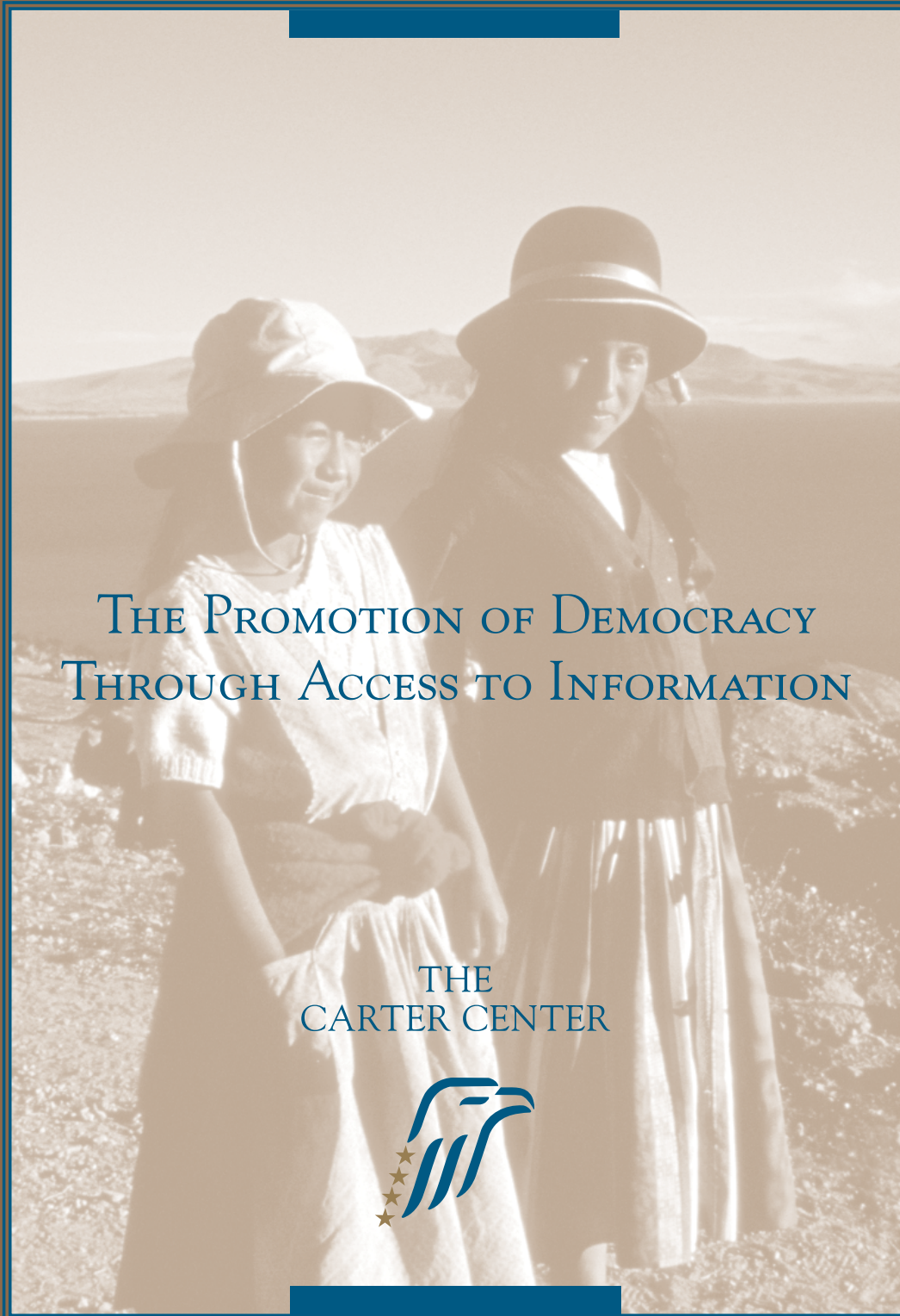


ACCESS TO INFORMATION: BOLIVIA



THE PROMOTION OF DEMOCRACY
THROUGH ACCESS TO INFORMATION

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THE PROMOTION OF DEMOCRACY THROUGH ACCESS TO INFORMATION: BOLIVIA



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May 2004



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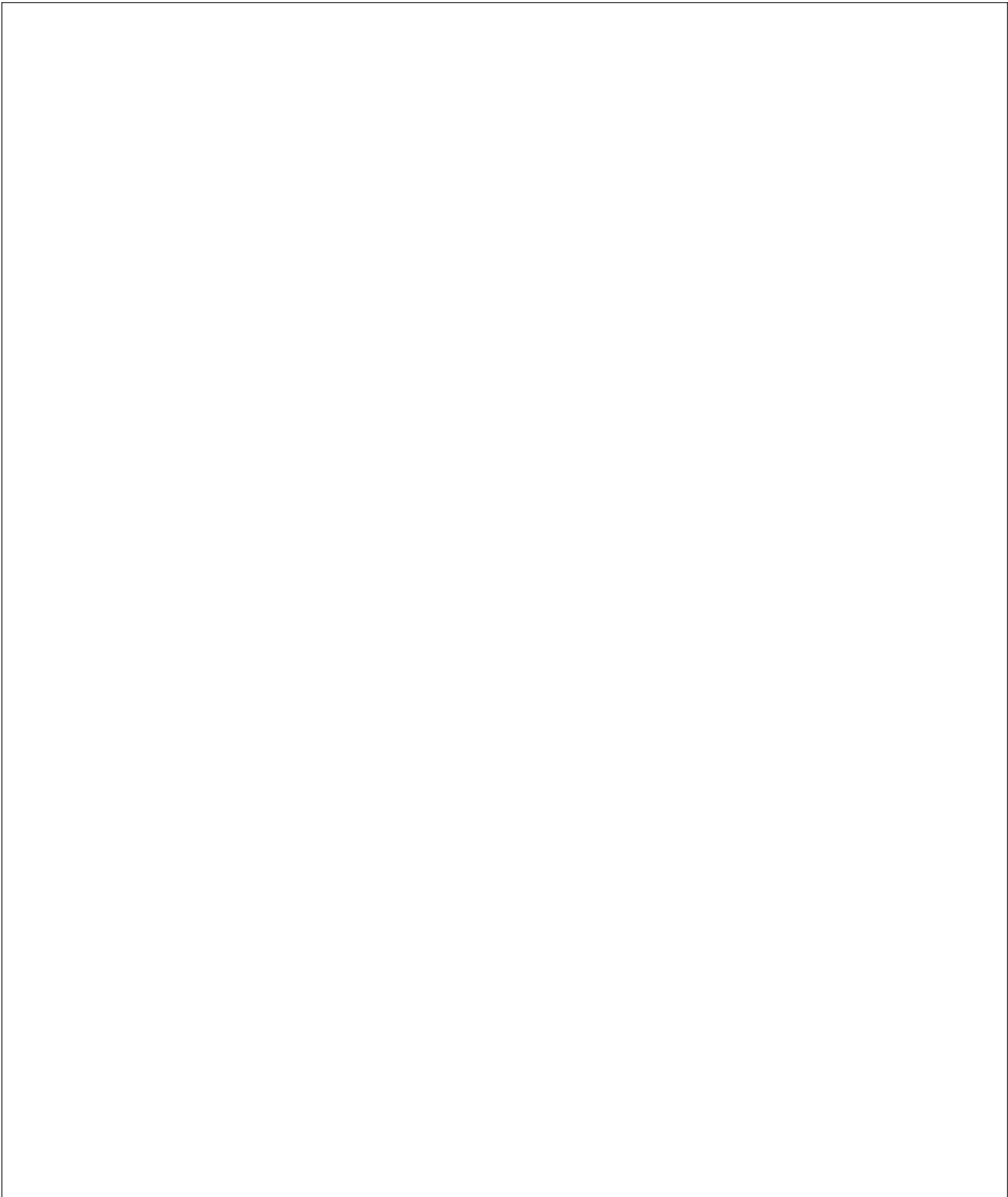


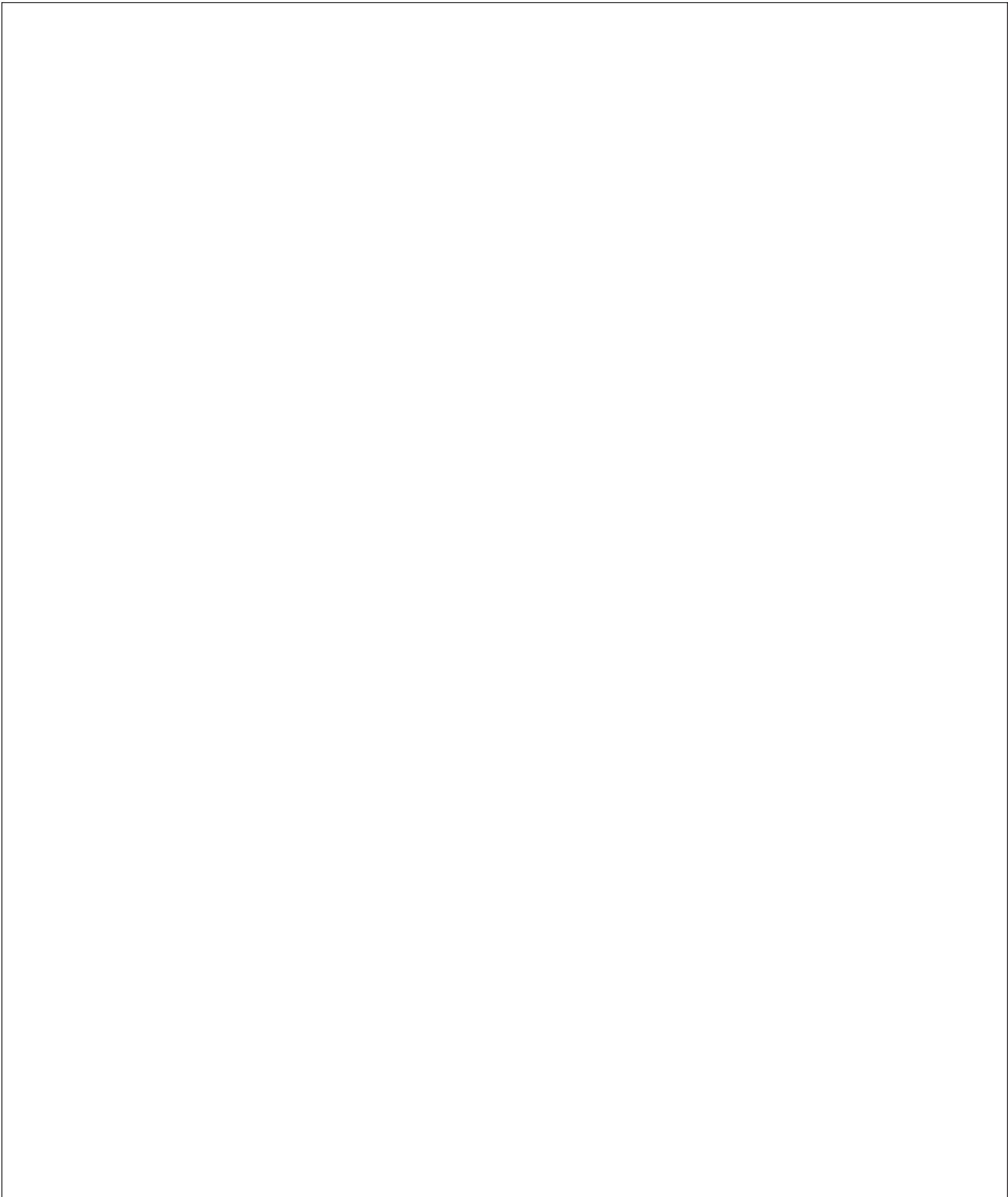


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THE PROMOTION OF DEMOCRACY THROUGH ACCESS TO INFORMATION





FOREWORD

Democracy depends on a free flow of information, and increasingly, developed and developing nations around the world are recognizing this fact. With more than 50 countries passing access to information laws in the past decade, the international trend toward transparency is clear.

Access to information, whether in the hands of the state or private companies providing public services, helps to increase accountability and allow citizens to more fully participate in public life. It is a critical tool in the fight against corruption. Equally important, access to information laws can be used to improve the lives of people as they request information relating to health care, education, housing, and other public services.

Bolivia is a leader in the promotion of an open information regime. Through President Mesa's recent declarations, citizen participation in relevant workshops, and the drafting of a comprehensive access to information law to be presented for congressional consideration, Bolivia has demonstrated its commitment to increasing transparency.

The Carter Center has collaborated in Bolivia to help inform the debate about the need for a strong access to information law, to bring together diverse sectors of society to promote the issue, to share the international experience, and to assist in considering mechanisms for full implementation and effective enforcement. We hope that this guidebook serves as an additional tool to raise awareness about the values of an access to information law.

While in Bolivia in December 2003, I spoke before the Bolivian Congress and its people about the benefits of democracy. But these cannot be enjoyed when citizens are kept in the dark. I have had the privilege to meet with many of Bolivia's elected and civil society leaders and have heard your desire for information. Therefore, I recommit The Carter Center and myself to supporting the establishment of an access to information regime within Bolivia. With civil society and government cooperating toward this common goal, I am confident that Bolivia will succeed.



ACKNOWLEDGMENTS

This guidebook would not have been possible without the dedication and commitment of many persons, including the talented writers, translators, and readers. We would first like to thank all of the authors for sharing their knowledge and experiences to make this guidebook both a scholarly and practical resource.

Laura Neuman, senior program associate of the Americas Program, leads the access to information project and compiled this volume. She commissioned the expert pieces, edited each of them, and wrote the introduction based on her own expertise and her experience with the Carter Center's access to information projects in Jamaica, Nicaragua, and now, Bolivia.

The Carter Center is privileged to have incredibly committed staff and interns who worked to make this guidebook possible, including Jennifer McCoy, Gabrielle Mertz, Erin Miles, Sarah Fedota, Nealin Parker, Tom Eberhart, and Jane Nandy. Particular recognition must be paid to Coby Jansen, Jessica Shpall, Justen Thomas, and Chris Hale for their incredible efforts throughout the editing, translating, and publication process. Their energy is limitless!

Translating others' words and ensuring that they exactly capture the flavor and tone are always challenges, and yet David Traumann, Paula Colmegna, Martha Uriona, Coby, Jessica, and Justen make it seem easy. We would also like to acknowledge access to information expert Richard Calland, who has served as a consultant to us on many of our trips to Bolivia.

We also gratefully acknowledge the financial support that we have received from the Corporación Andina de Fomento, U.K. Department for International Development, and the U.S. Agency for International Development.

Finally, we have been honored to receive incredible support and a warm welcome from countless Bolivians. We thank them for their generosity of time and spirit. We look forward to the work ahead.



INTRODUCTION

Access to information is critical to the establishment and promotion of democracy. As the democratically elected heads of state and government of the Americas declared at the special Summit of the Americas held in Mexico in January 2004, “access to information held by the state, subject to constitutional and legal norms, including those on privacy and confidentiality, is an indispensable condition for citizen participation and promotes effective respect for human rights. We are committed to providing the legal and regulatory framework and the structures and conditions required to guarantee the right of access to information for our citizens.”

It was the recognition of the many benefits of access to information that led the government to invite The Carter Center to Bolivia and civil society to engage in this issue. The Carter Center has focused its efforts on providing technical assistance to the government of Bolivia as it seeks to establish a new information regime in Bolivia. In addition, we have, thus far, held civil society workshops and seminars in La Paz, Cochabamba, and Santa Cruz to raise awareness of the importance of access to information and to share international experiences. In December 2003, former U.S. President Jimmy Carter and The Carter Center were honored to meet with President Mesa and members of his Cabinet, leaders from the majority of the political parties, and many civil society, media, union, and church representatives to discuss Bolivia’s democratic ideals and the priority placed on the right to information. The Carter Center is committed to supporting the government, Congress, and civil society in passing, implementing, and fully enforcing an access to information law.

The Carter Center has commissioned a series of relevant papers in the hope that they will serve as a tool for understanding the value of transparency in both the Bolivian and international contexts. Achieving transparency is a complex puzzle, and the following chapters seek to provide the reader with a number of the necessary pieces.

Nardy Sucho sets the stage for the guidebook through her discussion of *The Need for a Right to Information in Bolivia*. She reminds us that as Bolivian democracy continues to confront a series of social conflicts, access to information becomes even more vital. Through current examples, she illustrates why access to information is necessary and how it can serve to encourage public participation and the awareness of other rights.

In *Public Administration and Access to Information in Bolivia*, Antonio Birbuet provides the legal framework for this puzzle. Through a methodical analysis of the most relevant statutes and norms, Mr. Birbuet negates the argument that a right to information already exists. Although there are a number of legal instruments in place, he concludes that a comprehensive access to information law is critical as the present laws are often incomplete, inconsistent, and lack full implementation.

Following on Ms. Sucho’s discussion, Richard Calland offers additional support for the role of access to information as a socioeconomic right. In his paper *Access to Information: A Means to Promote Social and Economic Inclusion*, he narrates a number of international case examples to underscore this message. As Mr. Calland points out, the advent and use of transparency laws have “created an opportunity for poor people, habitually excluded by poverty and lack of information, to tackle those with power over them.”



THE PROMOTION OF DEMOCRACY THROUGH ACCESS TO INFORMATION

Access to information is often considered one of the most powerful tools to increase accountability and prevent corruption. Néstor Baragli, in *Access to Information and the Fight Against Corruption*, relates the negative effects of corruption and the ways in which access to information bolsters the government, civil society, and the private sector in their efforts to combat it.

The next two chapters, *Access to Information Laws: Pieces of the Puzzle*, by Laura Neuman, and *Implementation of an Access to Information Regime*, by Ms. Neuman and Mr. Calland, focus on two of the critical phases in establishing an information regime. The first paper draws upon the international experience and emerging norms in guiding lawmakers and citizens in the debate regarding those provisions critical to support a right to information. Further, it briefly analyzes the most current Bolivian transparency and access to information draft law in light of these international standards. For most governments, implementation of an access to information law has proven even more challenging than its passage. Changing the mindset of civil servants and the public as well as developing the necessary procedures for archiving, responding to requests, and training can take an enormous amount of time and resources. This chapter reminds the readers that implementation is a joint responsibility between government and its citizens. While government has the responsibility of establishing the processes, civil society must be prepared to use the law and monitor government's efforts.

Finally, Presidential Delegate Against Corruption Guadalupe Cajías in her article, *Certainties and Doubts in the Debate About an Access to Information Law in Bolivia* clearly establishes her commitment to promoting access to information while realistically defining the challenges facing President Mesa as his administration strives to design and implement a strong legal framework. She invites all Bolivians to take part in the upcoming debate regarding access to information, which she hopes will be “participatory, realistic, constructive, and inclusive, within the general desire to better the current socioeconomic and political conditions of a multicultural and multilingual country.”

In establishing an information regime, Bolivia is joining a growing trend of countries. However, experience has proven that to fully implement and effectively enforce an access to information law takes resources and commitment from all sectors of society. One must be ever vigilant to ensure that the right to information remains vibrant and alive. With the skills of its people and their deep respect for democracy, Bolivia will reach its goal of promoting greater transparency through an access to information law.



THE NEED FOR A RIGHT TO INFORMATION IN BOLIVIA

NARDY SUXO ITURRY

The Bolivian democracy is currently passing through a series of social conflicts, sharpened since February 2003 and concluding in the rebellion of October 2003, when organized social movements and society in general demanded greater participation in state decisions and policy-making. The state of affairs in 2003 saw the marriage of weak and suspect state institutions and an absence of information regarding critical issues, resulting in the social movements questioning the traditional form of policy-making.

Following the events that led to the resignation of the president, the new executive, civil society, and some members of Congress recognized that it was the lack of transparency and information regarding key issues affecting the nation, such as the hydrocarbon policy and corrupt acts that had been denounced without sanction, which gave way to the social explosion aptly named “Black October.”

BOLIVIAN DEMOCRACY

The Bolivian democracy, in existence for 22 years, is passing through complicated power relations, with conflict and poverty as its main framework. Bolivia, a large country with a small population of approximately 8.5 million people, is one of the poorest in the Western Hemisphere. It is estimated that close to 70 percent of its people live in poverty.

The multiethnic makeup of the country (60 percent of the population is indigenous) manifests itself in deep social differences and serves to further divide Bolivians. There are few channels for peaceful communication. These factors are worsened by the exclusionary forms of lawmaking that have impeded the majority of the population from playing a leading

role in the main decisions affecting the country. The relationship between the state and its citizens is fractured and is one in which the majority of Bolivians do not feel engaged.

A large part of our history as a republic has been marked by military authoritarianism. Independence was initially claimed from the Spanish in 1825, and Simon Bolivar drafted the first constitution the next year. This constitution, however, did not last, and with each regime change came a new version. For the next nearly 150 years, Bolivia struggled with internal crises and external threats. The National Revolutionary Movement entered office in 1952. From that point until the present, Bolivia has had more than two dozen presidents, half of them military rulers. Democratically elected civilian governments were not the norm in Bolivia until the 1980s.

Given the turbulent democratic history in Bolivia, the right to information has not enjoyed great respect from the state. In relations with the state, citizens have experienced almost complete and continuous antipathy and disregard of this right.

RELEVANT NATIONAL AND INTERNATIONAL INSTRUMENTS

The Bolivian Constitution grants its citizens the right to free association, unencumbered movement, and receipt of culture and education, but there exist insufficient guarantees with respect to the right to information. In fact, the constitution only makes reference to the right to freedom of expression and the right to petition, which provides citizens the ability to formulate requests and seek answers from public authorities but does not mandate the provision of documents. Thus, at present in



THE PROMOTION OF DEMOCRACY THROUGH ACCESS TO INFORMATION

Bolivia, the constitution does not confirm its citizens' fundamental right to information.

However, there are a number of international instruments to which Bolivia is a signatory that establish the right to information.

Article 19 of the Universal Declaration on Human Rights signals, among other rights, the right to "freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information."

Article 10 of the European Convention establishes that, "Everyone has the right to freedom of expression. This right shall include the right to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers." This article also makes reference to the fact that the exercise of these freedoms implies responsibilities and duties such as being subject to certain formalities, conditions, restrictions, or sanctions as specified by law, which are, of course, necessary measures for a democratic society. As with

any law or norm related to access to information, there are some limitations on this right when release of such information could cause harm to national security, territorial integrity, and public safety or divulge confidential information necessary to guarantee judicial authority and impartiality.

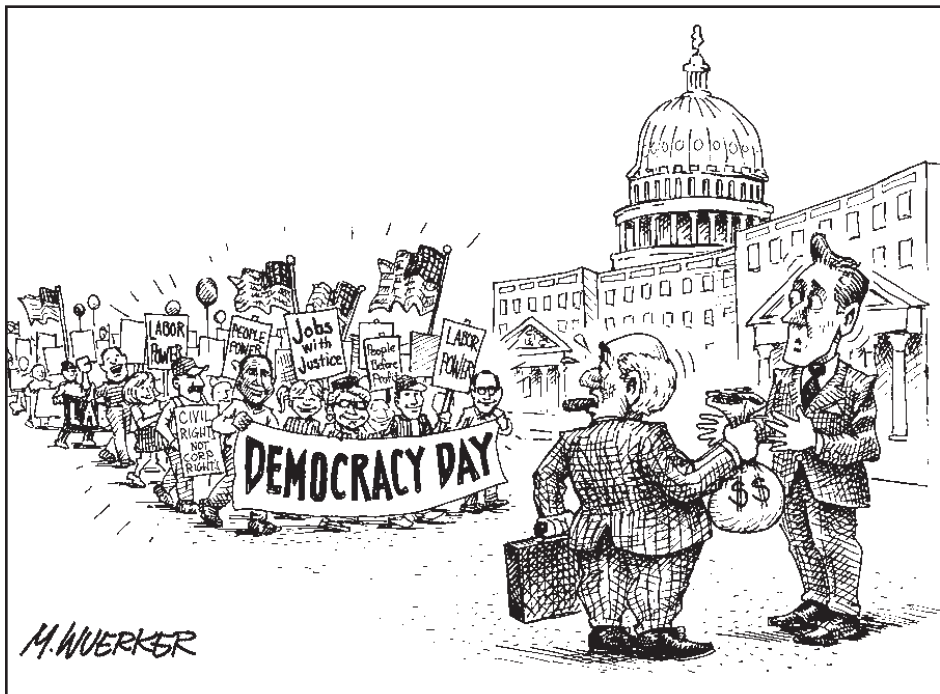
The Convention on the International Right of Rectification, which came into effect in 1962 and to which Bolivia accedes, states in its preamble that the right to information will protect humanity from the scourge of war by combating propaganda which aims to provoke or stimulate any threat to peace or any act of provocation that could produce effects of assault on peace.

POSITIVE EFFECTS OF ACCESS TO INFORMATION IN BOLIVIA

The right to information is a necessary instrument for Bolivians to exercise their fundamental human rights. In this country, human rights have

always been associated with mass and systematic violations by the state, principally during the dictatorships. However, at this point in history, it is indispensable to prioritize the respect, defense, and diffusion of human rights within our democracy, going well beyond simple dissemination to the construction and consolidation of democracy itself, where respect for all rights is an integral and indivisible part of any state response. As a part of this renewed commitment, Bolivia should engage in the international movement

MATT WUERKER





THE NEED FOR A RIGHT TO INFORMATION IN BOLIVIA

for human rights and comply with those pacts and declarations that call for the right to information.

In Bolivia, there exists a lack of knowledge on this set of norms that should be part of our internal legislation. Therefore, it is necessary to raise awareness within our society—not just organized civil society, nongovernmental organizations, and other social movements but with all people—and to encourage participation in state reforms of the three branches of power: executive, legislative, and judicial. This form of engagement and strengthening would allow the state powers more direct contact with society, thus their formulation of ideas would be based on reality and from the point of view of the population. Information will serve to augment their ability to listen and channel demands.

All changes and proposals that come from the state will have greater effectiveness and legitimacy if they have been shared and discussed with its citizens. As a result, society will not consider these reforms imposed upon them but rather feel ownership and provide the support that they deserve. Although it is impossible to agree on everything, conflict and resistance could be lessened through society having access to timely information. Not only will the provision of information serve to improve governance, it will also help prevent conflict and increase a sense of personal security.

It should not be forgotten that every human being strives to feel a part of the collective and to find mechanisms to communicate with others, whether orally, written, or using other channels. As they search for a more active participation, be this in the public or private sphere, people must base their engagement on the knowledge that information provides.

Ignorance of the laws and the mechanisms by which they function opens the door to violations of other rights or failure to fully implement important new legal initiatives. For example, the Code on Children and Adolescents states that all people have the right to a name and that each birth should be recorded, without charge, in the Office of the Civil Registry. In addition, all children younger than 18 years of age have the right to a birth certificate, a document necessary to exercise a myriad of rights. Unfortunately, many members of society do not know of this law and the guarantees it affords, and in some cases, the authorities themselves are unaware. Consequently, many children and young people are denied their citizenship card and, therefore, are

unable to exercise their rights, such as the right to vote and to access health and education services, leaving them without state protection. Through a freer flow of information on even basic information related to the existing laws,

Bolivians could more fully enjoy their rights.

A second example relates to the new Code of Criminal Procedure, which guarantees a more transparent and just process. Regrettably, this reform has been roundly rejected simply because of a misunderstanding of its provisions and a lack of knowledge of its potential benefits. Thus, the law is deteriorating without having the anticipated effect, and an important reform effort is lost. Had there been more information available during the formulation of this law and greater citizen participation and awareness, this backlash may not have occurred.

Finally, in addition to increasing the possibility for participation in decision-making and helping citizens better understand and exercise their rights, access to information is an important tool for increasing social inclusion and preventing the manipulation of information which can lead to conflict.

All changes and proposals that come from the state will have greater effectiveness and legitimacy if they have been shared and discussed with its citizens.



THE PROMOTION OF DEMOCRACY THROUGH ACCESS TO INFORMATION

NEXT STEPS

The ultimate purpose of these legal norms is to provide greater transparency in the management of “public matters” whereby all citizens have the right to request and receive information from state authorities. And, if the request for information is denied, the public body must justify the negation. Through this scheme, our democratic ideals will be met. A specialized law that regulates the right to information and an active society engaged in ensuring its effectiveness will contribute to the strengthening of democracy and serve to meet the ideals established in Article 1 of the State Political Constitution of a multiethnic and multicultural country committed to a participatory democracy and striving to assure rights for all its people.

Consequently, there must exist a resolute conviction, as much from the state as from society, that all citizens have the right to receive credible, objective, and timely public information.



PUBLIC ADMINISTRATION AND ACCESS TO INFORMATION IN BOLIVIA

ANTONIO BIRBUET DÍAZ

Advances in the democratic process should be seen in light of the socio-political reality. The role of the state, exercised through governments, is not only about introducing systems and processes of public administration with commitments to efficacy, efficiency, and economy. Rather, democratic practices also demand that the actions of governments are geared toward transparency, ethics, and social equity in relation to the management of public affairs.

Governability, essential for the proper functioning of public administration, strongly depends on the ability of the state to notify citizens of its actions and its capabilities and limitations to meet the demands of the people. At the same time, it is only possible to develop strong governance if individuals and communities are capable of receiving and using the necessary information and data about government's actions. Therefore, the ability to inform and the possibility of accessing information are two interacting components that allow for the effective exercise of transparency.

Consequently, in order to consider access to public information, it is necessary to discuss the existing normative framework which permits or prohibits people (individually or collectively) to access state information. It also is important to analyze the

procedures within public administration that establish how public authorities must act in carrying out the responsibility of the state to disclose and disseminate information about the management of public funds.

Often it is presumed that Bolivia already enjoys a legal and administrative framework that allows the state to provide information and citizens to request and receive documents. Unfortunately, this is not the case. The many legal provisions relating to access to information that do exist are often incomplete, inconsistent, and uncoordinated. Moreover, they lack full implementation and enforcement. It is for these reasons that the passage and implementation of a comprehensive transparency and access to information law, which combines all the relevant information provisions, are critical for both improved internal administrative management and external governability.

THE RIGHT TO ACCESS INFORMATION WITHIN THE NATIONAL LEGAL FRAMEWORK

The Bolivian Constitution is the supreme law. In its dogmatic section, it establishes a classification of rights. One of them, the right to petition, refers to the right of the people to request answers and information from their public leaders. This right

<p>POLITICAL CONSTITUTION OF THE STATE</p>	<p>FIRST PART: THE PERSON AS A MEMBER OF THE STATE</p> <p>FIRST CLAUSE: RIGHTS AND DUTIES OF THE PERSON</p> <p>Article 7. According to the laws in exercise, every person holds the following fundamental rights:</p> <p>a) ...</p> <p>b) ...</p> <p>...</p> <p>h) To petition individually or collectively;</p>
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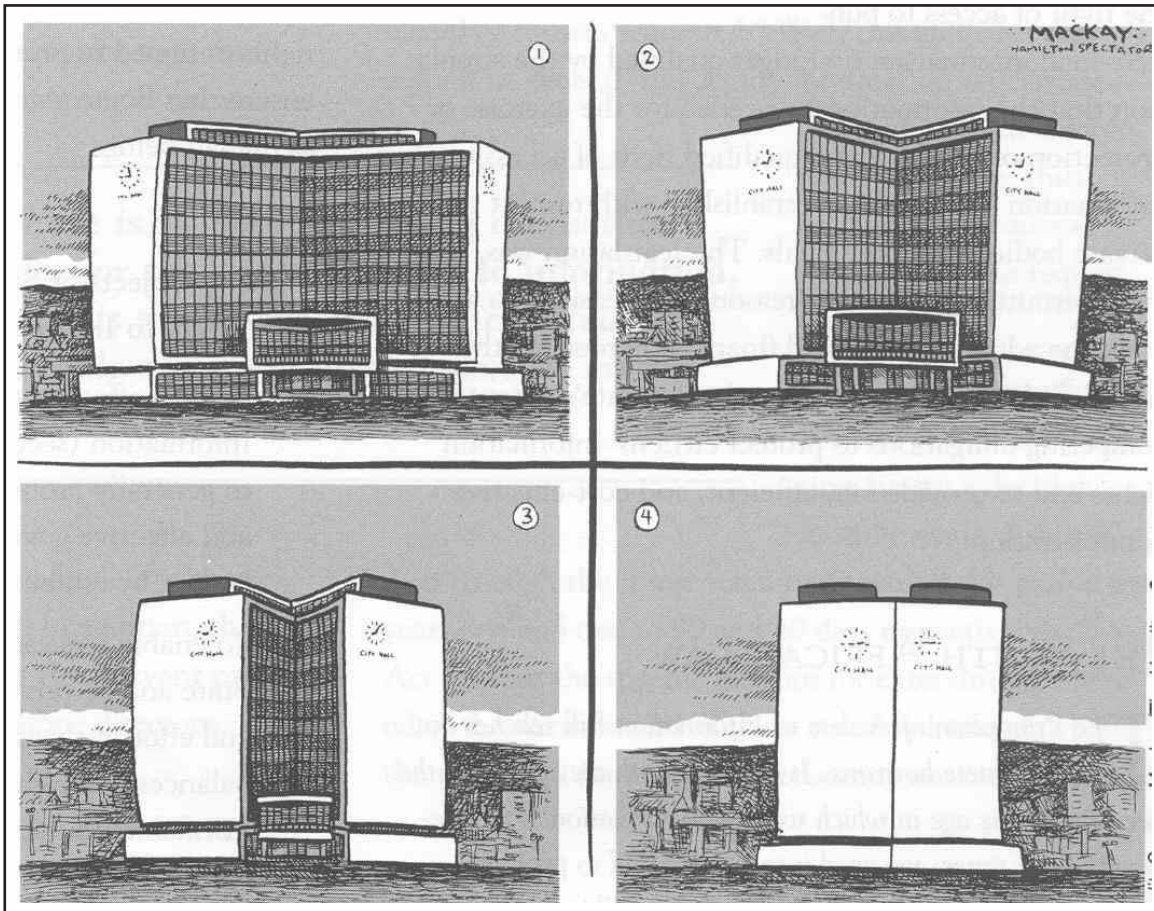
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implies the authority, ability, and faculties that every person holds to demand that the authorities in power listen to their requirements and needs and respond. Expert José Carrasco suggests that the right to petition is the best means for a citizen to relate to the structure of the state and the exercise of power.¹

However, it is important to point out that constitutional rights are subject to the principle of statutory reserve, which means that fundamental rights are not unconditional but are subject to the regulations set by law. In regard to the right to petition, which arguably could include the right to access information although it does not mandate the disclosure of documents, the main existing regulation

is contained in Law 2341 passed on April 23, 2002: The Law of Administrative Procedures.

Below are select sections of the Law for Administrative Procedures summarizing the provisions that relate directly to the exercise of the right to petition and access information. As is seen, Article 1 refers to the right to petition itself. Article 4 establishes the principle of disclosure of public acts. Article 16 establishes the rights of people in relation to the public administration and specifically discusses the right to obtain information. Finally, Article 18 specifically refers to the practice of accessing information and also to the limitations and exceptions established in this field.



GRAEME MACKAY/THE HAMILTON SPECTATOR

¹ Cited by Stefan Jost, José A Rivera, Huáscar Cajías and other authors in "Constitución Política del Estado: Comentario Crítico" Página 43; Ed. Fundación Konrad Adenauer. Segunda Edición. La Paz, Bolivia 2003.



<p>Law 2341 Passed April 23, 2002</p> <p>LAW FOR ADMINISTRATIVE PROCEDURES</p>	<p>PRELIMINARY TITLE: GENERAL REGULATIONS</p> <p>Article 1 (Objectives of the Law) The objectives of the present law are to:</p> <ul style="list-style-type: none"> a) Establish norms that regulate the administrative activities and administrative procedures of the public sector, b) Make effective the right to petition the public administration, c) Regulate the raising of objections about administrative acts that affect the subjective rights or legitimate interests of those being administered, and d) Regulate special procedures.
	<p>Article 4 (General Principles of Administrative Activity) Administrative activity will be guided by the following principles:</p> <p>...</p> <ul style="list-style-type: none"> m) Principle of publicity: The activities and acts performed by public administration should be made publicly available except when this or other laws prevents it.
	<p>SECOND SECTION: THE RIGHTS OF PERSONS</p> <p>Article 16 (About the Rights of Persons) Regarding Public Administration, every person holds the following rights:</p> <ul style="list-style-type: none"> a) To individually or collectively file petitions before public administration, ... f) To obtain certificates and copies of documents held by public authorities, with the exception of those specifically established by law or special regulations, g) To access registers and administrative files in the manner established by law.
	<p>Article 18 (Access to Files, Registries and Obtaining Copies)</p> <ul style="list-style-type: none"> I. Every person has the right to access files, public registries and documents held by public authorities and to obtain certificates and authenticated copies of such documents, regardless of the format, be they graphic, sound, visual or other, or the device in which they are contained. II. Every restriction or constraint to access information must be expressly regulated by law or by disposition of the proper authority, explicitly stating the level of the limitation. Excepted are those legal regulations that deal with confidentiality or professional secrecy and legal orders and regulations that establish measures related to access to information. III. In relation to the effects envisioned in the previous paragraph about the right to access and obtain copies and certificates, such right does not apply to the following files: <ul style="list-style-type: none"> a) Those containing information related to national defense, state security or the exercise of constitutional powers by any of the state powers. b) Those subject to restrictions or protected by commercial, banking, industrial, technological and financial secrecy, which are established in legal regulations.



THE PROMOTION OF DEMOCRACY THROUGH ACCESS TO INFORMATION

The Administrative Procedures Act, detailed on the previous page, demonstrates one of the main problems with the present legal framework related to access to information. As will be seen with the other laws, the types and categories of information available are limited. For example, in Article 18 III (a), access to files, registries and obtaining copies, it establishes that access to information cannot be exercised over records which “contain information related to national defense, state security, or the exercise of constitutional powers by the state powers.” Moreover, the scope of this measure is subject to the interpretation of authorities in relation to “the exercise of constitutional powers by state powers.” Due to the conceptual broadness of the statement, petitions for information could be subject to discretionary decisions regarding the application of exceptions to disclosure.

THE DUTIES OF PUBLIC ADMINISTRATION AND ACCESS TO INFORMATION

Given this legal framework regarding the rights and exceptions related to access to state information, we must now turn to the capacity of the state to provide information in the exercise of public

administration. It is, therefore, important to discuss the main features and attributes of the SAFCO law (Law 1178, Administration and Government Control Law, passed in July 1990), which governs public administration and establishes the extent to which the bodies of the three powers must generate and disclose information.

To understand the administrative capacity and state requirements, it is necessary to analyze the elements included in the SAFCO law together with those elements established by the Supreme Decree 23318-A of Nov. 3, 1992 (Regulations on Responsibility for Public Duties) and its Amended Supreme Decree 26237 of June 29, 2001. These regulations are part of the normative base that authorizes the exercise of Bolivian public administration and, hence, also regulates the ability and duty to generate information.

The SAFCO law establishes an integrated model of administration and control for the use of state funds through a series of financial and nonfinancial administrative systems that must operate in an interrelated manner with the Planning and Public Investment systems. The systems of administration and control established by the law are classified as follows:

Systems for planning and organizing activities	<u>Operations Planning</u> <u>Administrative Organization</u> <u>Budgeting</u>
Systems for executing planned activities	<u>Personnel/Staff Administration</u> <u>Administration of Goods and Services</u> <u>Treasury and Public Credit</u> <u>Integrated Accounting</u>
System for the control of acts performed by public administration	<u>Government Control</u>



PUBLIC ADMINISTRATION AND ACCESS TO INFORMATION IN BOLIVIA

The implementation of these systems requires the joint operation of a series of processes that generate data and documents, which must be part of an internal and external information plan. For example, the operations planning system requires public bodies to define their administrative objectives and specify the indicators with which they will measure results and show the performance. This discrete exercise generates important information related to the effectiveness of the public administration and potential reforms. Likewise, the functioning of other administration systems produces large amounts of information about all aspects of the functioning and performance of public bodies: budgets, management of financial resources, contracting of goods and services, salaries of officials, etc. The question is “What happens with all of this critical information?”

Although the SAFCO law calls for the generation of a broad range of information, it is important to point out that it does not specifically deal with information management or access to information by or for citizens. Rather, it solely addresses the generation of useful, timely, and reliable information

for effective, efficient, and satisfactory public administration. Moreover, the provision of information is oriented toward internal communication within each public body and external communication with other public bodies in relation to functions and obligations that emanate from administration, coordination, supervision, and control duties. There is no focus or explicit mechanism for sharing this information beyond those entities that form Bolivian public administration, thus limiting its usefulness as a means of broadly accessing information.

Nevertheless, this does not mean that public bodies do not provide information to citizens. In practice, many public bodies have developed diverse methods for disseminating information and even created entire departments specifically intended for this purpose; in fact, some public bodies are themselves designed solely to supply information to citizens. It also is worth mentioning that in recent decades, governments have spent significant funds on campaigns designed to show their work and achievements through use of the media, including television, radio, and newspaper. It is here they

<p>SAFCO Law 1178 July 20, 1990</p>	<p>Chapter I: PURPOSE AND SCOPE OF THE LAW</p> <p>Article 1. The present law regulates the systems of administration and control of state funds and their relation to National Planning and Public Investment Systems, with the purpose of:</p> <ul style="list-style-type: none"> a) ... b) Obtaining useful, timely and trustworthy information to ensure soundness of reports and financial statements. c) Ensuring that every public servant, without regard to rank, assumes full responsibility for his or her acts and is accountable not only for the use for which public funds are designated but also for the manner in which they are used and the results of their application. d) ...
	<p>Chapter II: ADMINISTRATION AND CONTROL SYSTEMS</p> <p>Article 12. The integrated accounting system ... based on financial and non-financial data will generate relevant information useful for decision making in State related matters ...</p>



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publish information thought to turn public opinion favorably toward their administration. These, however, have been criticized by opponents as simply propaganda campaigns that fail to show the actual situation of the country.

But when considering a specific law or mechanism, it is important to determine whether the information provided by public bodies under these existing norms is sufficient, timely, and useful for the population to investigate and judge the use of funds and activities performed by public authorities.

Another regulation directly related to the public administration's disclosure of information is Supreme

Decree 23318-A (Regulations on Responsibility for Public Duties) passed on Nov. 3 1992.² This decree includes the concept of transparency and mandates the effective, economic, efficient, transparent, and lawful performance of duties by public servants. It also establishes the obligation of generating and providing "useful, timely, pertinent, comprehensible, reliable, and verifiable information to their superiors, to the bodies that provide resources, and to any other person authorized to supervise their activities." As with the SAFCO law, this regulation is oriented toward the provision of information intended to satisfy internal needs of

<p>SUPREME DECREE 23318-A</p> <p>REGULATIONS ON RESPONSIBILITY FOR PUBLIC DUTIES</p>	<p>Chapter II: TERMINOLOGY</p> <p>Article 3. (Responsibility) It is the duty of public servants to perform their obligations in an effective, economic, efficient, transparent, and legal manner. Not complying with these rules may result in legal sanctions.</p> <hr/> <p>Article 5. (Transparency) The transparent performance of duties by public servants, which is the base for the credibility of their acts, includes:</p> <ul style="list-style-type: none"> a) The generation and rapid release of useful, timely, pertinent, comprehensible, reliable, and verifiable information to their superiors, to the bodies that provide resources, and to any other person authorized to supervise their activities. b) To allow access to information for their superiors and to those in charge of internal and external control and of verifying the efficacy and reliability of the information system. c) To disclose information before, during, and after the performance of their duties in order to allow a basic understanding by citizens of the allocation and use of public funds, the results obtained, and the factors that influence such results. d) To provide previously processed information to any individual or collective person who requests it and who shows legitimate interest. <p>All limits to transparency must be specifically established for each type of information, not being general for the whole body or its departments. The limitations must be established by law, clearly stating how to act in relation to confidential acts.</p>
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² On June 29, 2001, Supreme Decree 26237 that partially modifies Supreme Decree 23318-A was passed, but the new norm does not affect access to information regulations.



PUBLIC ADMINISTRATION AND ACCESS TO INFORMATION IN BOLIVIA

public bodies rather than to provide a wide range of information to Bolivian citizens.

This regulation further establishes that public servants must perform their acts in a transparent manner and provide “previously processed information to any individual or collective person who requests it and who shows legitimate interest.” As with the other laws in effect, when it comes to responding to a request for information, the “legitimate interest” clause included in the Supreme Decree 23318-A is open to the interpretation and the discretion of authorities. How can someone justify that a certain applicant is or is not “legitimately interested”? Thus, in practice, this regulation and its limitation on access to information may be counterproductive for increasing the transparency of public acts.

Law 2027 (Public Officer Statute), passed on Oct. 27, 1999, which sets standards and norms for public servants, should also be analyzed as part of the legal framework regarding access to information. Regulations contained in this law are closely related to the operation of the personnel/staff administration system established by the SAFCO law and to the Regulations on Responsibility for Public Duties.

The preliminary section of the Public Officer Statute establishes a series of principles, among which honesty, ethics, and responsibility during the performance of public duties are salient. The chapter on general regulations (Article 8) refers to the confidentiality that public officers must maintain regarding “issues and information previously

<p>Law 2027 October 27, 1999</p> <p>PUBLIC OFFICER STATUTE</p>	<p>PRELIMINARY TITLE</p> <p>Article 1. (Principles)</p> <p>h) Honesty and ethical behavior of public servants;</p> <p>...</p> <p>j) Responsibility in the performance of public duties.</p>
	<p>TITLE II: PUBLIC SERVANT</p> <p>Chapter I: GENERAL REGULATIONS</p> <p>Article 8. (DUTIES) Public servants must perform the following duties:</p> <p>...</p> <p>f) Maintain confidentiality over issues and information to which they have access due to the performance of their regular tasks, and that were previously classified as confidential.</p> <p>...</p> <p>h) Maintain and store documents and files under their custody and provide timely and truthful information about the subjects related to his or her duties.</p> <p>...</p> <p>j) Swear an affidavit on his or her property and income according to what has been established in the present law and supplementary regulations.</p>



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established as confidential.” Another subsection in the same chapter refers to the obligations of public servants toward “maintaining and storing documents and files subject to their custody and providing timely and truthful information about issues related to his or her duties.” These provisions could cause conflict as one clearly establishes a standard of confidentiality, while the other provision encourages the dissemination of, potentially, the same information that was deemed secret.

Supreme Decree 27329, passed on Jan. 31, 2004, states that access to public information is a necessary requirement for the functioning of democracy and that transparency regarding information is a fundamental pillar for good public administration as it reduces arbitrariness and contributes to credibility of institutions. To meet its objectives, this Supreme Decree provides for limited categories of information to be made public through government Web sites or other appropriate mechanisms.

The salient elements of the executive order include the following:

<p>SUPREME DECREE 27329</p> <p>January 31, 2004</p>	<p>Article 2. In order to achieve transparency and access to governmental information:</p> <p>a) The right of every person to access information with the purpose of retrieving, receiving, accessing and disclosing public information for the functioning and strengthening of democracy is recognized.</p> <p>b) Access to information must be ensured for every person without distinction because it provides the basis for the exercise of his or her citizenship.</p>
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Article 3 of the Supreme Decree establishes the type of information that should be made accessible to citizens, stating:

<p>SUPREME DECREE 27329</p> <p>January 31, 2004</p>	<p>Article 3. (ACCESS TO INFORMATION) Within the framework of transparency of public administration promoted by the national government, it is established that all bodies under the Executive Branch, both at a central and decentralized level, independent or deconcentrated, must make public through their websites or any other means of each Ministry, Prefecture, and Deconcentrated entity operating outside the government the following items and indicators:</p> <ul style="list-style-type: none"> • Budget approved by the National Treasury (TGN), the number of employees and hired personnel receiving payment from the TGN or other funding sources. • Terms of Reference of hired personnel. • Objectives and goals put forward in each Annual Operation Plan. • Annual reports on budget execution. • Annual plan for the contracting of goods and services that has been sent to the State Contracting Information System (SICOES).
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Article 4 refers to the right to petition established in the Political Constitution of the State and Law 2341 for Administrative Procedures. Articles 5, 6, 7, and 8 establish the classified information subject to disclosure restrictions and limitations in the areas of military, territorial integrity, foreign relations, and classified financial information.

The Bolivian Constitution, along with the laws and supreme decrees mentioned above, constitutes the legal framework that regulates the right of citizens to petition, delineates

the transparent performance of duties by public servants, and establishes the obligation of generating timely, useful, and reliable information. However, the possibilities for citizens to access information remain seriously limited because in some cases regulations establish expansive limitations and create broad classes

of confidential information; in other cases, regulations allow for discretionary interpretations to limit or restrict access to information. Without denying the need for the state to protect certain areas of public information, it can be argued that the existing legal framework does not provide the necessary elements for the full exercise of transparency. This situation worsens when there are a lack of political will to inform, a lack of rules that regulate optimal transparent behavior, and a lack of proper information systems.

These elements clearly suggest the need for a more comprehensive norm to promote transparency of state actions and to regulate the fundamental right to access information.

RECOMMENDATIONS FOR IMPROVING PUBLIC MANAGEMENT'S PROVISION OF INFORMATION:

1. Establish information systems

In a country like Bolivia where the state often faces budgetary shortage, it is vital for governments to establish clear policies for the development of properly formulated information and communication systems that will allow them to combine data gener-

ated by the diverse administrative bodies and systematize it in a useful, coherent, timely, and reliable manner.

Thus, for external communication to meet the needs of citizens, public bodies should develop integrated information systems that, at a minimum, display their institutional identity and state their aims,

duties, organizational design and culture, and shared values—in other words, all the information that can be verified and observed.

2. Strengthen relationship with public

In the same way that private companies are focusing on the customer in order to face the challenges of the 21st century, public administration should be oriented toward citizens and be conscious that its main mission is to serve and attend to the needs and reasonable demands of the populace. One of the suggested approaches to encourage this behavior is to establish a two-way communication system between citizens and public administration. In order for public bodies to effectively communicate with their citizens,

The possibilities for citizens to access information remain seriously limited because in some cases regulations establish expansive limitations and create broad classes of confidential information; in other cases, regulations allow for discretionary interpretations to limit or restrict access to information.



THE PROMOTION OF DEMOCRACY THROUGH ACCESS TO INFORMATION

they must improve their information systems and customer service and, at the same time, strengthen the generation of external information in a context of transparency.

How can policies and institutional objectives be defined if public bodies are unaware of the contents of social demands? How can citizens become aware of the possibilities and difficulties of state administration if they cannot access the necessary information for such a purpose? These are only some of the queries that can motivate the search for solutions to the problems of transparency that both central and local governments face.

Communication between the state and society is bidirectional; this means that in order to communicate with citizens, the state administration should improve already available information systems, increase the emission of external information aimed at citizens, and create consultation systems that may inform them about citizens' priorities in relation to public services and their preferences and expectations.

3. Do not place too much emphasis on new technologies

Although the number of public bodies that are using new information and communication technologies is increasing, these novel means of communication between citizens and administration may not yield the far-reaching effects desired. Strong disparities among the main capitals and the rest of the country in the development of communication technologies continue to exist. Additionally, public bodies vary in their technological capacities, as many have not yet even implemented all the administration and control systems that the SAFCO law establishes. The very basis of public administration and the generation of information are either under construction or completely stalled in many of the public bodies. Thus, the focus should remain on establishing workable systems with a realistic vision of the technological limitations rather than simply relying on new technological advances to resolve the administration's deficiencies.

4. Provide training for public officers

A visit around public offices will demonstrate how innumerable personnel are busy generating data, lists, tables, reports, etc. In short, public servants are immersed in the never-ending activity of information generation. Not even the employees creating the documents know if they will be used effectively or if they simply will add to the tons of paper generated in response to administrative formalities or directives given by some forgotten officer. The fact is that public bodies generate and store huge amounts of information that, in most cases, have no effective, efficient, or economic use. It is a chaotic and unsystematic collection that gives way to the damage and disappearance of costly documents. In poor countries like Bolivia, the paradox of this waste of money is in deep contrast with the lack of transparency. One means of remedying this cycle of waste is to properly train public officers in both record-making and record-keeping. Without proper training, Bolivia will continue to suffer with useless or missing documents.

5. Focus on implementation

Implementation of administration and control systems established by the SAFCO law has encountered numerous difficulties, which have, in turn, impacted the processing and generation of information. In recent years, the Integrated System of Administrative Management and Modernization (SIGMA) is gradually achieving a centralization of budgets, accounts, treasury, public credit, hiring, resource management, and personnel administration information; however, the different modules of SIGMA have not yet developed a proper report-generating method in order to disseminate information to citizens. Without effective implementation, none of the norms and new regulations will serve to increase transparency or provide a legitimate right to access information. Greater focus must be placed on the realization of these instruments and necessary tools to develop and implement these systems to their greatest capacity.



CONCLUSION

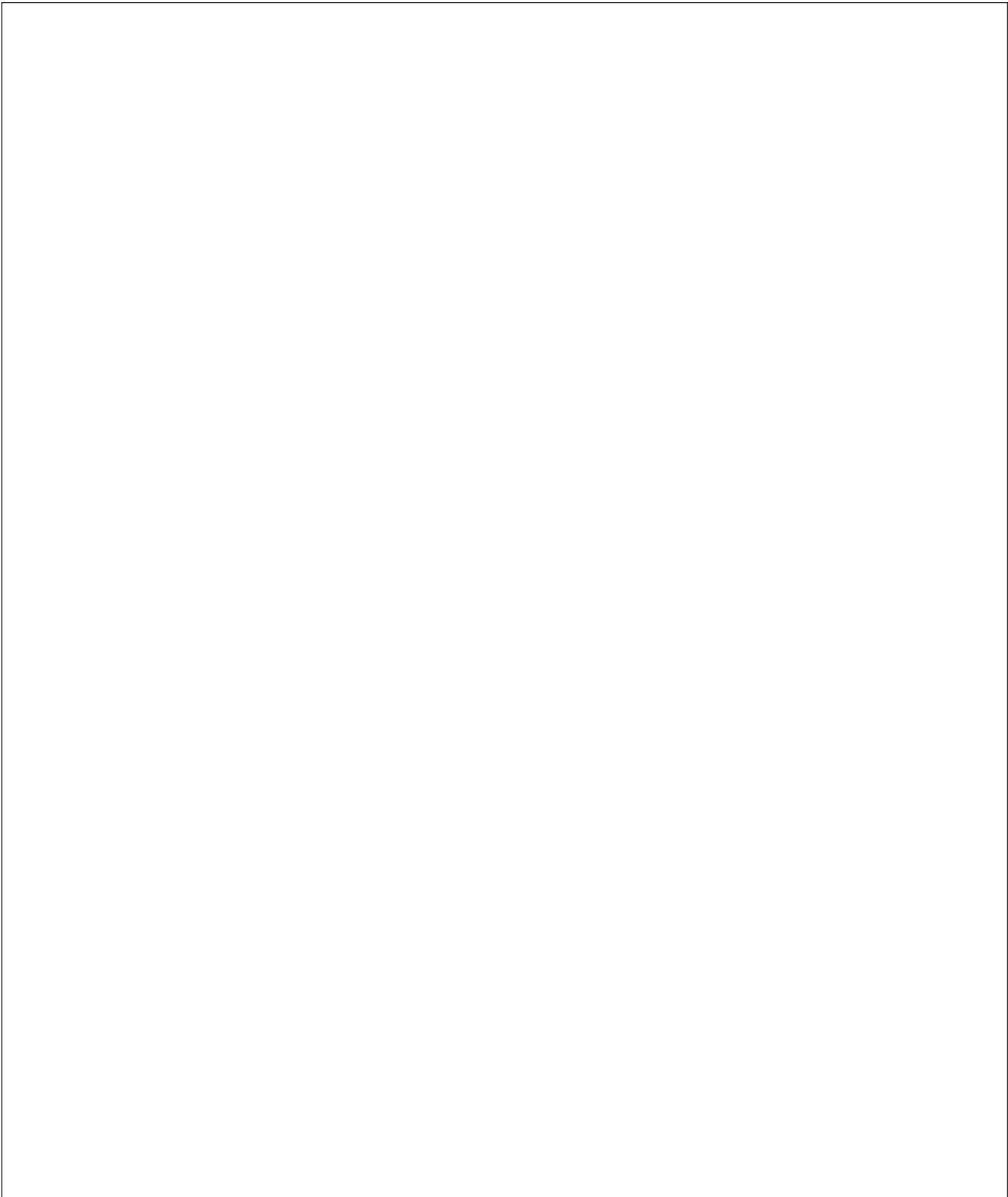
The areas of information to be disclosed by public bodies should be clearly defined in relation to their contents and scope. This will serve to prevent public bodies from being subject to permanent demands for information that they cannot process or that fall outside what is considered reasonable in order to satisfy isolated demands. At the same time, clear delineation of what information can be disclosed will help citizens understand what should be available and aid in their monitoring of implementation efforts.

The legal formulation of regulations for transparency must establish the levels of information that entities should be prepared to disclose to citizens. One level could refer to general data related to the given public body, the institutional context in which it operates, its form of organization, procedures, applicable legal framework, budgetary information, purchases, and hiring. A second level could refer to the disclosure of data, statistics, and indicators showing the performance of the relevant public body and the economic and social response of society in relation to the activities performed by the given institution. And there should be no need for justification in requesting any of the above information.

Recognizing the importance of access to information for the promotion of transparency and the way in which it is related to the battle against corruption led to a call for a specific transparency regulation in the Bolivian administration. This law and its supplementary regulations should be formulated in light of the need to deepen and strengthen the implementation of administration and control systems for each body in the public sector. The development of proper information and communication systems will only be possible if every body of the administration reaches an adequate level of management based on efficiency, efficacy, and economy of all operations and if all public entities become accountable.



THE PROMOTION OF DEMOCRACY THROUGH ACCESS TO INFORMATION





ACCESS TO INFORMATION: A MEANS TO PROMOTE SOCIAL AND ECONOMIC INCLUSION

RICHARD CALLAND

When Nelson Mandela became the first democratically elected president of South Africa exactly 10 years ago in May 1994, he immediately embarked on a fundamental transformation of his country. The starting point was the creation of a modern democratic constitution with a comprehensive bill of rights. The bill of rights sought to reverse the nearly 50 years of apartheid government—a crime against humanity, as the United Nations described it—that had institutionalized racial discrimination. The apartheid system created classes of people, with the minority whites enjoying all of the benefits while the majority blacks suffered racial segregation, poverty, and violence.

Throughout the apartheid era, South Africa's increasingly paranoid white minority government suppressed access to information—on social, economic, and security matters—in an effort to stifle opposition to its policies of racial supremacy. Security operations were shrouded in secrecy. Government officials frequently responded to queries either with hostility or with misinformation.¹

This response to information is not unique to apartheid systems. For many governments, there is deep-seated fear that a free flow of information can lead to greater instability and a loss of unbridled power. This may be particularly true for authoritarian regimes and in countries of great social inequality. Bolivia, although not an apartheid state, mirrors some of South Africa's greatest problems: a majority of the population living in poverty, with less access to basic services, and a sense of social and economic exclusion.

With the advent of the new bill of rights in South Africa, all people were guaranteed a full range of civil and political rights as well as a unique set of socioeconomic rights: the right to housing, clean water, adequate health care and education, and so on. In addition, the bill of rights contains the right to access information—not just public information but also privately held information—where necessary to protect or exercise another right. It represents the most far-reaching constitutional provision in favor of transparency. Why? Because in its analysis of the degradation during the apartheid system, ignorance, illiteracy, and lack of basic education represented an important part of the human indignity suffered by the majority South Africans. Excluded from political power and from economic opportunity of any kind, black people were also denied any access to information. Secrecy was used as a weapon of oppression.

Thus, enabling people to access information was seen as defining a right, within the new legal framework, as the right to vote, and the right to social and economic justice. As Justice Katherine O'Regan, a member of the South African Constitutional Court, has put it: "The right to access to information should not be seen as an afterthought or optional extra in our constitutional dispensation. It is integral to the conception of democracy that our constitution adopts. That conception encourages participation, abhors secrecy, and seeks to ensure that public power will not be abused."

¹ Sections of this paper were drawn from *Real Politics: The Wicked Issues*, S. Jacobs, G. Power, R. Calland, Idasa, 2001.



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ACCESS TO INFORMATION AS A SOCIOECONOMIC RIGHT

Freedom of information was previously regarded as a component—a poor relation—of the freedom of expression. In the past decade, as more countries implemented access to information laws, it became increasingly clear that information holds a unique place, apart from the freedom of expression, as a socioeconomic right.

A traditional, liberal right, such as the right to freedom of expression, is a necessary but insufficient condition for democracy and the enjoyment of democratic freedoms.

The power structure of modern society, reinforced and accentuated as it is by the social and economic forces of globalization, requires a different approach to human rights. As the

nongovernmental organization Article 19, among others, has argued, it is widely recognized that sustainable economic development depends on more than simply “getting the economics right.” It also includes promoting good governance, the rule of law, and an appropriate legal framework to guarantee participation and control corruption. Access to a wide range of publicly held information allows this.

Amartya Sen, a Nobel Prize-winning economist, has observed that there has never been a substantial famine in a country with a democratic form of government and a relatively free press. Inequality of access to information, he argues, is a form of poverty. Without knowledge, you cannot act. And without information, it is nearly impossible to exhort inclusion and equality. Thus, access to information is a pro-active right that serves our common pursuit of social, political, and economic equality.² It is a socioeconomic right, much like the right to housing,

education, and health care, as well as serving to deter continued discrimination and inequality.

The South African law that gave effect to the constitutional right to access information was the result of a concerted civil society campaign. The Open Democracy Campaign Group—comprised of 10 organizations, including church and labor unions as well as human, environmental rights, and democracy organizations—was founded to advocate for this law. For one of its members, the umbrella trade union movement organization COSATU, the question of the access to both public and privately

held information was an issue of fundamental political and strategic importance. As its representative on the Campaign Group, Oupa Bodibe, argued: “(W)orkers require information to exercise and protect their rights.

*Without knowledge, you cannot act.
And without information, it is nearly
impossible to exhort inclusion and equality.*

If unions or workers could request information vital to the protection or exercise of the right to fair labor practices... this would strengthen the enforcement of human rights throughout South Africa...

(I)nformation is required to exercise and protect the right to equality; to ensure the absence of discrimination in hiring, promotion and salaries; and generally to promote democratization of the workplace.”

Freedom of information was once considered a “luxury right” used only by journalists and the professional class. Not anymore. Access to information is now more clearly seen as a right used to promote social and economic inclusion. The following case studies serve to illustrate the role access to information plays in assuring that the most vulnerable in our societies benefit from their socioeconomic rights.

² *The Right to Know, The Right to Live: Access to Information and Socio-Economic Justice*, Introduction, ed. R. Calland and A. Tilley, ODAC, 2002.



ACCESS TO INFORMATION AND THE RIGHT TO FOOD: INDIA

Initially, they stood at the back of the gathering, arms folded but looking confident, smiling, jesting with one another. The ration dealers of rural Rajasthan, one of the poorest states in giant India, felt invincible in their position of power and wealth. But this was a day of reckoning; soon they were to be called to account, shaken off their smug perches.

Granted licenses by the state authority, these men are supposed to provide grain and other basic products to the poorest citizens under a public distribution system. But many of them cheat and exploit their power position. Rather than pass the grain to the neediest of citizens, they keep it for themselves or, more often, sell it on the black market for enormous gains while the people for whom the grain was intended continue to starve. In response to issues such as this, a statewide social movement has grown over the past 17 years—the Movement for the Rights of Peasants and Workers (MKSS).

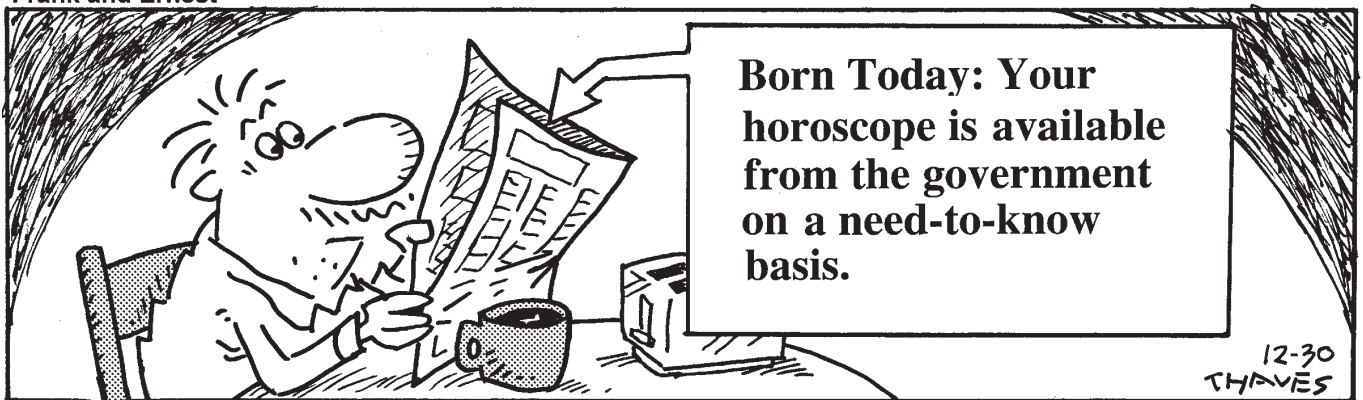
Under the umbrella slogan “The Right to Know is the Right to Live,” MKSS fought in the 1990s for a right to information law. Once the law was passed, in 2000, they turned it into an activist tool for social control and economic justice. Though implementing their advocacy program requires massive energy and the commitment of many volunteers, the core

methodology is uncomplicated. MKSS takes an issue and makes requests for the relevant public records under the information law. They then call the people of a panchayat (group of villages) to a *jun sunwai* (public hearing) where local residents come forward and have their say. Government officials are invited to attend. MKSS’ public mobilization provides a safe environment for the disadvantaged and ignored to speak out, and it provides a mechanism for citizens to seek their constitutionally protected socioeconomic rights.

Around 400 people were gathered on Jan. 30, 2004, nestled by the bend of the river as it enters the village of Kelwara, a sea of brightly colored shawls and saris. Although the majority of the people were women, it was a man that first came forward to the microphone. Lal Singh Rawat’s message was direct: “I am told that my ration book says that I was given 35kg of grain on Jan. 4. But I was not. I collected some kerosene and the ration dealer made a second entry. I signed with my thumbprint as I do not read or write.”

Singh Rawat is officially designated as “destitute,” which means that he is supposed to get the full entitlement. In fact, the evidence shows that the ration dealers have continuously stolen from him. Now the leader of the ration dealers came forward to counter the accusations of the people. The

Frank and Ernest



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ration book says he got 35kg and so does the official record, the dealer told the assembly and the local elected leaders. “So what? It is one man’s word against another.”

This proved to be a massive tactical blunder. With practiced assurance, two of the founders of MKSS, Nikhil Dey and Shankar Singh, began their forensic double act. One read from a vast pile of

ration books; the other from the official records that had been obtained under the Access to Information Act from the reluctant local government and the ration dealers. (They had only finally been compelled to give them over some 24 hours before the public hearing.) The records did not match; instead they proved endemic corruption. For example, 29 of the dealers’ registers showed ration distribution, but the corresponding ration books were empty. “Although they tried to intimidate the villagers in the days leading up to the hearing,” said Dey later, “they had not had time to alter the records to cover up their crimes.”

Further testimony was periodically added from the crowd. These public hearings allow the comparison of the official record—the records received under the access to information law—with the real-life record of the people.

The use of the transparency law created an opportunity for poor people, habitually excluded by poverty and lack of information, to tackle those with power over them. A microcosm of class and power relations everywhere, civil society sat at the feet of the private sector—in this case the holders of the contracted-out public distribution service—and government, and the people won out. The government officials, spouting words of thanks to MKSS, left with a truckload of ration books and the official records to initiate legal proceedings and reforms of the system.³

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As the case study from India shows, an access to information law can work directly—and powerfully—for the poorest and most vulnerable members of society. In South Africa, too, the work of the Open Democracy Advice Centre (ODAC) is proving that not only is ATI an important part of the jigsaw in combating corruption but that it can be used to help realize social

and economic rights and thereby alleviate social and economic exclusion.⁴

ACCESS TO INFORMATION AND THE RIGHT TO REPARATIONS: SOUTH AFRICA: CASE ONE

A central plank of President Nelson Mandela’s post-transition project for building national unity was the Truth and Reconciliation Commission (TRC). The truth commission process had three main functions: to hear evidence of violations of human rights and make findings; to consider applications by abusers for amnesty; and to award reparations (compensation) to those who had suffered gross violations of human rights.⁵

By 2000, a full report of the TRC had been published, recording in comprehensive detail the cruel individual and institutional dimensions of apartheid. Hearings by the Amnesty Committee were completed, with scores of applications resolved.

³ Adapted and edited from original piece, “Opening Up Rural India,” *Contretemps* Column, Mail & Guardian Newspaper, South Africa (www.mg.co.za), 20 February 2004, by Richard Calland.

⁴ ODAC, of which the author serves as executive director, is a specialist NGO established in 2000 to help ensure effective implementation of the South African Promotion of Access to Information Act and operates as a public interest law centre.

⁵ R. Calland, “Access to Information, How Is It Used and How Is It Useful,” *Access to Information: A Key to Democracy*, ed. L. Neuman, The Carter Center 2002.



ACCESS TO INFORMATION: A MEANS TO PROMOTE SOCIAL AND ECONOMIC INCLUSION

But, the third aspect—reparations—had been left hanging. Hardly anyone had received compensation.

The Khulemani Group, a support group for victims of apartheid, was established. Their first goal was to try and find out the government’s exact policy on reparations. They approached ODAC for advice on how to request this necessary information. ODAC assisted the group in preparing a formal application under the South African Access to Information Act. The government conceded that there was a policy document and, although unwilling to release it, was compelled to make an announcement about the policy. In mid-2002, President Mbeki told the National Assembly that a decision had been arrived at and an amount of R30,000 (about U.S. \$5,000) would be awarded to each victim of gross human rights violations, according to the findings of the TRC. It was only through the use of an access to information request that this policy was disclosed and some form of economic justice reached.

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ACCESS TO INFORMATION TO COMBAT DISCRIMINATION: SOUTH AFRICA: CASE TWO

ODAC has been involved in a number of cases that test the “horizontal” (information held by the private sector) reach of the South African act. In Pretorius vs. Nedcor Bank, the appellant sought the records relating to the policy of the bank when determining loan applications. Pretorius had applied for a loan and been turned down without any explanation. He wanted to know why. In South Africa, it is suspected that banks and other credit agencies discriminate against certain geographical areas that they regard as high risk. Risk aversion is, of course, a perfectly legitimate commercial strategy. Blanket discrimination against people from a

particular area offends the South African Constitution’s guarantee of a right to equal access and right against discrimination. In the Pretorius case, the bank, having taken counsel’s opinion, was anxious not to go to court and settled the case by providing the applicant with a range of papers setting out their policy and the reasons for the refusal in his case. Again, it was the use of the new right to information that put an end to this discriminating practice.

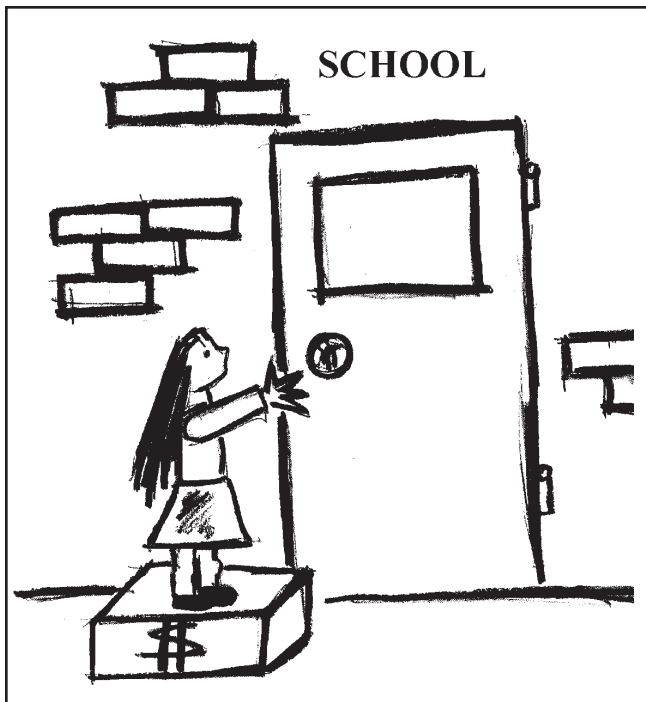
In another, more complicated case on behalf of indigent fishermen, ODAC obtained the “transformation plans” of a number of fishing companies that had been set up to win tenders for fishing quotas, the main economy and means for earning money

along the western and southern coasts of South Africa. In essence, a series of old, white-owned fishing companies had executed a neat legal fraud by reconstituting themselves as subsidiaries of

“empowerment” companies—companies owned by and/or with substantial black shareholding. Once considered an “empowerment company,” they could qualify for quota tenders that had been earmarked for black-owned and operated companies as a part of the new government’s general strategy of economic transformation. Black fishermen and women had been duped into signing the shareholding forms so that the traditional owners could win the special tenders and had received absolutely nothing in return. By accessing the “transformation plans” of these white-owned fishing companies and of the local government that granted the tenders, the companies’ fraud was exposed. Once the fraud was revealed to the black fishermen and women, they were able to extract legal remedy, and the companies were reported to Marine Coastal Management, the government’s regulatory body. A national investigative television program, “Special Assignment,” reported on the fraud and how the access to information law was used to prove it.



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ACCESS TO INFORMATION AND THE RIGHT TO EQUAL EDUCATION: THAILAND

The first major case under Thailand's right to access information act revolved around the admissions process of Kasetsart Demonstration School, one of several highly regarded, state-funded primary schools. The admissions process of the school included an entrance examination, but test scores and ranks were never made public. Interestingly, the student body in the best schools was largely composed of *dek sen*—children from elite, well-connected families. These factors created a widely held public perception that some form of bribery played a part in the admissions process.⁶

In early 1998, a parent whose child had “failed” to pass the entrance examination asked to see her daughter's answer sheets and marks but was refused. In the past, that would have been the end of the road; she and her daughter would have been left aggrieved, frustrated, and powerless. Instead, under Thailand's new transparency regime, she invoked the access to information law.

In November 1998, the Official Information Commission ruled that the answer sheets and marks of the child and the 120 students who had been admitted to the school were public information and had to be disclosed. There was a period of public controversy, but eventually the school admitted that 38 of the students who had truly “failed” the examination had been admitted because of payments made by their parents and that other impoverished students were inappropriately excluded.

The child's mother then filed a lawsuit arguing that the school's admission practices were discriminatory and violated the equality clause of Thailand's new constitution. The Council of State, a government legal advisory body with power to issue legal rulings, found in her favor and ordered the school and all state-funded schools to abolish such corrupt and discriminatory practices.

CONCLUSION

As seen above in a number of diverse cases, access to information has been used effectively as a means for ensuring the most fundamental of socio-economic rights: the right to food, public benefits, education, and equality. Information is power, and very often, the more you know, the more you are able to influence events and people. For citizens and citizen organizations, it is an age of opportunity and immense challenge. It is a chance, especially for the poorest in our society, to reclaim ground in their struggle for a more just existence. With greater knowledge, people can participate more meaningfully and can contribute to the policy-making process. Moreover, they can use these emerging norms to gain the information with which comes greater power. In this sense, the “Right to Know is the Right to Live.” Only through access to information can we take action to escape the human indignity of social and economic exclusion.

⁶ Ibid.



ACCESS TO INFORMATION AND THE FIGHT AGAINST CORRUPTION

NÉSTOR BARAGLI

“Nearly 400 years ago, the English philosopher and writer Francis Bacon wrote that knowledge is power. Today, we see that maxim play out in many ways in the political and economic spheres in both rich and poor countries.

In government, a high level of secrecy often enables those in authority to hoard their knowledge to increase their power, hobbling peoples’ ability to take part in the political process in a meaningful way. Behind closed doors, corruption thrives. In the private sector, corrupt corporate captains can keep shareholders in the dark and line their own pockets.

Most countries pay lip service to the value of transparency and openness in government. Some have gone further; they have taken strong actions to promote transparency, recognizing that citizens have a basic right to information and public debate. But there are still far too many governments that withhold information and stifle the media who try to bring knowledge to the public.

[T]his needs to change. It argues that access to information is an essential component of a successful development strategy. To reduce global poverty, we must liberate access to information and improve its quality.”

— Joseph Stiglitz y Roumeen Islam¹

When Stanley Fisher, of the World Bank, the International Monetary Fund, and the former director of the economics department at MIT, was asked about the problem of corruption at the state level, he simply answered, “It takes two to tango.”² The prestigious academic was alluding to the complexity of the corruption quagmire, which involves politicians, public employees, and the private sector. This clear image of the tango allows us to describe

the corruption phenomena in simple terms:

“Corruption is the daughter of clandestine relationships between the powers of authority and money; both parties hold something of interest to the other.”³ In this simple definition lies an idea that is key to the discussions of this chapter: clandestine relationships.

NEGATIVE EFFECTS OF CORRUPTION

The economic consequences of corruption are well-known. In those countries with low degrees of transparency, the costs of goods and services rise due to the added expenses that corruption generates; expenditure and investment priorities are skewed, given that these are not determined according to importance or necessity but instead by greed; initiatives for reform are negatively impacted; and foreign investment is reduced. The PriceWaterhouseCoopers Opacity Index in 2001 clearly shows the tremendous adverse effect that corruption and the lack of transparency have levied upon the regional economy. For example, it is estimated that corrupt practices in Brazil and Argentina add an additional 25 percent “tax” to business.

The institutional consequences are no less devastating. Citizens stop believing in democracy when those whom they have elected to represent

¹ “Más y mejor información reduce la pobreza.” *Diario Clarín*, January 3, 2002. Joseph Stiglitz is a Nobel Prize winner in economics and Roumeen Islam is general manager of the World Bank Institute. Copyright *Clarín* and *Le Monde*, 2003.

² Stanley Fisher’s anecdote comes from a 1992 debate organized by the Argentine Instituto para el Desarrollo Empresarial and is related by Luis Moreno Ocampo in his book *En Defensa Propia. Cómo Salir de la Corrupción*. Editorial Sudamericana, Buenos Aires, 1993, pg. 46.

³ Luis Moreno Ocampo, op. cit., pgs. 12 and 47



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them and improve their community base their decisions solely upon personal interests. People are less trusting that democracy's instruments can satisfy their needs and improve their quality of life. Even more detrimental, scarce public resources are diverted to private pockets, impoverishing the population in general and impacting most severely those with the fewest resources.

Corruption is a mold that grows in the dark.⁴ For corruption to thrive, it must take place outside of the sphere of established control mechanisms and the public eye. Fortunately—and this lends credence to the thesis of those who believe in humanity's moral progress—no one today will admit openly having committed an act of corruption. Instead, when public servants, judges, politicians, legislators, or businesspeople are faced with indisputable proof of corrupt acts, they continue to proclaim their innocence.

If we wish to win our battle against corruption, we must focus on one of its most indispensable ingredients, secrecy. In effect, it will be through the development of efficient systems for accessing information that we will successfully prevent corruption and diminish its negative effects.

The idea that corruption is something decisively "bad" for societies has been incorporated into the world conscience and is reflected in the messages, principles, and norms of the most important international organizations, such as the United Nations, the Organization of American States (OAS), the Organization for Cooperation and Economic Development, the European Council, etc., and multilateral organizations such as the World Bank and the Inter-American Development Bank.

Unfortunately, the situation of numerous countries in our region shows us that many of the systems that have been established to eliminate corruption have failed.

There is no more evident proof of this shortcoming than the enormous quantity of significant incidences of corruption that have taken place over the last 20 years, many of which were allegedly perpetrated by democratically elected presidents in the Americas. These cases include, among others, Carlos Menem (Argentina), Fernando Collor de Mello (Brazil), Abdalá Bucaram (Ecuador), Jorge Serrano Elías y Alfonso Portillo (Guatemala), Rafael Callejas (Honduras), Carlos Salinas de Gortari (Mexico), Arnaldo Alemán (Nicaragua), Juan Carlos Wasmosy, Raúl Cubas y Luis González Macchi (Paraguay), Alberto Fujimori (Peru), and Carlos Andrés Pérez (Venezuela).

Citizens stop believing in democracy when those whom they have elected to represent them and improve their community base their decisions solely upon personal interests.

Moreover, our societies have made secrecy a habitual practice that, on more than one occasion, has aided in the violation of human rights and the perpetration of acts of corruption and terrorism by the state, permitting the impunity of many responsible individuals. Complicity among authoritarianism, secrecy, and corruption is an indisputable and historically proven fact.

Using Professor Robert Klitgaard's classic formula (C=M+D-T, Corruption= Monopoly+ Discretion-Transparency), Dr. Luis Moreno Ocampo developed the following reasoning:⁵

"In the hegemonic power system, democratic laws do not regulate, rather there exists a monopoly of power, discretionality on the part of civil servants,

⁴ Luis Moreno Ocampo, op. cit., pg. 12.

⁵ See Robert Klitgaard, "Controlando la Corrupción," Editorial Sudamericana, Buenos Aires, 1994.



and the censorship and control of public information. Thus, we see that hegemonic power is equal to monopoly plus discretion minus transparency. $HP=M+D-T$.⁶

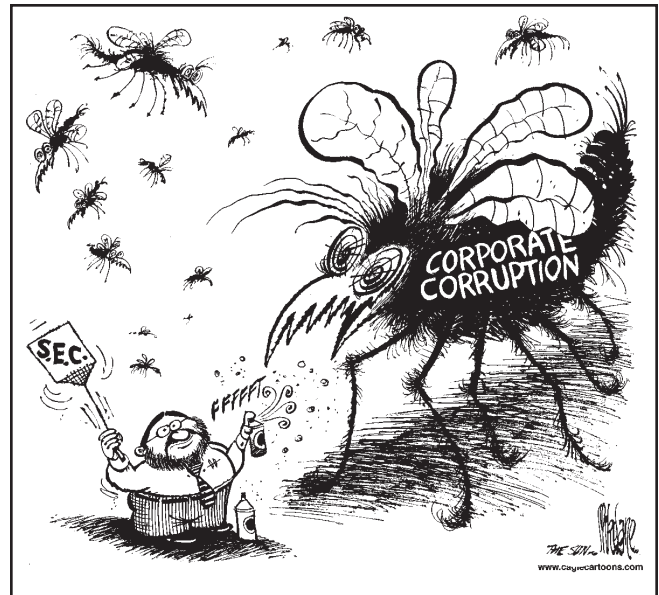
“And if we remember that $C=M+D-T$, we can replace the terms for their equals and obtain $HP=C$ (hegemonic power is equal to corruption). The hegemonic power systems, whatever their ideology might be, are systems of latent corruption.”⁷

It would be redundant to cite the monumental quantity of dictatorships throughout history that have made secrecy and corruption the axis of their governments. Fortunately, there is virtually unanimous recognition that democracy is, thus far, the best system of government and that access to information is a fundamental tool to both the success of democracy and the fight against corruption.

POSITIVE EFFECTS OF ACCESS TO INFORMATION

“Information is power,” as the old refrain goes, and the who consolidates information consolidates power. Despots love secrecy because they hate to share power with the sovereign people. An informed citizenship is a citizenship with power. It is no coincidence that countries with historically feeble democratic practices, weak institutions, and authoritarian governments are prone to secrecy.

On the other hand, those countries that have cultivated a culture of transparency in their institutions are today developed societies, whose citizens enjoy a better quality of life. Recent comments by Dr. Peter Eigen, founder and president of the board of directors of Transparency International (TI), confirmed this hypothesis when he argued that those countries that have a better rating on the Corruption Perception Index (CPI) elaborated by Transparency International are those that have norms and policies involving ample access to public information. Thus, he finds that it is fundamental to drive legislation and active policies in this direction.⁸ It is hardly necessary



MIKE LANE/CAGLE CARTOONS

to debate that those states with the best transparency ratings according to the aforementioned CPI are those countries considered to be the most developed in the world.

According to the CPI 2003 of Transparency International, on a scale of one (the most corrupt country) to 10 (least corrupt country), some of the best ratings (higher than eight points) were obtained by Finland, Iceland, Denmark, New Zealand, Sweden, the Netherlands, Australia, Norway, Switzerland, Canada, and the United Kingdom, all countries with established information regimes.⁹

In order to reach the goals of decreased corruption and improved governance, there is no better first step than to open the office doors where decisions are

6 Luis Moreno Ocampo was an assistant district attorney at the trial of the joint chiefs of staff of the military dictatorship of 1976-1983, co-founder of the NGO Poder Ciudadano, member of the board of directors of Transparency International, and has recently been named attorney general of the Criminal Tribunal of the International Court at the Hague.

7 Luis Moreno Ocampo, *op. cit.*, pg. 185.

8 Workshop with Dr. Peter Eigen, organized by the Oficina Anticorrupción de la República Argentina. Buenos Aires, August 7, 2003.

9 And, on the contrary, several of the worst ratings on the Corruption Perception Index 2003 of Transparency International were obtained by Latin American countries with no access to information, including: Argentina, Venezuela, Bolivia, Honduras, Ecuador, and Paraguay.



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made and allow the “sun to shine” on management of the public sector. And a law of access to public information, complemented by political will, efficient information systems and an active civil society, is the best tool with which to begin to transform the culture of secrecy.

If we wish to build an open and transparent society, in which corruption is the exception and not the rule, controls are required. These are, or at least should be, under the management and purview of state organizations created for such purposes, i.e. comptroller’s office, auditing office, special offices, union offices or legislative commissions, and should be embraced by civil society organizations, the press, and, most definitively, society as a whole.

But in order for this control system to work efficiently, all of the above must possess a fundamental ingredient, information. It is only with concrete data that we can respond to some of the critical questions that form an adequate regulation of public management, including, for example:

- Where does the state spend our tax money?
- What is the government’s structure? How many employees work there? Who are they? What are their salaries?
- What commercial relationships does (or did) a civil servant have with a specific business sector?

These issues are in addition to understanding other important issues that affect citizens and communities, such as those involving contracts, bids, governmental policy design, naming of public officials, etc. It is only through precise, complete, relevant, verifiable, and opportune information that governments may respond to these questions with certainty.

A state that is making efforts to prevent and combat corruption needs information in order to conduct a proper investigation, to ensure that the control mechanisms work properly, and to detect the most vulnerable areas and establish priorities. Furthermore, information serves to assure greater efficiency, without duplicating resources and efforts, and improve the decision-making process.

Citizens require information in order to ensure government accountability and help the state in its efforts to reduce corruption. Alone, governments

will not succeed in eliminating the deleterious effects of corruption. Rather they must engage the populace, through sufficient information, as partners in this fight. And, like governments, the media also requires truthful, comprehensive, and timely information if it wishes to be trust-

worthy and serve as a watchdog of civic interests.

Lastly, ample access to information and greater transparency are also desirable in the private sector as they discourage corrupt practices that distort the correct functioning of the market.

The three examples offered below are taken from Argentina. Currently, only the city of Buenos Aires and a few of the provinces possess norms concerning access to information and, aside from the fact that a legislative initiative was approved in the House of Representatives and debated in the Senate, no national law for information access exists. As the following examples demonstrate, information must be a top priority for the state, civil society, and the media in their efforts to control corruption, for without information, it is impossible to control corruption.

A state that is making efforts to prevent and combat corruption needs information in order to conduct a proper investigation, to ensure that the control mechanisms work properly, and to detect the most vulnerable areas and establish priorities.



STATE ORGANISMS CANNOT REGULATE WITHOUT INFORMATION:

Human resources database of Argentina¹⁰

In 2002, based on a transparency study of the national public administration's buying and hiring processes, the Anti-corruption Office, the investigation body of the Argentinean executive branch, decided to deepen the investigation into a widespread illegal practice known as *pluriempleo* (plural employment). *Pluriempleo* is a scheme whereby a public servant receives a salary for more than one post at the national, provincial, or municipal levels.¹¹

Through this study, the Anti-corruption Office intended to propose solutions to resolve deficiencies in the system regulating remuneration and reformulate the corresponding norms. In addition, the office believed that this investigation would provide the basis for recommending the systematization of all the databases for human resources in different jurisdictions to make them compatible, and as such, comparable. To accomplish this study, three stages of analysis were designed; the first consisted of a review of the norms regarding conflict of interest and guidelines for ethical behavior. The second phase proposed a series of interviews of current and former civil servants in charge of human resource management. The last phase implied a diagnostic study of the compatibility of databases to determine the potential for cross-checking information and, thus, detecting concrete cases of multiple remuneration.

In order to complete this investigation, the Anti-corruption Office required basic information on state employees in all jurisdictions (national, municipal, and local offices). Despite the fact this information was requested, the majority of these petitions were ignored. Even an official statutory body, such as the Anti-corruption Office, was incapable of accessing the necessary information to investigate potential corruption. The difficulties lay not only in an unwillingness to provide the

requested information but also in the inadequate public information systems. Thus, due to a lack of information, efforts to address these expensive and corrosive corrupt practices were temporarily stymied.

CIVIL SOCIETY ORGANIZATIONS CANNOT CONTROL WITHOUT INFORMATION:

Sworn statements of assets by civil servants in Argentina¹²

Sworn statements of assets by public employees are an effective tool in detecting illicit enrichment—for example, when their bank accounts increase inexplicably. This tool also permits an examination of the employee's work history and private holdings in order to establish and prevent possible conflicts of interest.

In Argentina, Law No. 25.188 on Ethics in the Exercise of Public Service (September 1999) established a regimen of publicly sworn statements of assets and provided a list of civil servants required to present asset statements. High-ranking political employees and important career civil servants within the executive, legislative, and judicial branches are among those required to comply with this annual requirement. This norm stipulates, in article 10, that the sworn declarations of these civil servants "... can be consulted by anyone at any time and copies of the sworn statements obtained." In this way, the law guaranteed public access to the annual asset declarations of high-ranking employees within the

10 This case was described in the working document: "Acceso a la Información Pública en la Argentina—El Procedimiento de Elaboración Participada de Normas: Una exitosa estrategia de trabajo conjunto entre la Sociedad Civil y el Sector Público," presented by Néstor Baragli in the second SOCIUS seminar. ("SOCIUS: Seminars Organized by the British Council on Citizens and the State in the 21st Century—Civil Service and the Legislature: Accountability and Innovation." México City, May 18-20, 2003).

11 "Estudio Exploratorio sobre transparencia en la Administración Pública Argentina 1998-1999—Informe Preliminar," August, 2000. Published on the Web page of the Oficina Anticorrupción: www.anticorrupcion.gov.ar in the "Centro de Documentación," word search: "Documentos Académicos."

12 Néstor Baragli, presentation at SOCIUS seminar cited in endnote 10.



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three branches of government (with the sole exception of the denominated “reserve annex,” which contains specific personal data).

Despite the legal mandate, in practice several problems exist for citizens who wish to access the sworn statement of legislators, civil servants, and judges. In response to this continued failure to comply with the law, the Commission for Follow-up on Fulfillment of the Inter-American Convention Against Corruption (ICAC), an independent entity comprised of prestigious organizations from civil society, professional associations, educational institutions, and public entities, and the nongovernmental organization *Fundación Poder Ciudadano* began judicial proceedings to order the removal of these obstacles. The appellants sought a judgment establishing the time period in which a response to an information request for asset declarations must be fulfilled. Had a national access to information law been in effect, the civil society organizations would have enjoyed a more solid legal basis for their argument as well as a powerful instrument for strengthening this right.

Nevertheless, in the case brought against the administrative secretary of the senate for failure to deliver the requested declaration, a lower court judge ruled in favor of *Poder Ciudadano* and ordered the public servants to fulfill their legal obligations. Unhappy with this ruling, the Senate appealed the decision. Notwithstanding, the sentence was upheld by the Court of Appeals, which ordered the administrative secretary to reveal the contents of the senators’ sworn asset statements.

This example again illustrates the value of information and the need for an active civil society willing to fight to overcome obstacles and uphold the ideal.

THE MEDIA CANNOT HELP MONITOR WITHOUT INFORMATION:

United States Freedom of Information Act and its use by an Argentinean journalist in the investigation of corruption

Alfredo Enrique Nallib Yabrán, a powerful Argentinean businessman, died on May 20, 1998,



from a self-inflicted gunshot wound to the face. From a poverty-stricken background, Mr. Yabrán had amassed an enormous fortune and ran businesses that were almost quasi-monopolistic in key strategic areas such as airports and post offices.

Yabrán was a “low profile” businessman until a reporter, Jose Luis Cabezas, managed to take a picture of him that subsequently was published in the magazine *Noticias*. Not long after the photo was taken, Cabezas was murdered (killed by a shot to the head and his body burned). From that moment on, Yabrán became, much to his chagrin, front-page news in Argentina.

His name was linked to important businesses associated with the political powerhouses, and insistent rumors abounded concerning his alleged connections with drug trafficking. Due to a lack of



information in Argentina (or at least accessible information), in order to confirm this hypothesis, well-known journalist Santiago O'Donnell filed a request for information on Alfredo Yabrán with the Drug Enforcement Administration (DEA) in the United States using the U.S. Freedom of Information Act (FOIA).¹³

Under certain conditions, FOIA allows the release of information on an individual without his or her consent if the person is dead. And Yabrán was definitively dead, so the reporter wisely used this resource in his investigation.¹⁴

As a result of this request, O'Donnell received key pieces of information that served as a basis for eight articles published in *La Nación*, one of the most important papers in Argentina, between Dec. 5 and 12, 1999. As O'Donnell states, for a good journalist, "the documents speak," and thanks to these papers, Argentines discovered that the businessman had been under investigation by the DEA since 1991. In fact, the DEA had lodged a case alleging ties with the Medellín Cartel. Additionally, Yabrán had been under investigation in the United States for a money-laundering scheme known as the "gold mafia" case. This was a businessman who had achieved access to key business sectors in Argentina due to his ties to power, and this was revealed only through the FOIA request process.

In order to reveal the numerous, complicated, and deeply ingrained avenues of corruption throughout countries in the region, it is essential to produce an efficient information system that can be accessed by a free press equipped with trained investigative reporters who are prepared to take full advantage of the system's benefits.

NATIONAL AND INTERNATIONAL RESPONSE

There is very good news for those who promote access to information as a tool to combat corruption. Recently, the tendency to promulgate and pass access to information laws has gained strength in Latin America and throughout the world, with many countries in the continent that either have laws (Mexico, Panama, Peru, Jamaica) or are working on projects at some level of legislative or social debate (Argentina, Bolivia, Costa

Rica, Ecuador, Guatemala, Nicaragua, Paraguay, etc.).

Moreover, international instruments provide numerous expressions of support for information and transparency in the region.

For example, in the scope of the OAS, the

Committee of Experts of the Follow-up Mechanism of the Implementation of the ICAC has expressed in all of its reports relative to the level of fulfillment of its mandate in countries across the region the necessity to create, implement, and/or strengthen legislation and systems for free access to public information. Additionally, in June 2003, through Resolution 1932 (Access to Public Information: Strengthening of Democracy), the General Assembly of the OAS found that access to information is widely recognized as necessary for the exercise of civil, political, social, cultural, and economic rights, reinforcing the idea that all individuals possess the liberty to search for, receive, access, and impart information and that information is necessary to strengthen democracy.

To reveal the numerous, complicated, and deeply ingrained avenues of corruption, it is essential to produce an efficient information system that can be accessed by a free press equipped with trained investigative reporters.

¹³ O'Donnell was then a journalist at the daily *La Nación*.

¹⁴ Joint work with María O'Donnell, then a correspondent in Washington at the newspaper *La Nación*.



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At the XIII Iberian American Summit, which took place in Bolivia in November of 2003, the heads of state of the region expressed in the Declaration of Santa Cruz de la Sierra, “We reaffirm our willingness to combat both corruption in public and private sectors as well as impunity, which constitutes one of the greatest threats to democratic governability ... Access to information in the state’s power promotes transparency and constitutes an essential element in the fight against corruption and is an indispensable condition for civic participation and the full exercise of human rights.”

Finally, campaigns driven by a cross-coalition of social actors working in unison, including various nongovernmental organizations, the media, academic groups, and legislators, have shown great promise and found success in their fight against corruption and promotion of access to information laws. These campaigns, initially domestic in nature, are now including international actors and working beyond the borders of any one country.

CONCLUSION

There is reason to be optimistic that through greater access to information, corruption in our region will diminish.

Who would have imagined 50 years ago that social equality; nondiscrimination; the full exercise of civil and political rights by men, women, and ethnic and religious minorities; the protection of children’s rights; the defense of the environment; and sustainable development as well as many other “utopias” would today be recognized as unquestionable principles and fundamentally respected rights—or at very least part of the discourse—in almost all of the nations on earth?

The same holds true for transparency and access to information. The issue of “corruption” is relatively new on the international agenda. Even so, advances in this area have been spectacular. Increasingly, the world has become conscious that the diversion of state resources for reasons other than public use is a practice that submerges countries into crisis and debilitates the foundation of a democratic system.

Nevertheless, there is still a long road ahead to move from the rhetoric of transparency to reality. However, the very fact that today no one can openly express contempt for or perpetrate violations against individual rights without facing international condemnation is a giant step forward for humanity and one that will lead the way in the fight against corruption and toward transparency.



ACCESS TO INFORMATION LAWS: PIECES OF THE PUZZLE

AN ANALYSIS OF THE INTERNATIONAL NORMS AND BOLIVIAN DRAFT LAW

LAURA NEUMAN

INTRODUCTION

In January 2004, the heads of state in the Western Hemisphere met in Mexico to discuss poverty, trade, democracy, and development. At the conclusion of the Summit of the Americas, these 34 presidents recommended that all states pass enabling legislation to provide their citizens a “right to information.”¹ In many Latin American countries, the right to information is found in their constitutions, but without implementing legislation or access to the constitutional courts, the right has been meaningless. At present, there exist only four countries with functioning comprehensive national access to information laws (Mexico, Peru, Jamaica, and Panama) and two small Caribbean nations with less effective laws (Belize and Trinidad and Tobago).

The case is similar in Africa, where, more than three years ago, the Declaration of Principles on Freedom of Expression, reaffirming the African Charter on Human and People’s Rights, provided a similar mandate to heads of state. Again, like Latin America and the Caribbean, a number of African nations include the right to information in their constitutions. And like Latin America, this continent lags far behind the rest of the world on promulgation, implementation, and enforcement of effective access to information laws with only one law in effect, in South Africa.

Much focus has been placed on passing access to information laws, and many countries around the world have heeded the call to enact this transparency tool, with more than 50 countries promulgating access to information laws since the early 1990s. Although experience has demonstrated that

implementation of an access to information regime is the most challenging phase, the need to draft a law that contemplates the necessary processes and provides for sufficient safeguards should not be ignored.

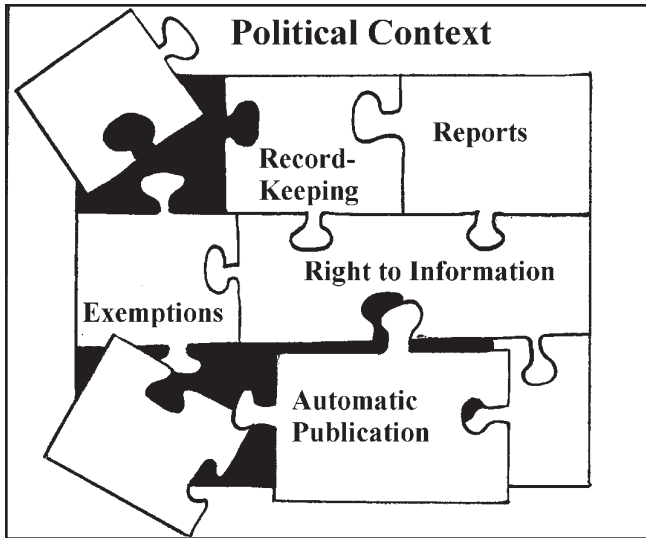
With the advent of this trend to promulgate access to information laws, whether it be to fight corruption, increase public participation, or provide people the tools necessary to exercise their fundamental human rights, there is a growing body of knowledge related to critical provisions both for the scope of the law and its implementation. These emerging norms and standards can be used to inform the debate about the importance of access to information as underpinning the democratic system and to assist in determining the most appropriate structure and terms for newly drafted access to information laws.

Each access to information law will be unique, depending upon the context in which it will function. For example, in countries in which there is a long tradition of authoritarianism and secrecy, more explicit legal provisions related to roles and responsibilities of the civil servants and procedures for providing information may be necessary. Likewise, in places where there is a less developed system of archiving and record-keeping, there may be greater focus on these areas within the law and/or regulations. To design, implement, and enforce an information regime that will lead to a strengthened democracy are akin to completing a puzzle: For the picture to emerge, all of the pieces must be identified, utilized (from the largest piece to even the smallest), and placed together within the puzzle’s distinct framework.

¹ All heads of state are included in the summit, except Cuba.



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COBY JANSEN

This paper seeks to provide some guidance in properly completing the puzzle, based on best international practice, as well as a brief analysis of the present Bolivian experience.

DRAFTING AN ACCESS TO INFORMATION LAW²

Constructing an effective transparency regime should be seen as a three-phase process: passage, implementation, and enforcement of the access to information law. These three elements together constitute the “transparency triangle.”³

The first side of the triangle is the passage of a well-drafted access to information law, and the following provides a brief description of the core principles necessary for a strong and effective access to information law. These recommendations interpret best international practice, with reference to documents such as Article 19’s Principles on Freedom of Information Legislation and Model Laws and SOCIUS’ Guidelines on Access to Information Legislation, and review laws of a number of different jurisdictions including South Africa, Jamaica, Peru, and the United States. Ultimately, however, any access to information legislation must be crafted to

best suit the sociopolitical environment of that particular country.

The organization of the law may vary, but experience has demonstrated that, at a minimum, it should include:

- a. Objectives and principles
- b. Scope of the law
- c. Automatic publication
- d. Process/procedures
- e. Exemptions
- f. Appeals procedures

Objectives and Principles

The fundamental goal of an access to information law is to further democracy’s beneficial effects. The recently passed Jamaica Access to Information Act states its objectives in Part 1 as “to reinforce and give further effect to certain fundamental principles underlying the system of constitutional democracy, namely—

- a. government accountability;
- b. transparency; and
- c. public participation in national decision-making.”⁴

The Mexican Access to Information Law included similar aims, such as to “contribute to the democratization of Mexican Society and the full operation of the rule of law” and adding such other goals as “improving the organization, classification, and handling of documents.”⁵

2 This section draws upon “Observations on the 2004 Bolivian Access to Information Draft Law,” L. Neuman and R. Calland, The Carter Center, April 2004.

3 “Establishing a Robust Transparency Regime: The Implementation Challenge,” L. Neuman and R. Calland, Transparency Task Force, Initiative for Policy Dialogue, forthcoming.

4 The Access to Information Act of Jamaica, 2002, Part 1 (2).

5 Federal Transparency and Access to Public Government Information Law, Article 4, Mexico.



To satisfy these objectives, the overarching principle of the law should be one of openness based on the premise that information belongs to the citizens rather than the government. The state is simply holding and managing the information for the people. Article 19 of the Universal Declaration of Human Rights goes even further in describing this principle, stating, “Everyone has the right to the freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.”

As such, the point of departure for any access to information legislation should be that:

- a. All people have a right to “seek, receive, and impart” information, and
- b. All public information is accessible except under very clear and strict conditions when it is in the best interest of the society that the information remains secret.

In drafting this section of the law, care should be taken to ensure that unnecessary conditions are not placed on access nor provisions included that could provide the opportunity for arbitrary restrictions of this right. It also may be appropriate to include in the principles the critical point that the right to request information exists without the need for the solicitor to provide any reason or justification.

Scope of the Law

The scope section of the legislation provides the extent to which public and private entities are covered under its provisions as well as who may request information. The emerging international standard provides that all people, regardless of their citizenry or residency, should have the right to request information.

The law should strive for maximum breadth in the public bodies included under its reach. In a regional conference held November 2003 in Lima, Peru, “Guidelines on Access to Information Legislation” were drafted. These recognized that public authorities should include “any body which:

- is established by or under the constitution;
- is established by statute;
- forms part of any level or branch of government;
- is owned, controlled, or significantly financed by public funds; or
- carries out a statutory or public function.”⁶

In addition to including all relevant public bodies, access to information laws are increasingly encompassing private sector entities. Modern laws vary from applying to those organizations that receive some public funding, such as in the Mexican law, to those bodies which provide public services, as is found in the Jamaican act, to the South African case which covers all private bodies when the information requested is “necessary to protect or exercise a right.”⁷

It is, perhaps, worth reiterating the rationale that calls for extension in scope of modern access to information laws to cover information held by private sector bodies. The fundamental concept that lies behind transparency is that through access to information, those who hold power can be held to account for their actions. The past 20 years have seen a huge shift in ownership and control of public services. Bolivia is no exception to this international trend. For the citizen or the consumer, the fact that the controlling entity has changed makes little difference to their core concerns of access, quality, and affordability. It seems unwise and unfair to create duties for the public sector to provide a right to access to information while exempting powerful private interests.

⁶ “Guidelines on Access to Information Legislation,” Addendum to the Declaration of the SOCIUS Peru 2003: Access to Information Conference, British Council Peru.

⁷ Promotion of Access to Information Act, 2000, South Africa.



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Nevertheless, with private sector information it is appropriate to include a caveat to ensure that there is not an unjustified intrusion on privacy. As with publicly held information, a right to private bodies' information also can be limited with appropriate exemptions, such as for commercial confidentiality or trade secrets. Where a private company is clearly providing a public service, such as after a privatization process, its information should then be defined in the law as "public information."

**"The Case for Including Private Sector Bodies"
Excerpted from *Non-State/Corporate
Transparency***

— Richard Calland, Paper for Transparency
Task Force, Initiative for Policy Dialogue

Throughout the world, privatization and related policies such as the "contracting out" of public services and the so-called "public-private partnerships" have radically altered the landscape of public power. Local public services, such as waste collection, are now in the hands of private contractors. Public transport schemes are elaborate partnerships between government and large companies. Even prisons, in some places, have been placed in the hands of the private sector.

Yet more fundamental to people's everyday existence: Water services have been privatized. The supply of water is now a vast multibillion dollar industry worldwide. From the hills of Cochabamba in Bolivia to the poverty-stricken townships of South Africa, citizens are resisting the increased costs of water that have followed fast on the heels of privatization... The argument for transparency in the state sector and the accountability it provides is rendered meaningless if vast tracks of privatized state power are exempted from the duty to be open and to grant access to information.

Automatic Publication

The "right to know" approach, whereby governments automatically publish as much information as possible, is important in increasing transparency, reducing costs for both the state and the requester, and making the law more convenient. Governments are often faced with resource limitations and the need to seek mechanisms to reduce bureaucratic costs while continuing to meet all of their obligations. One way in which this can be accomplished vis-à-vis an information regime is through automatic publication. The more information that is made available, without the need for individualized decision-making related to each request, the less costly the process.

This approach is found in the South African law and in the Australian state laws. Article 9 of the Panamanian Access to Information Law obligates the state to automatically provide information within specified broad categories. This legislation requires the information to be printed, placed on the relevant Internet sites, and periodically published.⁸ However, the strongest automatic publication schemes are not limited to disclosure via the Internet. Rather, in these cases, legislation mandates the state to use all appropriate means to reach the populace, which, in countries with less technological capacity, may not be solely through Web sites.

Finally, when developing a publication scheme, issues relating to implementation must be considered. These include the amount of time necessary to identify automatically available information, design methods for disseminating information, and training of the responsible public servants. Some laws, like those in Peru, took the implementation challenges into account when drafting their law and established a legislated phased-in approach for Web site development and automatic disclosure.

⁸ Transparency in Public Administration, 2002, Article 9, Panama.



Process and Procedures

Often the processes for requesting and providing information are more determinative of the act's value and effectiveness than any other provisions. Thus, clear and workable guidelines should be established to ensure that all people might exercise their right to information. Access to information laws differ in the specifics, but most modern laws include the following procedures:

How to Request Information

In general, this process should be as simple as possible to facilitate requests and not create artificial barriers, such as the satisfaction of formalistic procedures. Requesters should be obligated to describe the information sought with sufficient specificity so that the civil servant can identify the item. However, requirements to submit the request on a specified form or to a specified person within the relevant agency may cause unnecessary obstacles to the exercise of the right to information. Moreover, many laws allow for verbal requests of information, either in person or via the telephone. This is particularly important in countries where there is a high level of illiteracy or multiple languages.

Responding to Information Requests

Access to information laws should clearly establish the process that civil servants must follow in responding to information requests. In addition

to the manner in which the civil servant should provide the information, this section should include precise time frames for responding to requests, with a potential for one extension for justifiable cause, and the circumstances in which a request may be transferred to another covered entity.

Many countries, in an attempt to appease detractors, put in time limits for responding to requests that are too short and impossible to meet on a consistent basis, thus undermining the workability of the law and giving the appearance that the holder of the information is unwilling to release it. Rather, the time limits should be realistic, without being

excessively long, and there should be an opportunity for one reasonable extension.

The Peruvian law provides only seven working days to respond to requests, with the possibility of one five-day extension. In practice, compliance with this abbreviated

time frame may prove difficult. The Panamanian, Jamaican, and South African legislation, more reasonably, provides for 30 days, with potential for an additional 30 days.

In addition to time lines, sections relating to responding to information requests generally include a specified duty and procedure for transfer of requests when the information sought is held by another agency. In other words, where a petitioner makes a request to the wrong body, he or she should not simply be denied the information; instead, the agency must point the requester in the correct direction by

The more information that is made available, without the need for individualized decision-making related to each request, the less costly the process.



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transferring the request to the appropriate agency. Such a provision places the burden on the agency, rather than the requester, to transfer the request to the appropriate body. This alleviates the “ping-pong” phenomenon, whereby a requester is directed from one agency to another, without satisfaction. However, to ensure that transfers are not used as a bureaucratic delay tactic, it is important to include strict time limits for effectuating the transfer, the number of transfers allowed, the time period for responding, and the mechanism for notifying the requester that his/her request has been transferred.

Denials

All access to information laws include a process for denying requests. The best-drafted legislation mandates that information requests will be denied only based on a specified exemption and that the denial and reason for rejecting the request will be provided in writing. In the four countries presently enjoying a modern access to information law in Latin America and the Caribbean, the legislation states that denials must be provided in writing and must clearly state the reason.



MIKE MOSEDALE/CARDSTOCK

Responsibility and Sanctions

Identifying an information officer is one of the first steps to properly implementing an access to information law. The law should include a description of the officer’s main powers and duties, such as responsibility for the operation and implementation of the automatic publication scheme and for ensuring requests for information are satisfied.

Publication and dissemination of a “road map” should be an unambiguous responsibility of the information officer (often expressed in modern access to information laws as “guides” or “manual”). A road map which describes the type of information held by each agency and how it can be accessed serves to assist citizens in targeting and preparing their information requests and is an integral part in any record-keeping system. It helps government organize its records and systems and serves to limit the number of time-wasting, misdirected requests.

The information officer, or designated civil servant, also may be responsible for assisting the requester, particularly those in need of greater assistance; for making initial disclosure decisions; and for notifying the applicant of the decision.

In addition to the duties of the civil servants, the law should clearly state the sanctions for impeding access to information by destroying, altering, falsifying, or concealing a record and interfering, delaying, or in any way arbitrarily obstructing the disclosure of the information. In most jurisdictions, there are civil penalties for this administrative offense, although, increasingly, some countries are providing for some criminal penalties.

Costs

In general, modern laws do not attach a fee to the request for information but do require minimal payments to offset the reproduction costs. In many laws, there are provisions for reduction in fees or the possibility of a waiver of costs for a certain number of copies, for requests that are considered to be in the “public interest,” or for persons considered indigent.



ACCESS TO INFORMATION LAWS: PIECES OF THE PUZZLE

Record-keeping

Thought should be given to the question of archiving and record-keeping and to the duty of the civil servant to create and maintain certain records. In many of the countries presently implementing access to information laws, establishing record-keeping systems is one of the most time-consuming and costly elements in the openness regime. It is important that full consideration be given to this critical issue and that requisite guidelines are established to assist public bodies to develop good practices in relation to archiving and record-keeping.

In many countries, an archiving law already exists. In these cases, there should be an emphasis on ensuring that the access to information law is consistent with extant legislation and norms. The Peruvian law provides for the conservation of information, including the creation and maintenance of public registers, and calls on the public body to submit documents to the National Archives in accordance with the archives' established norms.⁹ The norms, whether included in the access to information law or supplementary regulations, should be clear, achievable, and realistic.

Annual Report

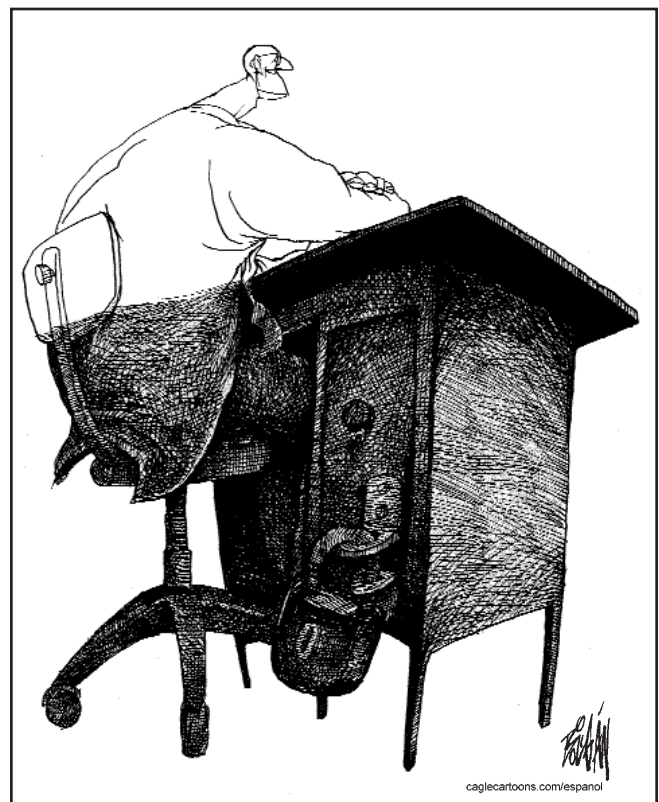
Annual reports allow governments to identify successes and failures in the implementation and execution of the new information regime, thus providing guidance for areas in need of greater resources or focus. Reports also facilitate citizens in their monitoring of government efforts and compliance. Thus, the access to information law should mandate annual reporting or more frequent reports as necessary. The Jamaican Access to Information Act instructs each minister to provide annual reports to the Parliament on the functioning of the act in his or her department.¹⁰ These reports are to include the number of requests and their disposition as well as the number and type of exemptions claimed.

Interestingly, the Panamanian law combines access to information reporting requirements with reports related to measures to increase citizen participation in policy-making. For example, the law calls for all

public institutions to present annually to Congress a report that includes the number of requests for information received, the number resolved and denied, and a list of administrative acts submitted for citizen participation with a report of the observations and ultimate decisions adopted.¹¹

Exemptions

In the best access to information laws, exemptions to the right to access information should be narrowly and clearly drafted and should explicitly define the public interest that is being protected (and harm avoided) by the disclosure denial. The exclusive and exhaustive legitimate exceptions to the release of documents should all be included in the exemptions section of the access to information law. The classification of a document as "secret" or "confidential" should not, without further review, be considered an



BEST OF LATIN AMERICA/CAGLE/CARTOONS

9 Transparency and Access to Public Information Law, Peru. Article 21.

10 Access to Information Act 2002, Article 36, Jamaica.

11 Transparency in Public Administration, 2002, Article 26, Panama.



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automatic reason for refusal to disclose. Classifications are generally a tool for archiving of documents related to national security and should not, without a clearly definable public harm and additional analysis, render a document exempt from release.

One of the main problems with titling the different exemptions section “Confidential,” “Reserved,” etc. is that it is likely to lead to abuse. Public servants who are not enthusiastic about the purpose of the law or who misunderstand its objectives and duties are likely to stamp something “reserved” or “confidential” without dedicating the necessary attention to whether or not the record properly falls within the exemption and the harm that would be caused through disclosure.

All good access to information laws provide for a public interest test that allows an override of the exemption. In these cases, after determining that a document or part of a document falls within an exemption for release, a balancing test is applied. If it is found that the public interest in providing the document outweighs the potential harm identified by the exemption, the document is released.

“The Case for a Public Interest Test”
Excerpted From *National Security and Open Government: Striking the Right Balance*
— Toby Mendel

Even when the disclosure of information is likely to harm a legitimate state interest, it should still be subject to disclosure unless the harm outweighs the public interest in accessing the information. This is a logical inference from the principles underlying freedom of information and is reflected in many laws. A public interest override of this sort is necessary since it is not possible to frame exceptions sufficiently narrowly to cover only information which may legitimately be withheld. Furthermore, a range of circumstances, for example, the presence of corruption, will generate an overriding public interest in disclosure.

Sometimes only one part or section of a document may fall within an exemption but not the balance of the document. Under the premise of severability, only the offensive part(s) of the requested document should be withheld from release.

In applying the exemptions section, a three-part test for refusal to disclose information has been defined:¹²

- a. The information must relate to a legitimate aim for refusing access that is clearly listed in the law;
- b. Disclosure must threaten to cause substantial harm to that aim; and
- c. The harm to the legitimate aim must be greater than the public interest in having the information.

Enforcement

As with implementation, the third side of the triangle, the mechanisms for enforcement, must be fully considered during the drafting of the law. Enforcement of the law is critical; if there is widespread belief that the legislation will not be enforced, this so-called right to information becomes meaningless. If the enforcement mechanisms are weak or ineffective, it can lead to arbitrary denials, or it can foment the “ostrich effect,” whereby there is no explicit denial but rather the government agencies put their heads in the sand and pretend that the law does not exist.¹³ Thus, some external review mechanism is critical to the law’s overall effectiveness.

However, in countries where there is a deep lack of trust in the independence of the judiciary or the judiciary is so overburdened that the resolution of cases can take years, an enforcement model that is not dependent on judicial involvement in the first instance may be best. The context in which the

¹² “Guidelines on Access to Information Legislation,” Addendum to Declaration of the SOCIUS Peru 2003: Access to Information Conference.

¹³ “Establishing a Robust Transparency Regime: The Implementation Challenge,” L. Neuman and R. Calland, Transparency Task Force, Initiative for Policy Dialogue, forthcoming.



access to information law functions will help determine the enforcement model chosen, but in all cases it should be:

- Accessible
- Timely
- Independent
- Affordable

Enforcement models range from taking cases directly to the courts, such as in South Africa, to establishment of an independent appeals tribunal, as in Jamaica, or an information commission/commissioner, as in Canada, with the power to either recommend or to order the release of information.

ENGAGING CIVIL SOCIETY¹⁴

The process through which the new access to information law is conceived and promulgated is critical to its ultimate success in terms of legitimacy and use. Governments may choose to provide this right to information for a variety of reasons: a new constitution is drafted, a new administration or faltering ruler is seeking methods to fight corruption; in response to a government scandal, to meet provisions for acceptance to multilateral organizations, or to comply with international treaties and agreements.

But it is when civil society has played a significant role that the information regime has truly flourished and surpassed the “check the box” syndrome of merely passing a law to satisfy some external requirement without achieving full implementation. In countries such as South Africa, Bulgaria, India, Mexico, Peru, and Jamaica, widespread civil society campaigns augmented and encouraged the government efforts to pass enabling legislation. When there is such a campaign, the law enjoys greater credibility and legitimacy. There is more significant buy-in from society, as representatives have a greater stake in the

legislation’s success. And, therefore, the law is more likely to be used, and failure of the government or information holders to comply with its terms will be noticed and challenged.

In Jamaica, a diverse group of civil society actors worked together to seek amendments to the proposed law. This coalition included such strange bedfellows as human rights and democracy nongovernmental organizations, the journalists’ association, prominent media owners and other private sector representatives, and the Civil Service Association. In South Africa, the Open Democracy Campaign Group that worked together between 1995-2000 to advocate for a strong law to give effect to the constitutional right to access information enshrined in the country’s new 1996 constitution included human rights nongovernmental organizations, church organizations, environmental pressure groups, and the powerful trade union umbrella body COSATU.¹⁵

In contrast, in countries where civil society was not engaged in the debate, the law has been mistrusted and the right to information has atrophied quickly. Or worse, laws are passed that are contrary to the principles of openness and limit freedom of information and expression, which happened in both Zimbabwe and Paraguay. Belize, a small former British colony in Central America, is an example of where the bad process used to pass the law clearly negatively affected its ability to meet the stated goals of transparency. Belize passed a law as early as 1994. It was accomplished with little public or parliamentary debate and no civil society involvement. For the past decade, the law has been used only a handful of times and rarely with success. Thus, the manner in which the law is promulgated and the extent to which actors outside of government are engaged should receive great focus.

¹⁴ Ibid.

¹⁵ For a more detailed account of the campaign, see “A Landmark Law Opens Up Post-Apartheid South Africa,” Dimba, M., www.freedominfo.org, posted July 17, 2002.



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BOLIVIA'S MOVE TOWARD TRANSPARENCY

President Carlos Mesa announced the Supreme Decree for Transparency and Access to Information on Jan. 31, 2004. This decree mandated all entities of government to make five classes of information automatically available through publication on an official Web site or through other appropriate means.

Although an important step in demonstrating the government's commitment to transparency and readying the public administration, the decree is not a substitute for a comprehensive access to information law. Therefore, building on the draft Access to Information and Transparency laws from the year 2000, the Presidential Anti-corruption Delegation (DPA) has recently completed a new draft law. This draft law incorporates comments from consultations that the DPA held with civil society groups in all nine provinces as well as those received from The Carter Center in May 2003 and April 2004 in relation to older drafts.

It is anticipated that in the coming months, this draft law will be submitted for congressional consideration. In an effort to further the debate, this paper provides a brief analysis of some of the key provisions of the draft law in light of the emerging international standards and experience. It is our understanding that the draft access to information law considered in this paper (which was the latest draft as of April 30, 2004) will be presented to the citizens of Bolivia through workshops and official public hearings and that their comments and recommendations will be used to further develop and perfect the act. Thus, as the draft develops, some parts of this paper may become obsolete.

In general, the draft Bolivian law includes a number of the critical puzzle pieces necessary for a modern and comprehensive right to information. It satisfies many of the key principles for access to

information: providing a clear right to information to all people, recognizing that people have the right to request information without stating a reason, and seeking to cover all government entities as well as some private sector bodies. Moreover, it appropriately combines the previous draft transparency law, which called for certain documents to be automatically published, with the right to request information. By placing these laws together under one umbrella act, there is less likelihood of conflict between the law's provisions and more clarity for the civil servants and citizen users.

Nevertheless, as with any initial draft, there remain areas where additional debate and consideration could serve to strengthen the law. Both the organization of the law's provisions and its contents should be considered with an eye toward simplicity, clarity, implementation, and usability. It is not the intention of this document to offer a comprehensive analysis of the DPA's draft transparency and access to public sector information act but rather to provide some comments that may serve to inform the upcoming civil society and congressional debate.

**Objectives and Fundamental Principles:
Bolivia Draft**

Title One of the draft law states two general principles: promoting transparency in public sector activities and recognizing and promoting the right of all people to public information as an indispensable requisite to the functioning and strengthening of democracy and of the exercise of citizenship. The first principle appears to relate solely to "activities" of public bodies. If activities are narrowly defined, this could potentially serve as a limitation to access a wide range of information.



But in this case, the “right” to information also is discussed more broadly in Article 5 of the latest draft bill and does not include any limitation based on “activities” of administrative entities. Rather, Article 5 encompasses the basis of any modern access to information law, providing “that all information created and in the possession of the state belongs to the collective, except for under specified exemptions found in this law.” It also appropriately places an obligation on public entities to provide information requested. The right to request and receive information is discussed further in Article 3. To avoid confusion and duplication, it may be best to combine these provisions and state this “right” to all information in just one omnibus provision.

Scope of Law: Bolivia Draft

The scope of an access to information law includes both who has the right to request information and which bodies are covered under the law. The latest Bolivian draft strives to meet the emerging international standard of providing a right to information to all people, regardless of citizenry or residency. Article 3 states that “any natural or legal person” has

the right to request and receive information based on the constitutional right to petition. This section may be clearer and more powerfully written if it simply states, like many of the recent laws including Peru and Jamaica, that “all persons have the right to request information.”

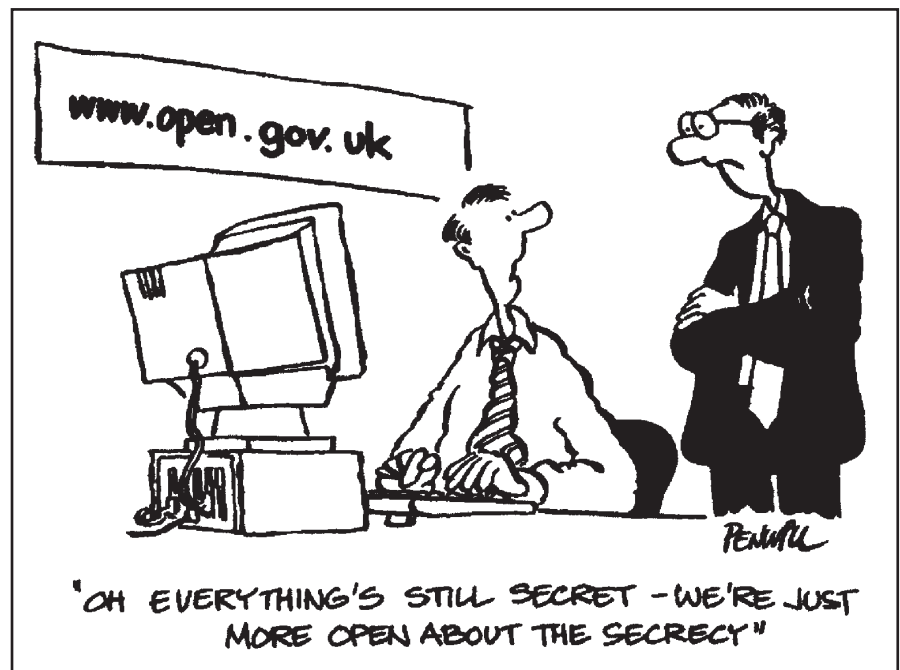
In the new draft law, Article 2 attempts to cover all public bodies as well as private entities with mixed public and private funds and those that provide public services or exercise public sector administrative functions. However, the scope of private

sector coverage is limited to information regarding loans, charges, and administrative functions. Although it is appropriate to include some exceptions to ensure that the privacy of these entities is not unjustifiably breached, this language may be too limiting.

Automatic Publication: Bolivia Draft

The Bolivian draft law follows the international standard of including the “right to know” approach of automatic publication. Articles 12 and 13 of the April 2004 draft bill state that the public sector bodies must establish transparency “portals,” whether physical or electronic, to publish the information listed in this law. The list of information that will be provided automatically should be open for further debate to explore whether it includes the most pertinent and important documents for citizens, such as budgets, expenditures, bids and contracts, policies etc.

Past drafts of the law more specifically directed the public sector to use forms of publication other than just the Internet. This was welcome as it served to ensure maximum access by all of the





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population and may be considered for reinstatement into the final law. Moreover, a process for updating information and protecting copyright might be considered to further strengthen the automatic publication guidelines.

In developing an automatic public disclosure scheme, issues relating to implementation must be considered. The latest draft bill provides for six months of training for the responsible civil servants and an additional six months

for establishment of the Web sites and the automatic publication. This phased methodology for the automatic disclosure scheme is appropriate and may help avoid overwhelming agencies, which could in turn discourage full implementation. Nevertheless, in practice, each agency should be encouraged to comply with the law's provisions as soon as practicable within the designated time frame.

Process/Procedures: Bolivia Draft

The processes for requesting and providing information are dispersed throughout the Bolivian draft. For ease and workability, the DPA and Bolivian Congress should consider integrating these under one title.

Requesting Information

Article 35 describes the method for requesting information, stating that all requests be directed to the information officer, designated person, or person that holds the information. As discussed previously, the process for requesting information should be as simple as possible to facilitate applications and should not require the satisfaction of formalistic procedures. By obligating the requester to send the solicitation to a specified person within the relevant agency, this provision in the draft law may cause unnecessary

obstacles to the exercise of the right to information. Article 19 may serve to alleviate this potential barrier by directing the entity to orient the applicant when the request is submitted to the wrong agency, but it does not totally obviate the initial obstacle.

Moreover, the Bolivian draft does not specifically allow for verbal requests of information, either in person or via the telephone. This provision is particularly important in countries where there is a high level of illiteracy or varying languages.

Positively, the draft bill satisfies one of the key components of a modern law in that it does not require the requester to state a reason for seeking the information.

Responding to Information Requests

The Bolivian draft law includes a number of provisions that address the manner and method for responding to information requests, the most important of which is Article 35, which defines the time lines for reply. The Bolivian law provides 20 working days for responding to a request, with the possibility of an additional 20 days. This time period is in line with modern access to information laws that seek to balance the need for a quick response with the capabilities and realities of the state's public administration.

Article 16 of the Bolivian draft law addresses the form in which the documents shall be provided to the requester. It is not fully clear from its drafting whether the body must provide the information in the form requested, as long as it falls within one of the specified formats described in Article 16, or only in its original state. As is the case for many similar laws, Article 19 states that there is no mandate to create or generate information that is not presently in the possession of the public body. This section could be combined with Article 20, which likewise

Positively, the draft bill satisfies one of the key components of a modern law in that it does not require the requester to state a reason for seeking the information.



addresses this topic, providing more detail to the basic principle.

One limitation in this Bolivian draft is its failure to address the issue of transfers of information when the information requested is held by another agency. Finally, the sections relating to provision of information may be expanded to provide the right of inspection (for no charge) and allow the requester to waive authentication, as described in Article 17, and the accompanying fee.

Denials

In accordance with emerging international norms, Article 14 of the Bolivian draft law states that the only exceptions to access of information are those found within the law. However, Article 15 apparently provides for an additional reason for denial “whenever the entity is not in condition to satisfy the request.” The purpose of this provision may be to address lost or destroyed documents but has the potential for abuse. Although providing some safeguard by requiring written notice and justification, in practice one may find that it is drafted too broadly and could unintentionally become a “catch-all” reason for denying information.

Article 14 of the Bolivian draft law includes a welcome addition that states, “No entity may refuse to provide information based on race, language, gender, religion ... or any other characteristic of the applicant.”

Responsibility and Sanctions

Identifying an information officer is one of the first steps in properly implementing an access to information law. Thus, we welcome the inclusion of Article 10, which states that each agency shall appoint such an official and that the person shall be of sufficiently senior ranking that they may assume an appropriate level of decision-making and responsibility. Article 18, which directs the information officer to assist the requester, is also in line with best practices. But as the law does not include great detail as to the information officer’s other duties and responsibilities, for example,

compiling and distributing a road map of information, these should be incorporated into any implementing regulations or binding guidelines.

There are two articles that address sanctions of public officers for failing to comply with the provisions of this law (Articles 7 and 9). These sections could be combined and expanded to include sanctions for destroying or altering documents.

Costs

In accordance with the best international laws, the Bolivian draft law provides that there will be no charge for information requests, with a charge only for reproducing the information, whether printed or through magnetic medium. The phrase “magnetic medium” may need to be defined, for if it entails only response via the Internet, there may not be an associated reproduction cost. Moreover, it may be consistent with public policy to include a waiver of the costs when the information is sought in the public interest or to provide a certain number of copies for free.

Record-keeping

Article 6 of the Bolivian draft law provides some basic principles of record-keeping, a technical area with the need for clear guidelines and uniformity across government. Thus, the law may need to call for promulgation of additional regulations or binding instructions to guide public officials.

Annual Reports

Articles 33 and 34 respond to the need for reporting to both the Congress and the public, although the congressional reporting appears less mandatory as it is dependent on a request from the Parliament. Additional details related to the content, frequency, and format appropriately would be included in the act’s regulations or instructions for implementation.

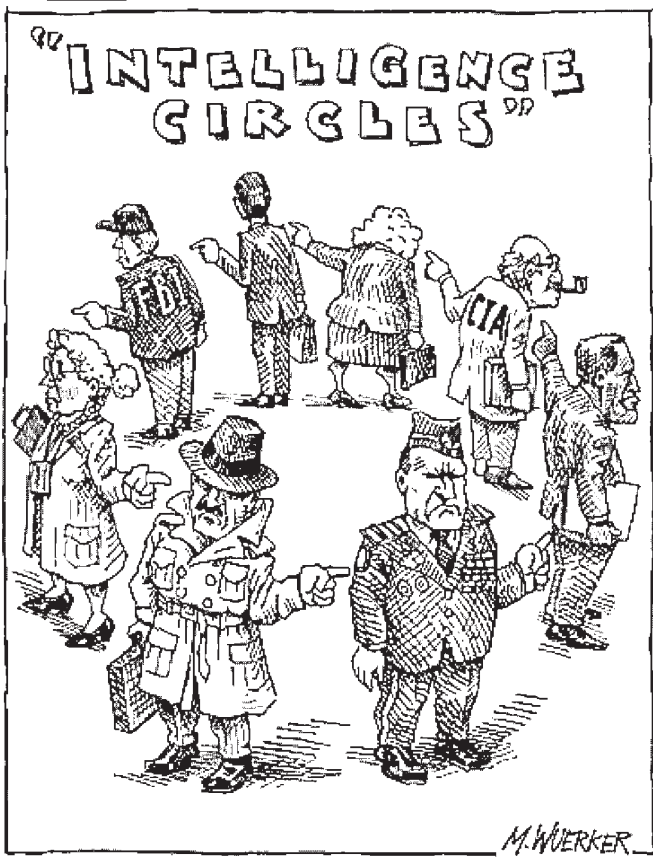
Exceptions: Bolivia Draft

Drafting the exemptions section of an access to information law is often the most contentious and difficult. All laws contain exemptions, and the



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Although the analysis of the potential harm, which should be the starting point for any exemption, is welcomed, this article does not explicitly call for the balancing of potential harm with the public interest and does not cover all classes of exemptions. Article 21 of the present draft addresses the case of a document that contains partial information but should be expanded to state that the part of a document that does not fall within an exemption must be provided to the requester.

Enforcement: Bolivia Draft

The present draft law does not include clear provisions for enforcement and appeals. It suggests that the ombudsman could play the role of an independent commissioner or appeals tribunal but does not provide any clear process for appeals. This section, in particular, needs additional development.

Implementation Coordination: Bolivia Draft

In Article 31, the draft access to information law considers the establishment of a national coordinating body. Such entities have been critical in ensuring effective implementation of the access to information law and in guiding education, training, and policy development. In Jamaica, a strategically located specialist entity, even with limited staff and resources, has played an important role in mounting a strong implementation plan. However, the role and responsibilities of the body should be clearly defined and not in conflict with the functions of the ombudsman or the decentralized information officers.

CONCLUSION

Adjusting the mindset and creating a new culture of openness represent a great challenge that will require resources and political will. The passage of a well-crafted access to information act is just one step. However, with continued partnership among key stakeholders, the various pieces of the puzzle will combine to create the desired transparency framework.

Bolivian law is not unique in this regard. Positively, Article 29 directs that these exemptions be interpreted in a restrictive manner.

However, the exemptions section as presently written in the draft law may be unnecessarily broad, particularly the inclusion of an exemption related to information whose release may affect the “democratic system.” There are also exceptions based on classification (such as secret and reserved), which clearly run into the problems discussed above. These sections may provide a blanket exemption for certain types of documents rather than be based on the content of the document or the potential harm associated with disclosure. (See Articles 26-28).

Most detrimental may be the failure to include a public interest override and severability clause. Article 23 of the present draft law appears to provide, in limited cases, a reverse public interest test, which focuses on considering the public detriment.



ANNEX I: COMPARATIVE CHART OF ACCESS TO INFORMATION LAWS

COMPARATIVE CHART: SELECT ACCESS TO INFORMATION LAWS AND THE BOLIVIAN DRAFT ACCESS TO INFORMATION AND TRANSPARENCY LAW

ISSUE	BOLIVIA*	MEXICO	PERU	SOUTH AFRICA	JAMAICA
Which entities are obligated by law to disclose information?	All public entities; the three branches of government at the national level and provincial and municipal administrations, whether they be autonomous, university-based, centralized, decentralized, deconcentrated, or self-governing; the judicial and legislative branches and all legal bodies who receive public resources directly or indirectly, individual or private legal bodies and mixed public/private legal bodies who provide public services and exercise administrative functions of any type are obligated to inform about these services •All people and entities undeline in Article 19 of Law N. 2345; •All people and entities indicated in Art. 18 of Law N. 2345.	Those indicated in the constitutional federal public administration law, including the president of the republic, and decentralized administrative institutions, such as the Office of the Attorney General of the Republic, etc; any other federal body, federal executive branch, the federal legislative branch, federal judicial branch, the constitutional bodies, the federal administrative tribunals, and administrative units.	Entities mentioned in Article 1 of the first title of the Law of Administrative Procedure, corporations and entities that manage public services or exercise public sector administrative functions of any type, are obligated to inform the public of the public services that they provide, their rates, government companies, etc.	Public bodies, meaning any department of state or administration in the national, provincial, or sphere of government or any municipality in the local sphere of government or any other functionary or institution exercising a power or duty of the Constitution or provisional constitution exercising a public power or performing a public function in terms of any legislation; and private bodies, meaning any natural person or partnership which carries or has carried on any trade, business, or profession, or any former or existing juristic person.	All public authorities, including companies in which the government holds more than 50% of the shares or is in a position to influence the policy;• Any other body which provides services of a public nature that are essential to the welfare of the Jamaican society, as declared by the minister responsible for that public authority. •This act does not apply to Governor-General when acting in official capacity; to the courts; to security or intelligence services related to intelligence-gathering activities; or to any body by order of minister and affirmative resolution.
Who has the right to request information?	Any legal body/corporation or natural person has the right to request and receive information.	Any person or their representative, including other government agencies. However, only citizens may request from the Federal Election Institute information related to the use of public resources by political parties.	Any person.	Any person. Public entities may also request access to the records of private entities on the grounds of public interest, such as when the record is required for the exercise or protection of any rights.	Any person.

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*The contents of this chart are based on the April 29, 2004, version of the draft Transparency and Access to Public Information Law. At the time of publication of this guidebook, there was an ongoing consultation process regarding the draft law. Therefore, the information in this chart is subject to these unforeseen changes and any new drafts/versions.



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COMPARATIVE CHART: SELECT ACCESS TO INFORMATION LAWS AND THE BOLIVIAN DRAFT ACCESS TO INFORMATION AND TRANSPARENCY LAW

ISSUE	BOLIVIA*	MEXICO	PERU	SOUTH AFRICA	JAMAICA
<p>Which documents are subject to automatic publication?</p> <p>P U B L I C A T I O N</p>	<p>The public entities' publication must at least include: general data regarding the public entity including the legal framework, location, structure, organization, services offered, etc; specific rules about the processing of administrative matters, competence, and powers, etc.; methods for appointing public servants and a list of those appointed through resolutions or memoranda and individual consultants; budget information, including details about approved or current budgets and the sources of financing; annual budget reports; annual plans for contracting goods and services, sent to SICOES (Information System of State Contracts); acquisitions of goods and services, providers, committed funds, hiring that took place etc., the results of official missions of the Maximum Executive Authorities; additional pertinent information.</p>	<p>The principle of publicity of information must be favored. With the exception of reserved or confidential information as provided in this law, the subjects compelled by the law must put at the public's disposition and keep up to date the following information: their structure, the powers of each administrative unit; a directory of public servants; the monthly remuneration received for each position, including the system of compensation as established in the corresponding dispositions; the address of the liaison section; their aims and objectives; services they offer; assigned budget, concessions, permits, or authorizations granted; contracts granted under the terms of the applicable legislation; etc.</p> <p>They must publish information on the amounts and persons to whom the public funds have been granted, the use of these funds, etc. Access to information requests and responses will be available to the public.</p>	<p>The Public administration entities will establish and continuously provide, through Internet Web sites, in agreement with their budget, the following information: general information, which includes their requirements, statements issues, organization, procedures, legal framework, etc.; budget information that includes details of satisfaction with budgets, investment projects, high-ranking officials' and staff's salaries and benefits, etc.; acquisitions of goods and services detailing amounts committed, providers, quantities, etc.; official activities that are developed or carried out by high-ranking public servants; additional information that the entity considers relevant.</p> <p>The entity should identify an employee who is responsible for the Internet Web site.</p>	<p>PUBLIC BODIES: description of its structure and functions; address, phone, fax, and e-mail of all information officers and deputy information officers; sufficient detail to facilitate a request for access to a record; a guide to information in every official language; latest notice of records available without having to request access; description of categories of information held by the entity; description of the services the entity provides to the public and how to access services; description of any arrangement for a person who formulates policy or performs duties by consultation or otherwise; description of all remedies available in respect of an act or failure to act by the body and any other information.</p> <p>PRIVATE BODIES: All of the above except the first and penultimate subsections and documents made available by other legislation.</p>	<p>An initial statement of its organization and functions containing the information specified in the First Schedule, including: a description of the subject area of the public authority; a list of the departments and agencies of the public authority; the title and business address of the principal officer; a statement of the manuals or other documents containing interpretations, rules, precedents, etc., that are provided by the public authority for the use of the authority or its officers in making decisions or recommendations with respect to rights, privileges, or benefits or to obligations, penalties, or other detriments to or for which persons are or may be entitled or subject.</p>

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ANNEX I: COMPARATIVE CHART OF ACCESS TO INFORMATION LAWS

COMPARATIVE CHART: SELECT ACCESS TO INFORMATION LAWS AND THE BOLIVIAN DRAFT ACCESS TO INFORMATION AND TRANSPARENCY LAW

ISSUE	BOLIVIA*	MEXICO	PERU	SOUTH AFRICA	JAMAICA
<p>In what format should the information be published?</p>	<p>The public sector entities must create, in any method, either physical or electronic, transparency portals, which make public at least the obligatory information as listed.</p>	<p>The information must be made available to the public by remote and local electronic means. The subjects compelled by the law must place computer equipment at the disposal of interested persons.</p>	<p>Distribution of information through the Internet on a phased-in basis, as provided in the law.</p>	<p>Published in a manual updated annually, if necessary, and available in at least three (3) official languages. With approval of the minister, if the information of two public bodies is connected, only one manual should be made.</p>	<p>The principal officer of the authority shall cause copies of such documents to be made available for inspection and for purchase by members of the public and published at least annually in the <i>Gazette</i>.</p>
<p>How should requests for access to information that has already been published be handled?</p>	<p>Not mentioned in the draft law.</p>	<p>The liaison units will not be obligated to process requests when the information is publicly available, but they must notify the requester in writing the source, place, and manner in which he can consult, reproduce, or obtain the information.</p>	<p>Not mentioned in the law.</p>	<p>If access to a record is granted, but that record is to be published within ninety (90) days of the request, is required by law to be published but is yet to be published; or has been prepared for submission to any legislature or a particular person but is yet to be submitted, the information officer may defer giving access to the record for a reasonable period. The information officer must notify within 30 days.</p>	<p>Where an official document is open to access by the public as part of a public register or otherwise or available for purchase by the public in accordance with administrative procedures, access to that document shall be obtained in accordance with those procedures.</p>

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THE PROMOTION OF DEMOCRACY THROUGH ACCESS TO INFORMATION

COMPARATIVE CHART: SELECT ACCESS TO INFORMATION LAWS AND THE BOLIVIAN DRAFT ACCESS TO INFORMATION AND TRANSPARENCY LAW

ISSUE	BOLIVIA*	MEXICO	PERU	SOUTH AFRICA	JAMAICA
<p>How does one request information from an entity covered under the law?</p> <p style="text-align: center;">I N F O R M A T I O N R E Q U E S T S</p>	<p>Every request for information must be directed to the information official or civil servant designated by the entity. In the event that no one has been appointed, the request must be directed to the official who has in his/her possession the information being requested or to his/her hierarchical superior.</p> <p>An applicant does not have to provide a reason for seeking the information.</p>	<p>Any person or his representative may submit a request for access to information either by writing a letter or using the forms approved by the institute (through paper or Internet). The request must contain:</p> <ul style="list-style-type: none"> • the name of the person making the request and the means by which he can be contacted • a clear and precise description of the documents being requested • any other facts that may make the information easier to locate in order to facilitate the search • optionally, the form in which he prefers access to the information be granted; it may be verbally, as long as it is needed for the purpose giving guidance to the requester, simple or certified copies, or other means. <p>In no case will the delivery of information be conditioned on a motive or justification for its use.</p>	<p>Every information request must be directed to the civil servant who has been designated by the entity to carry out this work. If no specific person has been named, then the request is directed to the civil servant who possesses the required information or to his/her immediate supervisor.</p> <p>In no case should an applicant be required to provide the reason for the exercise of their right of access to information.</p>	<p>A request must be made in the prescribed form to the information officer of the public body concerned at his or her address, fax number, or e-mail address. The form must at least require the requester to identify himself and sufficient particulars to identify the record requested. The requester must also specify the form and language in which access is requested and the address or fax number of the requester.</p> <p>An individual who, because of illiteracy or disability, is unable to make a request as described above may make that request orally.</p> <p>An applicant is not required to give any reason for requesting access to the document.</p>	<p>A person who wishes to obtain access to an official document shall make an application to the public authority that holds the document. The application may be made in writing, by telephone, or by other electronic means and shall provide such information concerning the document as is reasonably necessary to enable the public authority to identify it.</p> <p>An applicant shall not be required to give any reason for requesting access to that document.</p>

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What procedure must public servants follow in responding to an access to information request?	All public entities are required to adopt basic measures that guarantee and promote transparency and access to information. All covered entities and people are obligated to provide information to requesters in accord with the terms of this law and in agreement with Article 18 of the Administrative Procedure Law 2345, unless the information falls under one of the exemptions stated in the law.	The liaison section will be the link between the requester and the entity. When the liaison unit receives a request, they will turn it over to the administrative unit that may have the information. The obligation to provide access to information will be understood as discharged when the documents are placed at the disposition of the person making the request for his consultation in the site where they were found or when they are dispatched as simple copies, certified copies, or by any other means.	The entity is obligated to provide information to people who request it under the principle of disclosure. During business hours, public administration entities must allow requesters direct and immediate access to public information.	The information officer who receives the request must decide whether it is his responsibility to grant the request and advise the requester of the decision in the manner requested by the requester, as indicated in his/her request, if reasonably possible. If the request is made orally, the information officer must reduce oral request to writing. If the request is granted, a notice must state the access fee to be paid, the form in which access will be given, and information on mechanisms for lodging an internal or court appeal against the access fee to be paid. If not granted, the information officer must notify the applicant.	A public authority to which an application is made shall, upon request, assist the applicant in identifying the documents to which the application relates, acknowledge receipt of every application in the prescribed manner, and grant to the applicant access to the document specified in the application if it is not an exempt document.

ADMINISTRATIVE RESPONSES

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THE PROMOTION OF DEMOCRACY THROUGH ACCESS TO INFORMATION

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<p>What is the time limit for responding to requests?</p> <p>A D M I N I S T R A T I V E R E S P O N S E S</p>	<p>The entity to which the information request has been submitted must provide the information within twenty (20) working days; on exceptional occasions and for duly justified reasons in writing, this time limit can be extended by an additional twenty (20) working days.</p>	<p>The entity must notify the requester of the response as soon as possible and in no case more than twenty (20) working days, counted from the date of the presentation of the request. This time limit may be extended for a period of up to equal length when justifiable reasons exist and the requester is notified.</p> <p>Once the requester is notified that the information is available, it must be delivered within ten (10) working days.</p>	<p>The entity that has received the information request must provide the information within a time limit of no more than seven (7) working days; this time limit can be extended in exceptional situations, when the reason is provided in writing before the end of the first period, for five (5) additional days.</p>	<p>A public authority shall respond in not more than thirty (30) days after receiving the request application, with a possible extension of another thirty (30) days in any case where there is reasonable cause.</p>	<p>A public authority shall respond in not more than thirty (30) days after the date of receipt of the application, with a possible extension of another thirty (30) days in any case where there is reasonable cause for such extension. In the case of an application transfer, an authority shall respond no later than thirty (30) days after the application is transferred to the appropriate agency.</p>

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<p>In what format should the requested information be provided?</p>	<p>The public entity has the obligation to provide the requested information in written documents, photographs, either analog or digital recordings, or in any other format, as long as it is found or created by the entity and is under its responsibility. The entity only has the obligation to provide the information in the state and form in which it is found; the requester cannot require a change in format. There is no obligation to create or generate documents that they do not have or do not have the responsibility to have at the time of the request.</p>	<p>Access will be granted only in the form permitted by the document in question, but it will be provided in whole or in part at the request of the person seeking access.</p>	<p>The entities of public administration have the obligation to provide requested information as contained in written documents, photographs, recordings, analog or digital format, as long as it was created or obtained by the entity or in its possession or found under its control. There is no obligation to create or generate documents that they do not have or do not have the responsibility to have at the time of the request. Nor must they provide an analysis or evaluation.</p>	<p>The document must be given in the manner requested unless to do so interferes unreasonably with the effective administration of the public body concerned, is detrimental to the preservation of the record, or amounts to infringement of copyright. If the document exists in the language that the requester prefers, access must be given in that language. If it does not exist in the preferred language or if no preference was indicated, access must be given in any language in which the record exists.</p>	<p>Access may be granted in one or more of the following forms: inspection; document copy; arrangements to hear the sounds or view visual images; transcript of the data, words, sounds, and images, when possible. The document shall be given in the form requested, except when doing so would be detrimental to the preservation of document or infringe on copyright laws.</p>
<p>What are the processes for transferring a request to another agency?</p>	<p>If the entity does not possess the requested information, it must orient and provide in writing to the applicant its possible destination or location. There is no provision for the agency to transfer information requests.</p>	<p>When the information sought does not fall within the purview of the entity or agency to which the request for information was presented, the liaison section must duly orient the individual as to which entity or agency is responsible. In some cases, the entity has the duty to transfer the request to the agency that holds the information.</p>	<p>Assuming that the public administration entity does not possess the requested information and is aware of its location or destination, the requester must be notified. There is no provision for the agency to transfer information requests.</p>	<p>If a requested record is not under the control of the body from which it was requested, the officer who received the request must, within fourteen (14) days, transfer the request to the relevant public body. That body must prioritize the transferred request. The information officer must explain in writing the reason for the transfer.</p>	<p>When the document is held by another entity or the subject matter is more closely connected with functions of another public authority, the entity shall transfer the application and immediately inform the applicant. Transfer should occur as soon as possible but no later than fourteen (14) days.</p>

ADMINISTRATIVE RESPONS

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THE PROMOTION OF DEMOCRACY THROUGH ACCESS TO INFORMATION

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ISSUE	BOLIVIA*	MEXICO	PERU	SOUTH AFRICA	JAMAICA
Does the law require an explanation of the reason for denying a request?	When the agency is not in a condition to satisfy the request, they must inform the requester in writing of the limitations, causes, and motives for the impossibility and do so through express resolution of the Maximum Authority.	Yes. When the entity's committee has made a negative decision, it must provide the reasons for the denial and indicate to the requester the procedure that he may use to lodge an appeal.	Yes. The denial of access to the requested information must be provided in writing and supported by the exceptions established in the law, and the reasons why the request falls under these exceptions must be specifically stated. If there is a delay, these reasons also must be in writing.	Yes. A denial notice must state adequate reason, including the provision of the act that indicates refusal; exclude any reference to the contents of the record; and state that the requester may lodge an appeal and the procedure for doing so.	Yes. A denial or time extension response from a public authority shall state on the application the reasons and the appeal options available to an aggrieved applicant.
Under what other circumstances may a request for information be denied or deferred?	The law states that no entity can deny a request for information under any concept and that a decision should not be based on race, sex, language, religion, political opinion, etc. The only exemptions are those listed in the law (except for the "impossibility" clause discussed above).	In cases where the information cannot be found, the committee will draw up a resolution that confirms the nonexistence of the requested document and notify the person making the request. The liaison sections will not be obliged to process offensive requests for access when they have delivered information that is substantively identical in response to a request from the same person, etc.	The entity may deny the request when it does not possess the information requested but must communicate the reason in writing.	If all reasonable steps have been taken to find a document and it is believed that the record cannot be found or does not exist, the information officer must, by way of affidavit, notify the requester. An information officer may defer access when a document is to be published within 90 days, is required to be published but has not happened yet, or has been prepared for submission to any legislature or person but has yet to be submitted.	No other reasons for denial are mentioned in the law, other than exemptions. Request for access may be deferred if publication of document required within specified time period, document prepared for Parliament, or premature release would be contrary to public interest.

D E N I A L S

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Is there a provision for deemed denials?	Yes. In not providing a response within the aforementioned time limits, the request for information will be considered denied.	No, on the contrary. The failure to respond to a request for information within the specified time period will result in an affirmative decision for access, and the entity will be required to provide access to the information with 10 days, covering all costs.	Yes. If there is a failure to respond within the aforementioned time limits, the requester may consider his/her request denied.	Yes. If an information officer fails to give the access to the requester within the time period contemplated in the act, the information officer is regarded as having refused the request.	Yes. A failure to give a decision within the time required by the act shall be considered a refusal.
Is an information officer identified?	Yes. The public entity designates the information officer or public servant responsible for providing information; the person must be of level of superior hierarchy.	Yes. The law requires that every agency designate a liaison entity responsible for automatic publication; receiving information requests; assisting requesters, etc. In addition, each agency will have an Information Committee responsible for coordinating and supervising the provision of information; confirming, modifying, or revoking classifications; establishing mechanisms for satisfying disclosure criteria, etc.	Yes. The entity must identify an officer who is responsible for providing information. If no designee falls under secretary-general of institution or whoever fills that role.	Yes. Every public entity must designate an information officer and deputy information officers.	No. The law does not identify the requirement for an information officer.
Is it required to publish a road map of information held by government?	Not mentioned in the draft law beyond the automatic publication.	Not mentioned in the law beyond the automatic publication.	Not mentioned in the law beyond the automatic publication.	Yes. The information officer must compile, in at least three official languages, a manual containing a description of subjects and issues on which the body holds records.	Yes. A public authority shall publish a list of subjects handled by each department and agency at least annually in the <i>Gazette</i> .

D E N I A L S

RESPONSIBILITIES & SANCTIONS

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Does the law establish a requirement to help requesters?	When the entity does not possess the requested information, it shall orient the requester and communicate to the requester, in writing, the possible destination or location.	The liaison unit must assist in the completion of information requests, in particular in cases where the requester does not know how to read or write.	Not mentioned in the law.	Information officer must render reasonable assistance free of charge as necessary to enable the requester to comply with provision for form of request.	Upon request, a public authority shall assist an applicant in identifying the documents to which the application relates.
What sanctions will be used against civil servants who fail to uphold the law?	Civil servants responsible for providing information who arbitrarily impede, delay, or obstruct access to information or supply in an incomplete way will be subject to reprisals and sanctions for committing administrative offenses, including possible criminal charges for abuse of authority. Upholding the provisions shall not result in reprisals against officials who are responsible for providing information.	Civil servants will be held administratively liable for failure to comply; using, removing, altering, destroying, concealing, failing to use, disclosing, fraudulently classifying as confidential, etc. in an illegal manner information in their custody; intentionally denying information that is not classified, etc.; handing over information considered reserved or confidential, etc.	Information officer who arbitrarily obstructs access of the requester or who provides in incomplete form or obstructs in any way the fulfillment of the law will be sanctioned. Officials or public servants who fail to comply with the provisions of law shall be sanctioned for committing a serious offense and may also be held criminally liable for committing an abuse of authority crime according to penal code.	No person is criminally or civilly liable for anything done in good faith in the exercise of this act. A person who, with intent to deny access, destroys, damages or alters, conceals, or falsifies a record commits an offence and is liable on conviction to a fine or imprisonment not exceeding two (2) years.	Altering, defacing, blocking, erasing, destroying, or concealing accessible documents are punishable with a maximum J\$5,000 fine and/or up to six months imprisonment. In case of a <i>bona fide</i> belief that the grant of access is required by the act, no action for defamation or breach of confidence may be taken.
RESPONSIBILITIES & SANCTIONS					

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<p>What costs must the requester pay?</p>	<p>It is mandatory for public officials to undertake all pertinent actions to facilitate access to information free of charge. The applicant who requests the information must contribute only the amount that corresponds to the cost for reproducing the required information, whether it is printed or in magnetic form.</p>	<p>The costs of obtaining information may not be greater than the sum of: the cost of the materials used in reproducing the information, and the cost of sending it. The subjects compelled by the law must make an effort to reduce the costs of delivering the information.</p>	<p>The requester must pay only the amount that corresponds to the costs of reproduction of the requested information. Any additional cost shall be understood as a restriction of the fulfillment of the right to information and invoke the appropriate sanctions.</p>	<p>The requester must pay a prescribed fee for making a copy of the record or transcription; postal fee, if applicable; and the time reasonably required to search for the record and prepare the record. If search and preparation would require more hours than prescribed for this purpose, the information officer must, by notice, require a deposit. When a deposit is required, it must be repaid if access is denied. The information officer or head of the private body notifies the requester of the fee before executing the request.</p>	<p>The costs of reproducing any documents shall be borne by the applicant.</p>
<p>Can a fee waiver be issued?</p>	<p>Not mentioned in the draft law.</p>	<p>Yes, by appealing. The requester may lodge an appeal for review submitted to the Federal Institute of Access to Public Information when he is not in agreement with the cost of accessing the requested information.</p>	<p>Not mentioned in the law.</p>	<p>Yes. The minister may, by notice in the <i>Gazette</i>, exempt any person or category of people from paying the fees listed above, determine fee calculation methods, set fee limits, exempt categories of documents from certain fees, and limit excess collecting fees for requests of both public and private bodies.</p>	<p>The responsible minister may waive, reduce, or remit the cost of reproducing documents where he is satisfied that such waiver, reduction, or remission is justifiable.</p>

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THE PROMOTION OF DEMOCRACY THROUGH ACCESS TO INFORMATION

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<p>How often should reports be made and what should they contain?</p> <p>R E P O R T S</p>	<p>At least once a year, the Maximum Executive Authority of each entity must disseminate a report to the public detailing the form of address given to each fulfilled and diverted information requests.</p> <p>The legislative branch may request information from public entities when deemed necessary and relevant, directing to the executive branch the requests and representations that could be pertinent.</p>	<p>The Federal Access to Information Agency must submit a report to Congress on an annual basis including, at least, the number and types of information requests submitted and their resolution, including those in which it was not possible to locate the information in the files; the response time for different requests; the status of complaints that the institute presented to internal control mechanisms; and the observed difficulties of compliance with the law.</p>	<p>On an annual basis, the Office of the Presidency of the Council of Ministers must send a report to Congress which accounts for the fulfilled, unfulfilled, and pending information requests. To this end, the Office of the President of the Council of Ministers is responsible for gathering the above information from all of the entities of the public administration.</p>	<p>The Human Rights Commission must include in its annual report to the National Assembly, referred to in the Constitution, among others: any recommendation for improvement of the act; the number of requests for access received, granted in full, granted under a public interest disclosure, or granted in part; the number of times each provision of the act was relied on to refuse access; the number of cases in which time periods were extended; the number of internal appeals lodged and their grounds; the number of applications made to every court and their outcome; the number of complaints lodged with the public protector.</p> <p>The information officer of each public body must annually submit report to the Human Rights Commission on the above information.</p>	<p>The minister shall prepare an annual report on the operation of the act during the year to be laid on table of Parliament, containing: the number of applications for access received, granted, deferred, refused, or granted subject to deletions; the categories of exemptions claimed and the numbers of each category; the number of applications received for amendment or annotation of personal records; the number of applications for internal review of relevant decisions and appeals against relevant decisions and the rate of success or failure thereof; other matters as are considered relevant. Each public authority shall submit to the minister quarterly reports containing the above information.</p>

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<p>What exemptions does the law specify?</p>	<p>The information that is expressly classified as secret, reserved, and confidential considering the detriment to the public or individual that may be caused by its dissemination shall be accorded exceptional treatment.</p>	<p>Information is categorized as classified if its disclosure could:</p>	<p>The following are exceptions to the exercise of this right:</p>	<p>The information officer may refuse a request for access if the record's disclosure would:</p>	<p>The following official documents are exempt from disclosure:</p>
<p>Is there an exemption in the law with respect to national security/military context?</p>	<p>Information related to national security or military-related secrets whose disclosure could threaten the nation's territorial integrity and/or pose a risk to the continuation of the democratic system, including internal and external military defense plans, mobilization and special operations, military intelligence operations and plans, technical and scientific developments specific to national defense, material used in war situations, etc.</p>	<p>Information is considered classified if its disclosure could compromise national or public security or national defense.</p>	<p>The right to information may not be exercised with respect to information classified as reserved, such as in the military sphere, in both the domestic and international fronts, including military defense plans and military intelligence and/or national defense scientific operations, and information about military personnel who carry out national security activities, orders, operations, logistics, and activities related to military defense plans, material used in war situations, etc. or in the case of national security whose disclosure could cause a risk to territorial integrity or continuation of democratic system, etc.</p>	<p>Records that could reasonably be expected to cause prejudice to defense or security of the republic; or a record that contains information relating to military tactics or strategy; or military exercise or operations undertaken in preparation of hostilities or in connection with the detection, prevention, or suppression of hostilities; or relating to the quantity characteristics, etc., of weapons or other war-related equipment or to the capacity of the military or its personnel, etc.</p>	<p>Information whose disclosure would prejudice security and defense.</p>

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THE PROMOTION OF DEMOCRACY THROUGH ACCESS TO INFORMATION

COMPARATIVE CHART: SELECT ACCESS TO INFORMATION LAWS AND THE BOLIVIAN DRAFT ACCESS TO INFORMATION AND TRANSPARENCY LAW

ISSUE	BOLIVIA*	MEXICO	PERU	SOUTH AFRICA	JAMAICA
Is there an exemption in the law with respect to personal or private information?	Not mentioned in the draft law. The law does provide the right for people to seek their own personal information that is held by state (habeas data).	The subjects compelled by the law may not disclose, distribute, or commercialize the personal information held in the information systems they have developed unless the individuals to whom the information refers have given express consent in writing or by similar authenticated means. The consent of individuals will not be required to supply personal information in the following cases: if necessary for scientific or statistical reasons, and when name is not associated; when a judicial order to this effect exists; and in other cases established by the law, etc.	The right to information may not be exercised with respect to personal information whose disclosure constitutes an invasion of personal and family privacy, information referring to personal health, etc.	Records that would involve the unreasonable disclosure of personal information about a third party, including a deceased individual.	Documents involving the unreasonable disclosure of information relating to the personal affairs of any person, whether living or dead.
Is there an exemption in the law with respect to international relations?	Not mentioned in the draft law.	Information that would impair ongoing negotiations or international relations, including that information which other states or international organisms give as confidential to the Mexican state.	The right to information may not be exercised with respect to information classified as reserved in the area of international relations, including elements of international negotiations whose disclosure would prejudice a negotiating process or adopted agreements, at least during the negotiation; information whose disclosure would negatively affect diplomatic relations with other countries, etc.	Records that could reasonably be expected to cause a prejudice to the international relations of the republic or would reveal information supplied in confidence by or on behalf of another state or an international organization, supplied by or on behalf of the republic to another state or international organization in terms of arrangement or international agreement that requires information to be held in confidence, or required to be held in confidence by international agreement or customary international law.	Documents containing information communicated in confidence to the government by or on behalf of a foreign international organization, and documents that would prejudice international relations.

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Is there an exemption in the law with respect to the national economy?	Financial information whose disclosure could create a risk to the financial stability will be considered classified information.	Information that would damage the country's financial, economic, or monetary stability.	Not mentioned in the law.	Records whose disclosure would be likely to materially jeopardize the economic interests or the financial well-being of the republic or the ability of the government to manage the economy of the republic effectively in the best interest of the republic.	Documents whose disclosure could have a substantial adverse effect on the Jamaican economy or the government's ability to manage the Jamaican economy, including but not limited to taxes, duties, interest rates, monetary policy and exchange rate policy, or currency rates, etc.
Is there an exemption in the law with respect to police/domestic security?	The right to access to public information cannot be exercised with respect to information classified in the public order as reserved, because the information could put at risk the integrity of some people or affect the citizen security. The reserved information is understood as plans or programs intended to fight terrorism, drug trafficking, or organized crime; security plans and defense of police stations, penitentiary facilities, and protection for dignitaries; strategic and intelligence plans that could jeopardize information from sources; and information that impedes the course of investigations at the police and investigative stage, etc.	Information that would seriously prejudice the verification of observance of the laws, the imparting of justice, the collection of taxes, and immigration control operations. Also, that which puts at risk the life, security, or health of any person.	The right to access to public information cannot be exercised with respect to information classified as reserved, whose disclosure could put at risk internal integrity and order. The reserved information is understood as that whose goal is to prevent and repress crime and whose disclosure could hinder this, understood as plans of police and intelligence operations intended to fight terrorism, drug trafficking, or organized crime; communications about these; information which impedes police investigation within the limits of the law; witness protection; movement of personnel that could risk lives of people involved or citizen security; defense of police stations, penitentiary facilities, and protection of dignitaries, etc.	Records whose disclosure could reasonably be expected to prejudice investigation of a contravention or possible contravention of the law; to reveal identity of a confidential source of information in relation to enforcement or administration of the law; result in intimidation or coercion of a witness; facilitate commission of contravention of law; or prejudice or impair security of building structure or system, means of transport, or any other property. Methods, systems, plans, or procedures for the protection of a witness. Must refuse a request for access to a record if its disclosure could reasonably be expected to endanger the life or physical safety of an individual.	Official documents relating to law enforcement are exempt from disclosure if their disclosure would, or could reasonably be expected to, endanger any person's life or safety, prejudice an investigation or trial, disclose the existence or identity of a confidential source of information, reveal lawful methods for preventing or investigating crimes, facilitate the escape of a person from lawful detention, or jeopardize the security of any correctional facilities.

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Is there an exemption in the law with respect to the judicial process?	<p>The right to access to public information may not be exercised with respect to confidential information that could generate legal insecurity because it is in a state of incompleteness. Such confidential information is understood as legal proceedings when no ruling has been handed down, information relating to investigations into administrative procedures that have yet to be decided upon, information prepared or obtained by legal advisers of the public entities whose disclosure could reveal strategy or the defense in an administrative process etc.</p>	<ul style="list-style-type: none"> Procedural strategies in judicial processes that are ongoing. Judicial files or administrative procedures that have taken the form of a trial, where there has been no ruling. 	<p>The right to access to public information may not be exercised with respect to information relating to legal proceedings when no ruling has been handed down, information prepared or information obtained by legal advisers, lawyers, or entities of public administration whose disclosure could reveal the strategy or defense in an administrative or judicial process, etc.</p>	<p>Records prohibited in terms of s. 60(14) in Criminal Procedures Act, if disclosure could reasonably be expected to prejudice effectiveness of methods, techniques, etc., of prosecution of alleged offenders; impede prosecution; or reveal lists of pending bail proceedings.</p> <p>If record is privileged from production in legal proceedings, unless waived.</p> <p>A record may not be refused insofar as it consists of information about the general conditions of detention of people in custody.</p>	<p>Not mentioned in the law.</p>
Is there an exemption in the law with respect to the deliberative process?	<p>The right to access to public information may not be exercised with respect to confidential information, including certain government or state policies that require discretionary management in order to achieve the goals set forth and opinions voiced before the government has made a decision.</p>	<p>That which contains the opinions, recommendations, or points of view that are part of a public servant's deliberative process, until that time when a final decision is adopted, which itself must be documented.</p>	<p>The right to access to public information may not be exercised with respect to advice, recommendations, or opinions produced as a part of the deliberative process before the government has made a decision, except when the information is public. The exemption stops when the decision has been made and the agency refers to it.</p>	<p>Records that contain an opinion, advice, report, or recommendation obtained or prepared or an account for a consultation, discussion, or deliberation that has occurred for the purpose of assisting to formulate a policy or take a decision in exercise of power conferred or imposed by law if the disclosure could reasonably be expected to frustrate deliberative process by or between public bodies by inhibiting candid communication of opinion, advice, etc. or conduct of consultation, discussion, etc.</p>	<p>Documents which contain opinions, advice, or recommendations prepared for Cabinet or those documents for deliberations arising in course of Cabinet proceedings, but not when purely factual in nature or for study, tests, etc.</p>

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Is there an exemption in the law with respect to banking/commercial secrets?	Information protected by bank secrets, tax, commercial, industrial, technological and stock market, regulated expressly and specifically in the national and international legal order. Information needed for investigation, by competent authority, of an economic or financial crime established in national legislation will not be considered classified.	Commercial, industrial, bank, and fiduciary secrets or others considered as such by legal provisions.	Information protected by banking secrets, tax, commercial, industrial, technical, and stock market.	Information about decision of regulation or supervision of financial institutions; trade secrets; financial, commercial, scientific, or technical information likely to cause harm to a third party or to a state or public body or that could reasonably be expected to put third party or the public body at disadvantage at contractual or other negotiations or prejudice in commercial competition.	Documents which would reveal trade secrets or any other information of a commercial value whose disclosure would diminish or destroy its value.
Is there an exemption in the law with respect to reserved/confidential information?	Throughout the draft law, exempt information is called either classified or secret.	That which by a law's express provision is considered confidential, restricted, commercially restricted, or governmentally restricted.	Throughout the law, exempt information is called either confidential or reserved.	Must refuse request to access to record if the disclosure would constitute a breach of a duty of confidence owed to a third party in terms of an agreement or may refuse access to request if record consists of information supplied in confidence by third party, the disclosure of which could reasonably be expected to prejudice future supply of information, and it is in the public interest.	Not mentioned in the law.

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Is there an exemption in the law with respect to legal privilege?	Not mentioned in the draft law.	Not mentioned in the law.	Information that falls under attorney-client privilege.	Information officer must refuse request for access to a record if privileged from production in legal proceedings, unless privilege waived.	Documents privileged from production in legal proceedings or those whose disclosure would constitute an actionable breach of confidence, be in contempt of court, or infringe the privileges of Parliament.
What other exemptions does the law specify?	States that only a special law, in the areas mentioned in the present draft law, may create another express exception.	Liability proceedings against public servants, as long as no administrative resolution or definitive jurisdictional ruling has been made.	No others mentioned in the law.	<ul style="list-style-type: none"> Information obtained by or in possession of the South African Revenue Service with the purpose of enforcing the legislation concerning the collection of revenue. Computer programs that are property of the state. 	A document whose disclosure could result in damage to a resource that is historical, archeological, anthropological; anything declared national monument; any species of plant or animal life in danger of extinction, threatened, or vulnerable; or any other rare or endangered living resource.
Does a determination of "public interest" exist that overrides exemption?	Not mentioned in the draft law.	Not mentioned in the law.	Not mentioned in the law.	For several sections of the exemptions, the information officer must grant a request for access if the disclosure of the record would reveal evidence of a substantial contravention or failure to comply with the law or an imminent serious public safety or environmental risk and the public interest in the disclosure clearly outweighs the harm contemplated in the provision in question.	A public interest exists for some exemptions, including deliberative process and heritage sites, etc., but does not exist for all exemptions.

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Are there any other provisions in law that provide access regardless of exemption?	The law provides for access to information, regardless of exemptions, for the National Congress, the attorney general, the Financial Investigative Unit, Judicial Power, ombudsman, and Presidential Anti-corruption Delegate, within their areas of competency and in agreement with a judicial order.	Information may not be classified when the investigation of grave violations of fundamental rights or crimes against humanity is at stake.	The law provides that no exemption may be used contrary to the Constitution and that the exemptions do not apply when related to violations of human rights or the Geneva Convention. In many cases, Congress, the comptroller general, ombudsmen, and the Judicial Power may access classified information.	Not mentioned in the law.	Not mentioned in the law.
Does the law stipulate a period of declassification?	The period of declassification of information is established at the time it was classified as secret or confidential.	Yes. Information classified as restricted may remain as such for a period of up to twelve (12) years and may be declassified when the causes from which its classified status originated cease to exist or when the period of classification is over. Exceptionally, subjects compelled by the law may request extension of the period of classification as long as the causes that gave rise to its classification persist.	Yes. After five (5) years of classification as secret, any person may request receipt of the information if the head of the relevant section considers that the disclosure does not pose a risk to safety of people, territorial integrity, and/or continuation of the democratic system. If classification continues, the reasons must be provided in writing with the continuing time period and must be made known to the Council of Ministers, which can declassify, and the Ordinaria Commission within 10 days.	Yes. A document may not be denied if it originated more than twenty (20) years before the request was made.	Yes. The exemption of an official document or a part thereof from disclosure shall not apply after the document has been in existence for twenty (20) years, or such shorter or longer period as the minister may specify by order subject to affirmative resolution.
Is it possible to separate information and grant that part which does not qualify as exempt?	Severability not mentioned specifically in the draft law, but does state that in the event a document contains partial information, the public entity must permit access to that information which is available.	Yes. Administrative units may provide documents that contain information classified as restricted or confidential, as long as the documents in which the information appears permit the elimination of those parts or sections. In such cases, the parts or sections which have been withheld must be indicated.	Yes. In the event that a document contains exempt information, the entity shall allow release of the information in part form, providing that part which does not fall under an exemption.	Yes. If a request for access is made to a public or private body containing information that may or must be refused in terms of exemptions, every part of the record that does not contain, and may reasonably be severed from any part that contains, exempt information must be disclosed.	Yes. Where an application is made to a public authority for an official document that contains exempt matter, the authority shall grant access to a copy of the document with the exempt matter deleted therefrom.

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Does the law provide for an internal appeal/review of decision?	Not mentioned in the draft law.	Yes. The head of the agency that classified the documents as restricted shall immediately refer the application, with the elements necessary to establish and motivate said classification, to the committee of the organization in order to confirm or revoke the classification.	In some cases, a request for review will be sent to the superior hierarchy to exhaust administrative remedies.	Yes. An internal appeal must be lodged in the prescribed form within sixty (60) days and notice to third party within thirty (30) days. Request for appeal must be delivered or sent to the information officer of the corresponding public agency, identifying the subject matter and the reason for the appeal. The internal review shall be accompanied by payment of the prescribed appeal fee.	Yes. An application for internal review must be presented within thirty (30) days of the date of notification of the decision or expiration of the request. The entity receiving the internal review may take any decision that could have been taken on an original application.
Does the law establish a process of appeal, following the internal appeal/review, to another enforcement body that is not a court of law?	In the event that the request for access is denied, the applicant may file the proper administrative appeal, possibly before the public defender or, in a case of constitutional jurisdiction, in accordance with Art. 17 of Law 2341.	Yes. The applicant or his representative may lodge an appeal before the institute which dealt with the request or the liaison section for a review of the classification within fifteen (15) working days of the date of notice.	Yes. Provides for administrative review or through the constitutional court, where appropriate.	No. Once the internal review process has been exhausted, the applicant or a third party may initiate proceedings before a court. There is no intermediary body.	Yes. An appeal against the internal review decision may be lodged in the Appeal Tribunal within sixty (60) days after notification of the decision.
What authority does the enforcement body have?	Not mentioned in the draft law.	The Federal Institute of Access to Information is an organ of the federal public administration with operative autonomy. For the purposes of its determinations, the institute shall not be subordinated to any authority and shall adopt its decisions with full independence.	Not mentioned in the law.	The court hearing an application may grant any order that is just and equitable, including orders confirming, amending, or setting aside the decision which is the subject of the application concerned; requiring action or to refrain from action; granting specific relief, etc. The burden of proof that the decision complies with the act rests with the party that claims it so complies.	On the hearing of an appeal, the onus of justifying the decision of the internal review lies on the public authority. The Appeal Tribunal may make any decision that could have been made on the original application but shall not nullify a decision made by a minister.

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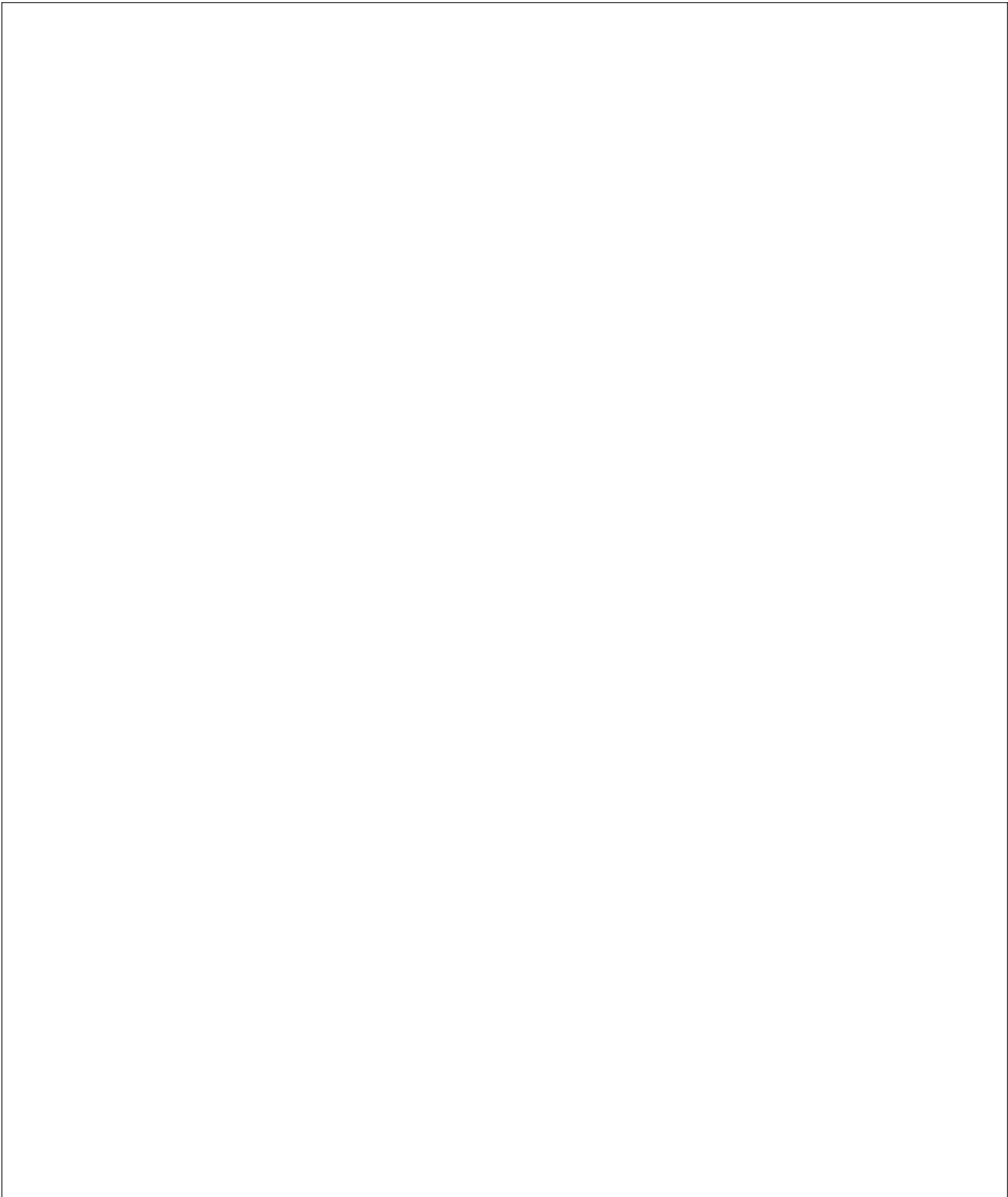
ISSUE	BOLIVIA*	MEXICO	PERU	SOUTH AFRICA	JAMAICA
Does the law require the designation of a coordinating entity?	Draft law provides suggestion, to be discussed, for the creation of a national coordination of access to information body, perhaps as an additional responsibility of the ombudsman, with operative and budgetary autonomy and with decision-making and sanctioning capacities in the administrative field, in charge of promoting and disseminating the exercise of the right to access to personal information and of protecting personal information in the possession of public entities.	The law requires the designation of a public Federal Institute of Access to Information, made up of five commissioners. It is independent in its operations, budget, and decision-making and charged with promoting and publicizing the exercise of the right of access to information, ruling on the denial of requests for access to information and protecting personal information held by agencies and entities.	Not mentioned in the law.	Not mentioned in the law, although Human Rights Commission is responsible for monitoring implementation of act, making recommendations, and public education.	Not mentioned in the law.
When does the law come into force?	Shall enter into force twelve (12) months from its enactment. In a first phase to be undertaken up to six months after the enactment of the draft law, the information officials shall be appointed and trained. In the second six months, the dissemination of information through Internet portals shall be established.	The law will take effect the day after its publication in the Official Diary of the Federation. The making public of information referred to in the law must be complete one year after the law takes effect. The heads of the agencies shall designate the liaison section and appoint the members of the committees to begin functioning no later than six months after the law has come into effect.	The public administration shall have a period of one hundred and fifty (150) days from the publication of the law to arrange its operations in accordance with the obligations arising from the law's regulations. However, the articles referring to those entities obligated to inform about the procedure and the cost of reproduction shall take effect the day following publication of the law. The period for Internet portals differs.	Minister must introduce a bill within 12 months after commencement of transitional agreements. For the first twelve (12) months from the date that the law takes effect, the maximum period of thirty (30) days to provide information shall be extended to ninety (90) days; and for the second twelve (12) months, the period of thirty (30) days shall be extended to sixty (60) days, except in cases where the period was already extended, in which case the 30-day provision shall remain in effect.	Comes into operation on the day indicated by the minister by notice in the <i>Gazette</i> . This was originally one year but was later extended, and the law has gone into effect in a phased-in basis.

OTHER PROVISIONS

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THE PROMOTION OF DEMOCRACY THROUGH ACCESS TO INFORMATION





IMPLEMENTATION OF AN ACCESS TO INFORMATION REGIME

Laura Neuman and Richard Calland¹

The effective implementation of an access to information law is the greatest challenge for governments. Without effective implementation, an access to information law, however well-drafted, will fail. Most of the countries in Latin America do not suffer from a scarcity of laws. Rather the opposite: There is a “hyperinflation” of legislation, with insufficient attention paid to the implementation of these laws. Paradoxically, much of government’s attention and civil society advocacy efforts over the past decade have focused on the passage of laws rather than their full implementation.

In considering jurisdictions that have effectively implemented a new access to information regime and those that have failed, we have identified a number of necessary components. First, there need to be sufficient and sustained political will and a concerted effort directed at changing the mindset of both the civil servants and the public. Second, the law itself must be drafted with implementation in mind. Finally, effective implementation is a joint partnership between the holders of information (government or the private sector) and the requesters (citizens, civil society organizations, media, etc.), and recognizing the dual responsibility helps us understand the nature of the challenge and contribute to the design of viable solutions.

POLITICAL WILL AND “MIND-SHIFT”

The establishment of an access to information regime can take enormous amounts of energy and resources, particularly in societies where a culture of secrecy has dominated the past or where there is no process in place for archiving and retrieving

documents. Daily, governments are faced with a myriad of priorities and the reality that there are not enough resources in the national reserves to meet all of the demands. Thus, once the access to information law is passed, there are some governments that claim credit for the passage but fail to follow through to ensure that the law will succeed in practice. Others, not realizing the enormity of the tasks necessary to implement the law, fail to commit the appropriate resources or simply lose interest.

The actions of governments in the implementation phase are often related to the reason and manner in which the law was passed. Examining the motive of government when passing the law may be indicative of its commitment level during the implementation phase. For example, where a government has passed the law merely to satisfy an international financial institution in order to receive a loan or debt relief or to join an intergovernmental organization, regional trade group, or common market, then there may be doubt about its true commitment to effective implementation. On the other hand, in cases where passage of the access to information law has been in response to civil society demand, there tend to be greater efforts toward implementation.

To more fully meet the ideals of a transparency regime, governments should strive to engage civil society throughout the process, and civil society must develop the capacity and willingness to respond. Cases like Paraguay, where a law was passed that did not meet international standards; Belize, where the law was never used; and Peru, where an access to

¹ This chapter is largely excerpted from *Establishing a Robust Transparency Regime: The Implementation Challenge — Theory and Practice*, L. Neuman and R. Calland, Transparency Task Force, Initiative for Policy Dialogue, forthcoming.



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information law was passed, only to be enjoined the next day for amendments, demonstrate the challenges to drafting and implementing an acceptable law. But we have seen clearly that when civil society is more deeply involved in the process, the law itself ultimately enjoys greater legitimacy and subsequently more use. Mexico is a wonderful example of this, as there were reportedly more than 300 information requests on the first day that the law became effective. The civil society engagement served to ensure that government remained focused and committed to implementing the law.

Moreover, the political will must be sustained, even when external events challenge the government's commitment. Many would say that the United States had one of the most liberal freedom of information systems. And yet, following the events of Sept. 11, more than 6,600 government documents were removed from their Internet sites in just a few weeks, and the administration acknowledged that there would be "purposeful delays" in responding to information requests. On Oct. 12, U.S. Attorney General John Ashcroft issued an internal memorandum that replaced freedom of information policy, which had been in effect since 1993. The memorandum stated, "I encourage your agency to carefully consider the protection of all such values and interests when making disclosure determinations under the FOIA... When you carefully consider FOIA requests and decide to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis..."² Newspaper reports characterized this memo as a retreat on freedom of information and a form of censorship.³ And "according to data collected by the Information Security Oversight Office of the National Archives

and Records Administration, the number of classification actions by the executive branch rose 14 percent in 2002 over 2001—and declassification activity fell to its lowest level in seven years."⁴

Most governments are used to functioning in a secretive fashion. The notion of transparency is invariably far beyond the range of experience and mindset of most public bureaucrats, and even more so in the case of the private sector. Therefore, it is necessary to achieve a fundamental mind-shift. The obstacle of what one might call a "mind-

set of opacity" is a common feature among nations, whereby some bureaucrats have an ingrained sense of ownership about the records for which they are responsible. Releasing them to the public is akin to ceding both power and control.

To move the holders of information beyond the lip-service recognition of transparency's virtues to the point where they are genuinely—conceptually and even emotionally—committed to it requires a huge effort. The experience in Jamaica, South Africa, and elsewhere around the world in countries that have a historical tradition and culture of patrician or authoritarian control of public information suggests that once the first awkward requests arrive, old attitudes resurface quickly. A law is never a panacea; without the will to implement effectively and the recognition that openness has a value that exceeds any passing discomfort caused by a "hard case request," it will achieve little but dashed hopes. Thus, it is essential to get buy-in from senior political stakeholders.

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² Memorandum for Heads of All Federal Departments and Agencies, From John Ashcroft, Attorney General, Subject Freedom of Information, Oct. 12, 2001.

³ "The Day Ashcroft Censored Freedom of Information," *The San Francisco Chronicle*, Jan. 7, 2002.

⁴ "Assessing the New Normal: Liberty and Security for the Post-September 11 United States," Lawyers Committee for Human Rights, 2003.



IMPLEMENTATION OF AN ACCESS TO INFORMATION REGIME

Once that is achieved, it is important to build on this will by identifying and cultivating “champions” at key nodal points in government. Education, developing a deeper conceptual awareness that creates a shared vision of the underlying rationale and philosophy for openness, also is an important related endeavor. In addition, getting adequate resources allocated, including infrastructural, financial, and human, for the implementation of an access to information law provides an explicit and exacting test of whether the necessary political will exists.

A mind-shift is necessary not only for civil servants and elected officials but also for citizens. In many countries there is a culture of acceptance and acquiescence, of not asking questions of your government or public officials. To impart the notion that information belongs to all citizens, and thus they have an absolute right to ask for it, can be as great a challenge as changing the public official’s reticence to share documents. Public awareness and education campaigns must emphasize that all people have the right to ask questions and to expect answers, and both governments and civil society organizations can and should engage in efforts to cultivate this mentality.

CONSIDERING IMPLEMENTATION
WHEN DRAFTING THE LAW

Once the access to information law is passed, it is too late to begin considering implementation issues such as archiving, record-keeping, designing a usable process for receiving and responding to requests, etc. The law itself must include clear and workable mechanisms for its effective implementation.

To impart the notion that information belongs to all citizens, and thus they have an absolute right to ask for it, can be as great a challenge as changing the public official’s reticence to share documents.

For example, it is easy when working on drafting an access to information law to become overly preoccupied with the exemptions portion of the bill, to the exclusion of other key provisions. While national security exceptions are clearly more “sexy” than the implementation procedures, they are often much less important in determining the bill’s overall value to citizens and in guiding public servants. Agency time limits for completion of information requests, fees, and appeals procedures are areas that must receive much greater attention.⁵

GOVERNMENT RESPONSIBILITY:
DEVELOPING THE SUPPLY SIDE

Without accurate, complete, and timely records and a means of finding and releasing this information, an access to information regime is bound to fail. Passing an access to information law does not alone guarantee the “right to information.” Rather, governments must commit to directing the necessary human and financial resources to establishing the necessary internal systems.

“Whether an FOI law succeeds in securing the entrenching of the right to information depends heavily on the predispositions of the political executives and officials who are required to administer it. Statutory entitlements could be undermined if government institutions refuse to commit adequate resources for implementation or consistently exercise discretionary powers granted by the law in ways that are inimical to the aims of the legislation.”⁶

⁵ See previous chapter *Access to Information Laws: Pieces of the Puzzle* for additional information relating to suggested procedures and processes.

⁶ “Administrative Discretion and the Access to Information Act: An internal law on open government?”, A. Roberts, *Canadian Public Administration* 42.5 (Summer 2002): 175-194.



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In implementing an access to information law, governments must develop the supply side—the means by which they will respond to civil society demand for information.

Time Line for Implementation

Properly implementing an access to information regime takes time. Unfortunately, there is often much pressure on government to put these laws immediately into effect. In Jamaica, Mexico, Peru, and South Africa, the governments gave themselves one year or less to implement the law. In each of these cases, they soon discovered the many obstacles. Although South Africa and Peru pushed through the implementation phase in the prescribed time, many of the necessary procedural details had not been resolved, causing unnecessary delays and obstacles for requesters. In Jamaica, the government was forced to postpone the law’s effective date on three different occasions and had to amend the enabling legislation to allow for entities to be phased in.

It is critical to the law’s legitimacy that once in effect, the various agencies can satisfy information requests. Thus, we encourage longer lead times for implementation. The time period must be long enough to build public sector capacity and inform citizens of their right but not so long as to lose momentum or appear to be faltering on the commitment, as is the case with Britain’s five-year implementation plan.

Options for an appropriate implementation scheme include: having all of government go into effect at the same time or a phased-in system whereby the law becomes effective first in a few key ministries and agencies and is then phased in over a specified period of time until all of government is on board. The advantages to the phased-in approach are that it

creates models that more easily can be amended or altered to address emerging problems before they overwhelm the entire information regime and that it allows the government to focus its energy on a few bodies at a time. Nodal agencies can serve as a vanguard for full, across-the-board implementation. During the initial phase, we recommend that responsible civil servants meet regularly to discuss systems capability and lessons learned and that these be applied to the next set of agencies that become effective. At the same time, interested nongovernmental organizations and citizens should capitalize on this time to prepare requests, become more familiar with the law’s value and defects, and engage positively with the first round of implementers.

One possible disadvantage to the phased-in approach is that governments may choose to include nonessential ministries or unimportant agencies in the first round of implementation, thus sending a signal that they are not serious about transparency. Secondly, requests may be made for information that is held by an agency for which the law is not yet in effect. This can cause problems as requests are trans-

ferred to bodies that are not under a duty to respond. The ability to transfer requests to “nonimplemented” agencies can serve as a loophole for providing information and certainly can create

great frustration for the applicants, as is presently occurring in Jamaica.

Moreover, governments may find that citizens are making more requests than expected or soliciting the most sensitive and embarrassing information. This “reality check” could cause government to delay further implementation. Therefore, if adopting a phased-in approach of effectiveness, we encourage time lines for each phase to be established as part of the enacting legislation or regulations.

Passing an access to information law does not alone guarantee the “right to information.”



IMPLEMENTATION OF AN ACCESS TO INFORMATION REGIME

Information Management

Without good systems to process requests, an access to information law will fail to deliver on expectations. Thus, an adequate information management system must be designed and established, which, in turn, has a viable relationship with the more general system of archiving.

Many countries that have recently passed access to information laws, such as Mexico and Peru, have rather precarious record-keeping traditions, or, in previously authoritarian governments such as South Africa, many records have been lost or deliberately destroyed.

In countries such as Jamaica, where there has been a long history of secrecy, passed down from the British colonial rule that ended 40 years ago, there are mountains of documents which have never been properly recorded or archived. The task of ordering all of these past documents is monumental and potentially unrealizable. In terms of human and financial resources, the start-up costs can become daunting when organizing and archiving hundreds of years of documents are contemplated.

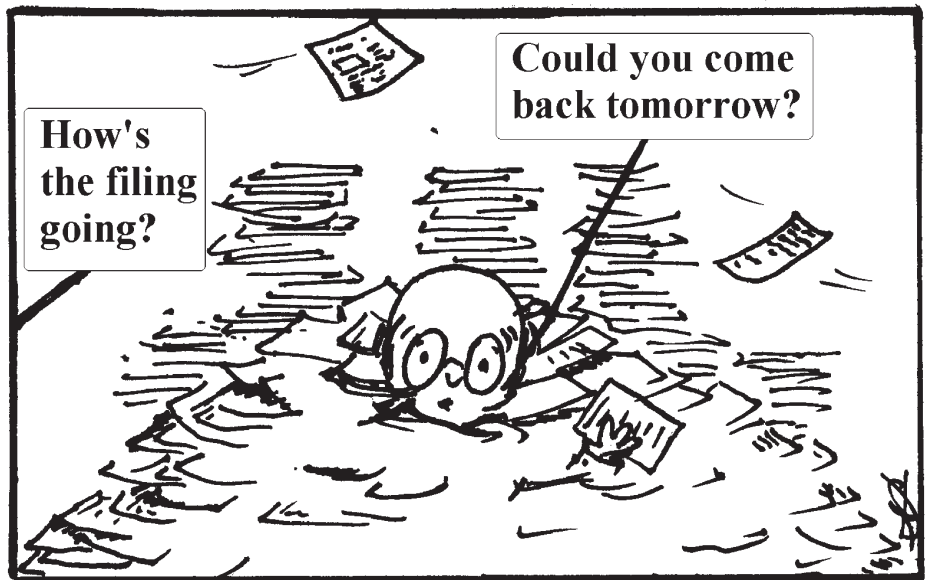
Rather than allow this to become an insurmountable obstacle, some advocates pragmatically have suggested that, in the initial stages of an information regime, governments ignore past documents and, rather, establish an archiving and record-keeping system for present and future

information. In terms of citizens' needs, it is often the contemporary documents such as budgets, policy decisions related to education and health, and information on crime and justice that are of greatest value.

Governments concerned with scarce resource allocation, such as Nicaragua, have considered getting the archiving system correct for current and future documents and then, over time, ordering the vast quantity of historical information.

The most important component of a record-keeping system, in terms of its direct relationship with the access to information law, is the categorization of records in terms of the duty to disclose under the law. Part of this process involves the creation of "road maps" of the records that exist. This is as important for the holders of information as it is for the potential requesters. Without knowing what records there are and where they are located, it is

Without good systems to process requests, an access to information law will fail to deliver on expectations.



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hard to imagine an information regime that will be anything other than frustrating for both holders and requesters. For this reason, many modern access to information laws such as those in Mexico, Jamaica, and South Africa include a provision for the creation of such road maps, sometimes termed “manuals” or “guides.”

In addition to establishing workable archival systems, standards defining “a record” must also develop and mature. As governments become aware of the depth and breadth of information that is open to the public, there are sometimes a backlash and an accompanying reduction in information generation. Fear of embarrassment or mistakes may portend the rise of “cell phone governance.” Important policy decisions are made at lunches, via telephone, or simply are not recorded, thus forfeiting the opportunity for citizens to enjoy the most meaningful benefits of the access to information law. As this practice becomes more common, access to information laws will need to respond with more detailed provisions relating to what constitutes a record and how it must be kept. Similar to the rule-making procedures in the United States and the Financial Management Act in Australia, to curtail the deleterious effects of “cell phone governance,” policy-makers might be mandated to keep records that, at a minimum, detail: who made a decision; when the decision was taken; why the decision was made; and the relevant sources used to make the decision.

After passing its own Access to Information Act in 2002, the Jamaican government swiftly created an access to information implementation unit based in the minister for information’s department. Although its work has covered areas such as materials development and education for public servants, it has also directed time and resources at improving the record-keeping system across government in order to smooth the way for the implementation of the law.

Establishing procedures for record-keeping, including retention schedules and classification systems, organizing existing documents, and training

all relevant public servants, may be one of the first and most time-consuming steps in implementing the new information regime. For this reason, governments should not wait for the passage of a law to get started.

Automatic Publication

Declaring the maximum number of records unconditionally available is the best approach for dealing with vast amounts of information: It limits the decision-making process for government—and is, therefore, less of a drain on resources—and is clearly better for the requester because the disclosure will be automatic. Indeed, the best implementation model is not only to disclose automatically as much information as possible but also to publish it at the point the record is created. This is what, in the freedom of information lexicon, is known as the “right to know” approach. Contemporary developments in the use and application of information, communication, and technology assist this process, in line with the modern notion of “e-government.” In Peru, for example, during the transitional government authority in 2001, when greater transparency was its watchword, the Department of Finance led the way with a Web site-based approach to openness, publishing huge volumes of information.

Clearly, using government Web sites is an important way of adopting a right to know approach, but there are dangers too. In the developing world especially, few people have access to the Internet. Moreover, with the changing technologies, even the most current advances may be outdated in the near future. Thus, any electronic record-keeping or publication scheme should be seen as a companion to hard copies and traditional publication rather than as a substitute.

Internal Systems

Internal systems and rules are important both for government, as a means to guide the activities on the front line and those public servants tasked with implementing the new law, and for civil society to understand the government’s actions vis-à-vis the



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access to information law. Applying to access the record of the internal system is one way of discovering the extent to which a government agency is taking the implementation issue seriously.⁷ Signs of internal trends toward transparency include training and the development of a manual for line managers and information officers and/or their units and internal rules relating to good practice and important procedural matters such as compliance with time limits. Also, good practice suggests that there should be a thorough internal system for recording requests, such as an electronic database that can itself be subjected to public and parliamentary scrutiny.

Related to this is the question of line management responsibility for implementation and for making disclosure decisions. Good implementation will lead to a clear delineation of responsibility supported, for example, by changes in officials' job descriptions and/or performance contracts and criteria. Most modern access to information laws create "information officers" or similar positions. One obvious way to test the strength of the implementation is whether or not such officials have, in fact, been appointed and whether they received specialist training.⁸ Sanctions for negligent record-keeping or failure to release information properly are necessary, but at the same time, civil servants must be supported in their efforts to promote a change in the culture of secrecy.

Strategic Planning and Training

Governments that are committed to the effective implementation of an access to information law will quickly draw up an implementation plan in consultation with the potential user community. One of the causes for optimism in the Jamaican case is that despite its government's historical culture of secrecy,

the access to information implementation unit carried out a consultancy exercise with civil society in August 2002, soon after the law was passed. This exercise, which The Carter Center facilitated, was repeated again in March 2003. This process enabled government officials to share, in a positive and safe setting, their own concerns with colleagues across government and individuals from civil society. For

the latter group, it enabled them to develop a better understanding of the obstacles facing civil servants and an opportunity to hold them accountable.

The first workshop posed the simple question, "What needs to happen to effectively

implement the new access to information law?" The workshop identified political will and human and financial resources (or a lack of them) as the chief obstacles to effective implementation. The second workshop was directed toward a more focused response to the obstacles, geared toward the then imminent date of the law's coming into force. It posited, "What needs to happen between now and the law's effective date to ensure the law's success?" One of the key findings of the workshop, which usefully prioritized competing needs and solutions, was that much focus had been placed on certain parts of the implementation plan while other areas, such as

Sanctions for negligent record keeping or failure to release information properly are necessary, but at the same time civil servants must be supported in their efforts to promote a change in the culture of secrecy.

7 At the time of writing, the Open Democracy Advice Centre, South Africa, is awaiting the response to requests made to all government departments and other important public sector entities (around 100 in total) to have access to their internal policy documents relating to the implementation of the South African Promotion of Access to Information Act.

8 ARTICLE 19's Principles on Freedom of Information Legislation, Principle 3, Promotion of Open Government, stresses the importance of training inside government bodies. See also Chapter 4, "Raising Awareness and Educating the Public and Duty-holders about the FOIA Rights and Obligations in Promoting Practical Access to Democracy—A Survey of Freedom of Information in Central and Eastern Europe," published by ARTICLE 19 in October 2002.



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the appointment and training of access to information officers and passage of the necessary regulations to operationalize the act, had been neglected. In the end, it was these sessions of shared experiences and problem-solving which helped prompt a social consensus about the way forward and allowed government to take the necessary decision to postpone implementation with less fear of civil society reprisal.

CIVIL SOCIETY RESPONSIBILITY: DEVELOPING THE DEMAND SIDE

During the implementation phase of the access to information regime, the response from civil society needs to be energetic and committed. Government has the responsibility for putting in place the necessary systems and processes while civil society must prepare to use the law and monitor government's efforts. It also needs to be strategic, with a coordinated, cross-sector approach and strategic alliances with investigative journalists, trade unions, churches, environmental groups, and human rights organizations, among others.

Most importantly, the civil society response should aim to link the access to information law to "real life" civil society activism. Building a multisector, cross-disciplinary coalition helps ensure that the law is not perceived to be an "elite right," for use by and for the benefit of only a narrow segment of society. Demonstrating the nexus between access to information and socioeconomic justice and fighting corruption is crucial to promote the value of the law and thereby to generate the requests for information that will bring the new law to life through its usage.

Thus, civil society organizations have responded to the passage of an access to information law in different ways in different places. Sometimes, as in Bulgaria or South Africa, specialist access to information organizations have emerged to monitor the implementation of the law and to provide training and request support. Both the Access to Information

Programme in Bulgaria and the Open Democracy Advice Centre in Cape Town also undertake litigation to enforce the right to access information. In other countries, such as the United States and India, expertise in using the freedom of information law has been accumulated by civil society organizations in order to serve their primary agenda—which could be health, anti-corruption, or accountability in the use of national security power.

As discussed in greater detail in the chapter "Access to Information as a Means to Promote Social and Economic Inclusion," in Rajasthan, India, MKSS, a social justice movement, led a campaign for a state access to information law and is now equally influential in inspiring its usage by and on behalf of rural communities. Their work, on a diverse range of policy issues that affect the rural poor, is giving life to their own slogan: "The Right to Know is the Right to Live."

Whatever model is adopted, civil society must be active in using the access to information law. In that way, the holders of information can be held accountable for their new responsibilities in the use, control, and disclosure of information, and the overall objective, that greater openness will empower people so that they can take control of their lives, becomes a living reality. A strategic and concerted civil society demand is just as important for an effective implementation regime as getting the supply side right.

CONCLUSION

The effective implementation of an access to information regime poses many challenges to both government and civil society. Each sector has a responsibility for ensuring the success of efforts to change the culture of secrecy, establish workable and realistic processes, and apply the law to improve governance and improve people's lives. By working together and confronting the obstacles, well-implemented access to information regimes ultimately will serve to enhance democratic processes for all.



CERTAINTIES AND DOUBTS IN THE DEBATE ABOUT AN ACCESS TO INFORMATION LAW IN BOLIVIA

GUADALUPE CAJÍAS

Even before assuming their posts as president of the republic and anti-corruption delegate, Carlos Mesa and Guadalupe Cajías had identified access to information as a critical issue. As members of the La Paz Association of Journalists' Honor Tribunal, they recognized the challenge of accessing public information and the need for such information for the media and all citizens.

In 2002, with the creation of the vice president's anti-corruption office, the debate on the necessity for access to state administrative documents intensified, with the proposal to establish a culture of openness that would allow full, free, and available access to all citizens.

President Mesa recognized the importance of an access to information law for increasing citizen participation in the lawmaking process. The passage and implementation of a comprehensive transparency and access to information law would allow all people to take part in the democratic process and remove the cloud of secrecy under which governments and civil servants have functioned in the past. The underlying principle of the new information regime is that all people have the right to seek, request, and receive public information with a limited number of exceptions, and only for those exemptions deemed necessary by the law.

REGARDING THE STATE

Bolivia has developed numerous initiatives designed to increase citizen participation and government accountability. However, in each of these cases, a lack of information has reduced the efficiency in its impact.

For example, beginning in 1994, the social control exercised by citizens was consolidated through the creation of oversight committees, who serve as counterparts to the local governments and are funded through the national popular participation initiative. These committees, sometimes formed by indigenous men and women with low levels of literacy, had the right to learn how, and on what, their municipal authorities spent the community's resources.

The Dialogue Law of 2001 created a mechanism for control over public entities (*Mecanimso de Control Social*) as a way in which representatives from civil society organizations could hold accountable the provincial councils and entities with control over funds provided under HIPC. HIPC, an initiative to forgive foreign debt for countries that are highly indebted, is conditioned on the allocation of financial benefits for services such as education, basic sanitary needs, and others.

However, the Presidential Anti-corruption Office (DPA) received complaints from both the oversight committees, especially the most rural ones, and the *Mecanismos de Control Social* because authorities denied them access to information and refused to hand over documents, even though they were public papers. Without the necessary information, neither the oversight committees nor the *Mecanismos de Control Social* would be able to meet their stated goals of increasing citizen participation and government accountability.

Systems exist to make central administration expenses transparent, such as the treasury's Web site that tracks government contracts, the SIGMA and SICOES systems, and the Internet Web sites of



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different public bodies. Despite this, citizens do not access this information, and professionals admit that it is difficult to navigate and to understand. Thus, its usefulness has proven limited.

Finally, we should point out that there were draft transparency, access to information, and other similar laws in Parliament, of which the public was not aware and that had not been debated outside the congressional chamber.

THE PROPOSAL

It is for these reasons that the Anti-corruption Office included in its plan of action a debate over legal proposals to facilitate access to information.

In September 2002, after he had been in office for only a month, the then Vice President Mesa and his team visited The Carter Center to learn about that institution's experience in supporting implementation of other similar laws. In addition, Guadalupe Cajías analyzed the experiences of other countries that already had such a law.

Some of the first findings from this research were:

- Citizen and all sectors' participation in the debate serve to enrich the law.
- Various examples from around the world show that the main challenge is the implementation of the law.
- It does not make sense to have a law only to satisfy international requirements.
- The cost of the true implementation of the law can be one of the largest obstacles.
- Overcoming a culture/mentality of secrecy is complex and challenging.
- Bolivian public administration varies in its organization and application of reforms and record-keeping, which is why, in many cases, even more recent files are not maintained.

Having learned from the other countries about the benefits of including citizens in the drafting of access to information legislation, the DPA held workshops in all nine provinces. A variety of stakeholders

attended these workshops, including, among others, representatives from grass-roots organizations whose fundamental interests and opinions were diverse. These workshops dealt with the current challenges of accessing relevant information, ideas for requesting and receiving information, and an analysis of the draft Access to Information Law from 2001. We compiled all of the ideas and recommendations that we received during those workshops.

As a result, the first draft of the proposed law took into consideration citizen inputs and seeks to balance the accomplishments, failures, and lessons learned from other like legislation. This proposed law is still in draft form and soon will be submitted to the national Parliament.

THE CHALLENGE

In the interim, President Mesa's government issued, through a Supreme Decree (Jan. 31, 2004), a more limited law in order to achieve transparency in the public sector and citizen access to information, as a gesture of the official public will to accelerate the process. The Supreme Decree's purpose was to provide a framework for a comprehensive transparency and access to information law and to encourage a variety of governmental entities to start establishing systems for providing information.

However, the implementation of the decree faced some difficulties that create doubt about which path to follow. We recognize that our citizen consultations regarding the Supreme Decree were not extensive enough and that we should involve more deeply journalists and public control representatives in the next discussions.

In addition, the degree of immaturity in the organization of files in the important offices of the central administration is more extreme than expected. The archiving and record-keeping systems have not been completely developed, and creating these procedures will be an important first step in establishing a new information regime.



CERTAINTIES AND DOUBTS IN THE DEBATE ABOUT A NEW LAW IN BOLIVIA

In spite of the high degree of political will, the process is slow. There are still many challenges to passing and fully implementing an access to information regime. Even after the Supreme Decree, there are municipalities that are not willing to submit information to the oversight committees and provincial councils.

A strong tendency to deny information continues among public officials. In order to achieve the new culture of transparency, it will be necessary to educate and train public officials. The costs have not yet been calculated, and a sustainable proposal of who will pay for this training, whether it be the user or the state, has not been determined. The deliberation on how to accomplish a good balance with respect to exemptions has recently begun, and surely it will be one of the most complex and polemic issues in the future of the law.

A new debate exists with regard to the excesses that can result from access to information. There are concerns that not all control and use of information are responsible. Secondly, it has been argued that a new regime, such as discussed, may immobilize actions in the state system or that a radical implementation of an openness system has the potential to affect people's privacy. Lastly, the advance of the systematization of information can, over the long term, favor state control over individuals.

We are cognizant of the concerns and challenges, and we will be careful to ensure that existing rights do not decrease and that the bureaucracy associated with access to information does not become an obstacle to the exercise of socioeconomic rights.

CONCLUSION

In summary, the debate in Bolivia is intense and full of challenges. The experiences and teachings from other countries show that this country can be a positive example: participatory, realistic, constructive, and inclusive, within the general desire to better current socioeconomic and political conditions of a multicultural and multilingual country.

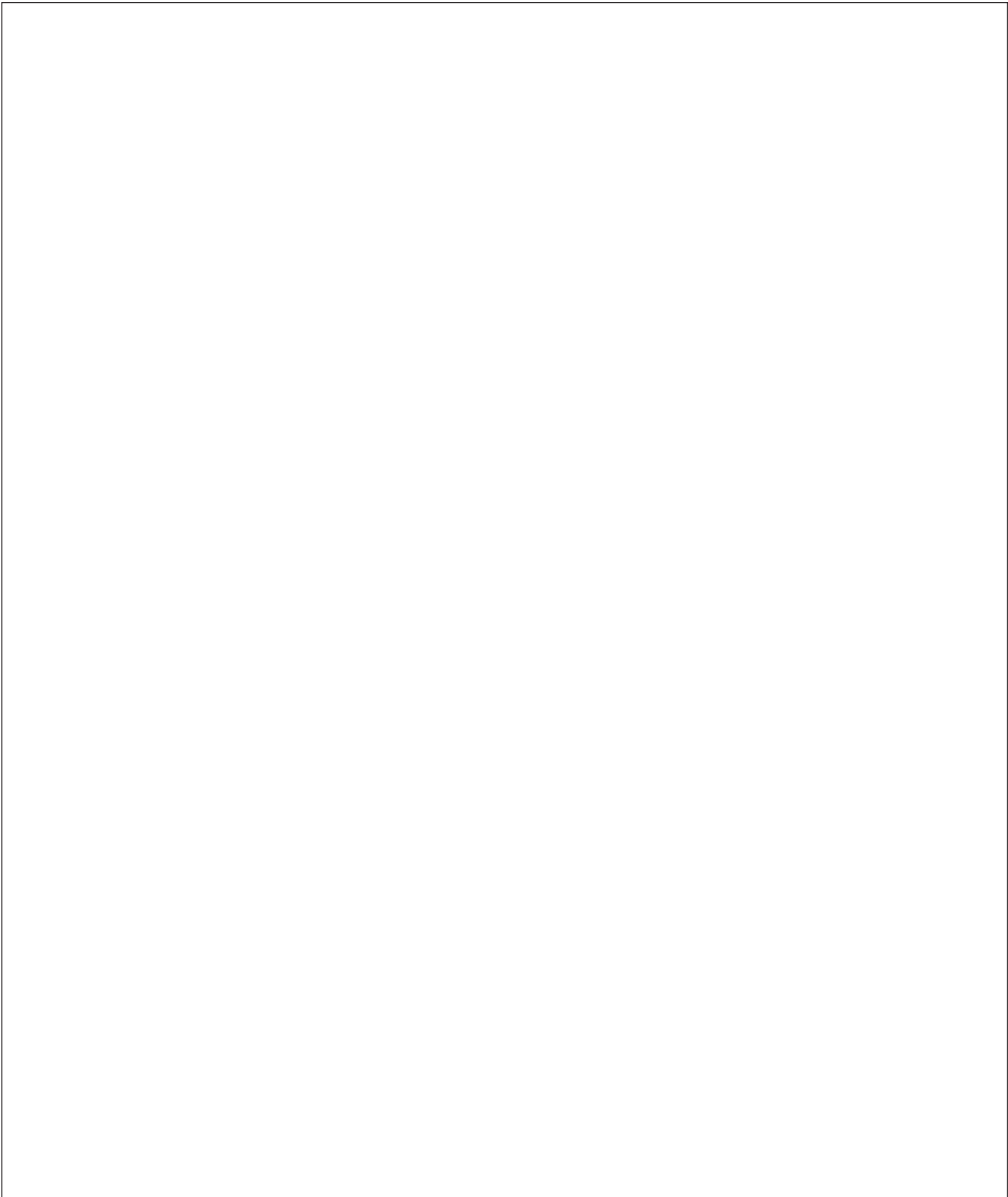
We believe that the passage of an access to information law will

further our democratic ideals. The DPA is committed to ensuring participation in the first draft of the law and to promoting the effective implementation and full enforcement of the law. We call on the people of Bolivia to join us in these efforts.

We are cognizant of the concerns and challenges and we will be careful to ensure that existing rights do not decrease and that the bureaucracy associated with access to information does not become an obstacle to the exercise of socioeconomic rights.



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ABOUT THE AUTHORS

Néstor Baragli is the principal analyst in the Division of Planning and Transparency Policies in the Anti-corruption Office of Argentina. In this position, he has coordinated the participatory procedure for creating the draft Access to Information Law for the executive branch of the Argentine government. He also works with and coordinates the relationship between the Anti-corruption Office and civil society organizations.

He has written various draft regulations and has participated in the formation, technical advisement, and development of the Committee for Follow-up on the Implementation of the Inter-American Convention Against Corruption (ICAC) of the Organization of American States and serves as lead expert representing Argentina. Mr. Baragli has been the director of the Corruption Control Program for *Poder Ciudadano* and the program director for the national chapter of Transparency International (TI) in Argentina, participating in both its formation and the creation of the Latin American and Caribbean chapter of TI (TI-LAC), where he collaborated in the writing of the manual “Time for Transparency in Latin America: the Anti-Corruption Manual for the Public Sector.”

In 1997, Mr. Baragli held the advisory position for the Buenos Aires Center for Citizen Control and Participation, where he organized and coordinated various public meetings and worked to build the relationship between the government and civil society organizations.

He has written articles and participated in numerous seminars and international conferences regarding the fight against corruption, citizen participation, civil society, the media, and the public administration oversight. Mr. Baragli is an attorney specializing in international public law, with his degree from the University of Buenos Aires.

Antonio Birbuet Díaz, born in La Paz, Bolivia, received his doctorate in economics from the Sorbonne University in Paris, France, and his bachelor’s degree in economics from the Universidad Mayor de San Andrés in La Paz. He has continued his education through courses, seminars, and workshops in economics, management, and public and business administration.

In the public sector, he served as deputy comptroller general of the republic. As a part of the Institutional Reform Project, funded by the World Bank, Mr. Birbuet was a consultant in the comptroller general’s office, where he directed a training program for the detection of fraud and corruption with experts from PriceWaterhouseCoopers from Spain. He has been the executive coordinator of the secretary pro tempore of the Río Group and executive coordinator of the secretary pro tempore of the Andean Presidential Council. He also has occupied executive posts in other branches of the Bolivian public sector.

In the business field, Mr. Birbuet has held upper management positions and has been a consultant and adviser to private businesses that are leaders in the Bolivian market. For many years, he has been a member of the Directory for the National Chamber of Industry and the National Chamber of Commerce. In the academic field, he has been a professor in the economics department of the Universidad Católica Boliviana and the Universidad Mayor de San Andrés. On numerous occasions, Mr. Birbuet has been invited to be a panelist and a speaker in seminars and workshops covering subjects such as economics and business administration. He has written publications both individually and in collaboration.



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Guadalupe Cajías is the anti-corruption presidential delegate. She has many years of experience as a correspondent and journalist. She received her bachelor's degree in journalism from the Pontificia Universidad Javeriana in Bogotá, Colombia. She has worked in the international news arena as a correspondent for channels such as *Univision* (United States) and *Cambio 16* (Spain and Colombia) and programs such as *El Día* (Mexico). Ms. Cajías served as the press coordinator for various international summits, including the VI Institutionalized Meeting of the Río Group and the European Union (Cochabamba), the Summit of the Americas on Sustainable Development (Santa Cruz), and the VI Summit of the States of the Andean Community (Sucre), among others.

She has published 10 books about history, culture, the media, and a historical novel. She has co-edited with other researchers textbooks about communications in Latin America and has received international awards for a radio play and a series of articles about children. She worked as a communications consultant and as a columnist for *La Prensa*, *El Deber*, *Los Tiempos*, and various other newspapers. In addition to her position as the anti-corruption presidential delegate, she teaches history at the Universidad Mayor de San Andrés, is a communications consultant for the comptroller general's office for the republic and the SNV Netherlands Development Organization, and is a columnist and contributor for Bolivian and Latin American newspapers and magazines.

Richard Calland is the executive director of the Open Democracy Advice Centre in Cape Town, South Africa, and head of the Right to Know program at the Institute for Democracy in South Africa (IDASA), where he has worked since 1995. Mr. Calland was a leading member of the 10-organization Open Democracy Campaign Group that conducted extensive research and lobbied intensively in relation to what was then the Open Democracy bill (now the Promotion of Access to Information Act 2000). Large parts of the bill were rewritten by the parliamentary committee as a result of the lobbying of the campaign group. The Open Democracy Advice Centre provides advice and support for organizations making requests for information under the Promotion of Access to Information Act and also conducts test case litigation.

Mr. Calland has written and spoken extensively on the issue of access to information legislation and implementation and in 2002, published the book *The Right to Know, The Right to Live: Access to Information*. He also has published numerous books and articles in the field of South African politics, including *Real Politics: The Wicked Issues* and *Thabo Mbeki's World: The Politics and Ideology of the South African President*. His most recent book, *Whistleblowing Around the World: Law, Culture and Practice*, was published in April 2004. He serves as a member of professor Joseph Stiglitz's International Task Team on Transparency.

Prior to coming to South Africa in 1994, Calland practiced at the London Bar for seven years, specializing in public law. He has an LL.M. in comparative constitutional law from the University of Cape Town (1994) and is a feature commentator for the weekly *Mail and Guardian* newspaper.



Jimmy Carter (James Earl Carter Jr.), 39th president of the United States, was born Oct. 1, 1924, in the small farming town of Plains, Ga. He was educated at Georgia Southwestern College and the Georgia Institute of Technology and received a B.S. degree from the United States Naval Academy. He completed his graduate work at Union College in reactor technology and nuclear physics. In 1962, he was elected to the Georgia Senate. He lost his first gubernatorial campaign in 1966 but won the next election, becoming Georgia's 76th governor on Jan. 12, 1971. He was the Democratic National Committee campaign chairman for the 1974 congressional and gubernatorial elections. Jimmy Carter served as president of the United States from Jan. 20, 1977, to Jan. 20, 1981. Significant foreign policy accomplishments of his administration included the Panama Canal treaties, the Camp David Accords, the treaty of peace between Egypt and Israel, the SALT II treaty with the Soviet Union, and the establishment of U.S. diplomatic relations with the People's Republic of China. He championed human rights throughout the world.

In 1982, he was named a distinguished professor at Emory University in Atlanta, Ga., and founded The Carter Center. Actively guided by President Carter, the nonpartisan and not-for-profit Center addresses national and international issues of public policy. Carter Center fellows, associates, and staff join with President Carter in efforts to resolve conflict, promote democracy, protect human rights, and prevent disease and other afflictions. Through health programs, the Center advances health and agriculture in the developing world.

On Oct. 11, 2002, the Norwegian Nobel Committee awarded the Nobel Peace Prize for 2002 to Mr. Carter "for his decades of untiring effort to find peaceful solutions to international conflicts, to advance democracy and human rights, and to promote economic and social development."

Laura Neuman is the senior program associate for the Americas Program. She is the access to information project manager and directs and implements Carter Center transparency projects, including projects in Jamaica, Bolivia, Nicaragua, and the United States. Ms. Neuman edited three widely distributed guidebooks on fostering transparency and preventing corruption and has presented at a number of international seminars relating to access to information legislation and implementation, most recently in Jamaica, Bolivia, Peru, Mexico, Argentina, Costa Rica, the United States, Canada, and Ecuador. Book and article publications include *Access to Information: A Key to Democracy*, "Using Freedom of Information Laws to Enforce Welfare Benefits Rights in the United States," and as co-author, "Compelling Disclosure of Campaign Contributions through Access to Information Laws: The South African Experience and Relevance for the Americas." Ms. Neuman is a member of the Initiative for Policy Dialogue Task Force on Transparency and an international associate to the Open Democracy Advice Centre, South Africa.

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Prior to joining The Carter Center in August 1999, Ms. Neuman was senior staff attorney for senior law at Legal Action of Wisconsin. She is a 1993 graduate of the University of Wisconsin Law School.



THE PROMOTION OF DEMOCRACY THROUGH ACCESS TO INFORMATION

Nardy Suxo Iturry is the principal representative for The Carter Center in Bolivia. She acts as a link between the government and civil society, supporting the efforts of the anti-corruption presidential delegation and civil society in their activities related to access to information. Prior to joining the Center, she was the director of Training and Citizen's Rights (2004), adjunct delegate of special programs in the National Office of the Ombudsman (1999-2003), director of Training and Citizen's Rights (1993-1999), and director of the Institute of Legal Research for the Universidad Católica Boliviana in 1994.

Among other positions, she was the consultancy coordinator for the Program for Access to Justice and Civil Society and Office of the Ombudsman for the Inter-American Development Bank in 1998 and drafted the Code for Children and Adolescents for UNICEF in 1990 and the Judicial Reforms in Bolivia for GTZ of Germany in 1996. Ms. Suxo has published and researched on various subjects including social economics, penal reform, constitutional studies, labor legislation, domestic workers, children, women, and those without freedom.

Ms. Suxo received her law degree from the Universidad Mayor de San Andrés and an additional degree in human rights from the Universidad Carlos III in Spain (CEBEM). She also has a degree in education from the Universidad Mayor in San Andrés and is currently a professor of law and jurisprudence in several universities.

THE CARTER CENTER AT A GLANCE

Overview: The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. A nongovernmental organization, the Center has helped to improve life for people in more than 65 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; improving mental health care; and teaching farmers to increase crop production.

Accomplishments: The Center has observed 53 elections in 24 countries; helped farmers double or triple grain production in 15 African countries; mediated or worked to prevent civil and international conflicts worldwide; intervened to prevent unnecessary diseases in Latin America and Africa; and strived to diminish the stigma against mental illnesses.

Budget: \$38 million 2003-2004 operating budget.

Donations: The Center is a 501(c)(3) charitable organization, financed by private donations from individuals, foundations, corporations, and international development assistance agencies. Contributions by U.S. citizens and companies are tax-deductible as allowed by law.

Facilities: The nondenominational Cecil B. Day Chapel and other facilities are available for weddings, corporate retreats and meetings, and other special events. For information, (404) 420-5112.

Location: In a 35-acre park, about 1.5 miles east of downtown Atlanta. The Jimmy Carter Library and Museum, which adjoins the Center, is owned and operated by the National Archives and Records Administration and is open to the public. (404) 865-7101.

Staff: 150 employees, based primarily in Atlanta.



MARTIN FRANK

THE
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