

Full effect of the right to know in Latin America: a process of cultural transformation

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Latin America is currently experiencing a progressive trend in the legal recognition of the right to access public information. At the same time, journalism has intensified the use of this instrument to obtain information, which allows it to practice the profession with greater quality. Despite these advances, some hurdles still prevail and show how hard it is to break down obscure social practices. These practices cannot be blamed onto the States alone. Quite the contrary, they derive from the customs of the various social players and the performance of the different local institutions, entities and corporations that take root in our culture.

In the past years, several countries in our region have passed legislation on access to public information, setting clear standards for the exercise of this right, and foreseeing reasonable times for the State's provision of the required data and documents.

Today, 15 Latin American countries have access to public information legislation in effect. Only in the last four years, since the mentioned sentence was passed, Chile, Uruguay, Nicaragua, Honduras and Guatemala have passed their own laws in this field, and currently, the Brazilian Senate is discussing the bill, which is already halfway to being approved. The Argentine Congress is currently assessing 14 different law projects. The sustained progress in relation to provisions is undeniable.

This advancement may be attributed to several factors.

In the first place -and after democracy was restored in most Latin American countries, following dictatorial or authoritarian governments- the progress is attributed to the growing empowerment of the civil society thanks to the awareness gained around the scope and reach of the rights of individuals and the concrete possibilities of demanding -through various revision mechanisms and organs- their full effect.

In the second place, the progress is due to the intrinsic value of public information as a fundamental instrument for the exercise of other human rights, for citizens' participation

and institutional monitoring. All this has triggered greater inclusion of access to information in the public scene and discussions, mainly due to the civil society organizations' promotion of the exercise of this right. Today, this work is carried out at regional level, among others, by the *Alianza Regional por la Libertad de Expresión y el Acceso a Información (Regional Alliance for Freedom of Expression and Access to Information)*, which groups various civil society organizations in Latin America.

In the third place, and more concretely, the progress stems from the creation of legal standards at international and regional level about the scope of the exercise of this right and its gradual inclusion into the local and national provisions that guarantee it. On this point, it is particularly interesting to mention the work done by the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights as well as the 2006 sentence passed by the Inter-American Court of Human Rights in the case *Claude Reyes vs. Chile*¹, forcing the State to adopt all the necessary measures to guarantee the full exercise of the right to access public information, among them, pass a piece of legislation on this matter. The objective was achieved and enabled to celebrate -a few days ago- the first year since the Act entered into force in Chile.

However, the Latin American experience suggests the enactment of FOI legislation is not enough per se to foster government openness and accountability. Other elements need to be in place to effectively lead to greater transparency. What are those elements?

First, the existence of effective, independent judicial courts is fundamental to enforce FOI legislation. According to our experience, courts have a prominent role in assuring legal provisions are duly met by government agencies. At the early stage of implementation of FOI laws and until a cultural change is achieved, government officials often reject access to information requests, thus paving the way for judicial intervention. It should be noted, however, that courts should be included in the process of cultural change. In many Latin American countries, judiciaries are non-transparent bureaucracies that resist to abide by modern access to information standards.

¹ Inter-American Court of Human Rights, *Claude Reyes and others vs. Chile case*, Reparations and Fees. Sentence of September 19th, 2006, Series C, No. 151

A second element leading to proper FOI functioning and government accountability are civil society organizations (CSOs). In Latin America, CSOs have been in the frontline of reform. They have had a key role in promoting FOI legislation, monitoring implementation, training public officials, working with the media, assessing progress, and taking leading cases to courts. The landmark *Claude Reyes v Chile* case decided by the Inter-American Courts of Human Rights (the first decision ever by an international tribunal to acknowledge the right to access to information) was part of a strategic litigation project conceived by a Chilean non-governmental organization (Pro Acceso). The Claude Reyes case was a decisive push for FOI reforms in Latin America and led to many judiciaries to recognize the right to access to information even before FOI legislation was passed.

Civil society organizations also have a prominent role in setting the public agenda. In Argentina, the Association for Civil Rights has struggled to create awareness about Freedom of Information through different strategies. For instance, we constantly submit requests asking for basic -but sometimes 'sensitive'- information. In 2009, we approached the Executive branch and asked for a copy of the President's paycheck. Our request was rejected and we ended up in court. As we work closely with journalists interested in access to information, our case made it to the front page of most national newspapers, which eventually led to the disclosure of the document by the President. It must be noted that before we started litigation, we already knew the salary of the President. So, what was achieved in this case? We generated an intense debate in the media over the importance of access to information and its impact of transparency and anticorruption.

It must be underscored that In Latin America the right to access to public information is not only in the agenda of anticorruption and transparency civil society organizations. It is incredible how fast this right has entered the agenda of organizations and groups that work every day for some specific rights such as environmentalists, users and consumers and the organizations which move the gender agenda forward. Undoubtedly, and as we already mentioned, this occurs once the intrinsic value of information is fully understood so as to call for measures which seek to avoid contamination, counteract the more disadvantaged position of consumers in the rules of the market, or drive changes in public policies in order to eradicate violence against women, among many other examples.

Third, a decisive element to ensure that FOI legislation leads to greater government accountability is the media. Vibrant journalists and professional media organizations play a fundamental role in the process of fostering and consolidating the 'transparency'

effect of the FOI agenda. In that context, many FOI-oriented non-governmental organizations have included journalists' organizations as key actors in their strategies to promote FOI reforms.

At national level, various initiatives exist in most Latin American countries². At regional level, since 2007 *Asociación por los Derechos Civiles* has fostered the creation of a network of organizations and journalists, who promote the approval and use of provisions that regulate the exercise of the right of access to public information³. Today, our network groups around 100 journalists and over 25 journalist organizations, promoting freedom of expression in 16 countries of the region. One of our goals is to ensure that journalists use FOI as a means for enhancing the quality and reliability of the information they use as a source for their investigations.

In the context of our work, we have come into contact with various journalistic investigation cases, which derived mainly from information requests. Among them, an investigation which enabled to uncover common practices of discretionary use of public money during periods of government transition in Mexico⁴; an information request that unveiled a

² Besides the journalists who have made the right to access public information one of their main working tools, the following experiences are worth mentioning: 1) Argentina: through sustained training work by the Argentine Forum of Journalists (FOPEA) and also the dissemination efforts mainly by *Periodismo Social* organization; 2) Colombia: mainly through the work of the *Fundación para la Libertad de Prensa* (FLIP), promoting the exercise of the right as the source for journalistic investigations; 3) El Salvador: by promoting the approval of an access to information Act by the Association of Journalists in El Salvador (APES) and through the habitual use of information requests on the part of digital newspaper *El Faro*; 4) Mexico: through the recent initiative called "*Mexico Infórmate*" (Mexico -be informed), which during the week of the world access to information day in 2009, promoted the publication of articles based on information requests in different media of the country; 5) Peru: through the diverse actions taken by the *Instituto Prensa y Sociedad* (IPYS), particularly the cases based on information requests and also the sustained work in this field by the Peruvian Press Council; 6) Venezuela: through the permanent training work done by the *Instituto Prensa y Sociedad* (IPYS) to its correspondents.

³ It is the *Periodismo por el Acceso a la Información Pública* network (Journalism for Access to Public Information) (www.periodismo-aip.org).

⁴ "*La corrupción azul*", the book published by journalist Daniel Lizárraga in 2009 is based on the response to 22 requests for information made from 2004 to 2008 to get to know the destination of the public funds under the administrations of presidents elect Vicente Fox and Felipe Calderón before taking over. As Lizárraga explains in his book, after the requests of information made, some 15,000 pages from official documents of all kinds were obtained. The material was classified in 25 data bases and matched with the results from the field work, pictures, personal tax return statements and the data bank of the *Proceso* magazine, where the journalist works.

silenced case of drinking water contamination in a city of Argentina⁵; and an investigation in Colombia that found out the number of people arrested for smuggling illegal drugs into other countries⁶.

These cases account for another breakthrough in this field: the growing use of this instrument as a source in the practice of journalism.

However, as we stated at the beginning, these breakthroughs seem not to be enough, as some hurdles still prevail and prevent from speaking of a true culture of transparency.

What are the reasons behind?

Beyond the gradual legal recognition and the flourishing exercise of this right by some actors, such as journalists, certain practices -which must be examined- have become deeply entrenched in the societies of the regional countries.

Even today, the idea prevails in society that it is easier, faster and more convenient to obtain certain public information through informal mechanisms, which are not always within legal parameters. Also, the absence of information availability and circulation is commonplace in other fields which go beyond the State-civil society relationship, such as the area of trade talks.

For instance, for the past years in Argentina, the credibility of some official figures linked to the country's economy has been put to the test. From *Asociación por los Derechos Civiles* and in view of the silence of the National Executive Power, we filed law suit successfully

⁵ The investigation is carried out by María Marcela Fernández, journalist of newspaper *La Voz del Interior* from the Argentine province of Córdoba, which disclosed that all members of the province's public utilities regulatory agency knew that the local grid water in several neighbourhoods of the Córdoba city was contaminated with nitrates, and that the people consuming the water were at risk. The journalist had access to this information through a petition that requested the minutes of the agency's board meetings. A summary of the case may be found at: http://www.siksi.com.ar/adc/trabajos_1.html (Web site visited in 04/25/10).

⁶ Journalistic case published on *Semana.com* by journalist Juan Esteban Mejía. There, after the information requests, he was able to reveal that the number of people detained for drug-trafficking was on the rise. A summary of the case may be found at: <http://www.periodismo-aip.org/caso-detalle.php?id=28> (Web site visited in 04/25/10).

before a court of justice⁷. Our intention was to obtain the exact methodology used and the products measured in order to calculate the consumer price index, which is the main inflation indicator. This macroeconomic data is not only key for crafting public policy but also for researchers, think tanks and academics working on poverty, demography, and broader social issues. After a long legal proceeding, we managed to get this information published on the Web site of the agency that collects these statistical data. While ADC promoted equal access to this information, which is fundamental to know other data such as the true poverty rate, and to assess the usefulness of certain public policies, seemingly several companies were getting the same data unlawfully. Last week, this practice was put on the spotlight after an alleged spy was found after office hours at the Ministry of the Economy 'gathering' information about the country's economic activity from a computer in a closed office⁸. This episode it is an example of the practices that hinder the progress of a transparency culture.

As regards journalism, many times the indiscriminate use of oral and off-the-record sources spreads a highly twisted message. By contrast, the use of the instrument that represents the legitimate exercise of the right to access public information may be translated into a journalism of better quality, which in turn, enables society as a whole, to be better informed.

Recognizing the value of exercising the right to access to public information is a process of cultural transformation. Not only is it linked to the enactment of FOI rules but also requires the change of many deep-rooted cultural practices. This depends on the commitment of civil society, private enterprises, state bureaucracy, political parties and, above all, journalism, which plays a fundamental role in this process due to its power of multiplying information.

⁷ ADC and other vs. National State – Economy Minister – INDEC and others for protection measures under Law number 16.986, CNFed.CA, courtroom V, sentence of 10/14/08 (available at <http://www.adc.org.ar/download.php?fileId=509>, Web site visited in 04/25/10).

⁸ See also <http://www.diarioperfil.com.ar/edimp/0463/articulo.php?art=21273&ed=0463> (Web site visited in 04/25/10)