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Access to Information: Lessons from Latin America

Bill Orme

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REVISED VERSION

**Access to Information:
Lessons from Latin America**

Bill Orme

An invitation to debate

More than three centuries ago, the thinker, poet and British politician John Milton published one of the most important and famous texts against censorship: *Areopagitica*. It was one of the catalysts for a major debate on the protection of freedom of expression and press. Many centuries before him, the Greeks formed solid arguments on the importance of *doxa* (opinion) for democracy.

Discussions on the centrality of freedom of expression and access to information and knowledge for democracies, development, protection and promotion of other human rights are far from new.

However, there is no doubt that continuing advances in information and communication technologies, most notably the extraordinary growth of the Internet, bring unprecedented new dimensions to these discussions. We are witnessing the accelerating impact of this technological revolution on the protection and promotion of human rights, on the consolidation of democracies, on fostering development, and on political decision-making processes, which in turn directly affect the everyday lives of citizens.

The advancement of knowledge societies depends on our understanding of the universal right to freedom of expression and access to information in our increasingly connected world. Among the critical issues raised and shaped by these continuing changes are press freedom, media development, the right to privacy, open government, media literacy, and the role of new information technologies in shaping public policy.

The UNESCO Office in Montevideo, seeking to expand its role as a laboratory of ideas, is offering this series of Communication and Information Discussion Papers to its community of stakeholders and to all people interested in these critical issues. Written by leading experts in their fields, these papers seek to provide fresh insights and analyses which will be useful to policy-makers and other decision-makers, offering new perspectives and information relevant to the leading issues now facing the international community, as reflected in Agenda 2030.

These papers do not intend to be the final word. Instead, they aim to contribute to more open, active, pluralistic and well-informed debate on these key issues, today and over the coming years.

Happy reading!

From regulation to implementation: access to information policies in action

Born on the 29th May 1917, if he were alive today, American president John Fitzgerald Kennedy would've just celebrated his 100th birthday. President Kennedy once said, "The very word 'secrecy' is repugnant in a free and open society; and we are as a people inherently and historically opposed to secret societies, to secret oaths and to secret proceedings."

This strong pro freedom of information speech is the continuity of an important democratic tradition with roots that lie in the minds of liberal philosophers such as Jeremy Bentham and in the founding fathers of the American democracy, such as Madison, Adams and Jefferson.

To paraphrase the words of the acclaimed Danish scientist, Niels Henrik David Bohr, access to public to information (also referred to as freedom of information) was and remains a powerful weapon used to defy authoritarian behavior, wrongdoing, corruption, violation of human rights.

This is precisely why in its Article 19 of the Universal Declaration of Human Rights, access to information is inscribed as a right for every woman and man on this planet. Despite the adoption of this declaration by 193 United Nation Member States and following the first ever approved freedom of information law adopted in 1766 in Sweden-Finland, it has since taken more than 220 years for a dozen States to adopt access to public information laws in their countries.

Today, Universal Access to Information is not only engraved in the Universal Declaration of Human Rights, but is also national legislation in more than 100 countries throughout the globe. Access to information is also recognized by a number of International Courts and a goal set out in the new 2030 agenda for sustainable development.

This is good news, indeed! Now, the challenge for many countries, including a majority of those in Latin America is to make the shift from adopting these laws to implementing them and in some cases improving them.

This discussion paper addresses exactly these concerns. The well-known investigative journalist Bill Orme carried out interviews with three former Latin American Information Commissioners and Freedom of Information champions, Jacqueline Peshard, Juan Pablo Olmedo and José Eduardo Elias Romao. From their beginnings, all three experts were involved in process of implementing access to information policies in their respective countries, Mexico, Chile and Brazil. It is important to highlight the experts spoke freely and openly about the successes and the failures of their experiences during the implementation of these laws.

Bill Orme offers the reader an account on how such policies are implemented in the real world, using the testimonies of the three dedicated pro-freedom of information professionals that were involved in chairing the implementation of the laws in three complex Latin American countries.

We hope this paper works as a beacon for those commissioners, civil servants and civil society activist seeking to improve and foster the freedom of information policies in their countries.

Enjoy your reading!

The Editors

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Summary

Access to Information: Lessons from Latin America

At the General Assembly in September 2015, the member states of the United Nations unanimously adopted Agenda 2030, formulated to guide global and national development policies for the next 15 years. Agenda 2030 includes the 17 Sustainable Development Goals, or SDGs, each with multiple specific targets.

Among these targets is SDG 16.10, which obliges signatory countries to 'ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements'. This new universal commitment to public access to information represents a recognition by the international community that this principle is both a basic human right and a practical requirement for the achievement of all these global development objectives.

As of the end of 2016, 109 of the 193 UN member states had adopted laws to provide public access to official information, the majority them passed in just the past ten years. The implicit hope of SDG16.10 is to reach unanimity in the national implementation of these legal guarantees by or before 2030.

This report reviews the regional implications and challenges of the indicators endorsed by the UN to monitor progress towards SDG16.10, and shows how the Latin American experience in this area offers valuable lessons for other countries and regions. As the report highlights, Latin America has been in the vanguard of the global movement towards laws and systems for public access to information since Colombia adopted the region's first access to information law in 1985.

The study analyzes in detail three more recent laws: that of Mexico, adopted 15 years ago and considered a model for such laws worldwide; Chile's law mandating freedom of information and official 'transparency,' which has now been in effect for almost a decade; and Brazil's landmark access to information legislation, which just marked its fifth anniversary. These three laws share many technical characteristics, and each has had significant impact at both the national and regional level, influencing neighboring countries with more recent access to information laws. They also have common origins in historic national processes of democratic reform. However, they are also distinctively different in each national case, in terms of their technical details, patterns of popular use, and political culture and history.

The report draws upon in-depth interviews with three leading experts in the field, each of whom served as the chief official responsible for administering these new laws in their respective countries, and who graciously agreed to share their experiences and observations:

- **Jacqueline Peschard Mariscal**, former director of the Federal Institute for Access to Information of Mexico (IFAI, later 'INAI')
- **Juan Pablo Olmedo**, former president of the Transparency Council of Chile
- **José Eduardo Elías Romão**, the first "*Ouvidor General*" of Brazil

All three stressed that while the technical aspects of an access to information law are extremely important, what matters most is the law's implementation in practice, and ultimately, its social impact, which depends in turn on its daily use by the press, civil society, and ordinary citizens.

Each of the interviewees emphasized the differing motivations and social profiles of frequent users of the online information systems established by these access laws. A fundamental challenge for all three countries, and the region in general, the experts concur, is the deep socioeconomic 'digital divide' skewing patterns of access and understanding of these public information services. Another challenge, equally important in several countries of the region, is the need to protect journalists against threats and violence, a phenomenon that severely limits freedom of the press and citizens' access to essential information about their communities.

The experts interviewed urged more systematic regional cooperation in the design and management of these new access to information mechanisms, with support from multilateral institutions such as the OAS and the UN. Yet even taking into account the acknowledged need to improve existing national access to information access

systems, and the continuing challenges in adopting and implementing such laws in other countries in the region, the regional trends are positive, the report shows, with encouraging implications for Latin America's ability to fulfill its commitments under SDG16.10 well before the Agenda 2030 deadline.

Sumario:

Acceso a la Información: Lecciones de la América Latina

En la Asamblea General de septiembre de 2015 los países miembros de las Naciones Unidas adoptaron por unanimidad la Agenda 2030, formulada para guiar las políticas de desarrollo nacionales y globales para los próximos 15 años.

La Agenda 2030 incluía los diecisiete nuevos Objetivos de Desarrollo Sostenible (ODS), cada uno con múltiples metas o 'blancos' específicos. Entre ellos está la meta ODS 16.10, la cual obliga a los países firmantes a 'Garantizar el acceso público a la información y proteger las libertades fundamentales, de conformidad con la legislación nacional y los acuerdos internacionales.'

El compromiso universal de garantizar el acceso a la información representa un reconocimiento por parte de la comunidad mundial de que este principio es un derecho humano básico y, a la vez, un requisito para el logro de todos estos nuevos objetivos globales. A finales de 2016, 109 de los 193 estados miembros de la ONU habían adoptado leyes que garantizan el acceso público a la información, la mayoría en sólo los últimos diez años. La esperanza implícita del ODS16.10 es alcanzar la aprobación unánime de tales garantías legales por parte de los países de la ONU antes del año 2030.

Este informe hace una revisión de los indicadores endosados por la ONU para monitorear los avances hacia la meta ODS16.10 y sus implicaciones y retos a nivel regional. La experiencia latinoamericana en esta área ofrece lecciones valiosas para otros países y regiones en vías de desarrollo.

El informe destaca que América Latina ha estado en la vanguardia de este movimiento mundial hacia leyes y sistemas que garanticen el acceso a la información, desde la aprobación de la primera ley de esta naturaleza en la región en Colombia, en 1985. El estudio analiza en forma detallada tres leyes más recientes en la región: la de México, adoptada hace 15 años, y considerada como ley modelo a nivel mundial; la de Chile, que tiene ya casi una década de vigencia; y la de Brasil, que acaba de cumplir su quinto aniversario. Cada una de esas leyes ha tenido efectos importantes a nivel nacional y también regional, influyendo en países vecinos con leyes de acceso a la información más recientes. Comparten además orígenes comunes en procesos nacionales de reforma democrática. Sin embargo, son distintas en cada caso, en términos de detalles técnicos, patrones de uso popular, e historia política.

El informe se basa en gran parte en entrevistas de fondo con tres expertos en el campo, quienes estaban entre las primeras autoridades responsables de la administración de estas nuevas leyes en sus respectivos países y que compartieron sus experiencias y reflexiones sobre la materia:

- **Jacqueline Peschard Mariscal**, ex directora del Instituto Federal de Acceso a la Información de México (IFAI)
- **Juan Pablo Olmedo**, ex presidente del Consejo de Transparencia de Chile
- **José Eduardo Elías Romão**, el primer "Ouvidor General" en Brasil

Coinciden los tres en destacar que, aunque los detalles técnicos de una ley de acceso a la información son sumamente importantes, lo que importa sobre todo es la implementación e impacto social de la ley, la cual depende de su uso cotidiano por la prensa, la sociedad civil, y los ciudadanos comunes.

A base de estas entrevistas, el informe toma nota de los perfiles distintos de los usuarios más frecuentes de los nuevos mecanismos digitales establecidos para dar

al público el acceso a la información ahora garantizado por estas leyes. Un reto fundamental para estos tres países y la región en general, dijeron, es cerrar la 'brecha digital' socioeconómica que distorsiona los padrones demográficos de utilización de estos sistemas de información gubernamentales. Otro desafío, de igual importancia en algunos países de la región, es la protección de periodistas contra amenazas y ataques, un fenómeno que restringe la libertad de prensa y el acceso cotidiano de los ciudadanos a información esencial en sus comunidades.

Estaban de acuerdo los expertos en la importancia del intercambio regional de consejos y asistencia técnica en el diseño y manejo de los sistemas oficiales para el acceso a la información, con apoyo de instituciones multilaterales como la OEA y la ONU. Aun tomando en cuenta la necesidad de mejorar los sistemas de acceso a la información ya existentes y adoptar y poner en práctica leyes nuevas en otros países de la región, el balance regional en esta área es bastante positivo, indica el informe, con implicaciones halagadoras para el cumplimiento de la promesa del ODS16.10 en América Latina antes de la fecha tope de 2030.

Access to Information: Lessons from Latin America

Introduction

The first nation to enact a law calling for public access to information was the Kingdom of Sweden in 1766¹. But with few exceptions, it wasn't until late in the 20th century that other countries began following Sweden's lead.

The Western Hemisphere was in the vanguard of this new movement: The United States adopted its landmark Freedom of Information Act in 1966, Canada passed its Access to Information Act in 1983, and Colombia became the first Latin American country with an access to information statute in 1985.

Outside the Nordic countries, few democracies elsewhere had yet taken this step.

Though North America moved first, the Latin American democracies which followed from the 2000s onward are widely considered to have improved upon the laws in Canada and the United States. The laws guaranteeing access to information in Mexico, Chile, Brazil and Uruguay are more detailed and broader in scope, with applicability at all levels of government, both national and local.

With just four remaining exceptions - Bolivia, Costa Rica, Cuba, and Venezuela – most Latin American countries now have freedom of information laws, including several considered among the best in the world.

Latin America has set an example, making greater progress in this area than any other region of the global South, and by some measures surpassing Europe as well. Yet Latin American experts in the field say current laws and mechanisms in most countries could be further improved, and more support could be provided regionally to ensure that all countries in the hemisphere adopt and implement access to information regimes.

In 2015, United Nations unanimously adopted the Sustainable Development Goals², which include a pledge by all countries to “ensure public access to information” (SDG16.10). This new universal commitment to freedom of information represented a historic recognition by the world community

that this is both a basic human right and a requirement for progress in all of these global goals. Advocates for this target successfully argued that without a free flow of information about these seventeen complex development objectives, the Sustainable Development Goals cannot be meaningfully monitored, much less achieved.

By the end of 2016, 109 of the 193 UN member states had adopted legal guarantees for public access to information³. Many of these laws were passed only recently, however, and have yet to be fully implemented. A number of other countries are now actively discussing adoption of access to information laws in their national legislatures. A few countries contend that such laws are not needed in their own national systems to ensure public access to what should be public information.

Achieving SDG16-10

Progress towards achievement of the access to information commitment in SDG16.10 will be measured by both the passage and implementation of national access to information laws. Ideally, this new commitment by all UN member states should not only accelerate the adoption and use of such statutes, it will also serve as a safeguard against the possibility of future governments repealing or declining to enforce access-to-information laws already on the books.

As with all the SDGs, the aspiration is to reach universal compliance by 2030. UNESCO has been entrusted with the task of reporting to the UN on the adoption and use of these laws, based on information from the member states. To raise awareness worldwide about this important principle, UNESCO's member states decided in 2015 to designate an ‘International Day for Universal Access to Information,’ to be celebrated every September 28th.⁴

The official text of SDG16.10, from the 2030 Agenda for Sustainable Development⁵, approved unanimously by the General Assembly in September 2015, is the following:

1 In 1766 the Kingdom of Sweden encompassed the territory of present-day Finland. Primary authorship of the legislation - Konglige Majestäts Nådige Förordning, Angående Skrif- och Tryck-friheten (His Majesty's Gracious Ordinance Relating to Freedom of Writing and of the Press) – is credited to Anders Chydenius, a Finnish member of the Swedish parliament. <http://www.painovapaus250.fi/en/press-freedom-250-years>

2 SDGs – official UN text (<https://sustainabledevelopment.un.org/sdgs>)

3 Foia-net: <http://www.freedominfo.org/regions/>

4 On 17 November 2015, UNESCO adopted resolution 38 C/70 declaring 28 September the as International Day for Universal Access to Information (IDUAI). <http://en.unesco.org/iduai2016/about-day>

5 2030 Agenda <https://sustainabledevelopment.un.org/post2015/transformingourworld>

Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.

After two years of UN debates, proposed measurement indicators for SDG16.10 and most other SDG targets were endorsed for official UN use by the UN Statistical Commission at its annual meeting at the UN in New York in March 2017⁶. (All SDGs indicators should be subjected to further review and possible revision in 2020, and again in 2025, the Statistical Commission recommended to the General Assembly.)

This is the indicator that was adopted to monitor the ‘fundamental freedoms’ component of SDG16-10:

“Number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates in the previous 12 months” [Indicator 16.10.1; UN Sources: UNESCO and the Office of the UN High Commissioner for Human Rights]

The indicator chosen for the access to information commitment of SDG16-10 is:

“Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information” [Indicator 16.10.2; UN Source: UNESCO]

Legal precedents and practices in Latin America

How does this work in practice? Do access to information laws function as their architects and supporters intended? Can their use and impact be measured? This paper looks to the specific examples of Brazil, Chile and Mexico for some answers.

Because of its pioneering experience in this area, Latin America has valuable lessons to share in the implementation of access to information laws, including rigorous monitoring of compliance by the many government bodies covered by the laws.

Beyond the widespread adoption of these laws in the region, Latin America has been in the vanguard of the movement to create open public archives of official records of all kinds, from historical and legal documents to transcripts of government meetings to budgetary and other financial data – digitally as well as physically.

- Colombia was one of the first countries to enact a comprehensive freedom of information law, in 1985, long before most other long-established democracies took such steps. The pioneering Colombian ‘Law 57’ was substantially strengthened by amendments in 2011 and again in 2014.
- Mexico’s 2002 *Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental* is considered a model for such legislation, both in the law’s far-reaching mandate and its provisions for implementation, including independent resources and legal authority for INAI, the National Access to Information Institute⁷, which oversees the law’s enforcement. In the global rankings of freedom-of-information laws by the Canada-based Centre for Law and Democracy (CLD), Mexico’s law is rated the best in the world.
- The more recent access to information laws in Chile (2008) and Brazil (2011) drew on lessons from their Colombian and Mexican antecedents as well as other international examples, such as the landmark South African constitution of 1996 and the U.S. Freedom of Information Act of 1966.
- Most Latin American access to information laws require governments to provide free online access to specialized websites where citizens can search archives for official data and documents and request further information.
- Mexico and Brazil both offer innovative legal approaches for federally organized national governments, with access-to-information laws backed up by constitutional guarantees and applying to state and municipal governments as well as to all federal ministries, agencies and public corporations. This is not the case with laws in some other federal systems, such as the United States, where the Freedom of Information Act applies only to the executive branch of the national government; the 50 U.S. states each have different systems and criteria for providing access to official information.
- The Organization of American States (OAS) has played an important role regionally, experts say, providing both legal impetus and technical support for the adoption of successful access to information laws. The OAS drafted its own ‘model law’ as a standard and point of reference for legislators tasked with drafting or amending access-to-information laws, and the OAS Rapporteur for Freedom

6 UN Statistical Commission (March 2017): <https://unstats.un.org/unsd/statcom/48th-session/documents/>

7 Originally “IFAI,” the Federal Access to Information Institute.- <http://inicio.ifai.org.mx/SitePages/ifai.aspx>

of Expression has strongly supported the enforcement of these laws throughout the hemisphere⁸.

Laws without borders: Setting examples, providing support

Countries with years of experience with access-to-information regimes can offer valuable lessons to countries, which have recently adopted such laws. After Chile's law went into effect in 2009, for example, the four member of the country's new Council of Transparency were invited by Mexico to visit and spend a week observing the operations of its Federal Access to Information Institute. "The generosity of Mexico in sharing its experience with us was invaluable," said Juan Pablo Olmedo, who was the first president of the Council, established to oversee the implementation of Chile's law.

For countries outside the Western hemisphere, the Latin American experience in this area is also worth studying – not only by the many nations in Africa and Asia with newly enacted freedom of information laws, but also European countries which have also only recently put access-to-information systems in place.

The Canada-based Centre for Law and Democracy (CLD) compiles regular rankings of national access-to-information laws, based on a detailed analysis of their differing legal provisions, enforcement mechanisms, online accessibility, and other factors⁹.

The Centre does not attempt to monitor the implementation or impact of these laws; its 'Global Right to Information Rating' is based solely on technical evaluations of the quality of the laws and their related constitutional provisions as legal instruments for their stated purpose of guaranteeing public access to information.

On that basis, the CLD index ranks Mexico's law number one in the world, out of the more than a hundred such national laws analyzed in its rating system. (The CLD evaluation takes into account revisions of Mexico's law adopted in 2015.)

Brazil's law is the next highest-ranked in Latin America, at #22. That is just one notch below South Africa, lauded as a global leader in the field for the pioneering freedom-of-information provisions in its 1996 post-apartheid constitution.

Colombia's 1985 law is ranked #30, and Chile's 2008 law is #43 in the CLD list. It is worth noting that these rankings are higher than those awarded to Canada, the CLD's home country, which is rated #49 on their scale. Mexico, Brazil, Colombia and

Chile all also outrank the 1966 Freedom of Information Act in the United States, generally considered the first comprehensive access to information law, which is rated at #55; among several often-noted deficiencies of the US 'FOIA' are its exclusive applicability to the executive branch of the national government in a federal system with 50 states and thousands of other local jurisdictions.

Perhaps most surprising, the famed freedom of information law of Sweden – the world's first, adopted by the parliament in Stockholm two a half centuries ago, as part of a broader "Ordinance Relating to Freedom of Writing and of the Press" – comes in at only #45 in the CLD index.

There are legal and technical reasons for Sweden's relatively low ranking. Yet Sweden's position illustrates an important paradox of freedom of information laws: Citizens in countries with long traditions of transparency and public disclosure have less need to use such statutes, as most official information they seek is already available in publicly accessible archives, either physical or digital. Broader press freedom and anti-censorship guarantees – both of which were integrally incorporated into Sweden's 1766 law – are further essential requirements for the free flow of information, both official and unofficial. A good freedom of information law alone does not guarantee good public access to information.

Mexico, Chile, Brazil: Three case studies

This report focuses primarily on the access to information laws of Mexico, Chile, and Brazil, with interviews outlining the professional experience and personal views of officials who have had responsibility for overseeing the administration and enforcement of these laws in the three countries. The report draws on the professional experiences of recognized experts in the field from these three countries, each of whom has presided over the supervisory body charged with implementing their respective national access to information laws:

- **Jacqueline Peschard Mariscal**, former director of Mexico's Federal Institute for Access to Information (IFAI)
- **Juan Pablo Olmedo**, former president of Chile's Council of Transparency
- **José Eduardo Elias Romão**, the first "*Ouvidor-Genera*l" in Brazil

Colombia, as noted, was the first Latin America country to adopt a law specifically guaranteeing

8 OAS Human Rights Commission: Derecho de Acceso a la Información en el Marco Jurídico Interamericano. Segunda Edición. (2012) (<http://www.oas.org/es/cidh/expresion/publicaciones/>)

9 Global Right To Information Rating (Centre for Law and Democracy) (<http://www.rti-rating.org/>)

public access to information, in 1985. Yet Colombian and international legal experts in the area largely agree with the consensus view of Colombian journalists and civil society activists that the law was passed with serious structural deficiencies which have contributed to its relative lack of popular use and impact, compared with the more recent laws of other major countries in the region.

To Colombia's credit, the Colombian judiciary has demonstrated great professionalism and independence in adjudicating suits and appeals for public access to official information based on this law over the past four decades. But with neither a separate, specialized supervisory body nor an online querying and information access system – as in Mexico, Brazil, and Chile – the law has remained underutilized. In a recent survey of local journalists throughout Colombia, conducted by the Proyecto Antonio Nariño, only a few respondents said they had ever made use of the law, and many said they were unaware of its provisions.

This is not the case in Mexico, Brazil, or Chile, however. In all three countries, journalists and civil society activists had lobbied hard and long for the adoption of access to information laws. These laws are now used routinely by reporters, civic activists, corporate lawyers, academic researchers, and ordinary citizens, as attested by the reports issued annually in each country on queries received and responses provided through these national access to information systems.

Political contexts: Turning the pages of history

The access-to-information laws of Mexico, Brazil and Chile have a common genesis.

In each case, passage of the laws represented a deliberate rejection of the country's recent authoritarian past and a collective effort to build strong legal safeguards against a return to opaque, undemocratic rule in the future. The standard of disclosure established by the laws apply to all levels of government: national, provincial and municipal. The laws established online information services which are available free of charge to all members of the public, as a citizen's basic right.

In Mexico, the 2002 access to information law was drafted and put into practice as a conscious effort to consolidate the country's newly open and competitive multiparty democracy, with critical support from civil society and independent news media. Chile's law was written and backed by political leaders and activists who had experienced first-hand the harsh opacity and arbitrariness of military rule, and who sought to strengthen the country's restored democracy by obligating the government to be more transparent and accountable. Brazilian public support for access-to-information reform was driven in good part by public determination to shed light on the country's sup-

pressed history of military rule, with a new social democratic government agreeing to open long-sealed archives to public scrutiny. As with Mexico, journalists in Brazil played a key role in advocating for the law.

In all three countries, the increasingly routine use of these laws by civil society and the news media has shaped important public policy debates, a testament to the broad scope of the laws and the professionalism of the laws' administrators.

Mexico is widely seen as a model by access-to-information advocates in the region – and not just for its law being among the first, or for being ranked first in the world by specialists in the field. The Mexican example is seen perhaps most significant in the way the law emerged from a broad-based reform movement covered intensively by the national press and including civil society groups and political parties spanning the country geographically and ideologically.

Mexico's law deserves its high international ranking as a well-designed legal instrument, but the key to its success has been its support and use by media and civil society, Jacqueline Peschard says.

"It's a very respectable law, even an exemplary law," she said. "It's a law that imposes basic standards and transparency obligations on all the states as well as on the federal government. But what is equally important is that civil society and media groups participated in designing and promoting the law, and now they are using it."

"Journalists throughout the country are very familiar with the law and make use of it, both on the federal and state level," Peschard added. "This is also true of civil society groups. Ordinary citizens use it to look for personal documents and information on local community issues, but most users of the law are seeking information in their professional capacity, as part of their jobs."

José Eduardo Elias Romão notes that the Brazilian legislators, lawyers and civic activists who collaborated in drafting Brazil's law looked carefully at Mexico's example, especially its applicability in a similarly federal system to government bodies at all levels, national and local. Brazil's bill also established an internet-based government information system modeled after Mexico's "Infomex" service. In Chile, similarly influenced by Mexico, the Council of Transparency manages a public website with direct access to government information offices and databases and user-friendly portals for public information requests.

Yet neither Brazil nor Chile adopted provisions similar to Mexico's safeguarding the managerial autonomy of the oversight body for the new law, Romão and Olmedo both lamented. *"The Mexican model is still the only real model in the region,*

both for the law itself and for the institution administering that law," Olmedo said.

Romão also points to the greater professional autonomy and higher public profile of the officials leading Mexico's INAI compared to their counterparts in Brazil, Chile, and most other Latin American countries with freedom of information regimes.

Peschard, with some caveats, largely agrees with the positive views of outside experts on the quality of Mexico's law. But she emphasizes that cultural and political factors can be more important than legal technicalities, once certain basic standards are met. *"The problem lies not so much in the laws themselves, but in whether they function in practice,"* she said.

One lesson from the Mexican experience, Peschard said, is the importance of ensuring that provincial and local governments and smaller state agencies have the technical and budgetary capacity to meet their obligations under these laws. This takes time, resources, and constant oversight, she stressed. Journalists and civic activists also need training in the use of these laws, she notes.

"Civil society is demanding and acquiring greater technical capacity to use these laws, which is positive," said Peschard. *"But technical capacity is just one part of it. You need a civil society with critical mass and an active commitment to social change. You also need an informed, engaged, independent media. And you need political will within government. You need all these things."*

Recommendations & Best Practices: Points of Agreement

These three past managers of national access to information systems - each interviewed separately for this report - had many broad areas of agreement on what is required for such regimes to function effectively.

Among these points of consensus, based on their professional experience:

- Access to information laws should include provisions guaranteeing the independence of the institutions and officials charged with managing implementation of the laws and the information systems they created
- The laws should apply to government at all levels – national, provincial and municipal

– with clear minimum legal standards and obligations, and sufficient financial and personnel resources to enable compliance

- A good, clear law is essential, but just a start: the key is active use of the law by media, civil society and ordinary citizens acting in the public interest - and the development of a 'culture of transparency' within government
- Proactive, accessible public disclosure of official information by government at all levels is preferable to the use of formal request mechanisms whenever possible – systematic disclosure should be the norm, not the exception
- Access to information statutes in themselves cannot guarantee public access to information, either official or unofficial: These laws can function for their intended purpose only in a legal and political environment where freedom of expression and independent media are respected and actively protected
- Access to information laws cannot function properly unless government records are organized and available in professionally managed archives, which requires substantial financial and human resources; these public records should ideally be available digitally as well as physically
- The region's deep socioeconomic inequalities are reflected in and exacerbated by unequal access to information in the internet age, with corrective action required to close this unjust digital divide
- The growth, use and management of access to information laws is creating a new professional subculture of access-to-information specialists in the region. Government officials, investigative journalists, academics and others responsible for managing or using access to information systems in Latin America say they would benefit from more systematic interaction with their peers in other countries, perhaps through a regional professional association or by broadening participation in the Transparency and Access to Information Network (RTA), now comprised of the government agencies overseeing such laws and systems in Latin America and the Caribbean.¹⁰

10 RTA is a network of government agencies in Latin America and the Caribbean with oversight responsibilities for transparency and access to information regulations. Members include: The Ministry for Institutional Transparency and Fight against Corruption of Bolivia; The Office of the Comptroller General of the Brazil; The Council for Transparency of Chile; The Ombudsman of Ecuador; The Institute Access to Public Information in El Salvador; The Federal Institute for Access to Public Information Data Protection of Mexico; Defender A of the People of Peru; And the Access to Information Unit Of Uruguay. Participant as Associate Members: the Government of the Autonomous City of Buenos Aires, represented by the Under-Secretariat for Public Affairs of Argentina; The Provincial Direction Anti-Corruption and Transparency of the Public Sector of the Ministry of Justice and Human Rights of Santa Fe, Argentina; The Undersecretary of Transparency and Anti-Corruption of El Salvador; The Commission Presidential of Transparency and Electronic Government of Guatemala; and the High Level

- Regional and international institutions have played a vital role in the expansion of freedom-of-information laws and technical advice, such as the OAS and its 'model law' for access to information. Some experts say the OAS should go further, strengthening recommended access-to-information standards as a requirement for democratic governance – either as an amendment or an agreed interpretation of state obligations under the OAS 'Democratic Charter' of 2001. Article 4 of the Charter states: "Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy."
- The inclusion in the SDGs of Target 16-10 "ensuring public access to information" is seen as a potentially important mechanism to accelerate and monitor progress in this area over the coming years - and to act as a check against possible future repeals or backsliding in enforcement of these laws.

The SDGs, press freedom, and access to information in Latin America

The SDG target 16-10 was intended to highlight the critical linkage between 'public access to information' and 'fundamental freedoms,' including freedom of the press.

The two SDG16-10 indicators proposed by UNESCO and endorsed by the UN Statistical Commission include data on the implementation of access to information laws and reports on journalists who have been murdered in reprisal for their work. A good record in the first category is not always paralleled in the second, however.

The challenge of enforcing and measuring the "protection of fundamental freedoms" in Latin America and elsewhere is beyond the scope of this report. The integral relationship between public access to information and respect for basic civil liberties cannot be overstated, however. These mutually reinforcing principles were combined in one single target of the SDGs for good reason.

Truly open and effective public access to information depends upon the protection of the basic civil liberties principles articulated in the Universal Declaration of Human Rights, including freedom of expression. And conversely, the free flow of information is a prerequisite for enforcement of all these basic human rights.

The two official indicators for the SDG16.10 were designed to reflect that interrelationship. In assessing compliance with SDG16.10 as a whole, both components of the target must be taken into account.

In 2016, the first year in which the new UN goals were in effect, there was important progress toward the SDG16-10 objective of making public access to information a universal norm. Six more countries adopted freedom of information laws for the first time. A solid majority of UN member states – 109, as of the end of 2016 - now have such statutes on the books. Implementation of newly passed laws is the essential next step, with some countries moving more quickly than others.

On the regional level, the principle of public access to information is strongly supported by the African Union, the Council of Europe, and the Organization of American States, among other multilateral bodies. And on a practical individual basis, continuing increases in internet connectivity, cell-phone capacity and online resources are giving more people access to more sources of information than ever before in history.

Yet the overall state of 'fundamental freedoms' was far less encouraging in 2016. International human rights organizations pointed to worsening suffering and repression of migrants; mounting civilian casualties from attacks by both terrorist groups and government armed forces; the imposition of restrictions on civil liberties in response to real or perceived security threats; and the rising appeal of authoritarian populism in the North and South alike, among other disturbing trends.

In the first sentence of its 2015-16 "State of the World" report, Amnesty International bluntly declared:

"International protection of human rights is in danger of unraveling as short-term national self-interest and draconian security crackdowns have led to a wholesale assault on basic freedoms and rights."¹¹

In its annual *Freedom in the World* report, Freedom House stated:

"A total of 67 countries suffered net declines in political rights and civil liberties in 2016, compared with 36 that registered gains. This marked the 11th consecutive year in which declines outnumbered improvements." This negative trend was accelerated by "setbacks in political rights, civil liberties, or both, in a number of democratically governed countries rated 'Free'

Commission for Anticorruption of the Presidency of Ministers of Peru. Also participating as members are the Transparency Secretariat of the Republic of Colombia; The Cooperation Program Regional EURO-social; the Office of the Attorney General of Colombia; the Attorney for Human Rights of Guatemala; the Institute of Access to Public Information of Honduras; and the Organization of American States (Source: OAS).

11 Amnesty International: <https://www.amnesty.org/en/latest/research/2017/02/amnesty-international-annual-report-201617/>

by the report, including Brazil, the Czech Republic, Denmark, France, Hungary, Poland, Serbia, South Africa, South Korea, Spain, Tunisia, and the United States," Freedom House reported.¹²

In the specific area of press freedom, with its direct bearing on public access to information, the Committee to Protect Journalists (CPJ) reported 48 confirmed cases of journalists killed in 2016 as a consequence of their profession – a disturbingly large number, though a significant drop from the death tolls of recent years.¹³

Reporters sans Frontiers (RSF) said its global and regional indices for 2016 revealed nonetheless a

"deep and disturbing decline in respect for media freedom throughout the world."¹⁴ Warned Christophe Deloire, the head of RSF: *"The climate of fear results in a growing aversion to debate and pluralism, a clampdown on the media by ever more authoritarian and oppressive governments, and reporting in the privately-owned media that is increasingly shaped by personal interests."*

CPJ's 2016 'Impunity Index' – tracking the chronic official failure to investigate or prosecute most murders of journalists worldwide – showed an encouraging increase in convictions for such crimes last year in several countries with previously poor records in this area. CPJ added:

"In another positive development, more countries on this year's index participated in UNESCO's impunity accountability mechanism, which requests information on the status of investigations into killed journalists for the U.N. agency's biennial report on journalist safety."

Yet most murders of journalists remain uninvestigated and unpunished, CPJ reports.

The country that perhaps best exemplifies this dichotomy is Mexico. A recognized global leader in access to information legislation, Mexico also has the unfortunate distinction as the country that become the most dangerous for journalists in the Western hemisphere. In the ten years that its Access to Information Law has been in effect, there have been at least 21 cases of Mexican journalists who were murdered without any subsequent arrests or prosecutions for the crimes, according to CPJ. Most were killed by criminal cartels, it is widely presumed; the basic facts of these cases have yet to be established in a court of law, however.

That decade-long record of unpunished homicides of journalists earned Mexico the number six ranking globally in CPJ's 2016 'Impunity Index.'¹⁵ Four of the first five countries in the CPJ Index – Somalia (#1), Iraq (#2), Syria (#3), and South Sudan (#5) – have experienced major armed conflicts over the past decade, with journalists among the many civilian victims. The sole exception was #4, the Philippines, where – like # 6 Mexico – most killings of reporters have been ascribed to criminal groups operating with suspected official collusion.

One consequence of this impunity is the self-censorship practiced by many threatened local reporters and news organizations, an understandable self-defense mechanism but one which deprives the Mexican public of access to essential information about crime and corruption.

In April 2017, one respected and financially successful provincial newspaper, El Norte of Juarez, in the state of Chihuahua on the U.S. border, took the extraordinary step of closing its doors after the most recent murder of one of its staffers, Miroslava Breach. In the state of Veracruz, 17 journalists were reported killed during the six-year term of a governor later charged by federal authorities with multiple counts of corruption. Many other journalists left the state or simply stopped reporting, depriving citizens of essential information. Other Mexican states suffered similar 'news blackouts' due to violence against local journalists.

Despite the continuing threats and violence against reporters, however, the mandatory public disclosure of official data and documents has made government far more transparent at both the federal and state level, Peschard argues.

Mexican people "not only have more information at their disposal now, but they also know how to 'translate' or interpret this information, due in part to the existence of this law, and also to a more mature and independent news media,"

Peschard said. "Only in the last ten years or so has investigative journalism been a norm in the profession in Mexico. The journalists are at greater risk, without question, but people are better informed than in the past. This is the paradox. "

Many Mexicans remains skeptical about the law's impact, however. Critics point to the notorious case of the 43 students who "disappeared" from the town of Iguala in an apparent mass abduction in 2015 and are presumed to have been killed, though their bodies were never located and no-one has been arrested for the crimes. They cite the continuing unanswered questions about the Iguala

12 Freedom House: <https://freedomhouse.org/report/freedom-world/freedom-world-2017>

13 Committee to Protect Journalists - <https://cpj.org/killed/2016/>

14 Reporters Without Borders (2016-17) <https://rsf.org/en/ranking>

15 Impunity Index: <https://cpj.org/reports/2016/10/impunity-index-getting-away-with-murder-killed-justice.php>

students as an example of the limitations of the government's legal obligation to keep the public informed.

Still, Peschard says the Mexican public knows far more about the case of the Iguala students than would have been known without the access to information requirements now imposed on state and federal authorities. Continuing public outrage about the lack of prosecutions or clear official evidence about the basic facts of this tragic incident can be attributed in part to the availability of information about the status of the investigations.

"The problem is not the availability of information about the investigations, but rather that the investigation itself has not progressed," she said.

Romão, Peschard and Olmedo agree that the linkage between the two SDG16.10 indicators and their underlying principles should be strengthened at the regional as well as global level, through the OAS and other intergovernmental mechanisms.

As they and others have noted, the Declaration of Principles on Freedom of Expression of the OAS Inter-American Commission on Human Rights is completely consistent with the text and spirit of SDG16.10, stating that

"the murder, kidnapping, intimidation of and/or threats against social communicators, as well as the material destruction of communications media, violate the fundamental rights of individuals and strongly restrict freedom of expression."

Experiences from Mexico, Chile & Brazil: Putting access to information laws into practice

MEXICO

- **Transparency and Access to Public Information Act**
- **Adopted: 2002 (Amended: 2015)**
- **CLD ranking: #1**
- **Website:**
<https://www.infomex.org.mx/gobiernofederal>
- **Interviewee: Jacqueline Peschard Mariscal**

In 2002, the Congress of Mexico passed and President Vicente Fox signed into law the "Transparency and Access to Public Information Act," putting Mexico in the vanguard of the global freedom-of-information movement. Mexico's enactment of a strong freedom of information regime was seen as both a symbol and a further consolidation of its political transformation following the

national elections in 2000, which ended seven decades of single-party rule in the country.

Mexico's 2002 law had several significant technical components and political factors which continue to make it a model today:

- The establishment of an autonomous professional body – IFAI, the Federal Institute for Access to Public Information; later changed to INAI, the National Institute for Access to Information – with broad authority to enforce compliance with the law by government bodies and to improve and monitor the availability of official information through digital and other channels.
- The creation of 'Infomex,' a web-based digital system for citizens to seek information from government and direct specific requests to relevant offices and agencies at all levels of government: federal, state and local.¹⁶
- The stipulation of detailed requirements for the systematic, proactive disclosure of information by government bodies on budgets, contracts, texts of laws and decrees, property registries, records of official meetings, and much more that had not been previously accessible to the general public.
- The launching of a dedicated public-access online platform - the 'Portal de Obligaciones de Transparencia' - for government bodies to publish these legally mandated public records, under the oversight of IFAI.¹⁷
- The pioneering 2002 law was strengthened further by a major constitutional reform in 2007 recognizing the 'right to information' and requiring public disclosure of official information by governments at every level in Mexico's federal system – national, state, and municipal.
- A major further reform of the law in 2015 extended its detailed public-disclosure requirements to all state governments as well as transforming 'IFAI' into INAI, the National Institute for Access to Information. This was much more than a change in nomenclature: It was a change in mandate, with INAI becoming truly national rather than just federal in its regulatory reach.
- Finally – and most important, in the view of many observers – Mexico's law was shaped and promoted by a strong civil society movement which cut across traditional ideological lines and combined sophisticated urban democratic reformers with well-organized independent rural groups. Enacted just two years after the first truly competitive national

16 Infomex (INAI): (<https://www.infomex.org.mx/gobiernofederal/home.action>)

17 Portal de Transparencia (INAI): <http://portaltransparencia.gob.mx/buscador/search/search.do?method=begin>

election in the country's history, the law won support from all major parties in Congress.

Jacqueline Peschard Mariscal served for seven years as a commissioner of Mexico's Federal Access to Information Institute (IFAI) from 2007 through 2014, including three years as president of the commission. A social scientist by training, Peschard is a professor at the National Autonomous University of Mexico and an internationally recognized expert on freedom of information laws.

Does Peschard think Mexico's law deserves its number one ranking? Yes, she believes it does – or at least a very high ranking among the more than a hundred national access to information statutes in effect today.

“The law was well-designed,” said. “These rankings look only at the quality of the laws as such, not at their implementation in practice, but the Mexican law is doing well in practice as well.”

The original 2002 law was strengthened further by a major constitutional reform in 2007 recognizing the ‘right to information’ and requiring public disclosure of official information by governments at every level in Mexico's federal system – national, state, and municipal. In 2015, the law was amended to expand the scope of its autonomous regulatory authority, which changed its name from IFAI to INAI (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales* - the National Institute for Transparency, Access to Information, and Protection of Personal Data). INAI's broadened mandate reflected a wide consensus on the need for both better privacy safeguards in the use of the law and more active oversight of official compliance with obligations to provide official information proactively, systematically, and accessibly.

“This was a very important change, which my fellow commissioners and I had advocated where we were at IFAI,” Peschard said. “Before we had different regulations in every state, with every state legislature creating its own rules. The 2015 reform established norms for governments at all levels to provide information and systems for access to information.”

Even with that reform, she says, there is still a wide gamut among Mexico's 32 states in terms of the availability of public information, differences that are due in part to varying technical and financial resources and the organization and accessibility of state records. *“Without good archives, you can't have transparency,”* she said.

By far the most important factor affecting compliance on the state level is “political leadership,” Peschard said.

“Political will matters above all, and this varies greatly from state to state, and from governor to governor,” she said.

Resistance in complying with the law's obligations is often deepest in state institutions run by unelected officials, such as public utilities and other parastate corporations, she noted. Mexico's law, like Brazil's and Chile's, applies to all state enterprises, such as Pemex, the national oil company, which were historically unaccustomed to public disclosure and outside scrutiny.

The law also covers some of the activities of public sector unions in these state enterprises. These unions have long been fiercely protective of their internal autonomy, while at the same time functioning as key elements of the governing party's political machinery. “There is a lot of resistance there,” she said. “They are now obligated to be more transparent, but some prefer to remain opaque.”

The key to compliance in all levels of government is public vigilance and political pressure, with journalists and civic activists both playing essential roles, Peschard stressed. Mexico's access to information law is functioning as its architects had hoped, she said, even though “much more remains to be done” for the law and to reach its potential for driving social and political change, she said.

“The trend is positive, though,” Peschard said. “I'm an optimist.”

CHILE

- **“Law for the transparency of public offices and access to state information”**
- **Adopted: 2008**
- **CLD ranking: #43**
- **Website: <http://www.consejotransparencia.cl>**
- **Interviewee: Juan Pablo Olmedo**
- Chile's access to information law was passed in 2008 and came into effect the following year, under the supervision of a newly created ‘Council of Transparency.’¹⁸ The Council was set up to serve as an oversight body for the law's implementation and the equivalent of a court of appeals for citizens whose requests to state bodies did not receive an adequate response.
- The first four Transparency Council members appointed by President Bachelet represent-

ed a range of ideological views, yet all had high-level legal experience and a shared commitment to putting the new law into practice. The head of Chile's leading non-governmental advocacy group for freedom of information reform was appointed president of the then-new Council.¹⁹

- For the first time in Chile, the law required the government to operate under “the principle of openness or transparency, according to which all information in the domain of its administrative bodies should be presumed to be public,” unless specifically exempted from disclosure under exceptions stipulated under the new law, including infringements of personal privacy and information that if published would jeopardize national security.
- All government ministries and agencies were required by the law to respond to citizens' requests for information within 20 days. The law's public disclosure requirements and systems applied to municipal and provincial governments as well as all national government ministries, agencies, and publicly owned corporations.
- One of the law's most politically notable features was its applicability to Chile's security forces, including the army and the national police, a move hailed as a further consolidation of democratic civilian government after decades of military dictatorship. Still, Chilean journalists and academic researchers have complained of continuing resistance by military authorities to these disclosure requirements.²⁰
- Following the example of Mexico and others, the Chilean law mandated the creation of a new public online portal for seeking and making requests for official information, with links to the online websites and archives of government ministries and agencies.²¹

Juan Pablo Olmedo is a veteran Chilean human rights lawyer and head of ‘Pro Acceso,’ a civil society group which had long advocated for the adoption of a freedom-of-information law in Chile. When Chile passed its law in 2008, President Michelle Bachelet named Olmedo to run the law's new supervisory body, the Council of Transparency. He served as the Council's first president for 18 months.

Olmedo says that the law has led to a new awareness by Chilean public officials of “their obligation to be transparent,” and a presumption among the

public that government data and records should be openly obtainable – including from Chile's security forces, a profound political change for the country. Chilean government ministries and other official bodies publish detailed annual accounts of their responses to requests for information under the law as well as proactive measures to provide information about their activities and budgets to the public.

Public officials, civic activists, and journalists in Chile have come to consider the law and its principles as an essential tool for Chilean democracy, Olmedo said.

“The law is well known, its mechanisms are understood, and there is a new political maturity about the use and accessibility of public information,” he said.

Yet public disclosure has not gone as far as Olmedo had originally hoped, he says. He points to what he considers unnecessarily restrictive rulings by the Chilean judiciary to keep some intergovernmental communications confidential, including email messages between public officials, plus a waning of the initially strong support for the law within the government.

“I think the law had its greatest impact in its first three years, when the law was new, the Council and its staff were new, and there was a lot of support from the president's office and political enthusiasm about the law generally,” he said.

But in recent years there has been “pushback” by elected officials and civil servants alike, he said, with a reversion in some parts of government to a traditional bureaucratic “culture of secrecy.”

Contributing to that trend, in Olmedo's view, is the perception that the commissioners overseeing the law are representatives of the administration that appointed them, rather than independent intermediaries between citizens and their government. *“They see themselves as government functionaries, not as advocates for the public,”* Olmedo said.

Though Olmedo was a leader in efforts to secure the law's adoption, he is critical of what believes in retrospect was an overly technical and legalistic approach to drafting and passage of the legislation. In contrast to Mexico and Brazil, there was relatively less involvement by civil society activists and the media, he said.

“This is a law written by and for lawyers,” said Olmedo. “Somehow we weren't able to forge alliances with social movements who would see access to information as a useful tool to bring about social change.”

19 Council of Transparency: <http://www.consejotransparencia.cl/consejo/site/edic/base/port/inicio.html>

20 Universidad de Chile forum on ‘Public Information, Secrets, y State Security’: <http://www.uchile.cl/noticias/123590/informacion-publica-secretos-y-seguridad-de-estado>

21 http://extranet.consejotransparencia.cl/web_RSWV2/paginas/VerInformacion.aspx

Moreover, he added, the government data and documents that are available through Chile's access to information system "are often highly technical and not comprehensible to the general public," Olmedo said – a criticism which could be made of most government information services, he concedes.

Still, the adoption of the law marked a turning point in Chilean political history, both philosophically and practically, Olmedo stressed, with the government at all levels now obligated to share information publicly or explain to a judge its decision to do otherwise. Local governments have in some ways been more successful than the national government at using the law for public interest purposes, he says, as their constituents are typically seeking very specific and personally relevant information about community issues, infrastructure and institutions. "A mayor is usually more in touch with ordinary citizens than a minister," Olmedo notes.

Olmedo believes access to information laws and systems throughout Latin America would benefit from greater regional technical cooperation and reinforcement of agreed standards for such laws. As noted, in its initial years Chile's Transparency Council sought support from Mexico's National (then "Federal") Institute for Access to Information. Chile's example in seeking guidance and lessons from the Mexican experience was followed by Brazil and other countries in the region. The Organization of American States was also very helpful, Olmedo said, with its recommended generic "model law" for use and by member states. Yet much more could be accomplished through regional collaboration, on both expert and political level, he believes.

"After the laws in Mexico and Chile, there was a cascade of access to information legislation throughout Latin America," Olmedo notes. "We see that trend continuing today, which is very positive. But this is still very new, and much more needs to be done to make these laws work for ordinary people and make governments more accountable."

Stronger regional norms - backed by the OAS and other international institutions, and enforced nationally by more independent oversight bodies – are needed to help ensure the success of Latin America's freedom of information regimes, Olmedo argues. An analogy, he and others suggest, would be the regionally accepted standards for free and fair elections, which include independent media coverage and professional management of the voting process by nonpartisan election authorities.

"The challenge isn't necessarily the quality of the law, but rather its implementation,

which is a matter of political will on the part of government, and greater awareness and use of the law by civil society, media, and ordinary citizens," Olmedo said.

BRAZIL

- "Law For Access to Information" (Law No. 12,527)
- Adopted: 2011
- CLD ranking: #22
- Website: <http://www.acessoainformacao.gov.br/>
- Interviewee: José Eduardo Elias Romão

In 2011, Brazil's Access to Information Law was ratified by Congress and signed into law by President Dilma Rousseff following years of national debate and discussion on the topic. The Access to Information law was introduced in the Congress in 2009, the same year that the government launched its innovative new 'Memorias Reveladas'²² website, a freely accessible online archive of thousands of previously classified official documents from past military regimes. The two initiatives - one retroactive, the other forward-looking – were considered integrally linked commitments to a new era of democratic transparency.

Brazil's 2011 law had several important distinguishing elements:

- Requirements for proactive disclosure and mechanisms for official responses to public requests for information apply to all taxpayer-funded agencies and institutions at all levels of government – federal, state, and municipal – as well as mixed-capital parastate corporations. Each institution receives and manages such requests autonomously, however, with its own personnel.
- Following the example of Mexico, the creation of a new online information portal for citizens to seek and file requests for official data and documents, free of charge, with a 20-day deadline for government response. In the law's first five years of operation, through May 2017, the federal government received more than 450,000 requests for information through this system and responded to 90 percent of these requests, according to official data. The portal also provides data about compliance with the law at state level, with indexes ranking Brazilian states by their record of responses to queries.
- To assist and monitor compliance, the establishment of a 'Commission for Reassessment of Information,' with commissioners appointed by the President and serving at the President's discretion. The Centre for

Law and Democracy praised the law's "broad scope [and] strong recognition of the right to information and the benefits of government transparency," but criticized what it terms its "vague" appeals system and the non-independent "composition and operations of the main oversight body."

- The assistance of the semi-autonomous Comptroller General's office (*Contraloría General de la Unión*, or CGU) in implementing requirements for the disclosure of public budgets and contract information, a critical professional role which some saw as compensating for the political control of the Commission by the Presidency. The CGU was assigned a key role in reporting on official compliance with the law's transparency and disclosure obligations.²³ In 2016, however, the CGU was abolished as an independent office, with its functions absorbed into a new "Ministry of Transparency" (Ministerio de Transparencia, Fiscalización y Controlaría General).

José Eduardo Elias Romão is a Brazilian lawyer specialized in human rights who was his country's first "Ouvidor-General de la Union," a post established by the 2011 law to oversee its implementation. He served for three years, until 2014.

In governmental Brazilian Portuguese, the title 'Ouvidor' – literally, a 'listener,' or 'auditor,' in the antique sense of the word – conveys a meaning similar to the Nordic term 'Ombudsman,' as in an officially chartered but independent representative and recipient of the public's concerns and questions about their government. Under the 2011 law, all federal government agencies and offices were required to appoint an official 'ouvidor' to respond to information requests from the public.

Yet Romão himself stresses that unlike a statutorily autonomous ombudsman, his legal status as Brazil's chief Ouvidor-General de la Union – the 'OGU' – was more akin to that of a minister's: he was appointed by the president, and could at any point be replaced by the president. This lack of protection from political influence is "a major weakness" in Brazil's access to information regime, he says.

Yet the political origins of the law in Brazil's democratic reform movement provided an aura of nonpartisan autonomy to the first OGU that the law itself technically did not, Romão notes. Because the access to information bill was proposed in Congress as a logical successor and complement to the opening of once-sealed government archives from Brazil's two decades of military rule, the law's passage was seen as "a further consolidation of Brazil's democracy," applying to all

parties in power at all levels of government, from federal to municipal, he notes.

The law's establishment of a digital portal for people to ask questions of government officials directly – with the officials required by law to answer – represented a fundamental change in the relationship between Brazilian citizens and their government, Romão says. The strict 20-day deadline for responses to these queries represented "a real revolution for the Brazilian bureaucracy," he says.

In retrospect, Romão and other experts say, the law did not provide sufficient time for government agencies to prepare for its technical demands. Yet one of Brazil's advantages in getting such a complex law up and running was that it could count on an existing large professional civil service to put it into effect, Romão points out. Even adjusting for scale, few governments in the region had equivalent human resources. Today, some 2000 civil servants countrywide are assigned to work on Brazil's access to information systems, he notes – a major commitment of human and financial resources.

Still, he says, some segments of that bureaucracy were reluctant to comply with their obligations under the new law. "We found the greatest resistance within the armed forces and the foreign ministry," he said, with both bureaucracies citing national security arguments against disclosure of requested information, both current and historic.

Brazil's online access-to-information system operates free of charge. People submitting requests are not obligated to identify themselves by profession or provide reasons for submitting their queries. Yet voluntary disclosure and practical experiences in tracking questions posed through the system show clear patterns.

The most frequent users of Brazil's law can be divided into three categories, Romão observes. Perhaps the most surprising category is comprised of public officials themselves. Legislators and officials at the executive level in local, state and federal government offices use the law routinely, sometimes on behalf of constituents, and other times for partisan purposes, in pursuit of information that might portray their political adversaries in a negative light, he notes.

Journalists, unsurprisingly, comprise another category of frequent user. They often decline to identify themselves as such in their queries so as not to alert officials who may be targets of investigative projects, Romão notes. But evidence of their now-routine use of the law by can be found in their daily output of stories exposing examples of waste and corruption in the use of public funds – stories directly or indirectly dependent for corroboration on official documents which before the 2011 law would not have been publicly available.

23 a) CGU monitoring of compliance by state and municipal governments: <http://www.cgu.gov.br/assuntos/transparencia-publica/escala-brasil-transparente> b) CGU rankings by state: https://relatorios.cgu.gov.br/visualizador.aspx?id_relatorio=22

In many countries with access to information laws, corporate lawyers and other private sector representatives comprise the largest category of frequent users, with requests linked directly to the business interests of their companies, clients, or competitors. This is not the case in Brazil, however, Romão reports.

In contrast to Mexico and Chile – as well as to national access to information regimes in the United States, Canada, and most European countries – officials can decline such information requests if they appear to be motivated solely by private commercial concerns, and public response would serve no apparent wider public interest. This departure from most global access-to-information norms stems from the law's origins in post-dictatorship democratic reform, with its information services operating free of charge, as a public good, Romão explains. (His own view, after supervising the system nationally, is that government offices should instead accept and answer private sector information requests, but charge commercial users for the service, using the income to subsidize free access for everyone else.)

Because access is free, the third and by far largest group of users in Brazil are ordinary citizens seeking information directly pertinent to their dai-

ly lives, with queries on health and social security benefits and services, property records, details of local public works projects, and similar personal and community issues.

Romão stresses, however, that the nature and provenance of these questions illustrate what he considers the gravest shortcoming of Brazil's information regime – its inevitable reflection of the grave socioeconomic inequalities that characterize Brazilian society itself. Regular users of the system are by definition those who enjoy access to broadband internet services: a segment of the population that while quite large is more urban, educated, and affluent than the population as a whole.

“There are many people in poor communities who don't have access to these services and would not know how to use them if they did,” Romão says. “For them, the law and their right to information is something distant and abstract, if they know about it at all. This inequality of access is the greatest challenge we face, not only in Brazil but throughout most of Latin America.”



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This guide, co-edited by UNESCO and the Brazilian government, explains the main features of the Brazilian legislation on access to public information.

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About the author:



Bill Orme

Bill Orme is an author, editor, and independent consultant specialized in media development and strategic communications, with long experience supporting independent journalism in emerging democracies and managing global advocacy campaigns.

Bill represents the Brussels-based Global Forum on Media Development (GFMD) at the United Nations, with a special focus on the freedom-of-information commitments in the UN's new Sustainable Development Goals. He is also engaged as a consultant on media reform and public information projects in West Africa and Latin America. From 2002 to 2014, Bill was a senior official at the United Nations Development Programme, serving as Chief of Communications & Publishing for the Human Development Reports, a Policy Advisor for Independent Media Development, and UNDP's Director of External Communications and chief press spokesman.

A veteran foreign correspondent, Bill was Executive Director of the Committee to Protect Journalists (CPJ) in the 1990s and a founding board member of IFEX, the International Freedom of Expression Exchange. He returned to daily journalism as a Middle East correspondent for *The New York Times* and UN bureau chief for *The Los Angeles Times*. Before heading CPJ, he was the editor of *LatinFinance*, a regional business monthly which he founded following a decade of reporting on Latin America for *The Washington Post*, *The Economist*, and other publications.

Bill is the author of "Understanding NAFTA: Mexico, Free Trade and the New North America" (University of Texas, 1996) and the editor and lead essayist of "A Culture of Collusion: An Inside Look at the Mexican Press" (University of Miami, 1997). He was an editor and writer for the annual CPJ Attacks on the Press reports (1993-98) and *UN Human Development Reports* (2003-2007; 2010-2014). Other books to which he has contributed include "Journalists in Peril" (Transaction, US, 1998); "Crimes of War" (W.W. Norton, US, 1999); the "Encyclopedia of International Media and Communications" (Elsevier, 2003); "Media in Support of Sustainable Development" (UNESCO, 2015); and "The Trust Factor" (Ethical Journalism Network, UK, 2015).

Bill serves on the advisory board of the National Endowment for Democracy's Center for International Media Assistance (CIMA) and is a founding member of International Media Development Advisors (IMDA), an association of independent media consultants.

Contact: bill.orme@gmail.com / +1-917-607-1026 / Skype: ormebill



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Oficina de la UNESCO en Montevideo
Sector Comunicación e Información
Luis Piera 1992, Piso 2
Montevideo 11200, Uruguay
www.unesco.org/montevideo
montevideo@unesco.org
tel. (598) 2413 2075 -- fax (598) 2 413 2094