

THE  
CARTER CENTER



## Working Group Guidelines

### Methodology

The second day of the conference, Wednesday, April 29, will be dedicated to working groups. A facilitator and a rapporteur have been assigned to each working group to assist in chairing and recording the discussions of each group. The morning and early afternoon of this day will be dedicated to considering the issues, learned lessons, successes, and challenges pertaining to each group. The last part of the day will focus on summarizing and identifying action points for advancing the right of access to information in the Americas Region. Each working group will be equipped with four Power Point slide templates on which it will capture the following:

1. the issue statement
2. the groups main discussion/considerations
3. the findings
4. the action points

The facilitator of each working group will present its Power Point presentation to the conference participants for discussion in plenary on Thursday, April 30th. From the hard work and discussions of each group, the presented slides, and the final group discussion, we will craft a document of Americas Regional Findings and Plan of Action, which along with the Africas Regional Findings and Plan of Action will be annexed to the International Declaration..

### Group Assignment

Designation to each working group was carefully decided with consideration to the following factors:

In collaboration with



1. Working group preferences
2. Strong blend of various stakeholders
3. Working languages
4. Group location and size

For this reason, it is imperative that all members of each group remain within their assigned working group. Please do not change your working group for any reason. We apologize in advance if we were not able to assign you to one of your initial preferences.



## **Working Group One**

### **Politics and Economy: Shifting the Balance toward Openness**

Facilitator: Roberto Saba

Rapporteur: Meg McDermott

- A. Participant Working Group List
- B. Working Group Concept Note
- C. Summary of Group Work from 2008 International Conference
- D. Suggested Reading
  1. Hernández-Valdez, Alfonso. Budgeting Implications for ATI Legislation: The Mexican Case, World Bank Institute Working Paper Series, 2009, <ftp.freedominfo.org/documents/WBI-Hernandez-Valdez.pdf>.
  2. Rosendorff, Peter B. "Democracy and the Supply of Transparency." University of Southern California, Typescript, 2004, <homepages.nyu.edu/~bpr1/papers/Transparency.pdf>.
  3. Stein, Ernesto, Mariano Tommasi, Koldo Echebarría, Eduardo Lora, and Mark Payne. "The Politics of Policies: Economic and Social Progress in Latin America." Chapter 1. The Inter-American Development Bank, 2006 Report. <http://www.iadb.org/res/ipes/2006/PDFs/chapter1.pdf>

In collaboration with





**Working Group One**  
**Politics and Economy: Shifting the Balance toward Openness**

**Grupo de Trabajo Uno**  
**Políticas y Economía: alterando el equilibrio hacia la apertura**

**List of Participants / Lista de Participantes**

*Facilitator: Roberto Saba*

*Rapporteur: Meg McDermott*

1. Martín Abregú
2. Jim Bronskill
3. Javier Casas
4. Adalid Contreras
5. Mario Fuentes Destarac
6. Alfonso Hernández Valdez
7. Silvana Lauzán
8. Daniel Lizárraga
9. Patrice McDermott
10. Thelma Mejía
11. Marcos Mendiburu
12. Nuria Piera
13. Darío Ramírez
14. César Ricaurte
15. Elizabeth Salguero
16. Mignone Vega Sánchez
17. Germán Stalker
18. Ricardo Verdum
19. Vânia Lúcia Ribeiro Vieira
20. Vladimir Villegas Poljak

THE  
CARTER CENTER



**Group One**  
**Politics and Economics: Shifting the Balance toward Openness**  
**Concept Note**

As Andrew Puddephatt posited for the international conference on the right of access to information in 2008, there is now a widespread consensus that transparency and accountability are essential underpinnings for good governance and that this, in turn, is a pre-condition for tackling poverty and inequality and achieving the Millennium Development Goals (MDGs). There also are widespread assumptions that transparency and accountability of public administration is necessary for sustainable economic development and the achievement of socio-economic rights.

One of the primary obstacles to transparency is what is often known as an asymmetry of information in that governments and public officials tend to know much more than citizens and hold onto information as a source of power. Yet, notwithstanding the historical secrecy of governments, in recent years there has been a substantial move towards greater openness with over 80 countries adopting access to information (ATI) laws of some kind and half of the Americas having comprehensive national legislation. However, this momentum may have stalled, laws remain unimplemented, and in some parts of the region transparency may be in retreat.

If progress is to be made we will need a more rigorous analysis of what might be termed the *politics of policy* in this field. Policy making in the real world is rarely shaped by rational, objective considerations. Rather, there are multiple factors that combine or clash to create policy, such as the level of socio-economic development, the strength and weakness of particular institutions, the type of political system/democracy and its

In collaboration with



stability, the perceived self interest of political actors, specific national and regional histories and cultures, the wider international dimension and contingent factors of both personalities and events, including national security concerns and recent economic crisis.

Identifying common factors that spur and sustain transparency is not easy, and one might even question its usefulness, as the process of establishing the policy may be more important than the actual structure of the policy. A timely reminder that there are no “universal policy recipes” or one-size-fits all answers.

Thus, the most productive approach may be to consider how to incentivize the variety of political and social actors to support transparency and accountability and what process ingredients have worked. It is obvious that in considering the interests of government, legislature, the media, business interests and civil society – to take some obvious constituencies – different arguments will have purchase at different times. A reforming government in an unstable political culture may be comfortable with transparency framed as an anti-corruption or good governance measure; an established government in a stable political culture is unlikely to be so receptive to that argument. Business will want a stable macro-economic framework and may respond to arguments about transparency that ensure a level playing field in a competitive market. The media may see transparency as an asset to its ability to gather news, or as threatening its privileged back door channels to government. In some cases it may be necessary to frame the issue in different ways for different audiences, requiring a sophisticated campaign approach that can, in turn, risk accusations of duplicity.

Moreover, economic considerations may play a critical role in determining the policy options and the advancement that is made in implementation. In countries where the bureaucracy already is considered bloated, the potential to add new independent bodies may be limited. And when appropriate resources are not made available, implementation efforts may stall.

This working group will explore these political economy questions focusing on the necessary political contexts for ATI laws to be established, implemented, and sustained and a transparency regime to thrive in the current circumstances. The kinds of questions we might consider are:

- 1) Is there agreement on the proposition that transparency and openness are essential for good governance and development? Are there conceptual challenges that need to be tackled?
- 2) How should arguments for ATI be couched – in broad human rights terms or more instrumentally as a means of achieving more effective public administration? Many ATI campaigns are couched in terms of tackling

corruption and holding government to account – are these the best arguments in stable countries with entrenched political elites?

- 3) Who and what are the obstacles/impediments to passage and implementation of ATI laws and what are potential solutions? (i.e. national security argument, prioritization, privacy, media concerns, small or divided societies).
- 4) How can we incentivize the passing and implementation of ATI laws, and are there practical examples of these succeeding in practice? What specifically can be done to diminish the disincentives? Who are the allies? Are there specific roles for the business community, media and civil society organizations?
- 5) Is there a particular economic burden on developing nations in implementing an ATI regime, and if so, can this burden be minimized while retaining the essentials of an ATI system?
- 6) What are economic incentives for transparency and how can we shift the political and economic balance so that benefits of transparency outweigh opacity?
- 7) What is the role of external agencies in these processes, including external donors, agencies such as the World Bank or IADB and foundations, and international NGOs such as The Carter Center. Do they play a positive or negative role?
- 8) Do we have sufficient data to arrive at definitive conclusions? Is more research needed – if so what kind?

THE  
CARTER CENTER



**International Conference on Access to Public Information:  
Politics and Economy  
Summary of Discussion and Findings**

This working group examined the political economy of access to information (ATI) at the international level. Broadly, the group discussed the benefits and challenges of passing and implementing ATI laws, the role of citizen demand, relevant political processes, national security issues and communications technology. They sought strategies to incentivize governments and bolster the argument for establishment of an ATI regime. The group agreed that there is a need to present the case for ATI differently depending on the context, as some arguments resonate differently depending on the context and actor. Some viewed the role of ATI within the human rights discourse as essential for its promotion, while others pointed out that if there is a strong connection to human rights, ATI can become abstracted. For example, in the case of stable countries with entrenched political elites, the human rights approach might not be the most effective. Yet, they concurred that ATI is not necessarily an either-or concept; it can be both a fundamental human right but also a tool of administrative reform. The group recognized the congruence of multiple arguments, ranging from the moral to the technical.

A major challenge to any ATI effort is incentivizing public officials when they have many other competing priorities. Due to the variation in political structures around the world, it is essential to determine the nature of the power politics and conflicts associated with ATI. National security is one such conflict, and the group found a need to redefine the paradigm so that transparency is seen as contributing to security rather than impeding it. The group identified incentives, as well, such as a potential increase in the country's facility for attracting FDI, improving internal policy deliberation by advancing the government's ability to share information and make policies uniform, and bettering the government's reputation and establish greater legitimacy. Yet, the group argued that when ATI is imposed externally, the legitimacy of that government is not increase and when transparency is a condition of an IFI loan rather than being demanded by citizens, the effects of these external drivers can be destructive. Such institutions promote a public ethos yet undermine it by defying transparency in their own operations.



There was agreement that in order to ensure that citizens are empowered and equipped to drive an agenda, the community of practice must find ways to make information meaningful and accessible for all, including involving the local communities. Ultimately, the key policy indicator is that ordinary citizens have access. Communications technology may provide opportunities to promote ATI to a wider swath of the population. The field is growing rapidly, and it is necessary to ensure that it continues to serve a public interest and remains equal and accessible.

### **Consensus on the Crux of the Issue:**

#### Government

- ATI is an important priority for attracting FDI
- ATI can improve internal policy deliberation and establish legitimacy
- Growth of the digital network offers new possibilities for public administration's capacity to communicate with its citizenry
- Effective regulatory environment can help provide a diverse and pluralistic environment

#### Citizens

- ATI must be driven by the needs of citizens, which obligates government to make information available and accessible.
- Citizen driven change makes advocacy efforts sustainable and legitimate.

#### International bodies

- International institutions that promote a public ethos yet defy transparency pose a challenge

### **Recommendations and Action Points:**

#### Government

- Redefine the national security paradigm – transparency promotes security
- Create standards for private organizations

#### Citizens

- Greater research needed regarding the issue
- Public should more closely scrutinize policies

#### International Institutions

- Public should more closely scrutinize policies
- Lead by example
- Other international and regional bodies (IACHR, UN Convention on Bribery) should act as change leaders

#### All stakeholders

- Greater sharing of information and best practices

- More effective monitoring and lobbying, especially from government and civil society.

#### Multiplicity of Arguments to Support Greater Transparency

- Embrace the range of moral and instrumental arguments
- Create channels of communications among different organizations and stakeholders
- More research to strengthen empirical arguments



## **Working Group Two**

### **Structural and Cultural Context: Creating an Environment for Transparency**

Facilitator: Mitch Pearlman

Rapporteur: Suzanne Piotrowski

- A. Participant Working Group List
- B. Working Group Concept Note
- C. Summary of Group Work from 2008 International Conference
- D. Suggested Reading
  1. Neuman, Laura and Richard Calland. "Making the Law Work: The Challenges of Implementation." In The Right to Know: Transparency for an Open World ed. Ann Florini (2007): 179-213, <http://www.cartercenter.org/accesstoinformation.html>.
  2. Roberts, Alasdair, "Dashed Expectations: Governmental Adaptation to Transparency Rules" In Transparency the Key to Better Governance, Ed. Christopher Hood & David Heald (2006) 107-125, [http://www.aroberts.us/Site/Articles\\_%26\\_Chapters.html](http://www.aroberts.us/Site/Articles_%26_Chapters.html).
  3. Neuman, Laura. "Enforcement Models: Content and Context." World Bank Institute Working Paper Series, 2009, [right2info.org/resources/publications/World%20Bank%20Institute.pdf](http://right2info.org/resources/publications/World%20Bank%20Institute.pdf).

In collaboration with





**Working Group Two**  
**Structural and Cultural Context: Creating an Environment for Transparency**

**Grupo de Trabajo Dos**  
**Tecnología y Estructura: creando un ambiente para la transparencia**

**List of Participants / Lista de Participantes**

*Facilitator: Mitch Pearlman*

*Rapporteur: Suzanne Piotrowski*

1. Lance Alloway
2. Laura Alonso
3. Rosental Alves
4. Hugo Carrión
5. Jorge Chediek
6. Damian Cox
7. Maria del Carmen Palau
8. Christina del Castillo
9. Brent Fuller
10. Suzanne Legault
11. Kela León
12. Conrad Martin
13. Leila Bezerra Motta
14. Orietta Rodríguez
15. Katya Salazar
16. Mario Rosario Soraide Duran
17. Shekhar Singh
18. Juan Cruz Vieyra

THE  
CARTER CENTER



## **Group Two**

### **Structural Context and Technology: Creating an Environment for Transparency Concept Note**

At a recent conference in New Zealand, colleagues engaged in a heated debate about whether every country should have an access to information law. Some argued that as a human right, it is imperative upon each nation to pass enabling legislation. Others countered that without the requisite public institutions capable of implementing and overseeing the enforcement of the law, the mere passage would be meaningless, or worse it could further destroy public confidence in its government.

In the later argument, based on practical considerations of assuring the application and enforcement of the right, the structural framework – the rights of citizens, maturation of the public administration, capacity, resources, independence of oversight bodies etc. - within which the access to information law will function is considered tantamount to its overall success. At the 2008 international conference on access to public information, Shekhar Sing posited that transparency regimes appear to do best where people feel a sense of empowerment, especially in terms of holding their government answerable and, where necessary, of challenging the system and the powers that be. However, for transparency to flourish, it also appears that this sense of empowerment needs to be tempered with an ability and inclination to resolve issues through reason and negotiation, rather than through violence. Additional advantage seems to be drawn from social institutional structures, where available, that have historically promoted a tradition to collectively support individual action and, where required, to act together. Also of relevance seems to be the level of cynicism affecting the society and the expectations that the people have from the system (especially from the government). But is this sufficient to advance legislative implementation and enforcement?

In collaboration with



Perhaps more important is the political system prevailing in a country, especially in terms of how democratic and representational it is. Independence of, and interaction between, the various wings of the government – especially the executive, legislature and judiciary (and, often, the armed forces as an independent power) – appear to be other critical factors. Diversity of views, ideologies and approaches (and even conflicts) within each wing of the government sometime appear to contribute to a transparency regime, as do other aspects of cultural and ideological diversity. Of great importance might be the extent to which media is independent of government, corporate, and political interests, and how diverse are its loyalties and how progressive is its agenda, as well as the role of (and cooperation and support from) the international community, including bilateral and multilateral donor agencies.

Transparency regimes are often affected by the relative primacy of other laws antagonistic to transparency, especially laws protecting official secrets. As well, provisions within the law consistent with effective implementation and enforcement serve as a roadmap for future success. And increasingly, advocates are turning to litigation strategies to advance implementation and enforcement efforts. Independent and proactive groups in society, including from the legal community, civil society groups, can contribute much to the setting up and maintenance of a transparency regime. As often can the larger international community.

New technologies can assist in seeking creative ways to advance implementation, assist in proactive publication, and aid requesters – particularly in small state societies where fear of retribution for making a request serves as a deterrent. Although these same technologies have generated additional challenges, such as the social effects of rapidly advancing technologies serving to further exclude those (governments and citizens alike) without access to digital “know-how” and potential privacy issues. Moreover, government dependency on technology has in some cases encouraged information dumping onto the internet as a proxy for true access to information. Finally, is there the necessary empirical evidence to demonstrate the value of new technologies for advancing the right of access to information?

Lastly, in considering the context within which access to information laws function, cultural factors and small-state phenomena may play a decisive role.

This working group will explore these structural, technological and cultural factors, with a particular focus on the ways in which these affect implementation, enforcement, sustainability and use of ATI legislation. The kinds of questions we might consider are:

1. What are the necessary structural characteristics for an access to information regime to thrive? What are the structural impediments to implementation and enforcement? How can we promote the necessary factors where they are missing or weak?
2. Should transparency regimes be attempted if critical support factors are weak?

3. Why have some countries in the region succeeded in implementation, while others have failed or are backsliding?
4. What, if any, could be the role of technology in facilitating transparency? How can the potential harms (privacy, digital divide, information dumping) be mitigated?
5. What role does culture play in the effectiveness of the right?
6. How can we deal better with problems that arise in small societies?
7. What role does litigation – either national or supranational – play?
8. What influence can the international and regional community bring to bear in these issues – and how?
9. How can structural solutions apply to address political, economic and institutional constraints?

THE  
CARTER CENTER



**International Conference on Access to Public Information:  
Structural and Cultural Context  
Summary of Discussion and Findings**

This working group concentrated on the structural and cultural factors that affect transparency. They discussed the necessary structural environment for transparency regimes, how structural solutions can address various constraints, structural impediments to implementation, the role of technology, and cultural factors. The group agreed that the right to information is a fundamental human right, asserting that the nomenclature needs to be changed to the right to information (RTI), “public records” should be used rather than “government records,” and persons should be emphasized over citizens.

The group considered the components of an effective transparency regime, such as a law with provisions for an independent appellate mechanism for enforcement, i.e. an ombudsmen or a mediation process, an independent judiciary, an effective feedback mechanism, and incentives and sanctions for public servants. Building and strengthening RTI regimes requires political space for different stakeholders, and the onus is on the state to protect this space. The government must pair the act with strong regulations such as records keeping and administrative laws. Ideally the act is not impacted by the primacy of other laws, such as state secrets laws. Although an RTI law is often the dominant mechanism, the group cautioned that we must be careful in thinking that RTI regimes begin and end with a law. There are alternative routes to transparency through bolstering elements of transparency in other laws. In the process of instituting ATI, there are supply-driven, demand-driven, and mosaic models. In some countries, having a demand driven movement is not feasible. External bodies can force ATI regimes into place, and this provides opportunities for domestic actors to take advantage of the momentum.

Implementation must be viewed as an ongoing process requiring continuous attention, and some in the working group posited that it is most effective when done through a phased-in approach. Information providers must be oriented and favorable of the law or it will have little impact. A major problem is a lack of resources and proper budgeting, and the international donor community could impact the effectiveness of ATI by supporting countries financially. Keeping demand strong and consistent is perhaps the most important part of maintaining an ATI regime, although a critical issue is that people don't



know about the law or how it functions. Social mobilization can drive high demand for public information. Ultimately, transparency regimes do best when people feel a sense of empowerment that is tempered with an inclination to resolve issues nonviolently.

Technology can be a great asset, and we need to look toward innovative opportunities to eventually reach three main goals: all government documents should be digital and electronic, easily accessible (if not exempted or confidential), and free to citizens. When a government is commissioning a piece of technology infrastructure, there needs to be some analysis of how data could be accessed by the public. Computer technology and cell phones have an important role to play, although technology should not be viewed as a panacea, and we must be cognizant of the digital divide. ATI regimes should promote the use of new technology where it furthers but does not frustrate RTI; these efforts must not exclude traditional information dissemination mechanisms.

Some participants argued that every country should have RTI legislation even if it is unable to effectively implement, while others said there must be some basic institutionalism in advance of the RTI regime as it could be counterproductive to push for ATI in countries that are unprepared for a commitment to transparency. In nonwestern countries, there may be tension between transparency, culture, and tradition. There is a belief that transparency is an imposed foreign idea, although the real problem is the way it is presented. In every culture there are elements of transparency and secrecy, though they manifest themselves differently. Regardless of cultural concepts of information, we must envision this as a process that individual societies go through. Taboo or not, cultural issues should not hold back progress.

#### **Consensus on the crux of the issue:**

Structural Necessities for an effective transparency regime:

- Independent appellate mechanism
- Incentives and penalties
- Provision for proactive disclosure
- Independent judiciary
- A public that is informed, motivated, and with the capacity to use the act
- Transparency-sensitive information providers with requisite facilities
- Effective record creation and maintenance systems
- Effective feedback mechanisms
- An independent, investigative media

#### **Recommendations and action points:**

- The right to information must be treated as a fundamental human right with an obligation on the state to ensure that it is exercised equitably.
- Being a fundamental human right, it must be accessible to all citizens of the world, irrespective of the political system in which they live.
- Various types of transparency imperatives are inherent in cultures across the world---these need to be recognized, strengthened, and supported.

- Utilizing the potential of new technologies without adversely affecting those without access to it.
- The RTI Act should cover all private parties that receive substantial government funds.
- All persons can access any information the government can access from private organizations.



## **Working Group Three**

### **Non-State and Multilateral Actors: Examining Roles and Responsibilities**

Facilitator: Anel Townsend  
Rapporteur: Patrick Schmidt

- A. Participant Working Group List
- B. Working Concept Group Note
- C. Summary of Group Work from 2008 International Conference
- D. Suggested Reading
  1. Blanton, Thomas. "The Struggle for Openness in the International Financial Institutions." The Right to Know: Transparency for an Open World. Ed. Ann Florini (2007): 214-242, <http://www.cartercenter.org/accesstoinformation.html>.
  2. Calland, Richard. "Prizing Open the Profit-Making World." The Right to Know: Transparency for an Open World. Ed. Ann Florini (2007): 243-278., <http://www.cartercenter.org/accesstoinformation.html>.
  3. Roberts, Alasdair. "Structural Pluralism and the Right to Information." The University of Toronto Law Journal 51.3 (Summer, 2001): 243-271, [http://papers.ssrn.com/sol3/cf\\_dev/AbsByAuth.cfm?per\\_id=383666](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=383666).

In collaboration with





**Working Group Three**  
**Non-State and Multilateral Actors: Examining Roles and Responsibilities**

**Grupo de Trabajo Tres**  
**Actores No-Estatales y Multilaterales: examinando roles y responsabilidades**

**List of Participants / Lista de Participantes**

*Facilitator: Anel Townsend*

*Rapporteur: Patrick Schmidt*

1. Santiago Cantón
2. Maria Elizabeth Dasso
3. Gonzalo Deustua
4. Benjamín Fernández
5. David Gollob
6. Alvaro Herrero
7. C.R. Hibbs
8. Joshua Lichtenstein
9. Emilene Martínez Morales
10. Javier Meléndez
11. Sean Moulton
12. Juan Pablo Olmedo
13. Katitza Rodríguez
14. Jorge Romero León
15. Thomas Susman
16. Elizabeth Velasco

THE  
CARTER CENTER



### **Group Three**

## **Non-State Actors & Multilateral Actors: Examining Roles and Responsibilities**

### **Concept Note**

As Richard Calland posited at the 2008 International Conference, there have been substantial advances in the realization of the right of access to public information in recent years, with the passing of many ATI laws around the world and a general acknowledgment of the importance of the principle of transparency for the leverage of other rights, the deepening of accountability and the strengthening of citizen agency and ‘voice’. This positive trend has occurred against the backdrop of a shift of public power towards the private sector, a growing prominence of the notion of corporate social responsibility and the increasing significance of multilateral institutions in global governance and development policy-making.

There is, therefore, an important conversation taking place about how best to extend the principle of transparency to non-state actors – both in terms of corporate and multilateral actors, including International Financial Institutions (IFIs). There are a number of questions that deserve serious debate. First, there is a legal question: does the right to access to information apply to non-state actors? On this, immediately it becomes necessary to distinguish and delineate the two sets of actors because the argument in relation to each has a difference of nuance. Most multilateral bodies are public institutions. That is to say, while they may have names that suggest a private sector orientation – the International Finance Corporation (IFC) – for example, as a part of the World Bank Group, and established by, and ‘owned’ by States, it is a public institution to whom the same principles of public accountability and transparency should apply. In the case of multilateral bodies and IFIs in particular, it is more about how best to achieve an appropriate level of openness. While some of the IFIs have introduced disclosure policies, there are large differences in the standards of disclosure and because the policies are voluntary, serious difficulties around enforcement arise, not least in terms of the independence and efficacy of appeal procedures.

The case for openness in relation to corporations is more nuanced, and probably involves for many a far more challenging conceptual leap. The system of liberal, capitalist

In collaboration with



democracy that now prevails has been built at least partly on the foundation stone of protecting private capital. The notion of ‘private’ exudes an aura that is, for some, hard to penetrate. What is ‘private’ is ‘private’ and should remain, therefore, secret; the question of disclosure should be entirely a matter for those who own the – private – information, and not be a matter be subject to any sort of right of access. So runs the argument.

But things have changed considerably over the past decades, and perhaps never more so than this past year. First of all, there is now a litany of disclosure requirements placed on corporations, often as a result of consumer protection regulation – from labeling obligations for food suppliers and supermarkets, to testing requirements for pharmaceuticals, to health & safety information from airlines and factories. Second, many of the ‘public’ functions performed by state entities are now performed by private companies – after a spate of privatization and contracting-out policies around the world. And perhaps most importantly, large sums of taxpayer monies are now being used to bailout and prop up private corporations. As more public monies are invested in these businesses, should those dollars come with new transparency requirements?

Other noteworthy advances in this arena include an awakened global civil society movement that has pressed, sometimes very effectively, for an end to secrecy in corporate information – the Publish What You Pay campaign is a prime example. In turn, this has led to a series of innovative multi-stakeholder initiatives, such as the Extractive Industries Transparency Initiative that have sought to build consensus between the main actors – both state and non-state – around what information should be disclosed, by whom, to whom, and when and how. And, lastly, in some far-sighted new legal regimes, a right to access to privately-held information has been enshrined in the Constitution and in statute, where access is *required for the exercise or protection of another right*.

Finally, questions continue regarding the transparency requirements that may be placed on other “non-state actors” such as non-governmental organizations or the media. Do NGOs that receive public funding have a duty to disclose? How are other rights, such as freedom of assembly or expression affected by duties of openness and access to information?

Thus, one may argue that there no longer exists a question on whether ‘private’ information should be subject to the principle of disclosure in the public interest – because that point has long since been arrived at – but what information should be subject and how in practicality the ideals may be met.

Some questions that this working group may consider are:

1. Who should be covered under an access to information law or disclosure policy and by what means and mechanism?
2. How should the principle of open disclosure be established in relation to information held by non-state actors so as to acquire the same status as the right to access to public information?

3. To what extent is it necessary to distinguish between different types of non-state actors – corporations on the one hand and multi-lateral bodies on the other? And what is the effect of any distinction in terms of the design of any legal instruments that should apply?
4. How to positively motivate engagement of non-state actors that may be threatened by a law or disclosure policy?
5. What is the role of sectoral transparency initiatives (EITI, budgetary transparency initiatives etc.) and should these be encouraged? And, what lessons can be learned from such sectoral initiatives for application to comprehensive regimes?
6. How best to ensure that a ‘right’ of access – whether on a voluntary basis or a statutory basis – is both enforceable and therefore meaningful from the information-seeker’s perspective? What specific recommendations should be made to the World Bank and Inter-American Development Bank as they consider their policies? How do these disclosure policies work in practice?
7. How to ensure continuity and consistency among policies and requirements of multi-lateral agencies?
8. Has the economic crisis and bailout forever altered the nature of some private corporations and thus their arguments for continued secrecy?
9. And, thereby, how best to ensure compliance by the private sector, bilateral donors, IFIs, and NGOs?

THE  
CARTER CENTER



**International Conference on Access to Public Information:  
Non-State and Multilateral Actors  
Summary of Discussion and Findings**

This working group examined the advancements in ATI over the past two decades that have paralleled a trend of power flowing out of the public sector and amassing in the private sphere. Participants focused on who should be covered under an ATI law, the argument for extending the reach of RTI requirements to non-state actors, whether disclosure laws should cover international organizations, private bodies and corporations, and how to ensure compliance by various actors. They began with a typology of organizations that possess information relevant to the meaningful recognition of a human right of ATI. A trio of categories quickly emerged: Profit-making bodies, public bodies (non-state but with connection with the state), and social bodies. The action associated with these bodies must be considered to understand their disclosure responsibilities.

The group debated a set of principles for non-state actor organizations, considering whether ATI should apply to any organization that manages public or state funds, exercises public functions or provides a public service, exploits a public good, or impacts human rights. There was wider agreement that ATI legislation should definitely apply to any organization that implicates the first three categories. There was less consensus in the fourth category: organizations that impact human rights. Conceptually, the group recognized that it is difficult to enforce a human right against private bodies because of the limits that apply when considering its application around the world, with different standards and cultural norms that affect the notion of human rights.

Starting with a discussion of IFIs and IGOs, participants called for a broad application of transparency law, arguing that the right of access to information as protected under the International Bill of Rights should apply to all IGOs and IFIs, as it does to other public bodies. The IFIs have accepted that they must be open, at least minimally, although the reality is more complex. Participants highlighted the opportunity for the World Bank to be influenced due to the interest of top executives, upcoming consultations on its disclosure policies, and the replenishment of the International Financial Corporation, which provides support for private projects. There must be meaningful engagement with



stakeholders and civil society voices, and these discussions should be done in the languages of affected peoples.

To determine which NGOs and INGOs should be covered, it is necessary to define when an NGO is public. One approach is to look at those that register for tax-exempt status. There is a clearer case for organizations that have the benefit of legal status and a subsidy by virtue of their exemption.

Lastly, the group discussed the transparency of corporations. Some defined corporations as creations of the public realm, meaning that they are designed to aid the public good. Yet this is difficult as all aspects of what a private company does might be seen as affecting the public interest. Some participants held reservations about this, explaining that we will lose allies in business by demanding that private bodies disclose information. Some corporations already have disclosure policies, and there is a philosophical problem about the distinction between rights and human rights. The group discussed the balance between the proprietary interests of companies and the need for companies to recognize that some things they do are so fundamentally entangled with human values that there must be an appreciation of the need for an ATI mechanism. The same applies to those non-state actors that exploit natural public resources, such as extractive industries and water that are essential to human dignity.

The group decided that everyone should have the right of access information held by large private profit-making bodies where this is required for the exercise or protection of a substantial human rights interest (i.e. things relating to health, safety, environment, civil liberties). Effect should be given to this right in national legislation that establishes procedures designed to impose a minimum administrative burden on these bodies. All multi-national corporations and large domestic businesses should voluntarily and proactively disclose information that is in the public interest, such as core financial data, and information that is pertinent to the protection of fundamental human rights. Finally, the possibility of appeals would ensure compliance by these different actors. An independent international appeal authority should be seriously explored.

#### **Consensus on the crux of the issue:**

- The Right to Public Information is now established, but Non-state Actors and Multilateral Bodies powerfully impact human rights.
- Therefore: how should the right to access to information be extended to such non-state actors in principle and in practice?

#### **Recommendations:**

- Application of the Right to Access to Information to three sets of non-state actors and multilateral bodies:
  - Intergovernmental Organizations, including International Financial Institutions

- Non-state actors that perform a public function and/or receive public funds and/or exploit natural public resources
- Large Corporations in respect of information required for the protection or exercise of a fundamental human right.

**Action Points:**

- Intergovernmental Organizations, including IFIs, should comply with international norms and standards
- Call for effective implementation & resourcing of disclosure policies
- Welcome World Bank review & urge open, consultative process
- MNCs and large domestic businesses should voluntarily and proactively disclose information in the public interest
- National law should adopt disclosure requirements for the funding of lobbying of political processes, including funding of political parties.



## **Working Group Four** **Regional Norm Building: Examining Roles and Responsibilities**

Facilitator: Miguel Pulido

Rapporteur: Andres Mejia

- A. Participant Working Group List
- B. Working Group Concept Note
- C. Summary of Group Work from 2008 International Conference
- D. Suggested Reading
  1. Florini, Ann. "The Evolution of International Norms." International Studies Quarterly 40 (1996): 363-389, <http://www.jstor.org/pss/2600716>.
  2. Neumayer, Eric. "Do International Human Rights Treaties Improve Respect for Human Rights?" Journal of Conflict Resolution. 49:6 (2005): 925-953, <http://jcr.sagepub.com/cgi/content/abstract/49/6/925>.

In collaboration with





**Working Group Four**  
**Regional Norm Building: Examining Roles and Responsibilities**

**Grupo de Trabajo Cuatro**  
**Normas Internacionales: considerando los estándares universales  
y una comunidad global**

**List of Participants / Lista de Participantes**

*Facilitator: Miguel Pulido*

*Rapporteur: Andrés Mejía*

1. Luis Enrique Aguilar
2. Patricia Álvarez
3. Jaime Aparicio Otero
4. Luis Castro
5. Sandra Coliver
6. Mercedes de Freitas
7. Carole Excell
8. María Julia Giorgelli
9. Agustín Jarquín Anaya
10. Edison Lanza
11. Silvia Molina
12. Marta Oyhanarte
13. Eneida Bastos Paes
14. Orlando Pérez
15. Moisés Sánchez
16. Dario Soto-Abril
17. John Wilson
18. Carlos Zelada
19. Juan Cruz Vieyra

THE  
CARTER CENTER



**Group Four**  
**Regional Norm-Building: Considering Regional Instruments and Standards**  
**Concept Note**

Access to public information is clearly established as a human right. It has been recognized as such from the Constitutions of modern democratic states to the Universal Declaration of Human rights (Article 19). It has been included in all treaties that conform to the International Law of Human Rights (such as Article 19 of the International Pact of Civil and Political Rights and Article 13 of the American Convention).

Regionally, the Declaration of the Summit of the Americas at Nuevo Leon included important references to access to information stating that “access to information held by the State, subject to constitutional and legal norms, including those on privacy and confidentiality, is an indispensable condition for citizen participation and promotes effective respect for human rights. We are committed to providing the legal and regulatory framework and the structures and conditions required to guarantee the right of access to information to our citizens.” Successive resolutions of the OAS General Assembly have been issued with relation to access to information in the Americas, the OAS Special Rapporteur on freedom of expression is charged with monitoring the right to information in the region, and the Inter-American Juridical Committee recently endorsed ten key principles for the right of access to information. Perhaps most importantly, the Inter-American Court of Human Rights, in the seminal *Claude v. Chile* case held that Article provides a fundamental right to public information and obligates public authorities to provide information. This decision was the first of its kind, and has been widely cited around the world.

But are these mechanisms embody a clear “norm” on access to information? And if so, are they sufficient guidance for states to pass and implement legislation that satisfies this “norm” and for citizens to exercise their rights?

In collaboration with



In addition to international and regional instruments, domestic legislation has expanded to promote and protect access to public information throughout the Americas Region. Legal and institutional mechanisms have been created in diverse Latin American countries that include specialized monitoring and oversight units and specific enforcement bodies. At present more than half the countries in the Americas have some form of national legislation, and even more have local laws and Supreme Decrees to establish the basis for access to information.

While there are similarities among many of these domestic laws, there also remain some important differences – particularly in areas such as exceptions, oversight bodies and appeals. Implementation around the region is, at best, patchy and there are no guidelines for how to put the new right into effect. As Jorge Santistevan posited at the international conference in 2008, the gap between the international instruments and domestic legislation and the concrete recognition of human rights in daily life is evident in the modern world. It creates part of the difficulty of applying the right of access to information to specific cases (*enforcement/compliance*). This is why the task of strengthening access to information is not limited to the creation of norms and institutions. It requires that citizens are energized to be able to oversee why the right that consecrates the norms is duly enforced against the authorities, institutions or businesses that own information of public interest, as well as promoted in society as a whole.

At present, the Organization of American States is considering the issuance of a regional instrument to advance the right of access to information. Conventions can serve to harmonize and to incentivize, but also can ultimately limit the advancement. Regional instruments can aid advocacy efforts in tough environments, as the states regional commitment can be used as a leverage for the promotion of domestic rights. Convention can provide a collective expression of what conduct is and is not acceptable and can create incentives for countries to engage in favorable behavior.

On the other hand, experience has shown that there are potential limitations and detriments to regional instruments. As they are by nature consensus documents, they often embody the lowest common denominator, thus reducing the threshold for acceptable behavior. Moreover, they often are unenforceable and lack sufficient oversight mechanisms. Perhaps most importantly, they may serve as a distraction from the real work of advancing the right or worse, undermine past advances.

Regional mechanisms other than a convention could be considered, such as developing a clear action plan for the Nuevo Leon Summit Declaration, an Inter-American Program, a model law, or even a voluntary regional monitoring mechanism. But would these be sufficient to advance the right of access to information, or fall prey to the same pitfalls as a treaty or convention?

Some questions that this working group may consider are:

1. Is there a recognized regional norm for the right of access to information? Is it sufficient? Where do other rights, such as privacy and right to personal information held by public bodies (*habeas data*) fit in?

2. Is there a need for a regional convention or treaty? If so, what must it include? What would be the process for creation? And how would it be monitored and compliance assured? If not, what other instruments should be considered?
3. Do regional mechanisms provide sufficient guidance to state lawmakers? Is it the role of the state or regional body to set the standards?
4. What is necessary to monitor regional and domestic mechanism and how measure whether we are progressing? Is the Special Rapporteur sufficient? What more does this office need to meet the demands?
5. What mechanisms may be brought to bear on those nations that do not comply with the regional instruments (including jurisprudence) or norms?
6. What is the role of other regional and international institutions, including civil society, to further national laws and encourage states to sign-on and ratify?

THE  
CARTER CENTER



**International Conference on Access to Public Information:  
International Norms  
Summary of Discussion and Findings**

This working group considered the political aspects of an international norm for the right of ATI. They debated issues such as the need for supra-national conventions or treaties to establish norms of transparency, how treaties affect governments and their interactions with IFIs, the role of the private sector, and how a convention would be implemented and monitored. The group was divided (with mainly a geographic division between representatives from African and representatives from the Americas) over whether an international instrument would benefit the right to information. Some expressed concern that treaties have a tendency to veer toward the lowest common denominator and could endanger progress. Others reiterated that ATI is a matter of national law, as a request for information is from one person to their government, not from government to government. But many group participants were supportive of attempts to create a treaty for advocacy reasons. Treaties can be useful in tough environments, serving to create an enabling atmosphere rather than a limiting one. When there is no understanding of what ATI is, it is impossible to introduce a law from the outside without working to make the international norm part of the domestic system of norms.

Donors, when talking to governments, have the power to push these issues. External pressure from development banks has been one way to get countries to sign on. The World Bank and others are still making aid conditional on ATI policies. The key is to make ATI part of the “policy dialogue” with partner governments, which is one of the requirements of whether there is a good governance environment. This pressure can bring cohesion to governments that are not unitary in their opinion of ATI. As for the private sector, corporations are more amenable to transparency when they realize that it would make doing business for them easier, thus appealing to their interests is essential.

In terms of implementation, the group focused on the two levels. At the national level, there must be specific monitoring groups that will promote the norms and guarantee access. At the international level, any treaty should be accompanied by a follow-up mechanism and monitoring body. Without follow-up or enforcement, any treaty would not have sufficient international leverage. Indeed, it would be dangerous to promulgate a



right without a remedy. Opinions in the group regarding monitoring were mixed over whether they should rely on the existing bodies or create new positions to fill this monitoring role. Suggested mechanisms included a tool, such as a special rapporteur, a UN oversight body, and a UN commissioner for ATI. Additionally, there needs to be a local group to work with the international group for feedback, such as at the UN level or a group of eminent persons, such as President Carter. However, such an endeavor will require a feasibility assessment done by ambassadors or senior level people.

### **Consensus on the crux of the issue:**

- Access to information is a fundamental human right that should be universally recognized.
- Access to information is also a right inherent to democracy, good governance, and development.
- The right of access to information imposes obligations on all States to guarantee the fulfillment of this right (on request and proactively.)
- Regional and international bodies have a role to play in developing, monitoring and enforcing the exercise of the right of access to information.
- The enactment of a law alone is insufficient to guarantee this right, consequently sufficient resources should be dedicated to training of public officials, education of the public, to improving information management, to maximize proactive dissemination of information, and to ensuring effective oversight mechanisms.
- The right of access to information, being necessary for good governance and development should be guaranteed to all sectors of society.

### **Recommendations and action points**

- The right of access to information instruments should assure that:
  - extends to everyone and to all information held by or under the control of public bodies subject only to limited exceptions permitted by international law;
  - imposes on states a requirement to disseminate proactively information related to the core functioning of government;
  - applies to the all branches of government (including the administration, judicial and legislative bodies, as well as autonomous organs) at all levels (federal, central regional and local);
  - applies to private bodies performing public functions and/or delivering public services, or operating with public funds;
  - requires that requestors be guaranteed, under national law, a right to appeal denials of the right to court of law or similar body empowered to make binding decisions;
  - should also apply to multilateral organizations, including international financial institutions, development banks and organizations.
- International and regional bodies, including human rights bodies, should:
  - take measures to ensure that all states have effective mechanisms to promote and protect the right to information;

- develop enforceable international instruments to protect and guarantee this right;
- should conduct ongoing monitoring of compliance with this right.



## **Working Group Five**

### **Demand: Identifying the deficits and expanding the pool of users**

Facilitator: Carolyn Gomes

Rapporteur: Chris Hale

- A. Participant Working Group List
- B. Working Group Concept Note
- C. Suggested Reading
  1. Puddephatt, Andrews, Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa, and the United Kingdom, World Bank Institute Working Paper Series, 2009, <http://right2info.org/resources/publications-1>.
  2. Holsen et al., Journalist's use of the UK FOIA, Open Government: a journal on Freedom of Information. Volume 2 Issue 1, April 2007, <http://www.opengovjournal.org/article/view/771/791>,

In collaboration with





**Working Group Five**  
**Demand: Identifying the deficits and expanding the pool of users**

**Grupo de Trabajo Cinco**  
**Demanda: Identificar Deficiencias e Incrementar la Base de Usuarios**

**List of Participants / Lista de Participantes**

*Facilitator: Carolyn Gomes*

*Rapporteur: Chris Hale*

1. Gilma Agurcia
2. Carlos Alberto Barreda
3. Gil Castelo Branco
4. Fernando Castañeda
5. David Cohen
6. Darce Fardy
7. Joseph Foti
8. Debra Gersh Hernandez
9. Juan Pablo Guerrero
10. Manfredo Marroquín
11. Manuel Mora MacBeath
12. Tamer Medina
13. Ivana Moreira
14. Guillermo Noriega Esparza
15. Gustavo Palencia
16. Carlos Pimentel
17. Maria Poli
18. Marcos Villamán
19. Juan Javier Zeballos
20. Laura Zommer

THE  
CARTER CENTER



**Group Five**  
**Demand: Identifying Deficits and Increasing the Pool of Users**  
**Concept Note**

In many countries in the Americas, the demand for passage of a law and the consequent requests for information have been limited to the elite or a few organizations. Even in countries with a high number of requests, such as the United States or Mexico, a careful review of what little data exists demonstrates that either the majority of requests are for personal documents (such as Veteran or social security files) or that a plentitude of the petitions have been made by the same small number of people with a similar profile (urban, male, higher level of education).

Moreover, some countries such as Canada have historically low level of use, averaging approximately 50,000 requests per year. Is this self-imposed restraint, a cultural factor or an indication that citizens are satisfied by the amount of information that already is being made available through proactive/automatic publication?

As governments pass laws under the promise of greater citizen participation, confidence and renewed relationships they are at times deceived by the lack of widespread engagement with the law, and the sense that the law is only used as a hammer rather than a tool. Repeat users receive greater notice, and retributive policies are created to dampen interest or ability to make information requests.

On the other hand, there is generally a lack of public awareness of the law, its benefits and how it functions. Government-led public information campaigns are often short-lived and ineffective as they fail to reach communities outside of the major cities. Moreover, for many citizens, purely public information – such as contracts and budgets - may not be as critical as their own personal documents, or are so complex as to be unintelligible. After long-term information deficits and restrictions on public information, citizens may believe that state information is reserved for official use only and thus do not demand information.

In collaboration with



User profiles are poorly documented and motivations for requests not well understood. Public officials tend to believe that the media are the main users of access to information laws, whereas in many of the countries in the Americas, the general proportion of journalists using freedom of information laws to the total requester population is low. And civil society groups that promote the passage or use of the laws too frequently frame the right of access to information as an anti-corruption or accountability mechanism, rather than reaching out to a diversity of groups and individuals that would benefit from the law, such as community based organizations, consumer advocates and socio-economic and human rights proponents.

Various barriers exist that inhibit persons from utilizing access to information laws, such as fee structures, technological constraints, requirements to provide the justification for the request or requester identity, and illiteracy. The local political environment may discourage citizens from requesting information, as it could be viewed as a challenge to the dominance of a single political party or organization. Prevailing perceptions of corruption also may prevent citizens from having any interest in the government's functions, much less any willingness to engage it. Furthermore, socio-political factors such as discrimination against women and indigenous persons may breed further distrust among these populations.

It is not clear who is responsible for increasing demand and targeting populations that are not robust users but for whom greater access to information would be beneficial. Should it be the government, civil society, or the original groups that demanded the passage of the law? The particular political and societal context of a country, as well as the environment in which the law emerged, play essential roles in examining the idea of who should hold responsibility for the act's relevance and maintenance. The relationship between government and civil society and trust in public institutions affects the capabilities of various actors to coordinate their efforts to promote demand. Finally, to what extent is demand for the law tied to conceptions of citizenship, civic-mindedness, and a sense of ownership?

Some questions that this working group may consider are:

1. What are the profiles of requesters in different countries? Do they represent a wide swath of the population? Are there examples where the demand is robust and diversified?
2. Why are laws not being used? Why do failures of implementation and compliance remain unchallenged?
3. How can barriers to access be overcome?
4. What is the role of government in eliciting more demand? What issues does this raise and how can those be addressed?

5. What are effective and innovative strategies for overcoming low rates of usage or expanding the range of users? Are there ways to explore promotion of the right through pre-existing strategies for participation, especially at the subnational and local levels?
6. How does the role of ATI figure into the broader processes of participation and accountability?
7. What is the link between demand and participation? What additional research is needed?