

Focus Group Meeting on Practices Related to the Right to Information

14 January 2014, Ankara

Introduction

The Focus Group Meeting on Practices Related to the Right to Information was organized jointly by TACSO-Turkey and STGM. The specific purpose of the meeting was to create a setting where especially those CSOs that exercise their right to information more frequently could share their opinions and experience in relation to the legislation¹ arranging for this right and corresponding practices. Opinions and experiences shared in this Focus Group Meeting will contribute to TACSO Turkey's Needs Analysis Survey and will also be considered in setting the content of the guide presently prepared by the STGM for civil society organizations in practices related to the right to information.

Participants to the Meeting

There were 16 participants to the Focus Group Meeting on Practices Related to the Right to Information representing 12 CSOs/civil initiatives from different areas of activity including environmental issues, women's rights, LGBT rights, women's employment, rights of refugees and asylum seekers, human rights and animal rights.

Highlighths of Discussion

The Focus Group Meeting on Practices Related to the Right to Information proceeded by discussing in different sessions of participants' views and experiences regarding practice in relation to the right to information.

Issues Related to Legislation

Discussions on legislation arranging for the right to information revealed that there were constraints on exercising this right that derived not only from this particular act but also from some other legislative arrangements Participants drew attention to the fact that the term "state secret" included in the text of the Law no. 4982 on Right to Information in the context of cases where this right may be restricted appeared in 32 different legislative acts and the term "confidentiality" in 60 others. It was stated, furthermore, that the term "national security" used in reference to cases where the right to information may be restricted appeared in legislation related to 26 different Ministries and General Directorates. Participants complained about the arbitrary nature of

¹ The Law no 4982 on Right to Information: <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=1.5.4982&sourceXmlSearch=4982&MevzuatIliski=0>
and Regulation on Principles and Procedures Related to the Exercise of the Right to Information:
<http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=3.5.20047189&MevzuatIliski=0&sourceXmlSearch=bilgi%20edinme>

implementation deriving from the vagueness of some concepts used in legislation. It was stressed that the reasons for restriction, for example on the basis of “state secret” are not explicitly defined.

Functionality of the Right to Information for CSOs and Instruments Used

Cases and experiences discussed in the meeting show that CSOs may have different purposes in exercising their right to information. These purposes include the following: understanding the state of affairs in specific fields of activity and using information obtained for planning purposes; monitoring in specific fields of activity; using information for purposes of campaigning or advocacy; using information obtained to remind authorities their obligations; and using information to force authorities to adopt a stance or act in a specific issue.

Experiences conveyed in the meeting show that participating CSOs have different levels of experience in exercising their right to information effectively and use different tools and strategies for this purpose. While some CSOs try to exercise this right on the basis of individual applications and requests, others do it as corporate identities. Attention was drawn to bureaucratic obstacles and formalities that the latter (corporate identity) confronts with.

In applications for information, both application interfaces provided by websites of governmental agencies and direct-formal writings are used. Concerning this difference, the following was stated in relation to the first way: Since governmental organizations do not provide any record-document on the date of application made to their websites, it becomes difficult to hold these organizations accountable for their legal obligation to respond in due time. In official writings by postal services on the other hand, the date of application can be easily proven. Participants also add that in their applications they use such terms as “association” or “foundation” since others like “CSO” or “NGO” may not be understood by the counterpart. They say it is also important to put questions as clear and as short as possible in different sentences.

Another way of obtaining information used by CSOs is to raise issues and questions in the Grand National Assembly through deputies. Participants added that such initiatives may produce responses if taken by deputies from not only one but more political parties represented in the Parliament.

CSOs experienced in measures designed to exercise the right to information effectively say they apply to more than one governmental agency at the same date and on the same issue and, when appropriate, they also inform such bodies as the Human Rights Commission. Some other CSOs state they pose the same questions to a government authority regularly and in a systematic manner, but the response they received in each was different than in others. Participating CSOs note that at local level in particular the exercise of the right to information may be smoother by using some inter-personal relations. But when information is obtained on the basis of such inter-personal relations information suppliers do not want this information to be shared with others or declared to the public. According to participating CSOs, in some cases deputies may be asked for their support in efforts to obtain information and, in some other cases, the support of international organizations may be phased-in.

Obstacles Faced in Practices Related to the Right to Information

Discussions revealed that obstacles encountered in exercising the right to information have different dimensions.

The following problem areas are observed in the articulation of requests for information some of which are related to the capacity and resources of applying CSOs: How questions are to be formulated; lack of clarity whether the agency concerned is actually the right agency or unit to put questions; depending upon response received, problems in following the procedure for applying the Higher Board for Information; and availability of means and resources to bring objection suits when necessary. There are also problems regarding how CSOs should read uncategorized information and how they should use such information effectively in their work.

Participating CSOs state that even when all other conditions are satisfied, factors related specifically to public administration itself still put barriers to the exercise of the right to information. They stress the fact that they get a different response and face a different attitude in each of their applications for information.

It is stated that public administration has no consistency within itself in terms of producing, recording and presenting data. Even when information is supplied upon request, the reliability of this information and data is contestable since data collection methods are questionable; data are not categorized and disaggregated properly and they are open to manipulation due to gaps in methodology and information. There are also cases where some public files are shared with requesters cannot be used by CSOs since these files can be opened only through some special programmes in electronic environments.

In some cases responses given to requests for information may not be relevant to questions forwarded and doubts arise whether questions have been duly understood or not. Also, terminology used by CSOs and by public administration may differ. In such cases, it is stated that efforts to share common terminology or give additional explanations to clarify it proved futile. Attention is drawn to the need for arrangements that would make it obligatory for each unit in public administration to properly record and make public data in its own field.

It is mentioned that the response of Public Administration may differ with respect to whether information request is made by a real or corporate person. In the latter, there is some bureaucratic burden involving preparation of files. When application is made as an association that is as corporate identity, a “document of authorization” is requested. However, no such document can be issued since it is not an established procedure for associations and hence the decision of the governing body is submitted to overcome the problem. Since platforms and civil initiatives have no legally recognized corporate identities, they have no other way but lodging requests individually as real persons.

Responses such as “no information is available on this”, “it requires additional research”, “this information is private” or “it is confidential” if the request is found somewhat complicated may be given frequently. In some cases, Public Administration appears to have preferred prefers responding “no information is available on this” if the request concerned is found somewhat complicated.

Some CSOs state that they are discriminated against on the basis of their field of engagement and can obtain no response to their information requests. Even if negative responses given to information requests may also be associated with some technical constraints or problems, these too have their political dimensions and the government prefers not to share information in some issues that it considers as delicate. Some CSOs experienced cases where they could reach some information that had been first denied as “confidential” and could not understand what it was classified as so. There are also cases where Public Administration refers applying CSOs to publicly shared activity reports and some websites. But it is mostly the case that such addresses do not contain requested or update information.

In some cases government agencies respond to requests in writing and in others make telephone calls saying they cannot respond to requests. There are some public administration bodies sharing information on various issues during interviews and meetings, but do not allow CSOs to use this information in their own work and research. Appeals to the same body may end up with different responses in consecutive years and while a detailed response can be given to a question one year, information on the same issue can be denied next year. When the same request is forwarded simultaneously to two different institutions, one of them may find it improper and refuse to respond while the other supplies information requested. Another point raised is: While government agencies may cooperate and share available information and plans in initial applications of CSOs, this cooperation ceases when it comes to the use of this information by CSOs in their monitoring reports and advocacy campaigns.

In cases where the response to information request is negative or insufficient, the experience of CSOs shows that the Higher Board mostly approves the response given by the public administration bodies when appeal is made to this Board. The response of the board may be “the request cannot be met” or direct affirmation of the original response given by public bodies. Even when the Higher Board warns public bodies concerned for not replying within due period, this warning is not effective and ultimately the requested information cannot be obtained. It is also stated that any such warning by the Higher Board is not sufficient for bringing a court case for not being responded to a request for information.

When the way of putting questions in the Grand National Assembly (TBMM) through deputies is used, there may be responses that information has already been supplied in earlier questions. In such cases, it is difficult to reach that information even if it really exists since it is impossible to search for past content in the website of the TBMM. While better endowed relative to other governmental agencies, it is stated that this website is not user-friendly in this respect. Also, it was stressed that parliamentary supervision mechanisms do not work effectively as proven by the rejection of all 19 inquiry proposals although brought up by different deputies.

During the meeting, it was also interesting to note the experiences of CSOs in different fields of activity. Representatives of CSOs active in the field of refugees say authorities cannot give consistent responses to the question “How many persons are granted refugee status”. Even in such critical issues as public security or public health, the government faces troubles in terms of its capacity in data collection. Coming to the issue of supporting refugees in such fields as sheltering and healthcare, there is a chaotic situation about the respective duties of institutions involved,

which makes producing and obtaining information even more difficult. The experience of CSOs working in this field suggests that responses to information requests take too long. Another important issue is that CSOs may learn, only upon their information requests that data are actually collected in some fields where they thought no data collection was taking place. This shows the importance of active approach to the exercise of the right to information on the part of CSOs.

Participants experienced in environmental issues state that they use data obtained from different agencies through the right to information for having them confirmed by other governmental or international organizations or for seeking some additional information. According to these participants, this method indicates that there is effective use of the right to information.

Representatives from CSOs whose activities are related to police stations and detention centres state that official authorities do not systematically collect chronologic and disaggregated and share them, thus making it difficult to develop policies in these areas. Information supplied by authorities on the number of imprisoned persons with different identities gives figures much below unofficial estimates and therefore creates doubts about their reliability. Representatives from CSOs in the field of women's rights and gender equality state that at least a part of data related to violence against women and incest in particular should be collected at the stage of police station. However, even when related personnel are trained in such issues, too frequent rotation of duties and duty places deems such initiatives futile. One case mentioned by participating CSOs suggests that responses to information requests may be in breach of privacy and other rights. It is interesting to note in this context that in a response given in relation to violation of the rights of children in prisons full names of children concerned were given while they are still under age 18 whereas the name of a security personnel violating animal rights was kept confidential.

Especially those CSOs working for the rights of LGBT state that they face discrimination in their relations with governmental agencies and in their requests of information. They draw attention to arbitrary practices frequently used against trans-individuals in the context of Misdemeanours and that information concerning detention of sex workers can be obtained from police stations only with direct lawyer support. Also mentioned were inconsistencies in practices of related governmental agencies. It was pointed out that activities in the field of reproductive health carried out jointly with the Ministry of Health may be considered as "offence" by the security if these activities involve trans-individuals. CSO representatives shared that in cases where their access to websites is restricted through filters they can apply to relevant public authorities and identify the public authority blocking access to these sites.

Good Practices Related to the Right to Information

During the meeting, CSOs also shared their good experiences in practices related to the right to information though limited. It was stated in some cases, processes of inquiry could be started when problem areas were reported and authorities took necessary initiatives to eliminate them. To be more specific, participants reported that there were 2 such good responses and initiatives in about 200 applications. A participant reported that a contract they reached in 2005 upon their application for information was later used in all activities as a reference. The Ministry of European Union and Turkish Armed Forces were cited as institutions giving regular and prompt responses to requests for information. For the Turkish Armed Forces, however, it was also stated that some data appearing

regularly at the website of the institution was accessible only for a short period of time and thus CSOs could obtain update information only when they acted quickly enough.

Evaluations and Suggestions

At the end of the meeting, participants expressed the following assessments and suggestions for CSOs to exercise their right to information effectively:

- Besides using the existing legislation and efforts to improve this legislation, there is also need to adopt measures to ensure that governmental agencies properly fulfil their duties and obligations.
- For the use of information as a strategic and tactic instrument, it is important for CSOs to go over possibilities in the context of their right to information.
- There must be efforts to ensure that governmental agencies produce integrated, regular and consistent information.
- Work conducted by civil society in relation to information access must be made more systematic. In this context it may be useful if each CSO develops its plan to exercise its right to information.
- It will also be useful if a network and mechanism of legal information support is created for the right to information. This initiative may be taken within bar associations. There may also be workshops on the issue organized for lawyers and qualified/innovative lawyers may be supported.
- Keeping the draft law on state secrets in agenda and making reference to this agenda in all publications, etc.
- Public administration has to share available information automatically without waiting for any request to this end.
- It is important for CSOs to be insistent on the issue and clearly identify and exert pressure on mechanisms that do not work in ensuring the right to information.
- Further cooperation and coordination among CSOs in the field of the right to information.
- There may be technical workshops for CSOs focusing on such issues as application and objection procedures and processes in relation to the right to information.
- Extension of support to strengthen the capacity of CSOs in collecting data, developing methodologies and analyzing information obtained with their different dimensions.

ANNEX 1-1 Meeting Agenda

10:00-10:15: Registration and Introduction of Participants

10:15-10:30: Objective of the Meeting

10:30-11:00:	Information Building Session: Proposal of a General Framework for Approaching to the Right to Information and Discussion
11:00-11:15:	Coffee Break
11:15-13:00:	Sharing experiences in civil society's application for information
13:00-14:00:	Lunch
14:00-15:00:	Sharing experiences in civil society's application for information
15:00-16:30:	What alternative ways may be considered in obtaining information?
16:30-17:00:	Evaluation and debriefing about the process, soliciting suggestions