

Civil society follow-up strategy to the implementation of the Quebec Plan of Action

HEMISPHERIC REPORT 2005

Study of the fulfillment of mandates
of the Plan of Action of Quebec
in 21 countries of the Americas



CITIZEN PARTICIPATION IN THE
SUMMIT OF THE AMERICAS

Civil society follow-up strategy to the implementation of the Quebec Plan of Action

Hemispheric Report

Coordinating Agency



CORPORACION
PARTICIPA

Supporting Agencies

Canadian International Development Agency (CIDA)
Inter-American Development Bank (IDB)
Inter-American Council for Integral Development of the
Organization of American States (CIDI/OAS)
US Agency for International Development (USAID)
Inter-American Democracy Network (IADN)
Partners of the Americas (POA)
Corporación Andina de Fomento (CAF)



Canadian
International
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Patent Register No.

First edition, Santiago, Chile, December 2004

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I. Introduction

The present report is in line with the Project Citizen Participation in the Summit of the Americas. In its coordination efforts, PARTICIPA Corporation works in alliance with the Canadian Foundation for the Americas (FOCAL), the Regional Coordinator for Economic and Social Research for Central America and the Caribbean (CRIES), Universidad de Los Andes from Colombia, the Latin American Faculty of Social Sciences (FLACSO) of Chile and the Inter-American Democracy Network (IADN). This project was launched seven years ago and, at present, involves Civil Society Organizations (CSOs) from 21 countries of the Americas.

The Project seeks to educate citizens and CSOs on the Summits of the Americas processes, on the commitments undertaken by the governments during the Summits meetings, and on how these processes are linked to the development of the countries and to the life of its citizens. It also aims at supporting efforts to influence governments in the fulfillment of the obligations they take on.

During these seven working years, two Summits of the Americas have taken place. For the Second Summit of the Americas held in Santiago, Chile (1966), the Project organized two Hemispheric-wide meetings with the participation of representatives of CSOs, governments and multilateral organizations from 34 countries. They contributed noteworthy proposals on the thematic areas of Education, Strengthening of Civil Society, the Role of Women in Eliminating Poverty and Discrimination and the Fight against Corruption. Several proposals tabled by CSOs were incorporated in the Plan of Action of Santiago. For the Third Summit of the Americas, held in Quebec (2001), PARTICIPA (Chile), FOCAL (Canada) and the Esquel Foundation (USA) carried out a consultation process involving 900 Civil Society Organizations from 17 countries which formulated 243 proposals to the Summit of Quebec. More than half of these proposals were incorporated into the final Plan of Action.

Between July 2002 and March 2005, the “Civil Society Follow-up Strategy to the Implementation of the Quebec Plan of Action” is being implemented to provide follow up and promote the fulfillment of the Quebec Plan of Action in the thematic area of strengthening democracy. This will be undertaken through the enhancement and broadening of citizen participation, with a network of CSOs designing and applying outreach and advocacy mechanisms at the Hemispheric, regional and national levels.

The selected themes to provide follow up and support the implementation of the Plan of Action are:

- 1) Access to information
- 2) Freedom of expression
- 3) Local government and decentralization
- 4) Strengthening of civil society participation
- 5) Judicial reforms and access to justice

For this follow-up process, a methodology was devised which permitted the use of quantitative and qualitative sources of information. A set of indicators for each of these topics was defined and, on their bases, questionnaires were designed for gathering information on the level of fulfillment of the Quebec mandates in each of the countries. For the themes of access to information, freedom of expression, access to justice and the autonomy of the Judiciary, use

was made of questionnaires that had been applied first to a group of experts. For local governments and decentralization, the questionnaires were addressed both to Municipal authorities as well as to representatives of CSOs having work-related relations with the Municipalities. Lastly, in the case of civil society participation, the questionnaires were applied to representatives of Civil Society Organizations, trying to include a wide diversity of organizations. To this end, consideration was given to the main topics of their agendas, the size of the enterprise and the coverage they offer¹.

Furthermore, and in an effort to reach consensus between the different opinions received when applying the questionnaires, in some countries where the research was carried out national workshops were conducted with the aim of both discussing the results achieved and standardizing the various points of view. In other countries events to launch the national reports took place instead of the workshops. In these events the main results were presented and discussions took place on the actions necessary to support the implementation of the mandates.

Likewise, the results were presented at the Hemispheric Forums² of civil society preparatory to the Special Summit of Monterrey. In these forums recommendations and proposals were drafted to support the implementation of the mandates on these themes. Within the frame of the advocacy process for the Special Summit, the results and proposals were presented at the meeting of the Summit Implementation and Review Group (SIRG) held in Washington, D.C., during December 8 and 9, 2003.

Activities as the ones mentioned in the previous two paragraphs will continue in an effort to disseminate the results obtained and, at the same time, to have an impact in the incorporation of the recommendations into the final document for the Summit of the Americas of Argentina in the year 2005.

The following organizations took part in the implementation of this research: Canadian Foundation for the Americas (FOCAL) of Canada, Partners of the Americas of the United States, Alianza Cívica of Mexico, Fundación del Servicio Exterior para la Paz y la Democracia (FUNPADEM) of Costa Rica, Fundación Dr. Guillermo Manuel Ungo (FUNDAUNGO) of El Salvador, Instituto de Investigación y Autoformación Política (INIAP) of Guatemala, Fundación Democracia y Desarrollo of Honduras (FDDH) and Centro de Investigación y Promoción de los Derechos Humanos (CIPRODEH) of Honduras, the Community Development Organization (GRENCONA) of Grenada, the Association of Development Agencies (ADA) of Jamaica, Participación Ciudadana of the Dominican Republic, The Network of NGOs of Trinidad and Tobago for Advancement of Women of Trinidad and Tobago, Centro al Servicio de la Acción Popular (CESAP) and Instituto Venezolano de Estudios Sociales y Políticos (INVESP) of Venezuela, Centro de Estudios Estratégicos para la Integración Latinoamericana (CEEILA) and Ciudadanos Trabajando por la Justicia of Bolivia, Department of Political Sciences of Universidad de Los Andes of Colombia, Corporación Latinoamericana para el Desarrollo (CLD) of Ecuador, Centro de Estudios y Promoción del Desarrollo (DESCO) of Peru, Asociación Conciencia of Argentina, Voto Consciente of Brazil, Latin American Faculty of Social Sciences (FLACSO) and PARTICIPA Corporation of Chile, Instituto de Derecho y Economía Ambiental (IDEA) of Paraguay, Asociación Encuentro of Uruguay and Coordinadora Regional de Investigaciones Económicas y Sociales (CRIES).

The presentation of these results is organized into legal subjects and into practical results.³ The commitment undertaken by the governments and the results achieved are given for each of the themes.

II. Results

1. ACCESS TO INFORMATION

1.1. Plan of Action Commitments

The Plan of Action⁴ establishes that the countries “will work together to facilitate cooperation among the national institutions responsible for guaranteeing (...) free access to information, with the aim of establishing best practices to improve the administration of information held by governments about individuals, facilitating citizens’ access to this information”.

1.2. Results

1. Legal aspects

The enactment of laws on freedom of access to information aimed at providing access to official data, as well as at constitutional guarantees, laws and guidelines emanating from the State, may contribute to safeguard access to public information. Nevertheless, access to information must be balanced vis-à-vis the right to privacy and the respect shown to citizens (as mentioned in the Plan of Action), while withholding information to protect national security.

In accordance with the results of the survey, the right of access to information is guaranteed by the Constitution in 18 of the 21 American countries studied. In some cases, this right is also warranted by special national laws. Therefore, most of the countries have a legal framework guaranteeing that citizens can exercise this right. In the North American region, Canada and the United States do not have such constitutional references, neither does Grenada.

Even though in the three countries mentioned above this right is not guaranteed by the Constitution, it is nevertheless fully warranted. For example, in Canada the Access to Information Law can revoke stipulations contained in other federal laws. Nonetheless, laws on freedom of information in Canada and United States date back to 1982 and 1966, respectively, therefore it is necessary to reinforce the legal framework and to bring it up to date. The updating process should be carried out with the aim that the measures taken by these countries to combat terrorism do not turn into obstacles for the exercise of this right, which would mean a drawback for the development of the accountability process.

With respect to the petition of Habeas Data⁵, it does exist in 12 countries. This means that in at least half of the countries studied, citizens have the possibility of lodging a complaint if the case merits it (only nine countries have this proceeding).

The Andean Region is the only region where all the countries can make use of this recourse. In MERCOSUR, Argentina, Brazil and Paraguay have this appeal, while Chile and Uruguay do not. The legal framework in the three remaining regions (North America, the Caribbean and Central America) have no reference to the above-mentioned recourse.

THE RIGHT OF ACCESS TO INFORMATION IS GUARANTEED BY THE CONSTITUTION IN 18 OF THE 21 AMERICAN COUNTRIES STUDIED. IN SOME CASES, THIS RIGHT IS ALSO WARRANTED BY SPECIAL NATIONAL LAWS.

THE PETITION OF HABEAS DATA, IT DOES EXIST IN 12 COUNTRIES. THIS MEANS THAT IN AT LEAST HALF OF THE COUNTRIES STUDIED, CITIZENS HAVE THE POSSIBILITY OF LODGING A COMPLAINT IF THE CASE MERITS IT.

Table No. 1: Existence of constitutional references on access to information, by country

| | Countries | Existence of constitutional references on | |
|---------------|--|---|-------------------------|
| | | Access to information | Recourse of Habeas Data |
| N.AMERICA | Canada | X | X |
| | United States | X | X |
| | México | ✓ | X |
| C.AMERICA | Costa Rica | ✓ | X |
| | El Salvador | ✓ | X |
| | Guatemala | ✓ | X |
| | Honduras | ✓ | X |
| THE CARIBBEAN | Grenada | X | ✓ |
| | Jamaica | ✓ | X |
| | Dominican Republic | ✓ | X |
| | Trinidad and Tobago | ✓ | X |
| ANDEAN REGION | Venezuela | ✓ | ✓ |
| | Bolivia | ✓ | ✓ |
| | Colombia | ✓ | ✓ |
| | Ecuador | ✓ | ✓ |
| | Perú | ✓ | ✓ |
| MERCOSUR | Argentina | ✓ | ✓ |
| | Brazil | ✓ | ✓ |
| | Chile | ✓ | X |
| | Paraguay | ✓ | ✓ |
| | Uruguay | ✓ | X |
| Total | With constitutional references | 18 | 9 |
| | Without constitutional references | 3 | 12 |

THERE IS ONE COUNTRY, HONDURAS, WHOSE LEGAL FRAMEWORK HAVE FIVE OR LESS CONSTITUTIONAL REFERENCES SUPPORTING THE RIGHT OF ACCESS TO INFORMATION.

Touching upon the characteristics of their legal framework, we can distinguish three different types of nations. There is one country, Honduras, whose legal framework have five or less constitutional references supporting the right of access to information. The laws in these country provide an inadequate level of access to information.

We have a second group of countries with legal structures containing between six and 10 references favouring access to information. These countries have a set of rules and regulations which though, in principle, offers a good system for accessing information, this procedure could be improved. Among these countries we have Costa Rica, El Salvador, Grenada, Trinidad and Tobago, Venezuela, Argentina, Brazil and Uruguay.

Lastly, we have a third group of countries with legal framework containing between 11 and 15 positive references on access to information. Among other aspects, these structures are characterized by the fact that they substantiate the Principle for Transparency and Publicity, ruling that information can be requested by any person without stating the motive for this request and also specifying clear sanctions for those officials who withhold information without sufficient justification. The countries in this group are Canada, the United States, Mexico,

Jamaica, the Dominican Republic, Bolivia, Colombia, Ecuador (this is the country offering the best legal structure for access to information), Chile and Paraguay. As can be seen most of the countries form part of this third group.

From the results obtained, it can be assessed that the level of implementation of the mandate of Quebec, in respect of the enactment of laws guaranteeing freedom of access to information, is adequate. Almost all countries have some form of rules and regulations warranting this right. Furthermore, most of these laws offer an important number of references backing access to information. Despite this favourable situation it is essential to consider that important steps must still be taken to achieve, in practice, the implementation of these laws.

The reality in these countries shows that, in some of them, the legal framework dates from some time back and that it is imperative that they be updated honouring the Principle of Transparency and Publicity, while in others, the legal structures have been enacted recently and, therefore, the theme of access to information is a new issue in their legislation. These countries need to make important efforts to ensure the implementation of these rules and regulations.

Lastly, it must be remembered that in almost all the countries of the Americas, the existence of constitutional references does not necessarily mean that they will be honoured by the authorities responsible for their observance. The public authorities in Latin America promote the action of excessive secrecy.

FROM THE RESULTS OBTAINED, IT CAN BE ASSESSED THAT THE LEVEL OF IMPLEMENTATION OF THE MANDATE OF QUEBEC, IN RESPECT OF THE ENACTMENT OF LAWS GUARANTEEING FREEDOM OF ACCESS TO INFORMATION, IS ADEQUATE.

IT MUST BE REMEMBERED THAT IN ALMOST ALL THE COUNTRIES OF THE AMERICAS, THE EXISTENCE OF CONSTITUTIONAL REFERENCES DOES NOT NECESSARILY MEAN THAT THEY WILL BE HONoured BY THE AUTHORITIES RESPONSIBLE FOR THEIR OBSERVANCE. THE PUBLIC AUTHORITIES IN LATIN AMERICA PROMOTE THE ACTION OF EXCESSIVE SECRECY.



Table No. 2: Characteristics of the laws that regulate Access to Information

| REGION | N. AMERICA | | | C. AMERICA | | | | THE CARIBBEAN | | | | ANDEAN REGION | | | | MERCOSUR | | | | | |
|--|------------|-----------|-----------|------------|----------|-----------|----------|---------------|-----------|-----------|-----------|---------------|-----------|-----------|-----------|-----------|----------|-----------|-----------|-----------|-----------|
| COUNTRIES ⁶ | C | USA | M | CR | ES | G | H | Gr | J | DR | TT | V | B | Co | E | P | A | Br | CH | Pa | U |
| The legal norms that govern access to information establish that: | | | | | | | | | | | | | | | | | | | | | |
| 1. Information held by the State can be requested by any person | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ |
| 2. Information requests must not necessarily state the motive for which the information is solicited | √ | √ | √ | X | √ | √ | X | √ | √ | √ | √ | √ | X | √ | √ | √ | √ | √ | √ | √ | X |
| 3. The government is obliged to provide all therequested information that it holds, with exceptions that are clearly specified | √ | √ | √ | √ | √ | √ | N/A | √ | √ | √ | √ | x | √ | √ | √ | √ | √ | √ | √ | √ | √ |
| 4. The cases in which the State is not allowed to provide information (e.g., protection of privacy or national security, etc), are stated in a clear and explicit manner | √ | √ | √ | X | X | X | N/A | X | X | √ | X | X | √ | X | √ | X | √ | √ | √ | √ | √ |
| 5. Exceptions to the principle of public access to information have been reduced to the bare minimum | X | √ | √ | X | X | X | X | X | X | √ | X | X | √ | X | √ | X | X | X | X | √ | X |
| 6. The legal system has the authority to exercise oversight in all cases of exception to the principle of public access to information | √ | √ | √ | √ | √ | √ | N/A | √ | X | √ | √ | X | √ | X | √ | X | X | X | √ | √ | √ |
| 7. When a document contains a combination of both permitted and restricted information, the permitted information must be provided upon request | √ | √ | √ | X | X | √ | N/A | √ | √ | √ | √ | √ | √ | √ | √ | √ | X | X | √ | √ | √ |
| 8. The principle of public access to information held by the government serves as a guide to interpret the law when specific cases come up | √ | √ | √ | X | X | √ | N/A | √ | √ | X | √ | X | √ | √ | √ | √ | √ | √ | √ | √ | √ |
| 9. Short time periods have been established for responses from offices where information has been requested | √ | √ | √ | √ | X | X | √ | X | √ | √ | X | √ | X | √ | √ | √ | √ | √ | √ | √ | X |
| 10. When information has been unjustifiably denied, the legal system can be used as a means of recourse | √ | √ | √ | √ | √ | √ | N/A | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ |
| 11. Persons requesting information can resort to the legal system in order to receive an explanation from the State regarding unnecessary delays | √ | √ | X | √ | √ | √ | N/A | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | X | √ | √ | √ |
| 12. Clear responsibilities are established for offici those that withhold information without sufficient justification | X | X | √ | X | X | √ | N/A | √ | √ | √ | X | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ |
| 13. The right to request information includes the right to duplicate the requested information | √ | √ | √ | X | X | √ | N/A | √ | √ | √ | √ | √ | √ | √ | √ | √ | X | √ | √ | X | √ |
| 14. The cost established by the State for the search and duplication of the information must not exceed a "reasonable" amount, which in the last instance will be determined by the legal system | √ | √ | √ | √ | X | √ | N/A | √ | √ | √ | √ | √ | √ | √ | √ | √ | X | X | √ | X | √ |
| 15. Laws which do not comply with the principle of maximum access to information have been modified or repealed | X | X | X | X | X | X | N/A | X | X | √ | X | X | X | X | √ | X | √ | X | √ | X | X |
| TOTAL | 12 | 13 | 13 | 7 | 6 | 11 | 2 | 11 | 11 | 14 | 10 | 9 | 12 | 11 | 14 | 12 | 9 | 10 | 13 | 13 | 10 |

N/A = Not applicable

2. Access to information, in practice

Access to information is understood as relevant information made public in areas as: public finances, activities by public and other senior officials, results of governments' activities, support to vulnerable groups, accounting, auditing and finances of private companies and their high-ranking officials, data which are of interest to the mass media, to civil society and to the citizens. To make public the information in these areas means that the availability of data be adequate for citizens to have access to opportunities and to practise their rights, be relevant to permit the exercise of supervision of public and private officials, be timely and updated, as well as understandable and easy to follow.

Therefore, even though it is important that laws guaranteeing access to information are available, the central issue is the possibilities of citizens to have at their disposal timely and unabridged information.

North America is the region offering better availability of data on public finances, while in the Caribbean region this information is almost unavailable. Apart from the three countries making up the North American region, in Ecuador, Chile and Uruguay the data are of easy access. Nonetheless, these six nations constitute an exception, as in the majority of the countries this information is difficult to access or is simply not available.

NORTH AMERICA IS THE REGION OFFERING BETTER AVAILABILITY OF DATA ON PUBLIC FINANCES, WHILE IN THE CARIBBEAN REGION THIS INFORMATION IS ALMOST UNAVAILABLE. APART FROM THE THREE COUNTRIES MAKING UP THE NORTH AMERICAN REGION, IN ECUADOR, CHILE AND URUGUAY THE DATA ARE OF EASY ACCESS. NONETHELESS, THESE SIX NATIONS CONSTITUTE AN EXCEPTION, AS IN THE MAJORITY OF THE COUNTRIES THIS INFORMATION IS DIFFICULT TO ACCESS OR IS SIMPLY NOT AVAILABLE.

Table No. 3.1: Real access to information. Public finances

| REGION | N. AMERICA | | | C. AMERICA | | | | THE CARIBBEAN | | | | ANDEAN REGION | | | | MERCOSUR | | | | | |
|--|------------|----------|----------|------------|----------|----------|----------|---------------|----------|----------|----------|---------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| COUNTRIES | C | USA | M | CR | ES | G | H | Gr | J | DR | TT | V | B | Co | E | P | A | Br | CH | Pa | U |
| Real access to information on public finances | | | | | | | | | | | | | | | | | | | | | |
| 1. Government spending | √ | √ | √ | √ | X | X | X | √ | X | √ | X | √ | X | X | √ | X | X | X | √ | X | √ |
| 2. Public contracts with the private sector (bids) | √ | √ | √ | X | X | √ | X | √ | √ | X | X | X | X | X | √ | X | X | √ | √ | X | √ |
| 3. Economic measures (e.g., privatizations and international agreements) | √ | √ | √ | X | X | X | X | X | X | X | X | √ | X | X | √ | X | √ | √ | √ | X | √ |
| TOTAL | 3 | 3 | 3 | 1 | 1 | 1 | 0 | 2 | 1 | 1 | 0 | 2 | 0 | 0 | 3 | 0 | 1 | 2 | 3 | 0 | 3 |

On the subject of access to information on activities of public and other senior officials, we have the same situation as shown in the above paragraph. Once again, the North American region is offering better access to this type of information. Apart from these countries, data is easily accessed in Costa Rica and Ecuador. The Caribbean and Central American regions are the ones where the level of access to this information is low.

Nonetheless, if comparison is made between access to this information vis-à-vis information on public finances, one can see that it is easier to obtain facts on activities of public and other senior officials than on finances.

Table No. 3.2: Real access to information on activities by public and other senior officials

| REGION | N. AMERICA | | | C. AMERICA | | | | THE CARIBBEAN | | | | ANDEAN REGION | | | | MERCOSUR | | | | | |
|--|------------|----------|----------|------------|----------|----------|----------|---------------|----------|----------|----------|---------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| COUNTRIES | C | USA | M | CR | ES | G | H | Gr | J | DR | TT | V | B | Co | E | P | A | Br | CH | Pa | U |
| Real access to information on activities by public and other senior officials | | | | | | | | | | | | | | | | | | | | | |
| 1. Public servants' income | √ | √ | √ | √ | P | X | X | √ | X | X | X | X | X | √ | √ | X | X | X | X | √ | |
| 2. Public servants' assets | X | √ | √ | √ | X | X | X | X | X | √ | X | X | X | √ | X | X | √ | √ | √ | X | X |
| 3. Voting in Parliament | √ | √ | √ | √ | √ | X | √ | √ | √ | X | √ | √ | √ | √ | √ | √ | X | √ | √ | √ | √ |
| TOTAL | 2 | 3 | 3 | 3 | 1 | 0 | 1 | 2 | 1 | 1 | 1 | 1 | 1 | 2 | 3 | 1 | 0 | 2 | 2 | 1 | 2 |

INFORMATION ON PUBLIC ACTIVITIES IS AVAILABLE IN THE MAJORITY OF THE COUNTRIES. IN ADDITION, IT CAN BE STATED THAT FROM ALL THE TYPES OF INFORMATION ASSESSED, THIS IS THE ONE OF EASIER ACCESS.

Information on public activities is available in the majority of the countries. In addition, it can be stated that from all the types of information assessed, this is the one of easier access. Nevertheless, there is a group of countries (Grenada, Trinidad and Tobago, Bolivia, Colombia and Peru) where there is no access to these data.

The regions showing a high level of access to this information are: North America, Central America and MERCOSUR.

It is important to point out that besides the efforts made by governments to disseminate this information, both the mass media and Civil Society Organizations play a very important role in this process.

Table No. 3.3: Real access to information on the results of government's activities

| REGION | N. AMERICA | | | C. AMERICA | | | | THE CARIBBEAN | | | | ANDEAN REGION | | | | MERCOSUR | | | | | |
|---|------------|----------|----------|------------|----------|----------|----------|---------------|----------|----------|----------|---------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| COUNTRIES | C | USA | M | CR | ES | G | H | Gr | J | DR | TT | V | B | Co | E | P | A | Br | CH | Pa | U |
| Real access to information on the results of government's activities | | | | | | | | | | | | | | | | | | | | | |
| 1. Levels of poverty and inequality | √ | √ | √ | √ | P | X | X | √ | X | X | X | X | X | √ | √ | X | X | X | X | √ | |
| 2. Students' achievements and other educational indicators | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | X | √ | X | X | √ | X | √ | √ | √ | √ | √ |
| 3. Health care and other health indicators | √ | √ | √ | √ | √ | X | √ | √ | √ | √ | X | √ | X | X | √ | X | √ | √ | √ | √ | √ |
| 4. Accusations of police abuse and use of excessive force | √ | √ | √ | √ | X | X | X | √ | √ | √ | X | √ | X | X | √ | X | X | √ | X | √ | √ |
| TOTAL | 4 | 4 | 4 | 4 | 3 | 2 | 3 | 4 | 4 | 4 | 0 | 4 | 0 | 0 | 4 | 0 | 3 | 4 | 3 | 4 | 4 |

REGARDING INFORMATION ON SUPPORT PROVIDED TO VULNERABLE GROUPS, THE DATA IS EASILY ACCESSED AND THE MASS MEDIA AND CSOs PLAY AN IMPORTANT ROLE IN ACHIEVING THIS GOAL.

Regarding information on support provided to vulnerable groups, the data is easily accessed and the mass media and CSOs play an important role in achieving this goal. But, there are countries where this information is unavailable. These are the same countries where information on the results of government's activities is unobtainable, plus Brazil and Paraguay.

North America and Central America are the regions with easier access to this kind of information.

Table No. 3.4: Real access to information on support given to vulnerable groups

| REGION | N. AMERICA | | | C. AMERICA | | | | THE CARIBBEAN | | | | ANDEAN REGION | | | | MERCOSUR | | | | | |
|---|------------|----------|----------|------------|----------|----------|----------|---------------|----------|----------|----------|---------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| COUNTRIES | C | USA | M | CR | ES | G | H | Gr | J | DR | TT | V | B | Co | E | P | A | Br | CH | Pa | U |
| Real availability of information on support given to vulnerable groups | | | | | | | | | | | | | | | | | | | | | |
| 1. Sources of support for victims of domestic violence and sexual abuse | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | X | √ | X | X | √ | X | √ | X | √ | X | √ |
| TOTAL | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 1 | 0 | 1 | 0 | 1 |

The data on accounting, auditing and finances of private firms together with the information on public finances, are the most difficult to obtain. This fact shows that information is not readily accessible on budgetary issues.

North America is the region offering the best access to this kind of information. Jamaica also shows a high level of availability to this type of data, a very marked difference with respect to the rest of the countries of the Caribbean region.

THIS FACT SHOWS THAT INFORMATION IS NOT READILY ACCESSIBLE ON BUDGETARY ISSUES.

Table No. 3.5: Real access to information on accounting, auditing and finances of private firms providing public services

| REGION | N. AMERICA | | | C. AMERICA | | | | THE CARIBBEAN | | | | ANDEAN REGION | | | | MERCOSUR | | | | | |
|---|------------|----------|----------|------------|----------|----------|----------|---------------|----------|----------|----------|---------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| COUNTRIES | C | USA | M | CR | ES | G | H | Gr | J | DR | TT | V | B | Co | E | P | A | Br | CH | Pa | U |
| Real access to information on accounting, auditing and finances of private firms providing public services | | | | | | | | | | | | | | | | | | | | | |
| 1. Performance indicators of public and private firms that provide public services | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | X | √ | X | X | √ | X | √ | X | √ | X | √ |
| 2. Price and quality of consumer products | √ | √ | √ | √ | P | X | √ | X | √ | X | X | √ | X | X | √ | X | X | X | X | X | X |
| TOTAL | 2 | 2 | 1 | 1 | 0 | 1 | 1 | 1 | 2 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 0 |

Table No. 3.6: Summary table on real access to information

| REGION | N. AMERICA | | | C. AMERICA | | | | THE CARIBBEAN | | | | ANDEAN REGION | | | | MERCOSUR | | | | | |
|---|------------|-----------|-----------|------------|----------|----------|----------|---------------|----------|----------|----------|---------------|----------|----------|-----------|----------|----------|----------|-----------|----------|-----------|
| COUNTRIES | C | USA | M | CR | ES | G | H | Gr | J | DR | TT | V | B | Co | E | P | A | Br | CH | Pa | U |
| 1. Real access to information on public finances | 3 | 3 | 3 | 1 | 1 | 1 | 0 | 2 | 1 | 1 | 0 | 2 | 0 | 0 | 3 | 0 | 1 | 2 | 3 | 0 | 3 |
| 2. Real access to information on activities by public and other senior officials | 2 | 3 | 3 | 3 | 1 | 0 | 1 | 2 | 1 | 1 | 1 | 1 | 1 | 2 | 3 | 1 | 0 | 2 | 2 | 1 | 2 |
| 3. Real access to information on the results of government's activities | 4 | 4 | 4 | 4 | 3 | 2 | 3 | 4 | 4 | 4 | 0 | 4 | 0 | 0 | 4 | 0 | 3 | 4 | 3 | 4 | 4 |
| 4. Real access to information on support to vulnerable groups | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 1 | 0 | 1 | 0 | 1 |
| 5. Real access to information on accounting, auditing and finances of private firms providing public services | 2 | 2 | 1 | 1 | 0 | 1 | 1 | 1 | 2 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 0 |
| TOTAL | 12 | 13 | 13 | 10 | 6 | 5 | 6 | 10 | 9 | 7 | 1 | 9 | 1 | 2 | 12 | 1 | 5 | 8 | 10 | 5 | 10 |

THE COUNTRIES OFFERING REAL AVAILABILITY OF INFORMATION ARE CANADA, THE UNITED STATES AND MEXICO AND ECUADOR. THE REST OF THE COUNTRIES DO NOT PRESENT AN EQUAL STANDING, AS THERE IS ACCESS TO INFORMATION ONLY ON SOME THEMES. THE MOST CRITICAL EXPERIENCES ARE SEEN IN TRINIDAD AND TOBAGO, BOLIVIA, COLOMBIA AND PERU. IN PRACTICE, THE LAWS REGULATING THE PRINCIPLE OF ACCESS TO INFORMATION ARE NOT ADEQUATE, AS CITIZENS DO NOT HAVE REAL ACCESS TO PUBLIC INFORMATION.

The countries offering real availability of information are Canada, the United States and Mexico (these three countries compose the North American region) and Ecuador. The rest of the countries do not present an equal standing, as there is access to information only on some themes. The most critical experiences are seen in Trinidad and Tobago, Bolivia, Colombia and Peru, countries where it is evident that availability of information does not only imply easy access to the data but also that the facts are unabridged, uncontradicted and easy to understand and to follow.

From the results achieved it can be seen that, in practice, the laws regulating the principle of access to information are not adequate, as citizens do not have real access to public information. The outcome of the assessment indicates that, in the majority of cases, citizens do not have real availability to information, being the topics related to public finances and finances of private companies (providing public services), the ones presenting the greatest difficulties for data access.

According to the information presented, it can be concluded that there are several countries, mainly from the Caribbean and Central America, presenting similar problems. Even though these countries have a legal framework, this structure does not offer favourable characteristics as it does not guarantee that citizens can have access to information when requested. Examples of these countries are El Salvador, Guatemala, Honduras and Trinidad and Tobago.

Another group of countries, mainly those forming the Andean Region and MERCOSUR, have better developed legal framework and are termed as favourable for access to information. In general, in these countries the theme of access to information is a new issue and, therefore, so are their legal structures. Nonetheless, and despite the legislative progress on this subject, in some of these countries citizens do not have a real access to information because laws are not honoured. For example, in countries like Bolivia, Colombia, Peru, Argentina or Paraguay where there is a set of norms favouring access to information, citizens do not have real access to data.

There is a last group of countries formed by countries having a legal framework favouring access to information and where citizens have real access to data, differing only on their level of effectiveness. These countries are Canada, the United States, Mexico, Ecuador, Chile and Uruguay.

1.3. Proposals

Given the results achieved, we propose:

- To promote the passing of laws guaranteeing free access to information, in those countries where they are not available, while for those where the law exists, to improve its application so that citizens are guaranteed effective and timely access to information.
- To urge that the current legislation on access to information clearly establishes the criteria by which information can be denied and that these exceptions be reduced to the bare minimum, so that the right of access to information can prevail, a right that has been so difficult to include in the national legislation.
- To guarantee that public services comply with the current legislation on access to information so that citizens are warranted the exercise of this right.
- To guarantee the use of information mechanisms to improve the level of transparency of national, regional and local government management, as well

as the in-depth, updated and relevant nature of the information made public. The government must regulate the information being published, which has to include reports on performance and budgetary expenses.

- To educate and raise awareness in citizens and public officials on the exercise of this right.
- To extend the use of official websites at the regional and local spheres in order to increase public institutions' transparency in the contracting processes at these levels, as well as to enhance accountability of government institutions.
- To encourage the application of training programs on technologies available to access information, so as to increase its use by the citizens.

2. FREEDOM OF EXPRESSION

2.1. Plan of Action Commitments

The Plan of Action⁷ declared that governments will *“ensure that national legislation on freedom of expression is applied in an equal manner to all, respecting this liberty and access to information for all citizens, and for States to ensure that journalists and opinion leaders are free to investigate and publish without fear of reprisals, harassment or vindictive actions, including the misuse of anti-defamation laws”*.

2.2 Results

1. Legal aspects

The right of freedom of expression has legal standing in the 21 countries studied. Furthermore, in the majority of these countries, with the exception of the four of Central America and the three English-speaking nations of the Caribbean, there is additional legislation regulating the exercise of this right.

The “desacato” laws are legal impediments restricting freedom of expression. These laws exist to protect the honour of public funcionarios acting in their official capacity, thus unjustifiably granting a right to protection for public officials that is not available to other members of society. These norms exist in nine countries, predominantly in the Andean Region and in MERCOSUR.

In the Andean Region, Bolivia, Ecuador and Venezuela still possess “desacato” laws. Colombia does not have it and, in Peru, it was repealed by Law 27975 of the year 2003.

In the case of Venezuela the “desacato” law dates back almost 80 years and was recently reintroduced through a decision of the Supreme Court of Justice (Provea, 2003), thus violating the principles of the Inter-American Commission on Human Rights. Likewise, during the period assessed, two verdicts have been passed limiting freedom of expression. Verdict 1.013 of the Supreme Court of Justice establishes that editors are unanimously responsible for the work performed by the journalists and, among other aspects, it regulates the contents and the drafting of the information presented by the mass media. While verdict 1.942 supports the “desacato” laws by which those individuals who criticize public servants can be imprisoned

In the MERCOSUR Region the “desacato” laws were repealed in Argentina in 1993, while in Uruguay demands have been addressed to the government

THE RIGHT OF FREEDOM OF EXPRESSION HAS LEGAL STANDING IN THE 21 COUNTRIES STUDIED. FURTHERMORE, IN THE MAJORITY OF THESE COUNTRIES, WITH THE EXCEPTION OF THE FOUR OF CENTRAL AMERICA AND THE THREE ENGLISH-SPEAKING NATIONS OF THE CARIBBEAN, THERE IS ADDITIONAL LEGISLATION REGULATING THE EXERCISE OF THIS RIGHT.

THE “DESACATO” LAWS ARE LEGAL IMPEDIMENTS RESTRICTING FREEDOM OF EXPRESSION. THESE NORMS EXIST IN NINE COUNTRIES, PREDOMINANTLY IN THE ANDEAN REGION AND IN MERCOSUR.

requesting its elimination⁸, and in Chile a derogatory project for these rules is being discussed in Parliament. The same law can be found in Brazil.

North America is the only region where this law is unknown. Relating to freedom of expression, although this right is guaranteed by the Constitution of the three countries, it is accepted that the right to freedom of expression has certain restrictions based on the need to maintain public order, national security and protection granted to vulnerable groups. The definition of these areas and, therefore, of the restrictions to exercise this right are being negotiated by the State and civil society organizations, in an effort to adapt the laws and their interpretation to the new realities facing these countries. In this respect, the work performed by the Courts in Canada and in the United States has been of key importance.

The case of Mexico illustrates the fact that well the existence of a right within the Constitution does not guarantee necessarily the one that this one is respected. For it is precise also to count on laws and regulations that establish the rights and obligations of the involved parts. In this country slopes have left the reforms to the laws and the regulations related to the exercise of the freedom of expression (it presses, radio and television), which are obsolete.

In this sense, although this right is recognized by the constitution of all the countries and in most of these special laws exist, the effective normative marks are insufficient. In addition, the presence of norms, like the figure of the “disrespect”, in the national legislations, next to the attitude of some judges, has been a key factor so that almost in the totality (19) of the investigated countries, they are continued presenting/displaying actions destined to limit this right. Examples of this type of actions are the constant processes that have taken against journalists and leaders of opinion to show dissident judgments, threats that receive the journalists, arriving in some cases at threats from death, the confiscation of publications and the censorship of programs.

Only the two countries, of the 21 investigated, where cases of actions have not appeared destined to limit the right to the free expression are Grenada and Jamaica, both corresponding ones to the region of the Caribbean.

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ARE GRENADA AND
JAMAICA, BOTH
CORRESPONDING ONES
TO THE REGION OF THE
CARIBBEAN.

Table No. 4: Existence of constitutional references to freedom of expression, norms regarding contempt of court (desacato) and court decisions restricting this freedom, by country

| | Countries | Constitutional references on freedom of expression | Norms regarding contempt of court (desacato) | Court decisions restricting freedom of expression |
|---------------|---------------------|--|--|---|
| N.AMERICA | Canadá | √ | X | √ |
| | United States | √ | X | √ |
| | México | √ | X | √ |
| C.AMERICA | Costa Rica | √ | X | √ |
| | El Salvador | √ | √ | √ |
| | Guatemala | √ | X | √ |
| | Honduras | √ | X | √ |
| THE CARIBBEAN | Grenada | √ | X | X |
| | Jamaica | √ | X | X |
| | Dominican Republic | √ | √ | √ |
| | Trinidad and Tobago | √ | √ | √ |
| ANDEAN REGION | Venezuela | √ | √ | √ |
| | Bolivia | √ | √ | √ |
| | Colombia | √ | X | √ |
| | Ecuador | √ | √ | √ |
| | Perú | √ | X | √ |
| MERCOSUR | Argentina | √ | X | √ |
| | Brazil | √ | √ | √ |
| | Chile | √ | √ | √ |
| | Paraguay | √ | X | √ |
| | Uruguay | √ | √ | √ |
| Total | With | 21 | 9 | 19 |
| | Without | 0 | 12 | 2 |

2. Characteristics of mass media

The general trend indicates that in 19 of the 21 countries surveyed there is heavy concentration of media ownership reflected in the existence of “holdings”, owning various media conglomerates. The media is in the hands of large economic groups who, in general, do not represent the ideological differences of these countries. One of the main reasons for this concentration phenomenon is that the countries do not have laws enforcing this matter.

This issue has a negative effect on the ideological diversity that should be part and parcel of the mass media and also limits the pluralistic role which, in theory, the media should offer.

The two nations where ownership is not concentrated are Jamaica and Uruguay, country which is starting a deconcentration process.

National legislations offer the possibility that local and ethnic communities, national groups or others may have their own communications media, but the costs implied in running this venture prevent this possibility from becoming a widespread reality. Likewise, the concentration of ownership of the media per se entails a barrier which restricts this access.

THE GENERAL TREND INDICATES THAT IN 19 OF THE 21 COUNTRIES. THE MEDIA IS IN THE HANDS OF LARGE ECONOMIC GROUPS WHO, IN GENERAL, DO NOT REPRESENT THE IDEOLOGICAL DIFFERENCES OF THESE COUNTRIES.

THE TWO NATIONS WHERE OWNERSHIP IS NOT CONCENTRATED ARE JAMAICA AND URUGUAY, COUNTRY WHICH IS STARTING A DECONCENTRATION PROCESS.

3. Freedom of expression in practice

In Mexico, as in the greater part of the countries forming the Andean Region and MERCOSUR, journalists face a dangerous situation when trying to exercise their right of freedom of expression. The results obtained show that in these countries communicators have to live with threats which directly affects their capacity to present truthful and impartial information.

On the contrary, in Grenada, Jamaica, the United States, Guatemala and Honduras journalists and opinion leaders are faced with very limited restrictions. For the first two countries mentioned, no restrictions were reported.

Summarizing, it can be said that the right of freedom of expression is guaranteed in all the countries studied. However, having said that, it must be pointed out that although all the countries of the region have subscribed internationally to protect this right, their legal framework do not reflect this commitment, as demonstrated in the “desacato” laws in force, in legal decisions restricting this right and in the lack of implementation of anti-monopoly laws.

Regarding the exercise of this right by citizens, journalists and opinion leaders, the outlook of Mexico, the Andean Region and MERCOSUR in relation to the guarantee of the right of expression, is disheartening.

During the last years restrictions to this right have intensified in the Andean Region and this situation seems to be directly related to the political crises experienced by the Andean countries in recent years. The most worrying cases are those of Colombia and Venezuela, because although threats to journalists and the citizenry persist in the five countries, it is in these two where intimidations are the order of the day. The fact that this situation arises in the two countries not showing the greatest number of cases restricting freedom of expression, leads to the conclusion that in both Venezuela and Colombia the exercise of this right is undergoing a critical phase.

In the MERCOSUR Region, journalists experience great difficulty in carrying out their work. Only Argentina presents no indictment cases against members of the press due to limitation of the freedom of expression. Furthermore, in all countries pressure has been exerted on the media on account of the content of their programs. Journalists in Argentina, Chile, Paraguay and Uruguay have suffered intimidation.

Of the 21 countries studied, Chile and Colombia are the ones showing the largest number of impediments to the right of freedom of expression. In the first country, besides obstacles faced by journalists in the exercise of their duties, there are cases of censorship of works and confiscation of material; while in Colombia, journalism is considered as a high risk profession because of the serious internal armed conflict prevailing in that country.

Table No. 5: Existence of cases that restrict freedom of expression

| REGION | N. AMERICA | | | C. AMERICA | | | | THE CARIBBEAN | | | | ANDEAN REGION | | | | MERCOSUR | | | | | |
|--|------------|----------|----------|------------|----------|-----------------|----------|---------------|----------|----------|----------|---------------|----------|----------|----------|----------|----------|----------|----------------|----------|----------|
| COUNTRIES | C | USA | M | CR | ES | G | H | Gr | J | DR | TT | V | B | Co | E | P | A | Br | CH | Pa | U |
| Existence for the period 2001 - 2002 of: | | | | | | | | | | | | | | | | | | | | | |
| Legal procedures against journalists based on limiting freedom of expression | X | √ | √ | √ | X | X | √ | X | X | X | √ | √ | √ | √ | √ | √ | X | √ | √ | √ | √ |
| Assassination of journalists due to their work | X | X | √ | √ | X | X | X | X | X | X | X | √ | √ | √ | X | √ | X | √ | X | X | X |
| Exile or displacement of journalists because of their work | X | X | X | X | X | X | X | X | X | √ | X | X | X | √ | X | X | X | X | √ ⁹ | X | X |
| Obstruction in the dissemination of information | X | X | √ | X | X | X | X | X | X | X | √ | √ | √ | √ | X | √ | X | √ | √ | X | √ |
| Confiscation of material | √ | X | √ | X | X | X | X | X | X | X | X | X | X | √ | X | X | X | X | √ | X | X |
| Threats against journalists | √ | X | √ | X | √ | √ | X | X | X | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ |
| Pressures on the media because of the content of their programs | X | X | √ | X | √ | X | X | X | X | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ |
| Censorship of media | X | X | √ | X | √ | X ¹⁰ | X | X | X | √ | X | X | X | X | X | X | X | √ | √ | X | X |
| TOTAL | 2 | 1 | 7 | 2 | 4 | 1 | 1 | 0 | 0 | 2 | 5 | 5 | 5 | 7 | 3 | 5 | 2 | 6 | 8 | 2 | 4 |

2.3. Proposals

Given the results achieved, we propose:

- To ensure that national legislations on freedom of expression are consistent with legal international standards. To specifically remove the practice of censorship in any of its forms, faithfully observing the mandates of the Inter-American Commission on Human Rights.
- To promote amendments to the existing legal framework, whereby monopolies are restricted in order to eliminate the risk of concentration of ownership.
- To guarantee protection to journalists, as well as respect for the free exercise of their profession and to give access to sources of public information, ensuring that at all times the right to privacy is honoured.
- To guarantee absence of political pressures and intervention to the media, especially to the television and written press. In this respect, to support the initiatives aimed at creating institutions independent of the Executive who can authorize the operation of radio and television frequencies.
- To promote, through the media, ideological and cultural pluralism. To this end, it is necessary to encourage the work of the community media, a crucial aspect in advocating participation and cultural diversity at the local sphere. Likewise, to strengthen public communication services and, in general, to promote pluralistic sources of information and the independence of the media in face of governmental or economic pressures.
- To promote the creation of a follow-up mechanism for the Freedom of Speech Committee of the Inter-American Commission of Human Rights, so it can take preventive measures when needed.
- To create mechanisms that ensure that governments will implement both general and specific recommendations issued by the Office of the Special Rapporteur for Freedom of Expression of the Organization of American States (OAS).
- To raise awareness in judicial authorities and staff on subjects connected to freedom of expression and jurisprudence on related matters. This can be achieved by holding advanced courses and vocational training courses.

GRENADA IS THE ONLY COUNTRY WHERE LOCAL GOVERNMENTS HAVE NOT BEEN ESTABLISHED. CIVIL SOCIETY ORGANIZATIONS HAVE ACTIVELY LOBBIED FOR THEIR IMPLEMENTATION. NO REPLY TO THIS REQUEST HAS BEEN RECEIVED, BUT RECENTLY THE GOVERNMENT FORMED A CITIZEN ADVISORY COMMITTEE AND IT IS EXPECTED THAT THE COMMITTEE WILL ADDRESS THIS ISSUE.

THE DIFFERENT SET OF RULES REGULATING LOCAL GOVERNMENTS IN EACH OF THESE COUNTRIES ESTABLISHES THAT THE POWERS BESTOWED ON THEM ARE THOSE RELATING TO THE MANAGEMENT AND DEVELOPMENT OF THE TERRITORY THEY GOVERN.

ACCORDING TO THE LAWS IN FORCE IN EACH OF THE COUNTRIES REGULATING LOCAL GOVERNMENTS THESE ENTITIES HAVE THE PROPER AUTONOMY TO ADMINISTER THEIR FINANCES, ALTHOUGH AT TIMES THIS FINANCIAL INDEPENDENCE IS CURTAILED BECAUSE A SIGNIFICANT PART OF THEIR BUDGET PROVIDES FROM THE TRANSFERS MADE BY THE CENTRAL GOVERNMENT. THIS SITUATION IS MAINLY SEEN IN CENTRAL AMERICAN AND CARIBBEAN COUNTRIES.

3. LOCAL GOVERNMENT AND DECENTRALIZATION

3.1. Plan of Action Commitments

The Plan of Action establishes that¹¹ *“in recognition that adequate citizen participation and political representation constitute the foundations of democracy, and that local governments have a more significant presence in the daily lives of citizens”*, the governments will:

“Promote mechanisms to facilitate citizen participation in political life, especially in local or municipal governments.”

“Promote the development, autonomy and institutional strengthening of local governments, to help create favourable conditions for the sustainable economic and social development of their communities.”

3.2. Results

The characteristics of local governments¹² vary according to each country as in each one of them the politico-territorial division is different. Each country has laws regulating local governments. These laws establish, among others, their powers, functions and electoral system.

Grenada is the only country where local governments have not been established. Civil Society Organizations have actively lobbied for their implementation. No reply to this request has been received, but recently the government formed a Citizen Advisory Committee and it is expected that the Committee will address this issue.

1. Autonomy of Local Governments

a) Local Governments' Tasks

The tasks performed by local governments vary significantly depending on the type of local government and on their location.

In general, the different set of rules regulating local governments in each of these countries establishes that the powers bestowed on them are those relating to the management and development of the territory they govern. Their purpose is to satisfy the needs of the local community and ensure its participation in the economic, social and cultural progress of society.

To reach these objectives, the main powers entrusted to the local governments are:

- To execute a local development plan and the necessary programs for its implementation.
- To elaborate, approve, modify and execute the local budget.
- To organize and provide public services of local importance
- To protect the environment and promote sustainable development.
- Area management.
- To protect the historico-cultural heritage.

b) Autonomy in the administration of the finances

According to the laws in force in each of the countries regulating local governments these entities have the proper autonomy to administer their finances, although at times this financial independence is curtailed because a significant

part of their budget provides from the transfers made by the central government. This situation is mainly seen in Central American and Caribbean countries.

The principal sources of financing of the local governments are:

- Transfer of resources from the central government.
- Own resources provided from taxes (taxes and duties).
- Own resources not provided from taxes (duties paid for services received, credits, rents, royalties).
- Others.

It is important to point out that all countries, with the exception of Grenada and Uruguay, have tax redistribution systems to compensate the income inequality given among the different local governments. In general, these systems are administered by the central government and receive their funding from resources transferred by this organism.

A case in point is the “Fondo Común Municipal” (Common Municipal Fund) of Chile, formed in its entirety by municipal contributions (no financial support from the central State) and which constitutes the main source of financing of local governments in the country.

2. Legal modifications geared towards supporting the decentralization process

For the last ten years, legal modifications aimed at supporting the decentralization process have been implemented in the areas of administrative flexibility, supervision, citizen participation and financing.

These modifications show different characteristics depending both on the country and on the pace of the implementation process. The countries showing the least progress are El Salvador, Honduras, Trinidad and Tobago and Paraguay.

In El Salvador, various proposals on decentralization have been presented, but the low level of transfer of authority still persists. Among the initiatives, mention can be made of the pilot project for decentralizing the water supply system, the administrative and organizational decentralization spearheaded by the Ministry of Education, the Basic Systems for Integral Health of the Ministry of Public Health and the construction of secondary roads. The Government Plan (1999-2004) included a National Strategy for Local Development. Nevertheless, it was reported that the decentralization process was at a standstill and that even drawbacks could be appreciated.

In Honduras there is a national decentralization plan whose execution has been extremely slow, and it is considered that the decentralization experiences have operated more as deconcentration than as decentralization proper.

A deconcentration of actions can be observed in social investment projects, in health, and a new challenge is being undertaken in education.

In Trinidad and Tobago there have been no modifications since 2000 of the legal framework that regulates or supports decentralization. A recent draft policy on Local Government Reform circulated in 2004 has been widely criticized in its lack of proper vision and direction to address the deficiencies. Public consultations were seen as mere formality rather than as an attempt to solicit real views and solutions and recommendations.

IT IS IMPORTANT TO POINT OUT THAT ALL COUNTRIES, WITH THE EXCEPTION OF GRENADA AND URUGUAY, HAVE TAX REDISTRIBUTION SYSTEMS TO COMPENSATE THE INCOME INEQUALITY GIVEN AMONG THE DIFFERENT LOCAL GOVERNMENTS.

FOR THE LAST TEN YEARS, LEGAL MODIFICATIONS AIMED AT SUPPORTING THE DECENTRALIZATION PROCESS HAVE BEEN IMPLEMENTED IN THE AREAS OF ADMINISTRATIVE FLEXIBILITY, SUPERVISION, CITIZEN PARTICIPATION AND FINANCING.

No process of decentralization has developed in Paraguay. In view of this situation, a group of Civil Society Organizations are working together with the Asociación de Gobernaciones Autónomas to draft a Bill on decentralization to be submitted to the National Parliament.

3. Citizen participation in Local Governments

With the exception of Paraguay, the different Constitutions and legal framework compel the local governments to give citizens the possibility to participate and to provide the necessary instruments to ensure their participation in decision-making activities relevant to the community.

In general, these mechanisms provide opportunities to involve the communities in the design and preparation of local plans and programs as, for example, the Public Hearings where the authorities meet with the community to discuss a specific issue. Furthermore, these spaces for consultation and participation include instruments like referendums and plebiscites to incorporate society in the making of decisions. From the information collected, it can be assessed that instances of this kind have multiplied during the last three years.

Nevertheless, these spaces are still limited and rarely do they result in effective participation. Most opportunities offered for participation are of an informative nature and the level of influence of citizens in decision making is low. Citizen participation in decision-taking processes is reduced to secondary subjects, while aspects as important as the municipal budget are left outside the sphere of competence of the community.

Even though some positive experiences can be found on citizen participation at the local level, it is necessary to move forward towards the establishment and institutionalization of more stable mechanisms of association and to the opening up of spaces to achieve real participation as, for example, in decisions relating to the use of financial resources. Otherwise, the processes for participation are seen more like mechanisms to comply with the law than as a real effort to promote dialogue and reach agreement.

Touching on the use of websites as opportunities offered for citizen participation, it can be determined that this is not a widespread practice as few local governments run a website. In general, websites are found at the level of Central Government and local governments with higher resources. Nonetheless, the majority of local governments show a different reality, as neither the budget nor the interest to run a website exists. Canada, the United States, El Salvador, Chile and Uruguay are countries offering a sizeable number of websites. Nevertheless, these facilities are mostly designed to inform or to respond to queries than to allow participation on decision-taking processes.

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DIFFERENT
CONSTITUTIONS AND
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COMPEL THE LOCAL
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POSSIBILITY TO
PARTICIPATE AND TO
PROVIDE THE NECESSARY
INSTRUMENTS TO
ENSURE THEIR
PARTICIPATION IN
DECISION-MAKING
ACTIVITIES RELEVANT TO
THE COMMUNITY.

MOST OPPORTUNITIES
OFFERED FOR
PARTICIPATION ARE OF AN
INFORMATIVE NATURE AND
THE LEVEL OF INFLUENCE
OF CITIZENS IN DECISION
MAKING IS LOW.

THE USE OF WEBSITES AS
OPPORTUNITIES OFFERED
FOR CITIZEN
PARTICIPATION, IT CAN BE
DETERMINED THAT THIS
IS NOT A WIDESPREAD
PRACTICE AS FEW LOCAL
GOVERNMENTS RUN A
WEBSITE.

Table No. 5: Local Governments' websites available for participation, by country

| | Countries | Existence of Local Governments' websites available for participation |
|----------------------|---------------------|--|
| N.-AMERICA | Canadá | Yes, most local governments have websites available for citizen participation and for dissemination of information |
| | United Estados | Yes, most local governments have websites available for citizen participation and for dissemination of information |
| | México | In general terms, it can be pointed out that few local governments have websites or email services to access information in the hands of the government |
| C.-AMERICA | Costa Rica | Available in 20% of the municipalities |
| | El Salvador | Yes |
| | Guatemala | n/i |
| | Honduras | n/i |
| THE CARIBBEAN | Grenada | N/A |
| | Jamaica | n/i |
| | Dominic Republic | In very few cases. Less than 10 for the 130 Local Governments |
| | Trinidad and Tobago | None |
| ANDEAN REGION | Venezuela | Less than 10% mainly concentrated in the principal cities of the country and in those municipalities with ample resources |
| | Bolivia | The existence of websites at the central level is widespread, while at the local level is low |
| | Colombia | The existence of websites at the central level is widespread and it is calculated at around 90%, while less than 10% of the municipalities offer this facility. Websites are concentrated in the main cities and in municipalities with ample resources |
| | Ecuador | At the level of Quito, and institutions based in the capital and in the two largest cities of the country have a website. Nonetheless, the situation in the provinces and in the cantons is quite different as there is neither the budget nor the interest to run a website |
| | Perú | There has been a gradual increase. At the central level it is calculated that almost 71% of public institutions run a website, although at the local level the percentage is lower |
| MERCOSUR | Argentina | Yes, even though local governments increase the number of their websites at an ever greater speed, less than 10% of these governments make use of the services offered by Internet. |
| | Brazil | Scarce, only a quarter of local governments run websites |
| | Chile | Yes, the existence of websites decreases in communities with insufficient resources |
| | Paraguay | The majority of local governments do not have a website or an Internet connection |
| | Uruguay | Yes, although great differences can be appreciated among the various local governments |

N/i = No information
N/A = Not applicable

Generally speaking, it can be determined that the countries studied are making efforts to promote and give continuity to the political, administrative and fiscal decentralization process. Gradually, the local governments have been taking more responsibility in the execution of policies and in the management of the budget.

Relating to the subject of citizen participation, some headway is registered in the configuration of structures and legal instruments favouring participation. Nevertheless, and from a practical standpoint, citizen participation is still limited and restricted mainly to consultation processes without extending its sphere to joint action by the State and the community.

3.3 Proposals

Given the results achieved, we propose:

- To ensure the existence of rules which clearly define the skills and responsibilities of each level of government.
- To ensure coherence between the transfer of skills and resources from the central government to the local governments, seeking to bring forward a greater autonomy in the management of funds.
- To provide technical and institutional training to support the modernization process of local administration, particularly the generation and collection of their own resources.
- To ensure that the opportunities given for participation at the local level have an impact on the decisions taken by local governments, as this favours social control exercised on municipal organizations, as well as transparency. To achieve this goal, it is necessary to educate citizens on the exercise of their right to participate and to supervise.
- To increase and consolidate the use of information facilities at the regional and local levels, especially the use of websites which are a valuable mechanism for communication between the government and the citizens.
- In the case of Grenada, to develop discussion and consultation mechanisms to facilitate the implementation of local governments.

4. STRENGTHENING OF CIVIL SOCIETY PARTICIPATION

4.1. Plan of Action Commitments

The Plan of Action¹³ establishes that governments “*Recognizing the importance of civil society’s participation to the consolidation of democracy, as well as the fact that this participation is a vital element for the success of development policies*” will seek to contribute to the strengthening of civil society’s participation in national and hemispheric processes through the following measures:

“The creation of public and private financing mechanisms to help strengthen the capacity of civil society organizations (CSOs) to publicize their work and its results, as well as to promote social responsibility.”

“The elaboration of strategies, at the national level and through the OAS, other multilateral organizations and multilateral development banks, to help increase the participation of CSOs in the inter-American system and in the political,

economic and social development of their countries and communities, promoting representativeness and facilitating the participation of all sectors of society. These strategies are also aimed at increasing governments' institutional capacity to receive, integrate and incorporate civil society's proposals and contributions, especially through the use of information and communication technologies."

4.2. Results

1. Laws aimed at strengthening civil society

Most of the countries have one or more legal structures to regulate the formation of Civil Society Organizations (CSOs) and to promote the strengthening of civil society as a whole. These structures guarantee freedom of association and the efficient exercise of this right. Grenada is the only country where there is no law nor Bill of law on this theme, nonetheless this does not influence negatively on the importance and development of CSOs in that nation.

The cases of Guatemala and Honduras can be underlined as these two countries recently enacted legislations on this theme. In the year 2002, Guatemala through Decree No. 02-2003 promulgated the "Ley de Organizaciones No Gubernamentales para el Desarrollo". In 2003, Honduras approved a special law giving recognition to Civil Society Organizations.

Nevertheless, the current legal framework of the various CSOs show some discrepancies, making the recognition and consolidation of these organizations quite problematic. On one hand, no mechanisms have been established to supervise management of resources. On the other, the legislation in general does not include a legal figure with the characteristics proper to the different types of CSOs, therefore they have to adapt to models suitable to Associations, Foundations or Corporations.

The countries presenting well developed legal structures which clearly stipulate the rights and duties of these organizations are the North American nations. According to these laws, CSOs can be non-profit or charity organizations. Depending on their status, these institutions can provide tax-deductible receipts, can obtain funds and/or public and private contributions and can perform several tasks.

Furthermore, these countries offer several mechanisms to give financial support to Civil Society Organizations. For example, in the case of Mexico the recently approved Ley de Fomento a las Actividades de las Organizaciones Civiles provides instruments for CSOs to access to public funds. This Law is still awaiting its enactment. Moreover, it is important to point out that since some time several departments of the government have implemented specific support programs to assign resources to various civil organizations.

Unfortunately this situation is not given in the rest of the countries, where the results indicate that one of the main problems faced by Civil Society Organizations is the difficulty to obtain financing. In general, the resources provided by the government are scarce, the system for allocating these funds lacks transparency and responds mainly to a partisan criteria and to the practice of obtaining votes with promises of government funding. Therefore, the main source of financing for these Organizations comes from international cooperation.

Lastly, account should be taken of the experiences of some Venezuelan Civil Society Organizations who have had to face pressures and intimidation from the government¹⁴ for receiving international aid. Likewise, mention must be made of

MOST OF THE COUNTRIES HAVE ONE OR MORE LEGAL STRUCTURES TO REGULATE THE FORMATION OF CIVIL SOCIETY ORGANIZATIONS (CSOs) AND TO PROMOTE THE STRENGTHENING OF CIVIL SOCIETY AS A WHOLE.

THE CURRENT LEGAL FRAMEWORK OF THE VARIOUS CSOs SHOW SOME DISCREPANCIES, MAKING THE RECOGNITION AND CONSOLIDATION OF THESE ORGANIZATIONS QUITE PROBLEMATIC.

THIS SITUATION IS NOT GIVEN IN THE REST OF THE COUNTRIES, WHERE THE RESULTS INDICATE THAT ONE OF THE MAIN PROBLEMS FACED BY CIVIL SOCIETY ORGANIZATIONS IS THE DIFFICULTY TO OBTAIN FINANCING. IN GENERAL, THE RESOURCES PROVIDED BY THE GOVERNMENT ARE SCARCE, THE SYSTEM FOR ALLOCATING THESE FUNDS LACKS TRANSPARENCY AND RESPONDS MAINLY TO A PARTISAN CRITERIA AND TO THE PRACTICE OF OBTAINING VOTES WITH PROMISES OF GOVERNMENT FUNDING.

the decisions taken on June 30, August 23 and November 21 by the Supreme Court of Justice of Venezuela seriously limiting Civil Society Organizations in their financial capacity, the nationality of their staff and the type of organization they can operate. The State was thus empowered to impose restrictions to the exercise of the right of citizen participation as, for example, the legal authority to prohibit members of religious orders or foreigners to act as spokespersons or directors of Civil Society Organizations, as well as preventing the acceptance of financial aid.

2. The relationship between Government and Civil Society Organizations, in practice

**A SECOND DIFFICULTY
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COUNTRIES.**

A second difficulty faced by Civil Society Organizations is that they can rarely participate in the design, execution and assessment of plans for political, economic and social development programs for their communities or countries.

This situation is even more relevant for Caribbean and MERCOSUR countries where there is scarce legal framework guaranteeing participation of Civil Society Organizations in these spheres. Even though there are some governmental offices that maintain ongoing interaction with CSOs, these are not institutionalized opportunities, they take place occasionally and are subject to the will of the government's institutions. Furthermore, they are interactions of an informative nature and rarely the agreements or suggestions put forward in these meetings are implemented. Civil Society Organizations have no possibilities of influencing the decisions taken, especially in budget-related issues.

The countries of the Andean and Central American Regions are gradually defining and establishing legal mechanisms for participation in the design, execution and assessment of plans for political, economic and social development programs at the regional and local levels.

The majority of the countries of the region initiated this process during the mid-1990s with the application of the principle of participative planning. In the countries of the Andean Region amendments have been introduced to the Constitution on this subject through the formation of participative committees at the local and regional levels. These procedures have been gradually implemented and improved. For example, in Colombia the function of citizen surveillance and social supervision have been redefined twice, while in the year 2001 Bolivia enacted the National Dialogue Law defining these same mechanisms and promoting the holding every three years of meetings of the National Dialogue Board to assess the results of various policies. Therefore, the setting up of norms promoting participation and especially the functions of citizen surveillance at the regional and local levels are continually being developed and improved.

As with the Caribbean and MERCOSUR countries and despite the progress made at the legislative level, in practice, both civil society participation in the decision-making process and their relationship with the different levels of government are very limited. On one hand, communication between government entities and Civil Society Organizations is of a restricted nature. In a great number of cases, they are called upon only to comply with the law and not with the aim of offering a clear and responsible policy to open up spaces for participation. The notifications for these meetings are of a very informal nature, therefore the encounters are sporadic and almost irrelevant; likewise, the level of representativeness and of influence is low. Furthermore, these meetings are of an informative nature where, in the last instance, decisions are taken by the government reflecting neither a process of debate or of agreement. These facts are clearly manifested in budgetary decisions, where CSOs play the role of guests, are

provided with very limited information and have no influence whatsoever on its implementation.

Likewise, mention must be made of the lack of information in the hands of Civil Society Organizations regarding legal instruments available to participate in the political, economic and social life of their communities.

Canada, the United States and Mexico have approved the participation of civil society not only as a strategic associate in the implementation of programs of public interest, but also as a source for obtaining fresh and novel viewpoints on politics. To this end they have encouraged, with very positive results, the creation of both institutionalized and informal mechanisms of association between the various departments and bodies of the government and civil society.

Nonetheless, in the opinion of some Civil Society Organizations of the region, and which is in keeping with the situation in the other countries studied, for the most part these channels of communication are used for consultation purposes and great skepticism prevails over the real impact these processes have in drawing up policies of public interest. On the part of CSOs there is the will to have a higher level of participation both in the design, implementation, monitoring and supervision of policies, as well as to achieve greater recognition for their work in cooperating in the development of the communities where they operate.

3. Participation of Civil Society in the inter-American system

Participation of Civil Society Organizations of the Hemisphere in the inter-American system is almost nil. This is mainly due to the lack of information CSOs have on the system. There is some interaction between Civil Society Organizations and the Ministries of Foreign Affairs, but this system does not work properly. In no case can this interaction be termed as ongoing or institutionalized and very rarely are CSOs invited to participate in official delegations representing the countries.

The regions offering greatest possibilities for Civil Society Organizations to participate are North America and the Caribbean.

As mentioned in the previous section, the countries forming the North American Region view Civil Society Organizations as associates and also as a source for obtaining fresh and novel viewpoints on politics. The importance given to the work of CSOs has open up for them the possibility to participate in the inter-American system, thus maintaining ongoing interaction with different governmental bodies and being invited to form part of official delegations.

Of the Caribbean countries, Jamaica is the only one not incorporating CSOs in official delegations. For the Dominican Republic it was expressed that this occurs even though no strategies exist to improve participation of civil society in the inter-American system. For Trinidad and Tobago, it was maintained that the government has implemented a policy to increase CSO participation in the inter-American system and has supported initiatives put forward by the Inter-American Development Bank and the World Bank to incorporate social organizations in their investment projects in the country.

In the frame of the Caribbean Community (CARICOM), Civil Society Organizations represented by the Caribbean Policy Development Centre (CPDC) participate in the Consultative Committee of this regional body. On various occasions they have been called upon to provide assistance and express their opinions on different aspects of regional integration. Likewise, the Consultative Committee of the Central American Integration System (CC-SICA), which is part of the institutional official structure of the region, includes Civil Society Organizations in its projects.

PARTICIPATION OF CIVIL SOCIETY ORGANIZATIONS OF THE HEMISPHERE IN THE INTER-AMERICAN SYSTEM IS ALMOST NIL. THIS IS MAINLY DUE TO THE LACK OF INFORMATION CSOS HAVE ON THE SYSTEM. THERE IS SOME INTERACTION BETWEEN CIVIL SOCIETY ORGANIZATIONS AND THE MINISTRIES OF FOREIGN AFFAIRS, BUT THIS SYSTEM DOES NOT WORK PROPERLY. IN NO CASE CAN THIS INTERACTION BE TERMED AS ONGOING OR INSTITUTIONALIZED AND VERY RARELY ARE CSOS INVITED TO PARTICIPATE IN OFFICIAL DELEGATIONS REPRESENTING THE COUNTRIES.

4.3 Proposals

Given the results achieved, we propose:

- To establish a legal framework which addresses the diverse character of Civil Society Organizations, and guarantees the existence of different spaces for participation at the local, national and international levels.
- To promote legislation regarding citizen participation. These rules should be broad in scope, unitary and coherent, regulating important subjects and reflecting a national policy.
- To stress the need of setting up a flow of resources to support the organization and the participation of civil society. To this end, mechanisms should be regulated for obtaining and transferring resources, i.e., contracting of services, fiscal incentives, subsidies and donations in accordance with the character of CSOs. At the same time, accountability mechanisms for these organizations must be developed.
- To increase the number of spaces for interaction between CSOs and the national, local and regional authorities, seeking better representativeness of the different civil sectors in concerted meetings and projects, while at the same time encouraging dialogue and cooperation between the government and civil society.
- To guarantee that citizen participation plays a central role in the administration of public policies, ensuring their involvement in the design, execution and assessment of decisions where resources are involved and in those focused on strategic subjects affecting citizens.
- To institutionalize mechanisms for CSOs participation in the Summits of the Americas processes.

5. JUDICIAL REFORMS AND ACCESS TO JUSTICE

5.1. Plan of Action Commitments

The Plan of Action¹⁵ establishes that *“equal access to an independent, impartial and expeditious justice system is a fundamental pillar of democracy and social and economic development”*. In recognition of this, the countries pledged, among other things, to:

“Support public and private initiatives and programs to educate people about their right of access to justice, and promote measures to ensure expeditious, equitable and universal access to justice.”

“Promote measures to strengthen the independence of the judicial branch, for example, through initiatives related to transparency in the selection of judicial officials, judges’ job security, appropriate codes of conduct and accountability mechanisms.”

5.2. Results

1. Access to justice

In all the countries studied, access to justice is guaranteed by the Constitution. Furthermore, a great number of these nations have some form of free legal assistance which perhaps cannot be considered as a Defensoría del Pueblo (Ombudsman), even though similar institutions exist.

Trinidad and Tobago and Grenada do not provide this kind of service. In the case of Grenada, the State provides free legal assistance only in cases of homicide where the death penalty could be applied. Faced with this situation, Civil Society Organizations provide legal service at a minimal cost. In Trinidad and Tobago, free legal service is not contemplated, although the government provides assistance when it is established that individuals cannot finance these costs.

Touching on the quality of the free legal service offered, the opinion is that this assistance has been reduced because of the increase in demand, the lack of trained personnel and the insufficient budget allocated to them.

Despite what is established by the laws in force in the different countries and the programs for legal assistance, it is not possible to ensure that in the countries where the follow-up exercise was carried out, all citizens can have access to justice, as these services offer partial coverage. Furthermore, it is the poorer strata the ones who are generally excluded from having access to justice.

In addition, in the majority of the countries the knowledge citizens have about their rights is poor, a problem that becomes even worse in the middle, middle-low, poor and destitute segments of the population, as these sectors, as was mentioned above, are the ones excluded from the possibility of having access to justice. In the North American Region, citizens are much better educated on the exercise of their rights.

Even though this is an ongoing problem, there is no systematic effort on the part of the governments to develop programs aimed at educating citizens on their right of access to justice. Although governments and the legal system of the countries studied have put forward initiatives to raise awareness on subjects relating to justice, this type of projects have been of a short duration, have not been able to reach the population as a whole and, therefore, they are seen as lacking in flexibility and in coverage.

This criterion cannot be applied to the North American region, where we find a wide variety of governmental initiatives and programs to inform people about their rights, but there is always room to improve these services and make them available to a greater number of citizens, especially to vulnerable groups like the indigenous peoples, ethnic minorities, marginal groups, incapacitated citizens, refugees and immigrants.

In all the countries, including those of the North American Region, an important number of initiatives on this theme come from CSOs and international organizations which in the last analysis provide the funds necessary to implement these programs at the national level.

2. Independence of the Judiciary

Touching on the commitment undertaken by the governments to support measures to strengthen the independence of the Judiciary through initiatives promoting transparency in the selection of judicial authorities, the results indicate that measures have been implemented in 12 of the 21 countries. These measures

IN ALL THE COUNTRIES STUDIED, ACCESS TO JUSTICE IS GUARANTEED BY THE CONSTITUTION. FURTHERMORE, A GREAT NUMBER OF THESE NATIONS HAVE SOME FORM OF FREE LEGAL ASSISTANCE.

TOUCHING ON THE QUALITY OF THE FREE LEGAL SERVICE OFFERED, THE OPINION IS THAT THIS ASSISTANCE HAS BEEN REDUCED BECAUSE OF THE INCREASE IN DEMAND, THE LACK OF TRAINED PERSONNEL AND THE INSUFFICIENT BUDGET ALLOCATED TO THEM.

IT IS NOT POSSIBLE TO ENSURE THAT IN THE COUNTRIES WHERE THE FOLLOW-UP EXERCISE WAS CARRIED OUT, ALL CITIZENS CAN HAVE ACCESS TO JUSTICE, AS THESE SERVICES OFFER PARTIAL COVERAGE.

IN THE MAJORITY OF THE COUNTRIES THE KNOWLEDGE CITIZENS HAVE ABOUT THEIR RIGHTS IS POOR, A PROBLEM THAT BECOMES EVEN WORSE IN THE MIDDLE, MIDDLE-LOW, POOR AND DESTITUTE SEGMENTS OF THE POPULATION.

THERE IS NO SYSTEMATIC EFFORT ON THE PART OF THE GOVERNMENTS TO DEVELOP PROGRAMS AIMED AT EDUCATING CITIZENS ON THEIR RIGHT OF ACCESS TO JUSTICE.

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run mainly along the lines of opening spaces for publicity and for the participation of Civil Society Organizations in this process. Nevertheless, it cannot be assured that all countries are free from political bias in the selection of judicial officials.

Among these 12 countries, mention must be made of Canada, the United States, Grenada and Jamaica as the countries showing a high level of transparency in the selection process and, it follows that these are the regions offering a greater level of transparency.

Although in these countries the processes to select and nominate magistrates to the Supreme Court of Justice still involve the Executive, the procedures are relatively open and, in practice, albeit in an unofficial capacity, the participation of the Bar of Attorneys and civil society is welcomed.

In the case of Grenada, it has to be mentioned that as this island is part of the judicial system of OECS, the Tribunals cover this region thus contributing to the autonomy of the Judiciary. No political interference was apparent in the appointment of officials. It is also worth mentioning that the Court of Justice of the Caribbean should become operational by the end of the year 2004.

Contrasting with the case of Grenada is the situation shown by the Dominican Republic, a member of the same Region, the transparency in the process has decreased due to the fact that in the year 2002 the methodology for selecting judicial officials changed and civil society was excluded from the process of presenting candidates. This situation is in force since 1997.

Even though the countries of Central America and the Caribbean present low levels of transparency, in the majority of them (Bolivia, Colombia, Ecuador, Peru, Costa Rica, Guatemala and Honduras) these initiatives are being developed. For example, in the case of Costa Rica the process to select magistrates includes the publication of their personal history and objective criteria is applied to judge the excellence of the candidates.

Furthermore, Bolivia and Peru now have a Code on Legal Ethics.

MERCOSUR is the region showing the lowest level of transparency in the process of selection of judicial authorities. In this region the tendency is that the selection responds to political criteria, and there has been no increase in the number of participants involved in this process. Neither is there objective criteria for selecting officials based on their merits, the personal history of the candidates is not published and there are no public mechanisms to oppose the applicants. The exception is Paraguay.

In March 2003, Paraguay started the process of selecting six new members to the Supreme Court of Justice after two members resigned and four were indicted. For the first time the process enjoyed the active participation of Civil Society Organizations, allowing for the curriculum vitae of the candidates to be introduced on the Internet, and a system could be established to receive both favourable and unfavourable opinions. This process was headed by Civil Society and the Magistrates' Council, and later public hearings were held with the Magistrates' Council before forwarding to the Senate the short list of three candidates.

Although the Magistrates' Council did not inform on the criteria used for the selection of these three candidates, it was the first time in the history of Paraguay that civil society participated actively in the process and that citizens were informed of the process of selection of judicial authorities.

5.3. Proposals

Given the results achieved, we propose:

- To increase and adequately distribute the financial resources of the legal system. In the first place, to ensure the broadening of public programs (Ombudsman) permitting access to justice, especially at the civil and criminal spheres, areas that have the greatest demand. In the second place, the creation and/or strengthening of mechanisms to ease the congestion of the legal system as the Mecanismos Alternativos de Resolución de Conflictos (Alternative Mechanisms for Solving Conflicts).
- To request the governments to strengthen the areas of free legal assistance through the allocation of larger human, budgetary and logistic resources.
- To raise awareness on democracy and human rights at all educational levels.
- To disseminate information on free legal services as a means of giving the least favoured sectors the possibility of access to justice when their rights have been violated.
- To increase the number and diversify the background of individuals taking part in the selection of judicial authorities; to establish objective criteria for the selection according to their merits; to define and respect the legal period these officials can remain in office; to publish both the personal history of the candidates and the public mechanisms available to oppose the applicants.
- To incorporate changes in the composition of the Judiciary to better reflect the social diversities of gender, ethnic background, etc.



Estrecho de Fernando Magallanes

R. Pequeno
C. Branco
Terra do Fogos
Terra Nova
Terra da
Pescaria
B. Formosa
C. de S. Thoma

de los Pescadores
B. da Lagoa
B. de muscas 3 Ilas
C. del Fuego
Carrizpana
R. del Fuego
R. Grande
P. del Norte
B. de los
B. de Gente
C. de grande
C. de Secado
Lago Secado
C. de las Bayas
C. de Pesca

TERRA
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III. Final Comments

In recent years, the governments and the international organizations have started to acknowledge the importance of the participation of Civil Society Organizations in intergovernmental processes. This recognition has resulted in the implementation of strategies aimed at strengthening this role.

The project Citizen Participation in the Summit of the Americas falls within the space allocated to civil society participation in the inter-American system. This is an Hemispheric initiative bringing together CSOs from 21 countries of the Americas. For seven years these organizations have developed a participative process within the frame of the Summits of the Americas. This process has undergone various stages always putting emphasis on the aim of instructing citizens on the Summits processes, on having an impact on the decisions taken during these meetings and on providing active follow up to the agreements adopted by the governments.

Special efforts have been made to reach this goal, particularly through conducting Hemispheric meetings to discuss the themes selected in the Summits or by carrying out consultation processes with Civil Society Organizations of various countries. Among the initiatives undertaken, mention can be made of the consultation process carried out for the Quebec Summit which involved 900 Civil Society Organizations from 17 countries of the Americas. During this meeting, the countries formulated 243 proposals with more than 50% of them being incorporated into the final Plan of Action.

The follow-up strategy of civil society to the Quebec Plan of Action consists in monitoring the execution by the governments of the agreements undertaken during the Summit. Specifically, follow up was provided to the theme of strengthening of democracy, which entails the fulfillment of the mandates relating to access to information, freedom of expression, local government and decentralization and the strengthening of civil society participation in the development of their communities and in the inter-American system.

The results obtained from the information collected through structured questionnaires on indicators reflecting the commitments undertaken on the themes mentioned, support the notion that, in general, the countries of the region have favourable legal framework but that these are not able to ensure that the practices followed are adequate.

For example, there are sets of norms regulating access to information and freedom of expression. Nevertheless, these legal rules are not sufficient to guarantee that these rights will be honoured. The fact that these circumstances exist is because the current legislations have restricting elements both on access to information, information can be withhold in certain cases, and on freedom of expression, there are legal clauses restricting this right. Nevertheless, the central issue against the full exercise of these rights lies in the fact that the practices followed are not adequate. Specifically, it is not possible to ensure effective access to information when at times the data do not exist or are denied by public servants. Likewise, we cannot state that freedom of expression is honoured while some countries still have “desacato” laws or exert censorship and pressure on journalists and leaders of opinion.

Touching on access to justice, even though important reform processes to the legal systems are being developed, nevertheless a significant part of the

THE COUNTRIES OF THE REGION HAVE FAVOURABLE LEGAL FRAMEWORK BUT THAT THESE ARE NOT ABLE TO ENSURE THAT THE PRACTICES FOLLOWED ARE ADEQUATE.

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PARTICIPATION OF CIVIL SOCIETY ORGANIZATIONS IN MEETINGS LIKE THE SUMMITS OF THE AMERICAS WHERE THEIR VOICES CAN BE HEARD IS VITAL, AS THE SUMMITS ARE A USEFUL MECHANISM TO OBTAIN COMMITMENT ON THE PART OF THE GOVERNMENTS IN THEMES OF INTEREST FOR THE ORGANIZATIONS AND THE CITIZENS. THE CONTRIBUTION OF CIVIL SOCIETY IN MULTILATERAL PROCESSES AS THE SUMMITS, IS TO ADVOCATE WITH PROPOSALS THE DECISIONS TAKEN AT THESE MEETINGS AND EXERCISE AN ACTIVE ROLE IN THE FOLLOW UP AND SUPPORT OF THE IMPLEMENTATION OF THE AGREEMENTS REACHED.

population does not have access to justice and, understandably, these are the sectors with less resources.

Participation of civil society in the development of their communities goes hand in hand with the decentralization process, in so far as this practice opens up new possibilities for citizens to participate. The Gordian knot in the theme of citizen participation at the different levels of government and not only at the local sphere, appears when the opinions expressed in these mechanisms for participation do not have a binding effect, the role played is only of an informative nature and, therefore, real possibilities for the community to have an impact in decision making are low.

Participation of Civil Society Organizations in meetings like the Summits of the Americas where their voices can be heard is vital, as the Summits are a useful mechanism to obtain commitment on the part of the governments in themes of interest for the Organizations and the citizens. The main objective in making use of these possibilities to participate is to influence on the commitments undertaken by the governments at the social, political, economic and cultural levels, which will then transform into policies and/or public programs in the different countries. In this regard, the contribution of civil society in multilateral processes as the Summits, is to advocate with proposals the decisions taken at these meetings and exercise an active role in the follow up and support of the implementation of the agreements reached.

The democratic process will be more reliable and dependable if civil organizations are linked to the decision-making practices of the countries, both at the national and at the international level.

NOTAS

- 1 For additional data on sources of information used in each of the countries, please refer to the national reports at www.sociedadcivil.org
- 2 The Forums where the results achieved were presented were: “Regional Forum of Civil Society in the Process of Hemispheric Integration within the Framework of the Special Summit of the Americas”, conducted on November 24 and 25, 2003 in Mexico City, Mexico. Eighty-six participants representing 71 Civil Society Organizations from 21 countries of the Americas were present. Furthermore, the Forum was attended by six representatives from the Governments of Mexico, the United States of America and Canada, seven representatives of international organizations like OAS, the Inter-American Development Bank and the World Bank, as well as two delegates from the Indigenous Peoples; the “Forum Advances and Challenges Facing Civil Society within the framework of the Summits of the Americas”, held on January 10, 2004 in Monterrey, Mexico and the “Dialogue-Meeting with Plenipotentiary Ministers members of SIRG”, which took place on January 11, 2004 in Monterrey, Mexico. Both these activities were held during the Special Summit of the Americas Meeting.
- 3 For more information on the results by country, please consult the national reports of each country at www.sociedadcivil.org
- 4 The Quebec Plan of Action can be accessed at www.oas.org.
- 5 Habeas Data follows from the right of freedom of information. It provides the person the opportunity to request information kept in both government and private data banks. It not only obliges the State to facilitate access to information, but also binds it to rectify, update or even destroy personal data registered in public or private data bases.
- 6 C: Canadá, E: Estados Unidos, M: México, CR: Costa Rica, ES: El Salvador, G: Guatemala, H: Honduras, Gr: Granada J: Jamaica, RD: Republica Dominicana, TT: Trinidad y Tobago, V: Venezuela, B: Bolivia, Co: Colombia, E: Ecuador, P: Perú, A: Argentina, Br: Brasil, CH: Chile, Pa: Paraguay, U: Uruguay.
- 7 The Plan of Action of Québec can be obtained in www.oas.org
- 8 In October 2003, the trade unions of the media of MERCOSUR demanded from the Government of Uruguay the repeal of the legislation which sanctions “desacato” laws.
- 9 The case refers to the incident of Alejandra Matus whose book “El Libro Negro de la Justicia Chilena” was confiscated and banned. When she learned of her imminent arrest, she left the country for Buenos Aires and then the United States.
- 10 An unusual case was the censorship applied by a local government to a theatre piece.
- 11 The Quebec Plan of Action can be found in www.oas.org
- 12 Local government is defined as the elected or appointed responsible organism for a unit of the territory, contemplated in the politico-administrative division of a country.
- 13 The Quebec Plan of Action can be accessed at www.oas.org.
- 14 In the middle of 2004 several organizations of the civil society (Súmate, Assembly of Education, among others) they had open judicial files by to have received bottoms of the National for Endowment Democracy (NED).
- 15 The Quebec Plan of Action can be accessed at www.oas.org