

# AMERICAS REGIONAL FINDINGS AND PLAN OF ACTION FOR THE ADVANCEMENT OF THE RIGHT OF ACCESS TO INFORMATION

**W**e, 115 participants from 18 countries in the Americas, representing governments, civil society organizations, international and regional bodies and financial institutions, donor agencies and foundations, the private sector, media outlets and scholars, gathered in Lima, Peru from April 28-30, 2009, under the auspices of The Carter Center, in collaboration with the Organization of American States, the Andean Commission of Jurists and the Knight Center for Journalism in the Americas, to advance the right of access to information in the region.

## PREAMBLE

**Endorsing** the principles, global findings and plan of action set out in the Atlanta Declaration and Plan of Action for the Advancement of the Right of Access to Information, including the international conventions referred to therein;

**Reiterating** that the right of access to information is a fundamental human right, universal, indivisible, interdependent and interrelated with the full-range of rights, and necessary for the fight against corruption, improved development, increased security, and good governance as well as being related to health, education, quality of life, and other essential rights;

**Acknowledging** the need to engage a more “citizen-centered approach” to the right of access to information that encourages governments to provide the range of information that individuals need to exercise their full spectrum of rights;

**Recognizing** that in many States in the Americas, citizens chronically lack confidence in the political system and that the lack of transparency in processes, public administration and political parties serves to deepen this mistrust;

**Reminded** that secrecy has been a major contributing factor to crises globally and in our region;

**Emphasizing** that in the Americas region, the lack of knowledge, capacity, and understanding of the benefits of the right of access to information hinders the ability of the region’s people to demand information and exercise this fundamental right;

**Agreeing** that the quality of institutions, regulations and practices related to the right of access to information should be monitored, supported, and enhanced;

# FINDINGS

The assembled conference hereby reaffirms the findings of the Atlanta Declaration and further asserts that in the Americas:

1. The greatest challenges to the right of access to information are a lack of implementation and enforcement, backsliding in the more developed systems, and an absence of widespread use of the existing legislation and mechanisms.
2. The diversity of the region necessitates diversity in responses. The particular political, social, economic and cultural circumstances require that the people of each country determine the access to information system that best suits their needs. Nevertheless, it is both desirable and feasible that the countries in the region share their access to information experiences and work together to promote the right of access to information.
3. There exist a number of regional instruments that establish standards for access to information. Although there are some benefits to a regional convention, the most immediate priority is to strengthen and implement the existing instruments and to make them work in practice.
4. The Organization of American States has taken important steps to advance the right of access to information in the region. However, there needs to be greater awareness of its efforts, additional internal coordination, strengthened engagement with civil society, and leadership by example through internal transparency and timely access to its information.
5. A statutory right of access to information through specific and enforceable legislation consistent with the Atlanta Declaration principles and fully integrated with the broad range of public policies is the ideal and must be the ultimate goal. However, in the absence of the requisite political climate, other means and mechanisms should be pursued to bring about the desired transparency objectives.
6. States have a special obligation to disclose information pertaining to human rights violations or corruption. This is all the more important in the Americas regional context of past state-sponsored or approved human rights violations and the more recent “global war on terror,” whereby systematic torture and other cruel, inhuman and degrading treatment has been allowed to flourish under the veil of state secrets.
7. Increasing government capacity and strengthening administrative practices to respond to requests and make information proactively available will help support the realization of the right of access to information and can serve to raise confidence in the system, which may further foster demand.

- e. Help requesters to use the information received; and
  - f. Build and develop a community of practice network.
34. The Carter Center will work with others in the Americas Region to disseminate the Americas Regional Findings and Plan of Action through high level communications, publications, conferences and meetings.

We call upon all regional and international bodies, States, and the regional access to information community to establish, develop and nurture the right of access to information in the Americas, in accordance with the principles, findings and global plan of action enunciated in the Atlanta Declaration and in the Americas Regional Findings, and to commit to the Americas Regional Plan of Action in furtherance of our common objective.

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- 8. Building demand requires a knowledge and understanding of the benefits of access to information for the individual and the State. However, an asymmetry across societies persists, with vulnerable groups having the least knowledge and capacity, most limited access, greatest inability to communicate in the dominant or official language, and yet the most essential need for information. Unless specific actions are taken to mitigate these and other structural disadvantages, many in society will be excluded from the potential benefits of the right of access to information.
- 9. Although technology can assist access to information, it is not a panacea. States use of websites and new technologies is but one avenue for dissemination rather than a substitute for meaningful access to information whereby all persons have the right to seek and receive information regardless of the medium.
- 10. There continues to be an absence of scholarship and applied methodologies to monitor and measure the implementation and enforcement of the right of access to public information. This has led to a gap in knowledge regarding the extent of State compliance and best practices.
- 11. In light of the global economic meltdown, private organizations have become significant beneficiaries of public funds and so must increasingly be covered by targeted transparency requirements. Transparency in these organizations will allow for greater accountability, improved administration, and increased consumer and investor confidence.
- 12. The practice of secrecy across a range of non-state and multinational actors, in particular systemically significant entities such as extractive, telecommunications, pharmaceutical and agro-chemical industries as well as the banking and financial sectors, may cause harm to fundamental human rights and have negative impacts on sustainable livelihoods.
- 13. Multi-stakeholder initiatives, such as the Extractive Industries Transparency Initiative (EITI), the related EITI++ and the Medicines Transparency Alliance, which bring government, civil society and private sector actors together, are increasingly influential in the establishment of common voluntary standards of transparency in key policy areas.
- 14. Civil society groups should lead by example and strive to be as transparent as possible. However, in seeking additional transparency there are acknowledged risks to groups operating in environments where threats to the security of their organizations, staff, and supporters exist. As such, calls for greater transparency in this sector must be accompanied by a vigorous opposition to any attempt to use access to information laws as a guise for political persecution or discrimination.

# REGIONAL PLAN OF ACTION

To give effect to the Atlanta Declaration and the Americas Regional Findings, we call upon the relevant stakeholders to undertake the following actions:

## For Regional and International Community

1. All regional intergovernmental organizations and international and regional financial institutions should assume a significant role in setting regional norms, improving state capacity and educating people about the right of access to information.
2. The Organization of American States should adopt Inter-American instruments on the right of access to information with special emphasis on the implementation of regional standards, such as model laws and benchmarks, and include areas such as archives, technology, information production, and indicators.
3. The Organization of American States, with broad civil society engagement and in accordance with the Atlanta Declaration principles, should draft and implement an internal information disclosure policy.
4. All regional intergovernmental organizations and international and regional financial institutions should ensure internal transparency policies and mechanisms that;
  - a. Provide clear and simple processes by which to request information;
  - b. Have limited exceptions to disclosure regimes;
  - c. Include independent appeals processes;
  - d. Mandate proactive disclosure of information; and
  - e. Promote transparency to member States and contractors.
5. International and regional financial institutions should, at a minimum:
  - a. Review existing confidentiality requirements and make them consistent with principles of transparency; and
  - b. Proactively disclose information about bank processes and policies, including decision-making and deliberative information; projects being implemented, including all technical and impact studies; information on support and advice to the financial sector and States; and loan conditions for borrower governments.

28. Civil society organizations, universities and scholars should undertake evidence-based research about access to information, including such issues as the particular conditions in our region that allow transparency cultures to form and thrive; the efficacy of the different transparency systems prevalent in the region; the quantifiable value of information; the relationship between information management and transparency; an analysis of the gap between demand and supply; measurement indicators and tools to assess implementation and enforcement of the right of access to information at the regional and State level; and best practices in the region.
29. Media owners, editors, reporters and their professional trade associations should offer and encourage training for journalists, both those familiar with investigative techniques and those new to using access to information laws, promote use of these transparency mechanisms and raise general awareness of the right of access to information. The media are encouraged to be proactive in the use of the law, and when denied access to information are encouraged to seek compliance through enforcement mechanisms.
30. The Americas Regional access to information community should strive to build solidarity and create alliances with a full range of stakeholders who share a common transparency agenda, including the business community.
31. Profit-seeking corporations should voluntarily disclose all information bearing on the public safety, health or environment, such as timely and full reporting of all results of clinical trials of pharmaceutical and/or agro-chemical products and relevant impact reports.
32. Relevant corporations and civil society organizations should join and encourage States to join regional and international multi-stakeholders initiatives.
33. To promote demand for access to information regimes and increase the use and benefits of right to information mechanisms, civil society, corporate, and professional organizations in collaboration with other stakeholders, should:
  - a. Advocate for the establishment and implementation of appropriate legal or policy frameworks;
  - b. Assist and supplement State's efforts to raise awareness of the existence and benefits of the right to information;
  - c. Support the provision of education programs on access to information in schools and universities;
  - d. Foster public education campaigns, particularly targeting vulnerable populations;

- a. Formal education through curriculum-building and training in public and private elementary and secondary schools and education programs in law and journalism schools;
  - b. Widespread public education campaigns; and
  - c. Training and capacity building to enjoy use of new technologies.
21. States should exert their influence to encourage regional intergovernmental organizations and international and regional financial institutions to further internal transparency and to advance the right to information in other member States.
  22. Financial regulators should comply with transparency principles themselves and ensure that transparency regimes in the financial sector are adequate and effective, with particular emphasis on private financial institutions regardless of their jurisdiction.
  23. States should join and promote regional and international multi-stakeholder initiatives that pursue common standards of voluntary disclosure of information.

**For Non-State Actors: Civil Society, Corporate and Professional Organizations**

24. Non-state actors should urge States to comply with relevant constitutional provisions, multilateral and bilateral donor agreements, and obligations made as signatories to international and regional treaties, resolutions and declarations.
25. Civil society, corporate, and professional organizations should litigate denials or obstacles to the right of access to information with the goal of advancing State and Regional jurisprudence.
26. Civil society organizations, including non-governmental organizations and labor unions, should lead by example and as a best practice should proactively publish and disseminate, via website and annual reports, details as to public funds received and the use of those specific funds.
27. Where not statutorily obligated, political parties and movements registered in the electoral system should voluntarily disclose financial information about their activities, such as sources and amount of funds received, regardless of whether they receive public funding.

6. Bi-lateral donor agencies should operate under the principles of maximum disclosure and transparency in accordance with the Atlanta Declaration principles, particularly related to the funding of projects and terms of funding.
7. Regional and international bodies should exhort States' compliance with treaties, resolutions, declarations and relevant jurisprudence to establish, implement and enforce the right of access to information.
8. International and regional bodies, donor agencies, development banks, and donor States should provide financial and technical support for:
  - a. States to establish and effectively implement responsive and enforceable access to information regimes;
  - b. Citizens to advocate for the establishment and effective implementation of responsive and enforceable access to information regimes;
  - c. Training for journalists and others on the use of access to information;
  - d. Building public awareness;
  - e. Evidence-based research, including creation and application of measurement indicators; and
  - f. Development of a community of practice network.

**For States in the Americas Region**

9. States should ensure that all public policies and regulations are created and function consistent with the principles of maximum disclosure and transparency, and that all branches of government and public agencies perform according to these tenets.
10. States without mechanisms to ensure the right of access to information should establish legal and policy frameworks in accordance with Article 13 of the American Convention on Human Rights and the duties articulated in the Inter-American Court of Human Rights decision *Claude Reyes v. Chile* and consistent with the Atlanta Declaration Principles.
11. Where not currently covered, States should extend the scope of access to information laws to cover key institutions and bodies and these should be subject to the full requirements of disclosure, including:
  - a. Central banks and those responsible for the development of monetary policy;

- b. Private sector bodies that provide public services or receive public funding;
  - c. Political parties and movements registered in the electoral system; and
  - d. Judicial and Legislative branches of government.
12. States with access to information regimes should ensure full and effective implementation in accordance with the Atlanta Declaration and specifically including:
- a. Designating a specific budget for each public body covered under the law to implement and sustain the necessary procedures;
  - b. Increasing capacity and resources for Information/Access Officers and Archival and Records Managers, including training and professionalization;
  - c. Assuring the generation (supply) of accurate and understandable information, including key documents relevant to indigenous peoples translated into non-official languages;
  - d. Affording specialized training for all public officials in the areas of record-making, storage, retrieval and delivery;
  - e. Ensuring clear guidelines for classification of documents to minimize discretion;
  - f. Sustaining proactive disclosure measures;
  - g. Strengthening reporting requirements related to operation of the law;
  - h. Performing periodic evaluations of the efficiency and effectiveness of the information regulations, institutions and practice;
  - i. Sharing best practices and collaborating across public agencies; and
  - j. Encouraging the use of technology, as appropriate.
13. States should issue clear regulations or rules for record-making and management, including specific provisions to deter the increasing use of the “non-existence of record” as a reason for denial and should monitor, investigate and apply sanctions for inappropriate use of this justification for rejecting information requests.

14. To guard against manipulation, the integrity of public records should be ensured in both paper and electronic forms. States should seek partnership with private sector organizations, funding agencies, and development banks for technical assistance and support to finance the digitizing of key records.
15. States should support implementation of access to information at the sub-national and local levels, including increasing the capacity for records management, retrieval and delivery, and offer appropriate incentives to local governments for establishment and/or improvement of transparency regimes based on best practice indicators.
16. States should assure that enforcement mechanisms are accessible and timely, including establishing intermediate appeals bodies, providing necessary human and financial resources, and capacitating all judges and any others responsible for resolving access to information complaints.
17. Claims of state secrets, national security, diplomatic relations or related grounds to shield information regarding human rights violations must be subject to review by a civilian court or other body that is fully independent of the executive branch. Claims should only be upheld where (a) the independent body has the opportunity to review the information sought to be suppressed, (b) disclosure of the information would demonstrably harm a legitimate national security interest, and (c) the restriction imposed is the least restrictive means possible for protecting that interest.
18. Subsequent to passage, Legislative bodies and other specifically named public entities outside the control of the Executive Branch, such as the Ombudsman and Courts, should monitor the implementation and enforcement of access to information laws, based on formal public administration reporting requirements, regular and special investigations, and seeking civil society inputs.
19. To promote demand for information, States should strive to build confidence in the system through:
- a. Ensuring that requests receive timely and satisfactory responses;
  - b. Providing effective and enforceable sanctions for inappropriate denials, obstructing requests for and receipt of information, and all other failures to comply with the right to information regime; and
  - c. Establishing appropriate enforcement measures.
20. States should further encourage demand through raising awareness of the right of access to information, including: