



**Mariya Riekkinen and Markku Suksi**

**ACCESS TO INFORMATION  
AND DOCUMENTS  
AS A HUMAN RIGHT**

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## SUMMARY

The right to access government information has acquired independent value and standing. Because it is closely linked with the freedom of expression and the notion of deliberative democracy, it is viewed as a necessary component of good governance and, therefore, reflects the fundamental values of democracy and participation. Although an explicit right to access official documents is not found in UN human rights law, attempts are being made, based on the existing legal sources, to justify such a right.

The few treaties that exist within this field have been adopted at the regional level and their interpretations depart from a dual approach to the right to access official information and documents:

- a) Reactive disclosure of information, i.e. disclosure of government information upon request, which is the leading principle;
- b) Proactive disclosure of certain types of information, i.e. an obligation of public authorities to publish certain types of information on their own initiative. This principle is complementary and limited *ratione materiae*.

As a rule, the right to request a document, according to the existing international treaties on the matter, belongs to everybody, and such a request is to be submitted in written form. The information can be requested from administrative or executive authorities. Moreover, national law can introduce legal provisions creating a duty also for other public authorities, courts and persons to grant access to documents and information and holding them accountable for not revealing the requested information to the public. As a general rule, all information is accessible which does not fall within the scope of exemptions, outlined by any treaty and specified by national legislation. The exemptions should preferably be applied by means of the “harm test” and the “public interest override test”. The refusal of public authorities to reveal information can normally be contested before the judiciary.

There are no strong arguments that could be used to challenge the viability of the right to access official documents under international human rights law. To start with, this right has already received its official recognition through regional organizations. Furthermore, it is regionally guaranteed to everybody by the Council of Europe’s *Convention on Access to Official Documents* and the *EU Charter of Fundamental Rights*. This means that for the purposes of promot-

ing a global norm on access to public documents and governmentally-held information, the international law could benefit from a) the availability of a developed legal vocabulary defining such principal concepts, as “the document”, “public authority”, “third parties”, b) the existing approaches to implementing this right, and c) elaborated exemption schemes. Such a specific right of access to documents should be designed as a separate human right which complements the freedom of expression.

The drafters of these instruments have used as a basis of their work reviews of national practices guaranteeing the freedom of information and access to official documents. Although the implementation of these principles at the international level can fall short of being effective due to an array of reasons, the existence of freedom of information statutes in at least 95 countries of the world testifies to the compatibility of such a right at the international level with national practices. In a good number of states, constitutions contain provisions granting the individual the right to access official documents and information as a constitutional right. Such constitutional provisions often require that legislation at the level of ordinary law is enacted. At the same time, although in certain states the constitution does not establish any explicit constitutional right to this effect, the legislative bodies have, nonetheless, adopted national freedom of information legislation. Therefore, on the basis of our review, states may act, according to a concept of freedom of information, in situations where the constitution does not grant such a right to individuals or does not require legislation on the freedom of information.

However, it seems clear on the basis of our review that a number of states do not have provisions in their legal systems on the right of access to documents or information either at the level of the national constitution or at the level of ordinary legislation. It is difficult to ascertain the exact number of states where no rules on the right of access to public documents or information exist. Nevertheless, the constitutions of 41 states out of 187 contain provisions of varying content concerning the right of access to public documents and information. In addition, an unspecified number of states may have enacted freedom of information legislation without any explicit provision in their national constitutions. On the basis of examples from a number of common-law countries, some 50% of the countries in the world have enacted provisions on access to public documents and information, either in constitutional law or in ordinary law or both. The increasing role of the internet is hardly visible in the normative materials, probably because the principle of access to public documents is medium neutral.

International law at the level of the UN still follows the approach, according to which government information is not available freely “unless the person who has it is either willing to make it available or is subject to some kind of enforceable duty to make it available”.<sup>1</sup> Recent legal developments have gradually discarded the rule sanctioning the secrecy of official information. Hence the main principle of making official documents and information accessible to everyone needs to be more effectively established at the level of the UN.

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<sup>1</sup> Mason 2000, p. 233. See also, Birkinshaw 2001, pp. 237–238, according to whom “[a] major governmental prerogative concerns its power to control the flow and timing of information”.

## **FOREWORD**

This inquiry into the freedom of information and access to governmentally-held documents is a result of the understanding that the Nordic model of openness, first conceived in the Kingdom of Sweden in 1766, is an important and unique feature of modern open government. It is necessary to find a firm legal basis for such openness not only in national legal orders but also at the level of international law, more specifically in human rights law.

With a view to the 250th anniversary of the 1766 Freedom of the Press Act of the Kingdom of Sweden, the idea was developed, with the support of the Ministry for Foreign Affairs of Finland, that an inquiry be made into the access to information legislation in different countries and into corresponding norms and interpretations at the level of international law. The inquiry was finalized at the end of June 2014 and is now published by the Institute for Human Rights at Åbo Akademi University. The authors of the inquiry and the Institute for Human Rights are grateful to the Ministry for Foreign Affairs for funding the work with and the publication of the inquiry.

Turku/Åbo on 17 December 2014

Mariya Riekkinen and Markku Suksi

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## 1. INTRODUCTION

For the first time in the history of modern statehood, eighteenth century Sweden introduced the principle of publicity of government documents. While all official documents remained in the possession of the state in the rest of the world, Swedish public authorities started to operate on the basis of ideas concerning access to public documents and, at the same time, the freedom of the press.<sup>1</sup>

After centuries of neglect by governments around the world, the international community recognized in 1948 freedom of expression as one of the fundamental human rights. The existence of freedom of information is explicitly guaranteed in the freedom of expression provisions of a number of universal and regional human rights treaties. In the United Nations, freedom of expression is guaranteed by the Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights (ICCPR), 1966, and the Convention on the Elimination of All Forms of Racial Discrimination, 1969. At the regional level, freedom of expression is acknowledged by the Council of Europe (CoE) Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR), 1950, the African Charter on Human and Peoples' Rights, 1981, the American Convention on Human Rights, 1969, and the Arab Charter of Human Rights, 2004. Freedom of speech or expression is guaranteed by almost all the constitutions of the world. However, the regulation of the concept of freedom of information differs from the concept of freedom of expression.

The existence of legal provisions on freedom of expression *per se* does not allow a direct conclusion concerning the existence of the individual right to access governmentally-held information or the right to the publicity of documents (we use both variants in the present work as synonyms). Most commonly, the right of access to governmentally-held information is interpreted as the extension of the freedom of expression. Nevertheless, the common-law states have for a long time maintained a more narrow interpretation of freedom of expression, which denies the inclusion of the freedom of, and access to, government infor-

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<sup>1</sup> In this connection Österdahl, for instance, claims that with respect to access to documents Sweden “belongs to the most liberal countries in the world”, Österdahl 1998, p. 336. According to the *World Press Freedom Index, 2014*, rating states on the basis of such criteria related to the freedom of the press as pluralism, media independence, environment and self-censorship, legislative framework, transparency, and infrastructure, Finland and Sweden are featured among the top countries. The World Press Freedom Index is a comparative index published annually by the Reporters Without Borders, an NGO which measures the level of freedom of information in 180 countries. According to information released on the web page of the Reporters Without Borders this index “reflects the degree of freedom that journalists, news organizations and netizens enjoy in each country, and the efforts made by the authorities to respect and ensure respect for this freedom”. *The World Press Freedom Index, 2014*, available at: <http://rsf.org/index2014/en-index2014.php>.

mation in the concept of freedom of expression. Instead, common-law countries interpret freedom of governmentally-held information as an independent “statutory right of access to information”.<sup>2</sup> Nonetheless, in the light of growing international tendencies to interpret access to information as an extension of freedom of expression, this wider approach can be expected to and, it can be argued, should become an integral part of all legal cultures around the world.

The main question posed by this study is whether a right of access exists at the international and national level “notably to government information and whether it is freely available rather than closely restricted”.<sup>3</sup> This question will help us to assess whether the right to access official information could be tenable in human rights law as a newly formulated human right, independent of the freedom of expression. The main research question will be supplemented by more specific questions in the chapters below.

Although human rights treaties enacted by the UN are still silent about the right to access governmentally-held information, international treaty-monitoring bodies increasingly tend to adjudicate this right as an extension of the right to freedom of expression. In 2004, the United Nations Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression made a Joint Declaration, according to which:

The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions.<sup>4</sup>

Moreover, according to the 2011 interpretation of the UN Human Rights Committee, which monitors the implementation of the ICCPR, Article 19 of the Covenant on freedom of expression “embraces a right of access to information held by public bodies”.<sup>5</sup>

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<sup>2</sup> See, e.g., Mason 2000, p. 225.

<sup>3</sup> *Ibid.*, p. 233.

<sup>4</sup> OSCE, Representative on Freedom of the Media, International Mechanisms for Promoting Freedom of Expression, Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 6 December 2004.

<sup>5</sup> UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN doc. CCPR/C/GC/34, para. 18.

The right to access official information is, however, legally recognized by the Council of Europe in the Convention on Access to Official Documents, 2009. In accordance with Article 2 of this Convention:

1. Each Party shall guarantee the right of everyone, without discrimination on any ground, to have access, on request, to official documents held by public authorities.
2. Each Party shall take the necessary measures in its domestic law to give effect to the provisions for access to official documents set out in this Convention.
3. These measures shall be taken at the latest at the time of entry into force of this Convention in respect of that Party.

The right of access to documents is also guaranteed by Article 42 of the Charter of Fundamental Rights of the European Union:

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

Insofar as the publicity of documents is a principle ensuring transparency in public administration, international human rights law links it with the paradigm of anticorruption policies. Although the 2003 UN Convention against Corruption does not explicitly state that the accessibility of governmentally-held documents is a measure of counteracting corruption, it contains specific references to the publicity of official documents. Such a reference can be found, for instance, in Article 46, paragraph 29(a), of the Convention pertaining to the mutual legal assistance of states in investigating corruption-related offences. This article mentions that access to “government records, documents or information” which are in the possession of a state party and which are, under national law, “available to the general public”, should be granted to a requesting state party for the purposes of legal assistance investigations, prosecutions and judicial proceedings in relation to the offences enumerated in the Convention. Paragraph (b) of the same provision also states that the state “at its discretion” may provide the requesting state party copies of documents that are not available to the general public, in order to provide legal assistance to another state in investigating corruption cases. We can see that the general assumption of the said paragraphs regarding access to public documents is rather limited, as the Convention accepts the principle of permitting the state itself to decide which document to make “available to the general public”. Nonetheless, the existence of the legally-

acknowledged connection between the publicity of documents and anticorruption policies testifies to the further recognition of this principle within the UN legal framework. Taking up the issue of the publicity of governmentally-held information, the 2003 UN Convention against Corruption is at the forefront, compared with its European counterparts: the 1999 CoE Criminal Law Convention on Corruption,<sup>6</sup> the 1999 CoE Civil Law Convention on Corruption,<sup>7</sup> and the 1997 EU Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the EU,<sup>8</sup> all of which are silent about this matter.

In 1986, the former European Commission on Human Rights under the aegis of the European Court of Human Rights made a distinction between access to “general sources of information” and access “by the interested person to documents, which although not generally accessible, are of particular importance to his own position” in the decision on the admissibility of the case *Graham Gaskin v. the United Kingdom*.<sup>9</sup> This decision shows a development in understanding freedom of expression in its potential to cover access to documents. At present, the European Court of Human Rights does not explicitly recognize the general right to access official information. Yet in a number of cases, as shown below, it admits that under certain circumstances Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (freedom of expression) may imply a right of access to documents held by public bodies.

The first legally-binding statement from an international human rights court, which explicitly stated that access to governmentally-held information is a human right, was the 2006 ruling of the Inter-American Court of Human Rights, according to which: “[T]he right to freedom of thought and expression includes the protection of the right of access to State-held information”.<sup>10</sup>

At the same time, not only freedom of expression can engender claims for accessing governmentally-held information. According to the interpretation of the UN Human Rights Committee, such access can also be derived from the right to take part in the conduct of public affairs. In General Comment No. 34 on Article 19 of the ICCPR, the Committee reinstates the connection between free-

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<sup>6</sup> CoE, Criminal Law Convention on Corruption, adopted 27 January 1999, ETS No. 173.

<sup>7</sup> CoE, Civil Law Convention on Corruption, adopted 4 November 1999, ETS No. 174.

<sup>8</sup> EU, Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, in: *Official Journal* C 195, 25/06/1997 P. 0002 – 0011, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41997A0625%2801%29:EN:HTML>.

<sup>9</sup> European Commission on Human Rights, *Graham Gaskin v. the United Kingdom*, Appl. No. 10454/83, admissibility decision of 23 January 1986.

<sup>10</sup> The Inter-American Court of Human Rights, *Claude Reyes et al. v. Chile*, judgment of 19 September 2006, para. 77.

dom of expression, access to information, and the right to take part in the conduct of public affairs, stipulated by Article 25 of the Covenant.<sup>11</sup> The connection of access to information and public participation has also been stated by the 2004 Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, and is defined as follows: “[T]he fundamental importance of access to information to democratic participation, to holding governments accountable and to controlling corruption, as well as to personal dignity and business efficiency”.<sup>12</sup>

Acknowledging the recent developments regarding the emerging international right to access governmentally-held information, the present study offers a historical overview of the Freedom of the Press Act in Finland and Sweden, followed by an overview of the universal and regional legal practices regarding recognition of the right to access official information and documents. The section regarding international law includes information on the NGO-drafted standards. A separate section of our study is devoted to examining the right to access official documents from a comparative perspective. This section systematizes the provisions of the constitutions of the world, guaranteeing the right to freedom of expression and the right to information. Moreover, insofar as our language skills allow us to conduct a legal analysis of English and Russian texts, we delve into a more detailed analysis of the laws on freedom of expression in common-law jurisdictions and in the Russian Federation. Legal analysis in all these sections is illustrated by detailed case-law examinations. The conclusions and recommendations are presented in the final section of this work.

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<sup>11</sup> UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN doc. CCPR/C/GC/34, para. 20.

<sup>12</sup> OSCE, Representative on Freedom of the Media, International Mechanisms for Promoting Freedom of Expression, Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 6 December 2004.



## **2. ACCESS TO PUBLIC DOCUMENTS AND INFORMATION IN FINLAND AND SWEDEN**

### **2.1. Historical Background**

#### *2.1.1. Written Rules on Access to Public Documents*

The first legal rules of a constitutional nature concerning access to public documents were enacted in 1766 by the Estates of the Realm of the Kingdom of Sweden. The rules concerning general access to information and documents were promulgated on 2 December 1766 in a document enacted by the Diet of Sweden identified as a fundamental law, but nonetheless entitled “Ordinance” by the King of Sweden, Adolphus Frederick. He was at the time a figurehead king over a state encompassing, *inter alia*, areas that today are identified as the states of Finland and Sweden.

The access to information rules were embedded in this document in a context of free speech and freedom of the press: the overall title of the ordinance was *His Majesty’s Gracious Ordinance Relating to Freedom of Writing and of the Press*. The main focus of the ordinance was on freedom of the press and the right to express in writing anything one wished, but already at that time, the organic relationship to access to public documents and information was a key component of the rules: in order to have something to write about and to publish in print matters concerning state affairs, it was necessary to disclose the sources of information held by the courts, public authorities and the Diet.

For almost 250 years, the principles of access to public documents have been preserved in Sweden and Finland, albeit in very different ways. In Sweden, the acceptance of this principle in constitutional law was more straightforward and was actually completed in 1809 and immediately thereafter. In Finland, the evolution of the principle up to the level of the formal constitution took longer and was more complicated.

#### *2.1.2. Material Contents of the 1766 Ordinance*

In the Preamble to the 1766 Ordinance, the reasons for passing the Ordinance were based on arguments supporting freedom of the press. However, the Ordinance referred to freedom of the press as one of the best means of improving morality and promoting obedience to the laws “when abuses and illegalities are

revealed to the public through the press”.<sup>13</sup> This implies that the content that was intended to be published on the basis of freedom of the press contained materials or was based on materials retrieved from the courts and public authorities, possibly containing information about abuses and illegalities. This idea is reinforced in Section 11 of the Ordinance, where freedom of the press and probably also access to public documents is advanced so “that all Our loyal subjects may be persuaded of the honourable conduct of their delegates during the sessions of Parliament”. Hence there is a connection to the accountability of government in the Ordinance.

The rules concerning access to information and documents are placed in Sections 6 through 11 in the 1766 Ordinance. Section 6 identifies in a broad and probably non-exclusive manner those documents that can be published under freedom of the press. Section 7 includes courts and other authorities related to court proceedings within the ambit of access to information by requiring that the name of the judge or civil servant deciding or participating in deciding a matter shall be clearly designated in the judgment or decision or in other records to counteract anonymous decisions, and Section 8 repeats this for the Council of State, but excludes secret ministerial matters. According to Section 9, the concept of public documents is expanded to encompass the King, that is, the Government, as well as the Estates. Finally, Section 10 makes it clear that public documents are not only such that have been issued by a court or a public authority, but also such that have been submitted to a court or public authority by an individual or another public authority or that are sent by such institutions to parties of the matter or to a third party. Section 11 extends the arrangement to the Estates with the specific aim of making it possible to review the conduct of the members of the Diet. The concept of the public document is thus very broad and of a general nature.

The main thrust of the 1766 Ordinance as concerns access to information and to public documents comes in the last sentence of Section 10:

And to that end free access should be allowed to all archives, for the purpose of copying such documents in loco or obtaining certified copies of them; responsibility for the provision of which is subject to the penalty laid down in §7 of this ordinance.

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<sup>13</sup> Quotes from His Majesty’s Gracious Ordinance Relating to Freedom of Writing and of the Press (1766) originate from a translation by Peter Hogg published in Mustonen 2006, pp. 8–17.

Concerning access to information *ratione personae*, everyone had free access to public documents. Section 6 of the Ordinance makes the need to obtain a document dependent on the wish of the person who feels the documentation is necessary for him or her and does not grant any margin of appreciation to the court or public authority as to what could be obtained. Hence access to information and public documents was a right of everyone, regardless of social status, citizenship (which was not a very developed legal category at that point of time), place of residence or some other qualification. Access to public documents was also not limited to the person requesting information being a party to the matter dealt with in the document, but applied to everyone.

Concerning access to information *ratione materiae*, it appears that all types of documents held by courts and public authorities were public documents, such as documents submitted by applicants, documents created by public authorities and documents sent by public authorities to individuals. However, Section 6 of the Ordinance excludes certain categories of information, such as criminal cases that have been settled by an amicable reconciliation between private individuals (except with the agreement of the parties, as long as they remain alive), information about “grave and unfamiliar misdeeds and abominations, blasphemies against God and the Head of State, evil and cunning schemes in these and other serious criminal cases, superstitions and other such matters should appear in court proceedings or judgments, they shall be completely excluded”. Some exceptions to free access thus applied to court proceedings and judgments. In Section 8, there is a reference to “secret ministerial matters” to which freedom of access would not apply; however, it is not clearly stated in the Ordinance what is meant by such secret ministerial matters. Nonetheless, on the basis of the detailed listings of documents that apparently are regarded as public documents, it could be assumed that secret ministerial matters should have referred to a fairly limited category of documents belonging to the Council of State. Moreover, in Section 11 dealing with the documents of the Estates in the Diet, there is a specific reference to “any activity or negotiations occurring on foreign territory that require secrecy”: thus, such documents could not be released and made public. Therefore, although limitations existed concerning the contents of the documents, the limitations were narrowly drawn in relation to the general principle of free access to public documents: “Highly significant too was the positioning of this right as primary and leaving of the necessary restrictions to a secondary po-

sition. Such an order of importance is proper to all subsequent laws on freedom of information. It is still a valid principle”.<sup>14</sup>

Concerning institutional delimitation, all courts and public authorities, including the King, that is, the Government, and the Estates, were included amongst the institutions, the documents of which were subsumed under the rule of free access. However, the reference in Section 8 to “secret ministerial matters” indicates that at the level of the Council of State or central government, certain documents could be excluded from freedom of access, in addition to the “irregular” court matters, specified in Section 6. Hence only relatively narrowly specified public organs were able to claim that some of their documents could be kept secret.

The openness of the courts and the public administration, including the highest state institutions, was reinforced by the threat of sanctions, and while there was a general reference to fines in Section 15 for violations of freedom of the press, the most severe sanction for violating freedom of access was identified in Section 7, namely, the “loss of office for whosoever refuses to do so or to any degree obstructs it”. Therefore, a civil servant or a judge who refused to grant access to public documents or obstructed access to such documents could be subjected to a harsh punishment.

### *2.1.3. The Drafting of the 1766 Ordinance*

The 1766 Ordinance was enacted by three of the Estates in the Diet during the Fall of 1766 and promulgated by the King of Sweden on 2 December 1766. The decision of the Diet was, of course, a remarkable political decision at that time, and, therefore, it is legitimate to inquire into the origins of the decision: where did the ideas come from and who drafted and advanced the Ordinance, in particular those parts dealing with free access to public documents?

The main person credited with advancing the idea of freedom of the press, including access to public documents, and drafting the Ordinance during the Diet of 1765–1766 was Mr. Anders Chydenius, a priest and a (junior) member of the Clergy in the Diet, appointed from the coastal region of Ostrobothnia, today a part of Finland.<sup>15</sup> He was originally a curate in the parish of Nedervetil, or in Finnish Alaveteli, and became later the pastor of Gamlakarleby or in Finnish

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<sup>14</sup> Manninen 2006, p. 45. See also Manninen 2006, p. 50.

<sup>15</sup> We are greatly indebted to professor emeritus Pentti Virrankoski for information concerning the role of Chydenius in the drafting of the Ordinance during the Diet of 1765–1766 (interview on 14 January 2014 in his home and additional comments). For a thorough historical analysis of Chydenius as a democratically-minded politician during the Enlightenment, see Virrankoski 1995.

Kokkola. Influenced by the ideals of the Enlightenment, Mr. Chydenius was active in numerous fields, such as freedom of trade and the free market economy, as well as the working conditions of labourers, and the promotion of agriculture, and assisted — during the Diet of 1789–1790 — the King in enhancing freedom of religion. During those times, various thinkers, in addition to Mr. Chydenius were propagating progressive ideas, the most influential of whom were Mr. Peter Forsskål<sup>16</sup> and Mr. Johan Arckenholtz,<sup>17</sup> both from Helsingfors or in Finnish Helsinki, as well as Mr. Anders Nordencrantz from Stockholm.<sup>18</sup>

Between 1719 and 1772, politics in the Kingdom of Sweden was not aligned along the four estates, but along a two-party structure, where the political rivalry was between the Hats, which could be characterized as conservative, and the Caps, which could be characterized as a progressive political movement.<sup>19</sup> This two-party structure of Swedish politics cut across all four estates, so that each of them consisted of supporters of both Hats and Caps. The consequence of this was that the logic of the inner working of the Diet switched from the collaboration between the four autonomous estates to a juxtaposition of two political parties, both with their own political platforms. This was visible, for instance, in the mechanism of parliamentarism, that is, political accountability of the government or the Council of State before the Diet, an early version of

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<sup>16</sup> Forsskål published in 1759 an essay entitled *Tankar om borgerliga friheten* (Thoughts on Civil Liberty; see <http://www.peterforsskal.com/thetext.html#top>, accessed 3 March 2014), in which he advocated, *inter alia*, freedom of speech and freedom of the press. While Section 21 of the piece is mainly about the right to speak and publish freely on societal issues, there is also a reference to the possibility of society's affairs becoming known to everyone and indications of substantive areas where access to public information and documents could be useful: "Finally, it is also an important right in a free society to be freely allowed to contribute to society's well-being. However, if that is to occur, it must be possible for society's state of affairs to become known to everyone, and it must be possible for everyone to speak his mind freely about it. Where this is lacking, liberty is not worth its name. Matters of war and some foreign negotiations need to be concealed for some time and not become known by many, but not on account of proper citizens however, but because of the enemies. Much less should peacetime matters and that which concerns domestic wellbeing be withheld from inhabitants' eyes. Otherwise, it might easily happen that only foreigners who wish harm find out all secrets through envoys and money, but the people of the country itself, who ideally would give useful advice, are ignorant of most things. On the other hand, when the whole country is known, at least the observant do see what benefits or harms, and disclose it to everybody, where there is freedom of the written word. Only then, can public deliberations be steered by truth and love for the fatherland, on whose common weal each and everyone depends". On Forsskål, see Manninen 2006, pp. 29–31.

<sup>17</sup> On Arckenholtz, who was a librarian, see Virrankoski 1995, pp. 179–180, 182–183, Manninen 2006, pp. 27–29, 41–43. Arckenholtz wrote a number of political treatises presenting practices of other countries to a Swedish audience, that is, he implied by way of comparative studies that changes were necessary in Sweden.

<sup>18</sup> On Nordencrantz, who was a successful businessman, see Virrankoski 1995, pp. 86–94, 98–99, 101, Manninen 2006, pp. 38–39, Roberts 1986, pp. 148, 151–152, 155 f. Nordencrantz advocated in particular the publishing of the documents of the Diet.

<sup>19</sup> For an account in English on this period of time, see Roberts 1986. It should not be surprising that Chydenius supported the political party of the Caps.

which was practiced during this Age of Liberty in the Kingdom of Sweden, as the period between 1719 and 1772 is generally referred to.<sup>20</sup>

It would be incorrect to attribute the ideas about access to public documents and freedom of the press to Mr. Chydenius.<sup>21</sup> He was the *primus motor* and leading member during the Diet of 1765–1766 in relation to these issues; however, the ideas had existed prior to his engagement in political issues. In his early political reflections, Chydenius had been opposed to the sovereignty of the Diet subject to the principle of the prohibition of the imperative mandate, established in 1747.<sup>22</sup> Chydenius wished to see the introduction of the imperative mandate so that the electors of the members of the various Estates could influence by binding instructions their representatives at the Diet. The reason for introducing an imperative mandate would have been to enable the electors of the members of the Diet to receive information about the discussions in the Diet as well as about the grounds for its decisions, which were mostly considered secret.<sup>23</sup> Access to documents was therefore primarily directed towards parliamentary documents,<sup>24</sup> the need of which was revealed when the Hats felt compelled to disclose certain disturbing facts to the Diet concerning state finances.

In order to remedy the need for information, the Diet of 1760–1762 had already discussed the conditions upon which public documents, including the documents of the Diet, could be made generally accessible for the purposes of holding the representatives accountable. In a memorandum to the above-mentioned Diet, Mr. Anders Schönberg, a supporter of the Hats, advocated free access to trial documents and documents held by public authorities at all levels, including documents of the Diet.<sup>25</sup> Eventually, the leadership of the Nobility re-

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<sup>20</sup> See Manninen 2006, p. 20, Roberts 1986, pp. 59, 86–91. This Age of Liberty has also been identified as an incipient form of democracy. See Virrankoski 2001, pp. 288–290, 308–312.

<sup>21</sup> Manninen 2006, p. 45. Manninen points out that “[w]hen the Caps gained central positions several people suggested publishing the documents concerning the Diet”. See also Manninen 2006, p. 46, where the point is made that at the beginning of the Diet of 1765–1766, Chydenius supported the general publicizing of public documents — at least concerning the Diet.

<sup>22</sup> The term “prohibition of the imperative mandate” was not used at that point in time, but only sometime after Edmund Burke had developed the same idea in his speech to the electors in Bristol on 3 November 1774. In the Kingdom of Sweden, the issue was whether the principals of the representatives of the Diet, in practice voting members of the Clergy, Burghers and the land-owning Peasants, could participate by means of instructions in processing issues within the different Estates (for the Nobility, this was customary practice, because the Nobility was relatively small and convened as a corporation in the Estate during the Diet). On the issue of whether the elected members of the Diet should take instructions from their principals, see Roberts 1986, pp. 68 f., 146.

<sup>23</sup> See Virrankoski 1995, p. 182. See also Manninen 2006, pp. 32, 34, 38.

<sup>24</sup> Manninen 2006, p. 45 f.

<sup>25</sup> *Ibid.*, pp. 46–49. Concerning the role of Schönberg, see Virrankoski 1995, pp. 178–179. See also Virrankoski 1995, p. 84 f., who attributes to Baron Christer Horn the assertion that the general public had been given too little information about political matters and who mentions the industrialist Carl Frieztzky as a member of the Diet of 1760–1762, who wrote a memorandum opposing secret decision-making and required the transfer of powers from the Secret Committee to the plenaries of the Estates. Both Horn and Frieztzky were Caps.

moved this topic from the agenda. However, Mr. Schönberg was also invited to present a memorandum on the issue for the next Diet of 1765–1766 (although he did not participate in the preparation of the Ordinance).<sup>26</sup>

When Chydenius understood that access to parliamentary documents could produce accountability similar to the imperative mandate of a delegate, he switched his political attention to access to public documents and dropped his claim of the imperative mandate. For instance, in a speech before the Grand Committee on 3 April 1765, he proposed that both records and memorials (memorandums) should be freely published.<sup>27</sup> Increasing the political accountability of the members of the Diet was probably a cornerstone of Chydenius' activities during the Diet. However, the right to publish official records and documents was not included in his oldest existing version of the text on freedom of the press from early 1765,<sup>28</sup> but somewhat later it was included. The combination of freedom of the press and the abolition of censorship with access to public documents was included in the report of 9 December 1765 of the special Committee on the Freedom of the Press, of which Chydenius was a member and later on also the unofficial secretary, in which capacity he directed the Committee's activities. Later on in December 1765, the Committee on the Freedom of the Press included documents of the Diet amongst those public documents to which everyone should have access.<sup>29</sup> The final report of the Committee was adopted on 21 March 1766, followed by an adoption of that report by the Grand Committee on 7 August 1766 after a debate on, in particular, publicity of the documents of the Diet. After this, and although the debates in the various committees of the Diet regarding general access to public documents were lively, the assemblies of the three Estates (Clergy, Burghers and land-owning Peasants<sup>30</sup>) accepted the report without objections, while the Nobility disagreed in part and requested some changes.<sup>31</sup>

The role of Chydenius in passing the text of the Ordinance has been characterized by one source as follows: “It would seem that no single ingredient of the [Ordinance –MS] was especially invented by Chydenius, but his mode and zeal

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<sup>26</sup> Manninen 2006, p. 44.

<sup>27</sup> *Ibid.*, p. 46.

<sup>28</sup> *Ibid.*, p. 41.

<sup>29</sup> Virrankoski 1995, p. 184. See also Virrankoski 2001, p. 313.

<sup>30</sup> Land-owning peasants were individuals who owned their property, such as the farm-land they cultivated, in contrast to tenants of various kinds. Because of formal ownership, they were taxed, and their presence in the Diet was required, *inter alia*, in order to participate in taxation decisions.

<sup>31</sup> Virrankoski 1995, p. 193.

in combining the different ingredients produced something unprecedented.”<sup>32</sup> Chydenius’ great historical achievement was to serve as the leader of the political thinking leading to the adoption of the Ordinance, including provisions on free access to public documents. However, ideas on financial issues advocated by Chydenius had infuriated a number of influential Hats and also Caps, who managed to have Chydenius excluded from the Diet as early as on 3 July 1766, when the estate of the Clergy made a decision to that effect. This means that he could not witness the promulgation of the Ordinance on 2 December 1766 as a member of the Diet, but had already at that point returned home to Gamlakarleby.

#### 2.1.4. *Principles of a Constitutional Nature*

As such, the term “Ordinance” indicates that rules exist at the level of a decree, that is, below the level of an act. However, the Ordinance was enacted under the sovereignty of the Diet, which was undisputable, and therefore, the Ordinance is, in fact, an Act of the Diet. In addition, Section 14 of the Ordinance defines itself as an irrevocable fundamental law:

And in order that Our loyal subjects may in future possess that complete confidence with regard to the assured preservation of the freedom of writing and of the press outlined here that an *irrevocable fundamental law* provides, We herewith wish to declare that no one, whoever he may be, on pain of Our Royal displeasure, shall dare to advocate the slightest elaboration or limitation of this gracious ordinance, much less attempt on his own authority to achieve such a limitation to a greater or lesser extent, and that not even We Ourselves will permit anyone to make the slightest modification, alteration or explication that could lead to the curtailment of the freedom of writing and of the press. [italics by MS]

On the basis of Section 14, it is clear that the material object of the regulation was freedom of writing and of the press, that is, a general right of citizens. Such a general right of citizens could only be conceived at the level of the constitution or at the level of an ordinary act of parliament, the reference to “irrevocable fundamental law” implying the former: the material contents of the Ordinance established a constitutional right for the citizens.

In order to understand the meaning of “irrevocable fundamental law”, it is necessary to know that Acts passed by the Estates required the majority of three

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<sup>32</sup> Manninen 2006, p. 52. This conclusion is in harmony with the characterization in Virrankoski 1995, pp. 194–195.



of the four estates in the Diet (Nobility, Clergy, Burghers and land-owning Peasants). This principle was established on the basis of the 1720 Instrument of Government Act and the 1723 Rules of Procedure of the Diet Act. Both of these Acts were considered fundamental laws, and the 1766 Ordinance can be understood as a complementary fundamental law in relation to them.<sup>33</sup> Because neither freedom of the press nor access to public documents was part of these two constitutional acts and because no absolutely clear distinction between a formal constitutional act and an ordinary act existed concerning the procedure of adopting constitutional acts, the 1766 Ordinance was not antithetical to the material constitution (in particular, the privileges of any of the estates) and could therefore be adopted by three estates as a fundamental law in spite of the fact that the Nobility was opposed to some parts of it.<sup>34</sup> Nevertheless, the Ordinance could be understood as a fundamental law of the same order as the constitutional acts of 1720 and 1723. In fact, the Nobility had also supported freedom of the press and the Ordinance, although it preferred a slightly altered version of it, so at the end of the day, it was possible for the King to promulgate the Ordinance as a fundamental law.

Formally, the decisions of the Swedish Diet were made along the four Estates during the Age of Liberty. So when the Hats dominated the Diet, they did so by dominating at least three of the Estates, and when the Caps finally gained an overall majority, they had to dominate at least three of the Estates.<sup>35</sup> Therefore, and in spite of opposition from the Nobility to some provisions of the Ordinance, it was defined from this point on as a fundamental law comparable to the fundamental laws of 1720 and 1723,<sup>36</sup> creating a regime of access to public

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<sup>33</sup> See Brusewitz 1916, p. iii. The preamble to the 1720 Instrument of Government Act identifies the Act as a fundamental law enacted by the unanimous decision of the four estates. The 1723 Rules of Procedure Act was also considered to be a constitutional act. The distinction between ordinary law and fundamental law was at least partly based on the notion of privileges of the estates, the amendment of which on the basis of Section XIX of the 1723 Rules of Procedure Act required the unanimous decision of the four estates, while other legislation was decided by the majority of three out of four estates. On the clear understanding of the fundamental laws of 1720 and 1723 as constitutional documents of a superior nature in relation to previous documents, see Roberts 1986, p. 61 f.

<sup>34</sup> Virrankoski 1995, p. 193.

<sup>35</sup> Therefore, control by one political party of all four estates would have guaranteed the possibility of passing more progressive legislation at the level of formal constitutional law. In such a situation, the enactment of rules in the new constitutional order according to the formula of  $\frac{3}{4} + \frac{1}{4}$  would in any future party constellation of the different estates have made it virtually impossible to secure unanimity for the revocation of a fundamental law.

<sup>36</sup> By the time of the adoption of the Ordinance, the concept of fundamental law was still developing concerning the enactment procedure, and it seems reasonable to think that the Ordinance became a fundamental law according to the traditional idea of fundamental law. Because it did not affect the privileges of any of the four estates, the new procedure of 15 October 1766 meant that a constitutional act enacted at a Diet required a super-majority of four estates, that is, unanimity of the four estates during the following Diet for confirmation as a constitutional act. This process for “explaining, adding to or improving” constitutional acts was adopted by the Diet in the fall of 1766. See the decision of the Diet of 15 October 1766, para. 6, in which the process of enacting constitutional

documents binding on the highest state organs, such as the Diet and the Council of State, as well as on the courts. The Ordinance was an effective legal norm, because these constitutional and public bodies started to act accordingly, with the right of access to public documents even being enforced.<sup>37</sup> It is therefore clearly possible to talk about constitutional significance for the Ordinance.

However, the nature of the Ordinance as a fundamental law could not withstand the *coup d'état* performed by the king, together with the military in 1772. At that point, young king Gustav III had grown weary of his role as a figurehead and longed for a restoration of royal powers, staging a swift campaign that ended with a wholesale revocation of all those fundamental laws that had been enacted after 1680, including the Ordinance of 1766. Nevertheless, the Ordinance was re-introduced as early as in 1774, although not as a fundamental law, but as a royal decree, which made it possible for the government to interfere with the freedom by means of its own decisions. Another ordinance on freedom of the press was issued in 1792 after the death of Gustav III, which again re-introduced this general freedom (and, in particular, abolished censorship). However, no specific mention was made of access to public documents. Therefore, it can be assumed that access to public documents was in that situation an integral part of the general freedom of the press (see sections 2.1.1. and 2.1.2. above). This Ordinance, too, was issued only as a royal decree.<sup>38</sup> This was the legal situation that existed during the period when the eastern part of the Kingdom, that is, more or less the area that is currently Finland, was separated from Sweden and made part of the Russian Empire (see section 2.2.2. below).

In Section 85 of the 1809 Constitution of Sweden, however, the freedom of the press ordinance was defined as a constitutional act. Thus, access to public documents, first established in the Ordinance of 1766, suffered a normative downgrading in 1772 and in the subsequent Ordinances of 1774 and 1792, only to re-appear at the constitutional level 37 years later in 1809. From 1766 until 1809, the survival of the right to access to public documents was uncertain. Ever since 1809, the Freedom of the Press Ordinance has enjoyed the formal status of a constitutional act in Sweden, but does this elevated status of the Ordinance also cover access to information and to documents of public authorities? What happened to the Ordinance in Finland, above all to freedom of information,

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acts is outlined. See Roberts 1986, p. 68, 168–170. See also Hirschfeldt 2010, p. 33, where the nature of the Ordinance as a constitutional act is propagated as one of the important elements of the Ordinance.

<sup>37</sup> For some examples of enforcement, see Hirschfeldt 1998, p. 7.

<sup>38</sup> *Kongl. Maj:ts Nådiga Förordning Om En Allmän Skrif- och Tryck-Frihet*, den 11 Julii 1792. The Ordinance of 1792 was not a proper decree with specific provisions, but a lengthy essay on the benefits of freedom of writing and of the press, consonant with the motivations underlying the Ordinance of 1766.

when Finland was separated from Sweden and made an autonomous Grand Duchy within the Russian Empire subject to the pledge that former Swedish law should continue to be in force in the jurisdiction of Finland?

## **2.2. Constitutional Developments after 1809**

### *2.2.1. The Development of Access to Public Documents in Sweden*

As mentioned above, Section 85 of the 1809 Instrument of Government (Constitution) Act of Sweden defined the freedom of the press ordinance as a constitutional act. In addition, Section 86 of the 1809 Instrument of Government (Constitution) Act explained that freedom of the press denoted the right of every citizen to publish texts without prior control. This right encompassed all documents and minutes in every case, excluding those minutes of the Council of State and the King that deal with ministerial matters and commands and minutes and documents of the central bank and the chancellery, all of which had to remain secret.

This means that, together with freedom of the press, access to public documents was part of the constitutional law of Sweden from 1809 on, taking 43 years before the establishment of the access to public documents was formally elevated to the position Mr. Chydenius and the Diet of 1765–1766 had espoused. Hence from 1809 on, access to public documents and information finally became a part of the formal Constitution of Sweden, and not just a principle or an act of constitutional nature. A new Freedom of the Press (Constitution) Ordinance had already been enacted in 1810, but was replaced by another Ordinance in 1812, which was amended several times before the current Freedom of the Press (Constitution) Ordinance was enacted in 1949. For instance, Section 2, subsection 4, of the 1812 Freedom of the Press (Constitution) Ordinance contained provisions concerning the general access to public documents, supplemented with certain limitations expressed in lengthy paragraphs of that section.

In the 1974 Instrument of Government (Constitution) Act, currently in force, a provision on the access to public documents is included in Chapter 2, Section 1, subsection 3: “[P]rovisions about the right to have access to public documents are found in the Freedom of the Press (Constitution) Ordinance.”

The Ordinance is defined in Chapter 1, Section 3, of the Instrument of Government (Constitution) Act as a constitutional act alongside the Instrument

of Government (Constitution) Act itself, the Order of Succession (Constitution) Act and the Freedom of Expression (Constitution) Act. The current Freedom of the Press (Constitution) Ordinance contains provisions concerning access to public documents in Chapter 2, Sections 1 through 18, and is from 1949, as amended.<sup>39</sup>

According to Chapter 2, Section 1, of the 1949 Freedom of the Press (Constitution) Ordinance, access to public documents is an individual right:

Every Swedish citizen shall be entitled to have free access to official documents, in order to encourage the free exchange of opinion and the availability of comprehensive information.

The integral relationship between freedom of the press and access to public documents has thus been preserved: access to public documents is embedded in a general freedom of expression, according to which freedom of the press entails the right to publish any public documents. At the same time, the material norms applicable in cases that deal with access to public documents are found in a constitutional act, not in an ordinary act of parliament, let alone a decree. The normative status of access to public documents is also, thus, very high concerning the details of the regulation.

A document is public insofar as it is held by a public authority and has been submitted to a public authority by a private party or another public authority or initiated by a public authority and approved in its final version. The default position is, thus, that documents of public authorities are public. However, rules concerning access to public documents and freedom of information are not limited to the Ordinance, but are complemented in Section 4 of the 1986 Administration Act by an active obligation of public authorities to inform the general public of matters of general interest.

Akin to 1766, the current Swedish rules on access to public documents at the same time have to be balanced in relation to the needs of confidentiality, for instance, to ensure privacy of individuals, national security, or business details of private enterprises that should not be disclosed to potential competitors.<sup>40</sup> Therefore, the 2009 Public Access to Information and Secrecy Act specifies matters that are exceptions to the general principle of publicity of documents to

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<sup>39</sup> For a translation into English, see <http://www.riksdagen.se/en/Documents-and-laws/Laws/> (accessed 6 March 2014).

<sup>40</sup> For example, according to Österdahl, the Swedish law on public access to official documents “is founded on the basic premise that openness shall be the rule and secrecy the exception in public administration”. Österdahl, 1998, p. 336.

be kept secret.<sup>41</sup> Hence the general principle of access to public documents at some point approaches its outer limit, at which point the specific provisions concerning secrecy of public documents and information become applicable.<sup>42</sup> In order for the wider public to know which public documents are in the possession of a public authority, the 2009 Act creates a duty on the part of the public authorities to maintain a register of public documents, a register that in itself is a public document to which individuals are entitled to have access. Recent amendments to this Act have increased the confidentiality in EU matters in a manner that has provoked critical reactions from the mass media.

It seems that over the years, access to public documents has resulted in a good number of cases in Swedish courts as well as at the Chancellor of Justice and the Ombudsman. In 1810, the Ombudsman was charged with overseeing the implementation of freedom of the press, with one important area for the Ombudsman's activities being, of course, public administration and the civil service. There does not seem to have been much to report by the Ombudsman before 1815 concerning access to public documents, but after 1815, the situation changed somewhat and cases started to appear in small numbers.<sup>43</sup> In 1840, the Ombudsman rendered an interpretation on the basis of a complaint from a person who had been denied access, where it was found that the chancellery was obligated to provide access to the documents, as requested. Because of the violation of the above-mentioned right, the Ombudsman initiated legal action against the president and several other civil servants of the chancellery, who were subsequently fined by the Supreme Court for failing to perform their official duties.<sup>44</sup> Access cases are reported from the latter part of the nineteenth century and the cases resolved by the Ombudsman and the courts have increased during

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<sup>41</sup> See Public Access to Information and Secrecy Act – Information concerning public access to information and secrecy legislation, etc. Stockholm: Ministry of Justice, 2009, at: <http://www.government.se/content/1/c6/13/13/97/aa5c1d4c.pdf> (accessed 6 March 2014). As summarized in the foreword to the information booklet, “[t]he Act contains provisions that supplement the provisions contained in the Freedom of the Press Act on the right to obtain official documents, for example provisions on the obligation of public authorities to register official documents, appeals against decisions of authorities, etc. This Act also contains provisions concerning the application of the principle of public access to information by municipal enterprises and certain private bodies. The Act also contains provisions on secrecy. The secrecy provisions entail both document secrecy and the duty of confidentiality. Secrecy thus entails restrictions both on the right of the public to obtain official documents under the Freedom of the Press Act and on the right of public functionaries to freedom of expression under the Instrument of Government. The Act also contains provisions regarding the cases where a duty of confidentiality pursuant to the provisions on secrecy limits the right to communicate and publish information permitted according to the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. The Act also contains provisions on the cases where a duty of confidentiality under enactments other than the Public Access to Information and Secrecy Act limits such right”.

<sup>42</sup> For an exposé of the situation in Sweden in comparison with the situation in South Africa, see Bull and Corder 2013, pp. 219–229.

<sup>43</sup> Hirschfeldt 1998, pp. 12–14.

<sup>44</sup> *Ibid.*, pp. 14–15.

the twentieth century.<sup>45</sup> Decisions by administrative authorities denying access to public documents are appealed to administrative courts, i.e. to the Supreme Administrative Court in the last instance, while decisions by courts of first instance and courts of appeals are tried by the Supreme Court in the last instance. The Ombudsman and the Chancellor of Justice also deal with issues concerning access to public documents in their capacity of oversight over public authorities and courts and in dealing with complaints from individuals.

The transparency and publicity of trials is established in Chapter 2, Section 11, subsection 2, of the Instrument of Government (Constitution) Act, while parliamentary proceedings are public, as stipulated in the Parliamentary Rules of Procedure (Constitution) Act, Chapter 2, Section 4, and meetings of the municipal councils according to the Local Government Act.

### *2.2.2. The Development of Access to Public Documents in Finland*

As indicated in section 2.1.4. above, the territory of what today is Finland was, after the war with Russia, separated from the Kingdom of Sweden in 1808–1809 and made an autonomous Grand Duchy within the Russian Empire. According to the Czar of Russia, Alexander I, the Grand Duchy of Finland would be governed subject to Swedish laws, which in Finland was interpreted as covering the constitutional acts of 1772 and 1789 as well as the general code of laws of 1734. Therefore, the 1792 Freedom of the Press Ordinance, which had been re-issued as a decree, was *not* amongst those Swedish acts that would be applied in the Grand Duchy of Finland.<sup>46</sup> In fact, censorship of the press and of the mail was practiced in Finland after 1809, in part because Russia wanted to prevent the spread of Swedish revanchism in Finland.<sup>47</sup> Therefore, it is likely that access to public documents was not part of the Finnish legal order after 1809.

In the 1865 Freedom of the Press Ordinance, access to public documents was re-introduced and specified in a manner more or less in line with provisions that had existed in Sweden after 1809,<sup>48</sup> and while an Ordinance of 1867 again limited the freedom of the press, it maintained access to public documents materially almost as provided for in the 1865 Ordinance. The 1891 amendments to

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<sup>45</sup> Hirschfeldt 1998, pp. 15–23.

<sup>46</sup> See Government Bill 105/1949 concerning the access to public documents act, p. 1, where such a legal situation is indicated.

<sup>47</sup> See the 1829 Ordinance on Censorship and Sale of Books.

<sup>48</sup> See Sections 9 through 11, where a general access to public documents is established, but significant limitations introduced at the same time concerning documents of a non-public nature, such as those of the higher governmental authorities. The central government of Finland, as well as the provincial governments, was thus not included in the access regime.

the Freedom of the Press Ordinance considerably limited access to public documents,<sup>49</sup> although access to public documents was still prioritized as the general rule (except for the higher state authorities, where non-access was the main point of departure).<sup>50</sup> Therefore, for the greater part of the history of the autonomous Grand Duchy of Finland, access to public documents was in the hands of the executive power, much in the same way as in Sweden between 1772 and 1809. In order not to seem overly positive about the legal continuity in this field, the situation in Finland appears to have differed dramatically from that of Sweden in spite of some provisions on access to public documents during the latter part of the nineteenth century: it seems that public documents were not generally accessible to the general public or only to a limited extent.

The 1906 constitutional act on civil liberties, enacted in conjunction with the right to vote in direct and proportional elections to the unicameral parliament, contained the freedom of association and assembly and — importantly — the freedom of the press. However, unlike Sweden, the freedom of the press had in this context no bearing on the access to public documents. Therefore, rules on access to public documents were absent also from the 1919 Form of Government (Constitution) Act of Finland, although a provision on the freedom of speech and of the press was included in that Act. Nonetheless, at this juncture, it became possible to transfer rules concerning access to public documents from administrative regulations at the level of the decree to acts of parliament, and as a result, different areas of material legislation were furnished with particular provisions concerning access to public documents. In addition, the 1919 Freedom of the Press Act, Chapter 5 contained several provisions concerning access to public documents, albeit more from the point of view of the freedom of the press. This Act formulated negative limitations concerning those public documents which would not be possible to publish without permission. Hence there was no explicit general formulation of access to public documents in that Act or in any other act, although the principle of access to public documents existed, perhaps mainly as a general principle of administrative law implied by the Freedom of the Press Act. This disparate and incomplete regulatory situation gave the impetus to establish the general access to public documents in the 1951 Act on the Publicity of Official Documents.<sup>51</sup>

As indicated above, the legacy of Chydenius and the 1766 Ordinance was not altogether lost in Finland between 1808 and 1951, although the normative

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<sup>49</sup> See Government Bill 105/1949, p. 1.

<sup>50</sup> See Sections 8 through 10 of the Ordinance, as amended in 1891.

<sup>51</sup> See Government Bill 105/1949, p. 2 f.

level for rules concerning access to public documents was very low for more than a century and gained status as an act of parliament only some time after the independence of Finland in 1917. The first formulation of access to public documents and information in formal constitution of Finland came in 1995 with the reform of the chapter of fundamental rights included in the 1919 Form of Government (Constitution) Act, which means that it took 223 years from 1772 before access to public documents and the freedom of information was again entrenched in the Finnish constitution. In Section 10 of the Form of Government (Constitution) Act, as amended in 1995, the provision was placed in the context of the political rights of the individual and referred to as a precondition for criticism and supervision of the exercise of public authority and the activities of government. The relationship between access to documents and free speech was also referred to.<sup>52</sup>

The provision of 1995 was transferred in the complete overhaul of the Finnish Constitution in the year 2000 as such into the current Constitution of Finland. In the Constitution of Finland of the year 2000, Section 12 is entitled the “Freedom of Expression and Right of Access to Information”. Thus, access to information is conjoined with the freedom of expression in the same section, but it nevertheless constitutes an independent individual right.<sup>53</sup> In order for freedom of expression to operate properly in a modern society, Section 12, subsection 2, further develops the freedom of expression by establishing rules on access to public documents in the following way:<sup>54</sup>

Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings.

The provision comprises two parts. The second sentence of the provision formulates a constitutional right of everyone to access to public documents and recordings. This provision *ratione personae* is universal and not limited to any particular group of persons, such as the citizenry or the parties to a litigation. Access to

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<sup>52</sup> See Government Bill 309/1993, pp. 56, 58.

<sup>53</sup> Subsection 1 of Section 12 reads as follows: “Everyone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act”.

<sup>54</sup> For a translation into English of the Constitution of Finland of the year 2000, see <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf> (accessed 6 March 2014).



public documents is established here as a general constitutional right and as a principal rule.

The first sentence of subsection 2 establishes that documents *ratione materiae* in the possession of the authorities are public. The expression used is documents and recordings, and the general idea posits that information held by public authorities is public irrespective of the method of storing or keeping it, be it on paper, tape, data file, or some other technical device. The first sentence adds a qualification that an Act of Parliament should impose narrowly drawn restrictions to the main rule. Provisions limiting access to documents cannot therefore be issued at normative levels below an Act of Parliament. In addition, the power of the Parliament to enact provisions limiting the publicity of documents and recordings is limited by reference to compelling reasons and to specific provisions. Institutionally, the reference to authorities is broad, and not limited to the administrative agencies of the state or the executive power or the courts. The Constitutional Law Committee of the Parliament of Finland may check, prior to passing a bill as an Act of Parliament that the proposed legislation is in conformity with the provision in the Constitution. Hence the constitutional provision affects in the first instance the enactment of provisions at the level of an ordinary act of parliament that have to conform to the requirements of the Constitution.

The Act that is there in order to fulfil the requirement of passing rules by an Act of Parliament is the 1999 Act on the Openness of Government Activities.<sup>55</sup> The Act implements governmental transparency, with the specific aim of facilitating the supervision by individuals and legal persons over the exercise of public authority and over public spending and to enable them to influence the exercise of public powers and to safeguard their rights and benefits. A public document is a document submitted to a public authority by a party to a matter or by another public authority or created by the public authority and approved as final for the purpose for which it is drawn up. Such documents are registered in a public register of documents maintained by the public authority. Any person is entitled to receive copies of documents held by authorities without giving any reason for the request, and if the public authority decided to refuse the request, it must without delay issue a written decision in which it justifies the refusal. The decision can be appealed to the administrative court. Since 1951, the administrative court jurisdiction of Finland, currently regional administrative courts and the Supreme Administrative Court, have tried access to public document cases in great numbers. Decisions by courts of first instance and courts of appeals

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<sup>55</sup> For a translation into English of the Act, see <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990621.pdf> (accessed 6 March 2014).

denying access to court documents can be appealed to a superior court, i.e. the Supreme Court in the last instance. The Parliamentary Ombudsman and the Chancellor of Justice also deal with issues of access to public documents in their capacity of oversight over public authorities and courts and in dealing with complaints from individuals. However, the Act also contains provisions creating an obligation on the part of public authorities to provide information about preparatory materials and about the activities of public authorities in general. A similar obligation has been created for municipalities pursuant to Section 29 of the Local Government Act.

The Act contains in Section 24 a lengthy listing of documents that are to be considered classified. All 32 paragraphs in the section contain specific definitions of matters relating to, *inter alia*, national security, privacy of individuals and confidential business-related information. The legal norms included in the Act have been designed and enacted so that there would be no need to add exceptions to the public nature of documents in any other acts; the exceptions of secrecy should be formulated *in toto* in this one Act. If a public authority refuses a request for a public document, it should do so by referring in its decision to one or several of the paragraphs in Section 24 and explain why the requested documents should remain classified.<sup>56</sup> However, the Act does grant access to a party to a matter, even to a range of documents otherwise considered classified. The Act on the Public Disclosure and Confidentiality of Tax Information (1346/1999) defines as public information data about taxation that pursuant to the secrecy provision in Section 24 of the Act on the Openness of Government Activities would otherwise be considered classified.

Section 50 of the Constitution deals with the public nature of parliamentary activity, *inter alia*, by stipulating that sessions of the plenary (but not those of the committees) are open to the public and that the parliamentary papers, including those of the committees, can be published or made available to the public. This normative situation concerning the documents of the legislative powers has existed since the latter part of the nineteenth century. Publicity of proceedings is mentioned also in Section 21, subsection 2, of the Constitution and is implemented by means of the openness and publicity of court proceedings and through meetings of municipal councils, as provided by the relevant acts.

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<sup>56</sup> For a commentary, see Mäenpää 2006, p. 70.

### 2.3. Concluding Remarks

As a principle, access to public documents was in 1766 probably originated in the Kingdom of Sweden and was not based on any external models from abroad. The idea was quickly transformed in the 1760s into a constitutional principle, followed by detailed regulation in Sweden in 1809 at the level of the formal constitution. In Finland, the principle took a long path to finally achieving constitutional status in 1995, with the main principle established in the Constitution, while its detailed provisions are provided in ordinary legislation enacted pursuant to the constitutional provision. The regulatory technique concerning access to public documents and freedom of information is thus different in the current legal systems of Sweden and Finland. The multi-documentary Constitution of Sweden contains a general provision in the Instrument of Government (Constitution) Act and detailed provisions in the Freedom of the Press (Constitution) Ordinance on access to public documents, including an individual right to access to public documents. In comparison, the Finnish Constitution establishes the framework from the point of view of an individual constitutional right within which access to public documents has to be implemented and leaves the detailed rules to be laid down by an act of parliament.

In spite of the differences in the regulatory techniques between Finland and Sweden, the material contents of the law on access to public documents are very similar, bordering on identical in actual practice. What is important in this context is that the publicity of documents and information is not dependent on rules established by the government and applied in an arbitrary manner by the executive power. What is also important is that the point of departure is not the confidentiality of documents held by the government, but instead the publicity of such documents. For the above-mentioned reasons, both Finland and Sweden may be characterized as open societies. However, the history of access to documents reveals the fundamental turning-point in thinking: at some point in time, the principle of confidentiality as the main rule has been supplanted by the principle of access to documents. This change of perspective is probably at least as much an intellectual paradigm shift as a legal one. Because access to documents and information is posited as the main rule, the exception to it is confidentiality, which should be as narrowly constructed as possible so as not to interfere too much with the operation of the main rule.

Throughout the constitutional history of access to public documents, a balancing act has been carried out between the main rule of access to public docu-

ments and the need to keep some public documents secret. The point of departure in 1766 and in the subsequent access to public documents provisions in the Finnish and Swedish constitutions is that access to public documents is the principal rule, while secrecy of public documents is an exception that should be as limited as possible. The grounds of secrecy of public documents are multifarious, ranging from national security to confidential data about business operations. However, one important area of this balancing of interests is the privacy of individuals that could be compromised through access to public documents. For instance, the existing right to access public documents does not imply that a person can retrieve the hospital records or other individual records of other persons.

Access to public documents and to information held by public authorities is envisioned in the two countries as a political right ensuring oversight over government and increasing the accountability of government. This is the case not only in relation to political offices, but also in relation to ordinary administrative agencies. In actual practice, provisions on access to public documents are very much a part of administrative law. Within this area, legal remedies apply in cases where access to public documents is denied. Historically, such remedies have existed from the very beginning of legal recognition of the principle of the publicity of documents. Regular administrative legal remedies are in both countries supplemented by the activities of the Ombudsman and the Chancellor of Justice. Safeguarding access to public documents through available legal remedies is important for ordinary individuals, and especially for the mass media.

### **3. THE PRINCIPLE OF ACCESS TO INFORMATION AND DOCUMENTS: INTERNATIONAL RECOGNITION AND ENTRENCHMENT**

#### **3.1. Freedom of Expression and Freedom of Information in the UN Legal Framework**

To date, the right to access official documents is guaranteed by many national constitutions (see sections 2.2.1. and 2.2.2. above and chapter 4 below). Nonetheless, there is no right to access official documents at the level of the United Nations. As for other regional human rights protection systems, in 2009 a special Convention on Access to Official Documents was adopted within the Council of Europe. This Convention is not yet in force. However, the fact of its adoption testifies to the legal entrenchment of this principle in regional human rights treaties. Moreover, this right is guaranteed by the 2012 EU Charter of Fundamental Rights.

The Universal Declaration of Human Rights (Article 19), the ICCPR (Article 19), and a number of other international treaties guarantee the freedom of expression — the right later employed by the human rights treaty bodies as a basis for adjudicating on the right to access governmentally-held information.

The right to freedom of expression is guaranteed by Article 19 of the ICCPR, which anchors this freedom together with the freedom of opinion and information:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include *freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice* [emphasis added by authors].
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.

By understanding freedom of information as an extension of freedom of expression, Article 19 implies the question of which information “is otherwise general-

ly accessible”.<sup>57</sup> In other words, it does not effectively overrule the rule on the secrecy of official information; neither does it impose a clear-cut obligation to disclose requested information to public authorities or to any other private person. It does not state “expressly [...] an obligation to provide information or a right to obtain it”.<sup>58</sup>

This suggests that the initial framework of protecting the right to information had resided with the provider of information.<sup>59</sup> Safeguarding the legitimate government interest in confidentiality is the rationale for such an approach.<sup>60</sup> The main assumption had for a long time been that information held by public authorities can be revealed to the public only if public authorities so decide.

The right to information is guaranteed by several other UN human rights treaties from a non-discrimination perspective. The right to information is guaranteed *ratione personae* to women by the 1979 Convention on the Elimination of All Forms of Discrimination against Women. This right to information is, however, limited *ratione materiae* to family planning and decisions on the number and spacing of children. States parties should take appropriate measures to ensure, on a basis of equality of men and women “access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning” (Article 10, para. h and Article 14, para. 2 (b)). States parties should also take appropriate measures to ensure, on a basis of equality of men and women, “the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights” (Article 16, para. 1 (e)).

The freedom to information is provided *ratione personae* to persons with disabilities pursuant to Article 21 of the 2006 Convention on the Rights of Persons with Disabilities, according to which:

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice [...]

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<sup>57</sup> Mason 2000, p. 226.

<sup>58</sup> *Ibid.*

<sup>59</sup> McDonagh 2013, p. 29.

<sup>60</sup> Mason 2000, p. 227.

Moreover, the Convention expressly mentions access to information in Article 9, paragraph 2(f):

States parties shall also take appropriate measures to: [...]

(f) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information.

In contrast, by guaranteeing “the freedom of opinion and expression”, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination does not express the right to information (Article 5, para. (d) (viii)).

### **3.2. Evolution of the Legal Approach: Circumscribing the Principle of Confidentiality**

The principle of access to information and documents was “slow to evolve”<sup>61</sup> in international human rights law. Long after the adoption of the international Bill of Human Rights the right to access governmentally-held information had not been afforded any explicit legal recognition. Even at present, the UN has not been successful in trying to establish a universal standard concerning freedom of information by means of an international convention. However, in the late 1980s and early 1990s, international human rights discourse witnessed the genesis of a process sometimes called the “transparency shift”, implying an increasing opportunity of citizens to gain access to governmentally-held information.<sup>62</sup> This shift towards a greater transparency in public administration emphasizes the significance of reciprocal communication between citizens and the state, with the right to access official documents being seen as a cornerstone of such communication.<sup>63</sup>

Newly formulated academic insights into freedom of information prioritize the right to freedom of expression as an umbrella concept embracing freedom of information and access to official information. The rationale for such an interpretation is that access to information is a pre-condition of the full exercise of the right to freedom of expression. In this respect, some academics maintain that freedom of access to governmentally-held information is a procedural or “instrumental” right ensuring the due implementation of freedom of expression.<sup>64</sup>

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<sup>61</sup> McDonagh 2013, p. 28.

<sup>62</sup> See, e.g., Hillebrandt, Cutrin and Meijer 2014, p. 2.

<sup>63</sup> See Alemano 2014 and Rucinski 1991.

<sup>64</sup> McDonagh 2013, p. 29.

Contributions to good governance and democratization of public administration have refined the agenda of free access to governmentally-held documents, recently taken up on the international level. Thus, the meaning of the freedom of expression is gradually shifting from the provider-based to the recipient-based approach.

At the same time, the legal doctrine of the common-law states has for a long time adhered to a narrow approach, which does not emphasize the connection between freedom of expression and freedom of governmentally-held information.<sup>65</sup> For instance, the US legal order considers “the right of publicity” as an intellectual property right protecting the use of one’s own identity. Black’s Law Dictionary defines the right of publicity as the “right to control the use of one’s own name, picture, or likeness and to prevent another from using it for commercial benefit without one’s consent”.<sup>66</sup> Such an interpretation is derived from the work of J.T. McCarthy, a seminal figure on the right of publicity.<sup>67</sup> Although the right of publicity in using one’s own identity is often associated with celebrities, this right is inherent to everyone.<sup>68</sup> Such an interpretation of the right of publicity is based on the rights of the information-holder, determining his or her judgment in making a decision to disclose certain information to the general public. Moreover, the legal tradition of Great Britain has for a long time regarded the right to access to information as an autonomous statutory-based right.<sup>69</sup> This implies that the right to access government information is an entitlement derived from law and not an extension of the fundamental right to freedom of expression. Therefore, the protection of this right cannot be directly inferred from implementing the fundamental right to freedom of expression, but depends on the availability of special statutory provisions. However, insofar as the ICCPR, the European Convention on Human Rights and the American Convention on Human Rights are concerned, they “all treat freedom of expression as including freedom of information”. As a consequence, the common-law jurisdictions are nowadays turning towards an interpretation of the right to access official information as a human right in accordance with the principles underlying international law.<sup>70</sup>

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<sup>65</sup> As remarked by Mason 2000, p. 225, “[i]nternational and European lawyers rather than traditional common lawyers have been astute to see that close connection”.

<sup>66</sup> Black’s Law Dictionary, p. 1350.

<sup>67</sup> See McCarthy’s foremost publication on the right of publicity quoted in Black’s Law Dictionary, supporting a definition of this right, McCarthy 1987.

<sup>68</sup> Kimball 2008, p. 186.

<sup>69</sup> See, e.g., Mason 2000, p. 225.

<sup>70</sup> *Ibid.*



Legal developments pertaining to the recognition of the principle of access to information at the level of the UN took place side by side with relevant regional developments. Eventually, regional human rights protection systems surpassed the UN in its legal recognition of the right to access governmentally-held information. In 2009, the Council of Europe recognised the principle of access to official documents held by public authorities as a human right by the *Convention on Access to Official Documents*.

Acknowledging the leading role of the freedom of expression as the core of the right to information, international treaty-monitoring bodies and international human rights tribunals recognize other legal foundations from which the latter right can be derived. In particular, the international organs and organizations mentioned interpret the right to access government information not only as a corollary of the freedom of expression, but also as the extension of the right to public participation, the right to a fair trial, the right to privacy, and the right of persons belonging to minorities to enjoy their own culture, to profess and practise their own religion, or to use their own language, all of which will be shown in more detail later in this chapter.

### **3.3. The 1948 Draft Convention on Freedom of Information and Viability of Newly Formulated Human Rights**

The pre-ICCPR era witnessed the attempts to introduce a special Convention on Freedom of Information. The right to freedom of information would have received official recognition as an independent international human right, distinguished from freedom of expression. In 1946, during its first session, the UN General Assembly declared freedom of information as “a fundamental human right”, the “touchstone of all the freedoms”, and an “essential factor in any serious effort to promote the peace and progress of the world”.<sup>71</sup> Pursuant to Resolution 59(I) of 14 December 1946, entitled *Calling of an International Conference on Freedom of Information*, the General Assembly initiated a study of the problems of freedom of information.<sup>72</sup> The Resolution considered the freedom of information as “the right to gather, transmit, and publish news anywhere and everywhere without fetters”. With the goal to formulate the views concerning

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<sup>71</sup> UN General Assembly, Resolution A/RES/59(I), Calling of an International Conference on Freedom of Information of 14 December 1946.

<sup>72</sup> UN General Assembly, Resolution A/RES/631, Future work of the United Nations in the field of freedom of information, 16 December 1952.

“the rights, obligations, and practices which should be included in the concept of the freedom of information”, Resolution 59(I) proposed to gather a conference on freedom of information.

On 21 April 1948, *the United Nations Conference on Freedom of Information* was held in Geneva. It called together the representatives of 57 governments.<sup>73</sup> The Final Act of that conference proposed the drafts of three conventions dealing with the freedom of information.<sup>74</sup> Those were the *Draft Convention on the Gathering and International Transmission of News*, the *Draft Convention Concerning the Institution of an International Right to Correction*, and the *Draft Convention on Freedom of Information*.

On 13 May 1949, the UN General Assembly adopted *the Convention on the International Transmission of News and the Rights of Correction* which was the result of a merger of the Draft Convention on the Gathering and International Transmission of News and the Draft Convention Concerning the Institution of an International Right to Correction.<sup>75</sup> The Draft Convention on Freedom of Information had remained a draft, the text of which “has not even been finalized”.<sup>76</sup>

The Draft Convention on Freedom of Information originated in a British proposal that reflected the legal ideas of the freedom of the press “as developed in the unwritten law of England”.<sup>77</sup> The origin of that draft can *per se* be seen as a testament for an overarching value of the freedom of expression with its roots in the British and Swedish constitutionalism.<sup>78</sup> In England — as in Sweden in its famous freedom of the press legislation — the ideas of freedom of expression began to officially spread as early as in the eighteenth century. The first legal mentioning of freedom from censorship in England was made in 1784 in the case *Rex v. Dean of St. Asaph Britain* by proclaiming that: “[T]he liberty of the Press consists in printing without any previous licence, subject to the consequences of the law”.<sup>79</sup>

Although the 1948 Draft Convention on Freedom of Information was targeted at codifying legal rules regarding implementation of this freedom, that draft was silent about access to official documents. As for its contents, the initial

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<sup>73</sup> Eek 1953, p. 10.

<sup>74</sup> The United Nations Conference on Freedom of Information, 21 April 1948, The Final Act, reproduced on the official web page of the Institute for Information Law, the University of Amsterdam, available at: [http://www.ivir.nl/news/UN\\_Conference\\_on\\_Freedom\\_of\\_Information\\_1948\\_Final\\_Act.pdf](http://www.ivir.nl/news/UN_Conference_on_Freedom_of_Information_1948_Final_Act.pdf).

<sup>75</sup> Eek 1953, p. 11.

<sup>76</sup> *Ibid.*, p. 10.

<sup>77</sup> *Ibid.*, p. 19.

<sup>78</sup> For more information regarding the parallels between the Swedish and British “age of liberty”, see Roberts 1986.

<sup>79</sup> Quoted from Eek 1953, p. 27.

Article 1 of the Draft Convention on Freedom of Information, adopted at the 1948 Conference, included an obligation of each contracting state:

[T]o secure to all its own nationals and to the nationals of every other contracting states lawfully within its territory freedom to impart and receive information and opinions orally, by written or printed matter, in the form of art, or by legally operated visual or auditory devices without governmental interferences.

Nonetheless, in the last version of Article 1, elaborated by the Third Committee of the General Assembly in 1959, it read differently:

[E]ach contracting state shall secure to its own nationals and to such of the nationals of every other contracting states, as are lawfully within its territory, freedom *to gather*, receive and impart without governmental interference, *save as provided in Article 2 and regardless of frontiers*, information and opinions orally, in writing or in print, in the form of art or *in duly licensed* visual or auditory devices; [...] <sup>80</sup>

As the result of almost nine years of negotiations the scope of Article 1 of the draft convention was extended with the provision “regardless of frontiers” allowing to impart/receive information to abroad/from other states. Moreover, with references to limitations set forth by Article 2, the last version of draft Article 1 introduced a specific limitation, i.e. the requirement of state licencing of visual and auditory devices. The initially introduced requirement of citizenship or lawful residence for the purposes of implementing the freedom of information was, however, left in the final text of Article 1.

The Conference text of Article 2 of the Draft Convention on Freedom of Information concerning the limitations of the freedom of expression declared that:

[T]he freedoms referred to in [...] Article 1 carry with them duties and responsibilities and may therefore be subject to necessary penalties, liabilities, and restrictions clearly defined by law but only with regard to an exhaustive inventory of 10 permissible limitations of freedom of expression.

In 1960, the Third Committee of the UN General Assembly adopted the last version of Article 2, which read:

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<sup>80</sup> UN General Assembly, Third Committee, Report A/4341 of 8 December 1959, Annex: Draft Convention on Freedom of Information, Article 1 (b) (UN General Assembly, Official Records, 1959, Annex 35, p. 5).

(1) The exercise of freedoms referred to in Article 1 *carries with it duties and responsibilities*. It may, however, be subject only to such necessary restrictions as are clearly defined by law *and applied in accordance with the law* in respect of: *national security*, [...]

(2) The restrictions specified in the preceding paragraph shall not be deemed to justify the imposition by any state of *prior censorship* on news, comments, and political opinions and may not be used as grounds for restricting *the right to criticize the Government* [italics by MR].<sup>81</sup>

The vision of possible limitations of freedom of expression, proposed in 1960 by the Third Committee, was based on the presumption that such limitations are necessary for the protection of national security. Moreover, the necessity for such exemptions to be based on law was complemented by the requirement of their application, in accordance with the law. With these qualifying requirements Article 2 of the Draft Convention on Freedom of Information implied that there should be *special legislation on the freedom of expression* in order for this freedom to be implemented. Moreover, the most recent version of Article 2 introduced special guarantees of implementing the freedom of expression, i.e. prohibition of censorship and the opportunity to criticize the government. Those guarantees strengthened the links between freedom of expression, free speech, and political participation.

Finally, Article 8 of that draft authorized the contracting states to derogate from freedom of expression “in time of war or other public emergency” — which is the provision that is not in conformity with the modern understanding of the freedom of expression as an absolute freedom. Although freedom of expression is not listed among those rights that may not be derogated from pursuant to the provisions of Article 4 of the ICCPR, the UN Human Rights Committee recalls that “in those provisions of the Covenant that are not listed in article 4, paragraph 2, there are elements that in the Committee’s opinion cannot be made subject to lawful derogation under article 4”.<sup>82</sup> In the view of the Committee, “freedom of opinion is one such element, since it can never become necessary to derogate from it during a state of emergency”.<sup>83</sup>

Already during the 1948 Geneva Conference on Freedom of Information a lack of consensus on the essence of the freedom of information arose between

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<sup>81</sup> UN General Assembly, Third Committee, Report A/4643 of 9 December 1960, Annex: Draft Convention on Freedom of Information, Article 2 (1) (UN General Assembly, Official Records, 1960, Annex 35, p. 5).

<sup>82</sup> UN Human Rights Committee, General Comment No. 29 (2001) on derogation during a state of emergency, Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 40, vol. I (A/56/40 (Vol. I)), annex VI, para. 13.

<sup>83</sup> UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN doc. CCPR/C/GC/34, para. 5.

democratic states “intending to develop freedom of information” and the authoritarian states “attempting to increase restrictions on freedom of information”.<sup>84</sup> As the result the Draft Convention was adopted during the conference by 31 votes to 6, with 2 abstentions. The six opposing votes came from the Soviet bloc.<sup>85</sup> The Draft Convention on Freedom of Information, proposed by the Conference on Freedom of Information, was discussed by the Third Committee and in the plenary sessions of the General Assembly.<sup>86</sup> In 1949, the General Assembly encouraged the process of making “substantive amendments” to this draft and to consider them during its Fourth session.<sup>87</sup> Since 1960, the Third Committee has not made any progress regarding the elaboration of the text of the Draft Convention on Freedom of Information.<sup>88</sup> The discussions regarding the Draft Convention continued until the Twenty-sixth session of the General Assembly in 1971 during which the last official mentioning of the work on freedom of information is found.<sup>89</sup> Meanwhile, in its Fifteenth session, the General Assembly began to elaborate an idea of a *Draft Declaration on Freedom of Expression*, proposed by the Economic and Social Council.<sup>90</sup>

The member states of the UN could not reach agreement concerning the future of this convention. Hilding Eek has advanced the opinion that the reasons for insignificant results regarding the adoption of the Convention on Freedom of Information are “partly political”, although “they may also be technical”.<sup>91</sup> Political reasons for non-adoption of the special international instrument on the freedom of expression culminated in the conflicting ideologies in the area of freedom of the press and information. The ideological conflict of those days was revolving around the polarity of the conservative Communist ideology, which considered the press and other media of information as the tools of safeguarding the position of the ruling elites, and the liberal Western doctrine, which understood these freedoms as the mechanisms of “social progress, and change, criticism and dissent”.<sup>92</sup>

Technical reasons were, according to Eek, manifold: the difficulties in setting a universal standard of national law in the field of freedom of information;

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<sup>84</sup> Kish 1995, p. 41.

<sup>85</sup> Eek 1953, p. 19.

<sup>86</sup> See UN General Assembly, Resolution A/RES/277(III) [A-C] Freedom of Information, of 13 May 1949.

<sup>87</sup> *Ibid.*

<sup>88</sup> Kish 1995, p. 44.

<sup>89</sup> UN General Assembly, Resolution A/RES/2844(XXVI) Freedom of information; human rights and scientific and technological developments; elimination of all forms of religious intolerance, of 18 December 1971.

<sup>90</sup> UN General Assembly, Resolution A/RES/1570(XV) Draft Declaration on Freedom of Information, of 18 December 1960.

<sup>91</sup> Eek 1953, p. 77.

<sup>92</sup> *Ibid.*, p. 15.

the possibility of wide and divergent interpretations of the freedom of expression while the language used in the convention was imprecise; the lack of “traditional standards” in the field of freedom of information; the constitutional situation of various countries which would require certain countries to introduce special legislation in order to enact this convention was not duly taken into account.<sup>93</sup>

Hence, in the view of Eek, who had acknowledged politically-motivated reluctance of some states to codify the rules on the freedom of expression, the above-mentioned technical-juridical difficulties were *per se* serious grounds preventing the Draft Convention on Freedom of Information from being adopted.

Eek published his concerns and observations regarding the failure of the Draft Convention on Freedom of Information in 1953. It seems that his views were already at that point of time in the forefront of modern views regarding the validity of newly emerging human rights. Within the field of emerging human rights, the interpretation of Philip Alston regarding the criteria which should be met by the emerging human rights in order to sustain them within the framework of international law is, perhaps, the most authoritative in modern human rights research. Alston belongs to those scholars who are concerned with the risk of devaluation of human rights.

Acknowledging an international trend for proclaiming increasing numbers of human rights at the international level which are “ranging from the right to tourism to the right to disarmament”,<sup>94</sup> Alston designed several criteria which human rights should qualify to, in order to amount to “the rights” in terms of international law. The proposed new human rights should:

- reflect a fundamentally important social value;
- be relevant, inevitably to varying degrees, throughout a world of diverse legal systems;
- be eligible for recognition on the grounds that it is an interpretation of the UN Charter obligations, a reflection of customary law rules or a formulation that is declaratory of general principles of law;
- be consistent with, but not merely repetitive of, the existing body of international human rights law;
- be capable of achieving a very high degree of international consensus;
- be compatible or at least not clearly incompatible with the general practice of states, and

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<sup>93</sup> Eek 1953, p. 77.

<sup>94</sup> Alston 1984, p. 607.

– be sufficiently precise as to give rise to identifiable rights and obligations.<sup>95</sup>

Studying the right of access to official information and documents, as it appears in international instruments, practice of international human rights tribunals, national constitutions and freedom of information acts, we will use below the above-mentioned criteria in order to assess whether a right to access public documents and governmentally-held information can be considered sustainable under the present international law framework.

### **3.4. Access to Official Information and Documents: The Current UN Framework**

#### *3.4.1. Interpretations of Treaty-Monitoring Bodies*

The UN human rights treaties avoid explicit guarantees of the right to access government information and documents which are not generally accessible. This said, however, it is not implied that we will be unable to find any references to such a right in international treaties. There are several ways to justify the right to access governmentally-held information on request under the provisions of the UN human rights treaties.

Reference to the freedom of expression is one of the most commonly used ways to adjudicate individual access to government information.<sup>96</sup> Freedom of expression is guaranteed by Article 19 of the Universal Declaration of Human Rights, Article 19 of the ICCPR, Article 13 of the Convention on the Rights of the Child, Article 5 (d)(vii) of the Convention on the Elimination of All Forms of Racial Discrimination, and Article 21 of the Convention on the Rights of Persons with Disabilities.

The Universal Declaration of Human Rights as well as the ICCPR guarantee the freedom of expression in its most general sense. All other treaties consider the freedom of expression from a non-discrimination perspective. This is why in our pursuits to study the evolution of the principle of access to governmentally-held information and documents we take Article 19 of the ICCPR as the initial point of examination. According to Article 19 of the Covenant, *the right to freedom of expression*, belonging to everyone, includes “*freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, ei-*

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<sup>95</sup> Alston 1984, pp. 614–615.

<sup>96</sup> McDonagh 2013, p. 26.

ther orally, in writing or in print, in the form of art, or through any other media of his choice” (para. 2; italics by MR). This article does not create directly for the governments the obligation to disclose information which they hold. Neither does it obligate public authorities to keep individuals aware of what sort of information is at the moment in the possession of the government. In other words, paragraph 2 of Article 19 “is addressing a situation in which information is otherwise generally accessible”.<sup>97</sup>

For a long time since the adoption of the ICCPR the references to the principle of access to government information and documents were lacking from the official interpretations of the Covenant provided by the UN Human Rights Committee. In 1983, the Committee issued General Comment No. 10 *Freedom of opinion and expression* (Article 19) which did not address this principle. This General Comment was focused on the development of modern mass media, the problem of extensive control over it (para. 2) and on the issues of possible restrictions of the right to freedom of expression (para. 4). In the 1996 General Comment No. 25 on *The right to participate in public affairs, voting rights and the right of equal access to public service* (Article 25) we can already see some developments towards widening the scope of the freedom of expression in the direction of the availability of information on political issues. In the frames of this General Comment the UN Human Rights Committee employs the term “free communication of information [...] about public and political issues” in the context of the full enjoyment of rights to participation in the conduct of public affairs (para. 25). Moreover, the Committee stresses the importance of the availability of the information for voters in minority languages as well as information on voting for illiterate persons (para. 12).

Finally, in a more recent piece, the 2011 General Comment No. 34 entitled *Article 19: Freedoms of opinion and expression*, the Committee remarks that *the right of access to information* is the extension of the freedom of expression. In particular, the Committee maintains that: “Article 19, paragraph 2 embraces a right of access to information held by public bodies” (para. 18). Moreover, the Committee clarifies that “information held by public bodies” includes “records held by a public body, regardless of the form in which the information is stored, its source and the date of production” (para. 18).

According to paragraph 7 of the General Comment, *public bodies* are:

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<sup>97</sup> Mason 2000, p. 227.



[a]ll branches of the state (executive, legislative and judicial) and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State party. Such responsibility may also be incurred by a State party under some circumstances in respect of acts of *semi-State entities*. [italics by MR]

The right to access information is associated not only with access to information from public bodies but also from “entities when such *entities are carrying out public functions*” (para. 18). The Committee takes a wider approach to identifying the information-holder when addressing access to personal data, with respect of which “every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes” (para. 18). Respectively, in the view of the Committee the right to access personal data corresponds to the obligation to reveal it on the side of not only public bodies but also “private individuals or bodies” who control the respective information or files (para. 18). General Comment No. 34 mentions that states parties should “proactively put in the public domain Government information of public interest”.

Paragraph 22 of General Comment No. 34 concerns the core issue of the right to access official information and documents, that is, *the scheme of restrictions* of this right, based on the provisions of Article 19 of the ICCPR. According to this interpretation, the restrictions must be “provided by law” and may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3.<sup>98</sup> They must “conform to the strict tests of necessity and proportionality”. This implies that restrictions are not allowed on grounds not specified in paragraph 3, “even if such grounds would justify restrictions to other rights protected in the Covenant”. Restrictions must be applied “only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated”.

Hence, by 2011 the UN Human Rights Committee has arrived at the conclusion that access to governmentally-held information and documents is a human right. This interpretation symbolizes recognition of the legal principle of the publicity of documents and its prevalence over the presumption of the secrecy of governmentally-held information. In the 2013 case of *Castañeda v. Mexico*,<sup>99</sup> the Committee utilized its interpretations, provided for in General Com-

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<sup>98</sup> I.e. for the respect of the rights or reputations of others and for the protection of national security or of public order (*ordre public*), or of public health or morals.

<sup>99</sup> *Castañeda v. Mexico*, UN Human Rights Committee, Communication No. 2202/2012, UN doc. CCPR/C/108/D/2202/2012, 29 August 2013.

ment No. 34. The applicant Mr. Rafael Rodríguez Castañeda claimed that his right of access to information under Article 19, paragraph 2, of the ICCPR was violated by the denial of access to all the used, unused and spoilt ballot papers from the polling stations regarding the presidential election so that the ballots could be counted again. Access to these documents was denied by national election authorities on the grounds that the election legislation of Mexico does not provide for general access to ballot papers in order to preserve the secrecy of vote yet it allows access to ballot papers “only in exceptional cases and only for the election authorities” (para. 2.4). The applicant had unsuccessfully challenged this denial before the national courts (para. 2.6 and 2.7) as well as before the Inter-American Commission on Human Rights which had ruled his application inadmissible (para. 2.9). The UN Human Rights Committee came to the conclusion that denying access to voting ballots was a proportionate restriction of the applicant’s right to information which “intended to guarantee the integrity of the electoral process in a democratic society” (para. 7.7). Such a conclusion was made with references to interpretation of the right to official documents provided by General Comment No. 34 and with due account of national election legislation of Mexico stipulating a legal mechanism for verifying the vote count which had been used in the election.

### *3.4.2. Other Points of Departure in Law for Access to Official Information*

The freedom of expression is the most commonly used yet not the only possible justification of the claims for access to official information. As it is emphasized in the above-mentioned General Comment No. 34, “elements of the right of access to information are also addressed elsewhere in the Covenant”.<sup>100</sup> More particularly, the UN Human Rights Committee is of the opinion that among the other articles that contain guarantees for freedom of opinion and/or expression, are Article 18 (the right to freedom of thought, conscience and religion), Article 17 (the right to privacy), Article 25 (the right to take part in the conduct of public affairs) and Article 27 (the rights of persons belonging to minorities to enjoy their own culture, to profess and practise their own religion, or to use their own language) of the ICCPR.<sup>101</sup>

The protection of the right to privacy, enshrined in Article 17 of the ICCPR, necessitates access to personal data files, as was remarked in General

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<sup>100</sup> UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN doc. CCPR/C/GC/34, para. 18.

<sup>101</sup> *Ibid.*, para. 4.

Comment No. 16 to the ICCPR on The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Article 17). In particular, according to paragraph 10 of this General Comment:

In order to have the most effective protection of his private life, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination.

Nonetheless, personal data in the meaning of General Comment No. 16 does not exactly match the notion of “official information”. Personal files are “official” in the sense that they are held by official bodies. Generally, however, individual information on concrete persons’ sensitive private matters remains outside the realm of the public sphere.

Moreover, effective implementation of the right to take part in the conduct of public affairs, guaranteed by Article 25 of the ICCPR, is supported by the right to information. Linked with the ideas of democratic government and public participation in decision-making, the principle of access to governmentally-held information guarantees a good and transparent public administration.<sup>102</sup> In accordance with General Comment No. 25 of the UN Human Rights Committee, the effective exercise of Article 25 rights should belong to an “informed community”, for maintaining of which voter education and registration campaigns are necessary (para. 11). Moreover, according to this General Comment, voters speaking minority language and illiterate voters should be proactively provided with information and materials about voting (para. 12). Electors should be fully informed of the guarantees of implementing their rights, i.e. the requirement of the secrecy of the vote, protection from coercion to disclose how they vote or from any unlawful interference with the voting process, independent scrutiny of the voting and counting process, access to judicial review, and assistance provided to the disabled, blind or illiterate (para. 20). Those are, of course, limitations *ratione personae* of freedom of information regarding political participation. A general right to access information in order to practice public participation presupposes “free communication of information and ideas about public and political issues between citizens, candidates and elected representatives” (para.

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<sup>102</sup> See, e.g., Chennupati, Potluri and Mangnale 2013, pp. 295–303; Mason 2000, pp. 230–231; Roy and Dey (undated).

25). This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.

The link between access to official information and public participation emphasized in General Comment No. 25 and General Comment No. 34 to the ICCPR entails implementation of the rights of persons belonging to minorities, *ratione personae*, in accordance with Article 27 of the ICCPR. Article 27 guarantees the right of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practise their own religion, or to use their own language. Following the opinion of the UN Human Rights Committee, the enjoyment of the rights under Article 27 of the ICCPR may require “measures to ensure the effective participation of members of minority communities in decisions which affect them”.<sup>103</sup> Hence, access to information is one of the preconditions of effective participation in decision-making regarding persons belonging to minorities. As was acknowledged in the case of *Poma v. Peru*<sup>104</sup> and reaffirmed in General Comment No. 34 to the ICCPR:

a State party’s decision-making that may substantively compromise the way of life and culture of a minority group should be undertaken *in a process of information-sharing* and consultation with affected communities [italics by MR].<sup>105</sup>

The circumstances of the case *Poma v. Peru* considered by the UN Human Rights Committee in 2009 concerned the government decision to divert the course of the river *Uchusuma* and to drill several wells on the wetlands situated on the applicant’s farm which had caused the progressive drainage and degradation of the pasture lands of the *Aymara* indigenous community. These damages deprived the author, who belonged to the *Aymara* indigenous community, of the only means of subsistence, and violated her traditional way of life. Although various members of the *Aymara* community held demonstrations against the contested decision, the protests were broken up by the police. The Committee found a violation of Article 27 of the ICCPR in this case claiming that in order to be effective participation in a decision-making process must require not mere

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<sup>103</sup> UN Human Rights Committee, General Comment No. 23, The rights of minorities (Article 27), UN doc. HRI/GEN/1/Rev.1 at 38 (1994), para. 7.

<sup>104</sup> UN Human Rights Committee, *Poma v. Peru*, Communication No. 1457/2006, UN doc. CCPR/C/95/D/1457/2006, 24 April 2009.

<sup>105</sup> UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN doc. CCPR/C/GC/34, para. 18.

consultation but also “free, prior and informed consent of the members of the community”.<sup>106</sup>

Hence, effective implementation of the rights under Article 27 of the ICCPR purports proactive obligation of public authorities to inform the members of indigenous communities of any decision which potentially can harm the way of life and culture of a certain minority group.

Moreover, another strong paradigm of the ICCPR interpretations regarding access to information concerns the right *to a fair trial*, Article 9, Article 14, and Article 15 of the ICCPR, in particular of those accused of criminal offences. For instance, General Comment No. 32 to the ICCPR, entitled Article 14: Right to equality before courts and tribunals and to a fair trial, provides for proactive obligation of the relevant authorities to inform any person charged with a criminal offence “promptly and in detail in a language which they understand of the nature and cause of criminal charges brought against them”.<sup>107</sup> Moreover, in accordance with paragraph 33 of the General Comment, the accused persons should have “access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory”.<sup>108</sup>

Finally, *the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* guarantees *the right to be informed* which under certain circumstances can be used as a basis for access to official documents. This right is guaranteed *ratione materiae* in the following cases:

Article 33 of the Convention provides for the right to be informed on the rights arising out of the Convention as follows:

1. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning:
  - (a) Their rights arising out of the present Convention;
  - (b) The conditions of their admission, their rights and obligations under the law and practice of the State concerned and such other matters as will enable them to comply with administrative or other formalities in that State.

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<sup>106</sup> *Poma v. Peru*, para. 7.6. In accordance with paragraph 7 of General Comment No. 23, the enjoyment of the rights guaranteed by Article 27 of the ICCPR “may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them”.

<sup>107</sup> UN Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN doc. CCPR/C/GC/32, para. 31.

<sup>108</sup> Exculpatory material should be understood as including not only material establishing innocence but also other evidence that could assist the defence (e.g. indications that a confession was not voluntary). *Ibid.*, para. 33.

In accordance with Article 22, paragraph 3, of the Convention a decision on expulsion shall be communicated to migrant workers and members of their families.

Under Article 23 of the Convention, migrant workers and their families have the right to be informed of the opportunity to have recourse to the protection and assistance of the consular or diplomatic authorities of the state of origin whenever the rights recognized in the Convention are impaired, in particular, in case of expulsion.

Finally, Article 37 of the Convention contains the right “to be fully informed” of all conditions applicable to the admission and particularly those concerning their stay and the remunerated activities in which migrant workers may engage as well as of the requirements they must satisfy in the state of employment.

Moreover, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families contains several other provisions regarding the right to be informed. However, those provisions relate to personal issues. The right to be informed on personal issues does not amount to a general right to access official information on public affairs.

### *3.4.3. UN Conventions on Environmental Matters*

The position of an individual inquiring for information is stronger in those cases where public authorities are under a specific legal obligation to reveal certain type of information as it follows from domestic statutes and international treaties. Several UN treaties impose on the governments a direct obligation to disclose information on environmental issues.

Access to environmental information is guaranteed by Article 6, paragraph (a)(ii) of the 1992 UN *Framework Convention on Climate Change*, according to which the parties shall:

- a) Promote and facilitate at the national and, as appropriate, subregional and regional levels, and in accordance with national laws and regulations, and within their respective capacities: [...]
- ii) Public access to information on climate change and its effects.<sup>109</sup>

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<sup>109</sup> UN Framework Convention on Climate Change, adopted on 9 May 1992.

Moreover, Article 4 of the 1998 UNECE *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, most commonly known as the Århus Convention, guarantees that:

1. Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:

(a) Without an interest having to be stated;

(b) In the form requested unless:

(i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or

(ii) The information is already publicly available in another form.<sup>110</sup>

The rule, contained in subparagraph (b)(ii) of the article, emphasizes that the right of access to environmental information goes beyond the threshold of being generally accessible to the public. The principle of access to environmental information, as enshrined in Article 4, is formulated as a duty of public authorities to disclose information on the request of individuals, who are under no obligation to prove any legitimate interest in the information. Public authorities can refuse a request for information under certain circumstances outlined in paragraph 4 of this article. Nonetheless, paragraph 1 (c) of Article 5 of the Convention imposes on public authorities a proactive obligation to disseminate immediately and without any delay environmental information in the event of any imminent threat to human health or the environment:

In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.

The obligation to inform the public on environmental issues is stipulated by the 1998 UNEP and FAO Convention *On the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* or the

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<sup>110</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted on 25 June 1998, entered into force 30 October 2001, reproduced on the official web page of the UNECE and available at: <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>.

Rotterdam Convention.<sup>111</sup> In accordance with Article 1 of the Convention, its objective is the following:

to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, by facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export and by disseminating these decisions to Parties.

As enshrined in the Rotterdam Convention, the obligation to inform the public applies to banned or severely restricted chemicals; and severely hazardous pesticide formulations that may impact on human health and the environment.

Moreover, the 1998 Århus Convention obligates public authorities to make publicly accessible lists and registers or files in order to keep the public informed on which environmental information exactly is held by public authorities (Article 5, para. 2 (b)(ii)).

Finally, the obligation of public authorities to proactively provide information regarding the rights and interests of indigenous peoples, in accordance with ILO *Convention concerning Indigenous and Tribal Peoples in Independent Countries* No. 169 (hereinafter: ILO Convention No. 169), is of relevance to the right to access official information. As far as legal relationships entailing the environment, ecology, and indigenous heritage represent matters of public significance, information referring to decision-making regarding indigenous rights can be considered as “official information” for the purposes of our present analysis. This right to be informed is, of course, limited *ratione personae* by reference to indigenous peoples. Moreover, it is limited *ratione materiae* as the relevant sources of international law stipulate only selected issues of which public authorities should inform indigenous peoples. The following are among the cases which obligate public authorities to provide information regarding indigenous peoples.

Concerning forthcoming decisions on the relocation of indigenous groups, Article 16, paragraph 2, of ILO Convention No. 169 guarantees the following:

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<sup>111</sup> UN Convention on the Prior Informed Consent procedure for certain hazardous chemicals and pesticides in international trade, adopted 10 September 1998, entered into force 24 February 2004, available at: [http://www.unido.org/fileadmin/user\\_media/Services/Environmental\\_Management/GUDDIS/Legal\\_Frameworks/rotterdam\\_convention.pdf](http://www.unido.org/fileadmin/user_media/Services/Environmental_Management/GUDDIS/Legal_Frameworks/rotterdam_convention.pdf).



Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent.

Undeniably, the process of obtaining the informed consent from the indigenous peoples for the purposes of their possible relocation necessitates public authorities to proactively provide the affected groups with all the necessary information, related to the implementation of the forthcoming decision. Such an obligation to proactively provide information regarding the rights of indigenous peoples is limited *ratione materiae* in the following cases:

In implementing and protecting the rights of workers belonging to indigenous peoples under labour legislation, in accordance with Article 20, paragraph 3(a), of ILO Convention No. 169 states shall ensure that:

[W]orkers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them.

Under Article 31 of ILO Convention No. 169, states shall undertake efforts in order to ensure that history textbooks and other educational materials provide “a fair, accurate and informative portrayal of the societies and cultures of these peoples”.

#### 3.4.4. *UN Declarations on Access to Documents*

The adoption of treaties guaranteeing the principle of the publicity of documents as well as interpretations of the existing treaties by treaty-monitoring bodies are accompanied by the acknowledgement of this principle in a number of UN Declarations. The right of access to information about all human rights and fundamental freedoms is mentioned by the 1998 Declaration *On the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*.<sup>112</sup> In particular, in accordance with Article 6 of this Declaration:

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<sup>112</sup> UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by General Assembly Resolution 53/144 of 9 December 1998, UN doc. A/RES/53/144 (1999).

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.

Article 6 understands access to information as a self-standing right, distinct from the freedom of expression. Referring to “domestic legislative, judicial or administrative systems”, the Declaration presupposes that individuals acquire access to governmental information. Yet this right is rather limited in scope *ratione materiae*, as the information in question implies only those issues which concern implementing human rights within the domestic administrative and legal framework. At the same time, the 1998 Declaration extends the scope of the responsible information-holders to non-state actors, that is, “individuals, groups, and organs of society”. This is a significant international law development insofar as the UN sources of human rights law and interpretation of treaty-monitoring bodies see primarily public authorities as the carriers of the duty to disclose information to citizens.

The right of access to information was acknowledged in the 2000 *Millennium Declaration* which mentioned that the governments should resolve “to ensure [...] the right of the public to have access to information” (para. 25).<sup>113</sup> Although the Millennium Declaration proclaims the right of public access to information, we have to admit that this right represents a narrow and unspecific part of the document.

At the same time, the right of access to official information is an essential part of UNESCO’s contribution. The principle of access to information is reaffirmed in two declarations adopted within the frames of this organization. To start with, the 2008 Maputo Declaration *Fostering Freedom of Expression, Access to Information and Empowerment of People* looks at the principle of access to information from the perspective of democracy and public participation, recognizing that freedom of expression and access to information “are essential to democratic discourse and open and informed debate, thereby fostering government transparency and accountability, peoples’ empowerment, and citizens’ participation”.<sup>114</sup> The Declaration calls upon governments “to ensure that public bodies respect the principles of open government, transparency, accountability

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<sup>113</sup> UN Millennium Declaration, General Assembly Resolution 55/2, UN GAOR, 55th Sess., Supp. No. 49, at 4, UN doc. A/55/49 (2000).

<sup>114</sup> UN Maputo Declaration on Fostering Freedom of Expression, Access to Information and Empowerment of People, adopted 3 May 2008.

and public access to information”. It employs the term “the principle of maximum disclosure of information”, yet not spelling out the exact contents of this principle. Two years later, UNESCO issued the Brisbane Declaration entitled *Freedom of Information: the Right to Know*, which called upon governments “to enact legislation guaranteeing the right to information in accordance with the internationally-recognized principle of maximum disclosure”.<sup>115</sup> In the context of state obligations, the Brisbane Declaration implies that the principle of maximum disclosure means that individuals should enjoy access to all information held by public bodies under “limited exceptions, proactive obligations to disclose information, clear and simple procedures for making requests, an independent and effective oversight system, and adequate promotional measures”.

*The UN Declaration on the Rights of Indigenous Peoples* contains provisions regarding the proactive obligation of public authorities to inform these peoples of forthcoming decisions. To start with, relocation of indigenous peoples should be preceded by an informed consent of the peoples concerned, in accordance with Article 10 of the Declaration:

No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Prior and informed consent of indigenous peoples is necessary to obtain before adopting and implementing any legislative or administrative measures which may affect the rights and interests of indigenous peoples. According to Article 19 of the Declaration:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Moreover, the proactive informing of indigenous peoples in order to obtain their consent is necessary for approval of projects affecting indigenous lands, territories or other resources of indigenous peoples, in accordance with Article 32 of the Declaration:

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<sup>115</sup> UNESCO Brisbane Declaration on Freedom of Information: the Right to Know, adopted 3 May 2010.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

Finally, according to Article 40 of the Declaration:

[I]ndigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights.

Although the UN Declaration on the Rights of Indigenous Peoples contains extensive provisions on informed consent with forthcoming decisions of public authorities, these provisions *ratione personae* concern only indigenous peoples.

### **3.5. The Access Framework of the Council of Europe**

#### *3.5.1. The European Convention on Human Rights and its Interpretations*

Although in 2009 the Council of Europe introduced a special *Convention on Access to Official Documents*, references to such an access could be found in the law of this international organisation well before the adoption of the said Convention.

The right to access official documents “finds its origin” in Article 10 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>116</sup> according to which:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder

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<sup>116</sup> Explanatory Report to the Council of Europe Convention on Access to Official Documents, ETS No. 205.

or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

As is the case with Article 19 of the ICCPR, Article 10 of the European Convention on Human Rights does not directly impose on the governments an obligation to disclose the official documents which are not generally accessible. The earliest interpretations of this article by the European Court of Human Rights (ECtHR) upheld this assumption by claiming that the right to information as enshrined by Article 10 of the ECHR implies only that the state does not interfere with the right to seek and impart generally accessible information. According to an interpretation in 1987, provided by the European Court of Human Rights, the freedom to receive information “basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him”.<sup>117</sup> With this, the Court emphasized that Article 10 of the ECHR does not impose on the governments a general obligation to make all information in their possession accessible for the public.

In the 1987 case of *Leander v. Sweden* the applicant argued against refusal to disclose personal information from a secret police-register, which had led to a negative assessment of his suitability for employment on a post in the Swedish Navy. According to the Court’s assessment, in circumstances such as those of the present case:

Article 10 (art. 10) does not [...] confer on the individual a right of access to a register containing information on his personal position, nor does it embody an obligation on the Government to impart such information to the individual (para. 74).

According to the ECtHR, the fact that the information revealed to the military authorities was not communicated to Mr. Leander “cannot by itself warrant the conclusion that the interference was not ‘necessary in a democratic society in the interests of national security’” (para. 66). This is due to the fact that under the Swedish legal system the Personnel Control Ordinance “contains a number of provisions designed to reduce the effects of the personnel control procedure to an unavoidable minimum” (para. 64). The respondent state was entitled to use its margin of appreciation when considering that in the present case the interests of national security prevailed over the individual interests of the applicant (para. 67).

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<sup>117</sup> *Leander v. Sweden*, ECtHR, Appl. No. 9248/81, judgment of 26 March 1987, para. 74.

The earlier case-law of the ECtHR allows a conclusion that the Court has for a long time been considering the right to individual access to official information and documents as a very limited secondary right derived mainly from other rights than the freedom of expression. Most often the Court protects the right to information under Article 8 of the European Convention on Human Rights (the right to respect for private and family life). Academics even labelled such a situation as a “traditional reluctance of the European Court of Human Rights to apply Article 10 European Convention on Human Rights in access to information cases”<sup>118</sup>.

In the 1989 case of *Gaskin v. UK*<sup>119</sup> the applicant was taken into the care of the City Council and foster parents until he was 18. The Council kept case records on him from doctors, teachers, police offices and foster parents. At the age of 18 he brought negligence proceedings against the Council and asked for discovery of his case records. His request was refused on the grounds of public interest. The applicant argued that the refusal to access his personal and confidential information from the Council violated Article 8 and Article 10 of the Convention. In particular, the state, according to the applicant, failed to meet its positive obligation to give him access to the requested information.

The Court claimed, as it did in its aforementioned *Leander* case, that “the right to freedom to receive information basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him” (para. 52). With respect to Article 10 of the ECHR, the Court ruled that, in the circumstances of the present case, Article 10 “does not embody an obligation on the State concerned to impart the information in question to the individual” (para. 52). Overall, the government was found to be responsible for a violation of Article 8 of the Convention insofar as the procedures followed in relation to access by the applicant to his case records failed to secure respect for his private and family life (para. 49).

Similar reasoning was presented in the 1998 case of *Guerra and others v. Italy*.<sup>120</sup> The applicants who lived in the area of a toxic chemical plant lodged a complaint against the government. The plant released large quantities of inflammable gas, causing multiple accidents. As the result of the most serious accident, 150 people were admitted to hospital with acute poisoning. According to the applicants, the failure of the authorities to provide information about the environmental and health risks connected to this plant violated Article 8 and Arti-

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<sup>118</sup> Hins and Voorhoof 2007, p. 114.

<sup>119</sup> *Gaskin v. The United Kingdom*, ECtHR, Appl. No. 10454/83, judgment of 7 July 1989.

<sup>120</sup> *Guerra and others v. Italy*, ECtHR, Appls. Nos. 116/1996/735/932, judgment of 19 February 1998.

cle 10 of the ECHR. The applicants insisted that Article 10 of the ECHR imposed on states “a positive obligation to collect, process and disseminate such information, which by its nature could not otherwise come to the knowledge of the public” (para. 52). In the view of the applicants, the protection afforded by Article 10 had a “preventive function with respect to potential violations of the Convention in the event of serious damage to the environment and Article 10 came into play even before any direct infringement of other fundamental rights, such as the right to life or to respect for private and family life, occurred” (para. 52).

The Court had again insisted that the freedom of information “cannot be construed as imposing on a State, in circumstances such as those of the present case, positive obligations to collect and disseminate information of its own motion” (para. 53). Hence, Article 10 of the ECHR was found inapplicable in this case. Instead, the Court found a violation of Article 8 of the ECHR (the right to private and family life) reiterating that “severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely” (para. 60).

The case of *McGinley and Egan v. UK*<sup>121</sup> concerned the complaint of servicemen who had been exposed to nuclear test explosions carried out by the United Kingdom at Christmas Island. Documents containing the original contemporaneous recordings of environmental radiation following the tests were stored at the Atomic Weapons Research Establishment, unavailable for inspection by members of the public due to security concerns. Nonetheless, they could have been produced if required for the purposes of proceedings before the Pensions Appeal Tribunal (para. 12). Several years later the applicants suffered health damages which they connected with these tests after several publications in the mass media about these tests. The applicants wished to retrieve the documents related to the tests in the context of their applications for service disability pensions. Their request was refused. A question arose for consideration under Article 8 of the ECHR, since the state had not provided to the applicants on an individual basis any explanation or information as to the nature and impact of their participation in the test programme.

The case failed on its facts as the Court had considered that national law stipulated necessary procedure for the disclosure of documents which the applicants failed to utilize. Hence, it cannot be said that the state “prevented the applicants from gaining access to, or falsely denied the existence of, any relevant

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<sup>121</sup> *McGinley and Egan v. The United Kingdom*, ECtHR, Appls. Nos. 21825/93 and 23414/94, judgment of 9 June 1998.

evidence, or that the applicants were thereby denied effective access to or a fair hearing before the [Pensions Appeal Tribunal]” (para. 90). Nevertheless, in this case the Court has already demonstrated a stronger assertion of the right to information by stating that “[w]here a Government engages in hazardous activities, such as those in issue in the present case, which might have hidden adverse consequences on the health of those involved in such activities, respect for private and family life under Article 8 requires that an effective and accessible procedure be established which enables such persons to seek all relevant and appropriate information” (para. 101).

Speaking the words of Sir Stephen Sedley, “[t]here is something odd about discovering a right to information in the entrails of Article 8, which says nothing about information, and refusing to discern it in Article 10”.<sup>122</sup> In any case, either as the result of the UN discourses regarding the right to access official documents and the 2009 Council of Europe Convention on such a right or independently of these developments, the more recent case-law of the ECtHR confirms the applicability of the right to freedom of expression and information guaranteed under Article 10 of the Convention to access to official documents. Yet the ECtHR still avoids a formulation of a general right to access official documents. For instance, in the 2006 case of *Sdruženi Jihočeské Matky v. The Czech Republic*,<sup>123</sup> an environmental NGO contested the refusal of Czech authorities to provide access to documents and plans regarding a nuclear power station. Because the Czech authorities had sufficiently justified the refusal to grant access to the requested documents, the Court found no violation of Article 10 of the ECHR in this case. The refusal was justified in the interest of protecting the rights of others (industrial secrets), national security (risk of terrorist attacks) and public health. Although this case failed on the facts, and the application was found inadmissible, the Court explicitly recognised that the refusal by the Czech authorities is to be considered as an interference with the right to receive information as guaranteed by Article 10 of the Convention. This admissibility decision is nonetheless important as it contains an explicit and undeniable recognition of the application of Article 10 in cases of a rejection of a request for access to official documents.

In the 2009 case of *Kenedi v. Hungary*,<sup>124</sup> the applicant, Mr. János Kenedi contested in the Court the reluctance of public authorities to enforce a court or-

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<sup>122</sup> Sedley 2000, p. 245.

<sup>123</sup> *Sdruženi Jihočeské Matky v. Czech Republic*, ECtHR, Appl. No. 19101/03, admissibility decision of 10 July 2006.

<sup>124</sup> *Kenedi v. Hungary*, ECtHR, Appl. No. 31475/05, judgment of 26 May 2009.



der granting him unrestricted access to certain documents deposited at the Ministry of the Interior regarding the functioning of the State Security Services in Hungary (para. 7). For several years Kenedi tried to get access to the relevant information from the Ministry. Finally, he obtained a court order to enforce access. The Ministry, however, continued to obstruct him, for example by requiring that Kenedi sign a declaration of confidentiality. The Court concluded that the authorities had acted arbitrarily and in defiance of domestic law. Their obstructive actions had also led to the finding of a violation of Article 6, paragraph 1, of the Convention (the right to a fair trial). The Court held, therefore, that the authorities had misused their powers by delaying Mr Kenedi in the exercise of his right to freedom of expression, in violation of Article 10. According to the Court, “such a misuse of the power vested in the authorities cannot be characterised as a measure ‘prescribed by law’. It follows that there has been a violation of Article 10 of the Convention” (para. 45).

### *3.5.2. Recommendations of the Committee of Ministers*

A process of interpreting the right to access official information and documents has been going on at the level of Recommendations of the Committee of Ministers. In 1981, the Committee of Ministers issued Recommendation No. R (81) 19 *On the Access to Information held by Public Authorities*.<sup>125</sup> It recommended the governments of member states to be guided in their law and practice by the principles appended to the Recommendation. According to Principle I of the Recommendation, “everyone within the jurisdiction of a member state shall have the right to obtain, on request, information held by the public authorities other than legislative bodies and judicial authorities”. Access to information shall not be refused on the ground that the requesting person has not a specific interest in the matter (Principle III). Principle V of the Recommendation outlined possible limitations of access to information, listing grounds for refusal to disclose the requested information which are necessary in a democratic society, for the protection of legitimate public interests (such as national security, public safety, public order, the economic well-being of the country, the prevention of crime, or for preventing the disclosure of information received in confidence), and for the protection of privacy and other legitimate private interests, having, however, due regard to the specific interest of an individual in information held

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<sup>125</sup> CoE, Committee of Ministers, Recommendation No. R (81) 19 to member states on the access to information held by public authorities, 1981.

by the public authorities which concerns him personally. Any refusal of information shall be subject to review on request (Principle VIII).

Later the reactive approach of this Recommendation suggesting to disclose official information on request was reflected in the 2009 Convention on Access to Official Documents.<sup>126</sup>

A year later the Council of Europe adopted a *Declaration on the freedom of expression and information*. Reinstating these freedoms as “a basic element of democratic and pluralist society”, this declaration is, nonetheless, silent about the right to access official documents.

Finally, in 2002 the Committee of Ministers adopted Recommendation Rec(2002)2 on *Access to Official Documents*.<sup>127</sup> This document represented a more elaborated version of the 1981 Recommendation No. R (81) 19 On the Access to Information held by Public Authorities and was used as a base for elaborating the 2009 Convention on Access to Official Documents. According to Article III of the Recommendation, “Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including that of national origin”. It contained the definition of “public authorities”, i.e. “i. government and administration at national, regional or local level; ii. natural or legal persons insofar as they perform public functions or exercise administrative authority and as provided for by national law” (Article I).

This definition of “public authorities” was later applied in the text of the 2009 Convention on Access to Official Documents almost in the form found in the above-mentioned Recommendation. However, the 2009 Convention extended the definition of “public authorities” to legislative bodies and judicial authorities, performing administrative functions. The definition of “official documents” was also provided in the meaning of “all information recorded in any form, drawn up or received and held by public authorities and linked to any public or administrative function, with the exception of documents under preparation” (Article I). This definition was modified for the purposes of the 2009 Convention by rejecting the linkage to public or administrative functions. As shown in the next section, the Convention on Access to Official Documents made use of the possible limitations of the right to access official documents, stipulated by Article IV of the above Recommendation, according to which such limitations

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<sup>126</sup> Explanatory Report to the Council of Europe Convention on Access to Official Documents, ETS No. 205.

<sup>127</sup> CoE, Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents, 21 February 2002.

should be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:

- i. national security, defence and international relations;
- ii. public safety;
- iii. the prevention, investigation and prosecution of criminal activities;
- iv. privacy and other legitimate private interests;
- v. commercial and other economic interests, be they private or public;
- vi. the equality of parties concerning court proceedings;
- vii. nature;
- viii. inspection, control and supervision by public authorities;
- ix. the economic, monetary and exchange rate policies of the state;
- x. the confidentiality of deliberations within or between public authorities during the internal preparation of a matter.

All these limitations were incorporated in the text of the Convention and complemented with one more limitation regarding disciplinary investigations. Moreover, Recommendation Rec(2002)2 provided for a review procedure against the arbitrary rejections to reveal the requested documents (Article IX), complementary measures to guarantee access to official documents (Article X), and proactive obligation of public authorities to release the documents of general interest (Article XI). These provisions were later incorporated in the text of the 2009 Convention on Access to Official Documents analysed below.

### *3.5.3. The 2009 Convention on Access to Official Documents*

#### *3.5.3.1. Definitions*

In 2009, the CoE adopted *the Convention on Access to Official Documents* which is “the first binding international legal instrument to recognise a general right of access to official documents held by public authorities”.<sup>128</sup> This Convention has drawn inspiration from the 1998 Århus Convention and EU Regulation (EC) No. 1049/2001 of the European Parliament and the Council regarding public access to European Parliament, Council and Commission documents.<sup>129</sup>

Article 1, paragraph 2(a), of the Convention contains the exact legal definitions of “public authorities” and of “the documents”. “Public authorities” means:

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<sup>128</sup> Explanatory Report to the Council of Europe Convention on Access to Official Documents, ETS No. 205.

<sup>129</sup> *Ibid.*, Introduction.

1. government and administration at national, regional and local level;
2. legislative bodies and judicial authorities insofar as they perform administrative functions according to national law;
3. natural or legal persons insofar as they exercise administrative authority.

The difficulty to find a common definition of natural or legal persons “insofar as they perform public functions or operate with public funds” was acknowledged by the drafters of the Convention.<sup>130</sup> The definitions of such persons vary significantly from one country to the other. This is why the Convention leaves it for a national legislator to interpret what is considered a public function.

Moreover, Article 1, paragraph 2(a), of the Convention keeps an opportunity open for the states to opt for a wider definition of “public authorities”:

(ii) Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that the definition of “public authorities” also includes one or more of the following:

1. legislative bodies as regards their other activities;
2. judicial authorities as regards their other activities;
3. natural or legal persons in so far as they perform public functions or operate with public funds, according to national law.

Such a possibility has been used on a number of occasions. For instance, Hungary has declared at the time of signature of the instrument that the definition of “public authorities” includes the following: legislative bodies as regards their other activities; judicial authorities as regards their other activities; natural or legal persons insofar as they perform public functions or operate with public funds, according to national law.<sup>131</sup> Lithuania has also declared that the definition of “public authorities” includes “legislative bodies as regards their other activities, judicial authorities as regards their other activities, natural or legal persons insofar as they perform public functions or operate with public funds, according to national law”.<sup>132</sup> Article 1, paragraph 2(b), contains a definition of “official documents”, which means “all information recorded in any form, drawn up or received and held by public authorities”.

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<sup>130</sup> Explanatory Report to the Council of Europe Convention on Access to Official Documents, ETS No. 205, para. 10.

<sup>131</sup> CoE, List of declarations made with respect to treaty ETS No. 205.

<sup>132</sup> *Ibid.*

### 3.5.3.2. The Approach

The Convention analysed here proclaims the principle of openness and availability of official information and documents for individuals which is, however, subject to certain restrictions. As a general rule, the Convention keeps up with the reactive approach to disclosing information, according to which access to official documents is provided for individuals on the basis of requests or applications. At the same time Article 10 of this instrument mentions that a public authority “at its own initiative and where appropriate” can take measures to make the documents of general interest public “in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest”. In accordance with the Explanatory report to the Convention on Access to Official Documents, one of the possible criteria which can be used in order to establish which documents should be published proactively is “if a document, or a particular kind of document, is frequently requested”.<sup>133</sup>

In accordance with Article 2 of the Convention, entitled “Right of access to official documents”:

1. Each Party shall guarantee the right of everyone, without discrimination on any ground, to have access, on request, to official documents held by public authorities.
2. Each Party shall take the necessary measures in its domestic law to give effect to the provisions for access to official documents set out in this Convention.
3. These measures shall be taken at the latest at the time of entry into force of this Convention in respect of that Party.

As we can see, belonging to everyone, this right is not limited by the requirement of citizenship. Moreover, in accordance with Article 4 of the Convention, an applicant for an official document “shall not be obliged to give reasons for having access to the official document” (para. 1). Article 4 guarantees for individuals requesting governmentally-held information the right to remain anonymous “except when disclosure of identity is essential in order to process the request” (para. 2).

Article 5 of this treaty stipulates the procedure of processing such requests:

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<sup>133</sup> Explanatory Report to the Council of Europe Convention on Access to Official Documents, ETS No. 205, para. 73.

1. The public authority shall help the applicant, as far as reasonably possible, to identify the requested official document.
2. A request for access to an official document shall be dealt with by any public authority holding the document. If the public authority does not hold the requested official document or if it is not authorised to process that request, it shall, wherever possible, refer the application or the applicant to the competent public authority.
3. Requests for access to official documents shall be dealt with on an equal basis.
4. A request for access to an official document shall be dealt with promptly. The decision shall be reached, communicated and executed as soon as possible or within a reasonable time limit which has been specified beforehand.
5. A request for access to an official document may be refused:
  - i if, despite the assistance from the public authority, the request remains too vague to allow the official document to be identified; or
  - ii if the request is manifestly unreasonable.
6. A public authority refusing access to an official document wholly or in part shall give the reasons for the refusal. The applicant has the right to receive on request a written justification from this public authority for the refusal.

This means that the state is under an obligation to provide for an effective procedure for the initial administrative processing of access requests.

### 3.5.3.3. Legal Guarantees

The Convention provides several legal guarantees for implementing the right to access official information. Firstly, it stipulates *the review procedure* for applicants whose requests for official documents have been denied (Article 8):

1. An applicant whose request for an official document has been denied, expressly or impliedly, whether in part or in full, shall have access to a review procedure before a court or another independent and impartial body established by law.
2. An applicant shall always have access to an expeditious and inexpensive review procedure, involving either reconsideration by a public authority or review in accordance with paragraph 1.

Secondly, Article 9 of the Convention introduces special “*complementary measures*” safeguarding the right to access official documents which imply a legal obligation of public authorities “to inform the public about its right of access to official documents and how that right may be exercised”. In particular, public authorities shall take “appropriate measures” to:

- a. educate public authorities in their duties and obligations with respect to the implementation of this right;
- b. provide information on the matters or activities for which they are responsible;
- c. manage their documents efficiently so that they are easily accessible; and
- d. apply clear and established rules for the preservation and destruction of their documents.

In relation with Article 8, paragraph 1, of the Convention, Sweden has made a reservation on access to a review procedure before a court or another independent and impartial body established by law as regards decisions taken by the Government, ministers and the Parliamentary Ombudsmen. According to this reservation, “as a principal rule, all decisions taken by a Swedish public authority to deny access to an official document, in part or in full, can be appealed in court”.<sup>134</sup> However, for decisions taken by the Government, ministers and the Parliamentary Ombudsmen special provisions apply.

Finally, in accordance with Article 7 of the Convention, access to official documents is free of charge. Nonetheless, a fee may be charged to the applicant for a copy of the requested document. Nevertheless, the charges should be applied in accordance with the self-cost principle and be reasonable due to the fact that public authorities should not make any profit.<sup>135</sup>

#### 3.5.3.4. Possible Limitations

The Convention provides for a wide inventory of possible limitations of the right of access to official documents. In accordance with Article 3 of this instrument:

1. Each Party may limit the right of access to official documents. Limitations shall be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:
  - a) national security, defence and international relations;
  - b) public safety;
  - c) the prevention, investigation and prosecution of criminal activities;
  - d) disciplinary investigations;
  - e) inspection, control and supervision by public authorities;
  - f) privacy and other legitimate private interests;
  - g) commercial and other economic interests;
  - h) the economic, monetary and exchange rate policies of the State;

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<sup>134</sup> CoE, List of declarations made with respect to treaty ETS No. 205.

<sup>135</sup> Explanatory Report to the Council of Europe Convention on Access to Official Documents, ETS No. 205.

- i) the equality of parties in court proceedings and the effective administration of justice;
- j) environment; or
- k) the deliberations within or between public authorities concerning the examination of a matter.

Concerned States may, at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that communication with the reigning Family and its Household or the Head of State shall also be included among the possible limitations.

2. Access to information contained in an official document may be refused if its disclosure would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.

3. The Parties shall consider setting time limits beyond which the limitations mentioned in paragraph 1 would no longer apply.

The limitations apply to the content of the document and the nature of the information.<sup>136</sup> The list of these limitations is *exhaustive*, i.e. it is not subject to arbitrary extension. Nonetheless, nothing prevents national authorities from revising this inventory in order to reduce the number of reasons for limitation or in order to formulate the limitations more narrowly, “with a view to granting wider access to official documents”.<sup>137</sup> The limitations dictated by national security “should not be misused in order to protect information that might reveal the breach of human rights, corruption within public authorities, administrative errors, or information which is simply embarrassing for public officials or public authorities”.<sup>138</sup> The limitation of public safety means that the right to access official documents may be limited by prohibiting the disclosure of documents concerning the security systems of buildings and communications, etc.<sup>139</sup> The rationale for limitation, set forth by subparagraph c), is that access to the mentioned documents can “be prejudicial to investigations, lead to evasion of justice or evidence being destroyed”.<sup>140</sup> Limitations under paragraph d) are targeted at the preservation of the capacity of public authorities to carry out disciplinary investigations within their administrations.<sup>141</sup>

As examples of limiting the right to access official documents for the purposes of inspection, control or supervision by public authorities (para. e) the Ex-

<sup>136</sup> Explanatory Report to the Council of Europe Convention on Access to Official Documents, ETS No. 205, para. 22.

<sup>137</sup> *Ibid.*

<sup>138</sup> *Ibid.*, para. 23.

<sup>139</sup> *Ibid.*, para. 24.

<sup>140</sup> *Ibid.*, para. 25.

<sup>141</sup> *Ibid.*, para. 26.



planatory report to the Convention mentions on-going tax inspections, school and university examinations, labour inspections, inspections by social services and health and environmental authorities, etc.<sup>142</sup> Limitations related to privacy envisaged by paragraph f) imply that the interests to protect private life and other legitimate private interests “may take precedence over the interest in making the information in the document in question available”.<sup>143</sup> The main purpose of the exception regarding commercial or other economic interests, in accordance with paragraph g) of the analysed article, is to prevent “undue harm” to competitive or bargaining positions.<sup>144</sup> Among the examples of information which can be covered by this paragraph are trade secrets or data that public authorities use to prepare collective bargaining in which they take part or information for tax purposes collected from citizens and corporations.<sup>145</sup> Limitations under paragraph h) regarding economic, monetary and exchange rate policies can be entailed, for example, where a change of interest rates is being considered or for market-sensitive financial information.<sup>146</sup> Paragraph i) regarding limitations concerning the equality of parties in court proceedings and the effective administration of justice may, for example, “authorise a public authority to refuse access to documents drawn up or received (for example from its solicitor) with respect to court proceedings in which it is a party”.<sup>147</sup> Documents that exist autonomously of court proceedings as such cannot be refused under this limitation.<sup>148</sup> Limitations set forth by paragraph j) allow limiting the dissemination of information on the environment.<sup>149</sup> An example of such limitations is prohibition of disclosure of information about the location of threatened animals or plant species, in order to protect them.<sup>150</sup> This limitation is based on Article 4, paragraph 4(h), of the above-mentioned Århus Convention.

Finally, limitation under paragraph k) regarding deliberations within or between public authorities concerning the examination of a matter aim at protecting confidentiality of proceedings within or between public authorities and at ensuring the quality of the decision-making process. The term “matter” covers “all kinds of issues dealt with by the public authorities, that is, individual cases

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<sup>142</sup> Explanatory Report to the Council of Europe Convention on Access to Official Documents, ETS No. 205, para. 27.

<sup>143</sup> *Ibid.*, para. 28.

<sup>144</sup> *Ibid.*, para. 29.

<sup>145</sup> *Ibid.*

<sup>146</sup> *Ibid.*, para. 30.

<sup>147</sup> *Ibid.*, para. 31.

<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*, para. 32.

<sup>150</sup> *Ibid.*, para. 33.

as well as procedures for political decision-making”.<sup>151</sup> Article 3 gives parties to the Convention that are monarchies the possibility to declare that communication with the Royal Family and the Royal Household shall also be included among the possible limitations.<sup>152</sup> For instance, Norway has made a declaration, in accordance with which “communication with the reigning Family and its Household shall also be included among the possible limitations”<sup>153</sup> under Article 3 of the Convention.

Paragraph 2 of Article 3 necessitates that every decision on limitations of the right to access official documents should be based on following two principles: the disclosure of information is potentially harmful for the interests, enlisted in paragraph 1 of Article 3; and the public interest in disclosure should override the potential harm.

The “harm test” and the “balancing of interests” can be implemented in two ways: by virtue of case-by-case decisions, i.e. in every individual case, or by virtue of legislative formulation of limitations. Such legislation could, e.g. contain rules regarding the requirements for carrying out the harm tests. “These requirements could take the form of a presumption for or against the release of the requested document or an unconditional exemption for extremely sensitive information”.<sup>154</sup>

Necessitating the requirements for limiting the right to access official documents to be set down in law, Article 3 of the Convention on Access to Official Documents presupposes that there should be national legislation on access to official documents.

Hence the Convention on Access to Official Documents is a comprehensive international treaty regulating the right to access such documents. In order for this instrument to enter into force, it should collect 10 ratifications. Although the Convention has been signed by 14 states, there are seven ratifications as of February 2015, those from Bosnia and Herzegovina, Finland, Hungary, Lithuania, Montenegro, Norway, and Sweden.<sup>155</sup>

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<sup>151</sup> Explanatory Report to the Council of Europe Convention on Access to Official Documents, ETS No. 205, para. 34.

<sup>152</sup> *Ibid.*, para. 35.

<sup>153</sup> CoE, List of declarations made with respect to treaty ETS No. 205.

<sup>154</sup> Explanatory Report to the Council of Europe Convention on Access to Official Documents, ETS No. 205, para. 38.

<sup>155</sup> CoE Convention on Access to Official Documents, status of signatures and ratifications as of February 2015.

## 3.6. The European Union and the Right of Access

### 3.6.1. EU Legal Regulation

The right of access to documents is an integral part of the EU legal framework, ensuring transparency of the EU decision-making process. This right has not been guaranteed by the provisions of the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community. It was first included in Declaration No. 41, attached to the Final Act of the Treaty of Amsterdam, which made important changes in the form of substantive amendments to the treaties, particularly in the three-pillar structure of the Treaty on European Union. This right had also been integrated into the abortive 2004 Treaty establishing a Constitution for Europe, Article I–50, paragraph 3, entitled “Transparency of the Proceedings of Union Institutions, Bodies, Offices and Agencies”, which stipulated that:

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State shall have, under the conditions laid down in Part III, a right of access to documents of the Union institutions, bodies, offices and agencies, whatever their medium.<sup>156</sup>

The right of access to documents was also stipulated by Article II–102 of the Treaty establishing a Constitution for Europe, according to which:

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

The Treaty establishing a Constitution for Europe, however, never entered into force.

Nonetheless, the efforts towards recognizing a right of access to documents held by the Community institutions were taken even before the above-mentioned Declaration No. 41, attached to the Final Act of the Treaty of Amsterdam. On 7 February 1992, when the Final Act to the Maastricht Treaty had been signed, Declaration No. 17 to that act was adopted.<sup>157</sup> According to the Declaration, the

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<sup>156</sup> The Treaty establishing a Constitution for Europe, adopted 29 October 2004, reproduced in *the Official Journal of the European Union*, Vol. 47, 16 December 2004, C 310.

<sup>157</sup> Declaration No. 17 to the Final Act to the Maastricht Treaty on the Right of Access to Information, reproduced in *the Official Journal of the European Union*, C-191 of 29 July 1992, p. 1.

Commission was called upon to submit to the Council a report on measures designed to improve public access to information.<sup>158</sup> A year later the European Community adopted a Code of conduct concerning public access to Council and Commission documents which established that the public will have the widest possible access to documents held by the Commission and the Council.<sup>159</sup> According to Österdahl, this general principle of access to documents “implies a kind of presumption of openness, albeit in a considerably weaker form than the one found in the Swedish Freedom of the Press Act”.<sup>160</sup>

After the reform of the EU treaties, the right of access to EU documents is guaranteed by Article 15, paragraph 3, of *the Treaty on the Functioning of the European Union*, stipulating that:

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union’s institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph.

General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the European Parliament and the Council, by means of regulations, acting in accordance with the ordinary legislative procedure.

Each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in accordance with the regulations referred to in the second subparagraph.

The Court of Justice of the European Union, the European Central Bank and the European Investment Bank shall be subject to this paragraph only when exercising their administrative tasks.

The European Parliament and the Council shall ensure publication of the documents relating to the legislative procedures under the terms laid down by the regulations referred to in the second subparagraph.<sup>161</sup>

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<sup>158</sup> On the provisions on public access in Declaration No. 17 to the Final Act of the Treaty of Maastricht, see, Broberg 2002, p. 196; Österdahl 1998, p. 345.

<sup>159</sup> Code of conduct concerning public access to Council and Commission documents, 93/730/EC, reproduced in the *Official Journal of the European Union*, L 340 of 31 December 1993, p. 0041 – 0042.

<sup>160</sup> Delving into the issues of interconnections between the regulations on access to documents in the EU and in Sweden, Österdahl ascertains that “[i]n contrast to the Swedish system when transparency is measured against the protection of individual integrity under Community law, there is no doubt that the protection of individual privacy prevails”. Österdahl 1998, p. 346.

<sup>161</sup> EU, Consolidated version of the Treaty on the Functioning of the European Union, reproduced in *the Official Journal of the European Union*, 26 October 2012, C 326.

Moreover, the right to access official documents is confirmed by Article 42 of *the EU Charter of Fundamental Rights*, according to which:

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.<sup>162</sup>

In general, the right to access official documents is conceptualized as part of the principle of openness in EU law, which “is emerging yet is largely undefined”.<sup>163</sup> For instance, according to Lenaerts, the principle of openness means firstly “granting citizens a right of access to documents held by EU institutions” and secondly “shedding some light on the traditionally opaque EU decision-making process”.<sup>164</sup>

The interconnections between the right of access to official documents and the concept of openness in the EU administration became an issue of Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001, regarding public access to European Parliament, Council and Commission documents. The purpose of the Regulation is “to give the fullest possible effect to the right of public access to documents and to lay down the general principles and limits on such access” (para. 4). It reiterates that: “[a]ny citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation”. The term “document” means, for the purposes of this Regulation, “any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution’s sphere of responsibility” (Article 3 (a)). Access to documents is provided on the basis of applications for access to a document made in any written form, including electronic form (Article 6).

Regulation No. 1049/2001 calls for a wider access to documents, including those pertaining to common foreign and security policy and to police and judicial cooperation in criminal matters (para. 7). It calls upon all the agencies established by the EU institutions to apply the principles laid down in the Regulation (para. 8). In accordance with paragraph 10 of the Regulation, access to documents should be granted not only to documents drawn up by the EU institutions,

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<sup>162</sup> Charter of Fundamental Rights of the European Union, 2012/C 326/02, reproduced in *the Official Journal of the European Union*, 26 October 2012, C 326/391.

<sup>163</sup> Alemanno 2014, p. 72.

<sup>164</sup> Lenaerts 2013, p. 277.

but also to documents received by them, “in order to bring about greater openness in the work of the institutions”. The Regulation adheres to the principle of maximum disclosure, implying that “in principle, all documents of the institutions should be accessible to the public”.

The exemptions should aim at protecting internal consultations and deliberations “where necessary” to safeguard the ability of the EU institutions to carry out their tasks (para. 11). In particular, Article 4 of the Regulation introduces an exemption scheme, in accordance with which access to official documents is denied if the disclosure undermined the protection of: (a) the public interest, as regards public security; defence and military matters; international relations; the financial, monetary or economic policy of the Community or a Member State; (b) the privacy and the integrity of the individual, in particular, in accordance with Community legislation on the protection of personal data (para. 1). Moreover, access is denied where disclosure would undermine the protection of: commercial interests of a natural or legal person, including intellectual property; court proceedings and legal advice; the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure (para. 2). With respect to a document, drawn up by an institution for internal use or received by an institution, pertaining to a matter that has not been decided upon by the institution, access to such a document is denied if disclosing the document seriously undermined the institution’s decision-making process, unless there were an overriding public interest in disclosure. As for third-party documents, access to such documents is possible after consultation with the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed (para. 4). Paragraph 5 of Article 4 states that a member state may request an institution not to disclose a document originating from that member state without its prior agreement. Paragraph 6 stipulates that partial disclosure of a document is possible if only parts of the requested document are subject to any of the exceptions.

The contents and limits of the right to access official documents were reviewed by the Court of Justice of the European Union in the 2011 case of *Access Info Europe v. Council of the European Union*,<sup>165</sup> regarding, *inter alia*, the application of Regulation No. 1049/2001. The claimant association challenged the denial to disclose information on a proposal for regulating public access to European Parliament, Council and Commission documents. The association applied for access to a document from the Council’s Secretariat General with pro-

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<sup>165</sup> *Access Info Europe v. Council of the European Union*, Court of Justice of the European Union, case T-233/09.

posals made by member states for amending the relevant regulation. The association was granted only partial access to the requested document. The identity of the member states having made the proposal was not revealed. The authorities relied on the exception stipulated in Regulation No. 1049/2001 Article 4(3), asserting that the disclosure of the identity of the relevant member states would “seriously undermine the [...] decision-making process”. The Court ruled for the claimant owing to the fact that the authorities had failed to weigh properly the competing interests and to establish a serious foreseeable risk justifying the application of the exception contained in Article 4(3) of Regulation No. 1049/2001. For example, the Council had not established to the requisite legal and factual standard proving that the disclosure of the identity of the relevant member states would seriously undermine the ongoing legislative process (para. 66). The Council had asserted that disclosure would cause member states to take a firm position for fear of adverse public opinion should they alter their stance. However, public opinion was perfectly capable of understanding that the author of a proposal was likely to amend its content subsequently (paras. 68–69). Further, the preliminary nature of the discussions relating to the Commission’s proposal for a regulation did not in itself justify the application of the exception in Article 4(3), which did not make a distinction according to the state of progress of the discussions (para. 76). As to the Council’s argument about the sensitive nature of the proposals, those proposals were part of the normal legislative process; further, it was inherent in democratic debate that such proposals could be subject to both positive and negative comments by the public and media (paras. 77–78). As to the submission that disclosure would cause written communication to be abandoned in favour of oral communication, it should be noted that the method used by the member state representatives to present their proposals did not have an effect on the Council’s practice of describing the content of those proposals in order to facilitate discussion (para. 81).

Akin to the situation in the UN and the Council of Europe where the reactive approach to the disclosure of documents still prevails, the lack of clarity is characteristic of the current state of the EU legal framework. EU legislation adheres to *the bottom-up right of access to official documents*, while providing certain references to the top-down obligation of public authorities to unconditionally open their records to the public.<sup>166</sup> An example of such a top-down obligation is the above-mentioned Regulation (EC) No. 1049/2001 providing for a wider access to the documents of legislative institutions and for a proactive obligation

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<sup>166</sup> See, e.g., Alemano 2014, pp. 72–90.

to make such documents “directly accessible to the greatest possible extent” (para. 6). Moreover, Article 13 of the Regulation contains a list of documents that should proactively be published in the Official Journal of the European Union.

Hence, according to the EU legal framework, access to official information and documents is considered an essential part of a citizens’ right to freedom of information, and a *sine qua non* for the will-formation process essential to a democracy. Freedom of information is seen by the EU “as sustaining the characteristics of openness, transparency and accountability which are considered today as essential qualities of good representative government”.<sup>167</sup> For such reasons public access to government documents should be considered to be a fundamental human right, prescribed by law and ensured by effective mechanism of implementation.<sup>168</sup>

### 3.6.2. EU Jurisprudence

The right to access official documents can be adjudicated under the EU law on the basis of other points of departure in law. For instance, in the late 1970s, in the case of *Hoffman-La Roche v. Commission*,<sup>169</sup> the European Court of Justice (ECJ) inferred the right to access the Commission’s documents from the general right to be heard. The case was considered by the Court before the provisions on the right to access official documents were introduced by the Treaty of Amsterdam and the Charter of Fundamental Rights.

This case pertained to the examination of the issues of the dominant market position in the common market with respect to the producers of vitamins. The merits of the case confirm that actual competition must be ensured among producers in the relevant market, which presupposes an adequate degree of interchangeability between such products. As for the procedural issues of the case, which are relevant to our present study, the applicant alleged that the procedure initiated by the Commission at its own initiative “was irregular having regard to the fact that documents for internal use by its departments came unlawfully into the possession of the Commission” (para. 7). The Court held that the right to be heard had been violated in this case because the Swiss company Hoffman-La Roche had not been allowed access to the European Commission’s evidentiary record by alleging the following:

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<sup>167</sup> Mason 2000, p. 237.

<sup>168</sup> Biasiotti and Faro 2011, p. 39; Österdahl 2006, p. 606.

<sup>169</sup> *Hoffmann-La Roche & Co. AG v. Commission of the European Communities*, ECJ, judgment of 13 February 1979, case 85/76.



[I]n order to respect the principle of the right to be heard, the undertakings concerned must have been afforded the opportunity during the administrative procedure to make known their views on the truth and relevance of the facts and circumstances alleged and on the documents used by the Commission to support its claim [...] (para. 11).

In 1995, the Court of First Instance considered the case of *Carvel and Guardian Newspapers v. Council*<sup>170</sup> — the case cited in scholarly literature as “the first public access case”.<sup>171</sup> This case was initiated by John Carvel, a journalist for the British newspaper *The Guardian*, who had submitted to the Secretary-General of the Council a request for access to several Council documents: preparatory reports; the minutes, etc. His request was denied. The Court made a distinction between the Council’s internal documents, i.e. the Rules of Procedure and other documents to which individuals should be provided access. Moreover, in this case the Court clearly defined the “right to documents” by saying that Council Decision 93/731 containing “provisions relating to the implementation of the principle of transparency” is “the only measure governing citizens’ rights of access to documents” (para. 62).

Concerning litigation starting from the mid-1990s against the alleged violations of the guaranteed right to access official documents, the ECJ initially employed a narrow interpretation of the exemptions from this right. For instance, in the 2007 case of *the Bavarian Lager Co. v. Commission*, the Court investigated the implementation of Regulation (EC) No. 1049/2001, according to which EU institutions shall deny or be denied access to a document where disclosure would risk undermining the protection of the private life of the individual, in particular, in conformity with the Community legislation on the protection of personal data.

The applicant, the Bavarian Lager, imported German beer in bottles intended principally for public houses and bars in the United Kingdom. However, most of those establishments were bound by exclusive purchasing contracts obligating them to obtain their beer supplies from certain breweries. Under British regulations, British breweries could permit public house managers to buy beer from another brewery on the condition that it was cask-conditioned and had an alcohol content exceeding 1.2% by volume. That provision is commonly known as the “Guest Beer Provision” (GBP). However, most beers produced outside the UK were sold in bottles. Alleging that the GBP constituted a restriction on im-

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<sup>170</sup> *Carvel and Guardian Newspapers v. Council*, Court of First Instance, case T-194/94, judgment of 19 October 1995.

<sup>171</sup> Ragnemalm 1999, p. 26.

ports, Bavarian Lager lodged a complaint with the Commission. As a result of its investigation, the Commission decided on 12 April 1995 to institute proceedings against the United Kingdom.

On 11 October 1996, a meeting was held that was attended by UK officials and representatives of the *Confederation des Brasseurs du Marche Commun*. The applicant had requested the right to attend the meeting in a letter dated 27 August 1996, but the Commission refused to grant permission to attend.

Having been informed by the British authorities that the GBP was going to be amended to allow the sale of bottled beer as guest beer in the same way as cask-conditioned beer, the Commission informed Bavarian Lager that the procedure for failure to fulfil obligations would be suspended. The Commission then decided to take no further action on the matter.

Bavarian Lager made several requests to the Commission for access to documents and the names of the participants at the meeting of 11 October 1996. The Commission agreed to disclose certain documents pertaining to the meeting, but blanked out five names appearing in the minutes, two persons having expressly objected to the disclosure of their identity and the Commission having been unable to contact the three others.

Bavarian Lager then made a fresh application to obtain the full minutes of the meeting of October 1996, stating the names of all the participants. Pursuant to a decision of 18 March 2004, the Commission rejected that application, citing in particular the protection of the privacy of those persons, guaranteed by the Data Protection Regulation. Bavarian Lager brought an action before the Court of First Instance, seeking annulment of the Commission's decision.

Pursuant to a judgment of 8 November 2007,<sup>172</sup> the Court of First Instance annulled the Commission's decision, ruling in particular that the mere entry of the names of the persons in question on the list of persons attending a meeting on behalf of the entity they represented did not constitute an undermining of privacy and did not place the private lives of those persons in any danger.

The Commission, supported by the United Kingdom and the Council, appealed before the Court of Justice against the judgment of the Court of First Instance. Notably, the position of Bavarian Lager in this appeal was supported by Denmark, Finland and Sweden — the latter states where, as has been already said, access to public documents is regulated at the constitutional level.

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<sup>172</sup> *Bavarian Lager v. Commission*, Court of First Instance, case T-194/04.

In its judgment of 2010,<sup>173</sup> the European Court of Justice held that the Court of First Instance was right to conclude that the list of participants at the meeting of 11 October 1996 mentioned in the minutes of that meeting contains personal data, since the persons who participated in that meeting can be identified. The Court confirmed that the aim of Regulation No. 1049/2001 was “to ensure the greatest possible transparency of the decision-making process of the public authorities and the information on which they base their decisions. It is thus designed to facilitate as far as possible the exercise of the right of access to documents, and to promote good administrative practices” (para. 49).

After pointing out that Bavarian Lager was able to have access to all of the information on the meeting of 11 October 1996, including the opinions of the participants, expressed in their professional capacity, the Court of Justice examined the question of whether the Commission could grant access to the document containing the five names of the participants at that meeting (of those five names, three persons could not be contacted by the Commission in order to give their consent, and two others expressly objected to the disclosure of their identity). The ECJ concluded that the Commission was right in verifying whether the said participants had given their consent to the disclosure of personal data concerning them.

In the absence of the consent of the five participants at the meeting of October 1996, the Commission adequately complied with its obligation of openness by releasing a version of the document in question with their names omitted.

The ECJ reasoned that “[a]s Bavarian Lager has not provided any express and legitimate justification or any convincing argument in order to demonstrate the necessity for those personal data to be transferred, the Commission has not been able to weigh up the various interests of the parties concerned. Nor was it able to verify whether there was any reason to assume that the data subjects’ legitimate interests might be prejudiced, as required by [the Data Protection Regulation]” (para. 78). The Court concluded that the Commission was right in rejecting the application for access to the full minutes of the meeting of October 1996 and annulled the judgment of the Court of First Instance.

In the case of *Heidi Hautala v. Council*,<sup>174</sup> the ECJ took a more lenient view on exemptions, claiming that in the case of exceptions access shall be denied line-by-line, redacting, if necessary, rather than excluding entire documents or sets of documents. In this case, the applicant, a member of the European Par-

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<sup>173</sup> *European Commission v. The Bavarian Lager Co. Ltd*, ECJ, case C-28/08 P, judgment of 29 June 2010.

<sup>174</sup> *Heidi Hautala v. Council of the European Union*, Court of First Instance, case T-14/98, 1999 E.C.R. II-2489.

liament, had been refused by the Council access to a report clarifying criteria for arms exports (para. 18). The contested report prompted the Council to adopt, on 8 June 1998, a code of conduct for arms exports, which was then published (para. 22). Access was refused as the report “contained highly sensitive information disclosure of which would undermine the public interest, as regards public security” (para. 18). The document was also refused on the grounds of protecting the public interest with regard to international relations, since the Council claimed disclosure would be harmful to EU relations with third countries (para. 21). The applicant alleged, *inter alia*, that the Council violated “the fundamental principle of Community law that citizens of the European Union must be given the widest and fullest possible access to documents of the Community institutions, and of the principle of protection of legitimate expectations” (para. 43). Hence, the Court was required to examine whether partial access should have been granted to information not covered by the public security exception (para. 87). This application was supported by Finland and Sweden.

Considering the general principles of democratic participation in public affairs, proportionality and the rule that restrictions should be narrowly construed, the Court concluded that partial access could have been allowed (para. 87). An exception to this general rule might be argued if the deletion of certain passages turned out to be excessively burdensome (para. 86).

The Court noted that the Council’s discretion in establishing whether disclosure will harm the public interest is connected with its political responsibilities under the Treaty on European Union (para. 71). In the present case, the contested report had been drawn up in the context of internal administrative use and contained confidential exchanges of views between the member states, the report having been produced for internal use only (para. 73). Therefore, there was no misapplication by the Council of the international relations exception.

The applicant appealed before the ECJ.<sup>175</sup> The Court of Justice decided to uphold the judgment of the Court of First Instance, annulling the Council’s decision to deny the applicant access to a report on arms exports. The Court of Justice pointed out that the public must have the widest possible access to documents and agreed with the judgment of the Court of First Instance, which stated that the Council should consider partial access to a document containing items of information, the disclosure of which would endanger EU interests.

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<sup>175</sup> *Council of the European Union v. Heidi Hautala*, European Court of Justice, case T-14/98, judgment of 6 December 2001.

### 3.7. Work of the OSCE on Access Principles

In December 2004, “the growing recognition of the key right to access information held by public authorities” has been acknowledged by the OSCE in a Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression. Proclaiming that access to information is a citizens’ right, this Declaration encouraged the states to adopt legislation on freedom of information, ensuring maximum disclosure and a narrow system of exceptions:

The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions.<sup>176</sup>

In 2006, the OSCE undertook a large-scale study of access to information, entitled “Access to information by the media in the OSCE region: trends and recommendations”. This study encompasses 56 countries and was carried out by the Office of the OSCE Representative on Freedom of the Media. The findings of the study were published on 30 April 2007.<sup>177</sup> The report recommended to all participating states to “adopt freedom of information legislation that gives a legal right to all persons and organizations to demand and obtain information from public bodies and those who are performing public functions”.<sup>178</sup> Although the analysed OSCE summary provides for a reactive approach to access to information by proclaiming that such information should be provided on request, it outlines those types of information that should be released proactively by saying that:

Government bodies should be required by law affirmatively to publish information about their structures, personnel, activities, rules, guidance, decisions, procurement, and other information of public interest on a regular basis in formats in-

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<sup>176</sup> OSCE, Representative on Freedom of the Media, International Mechanisms for Promoting Freedom of Expression, Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 6 December 2004.

<sup>177</sup> OSCE, Access to information by the media in the OSCE region: trends and recommendations. Summary of preliminary results of the survey.

<sup>178</sup> *Ibid.*, Recommendations on FOI laws.

cluding the use of ICTs and in public reading rooms or libraries to ensure easy and widespread access.<sup>179</sup>

The survey also recommended that the following types of information should not be classified as “state or official secret”:

Information relating to violations of the law or human rights, maladministration or administrative errors, threats to public health or the environment, the health of senior elected officials, statistical, social-economic or cultural information, basic scientific information, or that which is merely embarrassing to individuals or organisations [...]<sup>180</sup>

Although the focus of the OSCE survey is on legal guarantees of the media, provided by national legislation on freedom of information, this study ascertained several fundamental principles of implementing citizens’ access to official information, and, as the result, these principles were taken into account by the drafters of the 2009 Convention on Access to Official Documents. The said OSCE study was referred to in the Preamble of the Explanatory Report to the 2009 Convention on Access to Official Documents, which emphasizes the significance of national constitutional development in the area of access to official information for gradual international recognition of such access as a human right.<sup>181</sup>

### **3.8. The Inter-American System: Access Recognized**

When it comes to the Inter-American system of human rights protection, the right to access official information and documents is not directly derived from the provisions of the American Convention on Human Rights.<sup>182</sup> The right to generally accessible information can be inferred from the provisions on freedom of thought and expression, stipulated by Article 13 of the American Convention on Human Rights, according to which:

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<sup>179</sup> OSCE, Access to information by the media in the OSCE region: trends and recommendations. Summary of preliminary results of the survey.

<sup>180</sup> *Ibid.*, Summary of preliminary results of the survey, Recommendations on classification rules.

<sup>181</sup> Explanatory Report to the Council of Europe Convention on Access to Official Documents, ETS No. 205, para. 2.

<sup>182</sup> American Convention on Human Rights, adopted 22 November 1969, 1144 UNTS 123.

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
  - a. respect for the rights or reputations of others; or
  - b. the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, colour, religion, language, or national origin shall be considered as offenses punishable by law.

Nonetheless, access to official information was proclaimed to be a human right by the Inter-American Court of Human Rights in the 2006 case of *Claude Reyes, et al. v. Chile*.<sup>183</sup> In this case the Court ruled that “[t]he right to freedom of thought and expression includes the protection of the right of access to state-held information”. The applicants contested in the Court the refusal of the Chilean government to disclose information on a major U.S. logging project in Chile. Several human rights NGOs submitted a petition to the Inter-American Commission on Human Rights, urging that the refusal to reveal the requested information violates human rights. In 2005, the Inter-American Commission found that the Chilean government had violated the applicants’ rights under Article 13 of the American Convention on Human Rights, which includes freedom to seek, receive, and impart information and ideas of all kinds. The Commission urged Chile to release the information and to bring its national legislation in conformity with the Convention in order to guarantee access to public information.<sup>184</sup> The

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<sup>183</sup> *Claude Reyes, et al. v. Chile*, Inter-American Court of Human Rights, judgment of 19 September 2006, para. 77.

<sup>184</sup> *Marcel Claude Reyes, et al. v. Chile*, Inter-American Commission on Human Rights, Case 12.108, Report No. 60/03, InterAm. Comm. H.R., para. 222 (2003).

Chilean government did not comply with this request. The Commission referred the case to the Inter-American Court of Human Rights. The Court supported the opinion of the Commission and found the Chilean government liable for violating the right to freedom of expression by refusing to reveal the requested information (para. 77).

The above-mentioned decision of the Inter-American Court on access to governmentally-held information is a part of the latest development in a global recognition of access to information.<sup>185</sup>

### 3.9. NGO-drafted Standards

Legal discussions in the official human rights arena are just the tip of the iceberg in terms of campaigning and lobbying for access to information. The past two decades have witnessed a rise of a global movement promoting access to information, entailing several NGOs campaigning for access to government information, such as *Transparency International*, *Article 19's Global Campaign for Freedom of Expression*, *the Open Society Justice Initiative*, *the Global Transparency Initiative*, *Access-Info Europe*, and *the Commonwealth Human Rights Initiative*.<sup>186</sup> Consonant with the relevant official discussions in the United Nations, the existence of such movements indicates the emergence of the right to access governmentally-held information. Extensive discussions initiated by national, regional and international NGOs represent the grassroots developments towards recognition of the right of access to official information and lobbying activities.

International NGO campaigning led to codification of the rules governing access to official information in the Principles on National Security, Freedom of Expression and Access to Information, prepared at a conference organised by the "Article 19" movement in Johannesburg, October 1995 (hereinafter: the Johannesburg Principles).<sup>187</sup> These principles are based on international human rights law, evolving national practices (as reflected, *inter alia*, in judgments of national courts), and general universally recognized principles of law.<sup>188</sup> Again, this document does not indicate that there is a self-standing right to access official documents. Instead it formulates general standards on "the right to freedom

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<sup>185</sup> Bishop 2011, p. 3.

<sup>186</sup> *Ibid.*

<sup>187</sup> The Principles on National Security, Freedom of Expression and Access to Information, 1995, "Article 19", the Global Campaign for Free Expression.

<sup>188</sup> *Ibid.*



of expression, which includes the 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 or her choice” (principle 1 b). These principles restate a general rule on access to information (principle 11), according to which:

Everyone has the right to obtain information from public authorities, including information relating to national security. No restriction on this right may be imposed on the ground of national security unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest.

The Johannesburg Principles introduced the requirement that the burden to establish the validity of any restrictions lies with public authorities (principle 1 d).

The Johannesburg Principles served as a catalyst for adopting *the 2013 Global Principles on National Security and the Right to Information (The Tshwane Principles)*. These principles were elaborated by 22 organizations and academic centres with the participation of more than 500 experts from more than 70 states under the aegis of the Open Society Justice Initiative. The drafting process was completed at a meeting in Tshwane, South Africa, which gave these principles their name. These principles were developed in order to provide guidelines for law-makers and politicians in the area of freedom of information. They are based on international standards and scholarly writings and the best national practices in the area of balancing the interests of national security and freedom of information.

As remarked by the drafters, the interests of national security are most commonly invoked by courts as grounds for limiting the right to access official information. Therefore, the main premise of the Tshwane Principles is that access to information enabling public scrutiny of state action prevents abuses by public officials and allows citizens to engage in determining state policies facilitating democratic participation and “sound policy formulation”.<sup>189</sup> The overall approach of this document to the right “to seek, receive, use, and impart information held by or on behalf of public authorities, or to which public authorities are entitled by law to have access” is not, however, revolutionary. By mentioning that such information is available to citizens upon request, the Tshwane Principles acknowledge the overall reactive approach to the release of official

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<sup>189</sup> The Global Principles on National Security and the Right to Information (Tshwane Principles), 12 June 2013, Open Society Foundation.

information.<sup>190</sup> Nonetheless, the Principles emphasized that public authorities also have an affirmative obligation to publish proactively certain information of public interest. The scope of the information-holder is broadly interpreted.<sup>191</sup>

The *Global Principles on National Security and the Right to Information* have made a profound contribution to remedying several deficiencies in many UN and regional sources of human rights law and their interpretations dealing with the right of access to official information:

They provide a working definition for such a concept as “information of general interest”, which is often used by treaty bodies and national constitutions. According to the Tshwane Principles, the term “information of public interest” “refers to information that is of concern or benefit to the public, not merely of individual interest and whose disclosure is ‘in the interest of the public’, for instance, because it is useful for public understanding of government activities”.<sup>192</sup>

The Tshwane Principles summarize the requirements pertaining to possible restrictions of the right to access official information on the grounds of national security (principle 3) by saying that:

No restriction on the right to information on national security grounds may be imposed unless the government can demonstrate that: (1) the restriction (a) is prescribed by law and (b) is necessary in a democratic society (c) to protect a legitimate national security interest; and (2) the law provides for adequate safeguards against abuse, including prompt, full, accessible, and effective scrutiny of the validity of the restriction by an independent oversight authority and full review by the courts.

The principles formulate general international standards and national practices regarding the types of information that legitimately may be withheld by public authorities (principle 9) and the types of information with a high presumption or overriding interest in favour of the disclosure (principle 10).

The document introduces two assumptions regarding safeguarding the proper classification of official information. The principle of public participation in the process of classifying state information is stipulated by principle 12:

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<sup>190</sup> The Global Principles on National Security and the Right to Information (Tshwane Principles), 12 June 2013, Open Society Foundation, principle 1.

<sup>191</sup> “Public authorities”, according to the Tshwane Principles, “include all bodies within the executive, legislative, and judicial branches at all levels of government, constitutional and statutory authorities, including security sector authorities; and non-state bodies that are owned or controlled by government or that serve as agents of the government”. “Public authorities” also include private or other entities that perform public functions or services or operate with substantial public funds or benefits, but only in regard to the performance of those functions, provision of services, or use of public funds or benefits. *Ibid.*, Definitions.

<sup>192</sup> *Ibid.*, Definitions.

- (a) The public should have the opportunity to comment on the procedures and standards governing classification prior to their becoming effective.
- (b) The public should have access to the written procedures and standards governing classification.

The assumption of the legitimacy of whistle-blowing with respect to information held by public bodies is reflected in principle 14 stating that “[p]ublic personnel, including those affiliated with the security sector, who believe that information has been improperly classified may challenge the classification of the information”.

## 4. ACCESS TO INFORMATION IN A COMPARATIVE PERSPECTIVE

### 4.1. Constitutional Provisions in Different States

#### 4.1.1. Introduction

The period of the 1990s through 2000s is associated with a wave of framing new constitutions in the post-Soviet Union successor states and Eastern Europe<sup>193</sup> as well as on the African continent.<sup>194</sup> As shown below, many of the newly adopted constitutions in these regions incorporate the right to access governmentally-held information. As far as these new constitutions reflect cardinal political changes, the incorporation of the right to the publicity of documents in the newly adopted constitutions testifies to the official repudiation of the principle of secrecy in handling official information, paving the way for a genuine accommodation of the principle of transparency in public administration in national legal systems.

Intensified international discussions on citizen access to governmentally-held information signify a further step towards global democratization. The calls for increased transparency in public administration necessitate a change in the legal framework of handling information on public affairs. Challenging governmental control of handling official documents that are not accessible to the general public, of course, strengthens the transparency of public administration, the accountability of public officials, and the participation of citizens in the conduct of public affairs. Inquiries into the effects of publicity on the quality of good administration belong to legal and political studies. With respect to the continental legal tradition, understanding the principle of publicity in public administration could perhaps make a claim for being an independent theory.

The value of citizen access to specialized knowledge for practicing effective public participation in government has been conceptualized by internationally recognised political theorists. For instance, Robert Dahl, in discussing the theory of “deliberative democracy”, emphasises that sufficient information on political matters develops an understanding of the contested matter during decision-making processes.<sup>195</sup> Further, Jon Elster, in his studies on “deliberative de-

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<sup>193</sup> On the processes of new constitution-making in the 1990s see, e.g., Ludwikowski 1993, p. 158, Vereshchetin 1996, pp. 31–32.

<sup>194</sup> Dale 1993, pp. 67–83.

<sup>195</sup> Dahl 1956, Dahl 1961, Dahl 1998, Dahl 1989, Dahl 1971.

mocracy”, contemplates the impact of the audience on public debates and decision-making.<sup>196</sup> According to Elster, the presence of an audience “makes it especially hard to appear motivated especially by self-interest”.<sup>197</sup>

As for the Anglo-Saxon legal tradition, the publicity of documents is often considered in the framework of the so-called “sunlight” approach, according to which public disclosure is an effective remedy for ensuring fair politics.<sup>198</sup> More particularly, the American legal tradition widely employs the term “sunshine law” to denote an act prohibiting closed meetings or records of public bodies.<sup>199</sup> The foundational “sunshine law” of the USA is the Federal Freedom of Information Act of 1966, entitling individuals and organizations the right to request governmental information.<sup>200</sup> The most frequently used explanation of the origins of “sunlight legislation” is credited to US Supreme Court Justice Louis D. Brandeis and his phrase that “sunlight is the best disinfectant”.<sup>201</sup> Finally, the term “sunshine law” is extensively used in the research on developing countries<sup>202</sup> and on the European Union<sup>203</sup> as well as in the studies of the constitutional right to information.<sup>204</sup>

#### 4.1.2. Methodology of Constitutional Studies

Concrete examples of statutory guaranteed access to governmentally-held information date back to eighteenth century Sweden, most notably, the Freedom of the Press Ordinance of 1766, dealt with in chapter 2 above. South Africa demonstrates the most recent example of developments in developing countries. According to Section 32 of the Constitution of the Republic of South Africa, Act 108 of 1996, “everyone has the right of access to any information held by the state or another person that is required for the exercise or protection of any rights”. An increasing number of constitutional texts accommodate the right to access official information or documents (please see the Annex for provisions).

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<sup>196</sup> Elster 1998, pp. 97–122.

<sup>197</sup> *Ibid.*

<sup>198</sup> Carolan 2012, pp. 173–200, Westcott 2013, Dew-Becker 2009, pp. 434–457, Fulbrook 2012.

<sup>199</sup> Black’s Law Dictionary 2007, p. 1478; Dictionary of Law 2007, p. 289.

<sup>200</sup> See, e.g., Dickinson 2011, p. 110; Piotrowski 2007, p. 32.

<sup>201</sup> For an early formulation of the “sunlight disinfection”, see Louis D. Brandeis, ‘What Publicity Can Do’, *Harper’s Weekly*, 20 Dec. 1913. The full quotation is “Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman”, in Brandeis 1914, p. 92.

<sup>202</sup> Spector 2012.

<sup>203</sup> Kleinfeld 2012.

<sup>204</sup> Bull and Corder 2013.

Examining the emerging right to access official documents, we conducted an in-depth analysis of the constitutions of the world. Our analysis is limited by the availability of research materials. We obtained the texts of national constitutions from the database of the project “Constitute”, available at: <https://www.constituteproject.org>,<sup>205</sup> which we consider a credible source of information. Given such a restriction, we can analyse only those constitutional texts that are publicly available in English or in other languages we are proficient in. Moreover, we were concerned with the problem of changing the meaning of various legal terms, which may naturally occur during the translation of national constitutions into English. In several cases we analysed the constitutional texts in other languages, i.e. when analysing the Constitutions of: Finland – in Finnish and Swedish, Sweden – in Swedish, Russia, Belarus, Ukraine, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan – in Russian.

Hence, we conducted a full text analysis of 187 national constitutions from all legal traditions. Our principal aim was to study the variations in constitutional architecture in respect of regulating individual access to governmentally-held information. We did not limit our analysis by familiarizing ourselves with only those sections of the constitutions that are devoted to human rights and freedoms. We were looking for references to the publicity of documents in all the sections of national constitutions: preambles, the main principles of functioning of the states, the functioning of public authorities, and local self-government.

The following issues proved to be significant:

- Does a constitution contain a distinct right to governmentally-held information?
- What are the possible limitations of this right *ratione personae* (i.e. who is entitled to access to information), *ratione materiae* (i.e. what types of information can individuals acquire access to), *ratione temporis* (i.e. a reference to the draft of the document or to the completed document as to when, under what conditions, a document becomes public), and by way of *institutional limitation* (i.e. which organs and authorities are responsible for disclosing information)?

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<sup>205</sup> According to the information on the official web page of this project, “it was seeded with a grant from Google Ideas to the University of Texas at Austin, with additional financial support from the Indigo Trust and IC2. Semantic data structures were created by the Miranker Lab at the University of Texas using Capsenta’s Ultrawrap. Site architecture, engineering, and design are provided by Psyche Interactive. The following organizations have made important investments in the Comparative Constitutions Project since 2005: the National Science Foundation (SES 0648288, IIS 1018554), the Cline Center for Democracy, the United States Institute of Peace, the University of Texas, the University of Chicago, and the Constitution Unit at University College London”.

- Does a constitution set up any positive conditions for requiring governmentally-held information, e.g. the requirement of a “legitimate interest”, “human rights protection”, etc.?
- Does a constitution mention any procedural rules governing access to governmentally-held information?
- Does a constitution guarantee so-called “indirect” access to information, e.g. by entrusting certain representative organs or officials (the Parliament, the Ombudsman, etc.) with the power to inquire about information from the executive authorities?
- Does the rule on the publicity of documents explicitly follow the constitutional article on the right to freedom of speech/expression and access to the media, the right to take part in the conduct of public affairs, or perhaps the right to petition?
- How else, if not by ensuring the right to access governmentally-held information, can a constitution stipulate individual access to such information?
- Can it be done by establishing an obligation on the part of public authorities or by pointing out on the necessity of individual access to governmentally-held information within the framework of the principles of accountability, transparency, and counteracting corruption?

#### 4.1.3. *The Constitutional Right to Governmentally-Held Information*

The general right to access governmentally-held information is guaranteed by 41 national constitutions out of 187 national constitutions we have analysed.

There are certainly wide margins of guaranteeing individual access to governmentally-held information. Such variations concern the right of access to, or the right to obtain/receive information from, public authorities in the following constitutions: *Afghanistan* – the right of access to information from state departments –Article 50, *Albania* – the right to obtain information about the activities of state organs –Article 23, *Brazil* – the right to receive information from public agencies –Article 5, *Bulgaria* – the right to obtain information from state institutions and agencies –Article 41, *Costa Rica* – free access to the administrative departments for the purpose of obtaining information on matters of public interest –Article 30, *Kenya* – the right of access to information held by the state –Article 35, *Kyrgyz Republic* – the right to obtain information on the activities of state authorities, local government bodies –Article 33, *Malawi* – the right of

access to all information held by the state or any of its organs –Article 37, *Montenegro* – the right to access information held by state authorities –Article 51, *Morocco* – the right of access to information held by the public administration – Article 27, *the Netherlands* – the right of public access to information (on the activities of governmental bodies –Article 110, *Niger* – the right to have access to the information held by the public services –Article 31, *Norway* – the right of access to documents of the state and municipal administration –Article 100, *Pakistan* – the right to have access to information in all matters of public importance –Article 19A, *Panama* – a right to ask for accessible information or information of general interest stored in data banks or registries administered by public servants –Article 43, *Papua New Guinea* – access to official information –Article 51, *Peru* – the right to request information, without cause, and to receive it from any public entity –Article 2, *Serbia* – the right to access information kept by state bodies –Article 51, *Slovenia* – the right to obtain information of a public nature –Article 39, *South Africa* – the right of access to any information held by the state –Article 32, *South Sudan* – the right of access to official information –Article 32, *Uganda* – a right of access to information in the possession of the state or any other organ or agency of the state –Article 41, *Zimbabwe* – the right of access to any information held by the state or by any institution or agency of government at every level –Article 62.

Of all the mentioned constitutional provisions, the constitutions of Brazil and Estonia stand out for their legal foundation of guaranteeing the right of access to governmentally-held information. For instance, Article 5 XIV of the Constitution of Brazil proclaims the most general rule on access to information: “[A]ccess to information is assured to everyone, protecting the confidentiality of sources when necessary for professional activity”. Article 5 XXXIII specifies the rules of access to governmentally-held information of “private, collective or general interest”:

[A]ll persons have the right to receive from public agencies information in their private interest or of collective or general interest; such information shall be furnished within the period established by law, under penalty of liability, except for information whose secrecy is essential to the security of society and of the National Government.

Article 216, paragraph II, obligates the government “to take care of governmental documents and to take action to make them available for consultation by whomever may need to do so”, pursuant to the law. Under Article 93, paragraph



IX, all judgments of judicial bodies are public. Article 37, paragraph 1, establishes that the publicity of government agencies' acts, programs, public works, services, and campaigns "shall have an educational, informative, or social orientation character". Paragraph 3 II of Article 37 guarantees "user access to administrative registries and information about governmental acts".

The Constitution of Brazil also ensures a number of guarantees regarding access to personal information. For instance, Article 5 LXXII provides the right to habeas data.<sup>206</sup> Moreover, Article 202, paragraph 1, ensures that the participants in benefit plans of private social security entities are provided with full access to information regarding the management of their respective plans.

Pursuant to Article 44 of the Constitution of Estonia:

Everyone has the right to freely obtain information disseminated for public use. All state agencies, local governments, and their officials have a duty to provide information about their activities, pursuant to procedure provided by law, to an Estonian citizen at his or her request, except information the disclosure of which is prohibited by law, and information intended exclusively for internal use. An Estonian citizen has the right to access information about himself or herself held in state agencies and local governments and in state and local government archives, pursuant to procedure provided by law. This right may be restricted pursuant to law to protect the rights and freedoms of others or the confidentiality of a child's affiliation, and in the interests of combating a criminal offence, apprehending a criminal offender, or ascertaining the truth in a criminal procedure. Citizens of foreign states and stateless persons who are in Estonia have the rights specified in paragraphs two and three of this section equally with Estonian citizens, unless otherwise provided by law.

Obviously, Article 44 of the Constitution of Estonia guarantees a limited right to access official information. Guarantees of access to "information disseminated for public use" mean in this provision only such information is made available to individuals which public authorities decide to reveal to the public.

Moreover, the right to access official documents can be ensured by virtue of the right to consult or to obtain concrete documents. This is the case with the following constitutions: *Belgium* – the right to consult any administrative document and to obtain a copy – Article 32, *Kosovo* – the right of access to public documents – Article 41, *the Philippines* – access to official records, and to doc-

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<sup>206</sup> In accordance with Article 5 LXXII, the right to habeas data is granted: "a) to assure knowledge of personal information about the petitioner, contained in records or data banks of government agencies or entities of a public character; b) to correct data whenever the petitioner prefers not to do so through confidential judicial or administrative proceedings".

uments and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development –the Bill of Rights, Article III, Section 7, *Poland* – the right to obtain information on the activities of public authorities –Article 61, *Sweden* – every Swedish citizen shall be entitled to have free access to official documents –the Freedom of the Press Act, Chapter 2, Article 1.

Finally, access to official documents can be guaranteed by virtue of providing the right of monitoring the acts of public authorities, for instance, in accordance with Article 26 of the Constitution of *Bolivia*: “The right to participate includes: [...] the monitoring of the acts of public function”.

In addition, six other constitutions formulated the rule on individual access to governmentally-held information via establishing the obligation of public authorities to provide such information (*Belarus, the Czech Republic, Estonia, Slovakia, Tajikistan, and Uzbekistan*). The Constitutions of *Moldova* and *Romania* guarantee both the right to access information and the obligation of public authorities to provide such information.

Finally, five other constitutions regulate individual access to governmentally-held information by establishing the principle of the publicity of public documents, e.g. by proclaiming that governmentally-held documents are public (*Finland, Guatemala, Mexico, and Sweden*) or the right to have access to information about the government or its functionaries (*Liberia*).

Interestingly, several constitutional texts stipulate the main principles of the procedure of access to information (*Guinea, Estonia, Lithuania, Mexico, the Netherlands, Papua New Guinea, Poland, Sweden, and Uganda*).

#### 4.1.4. Possible Limitations

As a rule, the majority of constitutions guaranteeing the right of access to governmentally-held information provided for free access to such information. The principle of transparency with respect to official information remains, nevertheless, under the constraints of limiting access to certain types of information and (or) limiting the circle of individuals who can request such information. Several constitutions introduce qualifying criteria under which individuals may be entitled to request official information. Several types of limitations can be found in the constitutions of the world.

## A. Limitations *ratione personae*

*Citizenship* is the most common qualifying principle, which determines the right of access to governmentally-held information in national constitutions. In particular, the constitutions of Afghanistan, Belarus, Bolivia, Guinea, Maldives, Morocco, Papua New Guinea, the Philippines, Poland, Romania, South Sudan, and Uzbekistan guarantee access to governmentally-held information only to citizens. The Constitution of Zimbabwe introduces the requirements of either citizenship or permanent residence in order for an individual to be entitled to access governmentally-held information.

The constitutions of Cape Verde (Article 46), Croatia (Article 38), and Portugal (Article 38) guarantee the right to access sources of information to journalists. According to Article 66 of the Constitution of Venezuela, voters are entrusted with the right “to obtain from their public representatives, transparent and periodic accounting”.

Some national constitutions mention the so-called “indirect” right of access to governmentally-held information. In respect of “indirect” access to information, we assume that not individuals directly, but their representatives have the right to inquire about information from executive authorities. In Switzerland, parliamentary committees have “the right to information and to inspect documents and the power to conduct investigations”, according to Article 153 of the Constitution of Switzerland. In Thailand, according to Section 16 of the 2014 Constitution, every member of the National Legislative Assembly is entitled to interrogate a minister in relation to any matter falling within the scope of the latter’s duties. The minister may refuse to reply if he finds that the information concerned should not yet be disclosed because it deals with considerable public safety or interest. The Parliament (or its separate committees) is entitled to exercise a similar right in Swaziland and Suriname. In Sweden, the Parliamentary Ombudsman has the right to inquire about information from the courts of law, administrative authorities, and state or local government employees on the basis of Article 6, Chapter 13 of the Instrument of Government which is one of the four documents establishing the Constitution of Sweden. In Finland, the Parliamentary Ombudsman and the Chancellor of Justice have the right to receive from public authorities or others performing public duties information necessary for their supervision of legality, as stated in Section 111 of the Constitution. Finally, Article 54 of the Constitution of Portugal guarantees the right of workers’

committees to obtain information by proving that they have the right to “receive all information needed to perform their tasks”.

## B. Limitations *ratione materiae*

The most common material limitation of the right to access governmentally-held information centres on personal information, that is, personal information, contained in official registries or personal files. The right to familiarize oneself with personal records is guaranteed by the constitutions of Angola, the Dominican Republic, East Timor, Ecuador, Lithuania, Mexico, Mozambique, Panama, Seychelles, Venezuela, and Zimbabwe. However, access to personal files cannot be explicitly equated with a right to access governmentally-held information. This is owing to the fact that personal information does not represent a matter of public significance or a “public affair” according to the meaning of Article 25 of the International Covenant on Civil and Political Rights. Hence, access to personal files refers to the protection of individual rights in a particular case.

Certain constitutions entitle individuals with access to governmentally-held information, provided that such information affects the rights and legitimate interests of individuals. Such provisions can be found in the constitutions of Belarus, Kenya, Romania, Russia, and South Africa.

The test of “legitimate interest” or a “well-founded legal interest” for individuals is introduced by the constitutions of Bulgaria and Slovenia. In other words, an individual can acquire access to governmentally-held information about public affairs only after he or she proves that such information is sought for legitimate purposes.

Moreover, Article 62 of the Constitution of Zimbabwe introduces the test of “the interests of public accountability” in order to obtain governmentally-held information.

Several national constitutions contain provisions on the publicity and transparency of the origin and spending of the finances of political parties, e.g. the constitutions of East Timor, Ghana, Nigeria, and Peru.

Sometimes national constitutions guarantee the right to access only as concerns a certain type of information. For example, the Constitution of Nigeria (Article 213) provides for the principle of publicity of the census of population. The constitutions of France, Serbia, Slovakia, and Ukraine guarantee individuals access to information about the environment. The Constitution of Suriname (Article 36) guarantees the principle of the publicity of information regarding

health-care. The Constitution of Switzerland (Article 119) guarantees to each citizen access to data on reproductive medicine and gene technologies. The constitutions of Portugal, Thailand, and Ukraine guarantee access to consumer information.

As a rule, the constitutions mention access to documents that have already been adopted in their final version by public authorities. The exceptions, however, show that under some jurisdictions individuals are also entitled to access draft documents.

The constitutions of Estonia, Lithuania, Mexico, Papua New Guinea, Poland, and Uganda outline the basic principles of the procedure of disclosure of information to individuals. For example, in accordance with Article 25 of the Constitution of Lithuania, “[t]he citizen shall have the right to receive, according to the procedure established by law, any information concerning him that is held by State institutions”.

### C. Institutional limitations

Institutional limitations indicate the entities responsible for providing information on public affairs to individuals. Most commonly, the constitutions mention several entities responsible for disclosing information.

The majority of the constitutions mentioning the right of access to governmentally-held information guarantee that this information can be obtained from “the government”, “public authorities”, “state bodies”, “bodies of local self-government”, and their officials. Such an approach can be found in the constitutions of Albania, Belarus, Bulgaria, the Czech Republic, Estonia, France (only with respect to information about the environment), Kenya, Kosovo, Kyrgyz Republic, Malawi, Mexico, Moldova, Montenegro, the Netherlands, Niger, Panama, Peru, Poland, Romania, Russia, Serbia, Slovakia, South Africa, South Sudan, Sweden, Thailand, Uganda, Uzbekistan, and Zimbabwe.

There is also a trend to mention “administrative” or “governmental” documents or the “documents from governmental departments” in order to indicate the subjects of the disclosure of information. Such an approach can be found in the constitutions of Afghanistan, Belgium, Costa Rica, Finland, Guatemala, Morocco, Papua New Guinea, and the Philippines.

Morocco, Nepal and Venezuela exemplify constitutions holding the representative/elected organs accountable for providing the requested information to individuals.

Some of the constitutional texts mention not merely public authorities, but also organs and organizations carrying out public functions as the entities responsible for providing the requested information to individuals. These are exemplified in the constitutions of Kosovo, the Kyrgyz Republic, Lithuania, Montenegro, Panama, and Serbia.

The Constitution of the Kyrgyz Republic mentions the right to obtain information on the activity of organizations financed from national and local budgets (Article 33).

The constitutions of Brazil (Article 5) and Bulgaria (Article 41) adhere to a more general approach to defining the subject of disclosure of information by referring to public agencies — i.e. public authorities and entities carrying out public functions.

The constitutions of Tajikistan (Article 25) and Uzbekistan (Article 30) guarantee that information can be requested by individuals from public associations.

Article 25 of the Constitution of Tajikistan mentions that among others political parties “are obligated to provide everyone with the opportunity to receive and become familiar with documents concerning his rights and interests”.

Finally, the Constitution of South Africa (Article 32) mentions the right of access to any information held by “another person”, implying any physical person and legal entity. Similarly, Article 35 of the Constitution of Kenya guarantees the right to inquire about information “held by another person”.

#### *4.1.5. References to Access to Information in Other Constitutional Provisions*

Other possible options for guaranteeing the right to access governmentally-held information include the right to be informed and the right to public participation. For example, the Constitution of East Timor, Article 73, guarantees the right to be informed regularly and directly on the progress of the main issues of public interest. Article 15 of the Constitution of Liberia guarantees “the public right to be informed about the government and its functionaries”. Moreover, Article 29 of the Constitution of Ethiopia mentions the right “to information of public interest”. Similarly, Article 7 of the Constitution of Guinea guarantees the right “of access to public information”. Yet neither the Constitution of Ethiopia nor the Constitution of Guinea indicates the possibility of inquiring about such information from public authorities. The Constitution of Macedonia (Article 16)

guarantees the freedom of “public information and the establishment of institutions for public information”.

The right to political participation can also give rise to a demand for access to governmentally-held information. For instance, the Constitution of Bolivia (Article 26) guarantees that the right to participate includes “the monitoring of the acts of public function”. “Monitoring the acts of public function” can be understood as a direct reference to the principle of publicity of information regarding the exercise of public power.

#### *4.1.6. Concluding Remarks*

Having first been established in the constitutions of the Nordic countries, the constitutional right to access official information gradually spread to other national constitutions. As we can see, many constitutional developments regarding the recognition of the right to access official information took place in the 1990s — the time when new democracies began to establish themselves in the former Soviet republics and East European countries. Newly established democracies, to cite Vereshchetin, introduced new “internationalized” constitutions,<sup>207</sup> recognizing a right of access to information.

In this review, we have analysed 187 constitutional texts, of which the majority contained right of access to generally accessible information via freedom of expression. However, only 41 constitutions contained the general right of individuals (citizens or everyone) to access information held by public authorities. Some of the constitutions mention that information can also be obtained by individuals from institutions of local self-government as well as from entities and organizations carrying out public functions. At least formally, these constitutions include the principle of openness and availability of official information to individuals, subject to restrictions outlined by law. In a number of cases, the constitutions stipulate special rules on access to special types of official information. Most commonly, such special types of information pertained to the environment, health, and consumer rights. Some constitutions stipulate the obligation of public authorities to disclose information to individuals.

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<sup>207</sup> Vereshchetin 1996, p. 31.

## 4.2. Examples of Freedom of Information Legislation from Some National Legal Orders

### 4.2.1. Freedom of Information Laws: General Overview

In addition to the fact that provisions defining access to documents and information in national constitutions may require implementing legislation at the level of ordinary law, several sources of international human rights law and their authoritative interpretations acknowledge the need in national legislation for freedom of information (hereinafter: FOI legislation). For instance, General Comment No. 34 by the UN Human Rights Committee urges the states to “enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation”.<sup>208</sup> According to the General Comment, legal procedures for providing access to official information should stipulate a timely processing of requests for information. Moreover, fees for requests for information should be reasonable. The authorities should provide reasons for refusals to provide information. Arrangements should outline the procedures facilitating the appeals process against such refusals.

As we have already mentioned, the first FOI act was introduced in Sweden in 1766 as a fundamental law. Finland adopted such an act in 1951 at the level of ordinary legislation, creating the constitutional basis for access to public documents only later (see chapter 2, above). By 1990, the number of countries with FOI laws at the level of ordinary legislation had reached 14, and by 2010, more than 70 states had national laws on FOI.<sup>209</sup> The most recent data, as of 2013, provided by the project “*Right2INFO.org*”,<sup>210</sup> suggests that there are at least 95 countries with laws establishing the right to access governmentally-held information.<sup>211</sup> Such states as South Africa, Mexico, and states in Eastern Europe adopted freedom of information laws “as a way of expressing a new commitment to democratic governance”.<sup>212</sup> Regulations establishing a right to governmentally-held information had been adopted also in China.<sup>213</sup> Nonetheless, there

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<sup>208</sup> UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN doc. CCPR/C/GC/34, para. 19.

<sup>209</sup> Roberts 2010, p. 925.

<sup>210</sup> Right2INFO.org – is a project launched in 2008 by Open Society Justice Initiative. It provides relevant materials concerning the current state of the public’s right to information (RTI) held by public bodies (including in all branches and at all levels of government, and bodies that are independent of the executive) and entities that perform public functions or operate with public funds.

<sup>211</sup> Right2INFO.org project, Access to Information Laws: Overview and Statutory Goals, available at: <http://www.right2info.org/access-to-information-laws/access-to-information-laws> (accessed 15 May 2014).

<sup>212</sup> *Ibid.*

<sup>213</sup> *Ibid.*



is no official statistical data on how many UN member states introduced such legislation.

The official sources at the level of the OSCE conclude that freedom of information legislation has been adopted in the vast majority of the states participating in the OSCE. The 2004 Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression “applauded” the fact that “a large number of countries, in all regions of the world, have adopted laws recognising the right to access information and that the number of such countries is growing steadily”.<sup>214</sup> The findings of the 2006 large-scale survey on freedom of information reveal that by 2007, 45 out of 56 OSCE participating states adopted or started to adopt national laws on access to information:

- In the past 10 years, dozens of OSCE states have adopted FOI laws. These include older democracies such as the UK (2000), Switzerland (2004), and Germany (2005), and new democracies such as Armenia (2003), Kyrgyzstan and Azerbaijan (both 2006);
- Of the remaining states, a number, including Luxembourg, the Russian Federation and Malta, are currently developing or considering proposals for FOI laws.<sup>215</sup>

This OSCE study, nonetheless, expresses the opinion that the mere presence of FOI laws does not guarantee effective implementation of the right to access official information and documents. This can be the result of three reasons:

Firstly, inherited difficulties with freedom of expression, which are often culturally based:

- In Tajikistan, a monitoring project found that basic information, including the number of persons sick from typhoid fever, anthrax, brucellosis and flu, statistics of divorce cases, the number of suicides, funds spent for events on the Day of Youth, the total amount of drugs seized by the police, bathing deaths and natural disasters, was being denied.
- In Uzbekistan, since the incident in Andijan, access about what happened there has been limited.<sup>216</sup>

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<sup>214</sup> OSCE, Representative on Freedom of the Media, International Mechanisms for Promoting Freedom of Expression, Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 6 December 2004.

<sup>215</sup> OSCE, Access to information by the media in the OSCE region: trends and recommendations. Summary of preliminary results of the survey.

<sup>216</sup> *Ibid.*

The UN is concerned that implementation of the right to information laws can face “significant challenges, including political and bureaucratic resistance”, a concern that has also been expressed in the 2010 Brisbane Declaration entitled Freedom of Information: the Right to Know.<sup>217</sup>

Secondly, in a number of cases, the OSCE experts found that the FOI laws were “not adequate”.<sup>218</sup> Some examples of the flaws in FOI legislation were named as follows: limiting access to information *ratione personae* to only stakeholders in the administrative procedure who have a direct, practical, and actual interest in the case (the 1990 law on Administrative Procedure in Italy<sup>219</sup>); an excessive inventory of exceptions present in the law (FOI legislation in Austria<sup>220</sup>), situations when the law grants citizens a right to access documents held by authorities, but the government does not recognize this right in a freedom of information act and the failure or refusal to respond to requests (law on administrative procedures in Spain<sup>221</sup>).

Finally, the 2006 OSCE study has noticed a tendency characterised as the “withdrawal of openness”<sup>222</sup> even in those states where FOI laws are further developed. Such “withdrawals” can happen by introducing higher fees for access to information (the Freedom of Information Acts of Bulgaria, Ireland and the United Kingdom).<sup>223</sup> Moreover, “withdrawals” can also be explained by “heightened security needs” (as in the USA, where considerable controversy has arisen over reductions in access to data on internal decision-making, based on the claim of “executive privilege”).<sup>224</sup>

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<sup>217</sup> UNESCO Brisbane Declaration on Freedom of Information: the Right to Know, adopted 3 May 2010.

<sup>218</sup> OSCE, Access to information by the media in the OSCE region: trends and recommendations. Summary of preliminary results of the survey.

<sup>219</sup> Law No. 241 of 7 August 1990, §22(1).

<sup>220</sup> ARTICLE 19, Advance Summary of Concerns on Respect for Freedom of Expression in Austria, Submission to the United Nations Human Rights Committee, March 2007.

<sup>221</sup> “Transparencia y Silencio”, Estudio Sobre el Acceso a la Información en España, Octubre de 2005.

[http://www.sustentia.com/transparencia\\_y\\_silencio\\_espana.pdf](http://www.sustentia.com/transparencia_y_silencio_espana.pdf).

<sup>222</sup> OSCE, Access to information by the media in the OSCE region: trends and recommendations. Summary of preliminary results of the survey.

<sup>223</sup> *Ibid.*

<sup>224</sup> Open the Government Coalition, Secrecy Report Card 2006, available at: <http://www.openthegovernment.org>.

## 4.2.2. Features of the Freedom of Information Legislation in Common-Law Jurisdictions

### 4.2.2.1. General Remarks

The common feature of FOI legal culture in the common-law tradition (access of citizens to information on environmentally hazardous activities or access of shareholders to information held by the companies *ratione materiae*) is comprehended as a special right — the right to know. Black’s Law Dictionary defines a right-to-know act as follows:

A federal or state statute requiring businesses (such as chemical manufacturers) that produce hazardous substances to disclose information about the substances both to the community where they are produced or stored and to employees who handle them.<sup>225</sup>

The right-to-know acts impose on private actors proactive obligations to inform individuals of the hazardous activities they conduct, requiring regular environmental or social reporting to the public and determining the liability of the information-holder for providing false information in the reports.<sup>226</sup> For instance, in the USA, the 1986 Emergency Planning and Community Right-to-Know Act obligates certain companies to submit annual information to public authorities on the release of certain toxic chemicals.<sup>227</sup> This right is guaranteed by several possible regulatory sanctions, such as imposing a freezing order on selected shares where the registered owner fails to disclose information.<sup>228</sup> This mechanism is outlined in the Companies Act 2006.<sup>229</sup> The concept of the right to know has also influenced the legal regulation of the European Union. For instance, the 1996 Council Directive 96/82/EC On the control of major-accident hazards involving dangerous substances or the so-called Seveso II Directive stipulates public access to safety reports on hazardous activities (para. 19).<sup>230</sup>

Concerning FOI laws *strictu sensu*, Hazell and Busfield-Birch differentiate three periods of adopting FOI acts in the common-law tradition. According to these authors, the first phase was initiated by “the early pioneer” — the United

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<sup>225</sup> Black’s Law Dictionary 2007, p. 1351.

<sup>226</sup> See, e.g., Emeseh and Songi 2014, p. 145; Milman 2013, p. 4; Wolf 1996.

<sup>227</sup> Emeseh and Songi 2014, p. 140.

<sup>228</sup> *Ibid.*

<sup>229</sup> *Ibid.*

<sup>230</sup> EU Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances, *Official Journal of the European Union* L010/97.

States — which passed legislation on this issue in 1966. The second period comprised Australia, Canada and New Zealand, which all passed legislation in 1982, whereas the UK belongs to the third period.<sup>231</sup>

#### 4.2.2.2. The Freedom of Information Act of the USA

In 1966, the USA adopted the Freedom of Information Act,<sup>232</sup> which established the right to access information held by federal government agencies.<sup>233</sup> Congressional reports on this act emphasized that “American democratic political theory was the foundation for the statute”.<sup>234</sup> According to Kirby, the US FOI Act “was likewise a belated response, almost 200 years to the day, to the Swedish Act of 1766, which established a regime of openness and access to ‘public documents’ in that country”.<sup>235</sup>

As emphasized by the US Supreme Court in the case of *National Labor Relations Board v. Robbins Tire and Rubber Company*, the “basic policy” of the FOI Act favours the full disclosure of records held by federal agencies.<sup>236</sup> The law permits the general public to examine the records held by roughly 70 federal administrative and regulatory agencies and 15 executive branch departments. It also applies to government-controlled corporations.<sup>237</sup> Further, the statute requires that the government make public certain information without a request being necessary. For example, the statute requires federal agencies to make their organizational plans and regulations available in public reading rooms. Agencies must also publish this information in the Federal Register and on the internet. Access to information, as enshrined in this Act, corresponds to the obligation of state agencies to make information public. Agencies include “any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency”. Referring to only “executive” authorities, the Act does not include

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<sup>231</sup> Hazell and Busfield-Birch 2011, pp. 260–283.

<sup>232</sup> United States Code Annotated Title 5. Government Organization and Employees Part I. The Agencies Generally Chapter 5. Administrative Procedure Subchapter II. Administrative Procedure § 552. Public information; agency rules, opinions, orders, records, and proceedings, 5 U.S.C. § 552 (2005), available at: <http://www.justice.gov/oip/amended-foia-redlined.pdf> (accessed 17 May 2014).

<sup>233</sup> *Ibid.*

<sup>234</sup> Quoted from Halstuk and Chamberlin 2006, p. 512.

<sup>235</sup> Kirby 1988, pp. 1024–1025.

<sup>236</sup> *National Labor Relations Board v. Robbins Tire and Rubber Company*, US Supreme Court, No. 77–911, Decided June 15, 1978, in: 437 U.S. 214, 98 S.Ct. 2311, 98 L.R.R.M. (BNA) 2617, 57 L.Ed.2d 159, 84 Lab.Cas. P 10,643, 3 Media L. Rep. 2473.

<sup>237</sup> *Ibid.*

information from the President, the Congress, state or local governments, the courts, private individuals or private companies, which is a conspicuous limitation of the area of free access to official information. The FOI Act makes records available to “any person” upon request and the requesting party is not required to explain the purpose for which a record is being requested or why a record should be disclosed. The term “records” is defined broadly, including documentary information, such as reports, letters, manuals, photos, films and sound recordings.

The US FOI Act establishes certain matters that are exempted from public disclosure, in case they are:

- A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;
- related solely to the internal personnel rules and practices of an agency;
- specifically exempted from disclosure by statute, provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information satisfies a number of specific criteria, such as e.g. could reasonably be expected to interfere with enforcement proceedings or would deprive a person of a right to a fair trial or an impartial adjudication;
- contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- geological and geophysical information and data, including maps, concerning wells.

At the same time, the Act allows providing reasonably partial portions of a requested record after deleting the portions that are exempt.

The US FOI Act makes it possible to appeal against the refusal to disclose information before the judiciary. One of the most famous cases regarding unlawful refusals to disclose information under this Act is the 1993 case of *United*

*States Department of Justice v. Landano*.<sup>238</sup> Vincent James Landano, a prison inmate convicted of the murder of a police officer, sought to obtain Federal Bureau of Investigation (FBI) files under the Freedom of Information Act to support a claim that the prosecution withheld some evidence at his murder trial. The FBI provided partially released documents at Landano's request while having redacted some parts of the released information and withheld other documents completely. Landano argued against that partial release of information before the courts of law. The United States District Court ruled for Landano, after which the FBI appealed the judgment. The United States Court of Appeals affirmed in part, reversed in part and remanded the case, until certiorari was granted. The Supreme Court held that the government is not entitled to presume that all sources supplying information to the FBI in the course of a criminal investigation are confidential sources within the meaning of the section of the FOI Act exempting agency records compiled for law enforcement purposes by law enforcement authorities in the course of a criminal investigation, if the release of the records "could reasonably be expected to disclose" the identity of, or information provided by, a "confidential source".<sup>239</sup>

#### 4.2.2.3. Access to Information in Canada

The US FOI Act served a model for the second phase of introducing FOI Acts in other countries, notably of the British Commonwealth, such as Canada, Australia, and New Zealand, all of which adopted similar laws in 1982.<sup>240</sup> The Canadian Access to Information Act 1982 covers records of the Canadian Federal Government, with the exception of records designated by the Act as Cabinet records.<sup>241</sup>

In accordance with Article 2, paragraph 1, of this Act, its purpose is "to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed

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<sup>238</sup> *United States Department of Justice, et al., Petitioners v. Vincent James Landano*, U.S. Supreme Court, No. 91-2054, Argued Feb. 24, 1993, Decided May 24, 1993, in: 508 U.S. 165, 113 S.Ct. 2014, 124 L.Ed.2d 84, 61 USLW 4485, 21 Media L. Rep. 1513.

<sup>239</sup> About this case see, e.g., Martyniuk 1994, pp. 523-563.

<sup>240</sup> *Ibid.*

<sup>241</sup> Access to Information Act (R.S.C., 1985, c. A-1), the most recent amendment of 1 April 2014, Published by the Minister of Justice at the following address: <http://laws-lois.justice.gc.ca> (accessed 19 May 2014).

independently of government”. “Record” or “document” means “any documentary material, regardless of medium or form” (Article 3).

Notably, the right to access government records in Canada belongs, as a general rule, only to the citizens or permanent residents in accordance with the provisions of Article 4 of the Canadian FOI Act:

4. (1) Subject to this Act, but notwithstanding any other Act of Parliament, every person who is
  - (a) a Canadian citizen, or
  - (b) a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, has a right to and shall, on request, be given access to any record under the control of a government institution.

Nevertheless, the Governor in Council may, by order, extend the right to be given access to records under subsection (1) to include persons not referred to in that subsection and may set such conditions as the Governor in Council deems appropriate (Article 4, para. 2).

As a general rule, governmentally-held information is provided upon written request, which should include “sufficient detail to enable an experienced employee of the institution with a reasonable effort to identify the record” (Article 6). Nevertheless, Article 5 of the FOI Act of Canada stipulates the proactive obligation of public authorities to publish certain types of information:

- (a) a description of the organization and responsibilities of each government institution, including details on the programs and functions of each division or branch of each government institution;
- (b) a description of all classes of records under the control of each government institution in sufficient detail to facilitate the exercise of the right of access under this Act;
- (c) a description of all manuals used by employees of each government institution in administering or carrying out any of the programs or activities of the government institution; and
- (d) the title and address of the appropriate officer for each government institution to whom requests for access to records under this Act should be sent.

The Act stipulates the rules on exempt information. However, it does not contain a general public interest override test, which would require that information be disclosed in all cases where the general public interest in disclosure outweighs the specific public interest or other (third party) interest that is intended to be protected by the exempting provision. Nevertheless, the exemptions, stipulated

by the Canadian FOI Act, are of two types: (a) exemptions where public authorities “shall” refuse disclosure, i.e. “mandatory” exemptions (Articles 13, 19, 20, 24) and (b) exemptions where public authorities “may” refuse disclosure, i.e. “discretionary” exemptions, depending on the discretion of public authorities (Articles 14–18).

Paragraph 1 of Article 13 is devoted to mandatory exemptions, stating that the head of a government institution shall refuse to disclose any record requested under the Act containing information obtained in confidence from:

- (a) the government of a foreign state or an institution thereof;
- (b) an international organization of states or an institution thereof;
- (c) the government of a province or an institution thereof;
- (d) a municipal or regional government established by or pursuant to an Act of the legislature of a province or an institution of such a government; or
- (e) an aboriginal government.

In accordance with Article 19, paragraph 1, of the Canadian FOI Act, the head of a government institution shall refuse to disclose any record requested under the Act containing personal information, as defined in section 3 of the Privacy Act.

Article 20 contains an absolute exemption, stating that the head of a government institution shall refuse to disclose information on a trade secret or commercial interest of “a third party”. The “third party” in respect of a request for access to a record under the Act, means “any person, group of persons or organization other than the person that made the request or a government institution” (Article 3). At the same time, this rule is outweighed by “public interest in disclosure” in cases when the public interest (a) relates to public health, public safety or protection of the environment; and (b) outweighs in importance any financial loss or gain to a third party, any prejudice to the security of its structures, networks or systems, any prejudice to its competitive position or any interference with its contractual or other negotiations.

Article 24 of the FOI Act provides that the head of a government institution shall refuse to disclose any record that contains information, the disclosure of which is restricted by or pursuant to any provision set out in Schedule II of the Act. This provision is viewed by many institutions as the strongest guarantee against disclosure provided by an exemption. In other words, these exemptions significantly influence the confidentiality provisions of other statutes.



Article 14 of the Canadian FOI Act deals with discretionary exemptions as follows:

The head of a government institution may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to be injurious to the conduct by the Government of Canada of federal-provincial affairs, including, without restricting the generality of the foregoing, any such information

- (a) on federal-provincial consultations or deliberations; or
- (b) on strategy or tactics adopted or to be adopted by the Government of Canada relating to the conduct of federal-provincial affairs.

Moreover, according to Article 15 of the FOI Act of Canada, the head of a government institution may refuse to disclose information, the disclosure of which “could reasonably be expected to be injurious to the conduct of international affairs, the defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities, including, without restricting the generality of the foregoing, any such information [...],” listing nine categories of such information.<sup>242</sup> Article 16 states that the head of a government institution may refuse to disclose any record containing requested information on law enforcement and criminal investigations. Article 17 stipulates that the head of a government institution may refuse to disclose information, “the disclosure of which could reasonably be expected to threaten

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<sup>242</sup> (a) relating to military tactics or strategy, or relating to military exercises or operations undertaken in preparation for hostilities or in connection with the detection, prevention or suppression of subversive or hostile activities;

(b) relating to the quantity, characteristics, capabilities or deployment of weapons or other defence equipment or of anything being designed, developed, produced or considered for use as weapons or other defence equipment;

(c) relating to the characteristics, capabilities, performance, potential, deployment, functions or role of any defence establishment, of any military force, unit or personnel or of any organization or person responsible for the detection, prevention or suppression of subversive or hostile activities;

(d) obtained or prepared for the purpose of intelligence relating to

(i) the defence of Canada or any state allied or associated with Canada, or

(ii) the detection, prevention or suppression of subversive or hostile activities;

(e) obtained or prepared for the purpose of intelligence respecting foreign states, international organizations of states or citizens of foreign states used by the Government of Canada in the process of deliberation and consultation or in the conduct of international affairs;

(f) on methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in paragraph (d) or (e) or on sources of such information;

(g) on the positions adopted or to be adopted by the Government of Canada, governments of foreign states or international organizations of states for the purpose of present or future international negotiations;

(h) that constitutes diplomatic correspondence exchanged with foreign states or international organizations of states or official correspondence exchanged with Canadian diplomatic missions or consular posts abroad; or

(i) relating to the communications or cryptographic systems of Canada or foreign states used

(i) for the conduct of international affairs,

(ii) for the defence of Canada or any state allied or associated with Canada, or

(iii) in relation to the detection, prevention or suppression of subversive or hostile activities.

the safety of individuals”. In accordance with Article 18, the head of a government institution may refuse to disclose information pertaining to the economic interests of Canada. According to Article 21, the head of a government institution may refuse to disclose information pertaining to certain operations of the government. Pursuant to Article 22, the head of a government institution may refuse to disclose information pertaining to testing or auditing procedures. And, finally, according to Article 23 of the FOI Act, the head of a government institution may refuse to disclose information pertaining to solicitor-client privilege.

#### 4.2.2.4. Freedom of Information in Australia

Akin to Canada, the Australian Federal Government’s Freedom of Information Act 1982 refers to governmentally-held information.<sup>243</sup> Nevertheless, the scope of this Act extends to the courts in respect of administrative matters (Article 5). The Act proclaims that information held by the government “is to be managed for public purposes, and is a national resource” (Article 3, para. 3).

The FOI Act takes both a reactive and proactive approach to freedom of information, which is reflected in Article 3 outlining the goals of the Act:

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
  - (a) requiring agencies to publish the information; and
  - (b) providing for a right of access to documents.

Accordingly, Part II of the Australian FOI Act establishes an information publication scheme for agencies, ordering each agency to publish a plan showing how it proposes to implement this part. An agency is required to publish a range of information, including information about agency’s work and rationale, as well as information dealt with or used in the course of its operations, in part as operational information. In addition, an agency may publish other types of information held by the agency.

Part III of the Act is about accessing information upon a written request. In accordance with Article 11 of the Australian FOI Act, the right of access is defined as follows:

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<sup>243</sup> The Australian Federal Government’s Freedom of Information Act 1982, the most recent amendment of 12 March 2014, available at: <http://www.comlaw.gov.au/Series/C2004A02562> (accessed 20 May 2014).

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
  - (a) a document of an agency, other than an exempt document; or
  - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
  - (a) any reasons the person gives for seeking access; or
  - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

Article 11B reveals the *pro and con* criteria for a public interest test in order to establish whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5):

#### Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
  - (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
  - (b) inform debate on a matter of public importance;
  - (c) promote effective oversight of public expenditure;
  - (d) allow a person to access his or her own personal information.

#### Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
  - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
  - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
  - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
  - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
  - (d) access to the document could result in confusion or unnecessary debate.

Part IV of the analysed FOI Act stipulates the rules governing the exemptions. For the convenience of the users, Article 31A contains a table summarising how the Act applies to exempt documents and documents that are conditionally exempt:

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**How this Act applies to exempt and conditionally exempt documents**

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<b>Item</b>	<b>If ...</b>	<b>then ...</b>	<b>because of ...</b>
1	a document is an exempt document under Division 2 (exemptions) or under paragraph (b) or (c) of the definition of <i>exempt document</i> in subsection 4(1)	access to the document is not required to be given	subsection 11A(4).
2	a document is a conditionally exempt document under Division 3 (public interest conditional exemptions)	access to the document is required to be given, unless it would be contrary to the public interest	subsection 11A(5) (see also section 11B (public interest factors)).
3	a document is an exempt document, as mentioned in item 1, and also a conditionally exempt document under Division 3	access to the document is not required to be given	subsections 11A(4) and (6), and section 32 (interpretation).
4	access to a document is refused because it contains exempt matter, and the exempt matter can be deleted	(a) an edited copy deleting the exempt matter must be prepared (if practicable); and (b) access to the edited copy must be given;	section 22.
5	a document is an exempt document because of any provision of this Act	access to the document may be given apart from under this Act	section 3A (objects–information or documents otherwise accessible).

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Hence, as in the case with Canada, exemptions stipulated by the FOI Act of Australia protect a broad range of information. Moreover, according to the opinion of Hazell and Busfield-Birch, “the courts have upheld the breadth of the original exemptions, and contributed to the closed nature of the Australian system”.<sup>244</sup>

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<sup>244</sup> Hazell and Busfield-Birch 2011, p. 266.

#### 4.2.2.5. Freedom of Information in New Zealand

The 1982 Official Information Act of New Zealand aims “to increase progressively the availability of official information to the people of New Zealand” in order:

- (i) to enable their more effective participation in the making and administration of laws and policies; and
- (ii) to promote the accountability of Ministers of the Crown and officials.<sup>245</sup>

Moreover, the Act provides “proper access by each person to official information relating to that person” (Article 4, para. b); protects official information “to the extent consistent with the public interest and the preservation of personal privacy” (Article 4, para. b), and establishes procedures for the achievement of those purposes. The FOI Act of New Zealand provides for access not only to documents and records, but also to information in all its forms, which includes video/audio recordings and even notes of meetings that were not written down in minutes, so that officials may be required to provide a subsequent record. While the Act has no specific exemption for government internal communication, it contains a more general provision protecting collective ministerial responsibility as well as the confidentiality of advice and is, therefore, labelled as “the creator of one of the most open FOI regimes”.<sup>246</sup>

#### 4.2.2.6. The Freedom of Information Act of the United Kingdom

The Freedom of Information Act was adopted in 2000 in the UK, making the UK “a relative latecomer to freedom of information”.<sup>247</sup> Access to information legislation in the UK “began in local government”,<sup>248</sup> in particular with the Local Government (Access to Information) Act of 1985. Hence, the 2000 FOI Act introduced the principle of access to information “into central government and public authorities generally”.<sup>249</sup> The Act covers Northern Ireland, England and Wales, whereas its application to Scotland is limited only by its relevance to the

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<sup>245</sup> New Zealand, Official Information Act, No. 156, adopted 17 December 1982, with subsequent amendments, with the most recent amendment of the Legislation Act 2012 reproduced on the official web page of New Zealand legislation and available at: <http://www.legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html> (accessed 20 May 2014).

<sup>246</sup> Hazell and Busfield-Birch 2011, p. 261.

<sup>247</sup> *Ibid.*

<sup>248</sup> Birkinshaw 2001, p. 155.

<sup>249</sup> *Ibid.*, p. 330.

Scottish Office and those scheduled bodies which have addresses in Scotland, e.g. the BBC.<sup>250</sup> All other devolved public bodies of Scotland are, as a rule, covered by Information (Scotland) Act of 2002,<sup>251</sup> unless information is entrusted “in confidence” by the UK government. The 2000 FOI Act prescribes rules for disclosing information held by public authorities or by persons providing services for them and for amending the Data Protection Act, 1998 and the Public Records Act, 1958. Notably, Schedule 1 of the FOI Act provides a list of the bodies that are classified as public authorities in accordance with the Act. Some of these bodies are listed by name, such as the National Gallery. Others are listed by type, for example, government departments, parish councils, or schools. Moreover, under the Act the Secretary of State may designate as a public authority for the purposes of the Act any person who is not listed in Schedule 1 but who “appears to the Secretary of State to exercise function of a public nature”.<sup>252</sup>

As an act of general application, it takes a reactive approach by granting to any person the right to access information held by public authorities upon request according to paragraph 1 of Article 1 as follows:

1. General right of access to information held by public authorities.
  - (1) Any person making a request for information to a public authority is entitled –
    - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
    - (b) if that is the case, to have that information communicated to him.

At the same time, pursuant to paragraph 3 of Article 1, public authorities are not bound by the provisions of the above-mentioned paragraph 1 of Article 1, insofar as they are not provided with further information necessary to identify and locate the information requested:

- (3) Where a public authority –
      - (a) reasonably requires further information in order to identify and locate the information requested, and
      - (b) has informed the applicant of that requirement,the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

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<sup>250</sup> Birkinshaw and Varney 2011, p. 87.

<sup>251</sup> Freedom of Information (Scotland) Act of 2002 is available at: <http://www.legislation.gov.uk/asp/2002/13/contents>.

<sup>252</sup> Birkinshaw and Varney 2011, p. 36.

The obligation to provide information concerns public authorities (Article 3) and publicly-owned companies (Article 6). The request for information should reach the information-holder in writing or electronically (Article 8). Moreover, the requested information should be provided “promptly and in any event not later than the twentieth working day following the date of receipt”, according to Article 10 of the Act. The UK FOI Act regulates the means in which the information should be communicated to the applicant (Article 11):

- (1) Where, on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely
- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
  - (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
  - (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,
- the public authority shall so far as reasonably practicable give effect to that preference.

The UK FOI Act stipulates the rules on exempt information, which are classified into two types:

*Absolute exemptions*, i.e. which have no public interest test attached. The absolute exemptions include those which pertain to:

- Information accessible to an applicant by other means (Article 21);
- Information supplied by, or pertaining to, bodies dealing with security matters (Article 23);
- Court records (Article 32);
- Parliamentary privilege (Article 34);
- Prejudice to effective conduct of public affairs (Article 36);
- Personal information (Article 40);
- Information provided in confidence (Article 41); and
- Prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court (Article 44).

*Qualifying exemptions* are objections that are subject to a public interest test. Where an institution considers that the public interest in withholding the information requested outweighs the public interest in releasing it, the institution must inform the applicant of its reasons, unless the reasoning provided would

effectively mean releasing the exempt information. The rule of outweighing public interest in disclosure taking precedence over absolute prohibitions to disclose information is stipulated by Article 2, paragraph 1 of the FOI Act. Qualifying exemptions apply to information pertaining to:

- Information intended for future publication (Article 22);
- National security (other than information provided by or pertaining to certain security organisations, where the obligation to disclose information in the public interest does not arise) (Article 24);
- Defence (Article 26);
- International relations (Article 27);
- Relations within the United Kingdom (Article 28);
- The economy (Article 29);
- Investigations and proceedings conducted by public authorities (Article 30);
- Law enforcement (Article 31);
- Audit functions (Article 33);
- Formulation of government policy (Article 35);
- Prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords) (Article 36);
- Communications with Her Majesty, etc. and honours (Article 37);
- Health and safety (Article 38);
- Environmental information (Article 40);
- Legal professional privilege (Article 42);
- Commercial interests (Article 43).

The details of these exemption schemes show that there can be several specific grounds for restricting access to public documents and information, which might result in turning the broad principle of access to public documents and information into something that is more limited in practical application. Moreover, Birkinshaw and Varney emphasize the existence of so-called “excluded information” which is “totally outside the operation of the Act”.<sup>253</sup>

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<sup>253</sup> Birkinshaw and Varney 2011, para. 1.12.



### 4.2.3. *The Freedom of Information Legislation in Russia*

The FOI legislation in Russia is based on Article 29(4) of the Constitution of the Russian Federation on freedom of information, stating the following:

Everyone shall have the right to freely seek, receive, transmit, produce and disseminate information by any legal means. The list of types of information, which constitute State secrets, shall be determined by federal law.<sup>254</sup>

Although this constitutional article does not stipulate a right to access governmentally-held information, it does contain a right to access information that is otherwise generally accessible.

There are several federal laws ensuring the implementation of the freedom of information in Russia (see below), but they are not necessarily formulated so as to create a general right of access to public documents. Without doubt, they nonetheless give evidence on some steps that have been taken in that direction.

The first statute on information, i.e. the Federal Law No. 149-FZ *On information, information technologies, and protection of information*, was ratified in 2006.<sup>255</sup> Although this federal law is not a FOI act, it regulates issues pertaining to the protection of “information”, which is defined as follows in Article 2, paragraph 1: “All facts (communications or data), irrespectively of the form in which they exist”.

Although, according to Article 3 of this statute, legal relationships in the sphere of information are based on the principles of “the freedom to seek, receive, transmit, produce and disseminate information by any legal means” and “restricting this freedom only on the basis of the federal laws”, the statute prescribes restrictive regulation of access to information.

As its title suggests, information is *an object of legal protection* from the clear-cut perspective of an information-holder. Paragraph 5 of Article 2 defines *the information-holder* as “a person who created information on his or her own or who has obtained on the grounds of the law or the contract the right to allow or restrict access to information”. In accordance with Article 6 of the statute, an information-holder can be one of the following: a citizen (a natural person), or-

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<sup>254</sup> RF, *Konstitutsiya Rossiiskoi Federatsii*, adopted 12 December 2009 during the All-Russia referendum (with subsequent amendments, the most recent amendment of 5 February 2014), in: *Rossijskaya gazeta* (25 December 1993) No. 237.

<sup>255</sup> RF, *Federal'nyj zakon* of 27 July 2006 No. 149-FZ “*Ob informatsii, informatsionnykh tekhnologiyakh i o zashchite informatsii*,” in: *Sobranie zakonodatel'stva Rossiiskoi Federatsii*, 31.07.2006, No. 31 (part 1) item 3448.

ganization (juridical person), the Russian Federation, the constitutive subject of the Russian Federation, or a municipality. Article 6 also guarantees *the rights of the information-holder* with respect to information under his or her control:

- 1) to allow or to restrict access to information, to set up the rules for access to information;
- 2) to use the information, including its dissemination, according to own discretion;
- 3) to transfer this information to other persons, according to a contract or on the basis of other grounds, provided by law;
- 4) to protect by all legal means his or her rights in cases of illegal obtaining of information or illegal usage of this information by others;
- 5) to perform other actions with respect to information or permit performance of such actions.

*Individual access to information* is guaranteed to citizens and organizations in Article 8 as “the right to seek and receive any information, in any forms, and from any sources, under the terms stipulated by the present Federal law and other federal laws” (para. 1). Citizens (natural persons) have the right to receive from public authorities information that directly defines their rights and duties (para. 3). Organizations have the right to receive from state agencies and agencies of local self-government information that directly concerns their rights and duties as well as information necessary to interact with the said public authorities in carrying out their activities (para. 4).

Article 8 of the 2006 statute guarantees access to several types of information, which cannot be restricted (para. 4), such as: normative acts which define human rights and duties and stipulate the legal status of organizations and the powers of public authorities; information on the state of the environment; information on the activities of state agencies and agencies of local self-government, information on the use of budget funds, with the exception of data constituting state secrets or governmental privilege; information stored in open collections of libraries, museums and archives as well as in state, municipal and other information systems meant to supply citizens and organizations with such information; other types of information, access to which is prohibited by federal legislation.

Two years later, Federal Law No. 262-FZ of 22 December 2008 *On Ensuring Access to Information on the Functioning of the Courts of Law in the Russian Federation* was enacted.<sup>256</sup>

This 2008 statute guaranteed the right to access information on the workings of the courts of law *ratione materiae* only for stakeholders looking for such information *ratione personae*. According to Article 1, paragraph 3, of the statute, “the stakeholder” is a citizen, organization, public association, state organ or organ of local self-government who is looking for information on the functioning of the courts. The overall aim of the statute is to ensure access of the stakeholders to information regarding the functioning of the court of law (Article 2).

In accordance with the 2008 statute, access to information on the workings of the courts can be provided in several ways:

- presence of the individuals during open court trials;
- promulgation (publication) of information on the workings of the courts in the mass media;
- release of information on the workings of the courts in the internet;
- release of information on the workings of the courts inside the court premises, the Administration of the Justice Department of the Russian Federation, and the Association of Judges;
- familiarizing stakeholders with information on the workings of the courts in the files of archive collections;
- providing upon the request of stakeholders information on the workings of the courts.

Article 14 of the 2008 statute stipulated the proactive obligation of the courts to release on the internet the following information:

- general information about a particular court of law;
- information on cases under adjudication in a particular court, including the texts of court decisions with a due account of privacy regulations;
- the texts of law proposals submitted by courts in implementing their right to law-making initiatives;
- statistical data;
- information on the staff;

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<sup>256</sup> RF, *Federal’nyj zakon* of 22 December 2008 No. 262-FZ “*Ob obespechenii dostupa k informatsii o deyatel’nosti sudov v Rossiiskoi Federatsii*” (with subsequent amendments, the most recent amendment of 21 December 2013), in: *Sobranie zakonodatel’sтва Rossiiskoi Federatsii*, 29.12.2008, No. 52 (part 1) item 6217.

- information on office hours for consulting citizens, and
- information pertaining to possible contracts with private agents regarding delivering goods, providing services to the courts (which is the requirement of Russian legislation on public contracts).

The most recent Russian FOI law, *strictu sensu*, i.e. the Federal Law *On Ensuring Freedom of Information in the Activity of State Agencies and Agencies of Local Self-Government*, was adopted on 9 February 2009.<sup>257</sup> Western academics label this statute a “significant development” in the Russian legal system, which is based on the review of “the positive experience of the European counterparts with regard to domestic European legislation”.<sup>258</sup> The scope of the statute covers information on the activities of state bodies, municipal authorities and organizations under their aegis. This federal law does not hold other private or legal persons accountable for disclosing information to citizens. Article 1, paragraph 1, of the 2009 FOI statute contains a legal definition of “information”, which appears broader in comparison with the definition provided by the 2006 FOI statute. Information is defined in the following way:

Information on the activities of state bodies and municipal authorities is information (including documented information) which was created by state bodies, municipal authorities and those organizations which are under the aegis of state bodies and municipal authorities, according to their competence, or information which has entered these organs and organizations. Information on the activities of state bodies includes also the statutes and other normative acts, whereas information on the activities of municipal authorities includes local normative acts stipulating the structure, the powers, the procedure of setting-up and the activities of these authorities, as well as other type of information regarding their activities.

Information containing state secrets or other secrets protected by law is restricted information, according to Article 5 of the federal law.

Although Article 4 of the 2009 FOI law stipulates that access to information should be implemented on the basis of the principles of openness and availability of information, Article 2 of the statute contains significant limitations on the scope of access to official information. In paragraph 1 of Article 2, the statute refers to information on the activities of state organs and municipal authorities *ratione materiae*. Paragraph 2 of Article 2 continues with another

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<sup>257</sup> RF, *Federal'nyj zakon* of 9 February 2009, No. 8-FZ “*Ob obespechenii dostupa k informatsii o deyatel'nosti gosudarstvennykh organov i organov mestnogo samoupravleniya*”, in: *Sobranie zakonodatel'stva Rossiiskoi Federatsii*, 16.02.2009, No. 7 item 776.

<sup>258</sup> Henderson and Sayadyan 2011, p. 301.

limitation on the principle of maximum disclosure of information, making the act subordinate to more specific provisions in other statutes. According to paragraph 2, if other federal constitutional laws, federal laws and normative acts, adopted in order to implement the analysed federal law, stipulate special requirements for disclosing certain types of information on the activities of state organs and municipal authorities, the provisions of the 2009 federal law are applied with due consideration of the provisions of the said federal constitutional laws, federal laws and normative acts. Paragraph 3 of Article 2 specifies that if there are regional laws, providing for special requirements of disclosing certain types of information on the activities of regional state organs and municipal authorities, the 2009 federal law is applied with due consideration of the provisions of the regional statutes. Finally, according to paragraph 5 of Article 2, the scope of the 2009 federal law does not cover the following:

- 1) relationships concerning providing access to personal data which is processed by state organs or municipal authorities;
- 2) the procedure of consideration of citizens' applications by state organs and municipal authorities;
- 3) the procedure of submitting information by state organs and municipal authorities on their activities to other state organs and municipal authorities.

Article 8 of the 2009 federal law guarantees a number of rights to the parties requesting information:

- 1) to receive accurate information on the activities of state organs and municipal authorities;
- 2) to refuse reception of information on the activities of state organs and municipal authorities [i.e. not to retrieve the requested information – MR];
- 3) not to bring any justifications regarding the need to receive the requested information on the activities of state organs and municipal authorities, the access to which is not restricted;
- 4) to revise the documents and (or) actions/lack of actions of state organs and municipal authorities, including their public servants which violate the right to access information on the activities of state organs and municipal authorities as well as the procedure of implementing this right;

5) to demand, in accordance with the law, compensation for damages occurred as the result of violations of the right to access information on the activities of state organs and municipal authorities.

Article 20(3) of the 2009 federal law allows public authorities to refuse a request for information if the requested information has already been released in the mass media or on the internet. In case the requested information contains restricted data, this statute allows partial disclosure of information.

Hence, according to the 2009 federal law, access to information on the activities of state organs and municipal authorities is the right of individuals and their associations, which, as a general rule, is implemented upon a request to disclose information or as an oral reply to personal addressees during reception hours. Justifications for such requests are necessary only in order to apply for access to restricted information. The 2009 federal law, in addition, stipulates a number of cases where public authorities are obligated to provide information on their activities proactively, and which refer, for instance, to the obligation to make public on the internet general information on public authorities (title, contact details, competence, etc.); information on the law-making activities of public authorities, etc. (Article 13). An interesting aspect of Russian FOI laws is that a criterion limiting the right to information, based on “national security”, which is a very common ground for limitations in the sources of international law, has been omitted. Instead, Russian legislation mentions “state secrecy” as a reason for limiting access to certain information. Moreover, only the 2009 FOI law of Russia provides an opportunity for requesting parties to inquire about official information in oral form during the reception hours of public authorities.

Although the 2009 federal law entered into force relatively recently, in 2010, several individual applications regarding alleged violations of the right to access official information have already been reviewed by the Constitutional Court of the Russian Federation. In the ruling of 8 December 2011 No. 1624-O-O on the case of *T.A. Andreeva, F.V. Morozov and others v. the Russian Federation*,<sup>259</sup> the Constitutional Court considered the issue of the constitutionality of Article 1, paragraph 1, of the 2009 FOI law, pertaining to the legal definition of the term “information” (see above). The applicants, teachers from St. Petersburg State Polytechnic University, requested from the regional division of the State

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<sup>259</sup> RF, *Opredelenie* of 8 December 2011 No. 1624-O-O “*Po zhalobe grazhdan Andreevoi Tat'yany Alekseevny, Morozova Filippa Vladislavovicha i drugih na naruzhenie ikh konstitutsionnykh prav punktom 1 Federal'nogo zakona “Ob obespechenii dostupa k informatsii o deyatel'nosti gosudarstvennykh organov i organov mestnogo samoupravleniya”.*”

Fire Inspection Service several documents concerning the inspection of the observance of fire safety requirements in the university. The Service refused to disclose the documents. The applicants unsuccessfully challenged this decision in several court instances. All the trial courts found that the requested information does not fall under the scope of “information on the activities of state organs and municipal authorities”, according to the 2009 FOI law. The applicants alleged before the Constitutional Court that Article 1, paragraph 1, of the 2008 FOI statute contradicts, *inter alia*, the constitutional article on freedom of information. According to the applicants, the contested legal provision in the light of its interpretations by the court of law allows public authorities to refuse disclosing the requested information on the grounds that such information does not directly pertain to their activities.

With reference to Article 29, paragraph 4, of the Russian Constitution (freedom of information) as well as to the corresponding provisions of the International Covenant on Civil and Political Rights, the Constitutional Court stated that the right to information can be subject to certain restrictions. Accordingly, federal legislation is obligated to define the terms and the procedure of implementing the right to information. By defining the terms on which the said right can be implemented, the statutes should ensure that any restrictions are possible “insofar as they are necessary and proportionate to the constitutionally established goals, they do not encroach upon the essence of this right, they do not result in a loss of the real contents of this right, and they are guaranteed by formal, clear and unambiguous rules which exclude arbitrary interpretation of restrictions and, therefore, the arbitrary implementation of the restrictions”.<sup>260</sup> The Court also stated that the legitimate restrictions of the right to information purport to guarantee maximal information disclosure with respect to the activities of public authorities in respect of citizens and their associations. Such an approach is in accordance with the 2009 CoE Convention on Access to Official Documents (Preamble and Article 3) “emphasizing the significance of transparency in public administration in a pluralistic democratic society but allowing restrictions on access to official documents based on law and necessary and proportionate to the goals of protecting the universal values of a democratic society”.<sup>261</sup> Having

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<sup>260</sup> Constitutional Court of the Russian Federation, *Postanovlenie* of 30 October 2003 No. 15-P, of 26 December 2005 No. 14-P, of 16 June 2006 No. 7-P, of 19 April 2010 No. 8-P, of 31 March 2011 No. 3-P, and of 30 June 2011 No. 14-P, reproduced in Russian law database “Consultant”, available at: <http://www.consultant.ru>.

<sup>261</sup> RF, *Opreделение* of 8 December 2011 No. 1624-O-O “*Po zhalobe grazhdan Andreevoi Tat'yany Alekseevny, Morozova Filippa Vladislavovicha i drugikh na naruzhenie ikh konstitutsionnykh prav punktom 1 Federal'nogo zakona “Ob obespechenii dostupa k informatsii o deyatel'nosti gosudarstvennykh organov i organov mestnogo samoupravleniya”*”.

come to the conclusion that the legal definition of “information” prescribed in Article 1, paragraph 1, of the 2009 FOI law corresponds to the Russian Constitution and does not impose unreasonable restrictions on the right to information, the Constitutional Court declared the application inadmissible. This was due to the fact that the Constitutional Court is not an additional court instance with respect to the courts of general jurisdiction that had rendered the contested decision on the refusal to disclose the requested information. Therefore, reviewing the legality of the rulings of the courts of general jurisdiction does not fall within the competence of the Constitutional Court.

The position on statutory-based restrictions on the right to information, presented by the Constitutional Court in the 2011 case of *T.A. Andreeva, F.V. Morozov and others v. the Russian Federation* was restated in the most recent case pertaining to this right. In the 2013 case of *Mr. Sokolov v. the Russian Federation*,<sup>262</sup> the applicant challenged the constitutionality of Article 2, paragraph 2, of the 2009 FOI law, which prioritizes special legislation, defining special requirements for the disclosure of certain types of information, over and above the provisions of the 2009 statute. Mr. Sokolov addressed several courts of general jurisdiction and argued against the refusal of the federal state establishment of the “Head Management of State Expert Services”. The trial courts found that the requested information does not fall within the scope of “information” to which the state authorities should ensure access.

The applicant insisted that the provisions of Article 2, paragraph 2, of the 2009 federal law contradict Article 29, paragraph 4, of the 1993 Russian Constitution (the right to information) by allowing the possibility of denying access to information that is not restricted in those cases where special federal statutes that regulate certain legal relationships do not specifically mention the obligation of public authorities to disclose such information upon request. The Constitutional Court ruled the application of Mr. Sokolov inadmissible, stating that the 2009 federal law is based on the principles of openness and availability of information, except in cases stipulated by federal laws (Article 4, para. 1, of the 2009 federal law). As stated by the Constitutional Court in the case of *T.A. Andreeva, F.V. Morozov end others v. the Russian Federation*, such a scheme of legal regulation in the sphere of freedom of information purports to guarantee maximal information disclosure of the activities of public authorities for citizens and their

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<sup>262</sup> Constitutional Court of the Russian Federation, *Opredelenie* of 24 December 2013, No. 2066-O “*Ob otkaze v prinyatii k rassmotreniyu zhaloby grazhdanina Sokolova Modesta Mikhajlovicha na narushenie ego konstitucionnykh prav polozheniyami chasti 2 stat’i 2 Federal’nogo zakona “Ob obespechenii dostupa k informatsii o deyatelnosti gosudarstvennykh organov i organov mestnogo samoupravleniya”*,” studied on the materials of Russian law database “Consultant”, available at: <http://www.consultant.ru> (accessed 18 May 2014).



associations. Such an approach is in accordance with the 2009 CoE Convention on Access to Official Documents. According to the assessment of the Court, the provisions of Article 2, paragraph 2, of the 2009 federal law require an application of other provisions of this law in conjunction with special legal regulation of disclosure of certain types of information. Special legislation can provide rules governing certain types of information, their disclosure, and the inventory of restricted information. This means that unless there are no special legislative provisions regulating the disclosure of certain types of information on the activities of public authorities, the latter are obligated to disclose information, in accordance with Article 29, paragraph 4, of the Constitution and the 2009 FOI law. Hence, the contested provisions cannot *per se* allow public authorities to refuse disclosing information merely on the grounds of a lack of a statutory provision obligating them to provide access to certain types of information about their activities. Thus, there are no grounds warranting that the contested provision of Article 2, paragraph 2, of the 2009 federal law violates the constitutional rights of the applicant.

#### *4.2.4. Concluding Observations Concerning National Freedom of Information Acts*

On the basis of our review, we can see that the regulatory schemes of national FOI acts can be different. Nonetheless, the FOI laws that we have reviewed share some common features:

- they make it possible to hold executive authorities accountable for disclosing information that they possess;
- they provide, as a general rule, the reactive obligation to disclose information yet at the same time prescribe limited rules on proactive publication of certain data;
- they, as a rule, do not require a requesting party to justify the grounds for requesting the information;
- they contain an inventory of exceptions regarding certain types of information that is exempt from the scope of their regulation;
- they provide for the possibility of challenging the refusal to disclose information before a court or a special administrative organ;
- they do not provide individuals with the right of access to their own personal data.

At the same time, the existence of freedom of information laws in a number of countries without there existing constitutional support of a direct nature indicates that provisions concerning access to documents and governmentally-held information can also originate at the level of ordinary legislation. In such situations, however, access to documents and governmentally-held information is not formulated as a fundamental right of individuals protected under the constitution.

## 5. CONCLUSIONS

With the introduction of the 2009 CoE Convention on Access to Official Documents, the principle of openness and the availability of governmentally-held information, originating in eighteenth-century Sweden, has received official recognition by circumscribing the rule of confidentiality surrounding official documents, a rule that might still prevail in some legal systems. This Convention is not yet in force, but once in force, it may contribute to bringing about the paradigm shift that establishes access to documents and governmentally-held information as a general rule, because its adoption testifies to the growing tendency, at least among the states of the Council of Europe, to recognize the individual right to access official documentation. Perhaps the entry into force of this instrument will influence the official stance of the European Court of Human Rights, which has so far been reluctant to pronounce the general right to access official documents. Yet, as our analysis shows, the European Court of Human Rights recognizes that under certain conditions individuals are entitled to access official information consonant with the provisions of Article 8 and Article 10 of the European Convention on Human Rights.

With respect to the UN human rights regulations, the general right to access official information and documents exists only in the interpretations of the treaty bodies, in particular in General Comment No. 34 to the ICCPR, paragraph 18, which maintains that freedom of expression presupposes “a right of access to information held by public bodies”. Otherwise, the existing UN human rights treaties imply that individuals are entitled to access information that is otherwise generally accessible. In other words, as a general rule, the UN treaties do not explicitly guarantee the principle of availability of governmentally-held information to individuals. A more specific right to access environmental information is guaranteed by a number of UN conventions. Moreover, the right to access official information *ratione personae* and *ratione materiae* is mentioned in several UN declarations.

Nevertheless, the pre-ICCPR era witnessed an attempt to introduce a separate convention on the general right to information in 1948. That attempt failed for several reasons, e.g. the immaturity of the existing official legal vocabulary, which had been vague in defining the main concepts, such as “information”, “documents”, or “public authorities”; the political reluctance of some states, in particular, the Soviet bloc, which had been reluctant to abandon the principle of

secrecy in handling official documents; and a lack of systematic national practices regarding individual access to official documents.

As we can see, modernity proposes solutions to these problems. The existing treaties, declarations, and interpretations of the UN treaty bodies operate with clear legal definitions of “documents” and “public authorities”. The ideas of transparency in public administration and openness in decision-making as counterarguments to the principle of secrecy in state administration have begun to spread on the international human rights forums. At least 41 constitutional provisions on access to governmentally-held information, as well as approximately 95 respective national acts, have been introduced (the relatively recent increase in the importance of the internet and electronic materials is not very visible in the normative materials reviewed, probably for the reason that access to public documents is medium neutral in the same way as the freedom of the press, wherefore it would be relevant also in relation to electronic documents held by the government, provided that the grounds for limitations of publicity do not apply). Moreover, official legal developments with respect to recognizing the right in question coincide with the NGO work on codifying the rules on implementing this right. The result of this work culminated in the *Johannesburg Principles* and the *Tshwane Principles* on the right to information. Such formal universal, regional and national practices, coupled with informal NGO campaigning, support the potential of the right to access official information and documents achieving a high degree of international consensus. All this indicates that the time may be right for a global paradigm shift that establishes the priority of access to public documents and governmentally-held information over the confidentiality in handling official documents.

Thus, the right to access official information and documents satisfies the main criteria of newly formulated human rights suggested by Philip Alston,<sup>263</sup> in particular, it:

a. *reflects fundamentally important social values*, which in the case of access to public documents and governmentally-held information are the values of good governance, transparency in public administration, democracy and participation;

b. *is relevant to diverse legal systems*; as our review has demonstrated, access to official information is familiar to both continental and common-law jurisdictions. Moreover, this right is recognised by the regional human rights courts of the Council of Europe and the OAU;

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<sup>263</sup> Alston 1984, pp. 614–615.

c. *is eligible for recognition on the grounds that it is an interpretation of the UN Charter obligations, a reflection of customary law rules or a formulation that is declaratory of general principles of law*, and as highlighted in this review, the right to access public documents and governmentally-held information is normally understood as an extension of the freedom of expression, which the General Assembly Resolution A/RES/59(I) has proclaimed is a “touchstone of all the freedoms” and is reflected in the practices of many national states;

d. *is consistent with, but not merely repetitive of, the existing body of international human rights law*, and as our analysis has demonstrated, there is a fine difference between access to generally accessible information, the release of which depends on the discretion of public authorities, and access to all documents in the possession of the government under the exemptions prescribed by law. This difference supports the claim that access to official documents is consistent with and not repetitive of the existing human right to information;

e. *is capable of achieving a very high degree of international consensus*, as is evidenced by an intensified official discussion regarding this right in the UN and regional organizations as well as in the parallel work of the NGOs on standardizing the rules on implementing this right;

f. *is not clearly incompatible with the general practice of the states*, which for the right of access is supported by the fact that many of the states introduced FOI legislation; and

g. *is sufficiently precise as to give rise to identifiable rights and obligations*, which is testified to by the existence of a number of international and national documents, dealing with this right and elaborating legal definitions of the main concepts regarding this right.

Hence, in the light of recent legal developments and previous attempts at adopting global rules concerning the availability of governmentally-held information, a UN Convention on the Right to Access Official Information and Documents would stand a better chance of succeeding today than the attempts in the 1940s and the 1950s to institute freedom of information, in particular against the background of the relatively comprehensive fulfilment of the above criteria for a human right in emergence. As a first step and on the basis of our review, it should not be unrealistic to propose the adoption of a declaration on the right of access to public documents and governmentally-held information. It could even be possible, as a further step, to initiate the creation of an explicit convention-based right of everyone to access official documents and information, modelled against the background of provisions found in existing regional conventions and,

in particular, national constitutions. Such a specific right of access to documents should be designed as a separate human right which complements the freedom of expression.

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## ANNEX:

### The Right to the Publicity of Documents in the Constitutions of the World

The texts of national constitutions are obtained from the database of the project “Constitute”, available at: <https://www.constituteproject.org>. This web-site does not contain any explicit statement which would allow a conclusion that the constitutional texts are reproduced there as official translations. Nevertheless, it acknowledges that “William S. Hein and Company and the Oxford University Press have provided certain materials from their online collections of constitutional texts. [...] Much of the translated constitutional text on Arabic Constitute has been provided by International IDEA, in partnership with the Constitute team”.

State	Freedom of Expression, Freedom of Information	Access to Governmentally-Held Information
Afganistan 2004	<b>Article 34</b> Freedom of expression shall be inviolable. Every Afghan shall have the right to express thoughts through speech, writing, illustrations as well as other means in accordance with provisions of this constitution. Every Afghan shall have the right, according to provisions of law, to print and publish on subjects without prior submission to state authorities. Directives related to the press, radio and television as well as publications and other mass media shall be regulated by law.	<b>Article 50</b> Right to information The state shall adopt necessary measures to create a healthy administration and realize reforms in the administrative system of the country. The administration shall perform its duties with complete neutrality and in compliance with the provisions of the laws. The citizens of Afghanistan shall have the right of access to information from state departments in accordance with the provisions of the law. This right shall have no limit except when harming rights of others as well as public security. The citizens of Afghanistan shall be recruited by the state on the basis of ability, without any discrimination, according to the provisions of the law.
Albania 1998, reviewed in 2008	<b>Article 22</b> <b>1</b> Freedom of expression is guaranteed. <b>Article 17</b> <b>1</b> Limitations of the rights and freedoms provided for in this Constitution may be established only by law, in the public interest or for the protection of the rights of others. A limitation shall be in proportion to the situation that has dictated it. <b>2</b> These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights.	<b>Article 23</b> 1. The right to information is guaranteed. 2. Everyone has the right, in compliance with law, to obtain information about the activity of state organs, and of persons who exercise state functions. 3. Everyone is given the possibility to attend meetings of elected collective organs. <b>Article 63</b> <b>1</b> The People’s Advocate presents an annual report before the Assembly. <b>4</b> Public organs and officials are obligated to provide the People’s Advocate with all the documents and information requested by him.
Algeria 1989, reinstated in 1996, and reviewed in 2008	<b>Article 41</b> The freedoms of expression, association and assembly shall be guaranteed to the citizen.	-
Andorra 1993	<b>Article 12</b> Freedoms of expression, of communication and of information are guaranteed. The law	-

	shall regulate the right of reply, the right of correction and professional secrecy. Preliminary censorship or any other means of ideological control on the part of the public authorities shall be prohibited.	
Angola 2010	<p><b>Article 40</b></p> <p><b>1</b> Everyone shall have the right to freely express, publicise and share their ideas and opinions through words, images or any other medium, as well as the right and the freedom to inform others, to inform themselves and to be informed, without hindrance or discrimination.</p> <p><b>2</b> The exercise of the rights and freedoms described in the previous point may not be obstructed or limited by any type or form of censorship.</p> <p><b>3</b> Freedom of expression and information shall be restricted by the rights enjoyed by all to their good name, honour, reputation and likeness, the privacy of personal and family life, the protection afforded to children and young people, state secrecy, legal secrecy, professional secrecy and any other guarantees of these rights, under the terms regulated by law.</p> <p><b>4</b> Anyone committing an infraction during the course of exercising freedom of expression and information shall be held liable for their actions, in disciplinary, civil and criminal terms, under the terms of the law.</p> <p><b>5</b> Under the terms of the law, every individual and corporate body shall be assured the equal and effective right of reply, the right to make corrections, and the right to compensation for damages suffered.</p> <p><b>Article 44</b></p> <p><b>1</b> Freedom of the press shall be guaranteed, and may not be subject to prior censorship, namely of a political, ideological or artistic nature.</p> <p><b>2</b> The state shall ensure plural expression, imposing different ownerships and editorial diversity in the media.</p> <p><b>3</b> The state shall ensure the existence and the independent and qualitatively competitive functioning of a public radio and television service.</p> <p><b>4</b> The law shall establish the forms by which freedom of the press shall be exercised.</p>	-

	<p><b>Article 69</b></p> <p><b>1</b> Everyone shall have the right to apply for a writ of habeas data to ensure that they are informed of any information about them contained in files, archives and computerised records, and that they are informed of the purpose for which this is destined and, in addition, shall have the right to demand that these are corrected or updated, under the terms of the law and whilst safeguarding state and legal secrecy.</p> <p><b>2</b> The recording and processing of data referring to political, philosophical or ideological beliefs, religious faith, political party or trade union membership or the ethnic origins of citizens for discriminatory purposes shall be prohibited.</p> <p><b>3</b> Access to the personal data of third parties and the transfer of personal data from one file to another within different departments or institutions shall also be prohibited, except in the cases established in law or legal rulings.</p> <p><b>4</b> The provisions contained in the previous article shall, with the necessary adaptations, apply to habeas data.</p>	
<p>Antigua and Barbuda 1981</p>	<p><b>Article 3</b> Whereas every person in Antigua and Barbuda is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, regardless of race, place of origin, political opinions or affiliations, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely- b) freedom of conscience, of expression (including freedom of the press) and of peaceful assembly and association</p> <p><b>Article 12</b></p> <p><b>1</b> Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression.</p> <p><b>2</b> For the purposes of this section the said freedom includes the freedom to hold opinions without interference, freedom to receive information and ideas without interference, freedom to disseminate information and ideas without interference (whether the dissemination be to the public generally or to any person or class of persons) and freedom from interference with his correspondence or other means of communication.</p>	<p>-</p>

	<p><b>3</b> For the purposes of this section expression may be oral or written or by codes, signals, signs or symbols and includes recordings, broadcasts (whether on radio or television), printed publications, photographs (whether still or moving), drawings, carvings and sculptures or any other means of artistic expression.</p> <p><b>4</b> Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-</p> <p>a) that is reasonably required-</p> <p>(i) in the interests of defence, public safety, public order, public morality or public health; or</p> <p>(ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings and proceedings before statutory tribunals, preventing the disclosure of information received in confidence, maintaining the authority and independence of Parliament and the courts, or regulating telephony, posts, broadcasting or other means of communication, public entertainments, public shows; or</p> <p>b) that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.</p>	
Argentina 1853, reinstated in 1983, reviewed in 1994	<p><b>Article 22</b> The people do not deliberate or govern except through their representatives and authorities created by this Constitution. Any armed force or meeting of persons that attributes to itself the right to stand for the people and to petition in their name, commits the crime of sedition.</p>	-
Armenia 1995, reviewed in 2005	<p><b>Article 27</b> Everyone shall have the right to freely express his/her opinion. No one shall be forced to rescind or change his/her opinion. Everyone shall have the right to the freedom of expression including freedom to search for, receive and impart information and ideas by any means of information media regardless of frontiers. Freedom of mass media and other means of mass information shall be guaranteed. The State guarantees the existence and activities of independent and public radio and television offering a variety of informational, cultural and entertaining programs.</p>	-

Australia 1901, reviewed in 1985	None **** There is no constitutional provision regarding freedom of expression and information nor any constitutional amendmend akin to the First Amendment to the US Constitution, according to which “Congress shall make no law [...] abridging the freedom of speech, or of the press”. Nonetheless, several hallmark cases adjudicated by the High Court of Australia establish that the freedom of expression is subject to constitutional protection. For instance, in the case <i>Theophanous v Herald &amp; Weekly Times</i> (1994) 182 CLR 104, the High Court proclaimed freedom of political discussion provided a defence in a defamation action. See Carney, S., ‘The Implied Freedom of Political Discussion – Its Impact on State Constitutions. (Australia)’, pp. 180–203, in: 23(2) <i>Federal Law Review</i> (1995).	-
Austria 1920, reinstated in 1945, reviewed in 2009	None **** The Constitution of 1920 did not accommodate human rights, even though it has been reinstated in 1945 and amended in 2009. The freedom of expression is, nonetheless, guaranteed by Austria’s Basic Law of 21 December 1867. See, e.g., R. Craufurd-Smith, ‘Do Human Rights Require Private Broadcasting? The Case of Informationsverein Lentia and Others v. Austria’, pp. 63–72, in <i>Maastricht Journal of European and Comparative Law</i> (1995); G.P. Propes, ‘Wherefore Art thou Deference? The European Court of Human Rights, Military Discipline, and Freedom of Expression’, pp. 281–314, in: 19 <i>Houston Journal of International Law</i> (1996).	-
Azerbaijan 1995, reviewed in 2009	<b>Article 50</b> <b>I</b> Everyone has the right to legally seek, receive, pass, prepare and disseminate information. <b>II</b> The freedom of mass media is guaranteed. State censorship of mass media, including print media, is forbidden. <b>III</b> Everyone’s right to refute or reply to the information published in the media and violating his or her rights or damaging his or her interests shall be guaranteed.	-
Bahamas 1973, reviewed in 2002	<b>Article 15</b> Whereas every person in The Bahamas is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but	-

	<p>subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely- (b) freedom of conscience, of expression and of assembly and association;</p> <p><b>Article 23</b></p> <p><b>1</b>  Except with his consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this Article the said freedom includes freedom to hold opinions, to receive and impart ideas and information without interference, and freedom from interference with his correspondence.</p> <p><b>2</b>  Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question makes provision-</p> <p>a) which is reasonably required- (i) in the interests of defence, public safety, public order, public morality or public health; or (ii) for the purposes of protecting the rights, reputations and freedoms of other persons, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainment; or b) which imposes restrictions upon persons holding office under the Crown or upon members of a disciplined force, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.</p>	
Bahrain 2002, reviewed in 2012	<p><b>Article 23</b>  Freedom of opinion and scientific research is guaranteed. Everyone has the right to express his opinion and publish it by word of mouth, in writing or otherwise under the rules and conditions laid down by law, provided that the fundamental beliefs of Islamic doctrine are not infringed, the unity of the people is not prejudiced, and discord or sectarianism is not aroused.</p>	-
Bangladesh 1972, reinstated in 1986, reviewed in 2011	<p><b>Article 39</b></p> <p>1. Freedom of thought and conscience is guaranteed.</p> <p>2. Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence-</p> <p>a) the right of every citizen of freedom of speech and expression; and b) freedom of the press are guaranteed.</p>	-

<p>Barbados 1966, reviewed in 2007</p>	<p><b>Article 11</b> Whereas every person in Barbados is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely- d) freedom of conscience, of expression and of assembly and association</p> <p><b>Article 20</b> 1. Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference and freedom from interference with his correspondence or other means of communication.</p>	<p>-</p>
<p>Belarus 1994, reviewed in 2004</p>	<p><b>Article 33</b> Everyone is guaranteed freedom of thoughts and beliefs and their free expression. No one shall be forced to express one's beliefs or to deny them. No monopolization of the mass media by the State, public associations or individual citizens and no censorship shall be permitted.</p>	<p><b>Article 34</b> Citizens of the Republic of Belarus shall be guaranteed the right to receive, store and disseminate complete, reliable and timely information of the activities of state bodies and public associations, on political, economic, cultural and international life, and on the state of the environment. State bodies, public associations and officials shall afford citizens of the Republic of Belarus an opportunity to familiarize themselves with material that affects their rights and legitimate interests. The use of information may be restricted by legislation with the purpose to safeguard the honour, dignity, personal and family life of the citizens and the full implementation of their rights.</p>
<p>Belgium 1831, reviewed in 2012</p>	<p><b>Article 19</b> Freedom of worship, its public practice and freedom to demonstrate one's opinions on all matters are guaranteed, but offences committed when this freedom is used may be punished.</p> <p><b>Article 25</b> The press is free; censorship can never be introduced; no security can be demanded from authors, publishers or printers. When the author is known and resident in Belgium, neither the publisher, the printer nor the distributor can be prosecuted.</p>	<p><b>Article 32</b> Everyone has the right to consult any administrative document and to obtain a copy, except in the cases and conditions stipulated by the laws, federate laws or rules referred to in Article 134.</p>
<p>Belize 1981, reviewed in 2001</p>	<p><b>Article 3</b> Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political</p>	<p>-</p>

	<p>opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely- b) freedom of conscience, of expression and of assembly and association;</p> <p><b>Article 12</b></p> <p><b>1</b></p> <p>Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.</p> <p><b>2</b></p> <p>Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes reasonable provision-</p> <p>a) that is required in the interests of defence, public safety, public order, public morality or public health; b) that is required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the administration or the technical operation of telephone, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or c) that imposes restrictions on officers in the public service that are required for the proper performance of their functions.</p>	
Benin 1990	<p><b>Article 23</b></p> <p>Every person has the right to freedom of thought, of conscience, of religion, of creed, of opinion and of expression with respect for the public order established by law and regulations. The exercise of a creed and the expression of beliefs shall take place with respect for the secularity of the State. The institutions and the religious or philosophical communities shall have the right to develop without hindrances. They shall not be subject to the guardianship of the State. They shall regulate and administer their affairs in an autonomous manner.</p>	-



Bhutan 2008	<p><b>Article 7</b>  2 A Bhutanese citizen shall have the right to freedom of speech, opinion and expression.  3 A Bhutanese citizen shall have the right to information.</p>	-
Bolivia 2009	<p><b>Article 21</b>  Bolivians have the following rights:  5. To freely express and disseminate thoughts and opinions by any means of oral, written or visual communication, individually or collectively.  6. To have access to information and to interpret, analyze and communicate it freely, individually or collectively.</p>	<p><b>Article 26</b>  <b>II</b>  The right to participate includes: 5 The monitoring of the acts of public function.</p>
Bosnia-Herzegovina 1995, reviewed in 2009	<p><b>Article II: Human Rights and Fundamental Freedoms</b>  <b>Article 3</b>  All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:  h Freedom of expression</p>	-
Botswana 1966, reviewed in 2002	<p><b>Article 3</b>  Whereas every person in Botswana is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest to each and all of the following, namely- b) freedom of conscience, of expression and of assembly and association.  <b>Article 12</b>  <b>1</b>  Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.  <b>2</b>  Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision- a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the</p>	-

	<p>disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless, broadcasting or television; or c) that imposes restrictions upon public officers, employees of local government bodies, or teachers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.</p>	
<p>Brazil 1988, reviewed in 2014</p>	<p><b>Article 5</b> XIV access to information is assured to everyone, protecting the confidentiality of sources when necessary for professional activity;</p>	<p><b>Article 5</b> XXXIII all persons have the right to receive from public agencies information in their private interest or of collective or general interest; such information shall be furnished within the period established by law, under penalty of liability, except for information whose secrecy is essential to the security of society and of the National Government.</p> <p><b>Article 37</b> XXII the tax administrations of the Union, of the States, the Federal District, and the Municipalities, whose activities are essential for the operation of the State and are exercised by employees of specific careers, has priority funds for the implementation of their activities and works in an integrated manner, including the sharing of tax rolls and fiscal information, under the terms of the law or of a covenant.</p> <p>1. The publicity of government agencies acts, programs, public works, services, and campaigns is of an educational, informative, or social orientation character, and may not include names, symbols, or images representing personal promotion of government authorities or employees.</p> <p><b>Article 93</b> IX all judgments of the bodies of the Judicial Power are public, and all decisions are justified, under penalty of nullity, but the law may limit attendance, in given acts, to the interested parties and to their lawyers, or only to the latter, whenever preservation of the right to privacy of the party interested in confidentiality will not harm the right of the public interest to information.</p> <p><b>Article 202</b> §1 (0) The private social security scheme, of a complementary nature and organized on an autonomous basis as regards the general social security scheme, is optional, based on the formation of reserves</p>

		<p>which guarantee the contracted benefit, and regulated by a supplementary law.</p> <p>1. The supplementary law referred to in this article ensures that the participant in benefit plans of private pension plan companies is provided with full access to information regarding the management of their respective plans.</p> <p><b>Article 216</b></p> <p>2. It is incumbent upon the Government, pursuant to the law, to take care of governmental documents and to take action to make them available for consultation by whomever may need to do so.</p>
Brunei 1959, reviewed in 1984	-	-
Bulgaria 1991, reviewed in 2007	<p><b>Article 41</b></p> <p><b>1</b></p> <p>Everyone shall be entitled to seek, obtain and disseminate information. This right shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health and morality.</p>	<p><b>Article 41</b></p> <p><b>2</b></p> <p>Everyone shall be entitled to obtain information from state bodies and agencies on any matter of legitimate interest to them which is not a state or official secret and does not affect the rights of others.</p>
Burkina Faso 1991, reviewed in 2012	<p><b>Article 8</b></p> <p>The freedoms of opinion, of the press and the right to information are guaranteed. Every person has the right to express and to disseminate his opinions within the order of the laws and regulations in force.</p>	-
Burundi 2005	<p><b>Article 31</b></p> <p>The freedom of expression is guaranteed. The State respects the freedom of religion, of thought, of conscience and of opinion.</p>	-
Cambodia 1993, reviewed in 1999	<p><b>Article 41</b></p> <p>Khmer citizens shall have freedom of expression, press, publication and assembly. No one shall exercise this right to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and order and national security. The regime of the media shall be determined by law.</p>	-
Cameroon 1972, reviewed 2008	<p><b>Preamble</b></p> <p>16. the freedom of communication, of expression, of the press, of assembly, of association, and of trade unionism, as well as the right to strike shall be guaranteed under the conditions fixed by law.</p>	-
Canada 1867, reviewed in 2011	<p><b>Constitution Act 1982</b></p> <p><b>B Fundamental Freedoms</b></p> <p><b>Article 2</b></p> <p>Everyone has the following fundamental freedoms:</p> <p>b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.</p>	-

<p>Cape Verde 1980, reviewed in 1992</p>	<p><b>Article 45</b> <b>1</b> Everyone shall have freedom of expression by speech, image, or any other medium; no one shall be harassed because of political, philosophical, religious, or other opinions. <b>2</b> Everyone shall have the freedom to inform and to be informed, obtaining, receiving, and giving out information and ideas in any form without limitation, discrimination, or impediment. <b>3</b> Limitation of the exercise of these freedoms by any type or form of censorship shall be prohibited. <b>4</b> Freedom of expression and information shall be limited by the right of every citizen to honor, good reputation, image, and privacy in personal and family life, as well as the protection of youth and children. <b>5</b> Abuses committed in the exercise of freedom of expression and information shall entail civil, disciplinary, and criminal responsibility, as provided by law.</p>	<p><b>Article 46</b> <b>8</b> Journalists shall be guaranteed, under law, access to sources of information and shall be assured of independence and professional secrecy; no journalist shall be forced to reveal his sources of information.</p>
<p>Central African Republic 2013</p>	<p><b>Article 14</b> Freedom of information, of expression and to disseminate one's opinions through speech, writing and art, under condition of respect of the rights of others, is guaranteed at an individual and collective level. The State guarantees the freedom to demonstrate peacefully. The privacy of correspondence, as well as that of postal, electronic, telegraphic and telephonic communications, is inviolable. The above mentioned provisions cannot be restricted save through application of a law. Freedom of press is recognised and guaranteed. It is exercised within the conditions prescribed by law. The exercise of this freedom and equal access for all to the media are guaranteed by an independent body, with regulatory and decision-making powers, and whose status is established by law. Freedom of intellectual, artistic and cultural creativity is recognised and guaranteed. It is to be exercised within the conditions prescribed by law.</p>	<p>-</p>
<p>Chad 1996, reviewed in 2005</p>	<p><b>Article 27</b> The freedoms of opinion and of expression, of communication, of conscience, of religion, of the press, of association, of assembly, of movement, of demonstration and of procession are guaranteed to all. They may only be limited for the respect of the freedoms and the rights of others and by</p>	<p>-</p>

	the imperative to safeguard the public order and good morals. The law determines the conditions of [their] exercise.	
Chile 1980, reviewed in 2014	<p><b>Article 19</b> The Constitution assures to all persons: 12. Freedom to express opinion and to inform, without prior censorship, in any form and by any medium, without prejudice to responsibility [responder] for any crimes or abuses committed in the exercise of these freedoms, in conformity with the law, which must be of qualified quorum. In no case can the law establish [a] state monopoly over the media of social communication. Any natural or juridical person offended or unjustly alluded to in a medium of social communication, has the right to have his declaration or rectification gratuitously disseminated, under the conditions that the law determines, by the medium of social communication in which such information was issued. Any natural or juridical person has the right to establish, edit or maintain newspapers, magazines and periodicals, under the conditions that the law specifies. The State, such universities and other persons or entities that the law determines, can establish, operate and maintain television stations. There will be a National Council for Television, autonomous and with juridical personality, entrusted with seeing to the correct functioning of this medium of communication. A law of qualified quorum will specify the organization and other functions and attributions of this Council. The law will regulate a ratings system for the exhibition and publicity of cinema production.</p>	-
China 1982, reviewed in 2004	<p><b>Article 35</b> Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.</p>	-
Colombia 1991, reviewed in 2013	<p><b>Article 20</b> Every individual is guaranteed the freedom to express and diffuse his/her thoughts and opinions, to transmit and receive information that is true and impartial, and to establish mass communications media. The latter are free and have social responsibility. The right to make corrections under conditions of equity is guaranteed. There will be no censorship. <b>Article 74</b> Every person has the right of access to public documents except in cases established by statute.</p>	-

	<p>Professional secrets are inviolable.</p> <p><b>Article 112</b>  The political parties and movements with legal personality which declare themselves to be in opposition to the government may freely formulate their critical stance towards the latter and plan and develop alternative policies. For these purposes, they enjoy the following rights: access to official information and documentation, with the constitutional and legal restrictions; the use of the means of social communication of the State or of those that use the electromagnetic spectrum, in accordance with the representation obtained in the immediately preceding Congressional elections; and the right to reply in the same media.</p> <p>Minority parties and movements with legal personality shall have the right to participate in the executive committees of the collegiate bodies, in accordance with their representation in them.</p> <p>A statutory law shall regulate the matter in its entirety.</p>	
Comoros 2001, reviewed in 2009	<p><b>Preamble</b>  freedom of expression and of assembly, freedom of association and freedom to organize trade unions, subject to respect for morals and public order; the right to obtain information from a variety of sources and to freedom of the press.</p>	-
Congo 2001	<p><b>Article 19</b>  Any citizen has the right to express and to freely diffuse his opinion by words, in writing, by images or all other mean of communication.</p> <p>The freedom of information and communication is guaranteed.</p> <p>Censorship is prohibited.</p> <p>The access to the sources of information is free. Every citizen has the right to information and to communication.</p> <p>The activities relative to these domains are exercised within the respect for the law.</p>	-
Costa Rica 1949, reviewed in 2011	<p><b>Article 28</b>  No one may be disturbed [<i>inquietado</i>] or persecuted for the expression of their opinions or for any act that does not infringe the law.</p> <p>The private actions that do not harm the public morality or order, or that do not prejudice third parties, are outside of the action of the law.</p> <p>Nevertheless, it is not possible, for clergymen or laymen to invoke religious motives or to make use of religious beliefs as [a] means to make political propaganda in any form.</p>	<p><b>Article 30</b>  The free access to the administrative departments for the purpose of [obtaining] information on matters of public interest[,] is guaranteed.</p> <p>The secrets of the State are reserved.</p>

<p>Cote D'Ivoire 2000, reviewed in 2004</p>	<p><b>Preamble</b> Expressing its attachment to democratic values recognized to all, the free people, notably: - Transparency in the conduct of public affairs. <b>Article 9</b> The freedom of thought and expression, notably the freedom of conscience, of religious or philosophical opinion are guaranteed to all, under reserve of respect of the law, the rights of others, of the national security and of the public order. <b>Article 10</b> Each has the right to express and to freely disseminate their ideas. All propaganda having for its object or for its effect to make one social group prevail over another, or to encourage racial or religious hatred is forbidden.</p>	<p>-</p>
<p>Croatia 1991, reviewed in 2010</p>	<p><b>Article 38</b> Paragraph 1 Freedom of thought and expression shall be guaranteed. Freedom of expression shall specifically include freedom of the press and other media of communication, freedom of speech and public expression, and free establishment of all institutions of public communication.</p>	<p><b>Article 38</b> Paragraph 2 Censorship shall be forbidden. Journalists shall have the right to freedom of reporting and access to information. The right to correction shall be guaranteed.</p>
<p>Cuba 1976, reviewed in 2000</p>	<p><b>Article 53</b> Citizens have freedom of speech and of the press in keeping with the objectives of socialist society. Material conditions for the exercise of that right are provided by the fact that the press, radio, television, movies and other organs of the mass media are State or social property and can never be private property. This assures their use at the exclusive service of the working people and in the interest of society. The law regulates the exercise of these freedoms.</p>	<p>-</p>
<p>Cyprus 1960, reviewed in 2013</p>	<p><b>Article 19</b> <b>1</b> Every person has the right to freedom of speech and expression in any form. <b>2</b> This right includes freedom to hold opinions and receive and impart information and ideas without interference by any public authority and regardless of frontiers.</p>	<p>-</p>
<p>Czech Republic 1993, reviewed in 2013</p>	<p><b>Charter of fundamental rights and basic freedoms</b> <b>Article 17</b> <b>1</b> The freedom of expression and the right to information are guaranteed. <b>2</b> Everyone has the right to express his views</p>	<p><b>Article 17</b> <b>5</b> State bodies and territorial self-governing bodies are obliged, in an appropriate manner, to provide information with respect to their activities. Conditions therefor and the implementation thereof shall be provided for by law.</p>

	<p>in speech, in writing, in the press, in pictures, or in any other form, as well as freely to seek, receive, and disseminate ideas and information irrespective of the frontiers of the state.</p> <p><b>3</b> Censorship is not permitted.</p> <p><b>4</b> The freedom of expression and the right to seek and disseminate information may be limited by law in the case of measures that are necessary in a democratic society for protecting the rights and freedoms of others, the security of the state, public security, public health, or morals.</p>	
Denmark 1953	<p><b>Part V</b> <b>Article 47.1</b> 1. The Public Accounts shall be submitted to the Parliament not later than six months after the expiration of the financial year. 2. The Parliament shall elect a number of Auditors. Such Auditors shall examine the annual Public Accounts and see that all the revenues of the State have been duly entered therein, and that no expenditure has been defrayed unless provided for by the Finance Act or some other Appropriation Act. The Auditors shall be entitled to demand all necessary information, and shall have a right of access to all necessary documents. Rules providing for the number of Auditors and their duties shall be laid down by Statute. 3. The Public Accounts together with the Auditors' Report shall be submitted to the Parliament for its decision.</p> <p><b>Article 51</b> The Folketing may appoint committees from among its Members to investigate matters of general importance. Such committees shall be entitled to demand written or oral information both from private citizens and from public authorities.</p> <p><b>Part VIII</b> <b>Article 77</b> Any person shall be entitled to publish his thoughts in printing, in writing, and in speech, provided that he may be held answerable in a court of justice. Censorship and other preventive measures shall never again be introduced.</p>	-
Djibouti 1992, reviewed in 2010	<p><b>Article 15</b> Each has the right to express and to disseminate freely their opinions by word, pen, and image. These rights may be limited by prescriptions in the law and in respect for the honor of others. All the citizens have the right to constitute associations and trade unions freely, under reserve of conforming to the formalities</p>	-



	<p>ordered in the laws and regulations. The right to strike is recognized. It is exercised within the framework of the laws which govern it. It may in no case infringe the freedom to work.</p>	
<p>Dominica 1978, reviewed in 1984</p>	<p><b>Article 1</b> Whereas every person in Dominica is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origins, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely- b) freedom of conscience, of expression and of assembly and association.</p> <p><b>Article 10</b> <b>1</b> Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.</p> <p><b>2</b> Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-</p> <p>a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or c) that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not be reasonably justifiable in a democratic society.</p>	-
<p>Dominican Republic 2010</p>	<p><b>Article 49</b> Every person has the right to freely express their thoughts, ideas and opinions, through any media, without the establishment of prior censorship.</p>	<p><b>Article 138</b> The Public Administration is subject in its actions to the principles of efficacy, hierarchy, objectivity, equality, transparency, economy, publicity and coordination, with</p>

	<p>1. Every person has the right to information. This right shall include the freedom to search, to investigate, to receive and to impart information of all kinds, of public character, through any media, channel or path, in accordance with what the Constitution and the law determine;</p> <p>2. All of the media of information have free access to official and private news sources that are of public interest, in accordance with the law;</p> <p>3. The professional secret and the clause of conscience of the journalist are protected by the Constitution and the law;</p> <p>4. Every person has the right to reply and to correction when feeling damaged by disseminated information. This right shall be exercised in accordance with the law;</p> <p>5. The law guarantees the equal and plural access of all the social and political sectors to the media of communication that are property of the State.</p>	<p>full submission to the juridical order of the State. The law shall regulate:</p> <p>1. The statute of the public functionaries, the access to the public function in accordance with the merit and capacity of the candidates, the specialized instruction and training, the regime of incompatibilities of the functionaries that assures their impartiality in the exercise of the legally conferred functions;</p> <p>2. The procedure by which the decisions and administrative acts must be produced, guaranteeing the hearing of the interested persons, with the exceptions established by the law.</p>
East Timor 2002	<p><b>Article 38</b></p> <p><b>1</b> All citizens have the right to access personal data stored in a computer system or entered into mechanical or manual records regarding them, and may require their rectification and actualization, and have the right to know their purpose.</p> <p><b>Article 40</b></p> <p><b>1</b> All persons have the right to freedom of expression and the right to inform and be informed impartially.</p> <p><b>2</b> The exercise of freedom of expression and information cannot be limited by any type of censorship.</p> <p><b>3</b> The exercise of rights and liberties referred to in this Article is regulated by law based on the imperative of respect for the Constitution and the dignity of the human person.</p>	<p><b>Article 70</b></p> <p><b>1</b> Political parties shall participate in organs of political power in accordance with their democratic representation based on direct and universal suffrage.</p> <p><b>2</b> The right of political parties to democratic opposition, as well as the right to be informed regularly and directly on the progress of the main issues of public interest, shall be recognized.</p> <p><b>Article 73</b></p> <p><b>1</b> The normative acts shall be published by the organs of sovereignty in the official gazette.</p> <p><b>2</b> Failure to publish any of the legislation referred to in number 1 above or decisions of a general nature taken by the organs of sovereignty or local government render them null and void.</p> <p><b>3</b> The form of publication of other acts and decisions, and the consequences of the failure to do so, shall be determined by law.</p>
Ecuador 2008, reviewed in 2011	<p><b>Article 16</b> All persons, individually or collectively, have the right to:</p> <p>1. Free, intercultural, inclusive, diverse and participatory communication in all spheres of social interaction, by any means or form, in their own language and with their own symbols.</p> <p>2. Universal access to information and communication technologies.</p>	<p><b>Article 18</b> All persons, whether individually or collectively, have the right to:</p> <p>2. Gain access freely to information generated in public institutions or in private institutions that handle State funds or perform public duties. There shall be no confidentiality of information except in those cases expressly provided for by the law. In the event of a violation of human</p>

	<p><b>Article 18</b> All persons, whether individually or collectively, have the right to:</p> <p>1. Look for, receive, exchange, produce and disseminate information that is truthful, accurate, timely, taken in context, plural, without prior censorship about the facts, events, and processes of general interest, with subsequent responsibility.</p>	<p>rights, no public institution shall refuse to provide the information.</p> <p><b>Article 61</b> Ecuadorians benefit from the following rights: 5. To audit activities conducted by the government.</p> <p><b>Article 66</b> 19. The right to protection of personal information, including access to and decision about information and data of this nature, as well as its corresponding protection. The gathering, filing, processing, distribution or dissemination of these data or information shall require authorization from the holder or a court order.</p>
El Salvador 1983, reviewed in 2003	<p><b>Article 6</b> Every person may freely express and disseminate his thoughts provided they do not subvert the public order nor injure the moral, honor or private lives of others. The exercise of this right shall not be subject to previous examination, censorship or bond; but those who infringe on the laws [while] making use of this right, shall respond for the offense they commit.</p>	-
Equatorial Guinea 1991, reviewed in 1995	<p><b>Article 13</b> Every citizen shall enjoy the following rights and freedoms: b Freedom of expression.</p>	-
Eritrea 1997	<p><b>Article 7</b> <b>5</b> The conduct of the affairs of government and all organizations and institutions shall be accountable and transparent.</p> <p><b>Article 19</b> <b>1</b> Every person shall have the right to freedom of thought, conscience and belief.</p> <p><b>2</b> Every person shall have the freedom of speech and expression, including freedom of the press and other media.</p> <p><b>3</b> Every citizen shall have the right of access to information.</p>	-
Estonia 1992, reviewed in 2003	<p><b>Article 44</b> Paragraph 1 Everyone has the right to freely obtain information disseminated for public use.</p>	<p><b>Article 44</b> Paragraph 2 All state agencies, local governments, and their officials have a duty to provide information about their activities, pursuant to procedure provided by law, to an Estonian citizen at his or her request, except information the disclosure of which is prohibited by law, and information intended exclusively for internal use. An Estonian citizen has the right to access information about himself or herself held in state agencies and local governments and in state and local government archives, pursuant to procedure provided by</p>

		<p>law. This right may be restricted pursuant to law to protect the rights and freedoms of others or the confidentiality of a child's affiliation, and in the interests of combating a criminal offence, apprehending a criminal offender, or ascertaining the truth in a criminal procedure.</p> <p>Citizens of foreign states and stateless persons who are in Estonia have the rights specified in paragraphs two and three of this section equally with Estonian citizens, unless otherwise provided by law.</p>
Ethiopia 1994	<p><b>Article 29</b></p> <p>1. Everyone has the right to hold opinions without interference.</p> <p>2. Everyone has the right to freedom of expression without any interference. 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 media of his choice.</p> <p>Freedom of the press and other mass media and freedom of artistic creativity is guaranteed. Freedom of the press shall specifically include the following elements:</p> <p>a) Prohibition of any form of censorship.</p> <p>b) Access to information of public interest.</p> <p>3. In the interest of the free flow of information, ideas and opinions which are essential to the functioning of a democratic order, the press shall, as an institution, enjoy legal protection to ensure its operational independence and its capacity to entertain diverse opinions.</p> <p>4. Any media financed by or under the control of the State shall be operated in a manner ensuring its capacity to entertain diversity in the expression of opinion.</p> <p>5. These rights can be limited only through laws which are guided by the principle that freedom of expression and information cannot be limited on account of the content or effect of the point of view expressed. Legal limitations can be laid down in order to protect the well-being of the youth, and the honour and reputation of individuals. Any propaganda for war as well as the public expression of opinion intended to injure human dignity shall be prohibited by law.</p> <p>6. Any citizen who violates any legal limitations on the exercise of these rights may be held liable under the law.</p>	-
Finland 1999, reviewed in 2011	<p><b>Section 12</b></p> <p>Paragraph 1 Everyone has the freedom of expression.</p> <p>Paragraph 2 Freedom of expression entails the right to express, disseminate and receive</p>	<p><b>Section 12</b></p> <p>Paragraph 3 Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an</p>

	<p>information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act.</p> <p><b>Section 50</b> The minutes and other related documents of the Committees shall be made available to the public, unless a Committee for a compelling reason decides otherwise for a given matter.</p>	<p>Act. Everyone has the right of access to public documents and recordings.</p>
France 1958, reviewed in 2008	<p><b>Article 4</b> Paragraph 3 Statutes shall guarantee the expression of diverse opinions and the equitable participation of political parties and groups in the democratic life of the Nation.</p>	<p><b>Charter for the Environment</b> <b>Article 7</b> Each person has the right, in the conditions and to the extent provided for by law, to have access to any information pertaining to the environment in the possession of public bodies and to participate in the public decision-making process likely to affect the environment.</p>
Gabon 1991, reviewed in 1997	<p><b>Article 1</b> The Gabonese Republic recognizes and guarantees the inviolable and imprescriptible rights of Man, which obligatorily constrain public powers. 2. the freedom of conscience, thought, opinion, expression, communication, the free practice of religion, are guaranteed to all, under the reservation of respect of public order.</p>	-
Gambia 1996, reviewed in 2004	<p><b>Article 25</b> <b>1</b> Every person shall have the right to- a) freedom of speech and expression, which shall include freedom of the press and other media;</p>	-
Georgia 1995, reviewed in 2004	<p><b>Article 24</b> <b>1</b> Everyone has the right to freely receive and impart information, to express and impart his/her opinion orally, in writing or by in any other means. <b>2</b> Mass media shall be free. The censorship shall be impermissible. <b>3</b> Neither the state nor particular individuals shall have the right to monopolise mass media or means of dissemination of information. <b>4</b> The exercise of the rights enumerated in the first and second paragraphs of the present Article may be restricted by law on such conditions which are necessary in a democratic society in the interests of ensuring state security, territorial integrity or public</p>	-

	safety, for preventing of crime, for the protection of the rights and dignity of others, for prevention of the disclosure of information acknowledged as confidential or for ensuring the independence and impartiality of justice.	
Germany 1949, reviewed in 2012	<p><b>Article 5</b></p> <p><b>1</b> Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures, and to inform himself without hindrance from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship.</p> <p><b>2</b> These rights shall find their limits in the provisions of general laws, in provisions for the protection of young persons, and in the right to personal honour.</p>	-
Ghana 1991, reviewed in 1996	<p><b>Article 21</b></p> <p><b>1</b> All persons shall have the right to- a) freedom of speech and expression, which shall include freedom of the press and other media.</p>	<p><b>Article 55</b></p> <p><b>14</b> Political parties shall be required by law- a) to declare to the public their revenues and assets and the sources of those revenues and assets; and b) to publish to the public annually their audited accounts.</p>
Greece 1975, reviewed in 2008	<p><b>Article 5A</b></p> <p><b>1</b> All persons have the right to information, as specified by law. Restrictions to this right may be imposed by law only insofar as they are absolutely necessary and justified for reasons of national security, of combating crime or of protecting rights and interests of third parties.</p> <p><b>2</b> All persons have the right to participate in the Information Society. Facilitation of access to electronically transmitted information, as well as of the production, exchange and diffusion thereof, constitutes an obligation of the State, always in observance of the guarantees of articles 9, 9A and 19.</p> <p><b>Article 29</b></p> <p><b>2</b> Political parties are entitled to receive financial support by the State for their electoral and operating expenses, as specified by law. A statute shall specify the guarantees of transparency concerning electoral expenses and, in general, the financial management of political parties, of Members of Parliament, parliamentary candidates and candidates for all degrees of local government.</p>	-

<p>Grenada 1973, reinstated in 1991, reviewed in 1992</p>	<p><b>Chapter I: Protection of Fundamental Rights and Freedoms</b> <b>Article 1</b> Whereas every person in Grenada is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely- b) freedom of conscience, of expression and of assembly and association; <b>Article 10</b> <b>1</b> Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.</p>	<p>-</p>
<p>Guatemala 1985, reviewed in 1993</p>	<p><b>Article 35</b> The expression of thought through any means of dissemination, without censorship or prior permission, is free. This constitutional right may not be restrained by [the] law or by any governmental provision. [The person] who by using the freedom should fail to respect private life or morals, will be held responsible in accordance with the law. Whoever may feel offended has the right of publication of his [or her] defense, clarifications, and rectifications. The publications which contain denunciations, criticisms, or accusations [<i>imputaciones</i>] against functionaries or public employees for actions conducted in the performance of their duties[,] do not constitute a crime or a fault. The functionaries and [the] public employees can request a tribunal of honor, composed in the form determined by the law, to declare that the publication that affects them is based on inaccurate facts or that the charges made against them are unfounded. A court ruling [<i>fallo</i>] that vindicates the offended, must be published in the same media of social communication where the accusation appeared. The activity of the means of social communication is of public interest and in no case may they be expropriated. They may not be closed, attached [<i>embargados</i>], interfered with, confiscated, or seized [<i>decomisados</i>], nor may the enterprises, plants, equipment, machinery, and gear [<i>enseres</i>] of the means of communication be interrupted in their</p>	<p><b>Article 30</b> All of the acts of the administration are public. The interested [persons] are entitled to obtain, at any time, reports, copies, reproductions, and certifications that they [may] request and the display of the dossiers [expedients] that they may wish to consult, except when dealing with military or diplomatic matters relating to national security, or details provided by individuals under the guarantee of confidentiality. <b>Article 31</b> All persons have the right to take cognizance of what the archives, records, or any other form of State registries contain about them, and [regarding] the purpose for which such data is used, as well as their correction, rectification, and updating [<i>actualización</i>]. Registries and records of political affiliation, except for those pertaining to the electoral authorities and to the political parties[,] are prohibited.</p>

	<p>functioning, for faults or crimes in the expression of thought.</p> <p>The access to the sources of information is free and no authority may limit this right. The authorization, limitation or cancellation of the concessions granted by the State to persons, may not be used as elements of pressure or duress [<i>coacción</i>] to limit the exercise of the freedom of expression of thought.</p> <p>A jury will take exclusive cognizance of the crimes or faults to which this Article refers. Everything that relates to this constitutional right is regulated in the Constitutional Law for the Expression of Thought [<i>Ley Constitucional de Emisión del Pensamiento</i>]. The owners of the means of social communication must provide socio-economic coverage to their reporters, through the contracting of life insurance.</p>	
Guinea 2010	<p><b>Article 7</b></p> <p>Paragraph 1 Each one is free to believe, to think and to profess their religious faith, their political and philosophical opinions.</p> <p>Paragraph 2 They are free to express, to manifest and to diffuse their ideas and opinions by words [<i>par la parole</i>], in writing and by images.</p> <p>Paragraph 3 They are free to instruct [<i>s'instruire</i>] and to inform themselves at the sources accessible to everybody.</p> <p>Paragraph 4 The freedom of the Press is guaranteed and protected. The creation of an organ of [the] press or of [the] media for political, economical, social, cultural, sports, recreational or scientific information is free.</p>	<p><b>Article 7</b></p> <p>Paragraph 5 The right of access to public information is guaranteed to the citizen.</p> <p>Paragraph 6 A law establishes the conditions of [the] exercise of these rights, the regime and the conditions of creation of the press and of the media.</p>
Guinea-Bissau 1984, reviewed in 1991	<p><b>Article 3</b> The Republic of Guinea-Bissau shall be a State of constitutionally-instituted democracy, based on national unity and on the effective popular participation in performing, controlling, and directing public activities and directed toward constructing a free and just society.</p> <p><b>Article 44</b> Freedom of expression of thought, of meeting, of association, and of demonstration, as well as freedom of choice of religion, shall be guaranteed according to conditions provided for by law.</p>	-
Guyana 1980, reviewed in 1995	<p><b>Article 40</b></p> <p><b>1</b> Every person in Guyana is entitled to the basic right to a happy, creative and productive life, free from hunger, disease, ignorance and want. That right includes the fundamental rights and freedoms of the</p>	-



	<p>individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-</p> <p>b) freedom of conscience, of expression and of assembly and association.</p>	
Haiti 1987, reviewed in 2012	<p><b>Article 28</b> Every Haitian has the right to express his opinions freely on any matter by any means he chooses.</p>	-
Honduras 1982, reviewed in 2013	<p><b>Article 72</b> Expression of thought shall be free, and may be expressed through any means of dissemination, without prior censorship. Those who abuse this right, and those who by direct or indirect methods restrict or limit the communication and circulation of ideas and opinions shall be liable before the law.</p>	-
Hungary 2011, reviewed in 2013	<p><b>Freedom and Responsibility</b> <b>Article IX</b></p> <ol style="list-style-type: none"> <li>1. Everyone shall have the right to freedom of speech.</li> <li>2. Hungary shall recognise and protect the freedom and diversity of the press, and shall ensure the conditions for free dissemination of information necessary for the formation of democratic public opinion.</li> <li>3. In the interest of the appropriate provision of information as necessary during the electoral campaign period for the formation of democratic public opinion, political advertisements may only be published in media services free of charge, under conditions guaranteeing equal opportunities, laid down in a cardinal Act.</li> <li>4. The right to freedom of speech may not be exercised with the aim of violating the human dignity of others.</li> <li>5. The right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. Persons belonging to such communities shall be entitled to enforce their claims in court against the expression of an opinion which violates the community, invoking the violation of their human dignity, as provided for by an Act.</li> <li>6. The detailed rules relating to the freedom of the press and the organ supervising media services, press products and the communications market shall be laid down in a cardinal Act.</li> </ol>	-

Iceland 1944, reviewed in 1999	<b>Article 73</b> Everyone has the right to freedom of opinion and belief. Everyone shall be free to express his thoughts, but shall also be liable to answer for them in court. The law may never provide for censorship or other similar limitations to freedom of expression. Freedom of expression may only be restricted by law in the interests of public order or the security of the State, for the protection of health or morals, or for the protection of the rights or reputation of others, if such restrictions are deemed necessary and in agreement with democratic traditions.	-
India 1949, reviewed in 2012	<b>Article 19</b> <b>1</b> All citizens shall have the right- a) to freedom of speech and expression.	-
Indonesia 1945, reinstated in 1959, reviewed in 2002	<b>Article 28F</b> Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available types of channels.	-
Iran 1979, reviewed in 1989	<b>Article 24</b> Publications and the press have freedom of expression except when it is detrimental to the fundamental principles of Islam or the rights of the public. The details of this exception will be specified by law.	-
Iraq 2005	<b>Article 38</b> The State shall guarantee in a way that does not violate public order and morality: Freedom of expression using all means. Freedom of press, printing, advertisement, media and publication.	-
Ireland 1937, reviewed in 2012	<b>Article 40</b> <b>6</b> 1°. The State guarantees liberty for the exercise of the following rights, subject to public order and morality: <b>i.</b> The right of the citizens to express freely their convictions and opinions. The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State. The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law.	-

<p>Israel 1958, reviewed in 2013</p>	<p><b>Basic Law</b> <b>Human Dignity and Liberty (1992)</b> <b>1 Basic principles (Amendment 1)</b> Fundamental human rights in Israel are founded upon recognition of the value of the human being, the sanctity of human life, and the principle that all persons are free; these rights shall be upheld in the spirit of the principles set forth in the Declaration of the Establishment of the State of Israel.</p>	<p>-</p>
<p>Italy 1947, reviewed in 2012</p>	<p><b>Article 21</b> Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication. The press may not be subjected to any authorisation or censorship. Seizure may be permitted only by judicial order stating the reason and only for offences expressly determined by the law on the press or in case of violation of the obligation to identify the persons responsible for such offences. In such cases, when there is absolute urgency and timely intervention of the Judiciary is not possible, a periodical may be confiscated by the criminal police, which shall immediately and in no case later than 24 hours refer the matter to the Judiciary for validation. In default of such validation in the following 24 hours, the measure shall be revoked and considered null and void. The law may introduce general provisions for the disclosure of financial sources of periodical publications. Publications, performances, and other exhibits offensive to public morality shall be prohibited. Measures of preventive and repressive measure against such violations shall be established by law.</p>	<p>-</p>
<p>Jamaica 1962, reviewed in 1994</p>	<p><b>Article 13</b> Whereas every person in Jamaica is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely - b) freedom of conscience, of expression and of peaceful assembly and association; and <b>Article 22</b> <b>1</b> Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with</p>	<p>-</p>

	<p>his correspondence and other means of communication.</p> <p><b>2</b> Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -</p> <p>a) which is reasonably required -</p> <p>(i) in the interests of defence, public safety, public order, public morality or public health; or</p> <p>(ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or</p> <p>b) which imposes restrictions upon public officers, police officers or upon members of a defence force.</p>	
Japan 1946	<p><b>Article 16</b> Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition.</p> <p><b>Article 21</b> Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.</p>	-
Jordan 1952, reviewed in 2011	<p><b>Article 15</b> <b>1</b> The State shall guarantee freedom of opinion; and every Jordanian shall freely express his opinion by speech, writing, photography and the other means of expression, provided that he does not go beyond the limits of the law.</p> <p><b>Article 17</b> Jordanians shall have the right to address the public authorities on personal matters affecting them, or on what is relative to public affairs in the manner and conditions prescribed by law.</p>	-

Kazakhstan 1995, reviewed in 1998	<p><b>Article 20</b></p> <p><b>1</b> The freedom of speech and creative activities shall be guaranteed. Censorship shall be prohibited.</p> <p><b>2</b> Everyone shall have the right to freely receive and disseminate information by any means not prohibited by law. The list of items constituting state secrets of the Republic of Kazakhstan shall be determined by law.</p> <p><b>3</b> Propaganda of or agitation for the forcible change of the constitutional system, violation of the integrity of the Republic, undermining of state security, and advocating war, social, racial, national, religious, class and clannish superiority as well as the cult of cruelty and violence shall not be allowed.</p>	-
Kenya 2010	<p><b>Article 33</b></p> <p><b>1</b> Every person has the right to freedom of expression, which includes-</p> <p>a) freedom to seek, receive or impart information or ideas;</p> <p>b) freedom of artistic creativity; and</p> <p>c) academic freedom and freedom of scientific research.</p> <p><b>2</b> The right to freedom of expression does not extend to-</p> <p>a) propaganda for war;</p> <p>b) incitement to violence;</p> <p>c) hate speech; or</p> <p>d) advocacy of hatred that-</p> <p>(i) constitutes ethnic incitement, vilification of others or incitement to cause harm; or</p> <p>(ii) is based on any ground of discrimination specified or contemplated in Article 27 (4).</p> <p><b>3</b> In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others.</p> <p><b>34 Freedom of the media</b></p> <p><b>1</b> Freedom and independence of electronic, print and all other types of media is guaranteed, but does not extend to any expression specified in Article 33 (2).</p>	<p><b>Article 35</b></p> <p><b>1</b> Every citizen has the right of access to-</p> <p>a) information held by the State; and</p> <p>b) information held by another person and required for the exercise or protection of any right or fundamental freedom.</p> <p><b>2</b> Every person has the right to the correction or deletion of untrue or misleading information that affects the person.</p> <p><b>3</b> The State shall publish and publicise any important information affecting the nation.</p>
Kiribati 1979, reviewed in 1995	<p><b>Article 12</b></p> <p><b>1</b> Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to</p>	-

	<p>communicate ideas and information without interference and freedom from interference with his correspondence.</p> <p><b>2</b> Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -</p> <p>a) in the interests of defence, public safety, public order, public morality or public health;</p> <p>b) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the administration or the technical operation of telephony, telegraphy, posts, wireless or broadcasting; or</p> <p>c) that imposes restrictions upon public employees, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.</p>	
Kosovo 2008	<p><b>Article 40</b></p> <p>1. Freedom of expression is guaranteed. Freedom of expression includes the right to express oneself, to disseminate and receive information, opinions and other messages without impediment.</p> <p>2. The freedom of expression can be limited by law in cases when it is necessary to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion.</p>	<p><b>Article 41</b></p> <p>1. Every person enjoys the right of access to public documents.</p> <p>2. Documents of public institutions and organs of state authorities are public, except for information that is limited by law due to privacy, business trade secrets or security classification.</p>
Kuwait 1962, reinstated in 1992	<p><b>Article 36</b> Freedom of opinion and scientific research is guaranteed. Subject to the conditions and stipulations specified by Law, every person shall have the right to express his opinion by speaking or writing or otherwise.</p> <p><b>Article 37</b> Freedom of the press and of publication is guaranteed, subject to the conditions and stipulations prescribed by Law.</p>	-
Kyrgyzstan 2010	<p><b>Article 3</b> The state power in the Kyrgyz Republic shall be based on the following principles:</p> <p>3) Openness and responsibility of state authorities and organs of local government towards the people and exercise of their powers in the interests of the people;</p> <p><b>Article 31</b></p> <p><b>1</b> Everyone shall have the right to freedom of thought and opinion.</p>	<p><b>Article 33</b></p> <p><b>1</b> Everyone shall have the right to freely seek, receive, keep and use information and disseminate it orally, in writing or otherwise.</p> <p><b>2</b> Everyone shall have the right to acquaint with the information on himself/herself in state authorities, local government bodies, institutions and organizations.</p>

	<p><b>2</b> Everyone shall have the right to free expression of opinion, freedom of speech and press.</p> <p><b>3</b> No one may be forced to express his/her opinion or deny it.</p> <p><b>4</b> The propagation of national, ethnic, racial and religious hatred, gender as well as other social supremacy which calls to discrimination, hostility and violence shall be prohibited.</p>	<p><b>3</b> Everyone shall have the right to obtain information on the activity of state authorities, local government bodies as well as officials thereof, legal entities with the participation of state authorities and local government bodies as well as organizations financed from the national and local budgets.</p> <p><b>4</b> Everyone shall be guaranteed access to information in the possession of state authorities, local government bodies as well as officials thereof. The regulations of providing information shall be envisaged in the law.</p> <p><b>5</b> No one may be subject to criminal prosecution for the dissemination of information which abases or humiliates honor and dignity of a person.</p>
Laos 1991, reviewed in 2003	<p><b>Article 44</b> Lao citizens have the right and freedom of speech, press and assembly; and have the right to set up associations and to stage demonstrations which are not contrary to the laws.</p>	-
Latvia 1922, reinstated in 1991, reviewed in 2007	<p><b>Article 100</b> Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views. Censorship is prohibited.</p>	-
Lebanon 1926, reviewed in 2004	<p><b>Article 13</b> The freedom of opinion, expression through speech and writing, the freedom of the press, the freedom of assembly, and the freedom of association, are all guaranteed within the scope of the law.</p>	-
Lesotho 1993, reviewed in 1998	<p><b>Article 14</b></p> <p><b>1</b> Every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of, freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.</p> <p><b>2</b> Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -</p> <p>a) in the interests of defence, public safety, public order, public morality or public</p>	-

	<p>health; or</p> <p>b) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or</p> <p>c) for the purpose of imposing restrictions upon public officers.</p> <p><b>3</b></p> <p>A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection 2 except to the extent to which he satisfies the court that that provision or, as the case may be, the thing done under the authority thereof does not abridge the freedom guaranteed by subsection 1 to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in subsection 2 a) or for any of the purposes specified in subsection 2 b) or c).</p> <p><b>4</b></p> <p>Any person who feels aggrieved by statements or ideas disseminated to the public in general by a medium of communication has the right to reply or to require a correction to be made using the same medium, under such conditions as the law may establish.</p>	
Liberia 1986	<p><b>Article 15</b></p> <p><b>a</b></p> <p>Every person shall have the right to freedom of expression, being fully responsible for the abuse thereof. This right shall not be curtailed, restricted or enjoined by government save during an emergency declared in accordance with this Constitution.</p> <p><b>b</b></p> <p>The right encompasses the right to hold opinions without interference and the right to knowledge. It includes freedom of speech and of the press, academic freedom to receive and impart knowledge and information and the right of libraries to make such knowledge available. It includes non-interference with the use of the mail, telephone and telegraph. It likewise includes the right to remain silent.</p>	<p><b>Article 15</b></p> <p><b>c</b></p> <p>In pursuance of this right, there shall be no limitation on the public right to be informed about the government and its functionaries.</p> <p><b>d</b></p> <p>Access to state owned media shall not be denied because of any disagreement with or dislike of the ideas express. Denial of such access may be challenged in a court of competent jurisdiction.</p> <p><b>e</b></p> <p>This freedom may be limited only by judicial action in proceedings grounded in defamation or invasion of the rights of privacy and publicity or in the commercial aspect of expression in deception, false advertising and copyright infringement.</p>
Libya 2011, reviewed in 2012	<p><b>Article 14</b></p> <p>The State shall guarantee freedom of opinion, individual and collective expression, research, communication, press, media, printing and editing, movement, assembly, demonstration and peaceful sit-in in accordance with the statute.</p>	-



Liechtenstein 1923, reviewed in 2003	<b>Article 40</b> Every person shall be entitled to freely express his opinion and to communicate his ideas by word of mouth or in writing, print or pictures within the limits of the law and morality; no censorship may be exercised except in respect of public performances and exhibitions.	-
Lithuania 1993, reviewed in 2006	<b>Article 25</b> The human being shall have the right to have his own convictions and freely express them. The human being must not be hindered from seeking, receiving and imparting information and ideas. Freedom to express convictions, to receive and impart information may not be limited otherwise than by law, if this is necessary to protect the health, honour and dignity, private life, and morals of a human being, or to defend the constitutional order. Freedom to express convictions and to impart information shall be incompatible with criminal actions - incitement of national, racial, religious, or social hatred, violence and discrimination, with slander and disinformation.	<b>Article 25</b> The citizen shall have the right to receive, according to the procedure established by law, any information concerning him that is held by State institutions.
Luxembourg 1986, reviewed in 2009	<b>Article 24</b> The freedom to manifest one's opinion by speech in all matters, and the freedom of the press are guaranteed, save the repression of offenses committed on the occasion of the exercise of these freedoms. - Censorship may never be established.	-
Macedonia 1991, reviewed in 2011	<b>Article 16</b> The freedom of personal conviction, conscience, thought and public expression of thought is guaranteed. The freedom of speech, public address, public information and the establishment of institutions for public information is guaranteed. Free access to information and the freedom of reception and transmission of information are guaranteed. The right of reply via the mass media is guaranteed. The right to a correction in the mass media is guaranteed. The right to protect a source of information in the mass media is guaranteed. Censorship is prohibited.	<b>Article 16</b> The freedom of speech, public address, public information and the establishment of institutions for public information is guaranteed.
Madagascar 2010	<b>Article 10</b> The freedoms of opinion and of expression, of communication, of the press, of association, of assembly, of circulation, of conscience and of religion are guaranteed to all and may only be limited by the respect for the freedoms and rights of others, and by the imperative of safeguarding the public	-

	<p>order, the national dignity and the security of the State.</p> <p><b>Article 11</b> Any individual has the right to information. Information under all its forms is not submitted to any prior constraint, except that which infringes the public order and the morality.</p> <p>The freedom of information, whatever the medium, is a right. The exercise of this right includes duties and responsibilities, and is submitted to certain formalities, conditions, or sanctions specified by the law, which are the measures necessary in a democratic society.</p> <p>All forms of censorship are prohibited.</p> <p>The law organizes the exercise of the profession of journalist.</p>	
Malawi 1994, reviewed in 1999	<p><b>Article 35</b> Every person shall have the right to freedom of expression.</p> <p><b>Article 36</b> The press shall have the right to report and publish freely, within Malawi and abroad, and to be accorded the fullest possible facilities for access to public information.</p>	<p><b>Article 37</b> Subject to any Act of Parliament, every person shall have the right of access to all information held by the State or any of its organs at any level of Government in so far as such information is required for the exercise of his rights.</p>
Malaysia 1957, reviewed in 1966	<p><b>Article 10</b></p> <p><b>1</b> Subject to Clauses (2), (3) and (4) -</p> <p>a) every citizen has the right to freedom of speech and expression;</p> <p>b) all citizens have the right to assemble peaceably and without arms;</p> <p>c) all citizens have the right to form associations.</p> <p><b>2</b> Parliament may by law impose-</p> <p>a) on the rights conferred by paragraph a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence;</p> <p>b) on the right conferred by paragraph b) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof or public order;</p> <p>c) on the right conferred by paragraph c) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, public order or morality.</p> <p><b>3</b> Restrictions on the right to form associations conferred by paragraph c) of Clause</p>	-

	<p>(1) may also be imposed by any law relating to labour or education.</p> <p><b>4</b></p> <p>In imposing restrictions in the interest of the security of the Federation or any part thereof or public order under Clause (2) a), Parliament may pass law prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III, Article 152, 153 or 181 otherwise than in relation to the implementation thereof as may be specified in such law.</p>	
Maldives 2008	<p><b>Article 27</b></p> <p>Everyone has the right to freedom of thought and the freedom to communicate opinions and expression in a manner that is not contrary to any tenet of Islam.</p> <p><b>Article 28</b></p> <p>Everyone has the right to freedom of the press, and other means of communication, including the right to espouse, disseminate and publish news, information, views and ideas. No person shall be compelled to disclose the source of any information that is espoused, disseminated or published by that person.</p>	<p><b>Article 61</b></p> <p><b>c</b></p> <p>All information concerning government decisions and actions shall be made public, except information that is declared to be State secrets by a law enacted by the People's Majlis.</p> <p><b>d</b></p> <p>Every citizen has the right to obtain all information possessed by the Government about that person.</p>
Mali 1992	<p><b>Article 4</b></p> <p>Every person shall have the right to freedom of thought, conscience, religion, cult, opinion, expression and creation within the law.</p> <p><b>Article 7</b></p> <p>Freedom of the press shall be recognized and guaranteed.</p> <p>It shall be exercised within conditions determined by law.</p> <p>Equal access for all to the State media shall be assured by an independent organ whose regulations shall be established by an organic law.</p>	-
Malta 1964, reviewed in 2011	<p><b>Article 32</b></p> <p>Whereas every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely –</p> <p>b) freedom of conscience, of expression and of peaceful assembly and association;</p> <p><b>Article 41</b></p> <p><b>1</b></p> <p>Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without</p>	-

	<p>interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.</p> <p><b>2</b> Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subarticle (1) of this article to the extent that the law in question makes provision –</p> <p>a) that is reasonably required –</p> <p>i) in the interests of defence, public safety, public order, public morality or decency, or public health; or ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, protecting the privileges of Parliament, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or</p> <p>b) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.</p> <p><b>3</b> Anyone who is resident in Malta may edit or print a newspaper or journal published daily or periodically: Provided that provision may be made by law –</p> <p>a) prohibiting or restricting the editing or printing of any such newspaper or journal by persons under twenty-one years of age; and</p> <p>b) requiring any person who is the editor or printer of any such newspaper or journal to inform the prescribed authority to that effect and of his age and to keep the prescribed authority informed of his place of residence.</p> <p><b>4</b> Where the police seize any edition of a newspaper as being the means whereby a criminal offence has been committed they shall within twenty-four hours of the seizure bring the seizure to the notice of the competent court and if the court is not satisfied that there is a prima facie case of such offence, that edition shall be returned to the person from whom it was seized.</p> <p><b>5</b> No person shall be deprived of his</p>	
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	<p>citizenship under any provisions made under article 30(1) b) of this Constitution or of his juridical capacity by reason only of his political opinions.</p>	
<p>Marshall Islands 1979, reviewed in 1995</p>	<p><b>Article II: Bill of Rights</b>  <b>Section 1</b>  1. Every person has the right to freedom of thought, conscience, and belief; to freedom of speech and of the press; to the free exercise of religion; to freedom of peaceful assembly and association; and to petition the government for a redress of grievances.  2. Nothing in this Section shall be construed to invalidate reasonable restrictions imposed by law on the time, place, or manner of conduct, provided  a) the restrictions are necessary to preserve public peace, order, health, or security or the rights or freedoms of others;  b) there exist no less restrictive means of doing so; and  c) the restrictions do not penalize conduct on the basis of disagreement with the ideas or beliefs expressed.  3. Nothing in this Section shall be construed to prevent government from extending financial aid to religiously supported institutions insofar as they furnish educational, medical or other services at no profit, provided such aid does not discriminate among religious groups or beliefs on the basis of a governmental preferences for some religions over others, and provided such aid goes no further than  a) reimbursing users of educational, medical, or other non-profit services for fees charged to such users, or  b) reimbursing such institutions for costs incurred in providing such services, but only with funds channeled through an organization open to all religious institutions that provide the services in question.  <b>Section 16</b>  The Government of the Republic of the Marshall Islands recognizes the right of the people to responsible and ethical government and the obligation to take every step reasonable and necessary to conduct government in accord with a comprehensive code of ethics.</p>	-
<p>Mauritania 1991, reviewed in 2012</p>	<p><b>Article 10</b>  The State guarantees to all citizens the public and individual freedoms, notably: the freedom of expression.</p>	-
<p>Mauritius 1968, reviewed in 2011</p>	<p><b>Article 3</b>  It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to</p>	-

	<p>respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms b) freedom of conscience, of expression, of assembly and association and freedom to establish schools.</p> <p><b>Article 12</b></p> <p><b>1</b> Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.</p> <p><b>2</b> Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision</p> <p>a) in the interests of defence, public safety, public order, public morality or public health;</p> <p>b) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or</p> <p>c) for the imposition of restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.</p>	
<p>Mexico 1917, reviewed in 2007</p>	<p><b>Article 6</b> The expression of ideas shall not be subject to any judicial or administrative investigation unless such expression offends good morals, infringes upon the rights of others, incites crime, or disturbs the public order; the right to a reply shall be exercised subjects to the terms established by law. Freedom of information shall be guaranteed by the State.</p>	<p><b>Article 6</b> With regard to the exercise of the right of access to information, the Federation, the State, and the Federal District shall act, within their respective competences, in accordance with the following principles and basic tenets:</p> <p>I Any information held by any federal, State or municipal authority, entity, organ or body is public and may be held back only temporarily for public interest reasons in accordance with the terms established by law.</p> <p>II Information relating to private life and personal data shall be protected in the terms and with the exceptions provided for by law.</p> <p>III Everybody shall have free access to public information, his/her personal data or the correction of the latter, without</p>

		<p>having to show any cause or justification for their use.</p> <p>IV Mechanisms for granting access to information and speedy correction procedures shall be established. Those procedures shall be conducted before specialized and impartial organs and bodies enjoying autonomy in terms of operation, management and decision-making.</p> <p>V The persons and institutions subject to the [previously defined] obligations shall keep their records in updated public registries and shall publish via the available electronic media the complete and updated information about their management indicators and the use of public funds.</p>
Micronesia 1981, reviewed in 1990	<p><b>Article IV: Declaration of Rights</b> <b>Section 1</b> No law may deny or impair freedom of expression, peaceable assembly, association, or petition.</p>	-
Moldova 1994, reviewed in 2006	<p><b>Article 32</b> <b>1</b> Every citizen shall be guaranteed the freedom of thought and opinion, as well as the freedom of expression in public by way of word, image or any other means possible. <b>2</b> The freedom of expression may not prejudice the honour, dignity or the right of the other person to hold his/her own viewpoint. <b>3</b> The law shall forbid and prosecute all actions aimed at denying and slandering of the State and people, the instigation to sedition, war of aggression, national, racial or religious hatred, the incitement to discrimination, territorial separatism, public violence, or other manifestations encroaching upon the constitutional regime.</p>	<p><b>Article 34</b> <b>1</b> The right of a person to have access to any kind of information of public interest shall not be curtailed. <b>2</b> Public authorities, pursuant to their assigned competence, shall be compelled to ensure that citizens are correctly informed both on public affairs and issues of personal interest. <b>3</b> The right of access to information may not prejudice either the measures of citizens' protection or the national security. <b>4</b> The state and private mass-media means shall be bound to provide the correct information to the public opinion. <b>5</b> The public mass-media means shall not be subject to censorship.</p>
Monaco 1962, reviewed in 2002	<p><b>Article 23</b> Freedom of religion and of public worship, and freedom to express one's opinions in all matters, shall be guaranteed, subject to the right to prosecute any offences committed in the exercise of the said freedoms. No one may be compelled to participate in the rites or ceremonies of any religion or to observe its days of rest.</p>	-
Mongolia 1992, reviewed in 2001	<p><b>Article 16</b> 16. Freedom of thought, opinion and expression, speech, press, and peaceful assembly. The rules of procedures for conduct of demonstrations and public meetings shall be determined by law. 17. The right to seek and receive information except that which the State and its</p>	-

	bodies are legally bound to protect as secret. Information which is not subject to disclosure shall be classified and protected by law in order to protect human rights, and the dignity and reputation of persons and to ensure national defense, security and public order.	
Montenegro 2007	<p><b>Article 47</b> Everyone shall have the right to freedom of expression by speech, writing, picture or in some other manner. The right to freedom of expression may be limited only by the right of others to dignity, reputation and honor and if it threatens public morality or the security of Montenegro.</p> <p><b>Article 49</b> Freedom of press and other forms of public information shall be guaranteed. The right to establish newspapers and other public information media, without approval, by registration with the competent authority, shall be guaranteed. The right to a response and the right to a correction of any untrue, incomplete or incorrectly conveyed information that violates a person's right or interest and the right to compensation of damage caused by the publication of untruthful data or information shall be guaranteed.</p>	<p><b>Article 51</b> Everyone shall have the right to access information held by the state authorities and organizations exercising public authority. The right to access to information may be limited if this is in the interest of: the protection of life; public health; morality and privacy; carrying of criminal proceedings; security and defense of Montenegro; foreign, monetary and economic policy.</p>
Morocco 2011	<p><b>Article 10</b> The Constitution guarantees to the parliamentary opposition a status conferring on it the rights that will permit it to appropriately accomplish the missions that accrue to it in the parliamentary work and political life. It guarantees, notably, to the opposition the following rights: the freedom of opinion, of expression, and of assembly.</p> <p><b>Article 25</b> The freedoms of thought, of opinion and of expression under all their forms[,] are guaranteed. The freedoms of creation, of publication and of presentation [exposition] in literary and artistic matters and of scientific and technical research[,] are guaranteed.</p>	<p><b>Article 27</b> The citizens [feminine] and citizens [masculine] have the right of access to information held by the public administration, the elected institutions and the organs [organismes] invested with missions of public service. The right to information may only be limited by the law, with the objective [but] of assuring the protection of all which concerns national defense, the internal and external security of the State, and the private life of persons, of preventing infringement to the fundamental freedoms and rights enounced in this Constitution and of protecting the sources and the domains determined with specificity by the law.</p>
Mozambique 2004, reviewed in 2007	<p><b>Article 48</b></p> <p><b>1</b> All citizens shall have the right to freedom of expression and to freedom of the press, as well as the right to information.</p> <p><b>2</b> The exercise of freedom of expression, which consists of the ability to impart one's opinions by all lawful means, and the exercise of the right to information shall not be restricted by censorship.</p> <p><b>3</b> Freedom of the press shall include,</p>	-



	<p>in particular, the freedom of journalistic expression and creativity, access to sources of information, protection of independence and professional secrecy, and the right to establish newspapers, publications and other means of dissemination.</p> <p><b>4</b> In the public sector media, the expression and confrontation of ideas from all currents of opinion shall be guaranteed.</p> <p><b>5</b> The State shall guarantee the impartiality of the public sector media, as well as the independence of journalists from the Government, the Administration and other political powers.</p> <p><b>6</b> The exercise of the rights and freedoms provided for in this article shall be governed by law on the basis of the imperative respect for the Constitution and for the dignity of the human person.</p> <p><b>Article 71</b></p> <p><b>1</b> The use of computerised means for recording and processing individually identifiable data in respect of political, philosophical or ideological beliefs, of religious faith, party or trade union affiliation or private lives, shall be prohibited.</p> <p><b>2</b> The law shall regulate the protection of personal data kept on computerized records, the conditions of access to data banks, and the creation and use of such data banks and information stored on computerised media by public authorities and private entities.</p> <p><b>3</b> Access to data bases or to computerised archives, files and records for obtaining information on the personal data of third parties, as well as the transfer of personal data from one computerised file to another that belongs to a distinct service or institution, shall be prohibited except in cases provided for by law or by judicial decision.</p> <p><b>4</b> All persons shall be entitled to have access to collected data that relates to them and to have such data rectified.</p> <p><b>Article 144</b></p> <p><b>1</b> The following shall be published in the Boletim da República (Government Gazette), under pain of having no legal effect: a) laws, motions and resolutions of the Assembly of the Republic; b) decrees of the President of the Republic; c) decree-laws, decrees, resolutions and other legal instruments issued by the</p>	
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	<p>Government;</p> <p>d) decisions of the Supreme Court and judgements of the Constitutional Council, as well as the decisions of other courts to which the law attributes general binding force;</p> <p>e) judgements on the results of elections and national referenda;</p> <p>f) resolutions ratifying international treaties and agreements;</p> <p>g) notices issued by the Governor of the Bank of Mozambique.</p> <p><b>2</b> The law shall define the publicity requirements applicable to other public legal instruments.</p>	
Myanmar 2008	<p><b>Article 354</b> Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality: a. to express and publish freely their convictions and opinions.</p>	-
Namibia 1990, reviewed in 2010	<p><b>Article 21</b> 1. All persons shall have the right to: a) freedom of speech and expression, which shall include freedom of the press and other media.</p> <p><b>Article 61</b> 1. Save as provided in Sub-Article (2) hereof, all meetings of the National Assembly shall be held in public and members of the public shall have access to such meetings. 2. Access by members of the public in terms of Sub-Article (1) hereof may be denied if the National Assembly adopts a motion supported by two-thirds of all its members excluding such access to members of the public for specified periods or in respect of specified matters. Such a motion shall only be considered if it is supported by at least one-tenth of all the members of the National Assembly and the debate on such motion shall not be open to members of the public.</p> <p><b>Article 65</b> 1. When any bill has become an Act of Parliament as a result of its having been passed by Parliament, signed by the President and published in the Gazette, the Secretary of the National Assembly shall promptly cause two (2) fair copies of such Act in the English language to be enrolled in the office of the Registrar of the Supreme Court and such copies shall be conclusive evidence of the provisions of the Act. 2. The public shall have the right of access to such copies subject to such regulations as may be prescribed by Parliament to protect</p>	-

	the durability of the said copies and the convenience of the Registrar's staff.	
Nauru 1968	<p><b>Article 12</b></p> <p>1. A person has the right to freedom of expression.</p> <p>2. Except with his consent, no person shall be hindered in the enjoyment of his right to freedom of expression.</p> <p>3. Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, the provisions of this Article to the extent that that law makes provision-</p> <p>(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;</p> <p>(b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence or maintaining the authority and independence of the courts;</p> <p>(c) that is reasonably required for the purpose of regulating the technical administration or technical operation of telephony, telegraphy, posts, wireless broadcasting or television or restricting the establishment or use of telephonic, telegraphic, wireless broadcasting or television equipment or of postal services; or</p> <p>(d) that regulates the use of information obtained by public officers in the course of their employment.</p>	-
Nepal 2006, reviewed in 2010	<p><b>Article 11</b></p> <p>2. Subject to the other provisions of this Part all citizens shall have the right to the following freedoms:</p> <p>(a) Freedom of speech and expression.</p> <p><b>Article 42</b></p> <p>d) any person may observe the meeting on the occasion of an address to the National Panchayat by His Majesty or by any distinguished invitee, if the Secretary of the National Panchayat gives permission; and</p> <p>e) a summary record of the proceedings of every meeting of the National Panchayat shall be published as soon as possible for information of the general public in accordance with the rules of the National Panchayat.</p>	-
Netherlands 1815, reviewed in 2008	<p><b>Article 133</b></p> <p>2. The legislative and other powers of the administrative organs of water boards and public access to their meetings shall be regulated by Act of Parliament.</p> <p><b>Article 134</b></p> <p>Public bodies for the professions and trades and other public bodies may be established</p>	<p><b>Article 110</b></p> <p>In the exercise of their duties government bodies shall observe the right of public access to information in accordance with rules to be prescribed by Act of Parliament.</p>

	<p>and dissolved by or pursuant to Act of Parliament.</p> <p>The duties and organisation of such bodies, the composition and powers of their administrative organs and public access to their meetings shall be regulated by Act of Parliament. Legislative powers may be granted to their administrative organs by or pursuant to Act of Parliament.</p>	
Nicaragua 1987, reviewed in 2005	<p><b>Article 30</b> Nicaraguans have the right to freely express their convictions in public or in private, individually or collectively, in oral, written or any other form.</p> <p><b>Article 66</b> Nicaraguans have the right to truthful information. This right comprises the freedom to seek, receive and disseminate information and ideas, be they spoken or written, in graphic or by any other chosen procedure.</p> <p><b>Article 67</b> The right to inform is a social responsibility and shall be exercised with strict respect for the principles established in the Constitution. This right cannot be subject to censorship, but [may be subject] to subsequent responsibilities established by law.</p>	-
Niger 2010	<p><b>Article 30</b> Any person has the right to freedom of thought, of opinion, of expression, of conscience, of religion and of worship. The State guarantees the free exercise of worship and the expression of beliefs. These rights are exercised with respect for public order, for social peace and for national unity.</p>	<p><b>Article 31</b> Any person has the right to be informed and to have access to the information held by the public services within the conditions determined by the law.</p>
Nigeria 1999	<p><b>Article 39</b> 1. Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. 2. Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions: Provided that no person, other than the Government of the Federation or of a State or any other person or body authorised by the President on the fulfilment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for, any purpose whatsoever. 3. Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society - a) for the purpose of preventing the disclosure of information received in confidence,</p>	<p><b>Article 213</b> 1. Any report of the National Population Commission containing the population census after every census shall be delivered to the President by the Chairman of the commission. (4) Where the President accept such report and has laid it on the table of each House of the National Assembly he shall publish it in the official Gazette of the Government of the Federation for public information. <b>Schedule III, Part I: Federal Executive Bodies</b> <b>F. Independent National Electoral Commission</b> <b>15.</b> The Commission shall have power to - d) arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information.</p>

	<p>maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or</p> <p>b) imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.</p>	
Norway 1814, reviewed in 2014	<p><b>Article 75</b> It devolved upon the Storting: e) to decide how much shall be paid annually to the King for the Royal Household, and to determine the Royal Family's appanage which may not, however, consist of real property; f) to have submitted to it the records of the Council of State, and all public reports and documents.</p> <p><b>Article 100</b> paragraph 1 There shall be freedom of expression. paragraph 2 No person may be held liable in law for having imparted or received information, ideas or messages unless this can be justified in relation to the grounds for freedom of expression, which are the seeking of truth, the promotion of democracy and the individual's freedom to form opinions. Such legal liability shall be prescribed by law. paragraph 3 Everyone shall be free to speak his mind frankly on the administration of the State and on any other subject whatsoever. Clearly defined limitations to this right may only be imposed when particularly weighty considerations so justify in relation to the grounds for freedom of expression. paragraph 4 Prior censorship and other preventive measures may not be applied unless so required in order to protect children and young persons from the harmful influence of moving pictures. Censorship of letters may only be imposed in institutions.</p>	<p><b>Article 100</b> paragraph 5 Everyone has a right of access to documents of the State and municipal administration and a right to follow the proceedings of the courts and democratically elected bodies. Limitations to this right may be prescribed by law to protect the privacy of the individual or for other weighty reasons. paragraph 6 It is the responsibility of the authorities of the State to create conditions that facilitate open and enlightened public discourse.</p>
Oman 1996, reviewed in 2011	<p><b>Article 29</b> The freedom of opinion and expression thereof through speech, writing or other forms of expression is guaranteed within the limits of the Law.</p>	-
Pakistan 1973, reinstated in 2002, reviewed in 2012	<p><b>Article 19</b> Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the</p>	<p><b>Article 19A</b> Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.</p>

	integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence.	
Palau 1981, reviewed in 1992	<b>Article IV: Fundamental Rights Section 2.</b> The government shall take no action to deny or impair the freedom of conscience or of philosophical or religious belief of any person nor take any action to compel, prohibit or hinder the exercise of religion. The government shall not recognize or establish a national religion, but may provide assistance to private or parochial schools on a fair and equitable basis for nonreligious purposes.	-
Panama 1972, reviewed in 2004	<b>Article 37</b> Every person may express his/her opinion freely, either orally, in writing or by any other means, without being subject to prior censorship. Legal responsibility (liability) will, however, be incurred when by any of these means, the reputation or honor of persons is assailed, or when social security, or public order is attacked.	<b>Article 42</b> Every person has a right of access to his/her personal information contained in data banks or public or private registries and to request their correction and protection, as well as their deletion, in accordance with the provisions of the law. This information may only be collected for specific purposes, subject to the consent of the person in question or by order of a competent authority based on the provisions of the law. <b>Article 43</b> Every person has a right to ask for accessible information or information of general interest stored in data banks or registries administered by public servants or by private persons providing public services, unless access has been limited by written regulation or by legal mandate, and to request their lawful processing and correction.
Papua New Guinea 1975, reviewed in 2014	<b>Article 46</b> 1. Every person has the right to freedom of expression and publication, except to the extent that the exercise of that right is regulated or restricted by a law - a) that imposes reasonable restrictions on public office-holders; or b) that imposes restrictions on non-citizens; or c) that complies with Section 38 ( <i>general qualifications on qualified rights</i> ). 2. In Subsection (1), "freedom of expression and publication" includes - a) freedom to hold opinions, to receive ideas and information and to communicate ideas and information, whether to the public generally or to a person or class of persons; and b) freedom of the press and other mass communications media. 3. Notwithstanding anything in this section,	<b>Article 51</b> 1. Every citizen other than a citizen who has dual citizenship has the right of reasonable access to official documents, subject only to the need for such secrecy as is reasonably justifiable in a democratic society in respect of a. matters relating to national security, defence or international relations of Papua New Guinea (including Papua New Guinea's relations with the Government of any other country or with any international organization); or b. records of meetings and decisions of the National Executive Council and of such executive bodies and elected governmental authorities as are prescribed by Organic Law or Act of the Parliament; or c. trade secrets, and privileged or confidential commercial or financial information obtained from a person or body; or d. parliamentary papers the subject of

	<p>an Act of the Parliament may make reasonable provision for securing reasonable access to mass communications media for interested persons and associations -</p> <p>a) for the communication of ideas and information; and</p> <p>b) to allow rebuttal of false or misleading statements concerning their acts, ideas or beliefs, and generally for enabling and encouraging freedom of expression.</p>	<p>parliamentary privilege; or e. reports, official registers and memoranda prepared by governmental authorities or authorities established by government, prior to completion; or f. papers relating to lawful official activities for investigation and prosecution of crime; or g. the prevention, investigation and prosecution of crime; or h. the maintenance of personal privacy and security of the person; or i. matters contained in or related to reports prepared by, on behalf of or for the use of a governmental authority responsible for the regulation or supervision of financial institutions; or j. geological or geographical information and data concerning wells and ore bodies.</p> <p>2. A law that complies with Section 38 (general qualifications on qualified rights) may regulate or restrict the right guaranteed by this section.</p> <p>3. Provision shall be made by law to establish procedures by which citizens may obtain ready access to official information.</p> <p>4. This section does not authorize a. withholding information or limiting the availability of records to the public except in accordance with its provisions; or b. withholding information from the Parliament.</p>
<p>Paraguay 1992, reviewed in 2011</p>	<p><b>Article 26</b> The free expression and the freedom of the press are guaranteed as well as the diffusion of thoughts and of opinions, without any censorship, with no other limitations than those provided for in this Constitution. In consequence, there will be no law dictated to make them impossible [<i>imposibilitar</i>] or to restrict them. There will be no press crimes, except common crimes committed through the press. Any person has the right to generate, process, or diffuse information, and equally to the use of any legal and apt instrument for such goals.</p> <p><b>Article 28</b> The right of the persons to receive true, responsible, and equitable information is recognized. The public sources of information are free for everyone. The law will regulate the corresponding modalities, time periods and sanctions for them, in order to make this right effective. Any person affected by the diffusion of a false, distorted, or ambiguous information has the right to demand its rectification or its clarification by the same means and under the same conditions in which it was divulged, without prejudice to the other compensatory rights.</p>	<p>-</p>

<p>Peru 1993, reviewed in 2009</p>	<p><b>Article 2</b> Every person has the right: 4. to freedom of information, opinion, expression and dissemination of thought either orally, or in writing or by images, by any means of social communication whatsoever, and without previous authorization, censorship or impediment in accordance with the law. Crimes committed by means of books, press and any other social media are defined by the Criminal Code and are tried in a court of law. Any action that suspends or closes down any means of expression or prevents its free circulation constitutes a crime. The rights of information and opinion include those of founding means of communication.</p> <p><b>Article 31</b> Citizens are entitled to take part in public affairs by means of referendum, legislative initiative, and removal from office or revocation of authorities and the right to demand accountability.</p> <p><b>Article 35</b> Citizens may exercise their rights individually or through political organizations, such as political parties, movements, or alliances, in accordance with the law. Such organizations contribute to the development and expression of the will of the people. Their entry in the proper register confers legal personhood upon such entities. The law sets forth the rules aiming to ensure the proper democratic operation of political parties, transparency concerning the origin of their financial recourses, and free access to the State-owned social media proportional to the last general election results.</p>	<p><b>Article 2</b> Every person has the right: 5. To request, without statement of a cause, information he requires, and to receive it from any public entity within the legal term, at its respective cost. Exception is hereby made of information affecting personal privacy and that expressly excluded by the law or for reasons of national security. Bank secrecy and the confidentiality of tax filings may be lifted by the request of a judge, the Prosecutor General, or a congressional investigative committee, in accordance with the law and provided that such information refers to a case under investigation.</p>
<p>Philippines 1987</p>	<p><b>Section 24</b> The State recognizes the vital role of communication and information in nation-building.</p>	<p><b>Article III Bill of rights</b> <b>Section 7</b> The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.</p> <p><b>Article XVI</b> <b>Section 10</b> The State shall provide the policy environment for the full development of Filipino capability and the emergence of communication structures suitable to the needs and aspirations of the nation and the balanced flow of information into, out of, and across the country, in accordance with</p>



		a policy that respects the freedom of speech and of the press.
Poland 1997, reviewed in 2009	<p><b>Article 54</b></p> <p>1. The freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone.</p> <p>2. Preventive censorship of the means of social communication and the licensing of the press shall be prohibited. Statutes may require the receipt of a permit for the operation of a radio or television station.</p>	<p><b>Article 51</b></p> <p>1. No one may be obliged, except on the basis of statute, to disclose information concerning his person.</p> <p>2. Public authorities shall not acquire, collect nor make accessible information on citizens other than that which is necessary in a democratic state ruled by law.</p> <p>3. Everyone shall have a right of access to official documents and data collections concerning himself.</p> <p>4. Limitations upon such rights may be established by statute.</p> <p>Everyone shall have the right to demand the correction or deletion of untrue or incomplete information, or information acquired by means contrary to statute.</p> <p>5. Principles and procedures for collection of and access to information shall be specified by statute.</p> <p><b>Article 61</b></p> <p>1. A citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Such right shall also include receipt of information on the activities of self-governing economic or professional organs and other persons or organizational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury.</p> <p>2. The right to obtain information shall ensure access to documents and entry to sittings of collective organs of public authority formed by universal elections, with the opportunity to make sound and visual recordings.</p> <p>3. Limitations upon the rights referred to in paras. 1 and 2 above, may be imposed by statute solely to protect freedoms and rights of other persons and economic subjects, public order, security or important economic interests of the State.</p> <p>4. The procedure for the provision of information, referred to in paras. 1 and 2 above shall be specified by statute, and regarding the Sejm and the Senate by their rules of procedure.</p>
Portugal 1976, reviewed in 2005	<p><b>Article 37</b></p> <p>1. Everyone shall possess the right to freely express and publicise his thoughts in words, images or by any other means, as well as the right to inform others, inform himself and be informed without hindrance or discrimination.</p> <p>2. Exercise of the said rights shall not be hindered or limited by any type or form of</p>	-

	<p>             censorship.              3. Infractions committed in the exercise of the said rights shall be subject to the general principles of the criminal law or the law governing administrative offences, and shall be brought before the courts of law or an independent administrative body respectively, as laid down by law.              4. Every person and body corporate shall be equally and effectively guaranteed the right of reply and to make corrections, as well as the right to compensation for damages suffered.           </p> <p><b>Article 38</b></p> <p>             1. The freedom of the press shall be guaranteed.              2. Freedom of the press shall mean: a. Journalists and other staff's freedom of expression and creativity, as well as journalists' freedom to take part in determining the editorial policy of the media body in question, save when it is doctrinal or denominational in nature; b. Journalists' right, as laid down by law, to gain access to sources of information and to the protection of professional independence and secrecy, as well as their right to elect editorial boards; c. The right to found newspapers and any other publications, regardless of any prior administrative authorisation, bond or qualification.              3. In generic terms, the law shall ensure that the names of the owners of media bodies and the means by which those bodies are financed are publicised.              4. The state shall ensure the media's freedom and independence from political power and economic power by imposing the principle of specialisation on businesses that own general information media, treating and supporting them in a non-discriminatory manner and preventing their concentration, particularly by means of multiple or interlocking interests.              5. The state shall ensure the existence and operation of a public radio and television service.              6. The structure and operation of public sector media shall safeguard their independence from the Government, the Public Administration and the other public authorities, and shall ensure that all the different currents of opinion are able to express themselves and to confront one another.              7. Radio and television broadcasting stations shall only operate with licenses that are granted under public calls for tender, as laid down by law.           </p> <p><b>Article 54</b></p> <p>5. Workers' committees shall possess the</p>	
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	<p>right: a. To receive all the information needed to perform their tasks.</p> <p><b>Article 60</b></p> <p>1. Consumers shall possess the right to the good quality of the goods and services consumed, to training and information, to the protection of health, safety and their economic interests, and to reparation for damages.</p>	
Qatar 2003	<p><b>Article 48</b></p> <p>Freedom of the press, printing, and publishing is guaranteed according to the law.</p>	-
Republic of Korea 1948, reviewed in 1998	<p><b>Article 67</b></p> <p>Citizens are guaranteed freedom of speech, of the press, of assembly, demonstration and association. The State shall guarantee conditions for the free activity of democratic political parties and social organizations.</p>	-
Romania 1991, reviewed in 2003	<p><b>Article 30</b></p> <p>1. The freedom to express ideas, opinions, and beliefs, and the freedom of creation in any form - orally, in writing, through images, by means of sound, or by any other means of public communication - are inviolable.</p> <p>2. Censorship of any kind is prohibited.</p> <p>3. Freedom of the press also includes the freedom to establish publications.</p> <p>4. No publication may be banned.</p> <p>5. The law may oblige the mass media to account publicly for the sources of their financing.</p> <p>6. The exercise of the freedom of expression shall be without prejudice to the dignity, honor or privacy of an individual, or to his/her right to his/her own image.</p> <p>7. Any defamation of the country and the nation; any incitement to a war of aggression, to ethnic, racial, class or religious hatred, any incitement to discrimination, territorial separatism or public violence as well as any obscene acts contrary to public morals shall be prohibited by law.</p> <p>8. The civil responsibility for any information or creation made public will be borne by the editor or the producer, author, or organizer of an artistic show, by the owner of the means of reproduction, the radio station, or the television station under the terms established by the law. Indictable press offenses shall be established by the law.</p>	<p><b>Article 31</b></p> <p>1. A person's right to have access to any information of public interest may not be curtailed.</p> <p>2. Public authorities are under a duty to provide citizens with correct information concerning public affairs and matters of personal interest falling within their respective jurisdiction.</p> <p>3. The exercise of the right to information shall be without prejudice to measures which are taken to protect the youth or national security.</p> <p>4. The public and private mass media organs must ensure that public opinion receives correct information.</p> <p>5. The public services of radio and television are autonomous. They must guarantee that significant social and political groups have the right to broadcast. The organization of these services and the monitoring of their activity by Parliament are regulated by organic law.</p>
Russia 1993, reviewed in 2014	<p><b>Article 29</b></p> <p>1. Everyone shall be guaranteed freedom of thought and speech.</p> <p>2. Propaganda or agitation, which arouses social, racial, national or religious hatred and hostility shall be prohibited. Propaganda of social, racial, national, religious or linguistic supremacy shall also be prohibited.</p>	<p><b>Article 24</b></p> <p>1. Collecting, keeping, using and disseminating information about the private life of a person shall not be permitted without his (her) consent.</p> <p>2. State government bodies and local self-government bodies and their officials shall be obliged to provide everyone with</p>

	<p>3. Nobody shall be forced to express his thoughts and convictions or to deny them.</p> <p>4. Everyone shall have the right freely to seek, receive, transmit, produce and disseminate information by any legal means. The list of types of information, which constitute State secrets, shall be determined by federal law.</p> <p>5. The freedom of the mass media shall be guaranteed. Censorship shall be prohibited.</p>	<p>access to documents and materials directly affecting his (her) rights and freedoms, unless otherwise envisaged by law.</p>
Rwanda 2003, reviewed in 2010	<p><b>Article 34</b> Freedom of press and freedom of information are recognized and guaranteed by the State. Freedom of speech and freedom of information shall not prejudice public order and good morals, the right of every citizen to honour, good reputation and the privacy of personal and family life. It is also guaranteed so long as it does not prejudice the protection of the youth and minors. The conditions for exercising such freedoms shall be determined by Law. There is hereby established an independent institution known as the “Media High Council”. A Law shall determine its responsibilities, organization and functioning.</p>	-
Samoa 1961, reviewed in 2010	<p><b>Article 13</b> 1. All citizens of Samoa shall have the right a. To freedom of speech and expression.</p>	-
Sao Tome and Principe 1975, reviewed in 1990	<p><b>Article 28</b> 1 All have the right to freely express and divulge their thinking by word, by image or by any other means. 2 Infractions committed in the exercise of this right remain subject to the general principles of criminal law, their appreciation being within the competence of the courts.</p> <p><b>Article 29</b> 1 Freedom of the press is guaranteed in the Democratic Republic of S. Tome and Principe, within the terms of the law. 2 The State guarantees a public service press independent of the interests of economic and political groups.</p>	-
Saudi Arabia 1992, reviewed in 2005	<p><b>Article 39</b> Mass media, publication facilities and other means of expression shall function in a manner that is courteous and fair and shall abide by State laws. They shall play their part in educating the masses and boosting national unity. All that may give rise to mischief and discord, or may compromise the security of the State and its public image, or may offend against man’s dignity and rights shall be banned. Relevant regulations shall explain how this is to be done.</p>	-
Senegal 2001, reviewed in 2009	<p><b>Article 8</b> The Republic of Senegal guarantees to all citizens the fundamental individual freedoms, the economic and social rights as</p>	-

	<p>well as the collective rights. These freedoms and rights are notably: the civil and political freedoms: freedom of opinion, freedom of expression, freedom of the press, freedom of association, freedom of assembly, freedom of movement [<i>déplacement</i>], [and] freedom of manifestation.</p> <p><b>Article 10</b> Each one has the right of expression and to disseminate their opinion freely by word, pen, image, [and] peaceful march, provided that the exercise of these rights does not infringe the honor and the consideration of others, or the public order.</p> <p><b>Article 11</b> The creation of an organ of the press for political, economic, cultural, sport, social, recreative or scientific information is free and is not subject to prior authorization. The regime of the press is established by the law.</p>	
Serbia 2006	<p><b>Article 46</b> The freedom of thought and expression shall be guaranteed, as well as the freedom to seek, receive and impart information and ideas through speech, writing, art or in some other manner. Freedom of expression may be restricted by the law if necessary to protect rights and reputation of others, to uphold the authority and objectivity of the court and to protect public health, morals of a democratic society and national security of the Republic of Serbia.</p> <p><b>Article 50</b> Everyone shall have the freedom to establish newspapers and other forms of public information without prior permission and in a manner laid down by the law. Television and radio stations shall be established in accordance with the law.</p> <p><b>Part four “Competences of the Republic of Serbia”</b> The Republic of Serbia shall organise and provide for: 10. system in areas of health care, social security, protection of war veterans and the disabled, protection of children, education, culture and protection of cultural goods, sport, public information, system of public services.</p>	<p><b>Article 51</b> Everyone shall have the right to be informed accurately, fully and timely about issues of public importance. The media shall have the obligation to respect this right. Everyone shall have the right to access information kept by state bodies and organizations with delegated public powers, in accordance with the law.</p> <p><b>Article 74</b> Everyone shall have the right to healthy environment and the right to timely and full information about the state of environment. Everyone, especially the Republic of Serbia and autonomous provinces, shall be accountable for the protection of environment. Everyone shall be obliged to preserve and improve the environment.</p> <p><b>Article 75</b> Persons belonging to national minorities shall take part in decision-making or decide independently on certain issues related to their culture, education, information and official use of languages and script through their collective rights in accordance with the law.</p>
Seychelles 1993, reviewed in 2011	<p><b>Article 22</b> 1. Every person has a right to freedom of expression and for the purpose of this article this right includes the freedom to hold opinions and to seek, receive and impart ideas and information without interference. 2. The right under clause (1) may be subject to such restrictions as may be prescribed by</p>	<p><b>Chapter III</b> <b>Seychellois Charter of Fundamental Human Rights and Freedoms</b> <b>Article 28.</b> 1. The State recognises the right of access of every person to information relating to that person and held by a public authority which is performing a governmental</p>

	<p>a law and necessary in a democratic society</p> <p>a. in the interest of defence, public safety, public order, public morality or public health; b. for protecting the reputation, rights and freedoms or private lives of persons; c. for preventing the disclosure of information received in confidence; d. for maintaining the authority and independence of the courts or the National Assembly, for regulating the technical administration, technical operation, or general efficiency of telephones, telegraphy, posts, wireless broadcasting, television, or other means of communication or regulating public exhibitions or public entertainment; or e. for the imposition of restrictions upon public officers.</p>	<p>function and the right to have the information rectified or otherwise amended, if inaccurate.</p> <p>2. The right of access to information contained in clause (1) shall be subject to such limitations and procedures as may be prescribed by law and are necessary in democratic society including—</p> <p>a) for the protection of national security;</p> <p>b) for the prevention and detection of crime and the enforcement of law;</p> <p>c) for the compliance with an order of a court or in accordance with a legal privilege;</p> <p>d) for the protection of the privacy or rights or freedoms of others;</p> <p>3. The State undertakes to take appropriate measures to ensure that information collected in respect of any person for a particular purpose is used only for that purpose except where a law necessary in a democratic society or an order of a court authorises otherwise.</p> <p>4. The State recognises the right of access by the public to information held by a public authority performing a governmental function subject to limitations contained in clause (2) and any law necessary in a democratic society.</p>
<p>Sierra Leone 1991, reinstated in 1996, reviewed in 2008</p>	<p><b>Article 25</b></p> <p>1. Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purpose of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, freedom from interference with his correspondence, freedom to own, establish and operate any medium for the dissemination of information, ideas and opinions, and academic freedom in institutions of learning: Provided that no person other than the Government or any person or body authorised by the President shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.</p> <p>2. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-</p> <p>a. which is reasonably required-</p> <p>i. in the interests of defence, public safety, public order, public morality or public health; or</p> <p>ii. for the purpose of protecting the reputations, rights and freedoms of other persons, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the telephony, telegraphy, telecommunications, posts,</p>	<p>-</p>

	wireless broadcasting, television, public exhibitions or public entertainment; or b. which imposes restrictions on public officers or members of a defence force; and except in so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.	
Singapore 1959, reviewed in 2010	<b>Article 14</b> 1. Subject to clauses (2) and (3) - (a) every citizen of Singapore has the right to freedom of speech and expression.	-
Slovakia 1992, reviewed in 2001	<b>Article 26</b> 1. The freedom of speech and the right to information are guaranteed. 2. Everyone has the right to express his views in word, writing, print, picture, or other means as well as the right to freely seek out, receive, and spread ideas and information without regard for state borders. The issuing of press is not subject to licensing procedures. Enterprise in the fields of radio and television may be pegged to the awarding of an authorization from the state. The conditions will be specified by law. 3. Censorship is banned. 4. The freedom of speech and the right to seek out and spread information can be restricted by law if such a measure is unavoidable in a democratic society to protect the rights and liberties of others, state security, public order, or public health and morality. 5. State bodies and territorial self-administration bodies are under an obligation to provide information on their activities in an appropriate manner and in the state language. The conditions and manner of execution will be specified by law. <b>Article 45</b> Everyone has the right to timely and complete information about the state of the environment and the causes and consequences of its condition.	<b>Article 34</b> 1. The comprehensive development of citizens representing national minorities or ethnic groups in the Slovak Republic is guaranteed, particularly the right to develop their own culture, together with other members of the minority or ethnic group, the right to disseminate and receive information in their mother tongue, the right to associate in national minority associations, and the right to set up and maintain educational and cultural institutions. Details will be set out in a law.
Slovenia 1991, reviewed in 2013	<b>Article 39</b> paragraph 1 Freedom of expression of thought, freedom of speech and public appearance, of the press and other forms of public communication and expression shall be guaranteed. Everyone may freely collect, receive and disseminate information and opinions. <b>Article 40</b> The right to correct published information which has damaged a right or interest of an individual, organisation or body shall be guaranteed, as shall be the right to reply to such published information.	<b>Article 39</b> paragraph 2 Except in such cases as are provided by law, everyone has the right to obtain information of a public nature in which he has a well-founded legal interest under law.

<p>Solomon Islands 1978, reviewed in 2009</p>	<p><b>Article 12</b> 1. Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference and freedom from interference with his correspondence. 2. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision- a) in the interest of defence, public safety, public order, public morality or public health; b) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the administration or the technical operation of telephony, telegraphy, posts, wireless, broadcasting or television; or c) that imposes restriction upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.</p>	<p>-</p>
<p>Somalia 2012</p>	<p><b>Article 18</b> <b>1</b> Every person has the right to have and express their opinions and to receive and impart their opinion, information and ideas in any way. <b>2</b> Freedom of expression includes freedom of speech, and freedom of the media, including all forms of electronic and web-based media. <b>3</b> Every person has the right to freely express their artistic creativity, knowledge, and information gathered through research.</p>	<p>-</p>
<p>South Africa 1996, reviewed in 2012</p>	<p><b>Article 16</b> 1. Everyone has the right to freedom of expression, which includes- a) freedom of the press and other media; b) freedom to receive or impart information or ideas; c) freedom of artistic creativity; and d) academic freedom and freedom of scientific research. 2. The right in subsection (1) does not extend to-</p>	<p><b>Article 32</b> 1. Everyone has the right of access to- a) any information held by the state; and b) any information that is held by another person and that is required for the exercise or protection of any rights. 2. National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.</p>



	<p>a) propaganda for war;  b) incitement of imminent violence; or  c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.</p>	
South Sudan 2011	<p><b>Article 24.</b>  1. Every citizen shall have the right to the freedom of expression, reception and dissemination of information, publication, and access to the press without prejudice to public order, safety or morals as prescribed by law.  2. All levels of government shall guarantee the freedom of the press and other media as shall be regulated by law in a democratic society.  3. All media shall abide by professional ethics.</p>	<p><b>Article 32.</b>  Every citizen has the right of access to official information and records, including electronic records in the possession of any level of government or any organ or agency thereof, except where the release of such information is likely to prejudice public security or the right to privacy of any other person.  <b>Article 139.</b>  1. The Civil Service shall be governed by, <i>inter alia</i>, the following values and principles:  g) transparency shall be fostered by providing the public with timely, accessible and accurate information.</p>
Spain 1978, reviewed in 2011	<p><b>Article 20</b>  (1) The following rights are recognized and protected:  a) the right to freely express and spread thoughts, ideas and opinions through words, in writing or by any other means of reproduction.  d) the right to freely communicate or receive truthful information by any means of dissemination whatsoever. The law shall regulate the right to the clause of conscience and professional secrecy in the exercise of these freedoms.</p>	-
Sri Lanka 1978, reviewed in 2009	<p><b>Article 14</b>  1. Every citizen is entitled to -  a) the freedom of speech and expression including publication.</p>	-
St Kitts and Nevis 1983	<p><b>Article 12</b>  1. Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication is to the public generally or to any person or class of persons) and freedom from interference with his correspondence.</p>	-
St Lucia 1978	<p><b>Article 1</b>  Whereas every person in Saint Lucia is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-  b) freedom of conscience, of expression and</p>	-

	<p>of assembly and association.</p> <p><b>Article 10</b></p> <p><b>1</b></p> <p>Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.</p> <p><b>2</b></p> <p>Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-</p> <p>a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;</p> <p>b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or</p> <p>c) that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.</p>	
St. Vincent and the Grenadines 1979	<p><b>Article 1</b></p> <p>Whereas every person in Saint Vincent is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-</p> <p>b) freedom of conscience, of expression and of assembly and association</p> <p><b>Article 10</b></p> <p><b>1</b></p> <p>Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate</p>	-

	<p>ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.</p> <p><b>2</b> Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-</p> <p>a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;</p> <p>b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or</p> <p>c) that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.</p>	
Sudan 2005	<p><b>Article 39</b></p> <p>1. Every citizen shall have an unrestricted right to the freedom of expression, reception and dissemination of information, publication, and access to the press without prejudice to order, safety or public morals as determined by law.</p> <p>2. The State shall guarantee the freedom of the press and other media as shall be regulated by law in a democratic society.</p> <p>3. All media shall abide by professional ethics, shall refrain from inciting religious, ethnic, racial or cultural hatred and shall not agitate for violence or war.</p>	-
Suriname 1987, reviewed in 1992	<p><b>Article 19</b></p> <p>Everyone has the right to make public his thoughts or feelings and to express his opinion through the printed press or other means of communication, subject to the responsibility of all as set forth in the law.</p> <p><b>Article 85</b></p> <p><b>1</b> The Government shall provide the National Assembly with the requested information either in writing or orally. It can be invited by the National Assembly to attend the meeting.</p> <p>The Government can attend meetings of the</p>	<p><b>Article 54</b></p> <p>h. The central authority shall organize the regular dissemination of information on government policy and state administration, in order to allow the people to participate optimally in the administrative structures. The lower administration shall have the obligation to create a process of communication with the people, for the purpose of making government answerable to the public and to ensure the participation of the people in policy-making.</p>

	National Assembly as well as the People's Assembly. It has an advisory vote in those meetings. It can be assisted in the meetings by experts.	
Swaziland 2005	<p><b>Article 24</b></p> <p>1. A person has a right of freedom of expression and opinion.</p> <p>2. A person shall not except with the free consent of that person be hindered in the enjoyment of the freedom of expression, which includes the freedom of the press and other media, that is to say</p> <p>a) freedom to hold opinions without interference;</p> <p>b) freedom to receive ideas and information without interference;</p> <p>c) freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons); and</p> <p>d) freedom from interference with the correspondence of that person.</p> <p>3. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision</p> <p>a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;</p> <p>b) that is reasonably required for the purpose of</p> <p>(i) protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings;</p> <p>(ii) preventing the disclosure of information received in confidence;</p> <p>(iii) maintaining the authority and independence of the courts; or</p> <p>(iv) regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television or any other medium of communication; or</p> <p>c) that imposes reasonable restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under the authority of that law is shown not to be reasonably justifiable in a democratic society.</p>	<p><b>Article 176</b></p> <p>1. The functions of a service commission shall include appointments (including promotions and transfers) and selection of candidates for appointment, confirmation of appointments, termination of appointments, disciplinary control and removal from office of officers within the public service or any sector of the public service.</p> <p>2. For the performance of its functions, a service commission may, among other things –</p> <p>a) inspect Government offices;</p> <p>b) examine official documents, books or other records;</p> <p>c) obtain information and advice from any public officer or other Government servant; and</p> <p>d) do all such things, including the taking of evidence on oath and the administration of oaths, as are incidental or conducive to the exercise of the functions of that service commission.</p>
Sweden 1974, reviewed in 2012	<p><b>The Instrument of Government</b>  <b>Chapter 2: Fundamental rights and freedoms</b>  <b>Article 1</b></p> <p>Everyone shall be guaranteed the following rights and freedoms in his or her relations with the public institutions: freedom of expression: that is, the freedom to communicate information and express thoughts,</p>	<p><b>The Instrument of Government</b>  <b>Chapter 2. Fundamental rights and freedoms</b>  <b>Article 23</b></p> <p>Freedom of expression and freedom of information may be limited with regard to the security of the Realm, the national supply of goods, public order and public safety, the good repute of the individual,</p>

	<p>opinions and sentiments, whether orally, pictorially, in writing, or in any other way; freedom of assembly: that is, the freedom to organise or attend meetings for the purposes of information or the expression of opinion or for any other similar purpose, or for the purpose of presenting artistic work;</p> <p><b>Chapter 7: The work of the Government</b> <b>Part 1: The Government Offices and their duties</b> <b>Article 2</b> In preparing Government business the necessary information and opinions shall be obtained from the public authorities concerned. Information and opinions shall be obtained from local authorities as necessary. Organisations and individuals shall also be given an opportunity to express an opinion as necessary.</p> <p><b>Chapter 13. Parliamentary control</b> <b>Parliamentary Ombudsmen</b> <b>Article 6</b> Courts of law, administrative authorities and State or local government employees shall provide an Ombudsman with such information and opinions as he or she may request.</p>	<p>the sanctity of private life, and the prevention and prosecution of crime. Freedom of expression may also be limited in business activities. Freedom of expression and freedom of information may otherwise be limited only where particularly important grounds so warrant.</p> <p>In judging what limitations may be introduced in accordance with paragraph one, particular attention must be paid to the importance of the widest possible freedom of expression and freedom of information in political, religious, professional, scientific and cultural matters.</p> <p>The adoption of provisions which regulate in more detail a particular manner of disseminating or receiving information, without regard to its content, shall not be deemed a limitation of the freedom of expression or the freedom of information.</p> <p><b>Freedom of the Press Act</b> <b>Chapter 2. On the public nature of official documents</b> <b>Article 1</b> Every Swedish citizen shall be entitled to have free access to official documents, in order to encourage the free exchange of opinion and the availability of comprehensive information.</p>
Switzerland 1999, reviewed in 2014	<p><b>Article 16</b> 1. Freedom of expression and of information is guaranteed. 2. Everyone has the right freely to form, express, and impart their opinions. 3. Everyone has the right freely to receive information to gather it from generally accessible sources and to disseminate it.</p> <p><b>Article 17</b> 1. Freedom of the press, radio and television and of other forms of dissemination of features and information by means of public telecommunications is guaranteed. 2. Censorship is prohibited. 3. The protection of sources is guaranteed.</p> <p><b>Article 119</b> g. everyone shall have access to data relating to their ancestry.</p>	<p><b>Article 153</b> 4. In order to fulfil their duties, the committees shall have the right to information and to inspect documents and the power to conduct investigations. The extent of such rights and powers shall be governed by the law.</p>
Syria 2012	<p><b>Article 42</b> <b>1</b> Freedom of belief shall be protected in accordance with the law;</p> <p><b>2</b> Every citizen shall have the right to freely and openly express his views whether in writing or orally or by all other means of expression.</p> <p><b>Article 43</b> The state shall guarantee freedom of the press, printing and publishing, the media and its independence in accordance with the law.</p>	-

Tajikistan 1994, reviewed in 2003	<p><b>Article 30</b> Everyone is guaranteed freedom of speech, press, [and] the right to use means of mass information. Propaganda and agitation inciting social and racial, national, religious and language enmity and hostility are prohibited. State censorship and prosecution for criticism is prohibited. A list of information constituting a State secret is determined by law.</p>	<p><b>Article 25</b> State organs, social associations, political parties, and officials are obligated to provide everyone with the opportunity to receive and become familiar with documents concerning his rights and interests except in cases provided by law.</p>
Tanzania 1977, reviewed in 1995	<p><b>Article 18</b> <b>1</b> Without prejudice to expression the laws of the land, every person has the right to freedom of opinion and expression, and to seek, receive and impart or disseminate information and ideas through any media regardless of national frontiers, and also has the right of freedom from interference with his communications. <b>2</b> Every citizen has the right to be informed at all times of various events in the country and in the world at large which are of importance to the lives and activities of the people and also of issues of importance to society.</p>	-
Thailand 2014	<p><b>Section 4</b> Subject to the provisions of this Constitution, all human dignity, rights, liberties and equality of the people protected by the constitutional convention under a democratic regime of government with the King as the Head of State, and by international obligations bound by Thailand, shall be protected and upheld by this Constitution.</p>	<p><b>Section 16</b> At a meeting of the National Legislative Assembly, every member shall have the rights to interpellate a Minister on any matter under his authority, but the Minister shall have the right to refuse a reply if he is of opinion that the matter should not be disclosed yet on the ground of safety or vital interest of the State or that interpellation is prohibited by the rule of the National Legislative Assembly. The quorum of the National Legislative Assembly in this case may be different from the quorum as prescribed by section 13 paragraph one if so prescribed by the rule on meeting. If there is a matter which involves an important problem, not less than one-third of the total number of the members of the National Legislative Assembly may submit a motion for general debate with the Council of Ministers, but the vote of confidence or no-confidence shall not be made.</p>
Togo 1992, reviewed in 2007	<p><b>Article 25</b> Every person has the right to the freedom of thought, of conscience, of religion, of belief, of opinion and of expression. The exercise of these rights and freedoms is made within respect for the freedoms of others, of the public order and of the norms established by the law and the regulations. The organization and the practice of</p>	-

	<p>religious beliefs is exercised freely within respect for the law. It is the same for the philosophical orders.</p> <p>The exercise of belief and of expression of belief is done within respect for the secular-ity of the State. The religious denomina-tions have the right to organize themselves and to exercise their activities freely within respect for the law.</p> <p><b>Article 26</b></p> <p>The freedom of the press is recognized and guaranteed by the State. It is protected by the law.</p> <p>Every person has the freedom to express and to disseminate through speech, writing or any other means, their opinions or the information which they possess, within respect for the limits defined by the law. The press may not be subject to prior au-thorization, to caution [bail/security], to censorship or to other restraints. The prohi-bition of dissemination of any publication may only be pronounced by virtue of a decision of justice.</p>	
Tonga 1975	<p><b>Article 7</b></p> <p>It shall be lawful for all people to speak write and print their opinions and no law shall ever be enacted to restrict this liberty. There shall be freedom of speech and of the press for ever but nothing in this clause shall be held to outweigh the law of slander or the laws for the protection of the King and the Royal Family.</p>	-
Trinidad and Tobago 1976, reviewed in 2007	<p><b>Article 4</b></p> <p>It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrim-ination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:- i. freedom of thought and expression.</p>	-
Turkey 1982, reviewed in 2011	<p><b>Article 26</b></p> <p>Everyone has the right to express and dis-seminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. This freedom includes the liberty of receiv-ing or imparting information or ideas with-out interference by official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, or similar means to a system of licensing. The exercise of these freedoms may be restricted for the purposes of national secu-rity, public order, public safety, safeguard-ing the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret,</p>	-

	<p>protecting the reputation or rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.</p> <p>Regulatory provisions concerning the use of means to disseminate information and thoughts shall not be deemed as the restriction of freedom of expression and dissemination of thoughts as long as the transmission of information and thoughts is not prevented.</p> <p>The formalities, conditions and procedures to be applied in exercising the freedom of expression and dissemination of thought shall be prescribed by law.</p>	
Turkmenistan 2008	<p><b>Article 5</b></p> <p>The state and all of its organs and officials are linked by law and constitutional order. The Constitution of Turkmenistan is the Basic Law of the State. Rules and regulations laid down in it are unswervingly applicable. The laws and other legal acts that contradict the Constitution are null and void.</p> <p>The normative-legal acts of the government and administration, and the local self-government, are published for general information or made available through other means, except when they contain state or other secrets protected by law. The normative-legal Acts affecting the rights and freedom of the individual and citizen, if not brought to the general information of the public, are invalid from the time of their adoption.</p> <p><b>Article 28</b></p> <p>Citizens of Turkmenistan have the right to freedom of opinion and expression, as well as to receive information if it is not a state or other secret protected by law.</p>	-
Tuvalu 1986	<p><b>Article 24</b></p> <p><b>1</b></p> <p>Subject to the provisions of this Part, and in particular to -</p> <p>a) subsection (3); and</p> <p>b) section 29 (protection of Tuvaluan values, etc.); and</p> <p>c) section 30 (provisions relating to certain officials); and</p> <p>d) section 31 (disciplined forces of Tuvalu); and</p> <p>e) section 32 (foreign disciplined forces); and</p> <p>f) section 33 (hostile disciplined forces); and</p> <p>g) section 36 (restrictions on certain rights and liberties during public emergencies), except with his consent no-one shall be hindered in the exercise of his freedom of</p>	-



	<p>expression.</p> <p><b>2</b> For the purposes of this section, freedom of expression includes -</p> <p>a) freedom to hold opinions without interference; and</p> <p>b) freedom to receive ideas and information without interference; and</p> <p>c) freedom to communicate ideas and information without interference; and</p> <p>d) freedom from interference with correspondence.</p> <p><b>3</b> Nothing in or done under a law shall be considered to be inconsistent with subsection 1 to the extent that the law makes provision-</p> <p>a) in the interests of-</p> <p>i) defence; or</p> <p>ii) public safety; or</p> <p>iii) public order; or</p> <p>iv) public morality; or</p> <p>v) public health; or</p> <p>b) for the purpose of-</p> <p>i) protecting the reputations, rights or freedoms of other persons; or</p> <p>ii) protecting the privacy of persons concerned in legal proceedings; or</p> <p>iii) preventing the disclosure of information received in confidence; or</p> <p>iv) maintaining the authority or independence of the courts; or</p> <p>v) regulating the administration or the technical operation of posts or telecommunications.</p>	
Uganda 1995, reviewed in 2005	<p><b>Article 29</b></p> <p>1. Every person shall have the right to-</p> <p>a) freedom of speech and expression, which shall include freedom of the press and other media.</p>	<p><b>Article 41</b></p> <p><b>1</b> Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.</p> <p><b>2</b> Parliament shall make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information.</p>
Ukraine 1996, reviewed in 2014	<p><b>Article 34</b></p> <p>Everyone is guaranteed the right to freedom of thought and speech, and to the free expression of his or her views and beliefs. Everyone has the right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice.</p> <p>The exercise of these rights may be restricted by law in the interests of national</p>	-

	<p>security, territorial indivisibility or public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, the reputation or rights of other persons, preventing the publication of information received confidentially, or supporting the authority and impartiality of justice.</p> <p><b>Article 50</b> Everyone has the right to an environment that is safe for life and health, and to compensation for damages inflicted through the violation of this right.</p> <p>Everyone is guaranteed the right of free access to information about the environmental situation, the quality of food and consumer goods, and also the right to disseminate such information. No one shall make such information secret.</p>	
United Arab Emirates 1971, reviewed in 2004	<p><b>Article 30</b> Freedom of opinion and of expressing that opinion verbally, in writing, or by any other medium of expression is guaranteed as provided in law.</p> <p><b>Article 31</b> Freedom of communication by post, telegraph and other means of communication and the secrecy thereof are guaranteed in accordance with the law.</p>	-
United States of America 1789, reviewed in 1992	<p><b>Amendment I</b> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.</p>	-
Uruguay 1996, reinstated in 1985, reviewed in 2004	<p><b>Article 29</b> The expression of opinion on any subject by word of mouth, private writing, publication in the press, or by any other method of dissemination is entirely free, without prior censorship; but the author, printer or publisher as the case may be, may be held liable, in accordance with law, for abuses which they may commit.</p>	-
Uzbekistan 1992, reviewed in 2011	<p><b>Article 29</b> Everyone shall be guaranteed freedom of thought, speech and convictions. Everyone shall have the right to seek, obtain and disseminate any information, except that which is directed against the existing constitutional system and in some other instances specified by law.</p> <p>Freedom of opinion and its expression may be restricted by law if any state or other secret is involved.</p>	<p><b>Article 30</b> All state bodies, public associations and officials in the Republic of Uzbekistan shall allow any citizen access to documents, resolutions and other materials, relating to their rights and interests.</p>

<p>Vanuatu 1980, reviewed in 1983</p>	<p><b>Article 5</b> 1. The Republic of Vanuatu recognises, that, subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health – g) freedom of expression <b>Article 62. Enquiries by Ombudsman</b> 3. The Ombudsman may request any Minister, public servant, administrator, authority concerned or any person likely to assist him, to furnish him with information and documents needed for his enquiry.</p>	<p>-</p>
<p>Venezuela 1999, reviewed in 2009</p>	<p><b>Article 57</b> Everyone has the right to express freely his or her thoughts, ideas or opinions orally, in writing or by any other form of expression, and to use for such purpose any means of communication and diffusion, and no censorship shall be established. Anyone making use of this right assumes full responsibility for everything expressed. Anonymity, war propaganda, discriminatory messages or those promoting religious intolerance are not permitted. Censorship restricting the ability of public officials to report on matters for which they are responsible is prohibited. <b>Article 58</b> Communications are free and plural, and involve the duties and responsibilities indicated by law. Everyone has the right to timely, truthful and impartial information, without censorship, in accordance with the principles of this Constitution, as well as the right to reply and corrections when they are directly affected by inaccurate or offensive information. Children and adolescents have the right to receive adequate information for purposes of their overall development.</p>	<p><b>Article 28</b> Anyone has the right of access to the information and data concerning him or her or his or her goods which are contained in official or private records, with such exceptions as may be established by law, as well as what use is being made of the same and the purpose thereof, and to petition the court of competent competence for the updating, correction or destruction of any records that are erroneous or unlawfully affect the petitioner's right. He or she may, as well, access documents of any nature containing information of interest to communities or group of persons. The foregoing is without prejudice to the confidentiality of sources from which information is received by journalist, or secrecy in other professions as may be determined by law. <b>Article 66</b> Voters have the right to obtain from their public representatives, transparent and periodic accounting for their office, in accordance with the offered program.</p>
<p>Vietnam 1992, reviewed in 2001</p>	<p><b>Article 33</b> The State shall promote information work, the press, radio, television, cinema, publishing, libraries and other means of mass communication. All activities in the fields of culture and information that are detrimental to the national interests and which undermine the fine personality, morality, and way of life of the Vietnamese people shall be strictly banned. <b>Article 69</b> The citizen shall enjoy freedom of opinion and speech, freedom of the press, the right</p>	<p>-</p>

	<p>to be informed, and the right to assemble, form associations and hold demonstrations in accordance with the provisions of the law.</p> <p><b>Article 96</b></p> <p>1. The Nationalities Council and the Committees of the National Assembly can require members of the Government, the President of the Supreme People’s Court, the Head of the Supreme People’s Office of Supervision and Control, and other State officials to report or supply documents on certain necessary matters. Those to whom such requests are made must satisfy them.</p> <p>2. It is the responsibility of State organs to examine and answer the proposals made by the Nationalities Council and the Committees of the National Assembly.</p>	
Yemen 1991, reviewed in 2001	<p><b>Article 42</b></p> <p>Every citizen has the right to participate in the political, economic, cultural life of the country. The state shall guarantee freedom of thought and expression of opinion in speech, writing and photography within the limits of the law.</p>	-
Zambia 1991, reviewed in 2009	<p><b>Article 20</b></p> <p>1. Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.</p> <p>2. Subject to the provisions of this Constitution no law shall make any provision that derogates from freedom of the press.</p> <p>3. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision—</p> <p>a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or</p> <p>b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or the registration of, or regulating the technical administration or the technical operation of, newspapers and other</p>	-

	<p>publications, telephony, telegraphy, posts, wireless broadcasting or television; or  c) that imposes restrictions on public officers;  and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.</p>	
Zimbabwe 2013	<p><b>Article 61</b>  <b>1</b>  Every person has the right to freedom of expression, which includes--  a) freedom to seek, receive and communicate ideas and other information;  b) freedom of artistic expression and scientific research and creativity; and  c) academic freedom.  <b>2</b>  Every person is entitled to freedom of the media, which freedom includes protection of the confidentiality of journalists' sources of information.  <b>3</b>  Broadcasting and other electronic media of communication have freedom of establishment, subject only to State licensing procedures that--  a) are necessary to regulate the airwaves and other forms of signal distribution; and  b) are independent of control by government or by political or commercial interests.  <b>4</b>  All State-owned media of communication must--  a) be free to determine independently the editorial content of their broadcasts or other communications;  b) be impartial; and  c) afford fair opportunity for the presentation of divergent views and dissenting opinions.  <b>5</b>  Freedom of expression and freedom of the media exclude--  a) incitement to violence;  b) advocacy of hatred or hate speech.</p>	<p><b>Article 62</b>  <b>1</b>  Every Zimbabwean citizen or permanent resident, including juristic persons and the Zimbabwean media, has the right of access to any information held by the State or by any institution or agency of government at every level, in so far as the information is required in the interests of public accountability.  <b>2</b>  Every person, including the Zimbabwean media, has the right of access to any information held by any person, including the State, in so far as the information is required for the exercise or protection of a right.  <b>3</b>  Every person has a right to the correction of information, or the deletion of untrue, erroneous or misleading information, which is held by the State or any institution or agency of the government at any level, and which relates to that person.  <b>4</b>  Legislation must be enacted to give effect to this right, but may restrict access to information in the interests of defence, public security or professional confidentiality, to the extent that the restriction is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom.</p>

For the freedom of information and the freedom of the press to be effective, they are in need of the explicit support from a right of access to governmentally-held documents and information.

At present, the UN human rights law guarantees no right to access official documents. Nevertheless, such a right has already acquired independent value and standing in many states and in some regional systems of human rights.

Insofar as access to official documents is a principle ensuring transparency in public administration, it is linked with the paradigm of anticorruption policies. Moreover, being closely associated with the notion of deliberative democracy, it can be viewed as a necessary component of good governance, reflecting the fundamental values of democracy and participation. Perhaps these are among the main reasons why recent legal developments in regional human rights systems and many national constitutions, reviewed in the present book, have gradually discarded the overall principle of the secrecy of official information.

The authors come to a conclusion that the principle of making official documents and information accessible to everyone needs to be established at the level of the UN, preferably as an explicit human right.