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CJI/RES. 147 (LXXIII-O/08)

PRINCIPLES ON THE RIGHT OF ACCESS TO INFORMATION

THE INTER-AMERICAN JURIDICAL COMMITTEE,

ACKNOWLEDGING the right of information as a fundamental human right which ensures access to the information controlled by public organs, including, within a reasonable timeframe, access to past archives;

CONSCIOUS of the decision of the Inter-American Court on Human Rights *in re Claude Reyes y otros v. Chile* of September 19, 2006, in which it was decided that the right to the freedom of expression enshrined in Article 13 of the American Convention on Human Rights comprises the right to access to information;

BEARING IN MIND the resolutions of the OAS General Assembly entitled "Access to public information: strengthening of democracy", AG/RES. 1932 (XXXIII-O/03), AG/RES. 2057 (XXXIV-O/04), AG/RES. 2121 (XXXV-O/05), AG/RES. 2252 (XXXVI-O/06), AG/RES. 2288 (XXXVII-O/07), and AG/RES. 2418 (XXXVIII-O/08); as well as the Study on Recommendations on Access to Information, submitted to the Committee on Juridical and Political Affairs on April 24, 2008 (document CP/CAPJ-2599/08), in a work organized by the Department of International Law pursuant to the provisions contained in Resolution AG/RES. 2288 (XXXVIII-O/07);

BEARING IN MIND the main international declarations on the right of access to information adopted by several intergovernmental organs and non-governmental organizations, including, among others, the principles of Article 19, The Right to Public Knowledge, The Lima Principles, The Ten Principles of the Right to Know of the Open Society Justice Initiative and the Atlanta Declaration and Plan of Action for the development of the right of access to information, under the auspices of the Carter Center;

EXPRESSING ITS SATISFACTION in view of the adoption and implementation of legislation on access to information by a growing number of States in the Americas, as well as the efforts by other States to adopt said legislation;

CONSIDERING the need to develop principles related to the right of access to information, particularly to support the drafting and implementation of legislation to make this right effective,

RESOLVES:

To adopt the following principles, which are interrelated and that should be construed in an integrated manner:

1. In principle, all information is accessible. Access to information is a fundamental human right which establishes that everyone can access information from public bodies, subject only to a limited regime of exceptions in keeping with a democratic society and proportionate to the interest that justifies them. States should ensure full respect for the right to access to information through adopting appropriate legislation and putting in place the necessary implementation measures.

2. The right of access to information applies to all public bodies, including the executive, legislative and judicial branches at all levels of government, constitutional and statutory bodies, bodies which are owned or controlled by government, and organizations which operate with public funds or which perform public functions.

3. The right to access to information applies to all significant information, defined broadly to include everything which is held or recorded in any format or medium.

4. Public bodies should disseminate information about their functions and activities – including, but not limited to, their policies, opportunities for consultation, activities which affect members of the public, their budget, and subsidies, benefits and contracts – on a routine and proactive basis, even in the absence of a specific request, and in a manner which ensures that the information is accessible and understandable.

5. Clear, fair, non-discriminatory and simple rules should be put in place regarding the processing of requests for information. These should include clear and reasonable timelines, provision for assistance to be given to those requesting information, free or low-cost access, and does not exceed the cost of copying and sending the information, and a requirement that where access is refused reasons, including specific grounds for the refusal, be provided in a timely fashion.

6. Exceptions to the right to access should be established by law, be clear and narrow.

7. The burden of proof in justifying any denial of access to information lies with the body from which the information was requested.

8. Individuals should have the right to appeal against any refusal or obstruction to provide access to information to an administrative jurisdiction. There should also be a right to bring an appeal to the courts against the decisions of this administrative body.

9. Anyone who willfully denies or obstructs access to information in breach of the rules should be subject to sanction.

10. Measures should be taken to promote, to implement and to enforce the right to access to information, including creating and maintaining public archives in a serious and professional manner, training public officials, implementing public awareness-raising programmes, improving systems of information management, and reporting by public bodies on the measures they have taken to implement the right of access, including in relation to their processing of requests for information.

This resolution was adopted unanimously at the session held on August 7, 2008, by the following members: Drs. Ricardo Seitenfus, Ana Elizabeth Villalta Vizcarra, Guillermo Fernández de Soto, Jorge Palacios Treviño, Mauricio Herdocia Sacasa, Freddy Castillo Castellanos, Jaime Aparicio, Jean-Paul Hubert, and Hyacinth Evadne Lindsay.