

AG/RES. 2514 (XXXIX-O/09)

ACCESS TO PUBLIC INFORMATION: STRENGTHENING DEMOCRACY^{1/}

(Adopted at the fourth plenary session, held on June 4, 2009)

THE GENERAL ASSEMBLY,

RECALLING resolutions AG/RES. 1932 (XXXIII-O/03), AG/RES. 2057 (XXXIV-O/04), AG/RES. 2121 (XXXV-O/05), AG/RES. 2252 (XXXVI-O/06), AG/RES. 2288 (XXXVII-O/07), and AG/RES. 2418 (XXXVIII-O/08), “Access to Public Information: Strengthening Democracy”;

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly as it pertains to the status of implementation of resolution AG/RES. 2418 (XXXVIII-O/08), “Access to Public Information: Strengthening Democracy” (AG/doc.4992/09 add. 1) ;

CONSIDERING that Article 13 of the American Convention on Human Rights provides that “[e]veryone 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”;

CONSIDERING ALSO that Article 19 of the Universal Declaration of Human Rights includes the right “to seek, receive and impart information and ideas through any media and regardless of frontiers”;

^{1.} The Bolivarian Republic of Venezuela reaffirms the statement made in the footnote to resolution AG/RES. 2288 (XXXVII-O/07) as we consider that access to public information in the hands of the state must be consonant with Article 13 of the American Convention on Human Rights, which establishes that: “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.” Venezuela maintains that a democratic system must guarantee access to public information and must allow all citizens, without exception, to seek, receive, and impart information. When a citizen seeks information, he or she exercises, consciously and fully, the right to access information and the state must foster the adoption of legislative provisions that guarantee that right. Furthermore, the state must guarantee that same right for the poor, the underprivileged, and the socially excluded, based on the principle of equality before the law. Accordingly, it is necessary “to instruct the IACHR to conduct a study on how the state can guarantee to all citizens the right to receive public information in the framework of the principle of transparency and objectivity, in full exercise of the right to freedom of expression and as an effective mechanism of participation.” Along those lines, we underscore the conclusions and reflections of the special meeting on the right to public information, held on April 28, 2006, within the framework of the OAS, in which it was recognized that the media are responsible for ensuring that citizens receive, without distortions of any type, information provided by the state. Venezuela laments the fact that the message transmitted by the poor is again falling on deaf ears and it shares the views of those who denounce that denying access to information to the poor perpetuates their social and economic ostracism. For that reason, Venezuela again urges the Inter-American Commission on Human Rights to take the initiative and, under the powers vested in it by the American Convention on Human Rights, conduct the aforementioned study and report its findings to the General Assembly of the Organization of American States at its next regular session.

RECALLING that the Plan of Action of the Third Summit of the Americas, held in Quebec City in 2001, indicates that governments will ensure that national legislation is applied equitably to all, respecting freedom of expression and access to public information by all citizens;

EMPHASIZING that Article 4 of the Inter-American Democratic Charter states that transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy;

REAFFIRMING the public nature of the acts and decisions of government organs and of the reasons for them, the documents supporting them or constituting a direct and essential complement to them, and the procedures used to promulgate them, without prejudice to exceptions that may be established in accordance with domestic law;

NOTING that, in the Declaration of Nuevo León, the Heads of State and Government affirmed that access to information held by the state, subject to constitutional and legal norms, including those on privacy and confidentiality, is an indispensable condition for citizen participation and promotes effective respect for human rights, and that, in that connection, they are committed to providing the legal and regulatory framework and the structures and conditions required to guarantee the right of access to public information;

CONSIDERING that the General Secretariat has been providing support to member state governments in dealing with the topic of access to public information;

NOTING the work accomplished by the Inter-American Juridical Committee on this issue, in particular resolution CJI/RES. 123 (LXX-O/07), "Right to Information," attached to which is the report entitled "Right to Information: Access to and Protection of Information and Personal Data in Electronic Form" (CJI/doc.25/00 rev. 2), and resolution CJI/RES. 147 (LXXIII/08), "Principles on the Right of Access to Information";

RECOGNIZING that the goal of achieving an informed citizenry must be rendered compatible with other societal aims, such as safeguarding national security, public order, and protection of personal privacy, pursuant to laws passed to that effect;

RECOGNIZING ALSO that democracy is strengthened through full respect for freedom of expression, access to public information, and the free dissemination of ideas, and that all sectors of society, including the media, through the public information they disseminate to citizens, may contribute to a climate of tolerance of all views, foster a culture of peace and non-violence, and strengthen democratic governance;

TAKING INTO ACCOUNT the important role civil society can play in promoting broad access to public information;

TAKING NOTE of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights (IACHR); and of the Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE (Organization for Security and Co-operation in Europe) Representative on Freedom of the Media, the Special Rapporteurship on Freedom of Expression of the Inter-American Commission on Human Rights,

and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression, adopted in 2006;^{2/}

TAKING NOTE ALSO of the reports of the IACHR Special Rapporteurship on Freedom of Expression on the situation of access to information in the Hemisphere for 2003, 2004, 2005, 2006, 2007, and 2008;

TAKING NOTE FURTHER of the report of the special meeting of the Committee on Juridical and Political Affairs (CAJP), held at the headquarters of the Organization of American States on December 15, 2008, with the participation of the member states, the General Secretariat, and civil society representatives, to examine the possibility of preparing an inter-American program on access to public information (CP/CAJP-2707/09);

RECALLING initiatives taken by civil society regarding access to public information, in particular, the Declaration of Chapultepec, the Johannesburg Principles, the Lima Principles, and the Declaration of the SOCIUS Peru 2003: Access to Information, as well as the outcomes of the Regional Forum on Access to Public Information, of January 2004; the Atlanta Declaration and Plan of Action for the Advancement of the Right of Access to Information, sponsored by the Carter Center, which addresses ways of advancing the implementation and exercise of the right of access to information; and the results of the International Seminar on Press, Litigation, and the Right to Public Information, held in Lima, Peru, on November 28, 2007;

BEARING IN MIND therefore the Americas Regional Conference on the Right of Access to Information, organized by the Carter Center and held in Lima, Peru, from April 28 to 30, 2009;

RECALLING that the media, the private sector, and political parties can likewise play an important role in facilitating access by citizens to information held by the state;

TAKING INTO ACCOUNT the Report on the Questionnaire regarding Legislation and Best Practices on Access to Public Information (CP/CAJP-2608/08), which is a contribution to the study of best practices concerning access to public information in the Hemisphere; and

WELCOMING WITH INTEREST the study "Recommendations on Access to Information," submitted to the CAJP on April 24, 2008 (CP/CAJP-2599/08), a study organized by the Department of International Law pursuant to resolution AG/RES. 2288 (XXXVII-O/07), "Access to Public Information: Strengthening Democracy,"

RESOLVES:

^{2.} Reservation by Nicaragua: The Government of Nicaragua wishes to place on record its commitment to the promotion and protection of human rights, as enshrined in the Political Constitution of our country. At the same time, it considers it necessary for the Inter-American Commission on Human Rights not to apply a double standard in its analysis of the situation of human rights in the region. The elements of transparency, veracity of sources of information, and the impartiality and universality thereof would contribute to greater objectivity in the work of the Commission; therefore, its recommendations should not be used as an instrument to pressure some states.

1. To reaffirm that everyone has the right to seek, receive, access, and impart information and that access to public information is a requisite for the very exercise of democracy.

2. To urge member states to respect and promote respect for everyone's access to public information and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.

3. To encourage member states, in keeping with the commitment made in the Declaration of Nuevo León and with due respect for constitutional and legal provisions, to prepare and/or adjust their respective legal and regulatory frameworks, as appropriate, so as to provide the citizenry with broad access to public information.

4. Also to encourage member states, when preparing or adjusting their respective legal and regulatory frameworks, as appropriate, to provide civil society with the opportunity to participate in that process; and to urge them, when drafting or adjusting their national legislation, to take into account clear and transparent exception criteria.

5. To encourage member states to take the necessary measures, through their national legislation and other appropriate means, to make public information available electronically or by any other means that will allow ready access to it.

6. To encourage civil society organizations to make information related to their work available to the public.

7. To encourage states to consider, when they are designing, executing, and evaluating their regulations and policies on access to public information, where applicable, with the support of the appropriate organs, agencies, and entities of the Organization, implementing the recommendations on access to public information contained in the study organized by the Department of International Law of the Secretariat for Legal Affairs and submitted to the Committee on Juridical and Political Affairs (CAJP) on April 24, 2008.

8. To instruct the Permanent Council, in the framework of the CAJP, to:

- a. Convene in the second half of 2010 a special meeting with the participation of the member states, the General Secretariat, and representatives of civil society to examine the possibility of preparing an inter-American program on access to public information, bearing in mind the recommendations contained in the aforementioned study;
- b. Update the Report on the Questionnaire regarding Legislation and Best Practices on Access to Public Information (CP/CAJP-2608/08), requesting to that end contributions from member states, the Special Rapporteurship for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), the Inter-American Juridical Committee (CJI), the Department of International Law, the Department of State Modernization and Good Governance of the Secretariat for Political Affairs, interested entities and organizations, and civil society representatives; and

- c. Include in the study mentioned in the preceding subparagraph the right of all citizens to seek, receive, and disseminate public information.

9. To instruct the Department of International Law to draft, in cooperation with the CJI, the Special Rapporteurship for Freedom of Expression of the IACHR, and the Department of State Modernization and Good Governance, and with the cooperation of the member states and civil society, a model law on access to public information and a guide for its implementation, in keeping with international standards in this field.

10. To instruct the Department of State Modernization and Good Governance, and to invite the Special Rapporteurship for Freedom of Expression of the IACHR, to support the efforts of member states that request such support in the design, execution, and evaluation of their regulations and policies with respect to access by citizens to public information.

11. To instruct the Department of International Law to update and consolidate the studies and recommendations on access to public information and the protection of personal data, using as a basis the contributions of member states, the organs of the inter-American system, and civil society.

12. To instruct the Special Rapporteurship for Freedom of Expression of the IACHR to continue to include in the Commission's Annual Report a report on the situation regarding access to public information in the region.

13. To instruct the General Secretariat to identify new resources to support member states' efforts to facilitate access to public information; and to encourage other donors to contribute to this work.

14. To request the Permanent Council to report to the General Assembly at its fortieth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.