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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

**Written statement* submitted by Human Rights Advocates, Inc. (HRA),
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 February 2009]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

**Access to Public Information Laws: tools that improve citizen participation
and the work of the Human Rights Defenders**

1. Human Rights Advocates believes the adoption of laws on access to public information promotes public accountability, and leads to a transparent government, and benefits citizen and the participation of human rights defenders.
2. Article 6 of the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (DDDH) states: “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”. ¹ The Declaration contains principles and rights that are recognized in other international human rights instruments.
3. International bodies responsible for promoting and protecting human rights have underlined the fundamental human right to access information held by public authorities as well as the need for effective legislation to ensure, in practice, respect for that right. The International Covenant on Civil and Political Rights (ICCPR) guarantees the rights of freedom of expression and association. Article 19 states: “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. In the same sense, Article 19 of Universal Declaration of Human Rights states: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas.”
4. In this sense, the right to information is one aspect of the guarantee of freedom of expression. Human rights defenders need a voice to express and identify where violations of human rights occur, while at the same time to support measures that favor their protection. ² A requirement for the full enjoyment of freedom of expression is access to public information helpful to support a grievance or view.

Access to Public Information Laws: tools for the HRD

5. Adequate and timely information is a requirement for a meaningful dialogue between citizens, human rights defenders, and governments. If participants do not have such information it is difficult to build a common framework of understanding that supports the protection of rights. Conversely, if a dialogue is build on equal terms, parties may go beyond prejudices about each other’s interests, and build alliances to cope with the challenges facing the protection of human rights. For these reasons it is essential to enact legislation that guarantees citizens their right to monitor their government and have information for dialogue.

¹ G.A., N.U., A/RES/53/144, 8 March 1999.

² Freedom of Information: A Comparative Legal Survey, Pg. 17, by Toby Mendel. UNESCO 2008, 2th Ed.

6. Laws that protect the right of access to information have existed for more than 200 years. Sweden has one since 1766, although few in the world have more than 20 years of existence. There is currently a boom in the enactment of legislation protecting the right of access to information. The growing tendency around the globe to enact legislation on the right to information is indicative of its importance to the construction of democratic participation.³
7. According to *Privacy International* approximately 140 countries have adopted or are in the process of adopting comprehensive freedom of information acts that allow their citizens to access public records.⁴ In Central America most countries have such laws, with the exception of El Salvador.⁵ Although two different bills have been submitted to the legislative body of that country, the debate over such a law has not yet begun. However, the need for the law to enable civil society to monitor government activity has become increasingly evident.⁶
8. A Law on Access to Public Information also helps improve the links between government and the people, as may happen, for example, in the electoral context. It would allow voters to assess their government's performance and thus better inform their vote in the electoral process. The Human Rights Committee adopted General Observation No. 25 to the ICCPR which states: "Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected (...) In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential."⁷
9. The United States of America has had a Freedom of Information Act for over 40 years. The law and its implementation have strengths and weaknesses. Civil society organizations have denounced the secrecy of the previous administration.⁸ The new administration of President Barack Obama has issued executive orders promoting higher standards for open government, including the principle of maximum disclosure.⁹ This action has generated on positive expectations among U.S. and international organizations about the transition to a transparent government. At the same time they expect that these actions serve as a catalyst for change in other countries.¹⁰

Some perils in the work of Human Rights Defenders

³ Ibid., pg. 33

⁴ Global Freedom of Information Map, December 6, 2008. Available at: <http://www.privacyinternational.org/>
⁵ Rodrigo Baires Quezada, *El Salvador reprobado en Acceso a la Información*, digital newspaper El Faro, December 2007, available at: http://www.elfaro.net/secciones/Noticias/20071210/noticias4_20071210.asp

⁶ Centro de Estudios Jurídicos, *Ley de Acceso a la Información para El Salvador*, La Prensa Grafica, September 2008, available at: <http://www.laprensagrafica.net/opinion/1147504.asp>

⁷ Human Rights Committee, General Comment No. 25, Para. 12 and 25. U.N. Doc. HRI/GEN/1/Rev.7 at 194 (1996) Ibid. Parra. 25

⁸ Obama firma sus primeras órdenes ejecutivas, El País, January 2009. Available at: http://www.elpais.com/articulo/internacional/Obama/firma/primeras/ordenes/ejecutivas/elpepuint/20090121elpepuint_12/Tes

⁹ Executive Order 13490 of January 21, 2009. Federal Register /Vol. 74, No. 15 /Monday, January 26, 2009 / Presidential Documents. Available at: <http://edocket.access.gpo.gov/2009/pdf/E9-1719.pdf>

¹⁰ Open Letter by Members of Global Openness Community Welcoming President Obama's Initiative on Transparency. Available at: http://www.sunshineweek.org/sunshineweek/global_foi_letter

10. The work of human rights defenders is not exempt from danger. Their actions are often restricted by national laws that conflict with international norms protecting human rights.¹¹ For example, the Ethiopian Parliament recently adopted the Law of Proclamation for the Registration and Regulation of Charities and Societies.¹² The object of this legislation is to regulate foreign development assistance. Foreign aid organizations and local groups that receive more than 10 percent of their funding from foreign entities are forbidden from working in such areas as human rights and equality. This law limits the enjoyment of the right to freedom of opinion and expression, association and movement, and limits the work of human rights defenders. Moreover, Ethiopia does not have a legislative framework which guarantees citizens access to public information.
11. Other violations to the rights of human rights defenders directly affect their lives. The recent killings of human rights lawyer Stanislav Markelova and journalist Anastasia Babúrova illustrate how vulnerable are HRD in Russia.¹³ The *Institute for Freedom of Information Development* has published a report on the state of access to information in the Russian Federation. The study identified contradictions between the constitutional right –contained in Article 29- that entitles every person to “seek, get, transfer, produce and disseminate information by any legal means” and the actual official practices.¹⁴ The enforcement of rules on access to information would improve the transparency of government as well as favor the protection of human rights defenders.
12. The obligation of States does not end with enacting access to public information laws, but also stems to establishing the mechanisms necessary to ensuring their implementation. In addition to this, as stated by UNESCO, “it is not enough for individuals simply to have access to whatever information the State already holds. The State must also ensure that information about past human rights violation is readily available.”¹⁵ This type of legislation provides additional government accountability and disclosure of information of past human rights violations.¹⁶

Recommendations

13. HRA urges all States to take the measures necessary to give full effect to the rights of freedom of expression and association. In particular, it recommends the enactment of laws to facilitate access to public information, advance an open government and, foster citizen and human rights defender’s participation.

11 Fact Sheet No. 29, Pg. 11, *Human Rights Defenders: Protecting the right to Defend Human Rights*. Available at: <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>

12 Jaclyn Belczyk, *Ethiopia parliament approves controversial legislation regulating foreign charities*, JURIST, web-based legal news, University of Pittsburgh School of Law. January 7, 2009. Available at: <http://jurist.law.pitt.edu/paperchase/2009/01/ethiopia-parliament-approves.php>

13 Pilar Bonet, *Rusia: Defensores Indefensos El País*, 25 de Enero 2009. Available at: http://www.elpais.com/articulo/internacional/Rusia/defensores/indefensos/elpepuint/20090125elpepuint_11/Tes

14Russia: Access to Information faces contradiction. Octubre 28, 2008. Available at: http://freedominfo.org/documents/russia_report_summary.pdf

15 Freedom of Information: A Comparative Legal Survey, Pg. 27, by Toby Mendel. UNESCO 2008.

16 Who wants to forget? Truth and Access to Information about past Human Rights Violations (London: Article 19, 2000). Available at: <http://www.article19.org/pdfs/publications/freedom-of-information-truth-commissions.pdf>

14. HRA recommends the Special Rapporteur to assess the impact of such legislation on the work of human rights defenders.
15. HRA recommends that the Special Rapporteurs on the situation of Human Rights Defenders and of the Promotion and Protection of the Right to Freedom of Opinion and Expression, when appropriate, coordinate their communications to countries as to strengthen the idea that those human rights are intimately interrelated.
