

Day 4 – Thursday, 29 November 2007
Parallel Sessions – Session 2A 9.00am-10.30am

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Organisation: Article 19

Presentation Title: FOI and Countries in Transition: Off the Shelf
or Custom Built? From Policy to Practice

This paper assesses the extent to which there are models for the right to information which can be applied across the board, with particular reference to Asia. I argue that as a fundamental human right, the basic principles which underpin the right to information, like all human rights, are universal and applicable to all countries. Key principles are:

- that there is a right to enjoy a presumption in favour of a right to access information held by public bodies, defined broadly (everyone, all information, all public bodies);
- that this right is ensured through both proactive publication and a (simple, low-cost and rapid) request procedure;
- that the grounds for refusing access are clear, narrow and harm-based; and
- that there is an effective right to appeal any refusal to provide information to an independent body.

A number of factors come into play regarding implementation of these principles through legislation. Formal differences – such as different legal systems using different mechanisms to achieve the same thing – are not addressed in the paper. Countries in which basic principles of the rule of law do not apply are also not addressed, although this is central to effective realisation of the right to information. In such cases, legislation is more of a political than legal phenomenon and it is difficult to make generalisations.

Otherwise, I argue that an off-the-shelf, or largely off-the-shelf, approach may be adopted to give legislative effect to certain principles, while others require a more context-tailored approach. Thus, while different countries have taken different approaches towards defining the scope of information covered by their right to information laws, these differences are better characterised as more or less progressive, in terms of their breadth, than as linked to external political, historical, cultural or other contextual characteristics. The same is true, for the most part, of the scope of public bodies, procedures and exceptions.

The matter is very different, however, when it comes to appeals mechanisms, which need to be rooted in the social and political reality of the country, particularly when it comes to promoting their independence. Indeed, this is often the most challenging aspect of drafting right to information legislation.

Questions:

1. How do you assess the argument that rushing forward with excessively progressive legislation will create an official backlash and that a gradual approach is needed to keep officials positively engaged, which is essentially a criticism of the stance taken above?
2. Is it possible to promote independent administrative appeals mechanisms in countries which lack a tradition of this?