

FREEDOM OF INFORMATION AND THE RIGHT TO ENVIRONMENTAL PROTECTION

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Abstract

Freedom of information is essential to exercise the right to environmental protection, which belongs to all people in the world and deserves a special attention as they will not be able to exercise it without access to environmental information. The United Nations Human Rights Council adopted a resolution on human rights and climate change, which calls for increased international dialogue on the adverse impacts of climate change with an emphasis on those States with the greatest need of assistance from the international community. However, the effective environmental protection is only possible through the active participation of the public, so citizens should be enabled to take their own responsibility for the environment more seriously. In this sense, the Aarhus Convention stipulates important rights for the participation of citizens in environmental protection and establishes a number of rights of the public (individuals and their associations) with regard to the environment. This paper aims to analyze whether international law can help to promote the access to environmental information in an efficient way. The adopted methodology comprehends a deductive approach and techniques of qualitative, theoretical, explanatory and bibliographic research, by consulting books, websites, journal articles, news and official documents. The results show a critical view of the current rules and propose suggestions on how the issue of access to environmental information should be addressed in order to benefit the whole international community by promoting access to world's environmental information.

Keywords: Freedom of information, Environmental Protection, International law

Introduction

The value of the information increases every day and it is essential to exercise the right to the environmental protection, so international law plays a very important role to help implement freedom of information.

Although the internet represents a revolutionary method for people to interact, informing and being informed, it is essential that governments use this tool appropriately.

This work seeks to discuss how international law can help promote freedom of information towards the exercise of environmental protection in an efficient way and the adopted methodology comprehends a deductive approach and techniques of qualitative, theoretical, explanatory and bibliographic research, by consulting books, websites, journal articles, news and official documents.

Freedom of Information and International Law

In 1946, the United Nations (UN) General Assembly adopted the expression ‘Freedom of Information (FOI)’ in its Resolution 59 (UN, 1946) meaning the right to gather, transmit and publish news anywhere and everywhere without fetters. FOI was then recognized as a fundamental human right and as the touchstone of all the freedoms to which the United Nations is consecrated.

Brazil held the UN Conference on Environment and Development in 1992, most known as ‘Rio 92’, which led to Rio Declaration on Environment and Development. Its Principle 10 heralds that each individual shall have appropriate access to information concerning the environment that is held by public authorities at the national level, including information on hazardous materials and activities in their communities (UNEP, 1992).

Environmental information was first defined by the Aarhus Convention (UNECE, 1998) as any information in written, visual, aural, electronic or any other material form on:

(a) the state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;

(c) The state of human health and safety, conditions of human like, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above”.

The UN General Assembly keeps discussing access to environmental information and approving new Resolutions, but they are basically

recommendations. Rio Declaration Principle 10 demands rules within domestic legal orders, while the Aarhus Convention did state the right of access to environmental information. However, it has only 47 Parties (46 countries and the European Union). So, regardless of the international effort to spread the access to environmental information, this issue still depends a lot on domestic policies.

Transparency: Information Request *versus* Open Data

Due to the fact that environmental information is not personal, but a kind of public information, providing access to environmental information requires the information to be published, which relates to transparency, a word whose meaning denotes two necessary and jointly sufficient conditions: the visibility of information, and its inferability – the ability to draw accurate conclusions from it (Michener & Bersch, 2013).

When it comes to visibility of information, open data came to life in 2009 when several governments announced initiatives to provide greater public access to government data sets, which went beyond the data contained in official publications or releases of summary datasets to providing unrestricted access to administrative records and unit record data, limited only by the necessary precautions to preserve anonymity where confidentiality had been promised as a condition of data collection (Belkindas & Swanson, 2014).

Open data is data that can be freely used, re-used and redistributed by anyone – subject only, at most, to the requirement to attribute and share alike. This definition comprehends:

- “Availability and Access: the data must be available as a whole and at no more than a reasonable reproduction cost, preferably by downloading over the internet. The data must also be available in a convenient and modifiable form;
- Re-use and Redistribution: the data must be provided under terms that permit re-use and redistribution including the intermixing with other datasets;
- Universal Participation: everyone must be able to use, re-use and redistribute - there should be no discrimination against fields of endeavour or against persons or groups. For example, ‘non-commercial’ restrictions that would prevent ‘commercial’ use, or restrictions of use for certain purposes (e.g. only in education), are not allowed” (Open Knowledge, n.d.).

The adoption of the open data concept through a proactive disclosure is the most transparent way to spread environmental information because it eliminates the need of a request by the citizens, which can take a long time to be attended. It is true that many countries do have national rules on access to information, but when it comes to environmental information it is

essential to have open information by means that data should be available independently of a request.

On the other hand, the inferability of information implies that people will be able to understand the data's meaning, so that the set of characters can turn into knowledge. Data, information and knowledge have different concepts in the universal domain: "data are sets of signs that represent empirical stimuli or perceptions, information is a set of signs which represent empirical knowledge, and knowledge is a set of signs that represent the meaning (or the content) of thoughts that the individual justifiably believes that they are true" (Zins, 2007, p. 487). So, just publishing data is not enough also: it is important to show the information in a way people will be able to understand.

The North American Agreement on Environmental Cooperation (Commission for Environmental Cooperation, 1993) could also provide a useful example: under its Articles 14 and 15, citizens and non-government organizations can raise claims, known as citizen submissions, against the Parties to the agreement alleging that a Party is failing to effectively enforce its environmental law. Goldschmidt (2002, p. 345) recognizes the citizen submissions as an example of transparency and public participation in international environmental agreements.

It is also important to point out that the role of freedom of information laws should not be resumed to access to information and participation, as human activities often have led to unforeseen impacts on the environment, and once environmental damages occur, the cost for environmental restoration may be extraordinarily high. This is why the environmental impact assessment (EIA) procedure is required to be carried out before any action that may have an impact on the environment is initiated. In the course of EIA, information on possible risks is collected and disclosed to the public concerned (Morishima, 2007, p. 194).

The right to environmental protection belongs to people from all over the world and the language in which the information is published can also make hard for them to access it and be aware of the risks we are facing regarding climate change. In this sense, international organizations such as Article 19, Avaaz and Greenpeace play such an important role by helping people to understand the gravity of the problems we are facing nowadays, as well as encouraging them to participate on a number of discussions and requests.

Conclusion

The freedom of information has long been recognized, since the Resolution 59 adopted by the UN General Assembly in 1946. However, the concern with environmental information has considerably increased after

Principle 10 of the Rio Declaration on Environment and Development in 1992. In 1998, the Aarhus Declaration established the right of access to environmental information.

A number of countries have domestic laws on access to information that apply to environmental information, but these rules could yet be improved in order to promote open data, so that citizens do not depend on information requests to be aware of the environmental scenario. Also, the correct comprehension of the rules requires the availability of efficient tools to help people interpret them, and international organizations play a very important role in this sense.

Also, the countries should adopt the necessary measures in order to eliminate bureaucracy and improve Open Government as a way to fight climate change together with citizens.

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