

CHAPTER IV

REPORT ON ACCESS TO INFORMATION IN THE HEMISPHERE

A. Introduction

1. In its 2003 Annual Report, the Office of the Special Rapporteur for Freedom of Expression published a chapter entitled "Report on Access to Information in the Hemisphere."¹ In that report, the Office of the Special Rapporteur laid out a theoretical background on the right of access to information, stating that "guaranteeing public access to state-held information is not only a pragmatic tool that strengthens democratic and human rights norms and promotes socioeconomic justice; it is also a human right protected under international law."²

2. In June 2005, the General Assembly of the Organization of the American States (OAS) adopted Resolution 2121, entitled "Access to Public Information: Strengthening Democracy." This resolution extends the efforts of previous resolutions on this issue and encourages OAS Member States to implement legislation or other provisions giving citizens broad access to public information.³ The General Assembly also instructed the Special Rapporteur for Freedom of Expression "to continue to report on the situation regarding access to public information in the region in the annual report of the IACHR."⁴

3. The Office of the Special Rapporteur has therefore prepared this report in compliance with its mandate as established by the General Assembly and to continue contributing to the discussion on the issue. This report contains an update on the situation of access to information in the region.⁵

B. Access to information in the Member States: An update of the 2004 Annual Report

4. The General Assembly of the OAS resolved in paragraph 8 of Resolution 2121, entitled "Access to Public Information: Strengthening Democracy," to instruct the Special Rapporteur for Freedom of Expression to "continue to report on the situation regarding access to public information in the region in the annual report of the IACHR."⁶

¹ Inter-American Commission on Human Rights, Annual Report 2003, Vol. III, Report of the Special Rapporteur for Freedom of Expression, Chapter IV: Report on Access to Information in the Hemisphere, pp. 135-154.

² *Id.*, para. 8.

³ OAS, AG/RES. 2121 (XXXV-O/05), *Access to Information: Strengthening Democracy*. Available at: <http://www.oas.org/XXXVGA/docs/ENG/2121.doc>.

⁴ *Id.*, para. 8.

⁵ For more information on the theoretical approach to access to information, see: Inter-American Commission on Human Rights, Annual Report 2004, Vol. III, Report of the Special Rapporteur for Freedom of Expression, Chapter IV: *Report on Access to Information in the Hemisphere*, pp. 104-23, available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=459&IID=1>. See also Inter-American Commission on Human Rights, Annual Report 2003, Vol. III, Report of the Special Rapporteur for Freedom of Expression, Chapter IV: *Report on Access to Information in the Hemisphere*, pp. 135-154., available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=139&IID=1>.

⁶ See paragraph 8 of this resolution, which is included as Annex 4 to this report.

Pursuant to this mandate, in an effort to record the developments of the States in this area during 2004, this section of the report will update the situation of access to information in relevant Member States.

5. In this annual report, the Special Rapporteur includes the laws that the Member States of the Organization of American States passed during 2005 with respect to the right of access to information. During the year, Bolivia issued a decree providing access to information, while Chile replaced an article in its Constitution that now allows for access to public information. Honduras also amended its Constitution to provide citizens with the right to seek information from the government about themselves or their family. These developments highlight that the issue of access to information has continued to receive attention in 2005.

1. **Bolivia**

6. A decree signed by President Carlos Mesa on May 17, 2005 guarantees journalists the right to a response when they request information from government institutions. Decree 28168 recognizes that the right to access information is a fundamental element for the full exercise of citizenship and the strengthening of democracy, and provides that all natural and legal persons have the right to solicit and receive full and adequate information for the executive branch, and the information must be provided within 15 working days. The decree also provides that requests for information can only be denied in exceptional circumstances. Mesa resigned in June 2005 amid popular uprisings.

2. **Chile⁷**

7. Chile this year passed a new constitutional article on freedom of information, which provides that actions and decisions of government entities belong in the public record. Article 8, which repeals a presidential decree, two articles and resolutions on confidential and classified records, enables all records and decisions to be open to the public, with the exception of those already declared confidential or classified by a qualified quorum law, which requires an absolute majority. If the government does not provide access to such decisions and records, the interested party can file an action in the courts. Article 8 took effect as of its August 26, 2005 publication in the *Diario Oficial*.

8. The text of the article provides the following: "Those who hold public office must strictly adhere to the principle of probity in all of their actions." It then says: "The actions and decisions of government entities are of public record, as are the foundations and the procedures thereof. However, only a qualified quorum law can declare that a given record is classified or confidential, when publicity would compromise the duties of such an entity, individual rights, national security or the national interest."

⁷ Inter-American Press Association's Annual Report on Chile, available at www.sipiapa.org/publications/informe_chile2005o.cfm.

3. Honduras⁸

9. In March, the legislature approved a reform of Constitutional article 182 giving citizens a constitutional right to *habeas data* about themselves. The law says that “[e]very person has the right, in a rapid and non-onerous manner, to access information about himself or herself and his or her property already in the data base or in private or public registries, and if necessary, to update, correct or amend it.”

10. Congress has not yet approved, however, a bill on Access to Public Information and *Habeas Data*. The bill was introduced in October 2004 and had the support of the heads of five political party caucuses, but the legislative commission that introduced the bill extended the debate.

4. Other developments

a. Argentina⁹

11. As of October 2005, Argentina’s Freedom of Information Act was still awaiting final passage. The Chamber of Deputies approved the bill, but the Senate made a number of amendment proposals that would jeopardize the law’s original aims. In postponing the debate, the bill lost its parliamentary character, which means that it must be submitted again for consideration in the Argentine national Congress, which will begin its next session in March 2006.

12. In addition, a bill introduced by four senators from the Justicialist Party would increase the areas that are subject to confidentiality, which now applies to defense and security matters.

b. Guatemala¹⁰

13. Guatemala’s Freedom of Information Law is still awaiting passage by the nation’s Congress. The bill was proposed four years ago, but no political group has demonstrated an interest in debating and approving the bill. Openness and transparency in public information have been the subject of popular demand.

⁸ See March 24, 2005 report from PROBIDAD, available at <http://www.ifex.org/en/content/view/full/65548/>; Also see August 23 report from PROBIDAD, www.ifex.org/en/content/view/full/68815.

⁹See Inter-American Annual Report on Argentina, available at www.sipiapa.org/pulications/informe_argentina_2005o.cfm.

¹⁰See Inter-American Press Association Annual Report on Guatemala, available at www.sipiapa.org/pulications/informe_guatemala2005o.cfm.

c. Nicaragua¹¹

14. A freedom of information bill is still under consideration in Nicaragua. National Assembly Justice Commission member Walmaro Gutierrez said that the Assembly would hold a plenary debate on its approval.

d. Paraguay¹²

15. In April, 23 civic organizations presented a freedom of information bill in the Chamber of Deputies that would require officials to give reliable and documented information to any citizen. It also provides for prison sentences for those who attempt to cover up information, although it notes that sensitive information affecting the financial sector or violating the privacy of individuals will not be released.

16. This bill comes as another proposed law on Freedom of Public Information is under debate in the Chamber of Deputies. This bill, sponsored by legislators from various parties, lays out rules for providing information to citizens and provides for who specifically must give out information. The bill, however, contains a provision that allows issues “that could affect national security” or “the privacy of individuals” to be withheld. It says that officials may refuse to provide information.

e. Peru¹³

17. In June 2005, Congress approved a law on national intelligence that could endanger the public right to obtain information. The National Intelligence Service and Intelligence Office Act, which still needed the signature of President Alejandro Toledo as of October 2005, has a broad and vague notion of national security, and this could be interpreted in a way that would limit the right to obtain information. The law would amend a law on constitutional rights, primarily the Freedom of Information Act that has been in effect since 2003. The new law increases the number of exceptions to the current rule, established under the general law on access to information. The new law also increases to 10 years from five years the period that must lapse before confidential information can be

¹¹See Inter-American Press Association Annual Report on Nicaragua, www.sipiapa.org/publications/informe_nicaragua2005o.cfm.

¹²See Inter-American Press Association Annual Report on Paraguay, available at www.sipiapa.org/publications/informe_paraguay2005o.cfm.

¹³See Inter-American Press Association, <http://www.ifex.org/en/content/view/full/68049/>, also see IAPA annual report on Peru, available at http://www.sipiapa.org/publications/informe_peru2005o.cfm.

obtained. The time limit for restricted information would be 15 years under the new law, and 20 years for classified information. It also allows the National Intelligence Council (COIN), DINI, Ministry of Defense, Ministry of the Interior, and the General Administration on Security and Defense of the Ministry of Foreign Relations, to create their own guidelines for classifying and declassifying documents.