



**ARTICLE 19's submission to the consultations
of the UN Special Rapporteur on Freedom of Expression
on her report on "Freedom of Opinion and Expression and Sustainable
Development - Why Voice Matters"**

February 2023

Introduction

ARTICLE 19 welcomes the opportunity to respond to the public consultations organised by the UN Special Rapporteur on Freedom of Expression and Opinion (Special Rapporteur) on her forthcoming report to the Human Rights Council on freedom of expression and sustainable development.

The right to freedom of expression is considered an enabling right – the right which facilitates public participation in decision-making related to vast range of human rights and societal issues, and allows people, as a result, to better access these rights. For these reasons, ARTICLE 19 has long argued that there are strong links between the right to freedom of expression and information (freedom of expression) and economic, social and cultural rights – particularly the right to water, health, a clean environment, and education. We have also maintained that the right to freedom of expression is a prerequisite to achieving sustainable development as it empowers people with knowledge to demand services, to hold governments and companies accountable for their actions in general and developmental projects in particular. Ultimately, it promotes accountability on development issues as it does for more political matters. Information on budgets, spending, regulations, and decision-making means people can work from a position of knowledge rather than ignorance and participate in important decisions that affect their lives.

Therefore, ARTICLE 19 has supported efforts taken towards integrating respect for human rights with the development and anti-poverty agenda. In particular, we welcomed the inclusion of the right to information and freedom of expression in the UN Agenda 2030 for Sustainable Development and its recognition as necessary enabling mechanism for public engagement across the Sustainable Development Goals (SDGs), incorporating it explicitly into Goal 16 and implicitly into many other goals and targets. We have been monitoring and assessing the implementation of the SDG Goal 16 10 and its indicators. This submission builds on our existing work and numerous materials developed on these issues by ARTICLE 19 over the years¹ and focuses on:

¹ See, in particular, ARTICLE 19, [The London Declaration for Transparency, the Free Flow of Information and Development](#) (2010); [The Free Flow Principles: Freedom of expression and the rights to water and sanitation](#) (2014);

- Overall importance of freedom of expression for sustainable development (founded on three inter-connected aspects of the right to freedom of expression – the right to speak, the right to know and the right to be heard) and how it contributes to the achievement of the SDGs;
- Gaps in protection of freedom of expression in crucial areas of development agenda;
- The role of independent media and investigative journalism in promoting sustainable development and the barriers, threats and challenges they face; and
- Access to information, sustainable development and equality, inclusion, participation and empowerment of women and girls and indigenous communities.

We also provide suggestions for the Special Rapporteur’s subsequent recommendations on how to protect and promote the right to freedom of expression and the right to information in the context of sustainable development. Finally, in the annex to this submission (in Spanish), we provide more detailed information about the gaps in this area in Mexico, based on the work of ARTICLE 19 Mexico and Central America.

ARTICLE 19 also supports the work of the Special Rapporteur and other UN bodies to strengthen the global standards on access to digital technologies. We are fully aware that as digital technologies have become essential in everyday lives, they also enable the exercise and enjoyment of many economic, social and cultural rights as well as the right to freedom of expression. A lack of adequate infrastructure or connectivity usually leaves behind the poorest communities, and the digital divide shows its discriminatory effects in all its strength. For these reasons, ARTICLE 19 appreciates efforts for elaborating further guidelines on how access to digital technologies and digital connectivity contributes to sustainable development. We have also repeatedly urged the states to bridge digital divides, and implement their commitments on enhancing Internet accessibility and affordability.

At the same time, we believe that exploring the issue of sustainable development and digital connectivity is an extremely complex undertaking. We therefore recommend the Special Rapporteur to examine this issue in a separate dedicated report, rather than in this report. We stand ready to elaborate our recommendations about the issues that should be subject of such report in the future.

Importance and role of freedom of expression in sustainable development

ARTICLE 19 believes that the full enjoyment of the right to freedom of expression (which also encompasses the right of access to information) is the most potent force to strengthen peace and pre-empt conflict. It is central to achieving individual freedoms and developing democracy and plays a critical role in tackling the underlying causes of poverty.

[A Healthy knowledge: Right to information and the right to health](#) (2012); or [Tackling gender inequality through access to information](#) (2020).

As noted earlier, we see and approach freedom of expression as a cornerstone right or as “empowerment” right - one that enables other rights to be protected and exercised. It allows people to demand the right to health, to a clean environment and to effective implementation of poverty reduction strategies. It makes electoral democracy meaningful and builds public trust in administration. Access to information strengthens mechanisms to hold governments accountable for their promises, obligations and actions. It not only increases the knowledge base and participation within a society but can also secure external checks on state accountability, and thus prevent corruption that thrives on secrecy and closed environments. More specifically, freedom of expression is absolutely critical to achieving and sustaining poverty eradication and human rights.

For the following reasons, we urge the Special Rapporteur to recognise these key issues in her forthcoming report:

- **Sustainable development, poverty and the rule of law:** Sustainable development in general, and the achievement of the sustainable development goals (SDGs), relies on an enabling legal and policy environment in which freedom of expression and an independent media are respected and can thrive. For ARTICLE 19, these require, *inter alia*, building constitutional guarantees to freedom of expression and information, abolishing laws that repress the media, developing and adopting dedicated right to information laws, decriminalising defamation and putting an end to the abuse of defamation laws by those in power to stifle legitimate criticisms and investigative journalism, eliminating laws designed to exclude or marginalise certain ethnic, linguistic, religious or other minority groups in their efforts to compete in the marketplace on an equal footing with the dominant groups in society, removing discriminatory laws and practices which prevent women and girls in exercise of human rights and public participation.
- **Sustainable development and the right to speak:** If sustainable development is to be realised, people need the freedom to participate in public life, to put forward ideas and potentially have these realised and to demand, without fear of recrimination or discrimination, that governments uphold their obligations. The lack of effective voice of the groups most at risk of discrimination perpetuates inefficient, and sometimes corrupt, forms of governance and service delivery that keep the poor in a subordinate position. Freedom of expression allows individuals and communities the possibility of becoming active in the development process, thereby increasing its long-term suitability and sustainability.
- **Sustainable development and the right to know:** The knowledge and experience of people living in poverty is often undervalued, and their perspectives on their needs and on solutions to their own problems are often ignored. Poverty eradication entails fundamental reforms to promote broader political participation, to ensure accountability and transparency of government, and to create a strong role for community groups in policy-making. It also requires ensuring that poor people have access to relevant information to make their own informed decisions and realise their rights. The free flow of information strengthens accountability and transparency, prevents corruption, and increases the

capacity of community groups to participate in policy-making. In societies where information flows widely and access to communication services is widespread, markets and government institutions are likely to become more efficient, transparent and accountable. The institutions and organisations that serve the poor and defend their interests can be more effective. Information and knowledge that are vital to the poor can be more easily and widely accessible. For these reasons, the importance of access to information has been explicitly recognized in international standards on the right to water,² the right to health³ or the right to education;⁴ as well as in numerous international treaties and agreements related to, for instance, pollution,⁵ climate change⁶, disability⁷, and migrants.⁸

- **Sustainable development and the right to be heard:** It is those communities most affected by poverty which are least able to impart and obtain information, especially relating to basic services. As a result, they are excluded from public debate and unable to influence decisions that have a profound effect on their everyday lives. The alienation of poor communities from the public sphere prevents them from being able to represent their interests at national level, rendering them vulnerable to misguided policy-making. Information empowers communities to battle the circumstances in which they find themselves and helps balance the unequal power dynamic between them and their governments. It has been long argued that democracy must extend beyond the ballot box and be deepened through an expansion of 'social citizenship' and an intensification of efforts to combat poverty and inequality.⁹ Democratic reform should not only be focused on government but also tailored to create the mechanisms necessary for citizens to adopt an active role in public life.
- **Freedom of expression and the fight against corruption:** Freedom of expression and information is also important in the fight against corruption - the abuse of public power for private gain. The right to information gives individual's the ability to know what public institutions are doing: they can either access public information or public institutions have obligations to proactively publish information. When openness and transparency is pursued

² Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water, 2002.

³ See e.g. Committee on Economic, Social and Cultural Rights, General Comment No. 14, 2000: The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights); Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mission to Japan, A/HRC/23/41/Add.3, 31 July 2013; Committee on the Elimination of Discrimination against Women, General Recommendation No. 24: Article 12 of the Convention (Women and Health), 1999.

⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Article 13 of the Covenant), 1999.

⁵ Stockholm Convention on Persistent Organic Pollutants; Minamata Convention on Mercury, 2014.

⁶ United Nations Framework Convention on Climate Change, 1992.

⁷ The Convention on the Rights of Persons with Disabilities, Resolution adopted by the General Assembly, 24 January 2007, A/RES/61/106.

⁸ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 18 December 1990, A/RES/45/158.

⁹ See e.g. UNDP, Democracy in Latin America: towards a citizens' democracy, 2004.

by public institutions, the public can scrutinise how decisions are made and conducts of public officials. This is crucial in order to expose wrongdoing and to fight against corruption. The right to information becomes crucial in the acquisition and use of public funds as allocation and use can be followed, for example in public procurement, social benefits, delivery of public services. In the context of development, the right to information can encourage foreign investments and aids for development programs as investors and institutions will have more certainty that funds will not be lost for individual gain. When openness and transparency is maintained, this has a direct impact on the ability of journalists and the media to access the information, investigate and expose wrongdoing practices and conducts and impart such information to the public. It is also important to ensure that those individuals who speak about wrongdoing in the context of an employment relationship (also known as whistle-blowers) enjoy protection and their actions of exposing corruption practices and behaviours are protected as an exercise of their right to freedom of expression.

ARTICLE 19 urges the Special Rapporteur to examine in her forthcoming report all these aspects of the right to freedom of expression in the sustainable development agenda. In particular, we observe that such holistic recognition of importance of freedom of expression for sustainable development is missing in the 2015 Agenda 2030, incorporating the SDGs.¹⁰ While we recognise the importance of SDG Goal 16,¹¹ and an important target (16.10.2),¹² we believe it is important to consider freedom of expression for sustainable development in its complexity.

Gaps in protection of freedom of expression in crucial areas of development agenda

ARTICLE 19 appreciates that there has been substantial progress in the **recognition of the right to information** in national laws (in national constitutions, dedicated access to information laws and national policies and in sectoral laws). Our Global Right to Information Maps¹³ show that 133 countries currently have access to information laws or policies; hence 91% of the world's population lives in a country where they can formally request information from a state or a local authority.

There have been also several **multi-stakeholder global initiatives** between governments and international or local civil society organisations to promote more transparency. These include in

¹⁰ UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1.

¹¹ SDG 16 calls for all countries to “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.”

¹² 16.10.2: “Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information.”

¹³ ARTICLE 19, [Right to Information Around the World](#).

particular the Open Government Partnership (OGP),¹⁴ the Open Contracting Partnership (OCP),¹⁵ the Open Contracting Data Standard (OCDS)¹⁶ and the Extractive Industries Transparency Initiative (EITI).¹⁷ These initiatives have helped to further the development of plans and commitments for States to strengthen access to information; and unlike the UN processes, the civil society has played an active role in the development of these commitments (not just in ensuring there are properly implemented). Importantly, these initiatives have also contributed to increased transparency and openness through the focus on non-legislative measures. These include producing open data through the creation of open platforms where the information is publicly available and easily accessible. They also focus on the transparency in procurement processes, and strengthening efforts towards e-government for public institutions.

At the same time, we recommend that the Special Rapporteur recognises the following challenges to freedom of expression and access to information that affect the delivery of public services and achievement of economic, social and cultural rights:

1. Gaps in adoption of dedicated right to information laws

As noted above, there has been an important shift towards the recognition of the importance of the right to information. However, recognising the right to information in legal framework/national constitution is just the first step. It must be followed with legislation that makes this right enforceable (right to information law/RTI law). In some jurisdictions, adoption of a dedicated right to information law can be a straightforward process: model right to information laws have been developed in Africa and Latin America and such law can be adopted with very little effort by national authorities. In countries without right to information law, it is a lack of political will and deeply rooted culture of secrecy that is preventing the adoption of the law.

2. Failure of the RTI laws to comply with existing international standards

ARTICLE 19 urges the Special Rapporteur to highlight that many RTI laws do not fully comply with existing international standards in this area. In particular, the scope of many laws is narrow, the set process on right to information requests is inadequate, exemptions from obligation to make information available are too broad, an oversight body lacks independence (both political and financial one) and resources, there is effective appeal mechanism or no obligations of proactive

¹⁴ [OGP](#) requires its members to commit to adopt a solid right to information framework and ensure its proper enforcement. It is also based on a strong involvement of the civil society (in a much more dynamic way compared to the UN).

¹⁵ [OCP](#) was established in 2012 by policy experts, leaders and campaigners through a collaborative process that included hundreds of stakeholders across government, business, and civil society, who believe that better open data and more community engagement can transform public projects, goods and services.

¹⁶ [OCDS](#) was launched in 2014 as a global non-proprietary standard structured to reflect the complete contracting cycle, and enable users and partners around the world to publish shareable, reusable, machine readable data, to join that data with their own information, and to build tools to analyse or share that data.

¹⁷ [EITI Standard 2019](#) it is a global standard to promote open and accountable management of natural resources. It seeks to strengthen government and company systems, inform public debate, and enhance trust.

disclosure. Too often states fail to ensure that the law is accompanied by a comprehensive system and policy to promote the law including capacity building, training for public officials, and challenge barriers towards the culture of openness and transparency. For example

- The Access to Information Act 2015 of Kenya is narrow in scope. It excludes the cabinet deliberations and documents from disclosure and includes a very vague definition of national security that can be interpreted very broadly to deny access to information in a vast number of cases.¹⁸
- Some RTI laws in Asia require the person requesting information to state a reason for asking the information. The Chinese RTI law prescribes that a person may obtain information only if they show a “special interest”, such as production, life, research and other needs.¹⁹ RTI laws in Indonesia, Nepal, South Korea and Taiwan, explicitly require the requesters to state a reason or purpose for their request.²⁰ While the Pakistani law is silent on this matter, the official request form requires that the requester describes the purpose of the request and pledges to use the information only for the declared purposes.²¹
- The Publication and Free Access to Information Act of Iran includes an overly broad and vague provisions on “classified information” (based on the 1975 Secrecy Law) that is excluded from disclosure. The RTI stipulates that only Iranian citizens can file access to information requests. The Commission that oversees the implementation of the RTI Law lacks on political independence as it is created within the Ministry of Culture and Islamic Guidance.²²

3. Serious gaps in implementation of RTI laws

The effective implementation of RTI laws does not come as an automatic consequence. In ARTICLE 19’s experience, the lack of a proper implementation of these laws is an issue across the world, due to various factors. Often, public authorities are using state secrets or trade secrets legislation or exceptions to avoid disclosing important information. Culture of secrecy and structural obstacles allow public authorities and other entities to avoid their obligations under information laws. In developing countries, the barriers that prevent the entire population from accessing information include the digital divide. We would like to highlight the following examples:

- In Brazil, ARTICLE 19’s work shows that states and municipal authorities still struggle to familiarize themselves with the 2011 Access to Information Law. For instance, they often ask requesters to provide personal data (although this is not required under the Law) and do not provide requested information. For many areas of public administration, the culture

¹⁸ ARTICLE 19, Kenya: New dawn for transparency as Access to Information law is passed, 2016.

¹⁹ ARTICLE 19, [Asia Disclosed: A Review of the Right to Information across Asia](#), 2015.

²⁰ *Ibid.*

²¹ *Ibid.*

²² ARTICLE 19, [Iran: Right to Know Day must mark commitment to transparency](#), 2020.

of secrecy is pervasive, including about the use of development funds, environment, food and agriculture. Generally, public authorities seem to excessively rely on the public security exemptions in order not to disclose information. There is still no information commission or another dedicated oversight body that can ensure proper implementation and building capacities of public institutions in the area of access to information.²³

- The implementation of RTI laws has been particularly challenging during natural disasters, exactly at the time when national authorities should ensure transparency. For instance, in Nepal, after the April 2015 deadly earthquake, NGOs warned about the lack of efforts to proactively disseminate information of public importance.²⁴ Transparency was very poor also during Japan's nuclear meltdown and the following cover-up.
- Poor standards of record-keeping and a lack of registers also contribute to poor implementation of RTI laws by public authorities. For instance, China, Indonesia, Japan, Mongolia, Nepal and Thailand do not have any provisions in their RTI laws on records management; neither do they mention any role of the supervisory bodies in developing guidelines on this issue.²⁵ When RTI laws do mention the role of the Information Commission in issuing guidelines for records management, these are not developed, like in the case of Bangladesh and India.²⁶

4. The lack of comprehensive data on RTI enforcement

ARTICLE 19 is also concerned about a complete lack of data to measure progress in this area which then hinders the effectiveness of international frameworks such as the SDGs.

The lack of comprehensive data is particularly relevant for assessment of the progress towards SDG 16.10.2 on access to information. We note that the only available official data about achieving this goal come from a global monitoring by UNESCO, but this is based on a self-assessment by states and is far from comprehensive. For instance, only 40 countries (out of 102 countries that sent the response to the 2021 UNESCO survey, published in 2022) had provided requested data and others stated they did not collect any due to the pandemic.²⁷ The questionnaire sent to the countries was far from comprehensive, consisting of 9 questions and only 4 of those concerned the implementation of the law.

ARTICLE 19 believes that the Special Rapporteur could therefore recommend that States should ensure that the more effective ways of measuring the efforts in this area, including through methodologies developed by the civil society.²⁸ This means that the forthcoming report would

²³ ARTICLE 19, [Brazil: Five years of the Access to Information Law](#), 2017.

²⁴ Asia Disclosed, *op.cit.*

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ UNESCO, To recovery and beyond: 2021 [UNESCO report](#) on public access to information (SDG 16.10.2).

²⁸ See e.g. scorings developed by the Center for Law and Democracy (CLD), [Global Right to Information Rating Map](#) or [FOIANet](#).

not only be important in its own right; the recommendations of the Special Rapporteur could inform the review the implementation of the 2030 Agenda for Sustainable Development and the 17 SDGs later this year.

5. Failures to ensure public participation in issues related to protection of social, economic and cultural rights

ARTICLE 19 believes that broad public participation is a cornerstone of responsible democratic governance and a fundamental prerequisite to achieve sustainable development. It is especially important for the groups at risk of discrimination, such as women, refugees and internally displaced persons, indigenous communities, and people living in poverty. We have long argued that the lack of effective voices of people, especially the most disadvantaged and vulnerable groups, perpetuates inefficient, and often corrupt, forms of governance and service delivery that keep them in a subordinate position.

Unfortunately, there are many examples where governments do not fully realise that democracy extend beyond the ballot box and adopt a variety of measures aimed at preventing individuals and groups to take part in public affairs. In our experience, participation in environmental issues and decisions remains a particular concern worldwide. This is despite numerous international and regional obligations related to the protection of the environment that require States to enhance efforts to ensure public awareness, public participation and access to information in environmental matters. Policies and processes that deal with environmental impact, especially to mitigate the growing effects of climate change, often fail to ensure participation and consultation of stakeholders. These failures also include lack to provide information to those facing more barriers, particularly marginalised communities, with ample guidance on how, when and where to exercise their right to participation. The lack of mechanisms to ensure participation of affected local and indigenous communities often causes significant harm to them.²⁹

For example:

- The reports show that in several African countries, indigenous communities have been evicted from their land in order to preserve the natural environment and biodiversity without any compensation. No legal framework exists that allows such communities to even question the implementation of projects that affect them or laws granting them rights to benefit from the exploitation of resources in their lands (laws that for instance exist in Latin America). These communities are violated in their right to participation and also their right to access information as they are not informed about the existence of mechanisms through which they can assert their rights (that can be found in some property laws).³⁰
- In Papua New Guinea, the government has developed a guideline for multi-stakeholder partnerships to implement SDGs that ensures participation of all level of society, including

²⁹ ARTICLE 19, [COP27: Transparency must underpin actions to address climate change](#), 2022.

³⁰ See for e.g. Amnesty International, [Uganda: Evicted from their ancestral land 13 years ago, the Indigenous Benet people still await justice](#), 2021

indigenous people and minority groups. However, these efforts remain on paper as it has been reported that affected communities are not informed about ongoing processes and they are unable to participate in a meaningful way.³¹

- ARTICLE 19's report on freedom of expression and the right to water and sanitation showed that public participation of indigenous communities has been hampered by failure of public authorities to publish information in local and indigenous languages or to effectively communicate information to communities with high levels of illiteracy and digital divide. For instance, in the Brazilian state of Pernambuco, many communities affected by drought were not able to participate in consultations related to water programmes in the state as they had no access to the internet and no money to send an information request by mail or travel to cities.³² In Cambodia, during the construction of Lower Sesan 2 Dam, reports showed that that there was no written information available in Khmer for local populations.³³
- In Kenya, in 2012, ARTICLE 19 found that structures and mechanisms to convey information to internally displaced people (IDPs) were lacking; and frequently, IDPs rely on informal and inconsistent channels of communication regarding important government programs and policies affecting them, including those related to the rights to water and sanitation. The lack of information also hampered the equitable distribution of humanitarian assistance.³⁴ In Lesotho, public consultations were completely lacking in the Lesotho Highlands water project; the consultation was done at the level of central government rather than within the affected communities.³⁵ Similarly, in Zimbabwe, total lack of communication between the government and affected people were documented in the Osborne Dam.³⁶
- In some contexts, consultation with local affected communities are just a tick boxing exercise to comply with legal requirements established by laws but there is no real interest or intention to consult with them on the impact. For instance, in the case of Xiaonanhai Dam in Chongqing, China, the public consultations on the initial Environmental Impact Assessment (EIA) for the dam lasted only 10 days and the finished preliminary EIA report was published before the end of the consultation process.³⁷ In Thailand, there was a clear absence of any public participation in the decision and process of building the Pak Mun Dam. Authorities did not consult affected communities in the early stage of the decision-making process, nor did they attempt to include them in the project mitigation measures.³⁸ Bakun Dam in Malaysia was carried out with a lack of consultation with the affected indigenous

³¹ HRC, Climate action at the national level, Report of the Special Rapporteur on the right to development, A/HRC/48/56 (2021), para 90.

³² ARTICLE 19, [Cleaning Muddy Waters: Using Freedom of Expression to Claim the Rights to Water and Sanitation](#), 2014, p. 17.

³³ *Ibid.*, p. 18.

³⁴ ARTICLE 19, [The right to information for internally displaced persons in Kenya](#), 2011

³⁵ *Cleaning Muddy Waters*, *op.cit.*, p. 28.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

people and no public participation in the Environmental Impact Assessment process. As a result, more than 10,000 indigenous people from 15 communities have been forcibly displaced and the project has threatened the traditional economy and resulted in logging, habitat destruction and reservoir flooding. The Government has actively discouraged local debate and prohibited local media reporting on the adverse effects of the project.³⁹

The role of independent media and investigative journalism in promoting sustainable development and the barriers, threats and challenges they face

The media and journalism play a crucial role in promoting sustainable development. Free and independent media help to provide knowledge on important development issues, highlight and fight corruption⁴⁰ and develop a culture of criticism where people are less apprehensive about questioning government action related to economic, social and cultural rights. They also ensure that complex messages are translated into a meaningful and understandable form for the public and facilitate discussions on development related issues.

In 1990, ARTICLE 19 published a report on famine and censorship⁴¹ analysing the patterns of, and responses to, famine in China in 1959-61 and in Ethiopia and Sudan in the 1980s. It showed that, if timely, information can be collected and if made freely available, the risk of widespread damage and loss of life can be mitigated. Our 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.⁴² These findings are still relevant today.

ARTICLE 19 has also showed that the media plays a key role in effective advanced warning systems in environmental issues. 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,⁴³ 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.⁴⁴

³⁹ *Ibid*,

⁴⁰ See also the UN Convention Against Corruption (UNCAC), 31 October 2003, A/58/422, Article 13(d).

⁴¹ ARTICLE 19, [Starving in silence, a report on famine and censorship](#), 1990.

⁴² ARTICLE 19, *Is Post-Chernobyl Ukraine Ready for Access to Environmental Information*, January 2008; *A Haze of Secrecy: Access to Environmental Information in Malaysia*, January 2007; ARTICLE 19, *The Forbidden Zone: Environmental Information Denied in Russia*, November 2006.

⁴³ Yokohama Strategy and Plan of Action for a Safer World, Guidelines for Natural Disaster Prevention, Preparedness and Mitigation, the World Conference on Natural Disaster Reduction in Yokohama, Japan, 23-27 May 1994.

⁴⁴ *Ibid*.

The role of the public service media and community media are particularly important in this respect as they help to empower marginalized, vulnerable or rural communities about issues that are not reported in the mainstream media. Local media outlets, including community radios, newspapers and 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 people's participation in necessary responses.

Therefore, we believe that the Special Rapporteur should highlight that more efforts should be devoted to demonstrating to, and raising awareness and understanding of, the general public and opinion-makers on the role played by a free media in sustainable development. Development of information and the role of the media should also not be restricted to mainstream models- there is an important role for alternative media and informal communications networks. These networks need to be strengthened and included in policies, measures and activities related to range of issues related to sustainable development.

At the same time, ARTICLE 19 and other freedom of expression organizations have documented numerous ways in which media, journalists and civil society are prevented from monitoring violations of economic, social and cultural rights and reporting on developmental issues. In particular, we would like to highlight the following.

1. *Censorship of the media reporting on developmental issues*

For example:

- In March 2013, a court in Caracas, Venezuela, held that the press was forbidden from reporting on issues of water contamination without using the government-approved report. News accounts in the weeks preceding the decision had questioned whether a nearby river, that provides drinking water, was contaminated with chemicals. This report was denied by the government.⁴⁵
- In Brazil, ARTICLE 19 found that activists, journalists and media workers have been detained and their equipment inspected by national and private security guards, whilst working on the surroundings of the construction site at Xingu and Madeira Rivers.⁴⁶
- In Egypt, in June 2008, journalist Tamer Mabrouk exposed the practice of dumping chemicals into a lake. He was sued for libel and brought a counter-suit requesting the closure of the source of pollution. The court found that it did not have jurisdiction to hear his counter-suit. The court case on libel found him guilty and he was fined E6000.⁴⁷

⁴⁵ Cleaning Muddy Waters, *op.cit.*, p. 22.

⁴⁶ ARTICLE 19, [Brazil: Right to information + water](#), 2014.

⁴⁷ Cleaning Muddy Waters, *op.cit.*, p. 23.

2. Attacks on journalists, activists and protesters

ARTICLE 19 has documented several cases of attacks on journalists, human rights defenders and activists investigating violations of social, economic and cultural rights as well as attacks on people demanding these rights through peaceful protests. Along with the increasing trend on the number of attacks (ranging from range from threats, killings, attempted or actual assaults, abductions, disappearances and killing), impunity for such attacks remains extremely high. For example, in our report on freedom of expression and right to water, we highlighted the following cases:

- In Bolivia, journalist Ronald Méndez uncovered alleged embezzlement of one million dollars by a local water company. He was sentenced to one year in prison but was later released and the case closed. One month later was shot in the leg by an unidentified gunman.⁴⁸
- In Guatemala, on the 19 August 2013, Carlos Alberto Orellana Chávez who hosted news programs on a cable station Canal Óptimo 23, where he denounced corruption, was abducted by unidentified assailants. His body was later found with a bullet wound to the head. It is not clear if the crime is linked to his journalistic work but the day before his murder he had broadcasted critical reports on the subject of water contamination and related government corruption.⁴⁹
- On 1 August 2013, in Sri Lanka, several journalists covering demonstrations by residents calling for the closure of a factory accused of polluting local water supplies were attacked by the law enforcement agencies. Soldiers assaulted a photographer forcing him to get down from the rooftop from which he had been taking photos. Other journalists were threatened and roughed up by soldiers to prevent them covering the protest and its dispersal.⁵⁰
- In India, in 2011, protests against a dam in the Lakhimpur district were broken up after the district administration prohibited assemblies of five or more persons and declared the gatherings of dam protesters unlawful. Police arrested 200 protesters who were blocking access to the construction site.⁵¹
- In Sarawak, Malaysia, 2013, over 100 indigenous people, blocking a road to protest against low compensation levels they will receive after relocating to make way for Murum dam, were cordoned off by armed police. Police blocked human rights groups, the media and convoys carrying food and water from accessing the site and several protesters were arbitrarily arrested.⁵²

⁴⁸ *Ibid.*, p. 26.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Cleaning Muddy Waters, op.cit.*, p. 27.

3. Lack or weak protection of whistle-blowers

In recent years, whistleblowers' role in uncovering wrongdoing or corruption scandals has been key in many major international cases at the country and global levels. There has been a growing attention and recognition that the ability of whistleblowers to speak up to expose wrongdoing is part of the right to freedom of expression and deserves specific protection. There has been a slow but progressive cultural shift towards the recognition and less stigma surrounding the role of whistleblowers, largely thanks to the media.

At the same time, ARTICLE 19 notes how the protection of whistleblowers in international law is still very limited. Apart of the recognition in the UN Convention against Corruption (in Article 33 - an optional provision),⁵³ there is no binding international standard on whistleblowers protection for States. Protection has been provided only in the regional standards⁵⁴ and in some national laws.⁵⁵ ARTICLE 19 also documented that from 82 countries have thematic protection of whistleblowers, most of these countries are in the Global South, with the exception of South Africa, Botswana, Namibia, Zimbabwe and Tanzania that have comprehensive laws. Many developing countries have no legal protection at all, particularly in central Africa and Latin America.⁵⁶ In general, however, national laws typically only cover a specific sectoral issue and are very weak in the implementation. In most countries that have stand-alone laws to protect whistleblowers, these laws remain underused and whistleblowers experience poor success rates when trying to defend their rights in court.⁵⁷

For example, in Algeria, that has a very limited legislation protecting whistleblowers, in 2020, journalist and whistleblower Nouredine Tounsi brought to light revelations of corruption at the Enterprise Port of Oran (EPO) in Algeria. Tounsi, who has worked with the Platform to Protect Whistleblowers in Africa (PPLAAF) since 2017, was arrested on 21 September 2020 for his relation with the PPLAAF (allegedly a "foreign party") and for his publications on social media critical of local judiciary. Tounsi had previously raised concerns about the management of the Port of Oran, and was fired from his job alongside others for doing so. He was charged under the Algerian Criminal Code with espionage, disclosure of official secrets and insults and violence against officials and state institutions. He was convicted to one-year imprisonment.⁵⁸

⁵³ ARTICLE 19, [Using access to information to combat corruption: Guide on the Enforcement of Articles 10 and 13 of the UNCAC by Governments and Civil Society](#) (2022) p. 17.

⁵⁴ EU Directive 2019/1937 Of The European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, [L 305/17](#); Council of Europe, Recommendation [CM/Rec\(2014\)7](#) of the Committee of Ministers to member States on the protection of whistleblowers.

⁵⁵ Currently, 150 UN member states and 20 self-governing jurisdictions have adopted some sort of whistleblowers protection. David Banisar, [Map of Whistleblowing Laws](#), 2022.

⁵⁶ David Banisar, [Map of Whistleblowing Laws](#), 2022.

⁵⁷ See e.g. International Bar Association, [Are whistleblowing laws working? IBA and Government Accountability Project publish landmark report](#), 2021.

⁵⁸ ARTICLE 19, [Algeria: Release whistleblower and journalist Nouredine Tounsi](#), 2020; Barron's, [Algeria Whistle-blower Jailed For A Year](#), 2021.

Access to information, equality, inclusion, participation and empowerment of women and girls and indigenous communities

ARTICLE 19 appreciates that the Special Rapporteur wishes to examine the role of freedom of expression and information for empowerment of women and girls and indigenous communities. Through our work, we have documented numerous instances of importance of access to information is fundamental for women's empowerment. In our experience, access to information is an instrument that contributes to overcoming gender inequality and traditional constraints that have historically kept women disempowered and disenfranchised. In particular, we have documented that women's lack of access to accurate information on their reproductive health and choices make difficult to enjoy full protection of their sexual and reproductive health for the inability to make informed decisions. Similarly, the right of access to information empowers women to more effectively push for educational opportunities for themselves and their children. Last but not least, access to information is extremely crucial in the context of the right to land; women can invoke their rights to inheritance and property in relation to the use of land, and can acquire more power and autonomy in their communities.

At the same time, ARTICLE 19 experience shows that women still face enormous structural obstacles and barriers that undermine their ability to fully exercise the right to freedom of expression and information. Systemic barriers preventing them to exercise this right include in particular:

- **Educational and language barriers:** Educational opportunities afforded primarily to men and boys, leading to reduced awareness for women of their right to access information and where to seek information and greater prevalence of illiteracy among women. Additionally, too often, information is only written in the country's official language or using complex jargon, which places a gendered educational bias on accessing understandable and usable information. For example, ARTICLE 19 found that in Chiapas, Mexico, women in indigenous suffer a high level of poverty and cannot access information in their native language about social programs, health, education, land and territory relating to large development projects and public services. The barriers to access information for women in Chiapas exacerbated during the pandemic where they remained totally uninformed about the Covid-19 outbreak as authorities were releasing information only in official language, recommended guidelines for containment, which facilities could aid in case of serious symptoms and access to vaccination.⁵⁹ In Tunisia, rural women in the south west region of Gafsa and Kebilli are mostly illiterate and cannot access information about health services, as health service providers were publishing information on a digital platform that rural women could not access.⁶⁰

⁵⁹ ARTICLE 19, *Open Development: Access to Information and the Sustainable Development Goals* (2017) p. 21; [Video Channel](#) of the project in Spanish: Article 19, [Derecho a la información sobre el #COVID-19 para pueblos indígenas](#), 27 April 2020; ARTICLE 19, [Informe especial C.O.V.I.D: Libertad de expresión e información durante pandemia de COVID-19 en México y CA](#), 9 July 2020; ARTICLE 19, Right to Know Day: [Covid-19 shows why all States must prioritize the ability of women to access to information](#), September 2020.

⁶⁰ ARTICLE 19, [Open Development: Access to Information and the Sustainable Development Goals](#), 2017, p. 24.

- **Discriminatory laws and practices:** In some countries, social and legal norms deem it inappropriate for women to approach authorities or access public systems on their own; traditional and conservative norms keep women confined to the home and the private sphere, and excluded from public life. Additionally, in some countries, access to reproductive health is severely restricted by bans of abortion which also leads to lack of information about sexual and reproductive rights and legal pregnancy terminations. For instance in Brazil, ARTICLE 19 found that women had to face several obstacles and barriers women had to overcome to access information and abortion treatments such as accessing basic information on under which circumstances a woman is allowed to access abortion and to how and where these procedures are performed.⁶¹ ARTICLE 19 research conducted directly with healthcare professionals show that only 50% of 34 healthcare facilities disseminate official information on abortion services for victims of sexual violence (one of the circumstances under which abortion is legal in Brazil).⁶²
- **Technological barriers:** Power and economic disparities leading to a gender digital divide, impeding women’s ability to access technology and the Internet compared to men.⁶³ It also excludes indigenous and minority communities to access information that is not widely available in the communities or where the public authorities only provide information online. In Mexico, the introduction to ICTs and network connectivity in Chiapas and Oaxaca has brought many opportunities and benefited some groups (such as the youth) but exacerbated and introduced new barriers for other groups such as women. Older women, that suffer severe poverty, could not afford to buy cellphone, which constitutes the main mean to connect to the internet for them. Indigenous women, older ones in particular, don’t have a source of income as they are engaged in unpaid work in the field or stay at home to look after their household. Some of them can count on a small income from small trade of their products (fruit, vegetables, clothing) but the little money earned is used for family needs, such as food, health, housing, transport and in some exceptional cases, to support their children’s education. Women do not invest money in any electronic devices allowing them to access the internet. ⁶⁴

Recommendations

Based on the foregoing, ARTICLE 19 urges the Special Rapporteur to include the following recommendations for States in her report to improve protection of the right to freedom of expression and information in the context of sustainable development:

⁶¹ Barbara Paes, Ester Borges and Julia Rocha, [How can transparency improve women’s access to legal abortion in Brazil](#), 2019.

⁶² ARTICLE 19, [70 hospitals perform legal abortion and The Southeast region is the one that concentrates a significant portion of care, updates the 2022 edition of the Map of Legal Abortion](#), 2022.

⁶³ ARTICLE 19, [Tackling gender inequality through access to information](#), 2019, p. 7.

⁶⁴ ARTICLE 19, [Brecha digital, desigualdad y desinformación: Chiapas y Oaxaca](#) , 2021.

- States should adopt comprehensive right to information laws guided by the principle of maximum disclosure, in compliance with international standards and best practices, and informed by model right to information laws developed by regional organisations and civil society. At minimum, these should include a broad scope of the law, clear processes for responding to right to information requests and right of appeal against disclosure, obligation of proactive disclosure and a regime of narrow and limited exceptions. The right to information legislation should also provide for a creation of independent oversight bodies and for proper enforcement system, including capacity building, raising awareness and training for public officials;
- States should ensure that comprehensive legal framework on access to information are fully implemented in way that genuinely guarantees this right to everyone. They must tackle the persistence of a culture of secrecy by public bodies that attempt to avoid their transparency obligations by not releasing or publishing information held by these bodies;
- States should ensure that the public has access to reliable and accurate information about all matters relevant to social, economic and cultural rights on the basis of pro-active disclosure. In particular, they should ensure that requests for information on issues related to development and social, economic and cultural rights are processed rapidly and fairly, that an independent review of any refusals and complaints mechanisms is available and that applicants are provided with assistance if necessary;
- Public bodies and other duty bearers should ensure that accurate, reliable and comprehensive information and data relating to sustainable development are collected on a regular basis and maintained in an organised and systematic manner. Relevant information and data should be made available in open and machine-readable formats, using commonly available, open source or free software tools. Public authorities and other duty bearers should ensure that the data can be processed, evaluated, published and reused without restrictions;
- States should produce comprehensive data and statistics that allow to measure progress on the implementation of right to information laws in a meaningful way, including number of requests, responses, delays, reviews or appeals to hold public bodies accountable;
- States should ensure broad public participation in decision-making processes by including groups at risk of discrimination, such as women, refugees and internally displaced persons, indigenous communities and people living in poverty. Public participation should include their right to be timely informed about how, when and where to exercise their right to public participation. States should develop proper mechanisms to ensure participation of affected local and indigenous communities whose civil, political, economic, social and cultural rights are affected by such decisions, including but not limited to, their right to property, land, healthy and clean environment, education, water and sanitation, health;

- States should remove all restrictions to the free flow of information and discourse related to sustainable development, such as censorship, banning, blocking, and otherwise obstructing the dissemination of related information by the media and by other means. They must ensure that journalists, human rights defenders, activists, and others who exercise their right to freedom of expression – both online and offline - in relation to development can work safely without the fear of physical violence, intimidation, harassment or arbitrary arrest and detention, indiscriminate abuse in criminal and civil proceedings or threats of such acts;
- States should monitor, prevent, effectively and timely investigate attacks against journalists, human rights defenders and activists reporting violations of social, economic and cultural rights as well as attacks on people demanding these rights through peaceful protests;
- States should introduce comprehensive legislation to protect whistleblowers, recognising protection of anyone uncovering wrongdoing and corruption scandals both in the public and private sector. They should also strengthen efforts for a more effective implementation of existing whistleblowing laws ensuring such laws can be used effectively by whistleblowers to defend themselves in court;
- States should establish a clear legal and policy framework for the protection of the right to information that is gender sensitive, that addresses existing structural obstacles and barriers and ensures access to information that is relevant for women’s lives and the exercise of their rights. This should be followed by a comprehensive implementation of legal and policy measures which are equitable and remove barriers to women’s access to information, including by challenging social and cultural norms that entrench discriminatory attitudes towards women, address the digital divide and illiteracy.

Appendix – information about practices in Mexico

A lo largo de las últimas administraciones federales se han mantenido prácticas de opacidad que impiden el cumplimiento de la Ley General de Transparencia y Acceso a la Información Pública, mismas que terminan por obstaculizar el ejercicio del derecho a la información y la libertad de expresión, así como otros derechos humanos. A ello se agrega que la administración actual se ha caracterizado por implementar estrategias de control informativo y de la agenda pública que ofrecen un panorama adverso para el ejercicio de estos derechos. Este contexto se puede resumir en tres tendencias principales:

- Un ejemplo de ello se concentra en el tema de Publicidad Oficial, el cual como en sexenios anteriores, en la actual administración se ha convertido en una herramienta eficaz de control de la opinión pública.
- Un ejemplo de ello, se observa en la manera en que se están ejerciendo los recursos en materia de publicidad oficial, con una aparente falta de planeación que cumpla con los criterios de idoneidad, equidad y transparencia en su asignación, distribución y gasto, lo cual ha provocado de nueva cuenta una serie de malas prácticas como en sexenios pasados.
- De acuerdo con el Sistema de Comunicación Social (COMSOC), de la Secretaría de la Función Pública, en el 2021 el gobierno federal ejerció 2 mil 459 millones de pesos en publicidad oficial, de un total de 3 mil 50 millones de pesos que se aprobaron, es decir, no se gastó el 19% de los recursos autorizados por el Congreso, lo cual significa que un monto considerable que no se ejerció para el fin destinado que es comunicar información de interés a la población.

Otra práctica que organizaciones como FUNDAR y ARTICLE 19 han encontrado durante los primeros tres años de este sexenio es la persistencia de la concentración del ejercicio del gasto en publicidad oficial durante la temporada decembrina, ya que en diciembre del año 2019 se gastaron 83.82% (3 mil 105 millones); en 2020 el 69.06% (mil 715 millones); y en 2021 el 77.06% (mil 895 millones).

La concentración del gasto en materia de publicidad oficial también se ve reflejada en la manera en que las instituciones del estado lo han ejercido, ya que de 137 instituciones a quienes se les asignó recursos, 10 de ellas ejercieron el 80.92% (6 mil 998 millones) del total general en la mitad del sexenio, mientras que las 127 instituciones restantes agrupan el 19.08% (mil 650 millones).

Particularmente en 2021 las dos instituciones que más gastaron en publicidad oficial son el IMSS con 733 millones y la Lotería Nacional (LOTENAL) con 518 millones. De las 107 instituciones que ejercieron publicidad oficial, 10 de ellas concentran el 82.84% (2 mil 37 millones), mientras que las 97 restantes el 17.16% (422 millones de pesos).

En cuanto a los medios de comunicación, de 2019 a 2021, de un total de 473 medios que percibieron recursos por comunicación social, el 50.01% (4 mil 325 millones) se asignaron a tan solo 10 medios de comunicación, y los 463 restantes el 48.31% (mil 188 millones).

En el año 2021, Televisa, TV Azteca y La Jornada fueron los medios de comunicación que más recursos recibieron en la primera mitad del sexenio. En total, entre los tres medios suman 2 mil 552 millones de pesos, es decir el 29.52% del total general. Televisa ha recibido 933 millones; TV Azteca 848 millones; y La Jornada 771 millones.

La publicidad oficial como mecanismo de censura indirecta es un problema público que aqueja a buena parte de la región latinoamericana, y a pesar de los muchos intentos, hasta hoy no existe un solo país que lo haya resuelto.

Por su parte, está pendiente el cumplimiento de la sentencia AR 308/2020, de septiembre de 2021, de la Suprema Corte de Justicia de la Nación (SCJN), que ordena —de nueva cuenta— al Congreso de la Unión a reformar la Ley General de Comunicación Social a fin de garantizar la libertad de expresión y el derecho a la información. Ésta es su segunda oportunidad.

Durante el plazo otorgado por el Poder Judicial para el cumplimiento de la sentencia, el Congreso de la Unión no cumplió con lo establecido. Esto a pesar de que se le otorgó, a petición del propio Congreso, una prórroga, misma que se hizo extensiva al período ordinario de sesiones que fue del 1 de febrero al 28 de abril de 2022. Nuevamente, la ausencia de voluntad y compromiso político se hizo presente y la omisión legislativa continúa. El Poder Judicial otorgó, por última ocasión, una prórroga de 30 días hábiles contados a partir del 1 de septiembre de 2022 para que el Congreso cumpla su mandato constitucional; sin embargo, a 3 días de concluir este nuevo plazo, no hay señal de que vaya a cumplirse.

El 19 de julio de 2022, ARTICLE 19 presentó la segunda edición de la Evaluación Nacional de los Organismos Garantes del Derecho a la Información (ENOGDAI). Por medio de dicha iniciativa analizamos la actuación de los 33 Organismos Garantes del Derecho a la Información (32 locales y uno del ámbito federal), tomando como fundamento las obligaciones y atribuciones que les otorga la Ley General de Transparencia y Acceso a la Información Pública.

En esta edición de la ENOGDAI calculamos el índice de recurrencia de los sujetos obligados de cada entidad federativa, es decir, el porcentaje de recursos de revisión que fueron interpuestos respecto al total de solicitudes de información presentadas. Los hallazgos dan cuenta que los estados con los mayores índices de recurrencia fueron Veracruz (31.9%), San Luis Potosí (22.1%) y el Estado de México (19.8%). Por otro lado, los índices de recurrencia más bajos se registraron en Jalisco (2.3%), Nayarit (2.8%) y la Ciudad de México (3.5%). Resalta también que la causal más común por la que se interpusieron recursos de revisión durante 2019 fue la falta de respuesta del sujeto obligado dentro de los plazos que marca la ley.

Por otro lado, es significativo que en 36.5% de las resoluciones a recursos de revisión emitidas durante 2019, los Organismos Garantes no analizaron el fondo de los recursos, pues 20.4% de las resoluciones desecharon los recursos de revisión y 16.1% los sobreyeron.

En contraste, del 61.7% de los casos en los que los Organismos Garantes analizaron el fondo de los recursos, en la mayoría de éstos resolvieron modificar (26.9%) o revocar (22.7%) la respuesta emitida por los sujetos obligados, mientras que solamente confirmaron la respuesta en 12.1% de sus resoluciones.

Destacan los casos de los Organismos Garantes de Baja California Sur, Quintana Roo y Querétaro, pues desecharon o sobreseyeron más del 90% de los recursos de revisión que resolvieron durante 2019. En el caso de Baja California Sur, el Organismo Garante desechó 99.27% de los recursos que le fueron presentados.

Por otro lado, conforme a los datos obtenidos en la ENOGDAI, fue posible observar que entre mayor es el porcentaje de casos en los que se aplicó la suplencia de la queja, menor es el porcentaje de resoluciones que desecharon recursos de revisión y viceversa: entre menor es el porcentaje de casos en los que se aplicó la suplencia de la queja, se observa un mayor número de resoluciones de desechamiento. Esta es una de las tendencias más interesantes de toda la Evaluación.

La ENOGDAI también analizó el ejercicio de 11 atribuciones específicas en materia de promoción del Derecho a la Información. Los Organismos Garantes que ejercieron el mayor número de estas atribuciones fueron Campeche, el cual ejerció 8, así como el INAI y los Organismos Garantes de la Ciudad de México y Durango, los cuales indicaron haber ejercido 7 atribuciones.

Por otro lado, 10 Organismos Garantes locales y el INAI emprendieron acciones de promoción dirigidas a personas hablantes de lenguas indígenas. En conjunto, las 10 entidades federativas señaladas concentraban el 42% del total de la población hablante de lenguas indígenas de cinco años o más. Asimismo, 20 Organismos Garantes locales y el INAI implementaron por lo menos una acción de promoción que contempla contenidos para personas que viven con alguna discapacidad. Estas acciones se implementaron en entidades federativas en las que se concentraba el 62.7% de las personas que viven con alguna limitación o discapacidad.[EG1]

Finalmente, siete Organismos Garantes (21% del total) indicaron que las acciones de promoción que ejercieron no contemplaron contenidos para ninguno de estos grupos de población.

En materia de Transparencia Proactiva, ARTICLE 19 ha documentado casos relacionados con la falta de información para los pueblos y comunidades indígenas que a diferencia de años anteriores se concentran principalmente en el acceso a información ambiental y derecho a la consulta libre, previa e informada así como en contextos de desastres naturales.

En el año 2022 el paso del Huracán Ágatha afectó a más de 75 comunidades indígenas ubicadas en las regiones Sierra Sur y Costa del estado de Oaxaca. Entre las zonas más afectadas fueron 31 municipios, de los cuales, 22 se rigen bajo el sistema de usos y costumbres. En ese sentido el gobierno mexicano anunció el apoyo directo a las comunidades, sin embargo, hoy en día lo que se observa es que existe un desconocimiento sobre cómo será el uso del recurso, dado que, tienen que hacer uso del recurso hasta el cierre del año por temas de comprobación, lo que nuevamente coloca a las comunidades indígenas en una disyuntiva y en el que tengan que encargar a terceros la ejecución de los recursos, teniendo como resultados obras públicas en mal estado, además de que muchas de ellas no tuvieron acceso a la información respecto a estos programas de apoyo y siguen sin tener mayor información sobre lo que se espera de la ejecución de los recursos entregados.

Por su parte, a inicios de noviembre de 2020, el Huracán Eta impactó el territorio mexicano, siendo el estado de Chiapas uno de los más dañados, ya que su paso dejó a miles de personas damnificadas y en situación de desplazamiento.

Las cifras oficiales reportadas incluyen la muerte de 20 personas, 54,976 personas damnificadas, 2 mil 845 viviendas dañadas, 26 tramos carreteros interrumpidos por deslizamiento de ladera inestable, el desbordamiento de cinco ríos, tres comunidades incomunicadas por inundación, y muchos otros daños materiales.

El impacto social y económico fue particularmente duro para pueblos indígenas y rurales, cuyas necesidades no fueron atendidas oportunamente. La falta de información oportuna y con pertinencia cultural sobre las medidas de apoyo a personas damnificadas mermó radicalmente las posibilidades de la población para hacer frente a este desastre natural. En el Informe de “Transparencia Intermitente”^[1], Article 19 concluyó que el Estado Mexicano tiene una respuesta reactiva ante los desastres. A dos años del Huracán ETA, se dirigió la atención a la emergencia, dejando de lado las acciones previas destinadas a la prevención, mitigación y gestión integral del riesgo de los desastres (GIRD). El derecho a la información es útil y necesario para estos fines, sin embargo, no es contemplado ni abordado de manera adecuada por las dependencias oficiales de gobierno.

En relación con el tema de defensa del medio ambiente, derecho a la consulta y acceso a la información, en el estado de Yucatán es preocupante la situación que viven las comunidades indígenas mayas para poder acceder a la información culturalmente adecuada, en su lengua y de manera oportuna, un ejemplo son los megaproyectos como mega granjas porcinas, y el proyecto del gobierno federal “Tren Maya”.

Se han documentado omisiones y violaciones a los derechos humanos de las comunidades indígenas y rurales respecto al derecho de acceso a la información ambiental en el caso de la instalación de las granjas porcícolas en la entidad, de acuerdo al Secretario de Cultura de Yucatán, existen más de 400 granjas porcícolas en la región, y más del 90 por ciento, no cuenta con alguna Manifestación de Impacto Ambiental.

Cabe señalar que tampoco se respetaron los estándares internacionales en la instalación de las empresas porcícolas, ya que las granjas en su mayoría de los casos comenzaron a operar sin un proceso de consulta previa, libre, informada y de buena fé. Sin brindarle a las comunidades información ambiental, científica y culturalmente adecuada sobre los impactos a corto y largo plazo, para que las personas de las comunidades puedan tomar decisiones pertinentes y de acuerdo a sus formas de vida para salvaguardar su vida, su salud, medio ambiente sano, así como la protección de su patrimonio tangible e intangible.

Esto contraviene con la entrada en vigor del Acuerdo de Escazú en México, el 21 de enero del 2022, ya que con la ratificación del Acuerdo, México está obligado a garantizar no sólo el derecho a la información ambiental a las comunidades indígenas, sino también al acceso a la justicia de personas defensoras el medio ambiente.

El 25 de julio del 2021, las propias comunidades de Kinchil, San Fernando (Maxcanú) y Celestún llevaron a cabo un proceso de autoconsulta para discutir y decidir sobre la presencia y

continuidad de las empresas porcícolas en la entidad, siendo un ejercicio referente de autonomía y libre determinación como pueblo indígena^[2].

Del mismo modo en una coalición de diversas organizaciones, grupos indígenas, de derechos humanos y ambientalistas, entre otros; solicitamos en octubre del 2021 una audiencia temática a la Comisión Interamericana de Derechos Humanos sobre los abusos de derechos humanos causados por las mega granjas de carne o fábricas de carne, también conocidas como Operaciones Concentradas de Alimentación Animal, en toda América (incluyendo América del Norte y América del Sur), en el sentido de la Comisión Interamericana pueda emitir recomendaciones al Estado y a las empresas para que pueda atenderse de forma urgente las violaciones a derechos humanos causado por este modelo agroindustrial^[3].

^[1] Article 19, Transparencia Intermittente. La importancia del derecho humano a la información en contextos de desastres: El caso del Huracán Eta en Chiapas. México, 2022.

^[2] Informe “Misión de Observación de la Autoconsulta sobre las Mega Granjas de Cerdos en Yucatán” https://articulo19.org/wp-content/uploads/2021/09/MisionObservacionYUC_12sep2021.pdf

^[3] “Coalición internacional solicita a la CIDH que investigue las violaciones a derechos humanos de las mega fábricas de carne” https://articulo19.org/coalicion-internacional-solicita-a-la-cidh-que-investigue-las-violaciones-a-derechos-humanos-de-las-mega-fabricas-de-carne/?fbclid=IwAR3qYd52xzXldpvFpks78olw86I9gnMTdCK51zPd9o-inbAc_CtDLQuLV6M