

“Defining Restrictions on Access to Information: a Human Rights Dimension”

Statement of

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Aarhus Convention Task Force on Access to Information

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Madame Chairperson, Excellencies, distinguished delegates, ladies and gentlemen,

It is a great honour and a pleasure for me to address this meeting in my capacity as Special Rapporteur of the UN Human Rights Council on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.¹

I assumed this mandate in August 2014 following the untimely death of my predecessor, Mr. Marc Pallemarts, whom many of you may know already as the Chairperson of the Meeting of the Parties to the Aarhus Convention from 2003 to 2005. I am humbled before Marc’s legacy – his leadership, passion, immeasurable influence he contributed to both environmental and human rights communities. As the new Special Rapporteur, I hope to continue carrying forward Marc’s legacy, together with all stakeholders of the Convention in the coming years. This plan also coincides with the request of the Human Rights Council resolution 27/23, which asked me to cooperate with international environmental conventions with a view to mainstreaming human rights.

I am pleased to see that many provisions of the Aarhus Convention echo the values and principles of human rights, especially articles 4 and 5 on the access to environmental information, which concern this Task Force. It is also notable that *all* State Parties to the Aarhus Convention have ratified the International Covenant on Civil and Political Rights (ICCPR), which stipulates the State obligation to guarantee the right to information in its article 19. I believe it is becoming more and more evident that the two communities – environment and human rights – are complementary to each other, inseparable from one another and pursuing mutually reinforcing goals.

The right of access to information is often regarded as an enabler of other rights. As former Special Rapporteur on toxic waste rightly put it, the right to access information is an essential tool for the exercise of other rights, such as the right to life, the right to the highest attainable standard of health, the right to adequate housing and others.²

¹ For more information, see <http://www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/SRToxicWastesIndex.aspx>.

² See, A/HRC/7/21, p.2

In human rights terms, fundamentally, all information in possession of State authority belongs to public. Having said that, often we are faced with a dilemma between guaranteeing access to information to the fullest extent possible and defining certain restrictions to this right. In response to the dilemma, the human rights community have polished existing international human rights instruments and norms and developed some core principles to guide the design and implementation of access to information relevant-laws and practices.

I would like to highlight some key aspects here:

As the International Covenant on Civil and Political Rights, Article 19, paragraph 3 stipulates, any restrictions on the freedom of expression and opinions, including the right to access information, should only be **provided by law**. Such restrictions should not be imposed on an arbitrary basis.

All information held by public bodies should be guided by the principle of **maximum disclosure** and this presumption may be limited only in very limited circumstances.

Application of certain restrictions in access to information should be based on **limited scope of exceptions**. Justifications for the denial of access to information should be clearly and narrowly defined. Non-disclosure of information must be justified on a case-by-case basis. Exceptions should be considered only when a risk of substantial harm is evidently envisioned and when the projected harm is greater than the overall public interest in having access to the information.

We should be also mindful about the **processes to facilitate or limit access**. Procedures to request information should ensure fair and rapid processing. The law should also provide for an individual right of appeal to an independent administrative body in respect of a refusal by a public body to disclose information.

It should be also duly noted that **disclosure takes precedence**. States should amend or repeal laws that are inconsistent with this principle. The regime of exceptions provided for in the freedom of information law should be comprehensive and other laws should not be permitted to extend it.

Last but not least, States should provide **protection for those who disclose relevant information**. Right to information laws should provide protection for officials and individuals who, in good faith, disclose information pursuant to right to information legislation from any legal, administrative or employment-related sanctions for releasing information on wrongdoing, including the commission of a criminal offence or the failure to comply with a legal obligation. Furthermore, special protection should be provided for those release information concerning human rights violations.

I hope these human rights standards and principles provide added value to the Task Force's discussion on defining restrictions to access to environmental information with an aim to protecting and promoting the right to access information to the maximum extent possible.

On another note, I am pleased to share that my annual report to the Human Rights Council, to be presented in September 2015, will focus on the right to access information in the field of sound management of hazardous substances and waste.

Madame Chairperson, Excellencies, distinguished delegates, ladies and gentlemen,

I thank you for giving me an opportunity to take the floor at this important meeting, and I look forward to working with you all in the coming years.

Thank you again.