Statement by Frank La Rue
SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION

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Honourable Chair, Excellencies, Ladies and Gentlemen,

The report I present today underlines the links between the right to access to information (a component of the right to freedom of opinion and expression) and the right to truth.

Over the last months, I continued to participate in numerous activities around the world on topics related to the right to freedom of expression. In particular, I have dedicated an important portion of time to discussions my last report to the Human Rights Council, which analyzes the impact of mass surveillance technologies in the right to freedom of expression.

Last June, I was honored to visit Montenegro and the Former Yugoslav Republic of Macedonia. I reaffirm my gratitude to both Governments for the spirit of cooperation and the great support given to my visit. While concluding my visit to Montenegro, inter alia, I noted my concerns regarding the impunity of cases of violence against journalists and recalled the importance of media voluntary self-regulation. In the Former Yugoslav Republic of Macedonia, I expressed deep concern by the use of multiple legal instruments limiting the space for an independent and critical media. In this regard, I renew my appeal for the urgent release of the journalist Tomislav Kezarovski.

I am happy to inform I should be visiting Italy in November. On the other hand, I remain waiting for the confirmation of the exact dates for my visits to Indonesia and Pakistan.

Mr. Chairman,

Over the last decades, mostly after the fall of the Soviet block and the military dictatorships in Latin America, the right to information has increasingly been recognized as a crucial tool for the promotion of good governance and civil society participation in public affairs. Global commitments to promote development or to fight corruption, for example, clearly note the importance of ensuring transparency.

During the same period, the right to truth has also emerged, mostly following the fall of dictatorships. However, this right has most often been invoked in situations relating to the failure of the State to ensure accountability for systematic human rights violations and to provide appropriate reparations.

As indicated in my report, I believe that the recognition of the intimate relation between these two rights can only strengthen their protection. The links between the right to information and the right to truth is particularly relevant when addressing access to information on human rights violations.

Ladies and Gentlemen,
International human rights bodies have recognized and developed the right to truth as a distinct right. Global and regional human rights protection bodies have addressed the right to truth both from an individual perspective (the rights of victims and their families to know the truth on violations affecting their lives), as well as from a collective perspective (the right of society, as a whole, to know and the obligation of States to inform society about past violations). The updated UN Principles on Impunity note the existence of this right irrespective of legal proceedings (Principle 4).

The right to information is also recognized as a distinct right. It is one of the rights upon which free and democratic societies depend. Moreover, this right is an “enabler” of other rights, since access to information is often essential for individuals seeking to give effect to other rights.

The Human Rights Committee has underlined that in order to give effect to the right to freedom of expression States parties should proactively put in the public domain Government information of public interest. In order to ensure access to such information, State should develop and implement necessary legislation and procedures, such as laws on freedom of information.

Mr. Chairman,

The relationship between right to truth and right to information becomes very evident when addressing access to information on human rights violations.

As we all know, elucidating past and present human rights violation often requires the disclosure of information held by various State entities. Victims of violations and their families often face great challenges when demanding the release of State information even after authoritarian regimes fall.

In this sense, over the last years, some international mechanisms for the protection of human rights emphasized in their decisions on cases relating to systematic violations, the obligation which requires States to inform not only the victims and their families but also society as a whole of what has happened. In some cases, human rights bodies further conclude that the denial by the State to provide information, or the provision of false information constituted an additional violation as it prolonged and deepened the moral and emotional pain of victims and their families.

The jurisprudence of human rights bodies has also underscored the overriding public interest in the disclosure of information concerning serious violations of human rights and humanitarian law, as well as the obligation of States to take proactive measures to ensure the preservation and dissemination of such information.
The Inter-American Court, for example, has recently found that violations of the right to truth can also be a breach of the right to access information. In its considerations, the Court has emphasized that the State must demonstrate a certain amount of due diligence in searching and providing information.

Ladies and gentlemen,

The links between the rights to truth and access to information are especially relevant when discussing permissible limitations to the right to access information.

As is the case for all aspects of the right to freedom of expression, the right to have access to information is subject to some limitations. However, restrictions to any dimension of the right to freedom of expression must be defined by law that is accessible, concrete, clear and unambiguous, and compatible with the State’s international human rights obligations. They must also strictly conform to tests of necessity and proportionality.

Given that the promotion, protection and guarantee of human rights are the ultimate responsibility of all States, there is a greater responsibility in the disclosure of information held by public bodies concerning human rights violations.

In this regard, my report also underlines my great concern regarding the increasingly common use of national security as a justification for restricting access to information held by Governmental entities. The persistent denial of information on human rights violations potentially involving national security bodies often weakens public trust in State institutions.

National security should never be used as an excuse to prevent or limit the clarification of human rights violations.

In this regard, I recall in my report that sanctions should not be imposed on whistleblowers - individuals who, in good faith, decide to reveal confidential information on violations. In fact, every official who is involved in or witnesses a human rights violation should assume the moral responsibility to denounce it.

I also note that the recently released Global Principles on National Security and the Right to Information (known as the Tshwane Principles) provide a very useful tool for States and NGOs working to improve laws and policies regulating confidentiality on national security grounds.

Mr. Chairman,

As the elevated number of recent national laws on access to information indicates, most countries in the world have already clearly recognized the importance of this right. On the
other hand, recent studies on the application of national norms on right to information show that their implementation continues to be undermined by limited technical capacity and a great reluctance of public bodies and officials to comply with the new norms. Secrecy also continues to be justified on multiple grounds, especially national security.

Taking into consideration these implementation gaps, my report concludes with recommendations which recall some basic principles aimed at guiding national efforts to promote legislation on access to information.

The report calls States to revise or adopt national laws to guarantee the right to access information. Such legislation should be based on the principle of maximum disclosure and establish a clear and narrowly defined list of exceptions or grounds for refusing the disclosure of information. In particular, norms for secrecy on national security ground require greater attention in the review of existing legal frameworks.

It also recommends States to ensure that national norms and practices for access to information allow for simplified procedures. In particular, States should consider the appointment of a focal point, such as an Information Commissioner, to assist in the implementation of national norms on access to information or the creation of a State institution responsible for access to information.

The report finally underlines the importance of enhancing the capacity of public bodies and officials to adequately respond to requests for information. Changing bureaucratic procedures require investment in data management procedures and training. Public officials must be trained and sensitized to fulfil their responsibilities regarding the maintenance of records and the dissemination of information. On the other hand, officials or bodies who wilfully obstruct access to information must be held accountable and, when appropriate, sanctioned.

The right to access information on past or present human rights violations should be considered as an integral dimension of the right to truth in all circumstances. Recognizing the greater responsibility in the disclosure of information on human rights violations is an essential step for the consolidation of peace and democracy. Only people who have the right to fully acknowledge their past can be truly free to define their future.

Thank you.