

XIX 

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION



Changing the
Climate for
Freedom of
Expression and
Freedom of
Information

*Human Rights Responses to Climate Change
Policy Paper
December 2009*



Changing the Climate for Freedom of Expression and Freedom of Information

Human Rights Responses to Climate Change

POLICY PAPER

December 2009

ISBN: 978-1-906586-12-6

ARTICLE 19 · Free Word Centre · 60 Farringdon Road · London EC1R 3GA · United Kingdom
Tel +44 207 324 2500 · Fax +44 207 490 0566 · info@article19.org · www.article19.org

Cover photo courtesy of Sumaiya Ahmed

Table of Contents

I. Introduction	3
II. The Role of the Right to Freedom of Expression and Freedom of Information in Current Climate Change Negotiations	6
III. International Standards on Freedom of Expression, Including Freedom of Information, Relevant to Climate Change Action	8
1. Freedom of expression.....	8
2. Freedom of information	10
a. The Aarhus Convention	11
b. International Jurisprudence	14
c. The Content and Meaning of the Right to Freedom of Information	15
IV. Effective Responses to Climate Change: The role of freedom of expression and Freedom of Information	17
1. The free flow of information and public debate.....	17
2. Free and Independent Media.....	20
3. Transparency and accountability.....	21
4. The Global Economy of Information.....	22
5. The Global Economy of Participation.....	24
V. The Right to Know and the Right to Speak: Recommendations for Climate Change Responses.....	25
1. Legal framework for protection of information and expression rights.....	25
2. Promoting Aarhus Principles in International Agreements	26
3. Disclosure and Updates of High Quality Information on Climate Change	26
4. Protecting and Promoting the Free Flow of Information and Public Debates.....	28
5. Promoting the Participation of Vulnerable Groups	28
6. Transparency and Accountability	29
7. The Political economy of information and participation.....	30

Summary

In this paper, ARTICLE 19 sets forth its position that the rights to freedom of expression and freedom of information are crucial to the understanding of climate change and the formulation and implementation of climate change policy responses. ARTICLE 19 argues that government action against climate change is enhanced by maximising public availability of information to ensure public participation and facilitate full public debate.

The paper sets out international and regional law on the rights to freedom of expression and freedom of information especially in relation to climate change and environment issues with a particular focus on the Aarhus Convention. It highlights the key role played by freedom of expression and freedom of information in the development and implementation of effective climate change strategies. It details numerous violations of freedom of expression and freedom of information rights; including freedom of the media, the freedom of assembly, freedom from censorship, and an imbalance of information across countries.

The paper makes recommendations to state and other actors, notably the media, to ensure the rights to freedom of expression and freedom of information are appropriately integrated into climate change strategies. These include recommendations obliging states to abide by their international legal obligations when negotiating international climate change agreements, to establish legal and regulatory frameworks to protect these rights domestically, and to promote the importance of up-to-date, accurate information in informing national and international decision-making on climate change issues. It also recommends transparency in the transfer of resources from developed countries to developing countries, structural procedural reforms to ensure enhanced participation of developing countries in negotiations on mitigation strategies, as well as the promotion of genuine public participation within states, inclusive of vulnerable groups and indigenous peoples in particular.

I. Introduction

1. Climate change is widely recognised as one of the greatest threats to humanity¹, presenting the international community with an unprecedented though not insurmountable challenge. Climate change will have an adverse effect on human populations by straining access to clean water and sufficient food supplies as well as affecting the stability of public health, ecosystem resources and the security of settlements.²
2. For example, it is projected that Africa will be especially affected by climate change by 2020, with between 75 and 250 million people exposed to increased water stress whilst yields from rain-fed crops could be reduced by up to 50%. The health of millions of people is expected to be affected through increased malnutrition and diarrhoeal diseases, injury and disease due to extreme weather events, and increased incidents of cardio-respiratory diseases caused by higher concentrations of ground-level ozone in urban areas. In addition, the resilience and adaptive capacity of governments and peoples to these changes will be reduced by non-climate strains. These strains include unequal access to resources, food insecurity, trends in economic globalisation, conflict and the HIV/AIDS crises.
3. On the basis of burgeoning scientific evidence on climate change and its projected impact upon humanity, a broad range of civil society organisations have led growing calls for urgent responsive action at a global level.³ These calls have culminated in the months and weeks leading up to the 15th Conference of the Parties (COP 15) to the 1992 UN Framework Convention on Climate Change (“UNFCCC”) and the 5th Meeting of the Parties to the Kyoto Protocol which take place in December 2009 in Copenhagen (“the Copenhagen Conference”),⁴ arguably the “most important meeting since the end of the second world war”.⁵ However, an agreement on a legally binding framework for combating climate change post-2012,⁶ which is the essential and long-held objective of this meeting, will be

¹ Climate change is the term commonly used to describe the changes to the Earth’s climate caused by human activity, specifically greenhouse emissions such as carbon dioxide and methane, which build up in the atmosphere and trap heat. As human activity increases the concentration of these gases in the atmosphere far beyond their natural levels, much more heat is trapped. The term climate change is therefore often used interchangeably with global warming. It is noted that climate change in the usage of the Intergovernmental Panel on Climate Change refers to a change in the state of the climate that can be identified (e.g. using statistical tests) by changes in the mean and/or the variability of its properties and that persists for an extended period, typically decades or longer. It refers to any change in climate over time, whether due to natural variability or as a result of human activity. This usage differs from that in the UNFCCC where climate change refers to a change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods.

² Fourth Assessment Report of the Intergovernmental Panel on Climate Change (“IPCC”), *Climate Change 2007: Synthesis Report An Assessment of the Intergovernmental Panel on Climate Change*, available at http://www.ipcc.ch/publications_and_data/publications_ipcc_fourth_assessment_report_synthesis_report.htm. See also Nobel lecture by R K Pachauri, Chairman of the IPCC, Oslo, 10 December 2007, available at http://nobelprize.org/nobel_prizes/peace/laureates/2007/ipcc-lecture_en.html.

³ This has taken place most notably through the coalition of non-governmental organisations involved in the tckctck campaign, which includes organisations such as Greenpeace, WWF, Oxfam, Global Humanitarian Forum, Christian Aid and Amnesty International. See <http://tckctck.org/partners>.

⁴ The Copenhagen Conference will encompass the 15th Conference of the Parties to the UNFCCC and the 5th Meeting of Parties (COP/MOP 5) to the Kyoto Protocol. With 192 Parties, the UNFCCC has near universal membership and is the parent treaty of the 1997 Kyoto Protocol. As of 30 June 2009, the Kyoto Protocol has 186 countries and 1 regional organisation (the European Community) that have deposited instruments of ratification, accession, approval or acceptance. Under the Protocol, highly industrialised countries and countries undergoing the process of transition to a market economy, have legally binding emission limitation and reduction commitments. The ultimate objective of both treaties is to stabilize greenhouse gas concentrations in the atmosphere at a level that will prevent dangerous human interference with the climate system.

⁵ International Institute for Environment and Development Briefing, *COP 15 for journalists: a guide to the UN climate change summit*, November 2009, available at <http://www.iied.org/pubs/display.php?o=17074IIED>

⁶ This was agreed in the “roadmap” adopted at the UN Climate Change Conference in Bali in December 2007. 2012 is when the Kyoto Protocol’s first commitment period ends.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

difficult if not improbable to achieve.⁷ It is likely that negotiations at the Copenhagen Conference will therefore continue into 2010 when a legally binding agreement will hopefully be created.

4. Beyond any such agreement, it is predicted that similar intergovernmental agreements setting newer, more ambitious binding targets shall need to be negotiated and adopted in future years as the effects of climate change on humanity become more apparent. Therefore, notwithstanding the importance of the Copenhagen Conference itself, climate change will be an important item on the international agenda for the foreseeable future.
5. In this policy paper, ARTICLE 19 sets out the crucial importance of freedom of expression, including the right to freedom of information, to climate change responses. It is intended to be relevant and applicable to the formulation of climate change responses at the Copenhagen Conference and, critically, to any initiatives subsequent to it. This paper is also based on the understanding that the relationship between human rights generally, climate change and development is complex and multi-dimensional:
 - 5.1. *First*, climate change negatively impacts certain rights in particular – the right to life, the right to adequate food, the right to water, the right to health, the right to adequate housing and the right to self-determination. These adverse effects are felt across the world, though small-island and low-lying states are at highest risk. Moreover, the human rights effects of climate change impact most severely those individuals in the most vulnerable situations due to factors of poverty, gender, age, minority status and disability.⁸ Yet, while climate change impacts the realisation of economic and social rights most obviously, the realisation of other human rights, including the rights to freedom of expression and freedom of information, are simultaneously affected.
 - 5.2. *Second*, certain measures aimed at addressing climate change may have an impact upon the realisation of human rights. For example, the increased reliance on bio-fuels potentially impacts upon the right to food.
 - 5.3. *Third*, human rights, in particular the rights to freedom of expression, freedom of information and participation in decision-making processes are relevant to the development and execution of responses to climate change. As argued by the OHCHR recently, a human rights-based approach to climate change action would “strengthen policymaking in the area of climate change, promot[e] policy coherence and sustainable outcomes.”⁹
6. ARTICLE 19 argues that freedom of expression, including the right to freedom of information, are essential for properly understanding the human effects of climate change; and in developing approaches for identifying which populations are at risk from climate change, how state and non-state actors should act to protect the human rights of these people and how such actors should manage the consequences of climate change to protect their human rights.¹⁰

⁷ David Adam, Jonathan Watts and Patrick Wintour, “Copenhagen climate talks: No deal, we’re out of time, Obama warns” *Guardian* 15 November 2009, available at <http://www.guardian.co.uk/environment/2009/nov/15/copenhagen-climate-deal-obama>; Louise Gray, “Copenhagen Climate Change Agreement Is Impossible”, *Telegraph* 15 November 2009, available at <http://www.telegraph.co.uk/earth/copenhagen-climate-change-confe/6574604/Copenhagen-climate-change-agreement-is-impossible.html>

⁸ IPCC AR4 WGII Report, p 374, available at <http://www.ipcc.ch/ipccreports/ar4-wg2.htm>

⁹ Report of the Office of the High Commissioner of Human Rights on the relationship between climate change and human rights A/HRC/10/61, 15 January 2009, para 80.

¹⁰ The key provisions of international human rights law are: Article 19 of the Universal Declaration of Human Rights, which states “Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”; and Article 19(2) of the International Covenant on Civil and Political Rights states “Everyone shall have the right to freedom of

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

7. Alongside other fundamental human rights, the right to freedom of expression and freedom of information should provide “the legal baseline for how climate change is tackled”.¹¹ Publicly accessible information, public participation and public debates on climate change issues are key practical tools for enhancing governmental action against global warming, and should therefore be included as crucial components of any climate change strategy.
8. This policy paper offers substantive analysis and recommendations on climate change responses from the perspective of freedom of expression and the right to freedom of information. It should therefore be viewed alongside other contributions from human rights actors, other civil society organisations, the Office of the High Commissioner for Human Rights and academic commentators who have all individually recognised climate change as a legitimate, indeed pressing, concern for the international human rights movement.¹² It also follows on ARTICLE 19’s body of work on right to freedom of information and the environment. Over the years, in addition to setting relevant standards on freedom of expression and freedom of information rights,¹³ ARTICLE 19 has produced substantial reports on access to environmental information in such countries as Ukraine, Russia and Malaysia,¹⁴ as well as in the context of humanitarian disasters.¹⁵
9. Whilst there a number of terms of art which characterise the climate change arena, at the outset of this policy paper it is important to highlight two key terms:
 - 9.1. Adaptation refers to actions taken to adjust lives and livelihoods to new conditions brought about by warming temperatures and associated climate changes.¹⁶ Policies of adaptation aim to strengthen the capacity of societies and ecosystems to cope with and adapt to climate change risks and reduce their vulnerability to climate change threats.

expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. See generally T Mendel, *Freedom of Information: A Comparative Legal Study* (UNESCO, 2008 2nd edition).

¹¹ Siobhán McInerney-Lankford, “Climate Change and Human Right: an Introduction to Legal Issues” 33 [2009] *Harvard Environmental Law Review* 431-437 at 437.

¹² See the “OHCHR Report”; Oxfam, *Human Rights and Climate Wrongs*, Oxfam Briefing Paper 117, September 2008, available at http://www.oxfam.org.uk/resources/policy/climate_change/downloads/bp117_climatewrongs.pdf; Siobhán McInerney-Lankford, “Climate Change and Human Rights: an Introduction to Legal Issues” 33 [2009] *Harvard Environmental Law Review* 431-437 at 436. Until recently and with some notable exceptions, international human rights actors – whether intergovernmental, governmental or non-governmental – have refrained from engaging in climate change debates. It has been environmental and developmental organisations who have been traditionally most engaged on the issue of climate change, while human rights activists have only relatively recently begun to distinguish the specific connections between human rights and climate change. Indeed, until recently, climate change was seldom identified as a human rights issue at all, partly because of the differing approaches of human rights and climate change campaigns: whereas human rights law has generally relied on norms and principles contained in international human rights legal texts and soft law, climate change policies and campaigns rely heavily on data and statistics. It has been noted that a certain sense of “mutual disinterest” had developed between the climate change and human rights communities over previous years. See International Council on Human Rights Policy at pp 1-6 (“the ICHRP Report”). See also Stephen Humphreys (ed), *Human Rights and Climate Change* (Cambridge: CUP, 2009). Development organisations such as Oxfam have already specifically identified human rights dimensions of climate change.

¹³ See the principles contained in *The Public’s Right to Know: Principles on Freedom of Information Legislation*, June 1999 (London: 1999) (“Right to Know Principles”).

¹⁴ ARTICLE 19, *Is Post-Chernobyl Ukraine Ready for Access to Environmental Information* January 2008, available at <http://www.article19.org/pdfs/publications/ukraine-foi-report.pdf>; ARTICLE 19, *A Haze of Secrecy: Access to Environmental Information in Malaysia* January 2007, available at <http://www.article19.org/pdfs/publications/malaysia-a-haze-of-secrecy.pdf>; ARTICLE 19, *The Forbidden Zone: Environmental Information Denied in Russia* November 2006, available at <http://www.article19.org/pdfs/publications/russia-the-forbidden-zone.pdf>.

¹⁵ ARTICLE 19, *Humanitarian Disasters and Information Rights: Legal and Ethical Standards on Freedom of Expression in the Context of Disaster Response* April 2005, available at <http://www.article19.org/pdfs/publications/freedom-of-information-humanitarian-disasters.pdf>

¹⁶ The third IPCC Assessment Report defined adaptation as “adjustments in ecological, social, or economic systems in response to actual or expected climatic stimuli and their effects or impacts. [Adaptation] refers to changes in processes, practices, and structures to moderate potential damages or to benefit from opportunities associated with climate change”.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

9.2. Mitigation refers to the actions and policies that seek to minimise or prevent the extent of global warming by reducing emission levels and stabilising greenhouse gas concentrations in the atmosphere. Article 2 of the UNFCCC states that the “ultimate objective” of the Convention and associated instruments is “the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”. Although no “dangerous” threshold is mentioned in the treaty, a rise of average global temperatures by no more than 2°C above pre-industrial levels is widely viewed as the acceptable limit.¹⁷ Most climate change debates focus on mitigation and reaching an agreement on required global mitigation levels is at the centre of international climate change negotiations.

10. The next section (Part II) briefly considers the role of the right to freedom of expression and freedom of information in the UNFCCC as well as in recent drafts of the agreement intended to be agreed at Copenhagen in forthcoming weeks. Part III then sets out international standards on these human rights, placing particular emphasis on the relevance and interpretation of the rights to freedom of expression and freedom of information in the context of the environment. Part IV discusses the importance of the right to freedom of expression and freedom of information in effective responses to climate change. Finally Part V sets forth ARTICLE 19’s policy recommendations.

II. The Role of the Right to Freedom of Expression and Freedom of Information in Current Climate Change Negotiations

11. The 1992 UNFCCC and various Conferences of State Parties (“COPs”) have included information disclosure and access to information principles. Moreover, by clearly envisaging public participation in the development and implementation of the country strategies and programmes such as the National Adaptation Programme of Action, they arguably indirectly acknowledge freedom of expression also. However, the September draft negotiating text of the COP 15 has paid scant attention to human rights and contains a single reference to access to information.

12. The UNFCCC also addresses the issues of scientific information, education, training and public awareness and emphasises the role non-governmental organisations can play in this regard. Article 4(1)(h) of the UNFCCC requires all parties to:

Promote and cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to the climate system and climate change, and to the economic and social consequences of various response strategies.

Article 4(1)(i) requires all parties to:

Promote and cooperate in education, training and public awareness and encourage the widest participation including that of non-governmental organizations.

Article 6(a) then requires parties to:

Promote and facilitate public access to information on climate change and its effects at national and, as appropriate regional and sub regional levels

¹⁷ Although the UNFCCC does not include targets on specific greenhouse gas reductions, the Kyoto Protocol includes legally binding caps on greenhouse gas emissions for industrialised countries and emerging economies for the period of 2008-2012. Scientific and policy studies have converged towards a threshold for dangers climate change of a maximum rise in global average temperatures of 2°C above the pre-industrial level. See IPCC AR4 Working Group III (WG III) Report, pp 99-100.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

Article 6 the UNFCCC also requires parties to promote and facilitate the development and implementation of educational and public awareness programmes on climate change and its effects.

13. The 8th session of the Conference of the Parties (“COP 8”) defined specific actions for implementation under Article 6 of the UNFCCC, to be undertaken by State Parties, called the New Delhi Work Programme. These actions included international cooperation, education, and training, public awareness, people’s participation and people’s access to information.
14. The 7th Conference of the Parties (“COP 7”) also emphasised the importance of the right to freedom of information and the involvement of individuals and communities, interest groups and stakeholders both in the formulation and the implementation of the adaptation and mitigation strategies of the State Parties. This was expanded at COP 10 into specific actions that could be taken by State Parties. The actions include, among others: supporting education, training and public awareness on climate change issues and assisting participation by stakeholders; improving the collection, analysis and dissemination of information on global climate change trends and increased data sharing among state parties; strengthening institutions through targeted research programmes to address the adverse effects of climate change of vulnerable sectors; continuing to build capacity to prevent and react to disasters related to climate change, such as droughts, floods, and extreme weather events.
15. In ARTICLE 19’s view, the forthcoming COP 15 in Copenhagen presents an important opportunity to define and amplify the role of the right to freedom of expression, including access to information, within any new legal agreement adopted. ARTICLE 19 notes that successive drafts of the negotiating text of the agreement for COP 15 have paid little attention to the human rights dimensions of climate change, despite the length and degree of detail on other aspects.¹⁸
16. The draft negotiating text as of 15 September 2009 (181 pages, incorporating various proposals and alternatives to provisions), contains paragraphs which note or refer to the fact that the “adverse effects ... [of climate change] have a range of *direct and indirect implications for the full and effective enjoyment of human rights including the right to self determination, statehood, life, food and health, particularly in developing countries*” (paragraph 6); “the *respect for, protection and promotion of fundamental human rights and basic rights as outlined in the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Cultural [sic] and Political Rights and other relevant conventions and treaties*” as an objective (paragraph 14(z)); and the UN Declaration on the Rights of Indigenous Peoples and the Convention on the Elimination of all forms of Discrimination Against Women (paragraph 14(y)) (emphasis added). There is a single reference to the fundamental human rights premise of “dignity” in a proposed paragraph on enhanced national and international action on mitigation and social consequences of response measures (paragraph 17(a)). From a human rights perspective, there are other positive terms used – such as the “participation of stakeholders”, “active participation” and a “participatory approach” – as well as references to vulnerable countries, regions and populations, notably indigenous peoples – but these are not presented expressly in human rights terms.
17. The draft negotiating text contains a *single reference* to “access to information” in a subsection on “national and regional technology innovation centres” within the section on “enhanced action on development and transfer of technology”. It also states a general commitment to: “Improve access to information on existing and new technologies”.¹⁹ In addition, there is currently *no direct reference to freedom of expression or speech*.

¹⁸ For documentation on the revised negotiating text see <http://unfccc.int/documentation/items/2643.php>.

¹⁹ Paragraph 47(e) of the draft negotiating text, version as of 17 September 2009.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

Furthermore, there are currently very few references to human rights more generally within this version of the revised negotiating text.

III. International Standards on Freedom of Expression, Including Freedom of Information, Relevant to Climate Change Action

18. The right to freedom of expression and freedom of information is important to climate change responses not least because of the obligations owed by states as a matter of international law on these rights. This sections sets out the international human rights standards on these rights to emphasise their legal relevance to climate change actions.

1. Freedom of expression

19. Article 19 of the Universal Declaration on Human Rights (“UDHR”) guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.²⁰

20. The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.²¹

21. Furthermore, the International Covenant on Civil and Political Rights (“ICCPR”),²² a treaty ratified by 165 states parties,²³ imposes formal legal obligations on State Parties to respect its provisions and elaborates on many of the rights included in the UDHR. Article 19 of the ICCPR guarantees the right to freedom of expression in terms very similar to those found at Article 19 of the UDHR:

1. Everyone shall have the right to freedom of opinion.

2. 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, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

22. Freedom of expression is also protected in all three regional human rights instruments, at Article 10 of the European Convention on Human Rights,²⁴ Article 13 of the American Convention on Human Rights²⁵ and Article 9 of the African Charter on Human and Peoples’ Rights,²⁶ as well as in the UN Convention on the Rights of the Child.²⁷

23. Freedom of expression is a key human right, in particular because of its fundamental role in underpinning democracy. At its very first session, in 1946, the UN General Assembly adopted Resolution 59(I) which states: “Freedom of information is a fundamental human

²⁰ UN General Assembly Resolution 217A(III), adopted 10 December 1948.

²¹ See, for example, *Filartiga v. Pena-Irala*, 630 F 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit).

²² UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.

²³ As of 22 November 2009.

²⁴ Adopted 4 November 1950, in force 3 September 1953.

²⁵ Adopted 22 November 1969, in force 18 July 1978.

²⁶ Adopted 26 June 1981, in force 21 October 1986.

²⁷ Adopted and opened for signature, ratification and accession by UN General Assembly Resolution 44/25 of 20 November 1989, entered into force 2 September 1990.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

right and ... the touchstone of all the freedoms to which the United Nations is consecrated.”²⁸
As the UN Human Rights Committee has said:

The right to freedom of expression is of paramount importance in any democratic society.²⁹

24. The guarantee of freedom of expression applies with particular force to the media. As the UN Human Rights Committee has stressed, a free media is essential in the political process:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.³⁰

25. The right to freedom of expression is not absolute. International and regional human rights law, as well as most national constitutions, recognise that freedom of expression may be restricted under certain circumstances. However, any limitations must remain within strictly defined parameters. Article 19(3) of the ICCPR lays down the conditions which any restriction on freedom of expression must meet:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

26. These have been interpreted as requiring restrictions to meet a strict three-part test.³¹ First, the interference must be provided for by law. This requirement will be fulfilled only where the law is accessible and “formulated with sufficient precision to enable the citizen to regulate his conduct.”³² Second, the interference must pursue a legitimate aim. The list of aims in Article 19(3) of the ICCPR is exclusive in the sense that no other aims are considered to be legitimate as grounds for restricting freedom of expression. Third, the restriction must be necessary to secure one of those aims. The word “necessary” means that there must be a “pressing social need” for the restriction. The reasons given by the State to justify the restriction must be “relevant and sufficient” and the restriction must be proportionate to the aim pursued.³³

27. Numerous cases at regional and international human rights bodies, as well as before national³⁴ and regional courts,³⁵ have involved the violation of freedom of expression rights in relation to speech concerning environmental issues.³⁶ Notably, in the European Court of Human Rights case of *Steel and Morris v UK*, the applicants were London Greenpeace campaigners that had published leaflets attacking the McDonald’s Corporation on environmental, health and moral grounds.³⁷ The UK government argued that the applicants “were not journalists” and should not receive enhanced protection under Article 10. Finding

²⁸ Resolution 59(I) from 14 December 1946; available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/10/IMG/NR003310.pdf?OpenElement>

²⁹ *Tae-Hoon Park v. Republic of Korea*, 20 October 1998, Communication No. 628/1995, para. 10.3.

³⁰ UN Human Rights Committee General Comment 25, issued 12 July 1996.

³¹ See, *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7 (UN Human Rights Committee).

³² *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49 (European Court of Human Rights).

³³ *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, paras. 39-40 (European Court of Human Rights).

³⁴ *Greenpeace France et al v Areva*, 8 April 2008, Judgment No. 418 (Cour de Cassation, First Chamber).

³⁵ *Schmidberger, Internationale Transporte und Planzüge v Austria*, Case C-112/00 [2003] 2 CMLR 34.

³⁶ *Piermont v France* 20 March 1995, Application Nos. 15773/89 and 15774/89 (European Court of Human Rights).

³⁷ *Steel and Morris v the United Kingdom*, 15 February 2005, Application No. 68416/01.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

that there had been a violation of Article 10 of the ECHR, the European Court of Human Rights held that:

[I]n a democratic society even small and informal campaign groups, must be able to carry on their activities effectively, and there exists strong public interest in enabling such groups and individuals outside the mainstream to contribute to public debate by disseminating information and ideas on matters of general public interest such as health and the environment.³⁸

28. The European Court of Human Rights has also found that the failure of a state to follow conservation laws is a matter of public interest for the purposes of expression under Article 10 of the ECHR.³⁹

2. Freedom of information

29. The right of access to information held by public authorities, sometimes referred to as “freedom of information”, has been acknowledged as a crucial element of the right to freedom of expression. In its first session, the UN General Assembly described freedom of information as “a fundamental human right and ... the touchstone of all the freedoms to which the UN is consecrated”.⁴⁰ Subsequently, freedom of expression and information was guaranteed globally through Article 19 of the Universal Declaration of Human Rights and Article 19 of the ICCPR.⁴¹ The latter, which is a legally binding treaty on 165 state parties,⁴² states:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any media of his choice.

30. The UN Special Rapporteur on freedom of opinion and expression has stated that, “the right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Governments in all types of storage and retrieval systems.”⁴³ The Special Rapporteur developed his commentary on freedom of information in his 2000 annual report to the Commission on Human Rights, noting the fundamental importance of this right not only to democracy and freedom, but also to the right of public participation and the realisation of the right to development.⁴⁴ The UN Human Rights Committee, the body established to supervise implementation of the ICCPR, has also frequently urged States to enact freedom of information legislation.⁴⁵
31. In respect of freedom of information and climate change, in the last decade, additional declarations and treaties, such as the ‘Aarhus Convention’, have been agreed on specifically to guarantee the right of access to environmental information (see below).
32. The international community has also recognised access to environmental information as key to environmental governance, to the involvement of civil society in protecting the

³⁸ See *Steel and Morris v the United Kingdom*, para 89.

³⁹ *Vides Aizsardzibas Kubs v Latvia*, 25 May 2004 Application No 65545/01.

⁴⁰ UN General Assembly Resolution 59(1) 14 December 1946.

⁴¹ UN General Assembly Resolution 2200A(XXI) adopted 16 December 1966, in force 23 March 1976.

⁴² See the status of ratifications of the ICCPR, available at

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

⁴³ Report of the Special Rapporteur, Promotion and Protection of the Right to Freedom of Opinion and Expression, UN Doc E/CN.4/1998/40 28 January 1998, para 14.

⁴⁴ Report of the Special Rapporteur, Promotion and Protection of the Right to Freedom of Opinion and Expression, UN Doc E/CN.4/2000/63, 18 January 2000, para 42.

⁴⁵ See, for example, its Concluding Observations on Ireland UN Doc CCPR/C/79/Add.21, 28 July 1993; and on Azerbaijan UN Doc. A/49/40, 27 July 1994.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

environment and to the protection of individuals against environmental hazards. The Rio Declaration on Environment and Development (Rio Declaration)⁴⁶, the culmination of the 1992 UN Conference on Environment and Development, states unambiguously:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.⁴⁷

33. The Rio Declaration was taken as the starting point for the first legally binding international treaty on access to environmental information, the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, otherwise known as the Aarhus Convention, discussed in the next section.⁴⁸
34. There have been significant developments recently concerning recognition of the right to freedom of information. Most notably, in November 2008, the Council of Europe adopted the first international treaty on the right to information, the Convention on Access to Official Documents.⁴⁹ This new treaty expressly refers to the Aarhus Convention.
35. The right to freedom of information – including in relation to the environment – has also been recognised through national legislation, and has also been discussed in relation to intergovernmental organisations. There are now a large number of specific national laws on the right of access to information – more than 80.⁵⁰ Countries as diverse as Sweden and Colombia pioneered the right of access to information in their domestic legislation.⁵¹ Moreover, intergovernmental organisations such as the World Bank issued guidelines on the subject and are now considering their own policies on access to information.⁵²

a. The Aarhus Convention

36. Undoubtedly the most directly relevant international legal treaty on the issue of environmental information, including on climate change, is the 1998 Aarhus Convention. Taken as a whole, the Aarhus Convention provides a strong guarantee of the right to access environmental information. The Aarhus Convention incorporates the principles on the content of the right of access to information indicated above. Whilst the Aarhus Convention

⁴⁶ Rio Declaration on Environment and Development, A/CONF.151/26 (Vol); available at <http://www.un-documents.net/rio-dec.htm>.

⁴⁷ Rio Declaration, Principle 10.

⁴⁸ For the text of the treaty see http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-13&chapter=27&lang=en#1. As of 3 November 2009, the Aarhus Convention had been ratified by 43 states, including the European Community. UN Doc. ECE/CEP/43, adopted at the Fourth Ministerial Conference in the “Environment for Europe” process, 25 June 1998, entry into force 30 October 2001.

⁴⁹ Council of Europe Convention on Access to Official Documents (CETS 205) which has so far only been ratified only by Norway even though 11 other states have signed it without ratification.

⁵⁰ David Banisar/Privacy International, National Freedom of Information Laws, Regulations and Bills (Map) 2009, available at <http://www.privacyinternational.org/foi/foi-laws.jpg>; Freedom of Information World Report 2006, available at [http://www.privacyinternational.org/article.shtml?cmd\[347\]=x-347-543400](http://www.privacyinternational.org/article.shtml?cmd[347]=x-347-543400). See also <http://right2info.org/>

⁵¹ The Swedish Freedom of the Press Act, 1766, which now forms part of the Swedish Constitution, decreed that “every Swedish citizen shall have free access to official documents”. In Colombia, the right to access information is covered in the 1888 Code of Political and Municipal Organization.

⁵² See World Bank, *Toward Greater Transparency Through Access to Information: The World Bank’s Disclosure Policy*, 16 October 2009, available at <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTANDOPERATIONS/EXTINFODISCLOSURE/0,,contentMDK:22090574~pagePK:64865365~piPK:64864641~theSitePK:5033734,00.html>

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

was adopted by members of the UN Economic Commission for Europe, it is open for signature from non-European states.⁵³ What can the Aarhus Convention offer in terms of accountability of state parties both domestically and internationally in climate change negotiations?

37. In terms of *domestic accountability*, the Aarhus Convention obliges parties to ensure that public authorities make available to the public “environmental information” without any interest having to be stated, generally in the form requested and without any unreasonable charge being levied.⁵⁴ The definition of environmental information is broad and clearly covers any information on climate change issues.⁵⁵ The time available for responding to requests is reduced to one month.⁵⁶ The Convention makes it clear that access to environmental information may be refused only if absolutely necessary to protect the following interests:

- (a) The confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law;
- (b) International relations, national defence or public security;
- (c) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
- (d) The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed;
- (e) Intellectual property rights;
- (f) The confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law;
- (g) The interests of a third party which has supplied the information requested without that party being under or capable of being put under a legal obligation to do so, and where that party does not consent to the release of the material; or
- (h) The environment to which the information relates, such as the breeding sites of rare species.⁵⁷

38. The Aarhus Convention stresses that these restrictions must be interpreted narrowly, so as to allow for the maximum possible degree of disclosure:

The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.⁵⁸

⁵³ Article 19 of the Aarhus Convention.

⁵⁴ Article 4(1) and (9) of the Aarhus Convention.

⁵⁵ Article 2 of the Aarhus Convention indicates that environmental information covers “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 life, 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”

⁵⁶ Article 4(2) of the Aarhus Convention.

⁵⁷ Article 4(4) of the Aarhus Convention.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

39. The Aarhus Convention also imposes a positive obligation on a public authority which does not hold the information to inform the applicant where it might be applied for. It also makes provision for the separation of information which would be exempted from disclosure so that the remainder may be disclosed.⁵⁹
40. The Aarhus Convention also imposes positive obligations on parties including the requirement that public authorities “possess and update” environmental information relevant to their functions and. There is also a positive obligation to establish mandatory systems to ensure an adequate flow of information to public authorities about activities which may significantly affect the environment.⁶⁰ In the event of any threat to human health or the environment from any source, public authorities are required to immediately disseminate all information which could enable the public to take measures to prevent or mitigate the harm arising from the threat.⁶¹ This means, for example, a government ministry in charge of the environment must collect reliable scientific data on the impact of climate change. Parties are also required to ensure that public authorities make environmental information publicly available in transparent and accessible ways, to ensure that such information is progressively available in electronic databases, to publish (at least every four years) a national report on the state of the environment, and to take measures to disseminate national and international legislation and measures, including treaties.⁶²
41. Significantly the private sector is also targeted. Parties:
- [S]hall encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products, where appropriate within the framework of voluntary eco-labelling or eco-auditing schemes or by other means.⁶³
42. Each party is also obliged to establish progressively a “coherent, nationwide system of pollution inventories or registers on a structured, computerized and publicly accessible database”.⁶⁴ This aspect of the convention is supported through the Kiev Protocol on Pollutant Release and Transfer Registers (the Kiev Protocol) which was adopted by the European Community and 36 States at a meeting of the parties to the Aarhus Convention on 21 May 2003. The protocol requires States to establish a pollution release transfer register which is free and publicly accessible.⁶⁵
43. In addition to the principles directly related to the right of access to information, the Aarhus Convention contains a number of substantial provisions on public participation in decisions on specific activities. These activities include those concerning plans, programmes and policies related to the environment and during the preparation of executive regulations and/or generally applicable legally binding normative instruments.⁶⁶
44. In terms of the *accountability of states in intergovernmental fora*, Article 3(7) states an innovative and important principle:
- Each party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.

⁵⁸ Article 4(4) of the Aarhus Convention.

⁵⁹ Article 4(5) and (6) of the Aarhus Convention.

⁶⁰ Article 5(1)(a) and (b) of the Aarhus Convention.

⁶¹ Article 5(1)(c) of the Aarhus Convention.

⁶² Article 5(2)-(4) of the Aarhus Convention.

⁶³ Article 5(6) of the Aarhus Convention. See also Article 5(7).

⁶⁴ Article 5(9) of the Aarhus Convention.

⁶⁵ The Protocol became binding on 8 October 2009, see <http://www.unece.org/env/pp/prtr.htm>

⁶⁶ Articles 6-8 of the Aarhus Convention

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

45. This means that states parties to the Aarhus Convention are obliged to promote their commitments under the treaty in other international fora – including at COPs of the UNFFCC and other relevant meetings on climate change issues.⁶⁷ Thus the convention provides the most direct and compelling legal argument that freedom of information and public participation should be properly incorporated within the texts of climate change agreements. The ICHRP states that “[i]t is surprising, given the essential role that information and participation must play in developing adaptation policies, that Aarhus 3(7) appears not to have been invoked or insisted upon in those negotiations”.

b. International Jurisprudence

46. National, regional and international judicial and quasi-judicial bodies have been interpreting the right to freedom of information alongside other human rights for some years.⁶⁸ The emerging jurisprudence on the right to freedom of information has frequently concerned the right in the context of environmental information. The Inter-American Court on Human Rights noted in 2002:

[T]he experience of the Commission ... indicates that the norms of the inter-American human rights system were designed to be living instruments and to apply to current living conditions. As such, the Commission has in recent years been called upon to apply such basic rights as the rights to life and personal integrity, and the related rights to information, participation and effective judicial remedies, in situations involving the relation of individuals to their environment.⁶⁹

47. Most notably, the pioneering judgment recognising the right of access to government-held information of the Inter-American Court of Human Rights in 2006, *Claude Reyes v Chile*, concerned access to environmental records. In this case, the Inter-American Court of Human Rights went on to state unambiguously that freedom of expression, which includes the right to seek and receive information, “protects the right of every person to request access to the information under the control of the State”.⁷⁰

48. In April 2009, in *Társaság a Szabadságjogokért v Hungary*, the European Court of Human Rights recently recognised that Article 10 of the ECHR on freedom of expression includes the freedom to receive information held by public authorities. The court held that when the state has information of public interest in its possession, and is requested to disclose such information to a “watchdog” group – whether a press organisation or an NGO that serves a watchdog role – it is obliged “not to impede the flow of information”. This judgment may be distinguished from prior cases in which the Court protected, usually under Article 8 of the Convention, a personal right of access to government information that may be necessary for the enjoyment of individual rights.⁷¹ The right recognised here is general in that it applies to

⁶⁷ The ICHRP Report, p 50.

⁶⁸ For a review of relevant jurisprudence see Asia Pacific Forum of National Human Rights Institutions, Human Rights and the Environment, 12th Annual Meeting, Sydney 2007; Dinah Shelton, “Human rights and the environment: jurisprudence of human rights bodies” background paper No 2, Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment, January 2002.

⁶⁹ Inter-Am. C.H.R., OEA/Ser.G/CP/CAJP-1996/02/, Presentation by the Inter-American Commission on Human Rights pursuant to resolution AG/RES. 1896 (XXXII-O/02) “Human rights and the environment in the Americas”, available at <http://www.oas.org/consejo/CAJP/docs/cp10480e04.doc>.

⁷⁰ *Claude Reyes and Others v. Chile*, 19 September 2006, Series C No. 151, para 77 (Inter-American Court of Human Rights) unofficial translation from the Spanish judgment.

⁷¹ The European Court of Human Rights has also enforced the right to access environmental information through Article 8 of the ECHR, which protects the right to private and family life and peaceful enjoyment of the home. The court has ruled that environmental pollution will generally affect people’s well-being and is therefore relevant to the protection of private and family life, under Article 8. For example, in *Guerra and Others v Italy*, Court ruled that failure of the authorities to provide information concerning pollution caused by a factory near the applicants’ home violated their right to private and family life. *Guerra and Others v Italy*, 19 February 1998, Application No. 14967/89 (European Court of Human Rights).

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

a broad range of social actors, and potentially all individuals, without a need to show personal interest.⁷² Moreover, in March 2008, in the case of *Budayeva and others v Russia*, the European Court of Human Rights found a violation of Article 2, the right to life, where the state had failed to adequately inform a population about a foreseeable environment risk and failed to implement land-planning and emergency relief policies.⁷³

49. This legal recognition of the right to environmental information has inspired the UN Human Rights Council to recognise climate change as a human rights issue. In 2008 and 2009, the UN Human Rights Council adopted resolutions on *Human Rights and Climate Change* which, inter alia, note that “climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights ...”; recognise that the effects of climate change “will be felt most acutely by those segments of the population who are already in a vulnerable situation ...”, recognise that “effective international cooperation to enable the full, effective and sustained implementation of the [UNFCCC] ... is important in order to support national efforts for the realization of human rights implicated by climate change-related impacts”, and affirm that “human rights obligations and commitments have the potential to inform and strengthen international and national policy-making in the area of climate change”.⁷⁴ On 15 June 2009, the Human Rights Council also held a panel discussion on the relationship between climate change and human rights in order to realise the goals set out in the Bali Action Plan.

c. The Content and Meaning of the Right to Freedom of Information

50. The specific meaning and content of freedom of information finds its basis in a number of authoritative sources, in particular in the 2000 Annual report of the UN Special Rapporteur on Freedom of Opinion and Expression.⁷⁵ Based on the Right to Know Principles developed by ARTICLE 19,⁷⁶ the Special Rapporteur stressed nine crucial elements of the right:
- Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information; “information” includes all records held by a public body, regardless of the form in which it is stored;
 - Freedom of information implies that public bodies publish and disseminate widely documents of significant public interest, for example, operational information about how the public body functions and the content of any decision or policy affecting the public;
 - At a minimum, the law on freedom of information should make provision for public education and the dissemination of information regarding the right to have access to information; the law should also provide for a number of mechanisms to address the problem of a culture of secrecy within Government;

Although there had been no active State interference with the applicants’ right to respect for private and family life, the Court ruled that Article 8 imposes a positive obligation on the State to ensure the enjoyment of that right, which includes the obligation to provide information. The approach was confirmed in *McGinley and Egan v The United Kingdom* 9 June 1998 Application No 10/1997/794 in which the applicants had been exposed to radiation during nuclear testing on the Christmas Islands and claimed a right of access to records regarding the potential health risks of this exposure.

⁷² Application No 37374/05, 14 April 2009. The Court makes clear that the current case did not present a “denial of a general right of access to official documents,” but leaves open the possibility of recognizing such a right in due course, noting that today’s judgment is consistent with the Court’s recent advances “towards the recognition of a right of access to information.” The judgment is a significant conceptual contribution to the Court’s evolving jurisprudence in this area.

⁷³ *Budayeva and Others v Russia*, Application No No 15339/02, Judgment of 20 March 2008.

⁷⁴ See UN Human Rights Council resolution 7/23 of 28 March 2008 and resolution 10/4 of 25 March 2009.

⁷⁵ Report of the Special Rapporteur, Promotion and protection of the right to freedom of opinion and expression, UN Doc. E/CN.4/2000/63, 18 January 2000, para 42.

⁷⁶ ARTICLE 19, the Right to Know Principles.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

- A refusal to disclose information may not be based on the aim to protect governments from embarrassment or the exposure of wrongdoing; a complete list of the legitimate aims which may justify non-disclosure should be provided in the law and exceptions should be narrowly drawn so as to avoid including material which does not harm the legitimate interest;
- All public bodies should be required to establish open, accessible internal systems for ensuring the public's right to receive information; the law should provide for strict time limits for the processing of requests for information and require that any refusals be accompanied by substantive written reasons for the refusal(s);
- The cost of gaining access to information held by public bodies should not be so high as to deter potential applicants and negate the intent of the law itself;
- The law should establish a presumption that all meetings of governing bodies are open to the public;
- The law should require that other legislation be interpreted, as far as possible, in a manner consistent with its provisions; the regime for exceptions provided for in the freedom of information law should be comprehensive and other laws should not be permitted to extend it;
- Individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrongdoing, viz. the commission of a criminal offence or dishonesty, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty or serious failures in the administration of a public body.

51. These nine elements, or principles, are crucial to legislation on the right to freedom of information and the UN Special Rapporteur has recommended that all States should enact legislation in line with these principles. Laws and policies concerning access to information about the environment and climate change should also follow the nine principles, as well as those concerning legitimate restrictions on the right to freedom of information.
52. The right to access information held by public authorities should be guided by the principle of **maximum disclosure** and the principle of **pro-active disclosure**. The principle of maximum disclosure establishes a presumption that all information will be disclosed, subject only to narrowly drawn exceptions to protect overriding public and private interests. The principle of proactive disclosure requires public bodies to disseminate, proactively and in the absence of a request, information of key public interest. This presupposes an obligation on governments and public bodies to create, compile or collect information in certain contexts. In addition to undermining the culture of secrecy so pervasive in public institutions, proactive disclosure has important efficiency gains: by making information available in offices and public places, little staff time is spent processing individual requests for information. Proactive disclosure is not a merely formal requirement: a hundred tables of raw data will not improve an average person's knowledge of an issue. Thus, public bodies should be aware of the aim of the principle and should fulfil this obligation through assessment of what kind of information is needed and in which format; language used should not be overly technical etc. Moreover, building a system of pro-active disclosure should be an exercise that involves civil society and civil servants, all trying to meaningfully provide information that can be read, reviewed and used by citizens. Many progressive freedom of information laws incorporate this principle. Some include fairly long lists of information which the governments must produce and disseminate.

53. These principles are perhaps most recognised in the context of the aftermath of massive human rights abuses, where it has been described as “the right to truth”.⁷⁷ States have an obligation to discover the truth about past human rights abuses and publicise their findings. This is because such information is important to the dignity of those who have survived and necessary to inform the actions to be taken, as far as possible, to mitigate the effects of abuses. Ultimately this information ensures that similar events do not happen again. This rationale suggests a similar obligation for governments in relation to climate change responses: an obligation of states to do all within their power to harness the power of information to mitigate the threat from and effects of climate change related disasters.

IV. Effective Responses to Climate Change: The role of freedom of expression and Freedom of Information

54. As the previous section demonstrates, international, regional and national standards and jurisprudence have highlighted the importance of freedom of expression and freedom of information, in particular the right of access to information on the environment. The importance of free expression and of the free flow of information to climate change is enormous.

1. The free flow of information and public debate

55. The right to freedom of information is essential to the protection of the most fundamental right of all – the right to life, as embodied in the UDHR. It is also crucial to the realisation of other rights, including the right to family life or the right to health. Respect for human rights and the restoration of human dignity mandate the dissemination of appropriate and accurate information geared towards the effective and meaningful participation and consultation of populations most affected by climate change, for instance those living in coastal areas.

56. Information is needed to ensure that people take action in response to the new conditions brought about by climate change or take action that mitigates the effects of climate change. Hence, an essential step in the implementation of climate change strategies, be it mitigation or adaptation, must be the identification of all key information needs of populations, communities and businesses. These should also include information on the policies, procedures and support provided to ensure proper implementation of mitigation and adaptation strategies. Thought needs to be given, not only to what information needs to be provided, but also to how it should be presented so that it is accessible and understandable to a variety of intended “users”.

57. However, the realisation of the right to freedom of information is seriously flawed in relation to climate change, in both availability of information and in the way in which data on climate impacts is delivered to the public. Research by ARTICLE 19 and other human rights and environmental organizations across the world also demonstrates that populations are still being denied access to essential information about climate change and the environment. Denial of access to information stems largely from the absence of freedom of information legislation and institutional secrecy of numerous state authorities, coupled with legislation in place in many countries which prevents access to information, including state secret laws, national security laws and anti-terrorism legislation, all of which have been used in different parts of the world to curtail access to, and circulation of, public interest information. Rarely is such information presented in human rights terms expressly and, even when it is, the rights

⁷⁷ See ARTICLE 19, *Who Wants to Forget?: Truth and Access to Information about Past Human Rights Violations*, (London: 2000), available at: <http://www.article19.org/docimages/869.htm>.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

to freedom of expression and freedom of information are barely acknowledged as essential towards identifying and responding to other human rights impacts.⁷⁸

58. The right to freedom of expression and freedom of information related to climate change have been seriously undermined through attempts by states to restrict climate change activists, to stifle scientific research and exchange, and to limit the right to demonstrate.

58.1. Notable examples of attempts to curtail the rights of climate change activists include actions against climate demonstrators at G20 gatherings and so-called “Climate Camps”.⁷⁹ The use of excessive force by police officers⁸⁰ and containment tactics such as “kettling”, a practice of containment currently being challenged before the European Court of Human Rights,⁸¹ have clear “chilling effects” upon the exercise of the right to freedom of expression by individuals concerned about issues of climate change, while also having implications for the rights to liberty and assembly of protestors.⁸²

58.2. Journalists and campaigners who have attempted to expose environmental degradation, activities that are threatening adaptation to climate change, and the risks to human security and human health have themselves been prosecuted by the authorities. Those that dare to investigate environmental wrongdoings, critique government officials or expose corruption, face years of hardship. Too often, many people are starved of vital information to prepare them for the effects of climate change, and are left without any formal avenues to access information, or raise their concerns, complaints or fears.⁸³

⁷⁸ The IPCC Fourth Assessment Report and others outline the expected impacts by affected human right and by region. These predictions illustrate both the scale of human rights impacts expected in the short- to middle-term, and the extent to which more information will be required in order to locate affected communities and to provide the institutional support they will need.

⁷⁹ There have been a number of other significant, well-publicized protests in recent years across the world on a diversity of issues, notably military action in Iraq, and those on climate change have been amongst the most vocal. During 2009, climate camps have taken place in Canada, Denmark, France, Ireland, Netherlands/Belgium and the UK.

⁸⁰ See Independent Police Complaints Commission, “Commissioner’s report following the IPCC independent investigation into a complaint that officers used excessive force against a woman during the G20 protests” at http://www.ipcc.gov.uk/Bishopsgate_Report.pdf. The complaint, a peaceful demonstrator, was from a 23-year old woman who had been at the Climate Camp on Bishopsgate in the City of London on 1 April 2009. http://www.ipcc.gov.uk/news/pr060809_bishopsgate.htm.

⁸¹ The British Metropolitan police’s tactic of kettling – containing large numbers of protestors against their will – has been challenged in a complaint before the European Court of Human Rights that claims the practice is a fundamental violation of liberty. For the domestic litigation see *Austin v Commissioner of the Metropolis* [2009] UKHL 5.

⁸² In a report on a “human rights approach to policing protest” published before the G20 London meeting which hosted many thousands of climate campaigners, the UK Joint Committee on Human Rights concluded that the “peaceful protest should be facilitated and protected: to fail to do so would jeopardise a number of rights, including the right to freedom of peaceful assembly (Article 11 ECHR) and the right to freedom of expression (Article 10 ECHR)”. Joint Committee on Human Rights, “Demonstrating respect for human rights? A human rights approach to policing protest, Seventh Report of Session 2008-9, available at <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/141/141.pdf>. See also <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/141/141.pdf>

⁸³ For example, in July 2009, the French journalist Cyril Payen was arrested by security guards and handed over to the police while investigating illegal logging by a leading Indonesian industrial group in Sumatra. In November 2009, two foreign journalists – Kumkum Dasgupta, senior assistant editor with the Delhi-based *Hindustan Times* and Raimondo Bultrini, reporter for the Italian newspaper *L’Espresso* – were arrested while covering a Greenpeace protest against uncontrolled deforestation in Pelalawan district in the province of Riau, on Sumatra; see OneWorld UK, “Two foreign journalists arrested while covering Greenpeace operation”, 17 November 2009, available at <http://www.oneclimate.net/2009/11/17/two-foreign-journalists-arrested-while-covering-greenpeace-operation>.

In Brazil, Vilmar Berna, the editor of the Niterói-based environmentalist daily *Jornal do Meio Ambiente*, which exposes clandestine overfishing and threats to protected marine life in Rio de Janeiro Bay, has been constant target of threats and intimidation attempts since May 2006. In 2007, in China, Wu Lihong was sentenced to three years in prison for alerting the Chinese and international media to the pollution of Lake Taihu, the third largest in China. In his internet posts, he blamed the uncontrolled dumping of industrial waste for the lake’s asphyxiation. In Egypt, in 2009, Tamer Mabrouk, blogger, investigated the case of the Trust Chemical Industries dumping un-recycled water into Lake Manzalah and the Suez Canal, near Port Said, was sued for libel in June 2008; in May 2009, the Port Said court fined his 6,000 EUR (equivalent of one year salary). Mabrouk was also fired from his job. See Reporters Without Borders, *Dangers for journalists who expose environmental issues*, 19 September 2009, available at http://www.rsf.org/IMG/rapport_en_md.pdf.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

58.3. There is also growing concern in a number of countries that existing legislation, including anti-terrorism legislation, is being used and state power expanded to intimidate, arrest, detain and even prevent climate change campaigns. These include preventing campaigners from travelling to climate change talks in the Copenhagen Conference in forthcoming weeks.⁸⁴ It is expected that the expansion and more frequent resort to state security powers will have a particularly deleterious impact upon the individual exercise of freedom of expression on climate change issues.

58.4. Furthermore, despite the huge scientific evidence in support of climate change,⁸⁵ climate scientists – particularly official or government climate scientists have felt under pressure to downplay the effects of climate change and the threat of global warming from governments. This has had an impact upon not only the right to freedom of expression of individual scientists but also on the national *and international* public's right to know the latest, unbiased and high-quality scientific opinion on climate change. Instances of "climate science censorship" have taken place most notably in the US, a leading player on climate change issues but also, ironically, a state with a strong constitutional protection of free speech as well as long-established freedom of information legislation. A report released in January 2007 by two non-governmental organisations, the Union of Concerned Scientists ("UCS") and the Government Accountability Project ("GAP"), found that nearly half of 279 federal climate scientists who responded to a survey reported being pressured to delete references to "global warming" or "climate change" from scientific papers or reports, while many said they were prevented from talking to the media or had their work on the topic edited.⁸⁶ The George W Bush administration also suppressed entire reports on climate change issues, including one that was completed in 2007 by officials that concluded, based upon scientific evidence, that the US government should begin regulating greenhouse gas emissions because global warming poses a serious threat the country. Positively, the Barack Obama Administration has recently released that report and has revised its stated policy on editing the conclusions and policy advice of scientists.⁸⁷ Even though the situation in the US has improved, other states which also have the resources to produce high quality climate science – notably Australia and Canada – have been exposed recently for gagging their climate scientists.⁸⁸

⁸⁴ See "Environmental activist arrested ahead of coal-fired power station protest" *Guardian* 16 October 2009 <http://www.guardian.co.uk/environment/2009/oct/16/ratcliffe-arrests>; "Climate Change Activist Stopped from Travelling to Copenhagen", 14 October 2009, available at

http://mostlywater.org/climate_change_activist_stopped_travelling_copenhagen

⁸⁵ There is consensus amongst national and international scientific bodies of the existence of global warming and other changes to the planet's climate system. The most significant of these reports the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, a synthesis report compiling the results from a range of stand-alone studies, which found that human actions are "very likely" the cause of climate change. IPCC, Fourth Assessment Report (2007)

⁸⁶ Union of Concerned Scientists, "Investigation Reveals Widespread Suppression of Federal Climate Research", 30 January 2007, available at http://www.ucsusa.org/news/press_release/investigation-reveals-0007.html

⁸⁷ "Bush era EPA document on climate change released", 14 October 2009, available at <http://articles.latimes.com/2009/oct/14/nation/na-epa-climate14>; David Biello, "Editing Scientists: Science and Policy at the White House: How much do policy makers shape the science that comes out of government agencies?" *Scientific American*, 22 October 2009, available at <http://www.scientificamerican.com/article.cfm?id=white-house-editing-scientists>

⁸⁸ "CSIRO gagging climate debate" *The Australian* 5 November 2009 <http://www.theaustralian.com.au/news/health-science/csiro-gagging-climate-debate/story-e6fgr8gf-1225794500655>; Craig Saunders, "Are Environment Canada gatekeepers gagging their own scientists", 31 July 2009, available at <http://this.org/magazine/2009/07/31/environment-canada-gagging-researchers/>

2. Free and Independent Media

59. In 1990, ARTICLE 19 published a report on famine and censorship⁸⁹ analysing the patterns of, and responses to, famine in China in 1959-61 and in Ethiopia and Sudan in the 1980s. The report showed that, if timely, information can be collected and if made freely available, widespread damage and loss of life can be mitigated. The 1990 report went on to demonstrate that a widespread and free media, at national and local level, that reach a substantial percentage of the population, reduces the likelihood of devastating famine. In subsequent reports on access to environmental information in Russia, Ukraine and Malaysia, ARTICLE 19 reached similar conclusions regarding the role of the media.⁹⁰
60. The importance of a free and independent media also applies to climate change. The media plays a central role in providing key information to people most likely to be affected by the worst effects of climate change. A free and independent media can monitor national and international mitigation and adaptation efforts, and strengthen the transparent and accountable delivery of funds. The media can also serve to relay back key messages from those affected to officials and others trying to respond to the effects of climate change.
61. Furthermore, media play a key role in an effective advanced warning system, in particular in relation to the dissemination of warning and disaster mitigation messages. Indeed, in many areas affected by natural or other disasters, the mass media are the only means by which messages can be disseminated quickly and widely. This aspect was stressed in the Yokohama Strategy and Plan of Action for a Safer World, adopted at the 1994 World Conference on Natural Disaster Reduction,⁹¹ which stressed that early warnings of impending disasters and their effective dissemination using telecommunications, including broadcast services, are key factors to successful disaster prevention and preparedness.⁹² There is little doubt that the same principle ought to apply to adaptation to climate change as well. Effective telecommunication, including through mass media, constitutes a key factor to successful adaptation and mitigation strategies.
62. The media also have a professional responsibility to act in an appropriate manner, in accordance with any codes of conduct. This includes obligations to help satisfy the public's need for information and to ensure that information disseminated is as accurate as possible in the circumstances. This must also be subject to the duty to provide information, and to avoid interfering with or undermining disaster response efforts. These values should be reflected in many of the professional codes of conduct adopted by journalists and/or media organisations.⁹³
63. The media can also play a key a role in ensuring that complex messages are translated into a meaningful and understandable form for the public. In order to be able to perform this role, the media needs to be able to access accurate and timely information from credible sources. The media can also play a key role in increasing knowledge and facilitating discussions on

⁸⁹ ARTICLE 19, *Starving in silence, a report on famine and censorship*, London: ARTICLE 19, 1990, available at [http://www.reliefweb.int/rw/lib.nsf/db900sid/OCHA-6NMTSW/\\$file/art-gen-apr90.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/OCHA-6NMTSW/$file/art-gen-apr90.pdf?openelement).

⁹⁰ ARTICLE 19, *Is Post-Chernobyl Ukraine Ready for Access to Environmental Information* January 2008, available at <http://www.article19.org/pdfs/publications/ukraine-foi-report.pdf>; ARTICLE 19, *A Haze of Secrecy: Access to Environmental Information in Malaysia* January 2007, available at <http://www.article19.org/pdfs/publications/malaysia-a-haze-of-secrecy.pdf>; ARTICLE 19, *The Forbidden Zone: Environmental Information Denied in Russia* November 2006, available at <http://www.article19.org/pdfs/publications/russia-the-forbidden-zone.pdf>.

⁹¹ Adopted at the World Conference on Natural Disaster Reduction, Yokohama, Japan, 23-27 May 1994, available at: http://www.unisdr.org/eng/about_isdr/bd-yokohama-strat-eng.htm.

⁹² Yokohama Strategy and Plan of Action for a Safer World, Guidelines for Natural Disaster Prevention, Preparedness and Mitigation, adopted at World Conference on Natural Disaster Reduction in Yokohama, Japan, 23-27 May 1994, available at http://www.unisdr.org/eng/about_isdr/bd-yokohama-strat-eng.htm.

⁹³ See, for example, the IFJ Declaration of Principles on the Conduct of Journalists. Available at: <http://www.ifj.org/default.asp?Issue=ETHICS&Language=EN>.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

climate change, with a view to educating people on adaptation and mitigation actions and facilitating their involvement.

64. Local media outlets, including community radios, newspapers and even television services, have a central role to play not only in disseminating information from official sources but also in ensuring an effective two-way flow of information that should underpin effective participation. They can, in particular, provide a voice to local communities, and also portray the actual situation on the ground to national and international actors. The internet is also an effective tool both to ensure wide spread circulation of information and to assist in the implementation of all strategies related to climate change.⁹⁴

3. Transparency and accountability

65. The role of freedom of expression and freedom of information in promoting transparency, accountability and good governance has been well documented.⁹⁵ Open, effective systems of accountability are essential for the proper management of public funds. The media and civil society watchdogs can play a key role in monitoring and reporting on both expenditure and the impact of monies spent.
66. Two different aspects of accountability are particularly relevant to climate change. First, there is financial accountability for the expenditure of adaptation or mitigation funds, in the sense of these meeting reporting rules, owed to the public as a whole in the case of official funding and to those who have donated money in the case of private funds. Second, there is the broader question of accountability for the impact of the activities funded and the way in which they were carried out. This accountability is owed, among others, to the affected communities.
67. Disagreements and controversies over the extent of the funds required for adaptation have largely dominated the debates on climate change. Similarly important is the nature of the accountability mechanisms put in place, both “upwards” to the donors, and “downwards” to the populations, particularly those affected by the adaptation measures. The nature and extent of the funds therefore raise legitimate concerns regarding accountability, good management of monies donated, corruption and the effective use of the funds.⁹⁶
68. An important policy focus should thus be on providing access to information about both sources and expenditure of funds. This should include information about the amount of money received, the type and amount of other donations received, exact information on how funds were or are being distributed and to whom, audited accounts and the progress of project implementation. Available technology, as well as the media and other dissemination systems, should be used to distribute this information.

⁹⁴ See, for example, The South-East Asian Earthquake and Tsunami Blog: <http://tsunamihelp.blogspot.com/>.

⁹⁵ See, for example, World Bank Institute, *The Right to Tell: The Role of Mass Media in Economic Development* (Washington: International Bank for Reconstruction and Development and the World Bank Institute, 2002).

⁹⁶ For instance, a recent BBC World Service investigation has discovered that a significant financial pledge made in 2001, known as the Bonn Declaration, to assist poorer nations with the impact of climate change, cannot be accounted for. The money was supposed to be made available in a variety of ways, including through special UN climate change funds. Eight years on, this investigation found that only \$260 million have been received by the UN Climate Change funds. A BBC analysis suggests that there could have been up to \$2.9 billion in these special funds - more than 10 times the amount paid to date. Industrialised governments that drew up the Bonn Declaration say they never intended to put the \$410 million a year solely into the UN funds. The Declaration allowed them to spend it in "bilateral and multilateral" ways. The BBC investigation reveals that neither party is able to provide figures to prove its point of view, leaving confusion and mistrust on both sides. To avoid any such confusion in the future, the United Nations Secretary General Ban Ki-moon, tells the programme any deal struck in the Danish capital must be "measurable, reportable and verifiable". See *Shortchanging The Planet* on BBC World Service, Wednesday 25 November, 8-8.30pm GMT, see http://www.bbc.co.uk/pressoffice/pressreleases/stories/2009/11_november/25/ws_climate.shtml

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

69. Here again, the media has a vital role to play in monitoring these funds, strengthening their transparent and accountable use, and helping to ensure that the views of those affected are taken into account in programme design. A free media is able to monitor progresses, ensuring that these involve local communities and serve their best interests.
70. The media also have an important role to play in exposing instances of abuse and corruption. Without ensuring the rights to know and freedom of expression, corruption can develop unchecked, further harming an already afflicted society. A free and professional media can act as a check against corruption, by holding those responsible to account and facilitating public awareness.
71. Whistleblowers, those who release information on wrongdoing, should be protected from any legal, administrative or employment-related sanctions. “Wrongdoing” may include the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, breach of international human rights or humanitarian laws, or serious maladministration. It should also include a serious threat to health, safety or the environment, whether linked to individual wrongdoing or not. Whistleblowers should benefit from protection as long as they have acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing. Such protection should apply even where disclosure would otherwise be in breach of a legal or employment requirement. The importance of legal whistleblower protections should be reflected in national laws, as well as in recognised principles and authoritative statements by international actors.⁹⁷

4. The Global Economy of Information

72. The realisation of the right to freedom of expression and freedom of information are also challenged by the significant differences in power and capacity between, on the one hand, those populations most affected by, and most vulnerable to, climate change, and on the other hand, those governments and corporations who are often the principal causes of climate change and best positioned to generate an effective response. *Who* provides information on climate change effects and possibilities of response, with *what* resources and on the basis of *what* degree of public participation has clear implications for *the nature and quality* of the information produced to inform domestic constituencies and shape national and intergovernmental decisions on climate change.
73. Although considerable information already exists on the expected human impacts of climate change and this information is increasingly accepted by governments, there remains a very significant “information gap” around the world about the consequences of climate change because of a shortfall of resources and rights protections in many countries. The information gap is most often felt amongst poor populations both suffering the severest effects of climate change and needing information on climate impacts the most. Such populations are also less likely to have their human rights, including right to freedom of expression and freedom of information, protected.
74. Governments of poor countries lack the resources and means to monitor and analyse climate patterns and make climate projections for the future, or at least lack the resources to gather such information and produce such pointed scientific analysis as that produced by rich countries. An abundance of information, statistics and policy debates have been generated by wealthy states which have the necessary expertise and funding to enable them to develop climate monitoring mechanisms and produce reliable, high quality scientific information and

⁹⁷ See, for example, ARTICLE 19, The Right to Know Principles.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

forecasts on climate change. This therefore allows them to have a fuller picture about likely climate change impacts on them and appropriate responses to it.⁹⁸

75. The information gap is exaggerated amongst populations who have a weakly protected right to freedom of information. Although over 85 states have now adopted legislation on the right to access information, vast swathes of regions highly prone to climate change – the Middle East, Central Asia and Sub-Saharan Africa – have no such legislation or no such legislation operative.⁹⁹
76. Moreover, governments of richer states have legal regimes on the “right to know” through policy measures on proactively supporting the right to environmental information, for example through the establishment of a system of public registers to affirmatively release climate change information. The European Commission and the European Environment Agency recently launched a comprehensive new European pollutant release and transfer register (E-PRTR). This register contains information about the quantity and location of pollutants released into the air, water and land – including greenhouse gases – by industrial facilities throughout Europe. The E-PRTR is expressly intended to “[contribute] to transparency and public participation in environmental decision-making” and in so doing “[implement] ... the European Community the UNECE (United Nations Economic Commission) PRTR Protocol to the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters”.¹⁰⁰
77. It is not surprising that populations which are poorly informed about likely climate changes, their effects or the availability of adaptation funding are less likely to have a “sustained voice in, or influence over, policy-making, and so in times of crises the vulnerability of marginalised groups can increase dramatically”.¹⁰¹ The disparities of accessibility of quality information obscure the actual impact of climate shifts. Enhancing resources for poor states to address the information gap and the strengthening of legal rights of freedom of information would redress that imbalance.
78. The lack of resources as well as legal rights to support the production of quality climate change data has numerous, interrelated consequences in poor countries, in particular the following.
 - 78.1. Some Governments may not be able to assess the social and economic impacts of climate change, particularly at the local level and upon vulnerable groups.
 - 78.2. Populations, particularly vulnerable groups, are less able to appreciate the consequences of climate change in the first place, and in the event that they do, they are less able to gain access to information and resources which would enable them to make informed choices on adapting to or avoiding climate change effects.
 - 78.3. Populations are prevented from positively exercising their information and expression rights to participate in public discussions on climate change issues, to criticise their own state or others and to lobby effectively for action by local, national or international bodies.

⁹⁸ . For example, in June 2009 the UK Department for the Environment, Food and Rural Affairs (DEFRA) published “the most probabilistic climate projections at the regional scale compiled anywhere in the world”, John Mitchell, Director of Climate Science at the UK Met Office, quoted in “UK maps climate change forecasts”, BBC News, 18 June 2009, available at <http://news.bbc.co.uk/1/hi/sci/tech/8106104.stm>. Also, although the United Kingdom seems to be at the forefront of climate information, according to a global report on the human impact of climate change published by the Global Humanitarian Forum, the UK is among the twelve countries likely to be *least affected* by climate change; see Global Humanitarian Forum, *The Anatomy of a Silent Crisis* (Geneva, 2009).

⁹⁹ See Privacy International, National Freedom of Information Laws, Regulations and Bills 2009 (June, 2009), available at <http://www.privacyinternational.org/foi/foi-laws.jpg>

¹⁰⁰ See <http://prtr.ec.europa.eu/>

¹⁰¹ The ICHRP Report at 8.

78.4. Climate change policies are poorly discussed, attract little informed public support and leave populations of poorer countries, particularly vulnerable groups, disempowered.

5. The Global Economy of Participation

79. Whilst developing countries' have focussed on adaptation measures against the immediate climate threats, existing regulatory frameworks – particularly on emissions – have contributed to the limited participation by the least developed countries in intergovernmental decision making on mitigation strategies on climate change.
80. The problem of participation has been particularly evident with regard to the **Clean Development Mechanism** (“CDM”).¹⁰² Established under the Kyoto Protocol, the CDM allows industrialised countries with a greenhouse gas reduction commitment (Annex I countries) to invest in ventures that reduce emissions in developing countries as an alternative to more expensive emission reductions in their own countries. Thus, the CDM allows *net global* greenhouse gas emissions to be reduced at a much lower global cost by financing emissions reduction projects in developing countries where costs are lower than in industrialised countries. Also, the CDM allows for the substitution of dirty technologies with cleaner ones and therefore facilitates lower carbon development paths in developing countries. It is also intended to spur technological innovation, particularly among states for whom it will be difficult to achieve future emissions targets.
81. There are clear problems with the nascent global emissions trading system emerging under the CDM. It focuses on easing emissions reductions for developed countries and does not tackle the huge cuts increasingly needed in developing countries. In order to be functional and reliable over time, the emissions trading regime will eventually require the long-term accession of all relevant actors to a system of emissions' caps, including CDM “host” countries.¹⁰³ As the emissions trading system develops and faces such long-term challenges, it will be important to assess the extent to which human rights, including the right of access to information and freedom of expression, are taken into account when trading regimes are negotiated and implemented.
82. As things stand, however, even though developing countries are central to all aspects of negotiations on emissions, discussions on such strategies have hardly involved non-Annex I parties and have been shaped by the resource and information rich Annex I countries. Developing countries therefore currently lack the ability to voice their concerns and participate effectively in the CDM, but also in numerous key fora where emissions reductions and related matters are discussed, such as the G8 and the World Bank.¹⁰⁴
83. As the International Council on Human Rights Policy (ICHRP) has noted:
- [T]he most significant long-term mitigation structures – the emissions markets under construction ... have gone ahead as though they were of limited interest or relevance for non-participating states A broad combination of actors from Annex I countries, both public and private, have been actively constructing this market for over a decade, with the result that the trading regime has become increasingly complex, well-resourced and jargon-laden. The immense significance that emissions trading will have for the long-term economic prospects

¹⁰² According to the UNFCCC website the “CDM allows emission-reduction (or emission removal) projects in developing countries to earn certified emission reduction (CER) credits, each equivalent to one tonne of CO₂. These CERs can be traded and sold, and used by industrialized countries to a meet a part of their emission reduction targets under the Kyoto Protocol. The mechanism stimulates sustainable development and emission reductions, while giving industrialized countries some flexibility in how they meet their emission reduction limitation targets.” See <http://cdm.unfccc.int/about/index.html>

¹⁰³ The ICHR Report at 34-38.

¹⁰⁴ See <http://beta.worldbank.org/climatechange/>

of non-Annex I countries has barely been registered or researched in those countries, with the exception of the larger “middle income” countries whose involvement is critical to the market ...The result is de facto exclusion from discussions of carbon trading of very many whose futures will be directly affected.¹⁰⁵

84. A similar exclusion is observed with regard to Programmes for **Reduced Emissions from Deforestation and Degradation** (“REDD”). Given that approximately 20% of man-made greenhouse gas emissions are generated by deforestation and land use degradation, it is increasingly accepted that the mitigation of climate change will not be achieved without the inclusion of forests in an international regime. Programmes for REDD were agreed at the Conference of the Parties in Bali in December 2007 (COP 13). The issue of forests was hardly addressed within the Kyoto Protocol as there was little agreement in 1997 when it was adopted on how to measure forest-related emissions or reductions. In essence, REDD mechanisms use market incentives to reduce the emission of greenhouse gases from deforestation and forest degradation. REDD credits offer the opportunity to utilise funding from developed countries to reduce deforestation in developing countries. It is expected that a number of decisions will be taken with regard to REDD at Copenhagen (COP 15), including in relation to funding structures, reference levels to measure the reduction in emissions and distribution of benefits from control of forest resources.¹⁰⁶

85. It is clear that the design, implementation and monitoring of REDD mechanisms shall have significant implications for particular vulnerable populations, notably indigenous peoples, and respect for their human rights. Referring to a World Bank report, the ICHRP report notes:

90 percent of the 1.2 billion people living in extreme poverty around the world depend on forest resources for some part of their livelihood. In Indonesia, for example, some 6 million poor people live in state forest zones with good forest cover; in the Democratic Republic of Congo, 40 million people rely on forests for food, medicines, energy, and income. There is a long history of abuse of indigenous rights in connection with forest exploitation, by governments asserting claims over lands without formal title, and also by large logging companies, sometimes employing private militia. Government and big loggers have often worked together: the logging industry has a notorious reputation for corrupt practice.

86. The right to freedom of information is especially relevant in ensuring that indigenous groups are properly informed and can effectively participate in decision-making on REDD programmes – and may also financially benefit from control over forest resources. However, rights safeguards need to be built into the REDD regime and programming at the outset for forest-dependent indigenous populations to benefit instead of other more powerful actors. Moreover, it is important that REDD programmes are structured to ensure that they contribute to rather than reduce long-term development. It is more likely that this will occur if vulnerable groups, notably indigenous peoples, participate in their development.

V. The Right to Know and the Right to Speak: Recommendations for Climate Change Responses

1. Legal framework for protection of information and expression rights

87. ARTICLE 19 argues that climate change responses, especially those agreed and promoted at the international level, should reflect international human rights guarantees on the right of

¹⁰⁵ See the ICHRP Report, at 51.

¹⁰⁶ The ICHRP Report 32-33.

freedom of information and freedom of expression as protected by international human rights law and the Aarhus Convention. They should expressly refer to and meaningfully reflect existing international standards on the right of freedom of information and participation in the context of environmental decision-making.

Recommendations

To States and Intergovernmental Bodies:

- Climate change agreements and policies should recognise expressly that climate change has consequences for all human rights and that human rights, including the right to freedom of expression and freedom of information, are central to mitigation and adaptation strategies.
- Future climate change agreements should obligate all states to establish a legal and regulatory framework to protect the right to freedom of expression and freedom of information, including freedom of the media, in the development and implementation of responses to climate change, in particular those on adaptation, mitigation, funding and technology transfer.
- Climate change agreements should provide that states should establish at the domestic level accountability mechanisms to properly enforce the right to freedom of expression and freedom of information on climate change issues. Such mechanisms should include access to administrative and judicial remedies in cases of human rights violations.

2. Promoting Aarhus Principles in International Agreements

88. ARTICLE 19 argues that states parties to the Aarhus Convention should promote its principles in global agreements and processes on climate change.

Recommendations

To States and Intergovernmental Bodies:

- The provisions of the Aarhus Convention should be used as baseline standards in future international agreements on climate change.
- States parties to the Aarhus Convention should make the case for an express reference to that international legal text within climate change agreements.

To Civil Society Organisations:

- Civil society groups working on climate change issues should remind states of their obligations under the Aarhus Convention in their policy documents and advocacy initiatives.

3. Disclosure and Updates of High Quality Information on Climate Change

89. Climate change strategies rely upon accurate information on such matters as global temperatures, sea levels and deforestation. Disclosure of information on climate change is clearly in the public interest and serves to enhance the effectiveness of environmental monitoring by widening the constituency of people who understand environmental policy goals and can engage in formulating responses. Such environmental information should be publicly available, as recognised by the Aarhus Convention¹⁰⁷ and international best practice

¹⁰⁷ Article 4 (on Access to Environmental Information) and Article 5 (Collection and Dissemination of Environmental Information), Aarhus Convention.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

standards, be of a high quality and be presented as far as possible in human rights terms.¹⁰⁸ Moreover, access to such information by the media in particular should not be restricted.

90. Traditional approaches to national freedom of information legislation affirm the general public's right to receive on request information *held* by public authorities. The Aarhus Convention goes beyond the usual wording of freedom of information acts, requiring that states actively compile periodic reports on environmental risks, update them systematically, and make them available to the public proactively. Such measures should assist populations towards adapting to climate impacts.

Recommendations

To States and Intergovernmental Bodies:

- Climate change agreements and policies should promote the role of accurate and up to date information within national and international decision-making on climate change issues. Such information should be easily accessible and presented in human rights terms.
- Climate change agreements should require all states to enshrine in domestic law and implement the principles of maximum and pro-active disclosure on climate change information.
- Climate change agreements should require states to:
 - make information on climate change easily available and transparent;
 - disseminate immediately and without delay to the public all information which could enable the public to take measures to prevent or mitigate the harm arising from any climate change threats, especially imminent ones which may have severe humanitarian consequences;
 - publish at regular intervals not exceeding four years a national report on the effects of global warming on the state;
 - positively encourage and stimulate public awareness about climate change impacts based upon high quality and up-to-date scientific data.
- Climate change agreements should specifically emphasise the importance of the free flow of information, freedom of expression, and freedom of the media in climate change responses. They should call on all states to ensure that the media, civil society groups and members of the general public are not hindered in its efforts to gain access to information on climate change issues.
- Climate Change agreements should call on states to respect the right of whistleblowers and take necessary measures to ensure that whistleblowers on climate change issues should benefit from legal protection.

To the media and civil society organisations:

- The media and civil society organisations should publicise, use and test the validity of the climate change data produced by state and intergovernmental bodies through investigative reporting.

¹⁰⁸ ARTICLE 19, The Right to Know Principles.

4. Protecting and Promoting the Free Flow of Information and Public Debates

91. The fundamental rights to freedom of expression and freedom of assembly of climate activists and demonstrators need to be reinforced through international agreements. Demonstrations and protests on climate change issues play a fundamental function in global and national responses to climate change. As the urgency of climate change responses gathers pace, activists, organisations, demonstrators and human rights defenders will legitimately insist on being given the opportunity to voice their concerns. Similarly, climate change scientists should not be gagged from expressing their scientific opinions on climate change and the best avenues for addressing it.

Recommendations

To States and Intergovernmental Bodies:

- Climate change agreements should call on all states to fully protect the freedom of expression and freedom of assembly of those working on climate change issues at all times, including demonstrators, activists, etc.
- State authorities, especially the law enforcement authorities, should refrain from demanding and using wider powers of arrest and detention to prevent legitimate protestors from travelling to demonstrations within their own countries and in other states.
- Any reliance on security or anti-terrorism legislation to curtail the freedom of expression and freedom of assembly should be strictly in line with the *Johannesburg Principles on National Security and Freedom of Expression and Access to Information*.¹⁰⁹
- Scientists – whether working for national governments, international organisations, non-governmental organisations, corporations or independently – should have their right to freedom of expression on climate change matters effectively protected. Their advice to governments and international organisations on climate change issues should not be suppressed in any way.

To the media and civil society organisations:

- The media and civil society organisations should draw attention to and expose any unjustifiable restrictions on the human rights, in particular the rights to freedom of expression and to freedom of assembly, of demonstrators on climate change issues.
- The media should publicise up-to-date and high quality scientific information on climate change issues.

5. Promoting the Participation of Vulnerable Groups

92. Legal frameworks facilitating the positive exercise of the rights to freedom of expression and freedom of information support the participation of those groups and individuals most affected by climate change to make their claims for action on climate impacts, and, in doing so, to assist relevant policy-makers to understand and take account of these claims.¹¹⁰

¹⁰⁹ ARTICLE 19, The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, November 1996, available at <http://www.article19.org/pdfs/standards/joburgprinciples.pdf>

¹¹⁰ Principle 10 of the 1992 Rio Declaration states: “Environmental issues are best handled with the participation of all concerned citizens... At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

93. The rights to freedom of expression and freedom of information are crucial in facilitating public discussions and creating the conditions for public appreciation and consent for such policies and ultimately for their future success.
94. ARTICLE 19 argues that the importance of ensuring the rights to freedom of expression and freedom of information of vulnerable groups, in particular indigenous peoples, should be directly stated and amplified in the future agreements and decisions on climate change in order to empower and reflect vulnerable groups as active agents of change rather than as mere passive victims.
95. It is also noted that the proper fulfilment of human rights at the local level is especially important within states especially vulnerable to the effects of climate change as it would strengthen adaptation and mitigation strategies.

Recommendations

To States and Intergovernmental Bodies:

- Climate change agreements and policies should reflect the Aarhus Convention in obligating states to design consultation and decision-making processes which recognise the right of individuals to participate in adaptation and mitigation programmes.
- Climate change agreements should require that:
 - The participation of local communities be incorporated as a central aspect of climate change strategies, including adaptation and mitigation.
 - Effective systems for ensuring the two-way flow of information to and from communities particularly affected by climate change should be put in place as part of the overall strategy to ensure effective participation.
 - States have a duty to ensure that the rights to freedom of expression and freedom of information of vulnerable groups, in particular indigenous peoples, are fully protected in national strategies and international decision-making processes on climate change issues.
 - States should provide all relevant data and information affecting vulnerable groups and indigenous peoples in their own/local languages.

To the media:

- The international and local media should publicise and report on the specific climate change concerns of vulnerable groups and in particular of indigenous peoples.
- Professional codes of conduct adopted by journalists and media organisations should reflect key values of accuracy and respect for the populations particularly vulnerable to climate change effects.

6. Transparency and Accountability

96. Open, effective and transparent systems of accountability are essential for the proper implementation of climate change strategies and the management of funds required for these strategies. The nature and extent of the funds which will be provided (internationally or nationally) raise legitimate concerns regarding accountability, good management of monies, the risks of corruption and the effective use of funds.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

Recommendations

To States and Intergovernmental Bodies:

- Independent oversight bodies should be established to monitor the distribution of funds, both internationally and nationally, and to respond to complaints regarding possible corruption, misuse or mis-management of the funds.
- Effective measures should be put in place to ensure that affected communities can monitor the delivery of adaptation funds meant for their areas or their communities.
- The media should not be hindered in its efforts to report on and to gain access to information on mitigation and adaptation funds, including their extent and use.
- Whistleblowers should benefit from legal protection as outlined above.

7. The Political economy of information and participation

97. The international community needs to address the extent of the disparities in quality scientific information on climate change available across the world, and its impact on strategy development and implementation. Some states currently lack the capacity and resources to collect and analyse scientific and technical information to trace the impact of climate change, including its impact on specific rights (such as food, health, water and housing) and more general vulnerability, particularly at the local level. To date, developing countries have received minimal help from developed countries on this.

Recommendations

To States and Intergovernmental Bodies:

- Climate change agreements should require developed states to support global, regional and national research and information systems on risk, including assisting developing country governments to build monitoring and dissemination programmes at the national level, where these are missing and required. The priorities of such programmes should be the measurement and forecasting of climactic variability, regional and national floods, and geophysical hazards.
- Climate change agreements should establish the principle that richer states (Annex I states) should support poorer ones (non Annex I states) in information gathering, analysis and dissemination for adaptation programmes, where such information is not available.
- States should fund research into appropriate and meaningful transfer of technologies and funds and this data should be disseminated widely.

98. Climate change negotiations need to be geared more towards recognising and rectifying the deficiencies to date in terms of participation of poor states (non-Annex I countries), particularly the least developing states, in mitigation policies on climate change. Specifically, poor countries (non-Annex I countries) should be given a greater voice and the ability to participate in fora which may produce decisions which affect the nature of their ability to respond to climate change threats. Furthermore, there is a need to undertake long term research into structural reform of existing mechanisms to ensure that there is no bias against developing and least developing countries in relation to emissions trading.

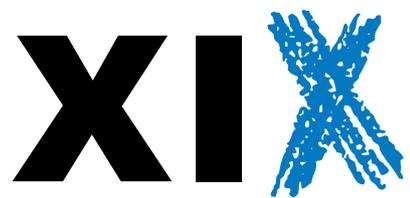
ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

Recommendations

To States and Intergovernmental Bodies:

- The lack or limited participation of Non-Annex I countries in mitigation negotiations must be reviewed, its causes and impact assessed, and solutions developed. If necessary, developing countries should be provided technical assistance and resources to participate in such processes on an equitable basis.
- Tenders for work relating to climate change processes (such as REDD) should be transparent and fair.
- Developed countries and corporations wishing to buy REDD credits should require clear human rights safeguards to ensure the development interests of the countries concerned.
- The long-term effects of a global emissions market on poor countries and human rights protection should be researched and the results published and publicised.
- The right of access to information and freedom of expression of indigenous peoples should be safeguarded and mainstreamed into mitigation strategies, notably REDD, and programming from the outset.



ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION