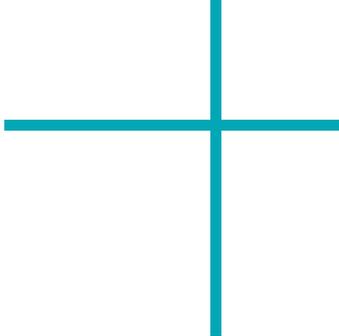




PROPOSAL:
PRINCIPLES
ON THE RIGHT
TO **ACCESS**
INFORMATION
DURING A
HEALTH CRISIS



INTRODUCTION

The absence of policies and principles on transparency and access to information in times of health catastrophes is reflected in the authorities' lack of coordination and their improvisation, as well as limited performance of primary tasks by the very agencies that comprise the oversight body. In certain countries of the region, this situation has led to infringement of the right to access citizen information – a right that is imperative if we are to preserve the health, security and physical safety of persons, as well as understanding other rights.

These principles on access to information in times of health emergencies respond to the challenges that States face to ensure the right to information under extraordinary situations. This paper is the initial proposal, and intends to trigger a regional discussion to share reflections and contributions in a final document offering guidelines that can be used as a reference for the region. The proposal was drawn up based on best practices in the region and input created by organizations and networks with expertise in the themes of transparency and access to information, among others. The recommendations and resolutions issued by international agencies, described below, became the crucial starting point for this work.

On March 19, the Office of the Special Rapporteur for Freedom of Expression of the Inter American Commission on Human Rights (IACHR), the United Nations Organization, and the Organization for Security and Cooperation in Europe (OSCE) issued a joint declaration indicating that: “Human health depends not only on readily accessible health care. It also depends on access to accurate information about the nature of the threats

and the means to protect oneself, one's family, and one's community."The third point made in the declaration states that experts "urge all governments to robustly implement their freedom of information laws to ensure that all individuals, especially journalists, have access to information."

On March 20, the Inter American Commission on Human Rights (IACHR) issued a [press release 060/20](#) together with the Office of the Special Rapporteur for Freedom of Expression(OSRESCER) to recognize that:

"States may impose temporary restrictions on human rights while a state of emergency has been declared. The purpose of any such measures must be strictly limited to safeguarding public health, they can only be put in place for a limited period, must have clearly defined objectives, and be strictly necessary and proportional to the ends they pursue. Furthermore, states may not suspend or prohibit rights and freedoms in a blanket fashion and must specifically refrain from limiting the freedom of the press or restricting social or political organizations or leaders from seeking and disseminating information via any means.

The IACHR calls on states and human rights institutions to ensure access to mechanisms for reporting possible unlawful limitations on or violations of human rights that derive from such measures. These mechanisms must guarantee transparency, access to information, personal data protection, informed consent, access to justice, and reparation.

Likewise, states must observe the positive obligation to provide full, ongoing, accurate information on the epidemiological evolution of the pandemic and the measures they are taking to combat it and to issue precise directives to healthcare providers to preserve the privacy of those whose state of health is affected by it. In particular, those in leadership positions at different levels of government are responsible for coordinating with health authorities to ensure that their messages are consistent with scientific findings and the measures that have been adopted."

On April 10, the IACHR published resolution 1/2020 titled *Pandemic and Human Rights in the Americas*, in which recommendation 32 underscores the importance of:

Ensure the right to access public information in the framework of the emergency caused by COVID-19, and not set general limits based on reasons of security or public order. The bodies and officials that guarantee this right should give priority to requests for access to information related to the public health emergency, and also proactively report in detail on the impact of the pandemic and on emergency spending, and do so in an open format accessible to all vulnerable groups, in accordance with best practices internationally. If deadlines for requests for information on matters not linked to the pandemic have to be extended, governments should explain the denial, set a time period in which the obligation will be met, and allow for appeals against such decisions.

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In agreement with, and undersigning these recommendations, xx organizations and networks. The complete list can be viewed at the end of the paper.

PRINCIPLES ON THE RIGHT TO ACCESS INFORMATION DURING A HEALTH CRISIS

01 **GUARANTEE THE RIGHT TO ACCESS TO INFORMATION**

Within the context of a health emergency, information becomes the strategic input that can save lives. Accessing public information becomes indispensable to learn of the administration's actions and avoid arbitrariness in the making of public decisions.

Despite the extraordinary circumstances in which the State may find itself, everything possible and necessary must be done to guarantee access to information, a key right, to enable the exercise of other fundamental rights.

02 **PRIORITIZE INFORMATION LINKED TO THE EMERGENCY**

One of the most important elements to preserve health is access to precise information on causes, effects and care for an individual, his or her family, and the community.

During health emergencies, not only do governments have the obligation to provide truthful and timely information on health matters at all times, they must also report on matters of public interest to provide an understanding, assessment, and control of the government's actions, such as the financial aid proffered to different sectors of the population or public funds earmarked for the health emergency in question.

03 **NO SETTING OF GENERAL LIMITS ON THE RIGHT TO ACCESS INFORMATION**

The right to access information cannot be restricted in any way whatsoever given that it is a fundamental right for the exercise of other rights, among them, health. In this regard, States should refrain from decreeing provisional measures that definitively suspend *de iure* or *de facto* the right to access information on the grounds of security or public order.

The disproportionate postponement of the timeframe to respond to requests for public information, or the suspension of processes carried out before enforcement bodies, in practice constitutes excessive limitation of the right to access information, which in turn cancels and voids to a great extent this fundamental human right.

04 **SETTING LIMITATIONS ON THE RIGHT TO ACCESS INFORMATION MUST BE GROUNDED IN LEGISLATION, AND MUST BE SPECIFIC, PRECISE, TEMPORARY, EXCEPTIONAL AND IN ADHERENCE TO INTERNATIONAL STANDARDS**

In the case of governments setting limitations on the right to access information, said limitations must affect only the information not linked to handling an emergency. In addition, these limitations must be grounded in the law; they must be proportional, specific, precise and temporary, and in adherence to international standards. Oversight bodies should establish reasonable timeframes to respond to requests for information and prioritize maintaining the possibility of appealing resolutions at all times.

Pursuant to international standards in the matter of information, including matters of national security related to public health, States must guarantee the application of proof of damage at the time of restricting information and thus guarantee maximum dissemination of matters related to the guarantee of rights, such as

is public health. A balance must be established between dissemination and classification to privilege the enjoyment of human rights and freedom of expression and information.

05 **ENCOURAGE PROACTIVE TRANSPARENCY POLICIES IN PRIORITY SECTORS**

It is crucial to have available the utmost amount of truthful and timely information in a proactive manner, particularly as regards the health sector and health emergencies. Proactive transparency, targeted and socially useful, is a way to transmit information in an expeditious and efficacious manner, to be prioritized in an emergency.

It is important that this information be disseminated in open formats that will enable its reutilization. The use of tools, such as portals containing data in real time on infection, deaths, location of cases and measures to deal with the ensuing economic crisis resulting from the health contingency, will facilitate maintaining the health and wellbeing of the population. Consequently, the lack of said proactively produced information may lead to risks to the physical and emotional health of the people, as well as jeopardize their enjoyment of human rights.

06 **GUARANTEE THAT THE INFORMATION REACHES VULNERABLE GROUPS**

Averting asymmetries in information made available to citizens is indeed one of the most important elements to prevent and mitigate the effects of health emergencies and lack of information.

Governments are obligated to deliver information to people with limited Internet access, and to those with disabilities, speakers of other languages, and any other type of situation that renders people vulnerable through means including sign language, employing speakers of indigenous languages, oral formats, through community radio, or any other means to ensure that said population may make decisions and secure their right to health,

the same as all other citizens. In order to comply with this principle, it is important for the States to guarantee equal access to the Internet.

07 **THE OVERSIGHT BODY SHOULD CONTINUE EXECUTING PRIORITY ACTIVITIES THAT FACILITATE THE RIGHT TO ACCESS INFORMATION**

Information is key to preventing and combating health emergencies appropriately. Emergency situations demand urgent access to reliable and truthful information. Thus, those institutions in charge of access to information may not suspend priority activities, and shall establish reasonable terms for non-priority activities; in addition, they shall supervise compliance of the timeframes established for the majority of the activities under mandate.

08 **ENCOURAGE INSTITUTIONS TO WORK IN COORDINATION AND COLLABORATION**

Oversight bodies for the right to access information shall coordinate work with those sectors responsible for managing a health emergency and its effects in order to provide information to the population. They must also ensure that their messages possess reliable information, that they grant certainty and are coherent, presenting scientific findings and measures to be adopted to combat the effects of health catastrophes.

09 **STANDARDIZING INFORMATION IN ONE SINGLE PLACE**

The multiple sources of information and the spread of false information on the health emergency may hinder the adoption of appropriate measures to prevent and mitigate effects. For this reason, it is necessary to have one single source of information to present information in an orderly, updated system in open formats and providing links to other microsites for verification purposes. In like manner, it is imperative for all information to be reliable.

10

THE USE OF NEW TECHNOLOGIES TO ENSURE FOLLOWUP OF IMPORTANT ACTIVITIES

Obstacles hindering the exchange of information among government agencies should be mitigated through the use of new innovative technologies and communications designed to facilitate the flow of information in real time, and making it possible to work from any point with a minimum of technological materials; this often entails doing without physical files that are located at the offices of government agencies.

METHODOLOGY

This proposal was prepared based on the work of our member organization **Fundar - Centro de Análisis e Investigación** (Mexico), with the support and coordination of the Alianza Regional por la Libre Expresión e Información.

MEMBER ORGANIZATIONS OF ALIANZA REGIONAL

- Acción Ciudadana (AC) – Guatemala
- Artigo 19 – Brasil
- Asociación Nacional de la Prensa (ANP) – Bolivia
- Centro de Archivos y Acceso a la Información (Cainfo) – Uruguay
- Comité por la Libre Expresión (C-libre) Honduras
- Espacio Público - Venezuela
- Fundación Democracia sin Fronteras (FDsF) – Honduras
- Fundación Salvadoreña para el Desarrollo Económico y Social (FUSADES) - El Salvador
- Fundación Ciudadanía y Desarrollo (FCD) - Ecuador
- Fundación Violeta Barrios de Chamorro (FVBCH) – Nicaragua
- Fundar, Centro de Análisis e Investigación – México
- Instituto de Derecho y Economía Ambiental (IDEA) – Paraguay
- Instituto de Prensa y Libertad de Expresión (IPLEX) - Costa Rica
- Observatorio Cubano de Derechos Humanos (OCDH) - Cuba
- Participación Ciudadana (PC) - República Dominicana
- Transparencia por Colombia – Colombia
- Transparencia Venezuela –Venezuela

OVERSIGNING THIS PAPER:

The list of civil society organizations and networks that support this proposal is available [here](#)