

Establishing a Robust Transparency Regime: The Implementation Challenge - Theory & Practice

**With special reference to Latin America,
the Caribbean, and South Africa**

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Prologue: Unearthing the Goblet

Carlton Davis is Jamaica's Cabinet Secretary, the country's most senior public servant. Eleven years ago, on one of his first days on the job, he took a walk around his new domain and discovered a room full of papers. There were piles and piles of documents. Rooting around, coughing with the dust, he moved one particularly large tower only to discover beneath it a silver goblet. Polishing it with the sleeve of his jacket, he read to his amazement that it was a special commemorative Olympic trophy that had been awarded to the successful Jamaican athletics relay team decades before. It was a national treasure, yet it had been literally buried in papers. What other nuggets of history or critical information were lost in the chaos of unorganized and discarded documents? As a scientist by training, he understood the value of learning from the past, and the importance of good documentation to make this possible. Greatly concerned by what he had found in that room and, looking back now, Davis traces his commitment to access to information to that moment. He recognizes the value of access to information as a human right, and the role information can play in engaging citizens. But equally so, as a leader in Jamaica's quest for modernization in public service and more efficient governance, he believes that a well-implemented access to information law is an instrument that governments can use to learn from past successes and mistakes.

I. Introduction

Davis is one of a new breed of public servants determined to challenge a culture of secrecy, who will determine whether the host of legal and institutional changes described throughout this book lead to significant and lasting transformation in the relationship between those in power and the citizens they serve. Although there is now widespread international recognition of the importance of establishing effective information regimes, there has not been the equivalent emphasis laid on the obstacles facing governments and citizens in ensuring its implementation. Responding to the challenge of implementing transparency law

and policy demands leadership, resources, and the personal conviction of “transparency champions.”

The actions of governments in the implementation phase are often related to the original motive or purpose for supporting a transparency law, and the manner in which the law was passed. When the access to information law was passed as part of an integrated policy or to meet an inherent need or civil society demand, there has tended to be greater commitment to implementation. So, for some governments it is the desire for efficiency and modernization that drives them to pass access to information (ATI) laws (such as in Jamaica). For others, it is the need to rebuild trust with its citizenry through the sharing of information and creation of new political space (President Mesa in Bolivia), or a commitment to the establishment of a new order based on human rights (South Africa during its democratic transition, 1994-99). In Sinaloa, Mexico, the governor passed a comprehensive access to information law because he wanted his citizens to have faith in the State government, and therefore begin paying their taxes. In these cases, there has generally been a greater emphasis on implementation so that the fruits of the law are received.

But where a government has passed the law to satisfy an international financial institution as a “condition” for loan or debt relief or in order to join an intergovernmental organization, regional trade group or common market, its true commitment to full implementation may be in question. For example, in both Nicaragua and Honduras, the executive branch included the passage of an access to information law as one of the conditions to receive debt relief under the Highly Indebted Poor Countries Program of the World Bank and IMF. Both countries have suffered from a lack of enthusiasm from other sectors, and even passage of the law is in question.

Whatever the underlying reason for establishing a transparency regime, after a decade of proliferation of access to information laws, with more than 50 countries now enjoying a legislated right to information, it is clear that the stimulus of both a supply of information and a demand for it is the key to meeting the policy objectives. This supply-demand intersection is a fundamental part of our hypothesis for effective implementation and use of the law. This paper will focus on the government side of the equation – the “supply side” – where there is a new body of knowledge and learning arising from the legislative explosion of the past decade. Examples from Latin America, the Caribbean and South Africa will highlight then recent lessons.

Notwithstanding the emphasis on the “supply side”, ensuring the success of an ATI law is a matter of co-responsibility. Not all the burden lies with government: citizens, civil society and community organizations, media, and the private sector must take responsibility for monitoring government efforts and using the law. Without an adequately developed demand side, the law is likely to wither on the

vine. In other words, the demand and supply sides must match; and where they intersect will determine the quality of the transparency regime.

A. The State of Play in Latin America, the Caribbean and South Africa

Although the majority of Latin American countries have a right to information included in their constitution, these articles have been neither implemented nor enforced. In recognition of these failures, in 2004 the Presidents and Prime Ministers of the Americas committed themselves to providing the legal framework for implementing the right to information.ⁱⁱⁱ

At present, in addition to the United States and Mexico, in the Americas there exist only four countries with functioning access to information laws (Mexico, Peru, Jamaica, and Panama), two small Caribbean nations with less effective laws (Belize and Trinidad and Tobago), and newly passed laws in Ecuador and the Dominican Republic. In Buenos Aires, Argentina there is a city access to information law, but the Federal Government has failed to pass similar legislation. Citizens in other Latin American jurisdictions, such as Colombia, may apply for access to information based on provisions in dispersed laws, but do not yet enjoy a comprehensive right. Enabling legislation is being debated or considered in almost all countries in Central America and the Caribbean, as well as South America, except for a notable absence of discussion in Cuba and Venezuela.^{iv}

The case is similar in Africa, where more than three years ago the Declaration of Principles on Freedom of Expression, reaffirming the African Charter on Human and People's Rights provided a similar mandate to heads of state. Like Latin America and the Caribbean, the African continent lags far behind the rest of the world on promulgation, implementation and enforcement of effective access to information laws, even though a number of African nations include the right to information in their constitutions. Although a number of countries, including Nigeria, Ethiopia, Ghana and Mozambique, have draft bills that are under consideration and others have passed laws or Decrees that include some transparency principles, such as Mali, five years after South Africa passed its law in early 2000 it remains the sole nation which provides a comprehensive right to information.

Much focus has been placed on passing access to information laws; model laws have been widely distributed, with specific versions provided for Africa and most recently Latin America and the Caribbean^v, and many countries around the world have heeded the call to enact this transparency tool. Nevertheless, experience has proven that passing the law is the easier task. Successful implementation of an open information regime is often the most challenging and energy consuming for government and civil society. And yet, without effective implementation, an access to information law – however well drafted – will fail to meet the public policy objectives of transparency.

B. Diagnosing the Implementation Challenge

Until recent times, little attention has been paid to the theory and practice of implementation. Depending on the scope of the law, within each state there could be anywhere from all ministries and more than two hundred agencies, as in Jamaica, to the approximately 100,000 public authorities in the United Kingdom that must implement and administer the new transparency regime.

In 2003, the Open Society Institute's Justice Initiative (OSI) conducted a pilot monitoring study in five countries to assess the success of implementation efforts, and advance good implementation practices.^{vi} In each country, four different types of persons (non-governmental organization representatives, journalist, ordinary individual citizen, and "excluded person") submitted a total of approximately one hundred requests to eighteen different government agencies. The same request was made to each agency twice, by a different requester, in order to test whether the agency responded differently according to the type of person. In addition, there were three distinct classification of requests submitted, as determined by the pilot study organizers: routine, difficult, and sensitive.

The results from the 2003 access to information monitoring study illuminate the challenges in meeting the implementation and transparency goals. Of the 496 requests for information filed in the five countries during the monitoring period, a total of 35.7%, or just over one in three requests, received the information sought. Approximately half of the requests (49.6%) received the information or written refusals within the time periods established in the respective laws.^{vii} This is clearly progress toward transparency. As the report noted, "the five monitored countries are all introducing new standards of government transparency, while undergoing democratic transitions. In this context, both outcomes – compliance with international FOI [Freedom of Information] standards in almost 50 percent of the cases, and the provision of information in response to 35 percent of requests, can be seen as a solid basis for building greater openness."^{viii}

Unfortunately, the OSI report also records that over one third of requests met with complete silence or lack of response from the authorities. In terms of these "mute refusals", as the survey refers to them, South Africa fared the worst with 63% of the properly submitted requests completely requested. As the country report on South Africa comments, "these results are of particular concern given that South Africa's FOI law, the 2000 Promotion of Access to Information Act (PAIA), the first of its kind in Africa, has been hailed as a model for other African countries."^{ix} Even though the South African law may be the best drafted and most comprehensive among the five test countries, in terms of compliance with international standards and best practice, only 23% of requests were successful, compared with 34% for Macedonia, which had no legal right to access information, Armenia with a 41% received rate, and the best performing Peru with 42%. The OSI report on South Africa noted, "a common feature of the

bodies which performed well in the monitoring was that they had made a serious commitment to implementing the law and believed in its potential.” This monitoring exercise helps illustrate that even the best laws can be rendered meaningless when the myriad of implementation challenges are not addressed.

C. The Transparency Triangle

Constructing an effective transparency regime should be seen as a three-phase process: passage, implementation, and enforcement of the access to information law. These three elements together constitute the “transparency triangle.” All three are crucial and interrelated in the establishment of a robust transparency scheme; but experience indicates that the implementation phase is paramount and serves as the base of the triangle. Without full and effective implementation, the right to information becomes just another example of the “hyper-inflation” of new laws that serve no one.^x Moreover, implementation, and the ultimate success of the law in meeting its objectives, is driven both by supply and demand. The government must create the supply of information, through record-making, organized recordkeeping, and trained professional civil servants. Civil society must provide a demand. While many of the chapters in this book describe struggles to pass laws, the focus in this chapter is on what happens thereafter.

II. Setting the Stage

Implementation depends heavily on the conditions under which a law is enacted. Three points are crucial: the degree of societal involvement in the demand for and drafting of the legislation; alternative approaches taken by the government; and embedding provisions for implementation into the law.

A. Instituting a new information regime: the process

In terms of legitimacy, sustained monitoring, and usage, the process through which the new access to information law is conceived and promulgated is critical. As discussed above, governments may choose to provide this right to information for a variety of reasons: a new constitution is drafted; a new administration or faltering ruler is seeking methods to fight corruption; in response to a government scandal or public health crisis; to meet provisions for acceptance to multilateral organizations; or to comply with international treaties and agreements. But it is when civil society has played a significant role in advocating for the law and lobbying around the key provisions that the information regime has tended to truly flourish, thus overcoming the “check the box” syndrome. In countries such as South Africa, Bulgaria, India, Mexico, Peru and Jamaica, widespread civil society campaigns augmented and encouraged the government efforts to pass enabling legislation. Where such a campaign has occurred, the law has enjoyed greater credibility and use. There is more significant buy-in from society, as

representatives have a greater stake in the law's success. And, therefore, the law is more likely to be implemented as failure of the government or information holders to comply with its terms will be noticed and challenged.

In Jamaica, for example, a diverse group from civil society worked together to seek amendments to the proposed law and to fight for more robust legislation. This coalition included such strange bedfellows as human rights and democracy non-governmental organizations (NGOs), the journalists' association, prominent media owners and private sector representatives, and the Civil Service Association.^{xi} Many of these same actors have remained engaged in monitoring government's implementation efforts, and in using the law. In South Africa, the Open Democracy Campaign Group that worked together from 1995-2000 to push for a strong law to give effect to the constitutional right to access information enshrined in the country's new 1996 constitution, included human rights NGOs, church organizations, environmental pressure groups and the powerful trade union umbrella body COSATU.^{xii} These advocacy efforts translated into a constituency willing and eager to use the new instrument, and prepared to monitor government's implementation and enforcement performance.

In countries where civil society was not engaged in the debate, the right to information has atrophied and the law never fully implemented. Belize passed its Freedom of Information law in 1994, one of the first countries in the hemisphere to do so. It was accomplished with little public or parliamentary debate and no civil society involvement. For the past decade the law has been used only a handful of times, and rarely with success. When asked, NGO leaders indicated minimal knowledge of the law and little faith in its ability to promote greater transparency.^{xiii}

In the worst cases, when there is no participatory process, laws are passed that are contrary to the principles of openness and limit freedom of information and expression, such as was seen in both Zimbabwe and Paraguay.^{xiv} In contrast, Peru presently enjoys a comprehensive access to information law that was drafted with a wide sector of civil society involvement, support from the Ombudsman's office, and extensive consultations with the armed forces. However, the right to information was not new to Peru. In response to the collapse of the Fujimori dictatorship and the pervasive allegations of government corruption, in 2000, the interim president Valentine Paniagua issued a presidential decree supporting a right to public information held by the executive. Laudable in its purpose, this unilateral decree was not fully applied or utilized. Although the newly passed legislation does not greatly expand on the decree, the manner in which it was promulgated, with civil society advocacy and debate, has led to increased legitimacy, implementation, and use.

B. Vanguard Steps

Like Paniagua, governments are increasingly seeking means to demonstrate their commitment to transparency before completion of the lawmaking and implementation phases. If the process of passing the law includes consensus building and sufficient time for effective implementation, it potentially could be years before persons may fully exercise their right to information. Moreover, in some contexts the fragmentation, weakness, or skepticism of the legislature has blocked the passage of a comprehensive law. In an attempt to satisfy citizen desire for more immediate results and to learn critical implementation lessons earlier, executives are experimenting with tools other than legislation, such as Supreme Decrees and voluntary openness strategies.

For example, in Peru, Argentina and Bolivia supreme decrees that carry the weight of law were issued to promote transparency. Supreme decrees can be accomplished quickly, demonstrate government commitment and political will, begin the process of shifting the culture of secrecy, provide implementation experience, and serve as a platform for the more extensive legislation. But there are also striking disadvantages. First, supreme decrees apply exclusively to the Executive, leaving aside completely the other branches of government and the private sector. Moreover, they often serve as a pseudo-panacea minimally satisfying the call for openness, but potentially slowing down the passage of a comprehensive right to information law. As they do not engage the legislature, they are rarely (if ever) accompanied by a budget for implementation. Worse, supreme decrees often do not often follow an inclusive process of drafting and consultation, thus less opportunity for building legitimacy and buy-in. Finally, if not effectively implemented, a supreme decree, like a law, can raise unrequited expectations and de-legitimize positive government efforts.

In Bolivia, the passage of a Supreme Decree for Transparency and Access to Information has proved particularly detrimental. Following the issuance of the January 2004 Decree, which provided a right of access to a limited class of documents, media representatives and some civil society groups strongly rejected the effort. Failure to consult with these relevant stakeholders and poorly drafted exemptions provided sufficient fuel for key groups to publicly denounce the Decree. Since its initial announcement, there have been few efforts to systematically implement its provisions, and most recently it was shelved pending further civil society and media engagement. Most damaging, this experience has caused some sectors to distrust further access to information initiatives, including proposed comprehensive legislation.

In Argentina the Supreme Decree for Transparency, issued by President Kirchner in February 2004, initially enjoyed greater public support. In contrast to the Bolivia case, it was issued in response to over five years of civil society demand for the right to information. In the wake of the 2002 economic collapse and presidential resignations, fearful and disorganized members of the Lower House passed the draft access to information law. As the political parties regrouped and regained some legitimacy, they no longer saw the need for such a

threatening piece of legislation and blocked its passage in the Senate. The only recourse was a supreme decree. However, as with the Peru example, the decree has not satisfied the need for a law and civil society groups continue their campaign.^{xv}

Short of a legally binding tool, governments are increasingly considering pilot projects as a vanguard to an access to information law. Voluntary Openness Strategies (VOS) and Codes for Transparency, such as the United Kingdom's Publication Schema, can serve to begin the transformation from a culture of secrecy to one of openness and as a platform for the more comprehensive right to information legislation. Focusing the VOS on a few key pilot ministries and agencies that agree to provide an extensive range of information to citizens can prepare the ground for effective implementation of a transparency law, when ultimately passed. These pilot bodies have the opportunity to develop best practices and to become "islands of transparency."

Other pilot projects could include release of certain classes of documents across government, or all information related to a particular theme. In India, the Ford Foundation recently has agreed to fund a "model district" whereby intensive focus is placed on one district to "address all micro-issues and nuances involved in implementation" and demonstrate what is possible.^{xvi} The World Bank, in response to activist demands, appears prepared to begin such a pilot project when it begins a one-year experimental public release of key documents simultaneously with their submission to the board.^{xvii} These pilot projects may serve to satisfy some user demand, while concurrently preparing governmental bodies for the more extensive rollout of transparency measures.

C. Drafting the Law: Taking Account of the Implementation Challenge

Finally, when writing an access to information law it is important to take into consideration the processes and procedures necessary for its effective implementation and full enforcement. When drafting or debating the proposed legislation it is easy to become overly preoccupied with the exemptions section of the bill, to the exclusion of other key provisions. While national security exceptions may be more interesting and controversial than the implementation procedures, they are often much less important in determining the bill's overall effectiveness in promoting real transparency. In Peru, there were months of productive meetings between the Press Council of Peru and the armed forces to negotiate and agree on the national security exemptions. However, this same energy was not placed in designing the archival system or appeals process. To date, one of the difficulties with the Peruvian legislation is its weakness in independent and judicial remedies for aggrieved requestors.

Focusing exclusively on the exemptions' section is misguided. In reality, if governments are determined to withhold information, for whatever reason, they will do so regardless of the exactness with which the exceptions to access are

written in the law. Thus, more emphasis must be given to the procedures for legal challenge when and if the exemptions are used as a shield to hide behind. Issues such as mandatory publication of certain information, time limits for completion of information requests, administrative duty to assist the requester, costs for requests and copying, sanctions for failure to comply, reporting requirements, and appeals procedures, must receive much greater attention when considering the draft law. It is these practicalities that ultimately will determine the value and usability of such a law for ordinary citizens.

For example, there needs to be greater detail placed in the law or regulations, in relation to the procedures for implementing and applying the legislation. In countries such as South Africa, where civil servants are accustomed to following laws with great deference, it proved critical to provide for all the implementation mechanisms within the law, and limit discretionality. Moreover, with greater exactitude in the law, it is easier to hold government departments to account for failure to properly implement the law. In other words, it is easier to demand and get adequate implementation of systems and procedures where the law is clear and specific, with sufficient level of detail, than where it is vague or too general.

Two additional legislation-drafting issues deserve brief mention. First, principles for good record making and records-management should be included within the access to information law. The specifics can be detailed through regulations, but it is helpful to have clear statements of purpose related to information systems as part of the access to information mandate.

Second, the primacy of the ATI law must be clearly stated within the law's text. There is often other extant legislation that deals with information - whether it is a law on Archiving, Official Secrets, the Armed Forces, Banking, or Public Administration. Canvassing the multitude of laws that speak to the issue of information would be difficult and time-consuming both for the requester and the civil servant tasked with responding. Arguably, if a public servant were expected to review each potential law and article related to the subject matter of each request, the response time would be enormous and the result likely to be a denial. To eliminate conflict of laws, promote full implementation, and reduce confusion among stakeholders, it is critical that the access to information law is the primary legislation. It should clearly state within the legislation that the ATI law governs all requests, and captures all exceptions to release.

The state of Sinaloa, Mexico has one of the most advanced and modern access to information laws in the region. Passed before the federal law, it has been in effect for almost two years. During this initial period of application, the government has identified the failure to explicitly state the primacy of the law as one of its major flaws. Because of the problems and delays encountered, such as confusion and opportunity to subvert the objectives of openness, the implementers are already requesting an amendment or modification to clearly state that in questions of information, the access to information law will govern.

III. Implementation of the Law

Robust implementation is very difficult to achieve, and thus far insufficient attention has been paid to the obstacles and potential solutions to overcome them. As the British Minister responsible for its Freedom of Information law argued the year before it came into effect “Implementation has been beset by three problems . . . A lack of leadership. Inadequate support for those who are administering access requests. And a failure to realize that Freedom of Information implementation is not an event: it is a process which demands long-term commitment.”^{xviii}

A. The Politics of Implementation

i. Political Will and Mindshift

Effective implementation demands political commitment from the top, both to ensure that the necessary resources are allocated and to overcome entrenched mindsets of opacity. The resource demands are significant, particularly in societies where a culture of secrecy has dominated the past and where there are no processes already in place to facilitate the archiving and retrieval of documents.

Most governments are accustomed to working in a secretive fashion. The notion of transparency is invariably far beyond the range of experience and mindset of most public bureaucrats. Therefore, a fundamental mind-shift is necessary, which must be prefaced with political will for a change in approach. The mindset of opacity is a common feature, as it seems that in general bureaucrats have developed an ingrained sense of ownership about the records for which they are responsible. Releasing them to the public is akin to ceding control and, therefore, power.

Moreover, robust information regimes can take an enormous amount of energy and resources. Daily, governments are faced with a myriad of priorities and the reality that there are not enough resources in the national reserves to meet all of the demands. In a recent study of efforts to implement the new law in Great Britain, the Constitutional Affairs Committee received a submission from the local government association stating, “that resources are the single most important issue in FOI compliance.”^{xix} It went on to explain, “[B] y far the largest issue for local authorities is the lack of resources. They do not have the time, money or personnel to easily organize information on a corporate basis in order to allow ready retrieval for FOI purposes.”

Thus, once the access to information law is passed, there are some governments that claim credit for the passage but fail to follow through to ensure that the law will succeed in practice. While others, realizing the enormity of the tasks

necessary to implement the law, fail to commit the appropriate resources or simply lose interest. Still others that have demonstrated the requisite political will may find it difficult to sustain. The indicators of political will vary from country to country, but some such signals might include the government's preparedness to underpin the right to information in the constitution (such as the case of South Africa), the government's willingness to accept and encourage citizen participation in the process of writing the law, or the provision of sufficient and continued resource allocations. Whatever the specific method, political will must be signaled clearly, and from the very top, if the task of entrenching a new culture of openness is to survive the beyond the implementation challenges and for the long-term.

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In Jamaica, we had the privilege to lead implementation workshops for senior public servants. In these retreats for permanent secretaries and information officers, we asked what would be necessary to ensure adequate implementation. The resounding answer was resource allocation and political will. Interestingly, when asked what would be a demonstration of political will, the civil servants responded "resource allocation." Unfortunately, in Jamaica and many countries with new information regimes, national and ministerial budgets are not prepared with clear line items for access to information, thus mandating implementers to find monies from other pots, or take on additional responsibilities and costs without an increase in resources. As leading scholar Alasdair Roberts noted in his recent research, "the budget for central guidance of the British FOI implementation effort exceeded the budget of the Jamaican Access to Information Unit (with its staff of four); the government's Archives and Records Department; the other parts of the Prime Minister's Office; and the Jamaican houses of Parliament - - combined."^{xx}

A major part of the fight for financial resources entails determining the specific needs. This is not a simple task. However, in general, costs for a new information regime include three categories: start-up, ongoing, and exceptional. Start-up costs may include a study of the extant archiving and record-keeping system; development of a new archiving system; preliminary training of civil servants; equipment purchases for processing request like photocopiers and printers, and expenses related to hiring and setting-up a new coordinating unit for information. Recurring costs would include annual salaries and benefits for information officers, ongoing training related to recordkeeping and the law, promotional and awareness raising activities, overhead and rental for related offices, equipment maintenance fees, paper and other costs related to provision of documents. The exceptional category may cover items such as extraordinary litigation costs or large seminars.

In practice, many of the resources applied toward satisfying the access to information regime needs are drawn from existing budgeted items. For instance, rather than hire a new staff person, already employed civil servants are tasked with additional responsibilities, computers are used for more than one purpose,

or overhead costs are not broken-down. Specific cost information is available in only a few countries in the Western Hemisphere, and generally only in those like Mexico where there is a separate line item in the overall budget. However, there are some cost figures that can guide the discussion. For example, in Mexico the first annual budget for the Federal Institute for Access to Information was US\$25 million. This provides the “Rolls Royce” version of access to information, such as a brand new building, staff of over 150, and an advanced Internet based system that would make major corporations jealous. In Mexico, the government expends approximately .033% of GDP on their access to information regime. Other countries have much more limited expenditures, such as the estimated US .0007% of GDP or Canada’s .004%.

The political fight for resources is easier to wage when the benefits are quantified. In terms of money saved from reduced corruption, in Buenos Aires a transparency pilot project was initiated in the public hospitals whereby procurements for medical items, such as needles, bandages, surgical gloves, and plastic items were made public. The result was a savings of 50%, merely through the publication of contract bids. A similar exercise was conducted for Mexico’s largest public university, with a like outcome due to greater transparency. This does not even take into account the benefit of increased foreign investment, or increased confidence in government – not to mention greater efficiency in administration. In Mali, a recent internal organization of records of government employees and persons receiving government salary demonstrated over one thousand “ghost employees,” persons benefiting from government payroll without doing any work.

Nevertheless, in light of increasing social demands and worsening economies, governments continue to face the political dilemma of servicing the needs of the access to information regime over other programming, and articulating the overall benefit (vs. cost) of good governance.

iii.ii. Who Leads the Efforts

The agency or individual tasked with leading the effort to implement the new access to information regime is a political decision that may determine whether the law succeeds. Nominating a lead implementer with sufficient seniority, respect, and power will provide the foundational message to other parts of the administration, public service and civil society that the government is serious in its efforts. As the Canadian Information Officer stated in his annual report to Parliament, the person charged with implementing the access to information must be sufficiently senior that he or she is confident in making the difficult decisions and must carry the weight to encourage others in promoting the objectives of transparency through the release of information. “Good policies . . . need champions if they are to be effectively implemented.”^{xxi} In identifying leaders, it is important to cultivate these “champions” at key nodal points in Government. The political leadership of persons such as Jamaican Carlton

Davis or Guadalupe Cajias, the Bolivian Presidential Delegate for Anti-Corruption, has assured that implementation efforts continue, even in the face of political and logistical obstacles. By placing the key implementer in the Ministry of the Presidency or Prime Minister, as is the case in Jamaica, Bolivia and Nicaragua, there is a greater likelihood of political support and acquiescence by the other line Ministries. On the other hand, when implementation is spread across line function ministries, as is the case in South Africa, there is a possibility that peer ministries will ignore directives and that implementation efforts will wane.

In South Africa, the initial impetus for an access to information regime came from the Deputy President's office just one year after the transition to democracy in early 1995, when then deputy president Thabo Mbeki appointed a Task Force to produce a white paper on access to information. The Task Force was high level including one of Mbeki's most trusted lieutenants and one of the country's most highly regarded human rights scholars. Though its report attracted much attention, as the process of finalizing the law became protracted the energy of the Task Force dissipated. Ultimately, responsibility for the final passage of the law was transferred to the Ministry of Justice, one of the busiest departments of government and one that has proved to be singularly ill-equipped to master the challenge of implementation. Political leadership has been conspicuous by its absence. At a meeting between the then Minister of Justice Penuel Maduna and a group of visiting deputies from Armenia in January 2003, the Minister appeared ill-briefed on the implementation of the law and informed his visitors that his department was fully complying with the law and not been the subject of any appeals. This was inaccurate. Not only have there been several appeals against refusal, but his department was at the time the subject of two pieces of litigation under the Act. This absence of leadership in implementing the law, seen also in Belize and Trinidad and Tobago, has led to inconsistent implementation and compliance with the law.

iv.iii. Public Servants: On the Front Line

Public servants are on the front-line of implementation. As such, this critical stakeholder must be engaged early and strategically in the process of establishing and implementing the law. Ultimately, it is this constituency that will be responsible with making the law meaningful for users - - and have the power to either facilitate the process or create unnecessary roadblocks.

Civil servants, as the face of government, have grown accustomed to being blamed for all range of problems and citizens' grievances. Although having no control over policy decisions, it is the civil servants who are tasked with their implementation. Moreover, public functionaries often must contend with contradictory roles and responsibilities, and competing interests. An access to information law can add to the discomfort as access to information coordinators

“on occasion, experience an uncomfortable conflict between their responsibilities under the access to information act and their career prospects within their institution.”^{xxii}

However, as developing democracies seek to professionalize the public service, tools such as access to information can support this objective. In Bolivia during a recent workshop on access to information implementation, the civil servants identified an access to information law as a means of protecting themselves from arbitrary decision-making by politicians and a way to diminish untoward political pressures. These more senior public functionaries also listed such benefits as increasing efficiency, reducing bureaucracy, and identifying and eliminating bottlenecks.

In Jamaica, the civil service association recognized the opportunity the access to information law provided them to enhance customer service and more clearly demonstrate who was responsible for poor policy choices, i.e. the political masters. Thus, Mr. Wayne Jones, the President of the Civil Service Association accepted a lead role in promoting the passage and implementation of a comprehensive access to information law. The unions stance also has led to greater buy-in from the relevant front-line workers.

B. Government System-building: Developing the Supply Side

Governments must establish the internal systems and processes to generate and provide information, and train of civil servants to ensure understanding and compliance – the mechanics of the supply side.

i. Recordkeeping and Archiving

If there are no records to be found, or they are so unorganized that locating them becomes an insurmountable obstacle, the best access to information law is meaningless. In order to respond to information requests, an adequate information management system must be designed and established. This is not an easy task.^{xxiii}

Many countries that have recently passed ATI laws, such as Mexico and Peru, have rather precarious record-keeping traditions. In previously authoritarian governments, such as South Africa, many records have been lost or deliberately destroyed. Government officials in Argentina tell of their difficulty in receiving documents necessary to complete their work, often due to inadequate record keeping and organization systems. In 2002, an analysis was undertaken by the Anti-Corruption Office (AO) of Argentina to determine the prevalence of civil servants receiving multiple paychecks. The AO found that the greatest obstacle to assessing and stopping this illegal practice that was costing the country millions of dollars was a lack of a functioning database and systematized

records.^{xxiv} It proved nearly impossible to get the most basic information of the number of positions and the names of the persons employed in these jobs.

Governments generate millions of tons of paper each year. In some countries, a lack of recordkeeping processes and space constraints have translated into huge bonfires of critical documents. Until a few years ago, Bolivia burned most of the over 192 tons of paper that the executive branch generated each year. In other countries such as Jamaica where there has been a long history of secrecy but emphasis on document retention, both passed down from the British colonial rule that ended 40 years ago, there are mountains of documents, which have never been properly recorded or archived.

In many places, until the advent of access to information regimes, national archivists and record-keepers had been considered more akin to untrained secretaries, rather than degreed professionals, and were not provided the resources or respect necessary to fulfill their mandate. As one records manager stated, "traditionally, recordkeeping in the Jamaican public service has been an arcane and often overlooked field. Records management continues to be perceived as a low-level administrative/clerical function, largely focused on the management of public records at the end of their life cycle (i.e. the disposition phase)."^{xxv}

In fact, in many government agencies, it was the secretary that was tasked with filing and maintaining all critical documents. However, as computers have become more commonplace, secretarial staff have been reduced, further depleting record-keeping resources.^{xxvi} A recent report of the United States Interagency Committee on Government Information addressed the need to improve accountability for records management. The report highlighted the "low priority assigned to information and records management" and recommended that "agencies must have an expectation that their actions have important positive or negative consequences, and there needs to be an effective mechanism for evaluating agency actions."^{xxvii} The Committee suggested that appropriate incentives be established for proper management and protection of records as "valuable Government assets."

Perhaps more damaging to the establishment and maintenance of files is the widespread misconception by civil servants and elected officials that the documents they generate belong to them. We have heard this view from Argentina, to Bolivia, to Jamaica and Belize, all the way to the US State of Georgia. Thus, when leaving their post or retiring, they take the files home with them – such that they are forever lost to the archiving system.

Even when available, the task of ordering all of these past documents is monumental, and potentially unrealizable. In terms of human and financial resources, the start up costs can become astronomical when the organization of hundreds of years of documents is contemplated. Rather than allow this to

become an insurmountable obstacle to the government's willingness to pass the law, some advocates pragmatically suggest that in the initial stages of an information regime, governments ignore past documents and, rather, establish an archiving system for future information. In terms of citizen needs, it is often the contemporary documents such as budgets, policy decisions related to education and health, and information on crime and justice that are of greatest value. Governments concerned with scarce resource allocation, such as Nicaragua, have considered focusing their recordkeeping reforms on current and future generated documents, and then over time ordering the vast quantity of historical information.

Electronic documents have created a new set of problems and needs for recordkeeping and archiving. A comparative study of the implementation of access to information laws in the Commonwealth of Australia, New South Wales, Queensland and New Zealand found that "across all four jurisdictions, we encountered concern bordering on alarm at the implications of the growth of e-mail. We encountered few examples of systematic filing and destruction of email, nor of any central protocols for how emails should be stored."^{xxviii} As the modern trend of electronic communication and documentation continues, record-keeping systems will need to respond.

Part of this process of organizing and identifying records involves the creation of "roadmaps" of the documents that exist. This is as important for the holders of information as it is for the potential requesters. Without knowing what records there are, and where they are located, it is hard to imagine an implementation regime that will be anything other than frustrating for both holders and requesters. Six months after the Jamaica law came into effect, senior civil servants stated that one of the greatest advantages of the law, thus far, is their own increased knowledge of government and the records that various agencies hold. For this reason, many modern ATI laws such as the South African, Mexican and Jamaican include provisions mandating the creation of such 'roadmaps'.

Recordkeeping - the management of documents on a daily basis - is inextricable linked to the archiving of historical or critical information. Unfortunately, in some countries the archival laws are inconsistent with modern recordkeeping systems (particularly in relation to electronic records) or provide regulations in conflict with access to information laws. In Jamaica, for example, the archivist has discretion whether to release documents, and the decision is not based on public interest or principles of transparency. Thus, there also exists a need to ensure consistency within the record management policies. As the US electronic records policy working group has pointed out, "To be accountable for information and records management requirements, agencies must have a clear understanding of what needs to be done and how to do it . . . If agencies are provided with a clear set of standards that are made understandable through the educational opportunities

and there are effective mechanisms for evaluating agency actions, the odds for a successful outcome are significantly improved.”^{xxxix}

ii. Record Making

There is no value in a right to access to information, if no reliable document exists. Record-making standards must also develop and mature. One Bolivian public administration expert commented that most of the documents presently generated by his government are trash, and are created simply to satisfy some administrative requirement with no clear understanding of the public servant as to its use or importance: “That which is certain is that the public entities generate and accumulate incalculable volumes of information that for the most part have no utility from the perspective of efficacy, efficiency and economy of its operations.”^{xxx}

On the other end of the spectrum, as governments become aware of the depth and breadth of information that is open to the public, there is sometimes a backlash to information generation. Fear of embarrassment or mistakes may portend the rise of “cellphone governance.” Important policy decisions are made at lunches, via telephone or simply are not recorded. An Arkansas appeals court recently ruled that the Fort Smith board of directors and city administrator violated the State’s freedom of information act and open meetings provisions when a decision to purchase property was made via telephone. The Court found that telephone conversations are a “meeting” under the terms of the act, holding that “It is obvious that [the board’s] actions resulted in a consensus being reached on a given issue, thus rendering the formal meeting held before the public a mere charade . . . By no reasonable construction can the FOIA be read to permit governmental decision-makers to engage in secret deal-making . . .”^{xxxi}

As this practice becomes more common, access to information laws will need to respond with more detailed provisions relating to record making. Similar to the rule-making procedures in the United States and the Financial Management and Accountability Act of 1997 in Australia, to curtail the deleterious effects of cellphone governance, policy makers must be mandated to keep records that, at a minimum, detail: who made a decision; when the decision was taken; why the decision was made; and list the relevant sources used to make the decision.^{xxxii}

iii. Automatic Publication

The best approach for dealing with vast amounts of information is simply to make as many records as possible automatically and unconditionally available. This limits the need for government decision-making, and is therefore less of a drain on resources. Moreover, it is clearly better for the “demand side”, as proactive disclosure reduces the number of requests and delay in information receipt. Indeed, the best implementation model is not only to categorize as much

information as possible as automatically disclosable, but also to publish the information at the point the record is created. This is what in Freedom of Information lexicon is known as the “right to know” (RTK) approach. Information and Communication technologies makes this easier and cheaper. In Peru, for example, during the transitional government authority in 2001 when greater transparency was a watchword of the interim government’s approach, the Department of Finance led the way with a website-based approach to transparency, publishing huge volumes of information. A focus on automatic publication through the Internet has continued with the National Office of Anti-Corruption tasked with monitoring the development of public body websites and periodically issuing reports. The most recent report, the sixth of the series, found that all government ministries were in compliance with the automatic publication provisions of the access to information law, and 37.3 percent of the decentralized public agencies were in full compliance. In comparison, in the municipalities there was only 2.1 percent complete compliance.^{xxxiii}

Clearly, using government websites is an important way of adopting a RTK approach, but there are dangers too. It should not be seen as a panacea, especially in the developing world, where few people have access to the Internet.^{xxxiv} Moreover, with the changing technologies, even the most current advances may quickly become outdated. Thus, any electronic record-keeping or publication scheme should be seen as a companion to hard copies and traditional publication, rather than as a substitute.

iv. Internal Systems

1. Internal Procedures (the “internal law”)

It is crucial that governments develop – and users understand – clear guidelines for the civil servants charged with implementing the law. To ensure consistency and efficiency in implementation, the guidelines should cover: records management; assessing requests for information; provision of documents; and interpretation of the law.

For users, applying to access the record of the internal system is one way of discovering the extent to which a government agency is taking the implementation issue seriously.^{xxxv} Things to look out for would be training and the development of a manual for line managers and information officers and/or their units, and internal rules relating to good practice and important procedural matters such as compliance with time limits. Also, there should be a thorough internal system for recording requests, such as an electronic database that can itself be subjected to public and parliamentary scrutiny.

Given its history and role in the oppression perpetrated by the apartheid state, it is somewhat surprising and ironic that in South Africa the Department of Defence has, of the twenty-six national government departments, shown the greatest

commitment to implementing the law properly. A Johannesburg-based NGO, the South African History Archive (SAHA), had already discovered that Defence was performing surprisingly well when, in contrast to other departments, it dealt with many of the requests SAHA submitted efficiently and courteously. SAHA's diagnosis accorded with that of the OSI study and ODAC's own assessment, the Department of Defence had put in place a number of specific steps to implement the Act, which when emulated in other agencies could serve to support their implementation efforts. These measures included:

- A manual and implementation plan;
- A register of all requests;
- Human resource allocation to the Promotion of Access to Information Act (PAIA) even though there is no special budget;
- The CEO is the Information Officer and all division chiefs act as Deputy Information Officers, with assistants handling PAIA requests;
- A PAIA sub-committee is established, which deals with major issues – e.g. disclosing information on the arms procurement contracts, sensitive information and large volume requests;
- Provincial departments send the requests to the head office to process.

In contrast, bodies performing badly had either not instituted systems or the systems were not functioning.^{xxxvi}

2. Information Officers and Training

In addition to internal systems, there is a need for line managers responsible for implementation and responding to requests. Most modern ATI laws create information officers or similar positions. In Canada, access to information coordinators have been the backbone of implementation and administration efforts. Similarly, the Mexican, Peruvian, and draft Bolivian Access to Information Acts call for the establishment of designated information units or officers in each public body, tasked with assisting applicants and serves as the frontline respondent.

One obvious way to test the strength of implementation is whether such officials have in fact been appointed and whether they received specialist training.^{xxxvii} A comparative study of four commonwealth jurisdictions found “there was universal agreement that a significant investment had to be made in training” and that the training should “encompass both general staff (at all levels) and FOI coordinators/specialists (where such existed).”^{xxxviii} Moreover, training should not end when the law goes into effect. Staff changes, lessons learned, and amendments to internal policies and procedures, dictate the need for continual training of Information Officers and other relevant civil servants.

The public needs to know whom to contact and how to reach this designated official. Most modern ATI laws include such requirements. The South African law, for example, requires government to have the name and contact details of the information and deputy information officers listed in all telephone directories.

These Information Officers can work together, through the establishment of networks or working groups, to share best practices and lessons learned. In Jamaica, the Information Officers meet periodically and serve as a mutual support system. These networks also serve to demonstrate the value and professionalism of the position.

3. Implementation Plan: the Value of Strategic Planning & Consensus-building

If governments are wise, they will consult with the potential user community they will consult with the potential user community when they draw up their implementation plan. One of the causes for optimism in the Jamaican case is that despite its government's historical culture of secrecy, the access to information implementation unit carried out an implementation consultancy exercise with civil society in August 2002, soon after the law was passed and again in March 2003^{xxxix}. This process enabled government officials to share, in a positive and confidential setting, their own concerns with colleagues across government and individuals from civil society. For the latter group, it enabled them to develop a better understanding of the obstacles facing civil servants but also an opportunity to hold them to account.

The first workshop asked the simple question: "what needs to happen to effectively implement the new Access to Information law?" The workshop identified a lack of political will and resources – human and financial – as the chief obstacles to effective implementation. The second workshop focused on prioritizing key activities. It found that some aspects, such as the appointment and training of access to information officers and passage of the necessary regulations to operationalize the Act, had been neglected. In the end, these sessions of shared experiences and problem solving allowed government to take the necessary decision to postpone implementation with less fear of civil society reprisal.

As the Jamaica example demonstrates, it is often managerial weaknesses rather than flagging political will that slows down implementation or causes the greatest obstacles. The delay in putting the Jamaica law into effect had much more to do with lack of preparedness than government fear. In Great Britain, parliament heard evidence from government departments that a failure to share best practice across sectors led to delays and inconsistent messages.^{xi} Thus, identifying key managerial or logistical weaknesses sharing lessons learned, and providing consistent guidance will allow administrators to apply resources more wisely, in a focused and efficient manner.

4. Specialized ATI Implementation and Coordination Units

In both Mexico and Jamaica, specialized access to information units have been established within government. These entities are responsible for assisting and monitoring implementation, raising awareness about the new right to information, and providing a clear focal point for all efforts. A designated specialist unit, such as the Mexican Federal Institute for Access to Information (IFAI) or the Jamaican Access to Information Unit, allows the government to provide a uniform and focused response to problems and demonstrates clear commitment. In contrast, in Peru, each ministry or agency is to have a designated access to information person, but there is no federal coordinating body. In South Africa, no special unit has been established to oversee implementation; on the contrary, the responsibility for the ATI law has been simply added to the long list of responsibilities ordinarily carried by the Director-General (Permanent Secretary) of each line function ministry or agency.

The IFAI has a mandate emanating from the access to information law, whereas the Jamaica unit was created spontaneously as a means for addressing all implementation issues. As the IFAI is authorized by statute it is a “legal” body, and has enjoyed a budget sufficient to meet its objectives and tasks. This has not been the case for Jamaica, where the ATI Unit has been dependent on using existing monies from the Information Minister in the Office of the Prime Minister.

Experience has demonstrated that specialized coordination units are necessary beyond the implementation phase, particularly when tasked with education, training, and monitoring. In Trinidad and Tobago, the Freedom of Information Act went into force on February 20, 2001. Shortly thereafter, a Freedom of Information Unit (FOI) was established to provide technical and legal guidance to government bodies, raise citizen awareness of the new law, and monitor and report on implementation efforts. The Cabinet initially authorized the FOI Unit for one year and then extended it until September 30, 2003, when it was disbanded. Even before the ultimate termination of the unit, the size of the staff was being reduced. Although there have been no quantitative studies performed to determine the effect of the unit’s discontinuance, some statistics serve to indicate its importance and continued need. In the period of August – November 2001, when the FOI Unit was active in training of civil servants and education of citizen’s, there were 37 requests for information and 88 quarterly reports received from government, representing 55% of all agencies mandated to submit reports. For the same period in 2002, when the unit was still engaged, there were 63 requests for information and 32 reports received, representing 20% of all agencies. By November 2003, when the contract of the last member of the unit expired, there had been only 6 information requests and a mere 8% of all agencies were still complying with the reporting requirements.

v. Civil Servants Sanctions and Incentives

Political will within a democratic framework, and managerial effectiveness within a bureaucracy, both require clear incentives for action and unambiguous disincentives for inaction. In all access to information laws in Latin America and the Caribbean, as well as in South Africa, sanctions exist for any public servant that destroys, alters or damages documents or provides exempt documents contrary to the provisions of the law. What is less common are explicit disincentives (sanctions) for persons that fail to meet implementation deadlines, delay provision of documents to requestors, or create unwarranted difficulties for users. The draft Bolivian law has added sanctions for these “process” and implementation related failures, as well as for documented related illegal actions. The Canadian government, as it considers amendments to its twenty-year law, has recommended adding penalties for failure to respect deadlines. In Great Britain, senior managers were named to lead the implementation effort and oversee the efforts of the FOI officers. Months before the law was to go into full effect, the British parliament heard that “many FOI officers were having difficulty getting senior managers to take the requirements of FOI implementation seriously . . . One explanation has been that the penalties for non-compliance are not clear.”^{xli}

But rewards for good behavior are just as important. In Canada, the Treasury Board, which is responsible for ensuring continued implementation of the Federal access to information law, has begun a system of public awards and certificates for exemplary civil servants. Additional incentives would include pay raises based on performance evaluations that contain specific implementation criteria, promotions, and bonuses.

vi. Phased-in effectiveness of law

The establishment of processes and the necessary mindshift from the culture of secrecy to openness takes an enormous amount of time and energy. The pressure on governments to quickly put access to information laws into effect is unfortunate. In Jamaica, Mexico, Peru, and South Africa, the governments gave themselves one year or less to implement the law. In each of these cases, they soon discovered the many obstacles. Although most of these countries pushed through the implementation in the prescribed time, many of the necessary procedural details had not been resolved. In Jamaica, the government was forced to postpone the date the law would come into effect three times and amended the enabling legislation to allow for phased commencement.

Given that a stumbling start may undermine a law’s legitimacy, longer lead times for implementation are preferable. The time period must be long enough to build public sector capacity and inform citizens of their right, but not so long as to lose momentum or appear to be faltering in the commitment to transparency, as occurred during the UK’s five-year implementation period. During the implementation phase, government will generally focus on establishing procedures, passing regulations, and preparing or updating record management.

But government leaders and civil society groups need to ensure that a longer lead time is not used for mass record destruction. In Japan, a “surge in the destruction of documents eligible for disclosure under the Freedom of Information Law by 10 central government offices” was reported in the lead up to the law coming into effect. The report claims that, for example, “the agriculture ministry scrapped 233 tons of documents in fiscal 2000, a 20-fold increase on the 11 tons destroyed in fiscal 1999.”^{xlii}

A potentially successful model for implementation is the use of a phased-in system whereby the law becomes effective first in a few key ministries and agencies and is then phased in over a specified period of time until all of government is on-line. A phase-in approach creates models that more easily can be amended or altered to address emerging problems, before they are overwhelming the entire information system. As Maurice Frankel of the Campaign for the Freedom of Information in Great Britain told a Constitutional Affairs Committee reporting on Britain’s progress toward implementation, “I think [the big bang approach] is bad verging on potentially catastrophic . . . central government could have done this much earlier, had a lot of experience . . . and could have dealt with a lot of the problems which are going to come up relatively easily. Instead of that, every single authority in every sector is confronting the same problem simultaneously with no opportunity to learn from anybody.”^{xliii}

During the initial phase, responsible civil servants should meet regularly to discuss systems capability and lessons learned, and ensure that these are widely shared and applied by the next set of agencies, to which the law goes into effect. The government should capitalize on this time to complete and approve any necessary regulations and internal policies. And interested NGO’s and citizens should become more familiar with the law’s value and defects, make requests, learn how to effectively monitor government implementation efforts, and use this opportunity to engage positively with the first-round implementers.

A potential disadvantage to the phased-in approach is that governments may choose to put non-essential ministries or unimportant agencies in the first round of implementation, thus sending a signal that they are not serious about transparency. Alternatively, they may find that citizens are making more requests than expected or soliciting the most sensitive and embarrassing information. This reality check could cause government to delay further implementation. Therefore, if adopting a phased-in approach of effectiveness, we encourage timelines for each phase to be established as part of the enacting legislation or regulations.

C. Sustaining the Demand Side

Although the focus of this paper is the “supply side”, without an equivalent demand for information, government will inevitably stop placing human and financial resources in the implementation and administration of an access to information regime. Thus, the response from civil society needs to be energetic, committed, and long-term. Through recent experience, we have seen that strong campaigns have formed around the issue of passage of the law, only to disintegrate during the implementation and usage phase. Without a demand for information, and vigorous monitoring of government implementation and enforcement efforts, the hard-fought right to information can quickly atrophy.

IV.I. CONCLUSION

These challenges that face countries wanting to implement access to information policies, include a lack of education and awareness; a lack of capacity; a lack of political will; and a culture of bureaucratic secrecy. As this list demonstrates and this paper asserts, although there are technical aspects to good implementation, it is not simply a question of getting the mechanics right. Adjusting the mindset – changing, as they say in Spanish, the *mentalidad* (the mentality) – is a far more important, and challenging priority for policy-makers and activists alike. The obstacles are immense and the pitfalls many, but the rewards equally monumental. But as our own understanding of the theory and practice of good implementation grows, so the capacity to diagnose implementation problems increases immeasurably. Properly implemented, an access to information law can change the rules of the game not just for civil society but also for government, and serve to enhance democratic politics.

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ⁱⁱ Richard Calland is Executive Director of the Open Democracy Advice Centre, Cape Town South Africa.

ⁱⁱⁱ In January 2004, the heads of state in the Western Hemisphere met in Mexico to discuss poverty, trade, democracy and development. At the conclusion of the Summit of the Americas, these 34 presidents proclaimed that “Access to information held by the state . . . is an indispensable condition for citizen participation and promotes effective respect for human rights.” Declaration of Nuevo Leon, Summit of the Americas, Monterrey Mexico, January 2004. The declaration further recommended that all states commit themselves to “providing the legal and regulatory framework and the structures and conditions required to guarantee the right to access to information of our citizens. Cuban leader Fidel Castro was not invited. Additional hemispheric efforts to promote transparency have resulted in the Declaration of SOCIUS, Peru 2003 and The Declaration of Santa Cruz de la Sierra that “expresses the will to combat corruption and impunity in the public and private sectors, which constitute one of the greatest threats to democratic governability, reiterating the importance of access to information . . . for promoting transparency, [as] an essential element for the fight against corruption, and an indispensable condition for public participation and the full enjoyment of human rights.” Hemispheric advocacy efforts culminated in the “Access to Public Information: Strengthening Democracy” Resolution of the 34th Regular Session of the OAS General Assembly, May 29 2004 which reiterated the states’ obligations to “promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.”

^{iv} The Venezuelan Government has tried to link hemispheric access to information provisions to more controversial freedom of press issues, most recently at the OAS General Assembly. Beyond these efforts, Venezuela has been silent on passage of a national law.

^v See, Article 19 Model Law and Socius Peru 2003, British Council.

^{vi} One of the writers, Richard Calland, participated in the development, testing and refinement of the methodology. The Open Democracy Advice Centre, Cape Town, coordinated the South African part of the survey in 2003, and in 2004 coordinated the African regional portion that includes six countries: South Africa, Mozambique, Kenya, Senegal, Nigeria and Ghana. The initial five countries included in the pilot study were South Africa, Macedonia, Bulgaria, Peru and Armenia. The pilot study was refined and in 2004 the first full study was conducted in 16 countries. At the time of writing, the findings were not yet available.

^{vii} Macedonia, which did not have an ATI law, applied a 20-day time limit for the purpose of the exercise, above the international average of 15 days.

^{viii} Access to Information Tool: Overview 2003, p. 12, Open Society Institute, Justice Initiative.

^{ix} Access to Information in the Republic of South Africa, Access to Information Tool: South Africa 2003, p. 2, Open Society Institute, Justice Initiative.

^x In the authors' work in Bolivia, we often heard of the failure to implement well-drafted laws. Moreover, one scholar suggested that his country of Ecuador counts more than 800,000 laws, as none are removed from the books. According to him, only a small percentage of these laws are implemented and enforced.

^{xi} For a more detailed account on the passage of the law in Jamaica, see The Carter Center Access to Information Project: Jamaica Case Study, Neuman L., Access to Information A Key to Democracy, The Carter Center, ed. Neuman, L., November 2002.

^{xii} For a more detailed account of the Campaign, see A Landmark Law Opens Up Post-Apartheid South Africa, Dimba, M., www.freedominfo.org, posted July 17, 2002.

^{xiii} The authors of this paper visited Belize in 2003 and had the opportunity to meet with civil society leaders, media representatives and members of government and opposition parties to discuss the Freedom of Information Act of Belize.

^{xiv} For a more detailed account of the Zimbabwe situation, see The Access to Information and Protection of Privacy Act: Two Years On, Article 19/MISA-Zimbabwe, September 2004.

^{xv} See, America for the Sanction of Access to Information Law in Argentina, a campaign led by Poder Ciudadano and other leading NGOs.

^{xvi} Yashwantrao Chavan Academy of Development Administration (YASHADA), Action Research Project, see Prune Newline, The Indian Express, December 15, 2004.

^{xvii} World Bank Poised for Breakthrough on Disclosing Draft Documents, IFTI Watch Update, May 28 2004.

^{xviii} House of Commons Constitutional Affairs Committee, Freedom of Information Act 2000 – progress towards implementation, Volume 1, 30 November 2004, quoting Lord Falconer of Thornton, speech to Campaign for Freedom of Information, 1 March 2004.

^{xix} House of Commons Constitutional Affairs Committee, Freedom of Information Act 2000 – progress towards implementation, Volume 1, 30 November 2004.

^{xx} Alasdair Roberts, Blackouts: Government Secrecy in the Information Age, Forthcoming.

^{xxi} Annual Report 2001-2002, Chapter I: Performance Overview, Office of the Information Commissioner of Canada.

^{xxii} Annual Report 2001-2002, Recognizing, Fostering, and Protecting the Coordinators, Office of the Information Commissioner of Canada.

^{xxiii} "Good recordkeeping is a pre-requisite for the successful administration of the Access to Information Act as well as a central component of good governance." See, Annual Report 2002-2003, Ch. II, Addressing the Crises in Information Management, Office of the Information Commissioner of Canada.

^{xxiv} See, Acceso a la Informacion y la Lucha Contra Corrupcion, Baragli, N., La Promocion de Democracia a traves del Acceso a la Informacion: Bolivia, The Carter Center, May 2004.

^{xxv} The Records and Information Management Profession: the View from Within the Jamaican Public Service, Emerson O. St.. Bryan, December 2002.

^{xxvi} Interview with Robert Bohanan, United States Archivist, May 2004.

^{xxvii} Recommendations for the Effective Management of Government Information on the Internet and Other Electronic Records, Electronic Records Policy Working Group, Kurtz, M. Chair, October 2004.

^{xxviii} Implementation of the Freedom of Information Act 2000, Study Visit to Australia and New Zealand, Report by Edward Adams and Andrew Ecclestone, submitted to Department of Constitutional Affairs, United Kingdom, September 2003.

^{xxix} Recommendations for the Effective Management of Government Information on the Internet and Other Electronic Records, Electronic Records Policy Working Group, Kurtz, M. Chair, October 2004.

^{xxx} Birbuet, A., Public Administration and Access to Information in Bolivia, The Promotion of Democracy through Access to Information: Bolivia, Carter Center, May 2004.

^{xxxi} Harris vs. City of Fort Smith, Arkansas Court of Appeals, 2004.

^{xxxii} Financial Management and Accountability Act of 1997

^{xxxiii} Monitoreo a Portales de Transparencia de la Administración Pública, Informe No. 6, Comisión Nacional Anticorrupción, 18 November 2004.

^{xxxiv} Although the Peruvian report documents government compliance, it does not provide any data on number of users or “hits.”

^{xxxv} At the time of writing, the Open Democracy Advice Centre, South Africa, is awaiting the response to Right to Information requests made to all government departments and other important public sector entities (around one hundred in total) for access to their internal policy documents relating to the implementation of the South African law (PAIA).

^{xxxvi} Access to Information in the Republic of South Africa, Access to Information Tool: South Africa 2003, p. 14, Open Society Institute, Justice Initiative.

^{xxxvii} ARTICLE 19's Principles on Freedom of Information Legislation, Principle 3, Promotion of Open Government, stresses the importance of training inside government bodies. See also Chapter 4, Raising Awareness and Educating the Public and Duty-holders about the FOIA Rights and Obligations in Promoting Practical Access to Democracy – A Survey of Freedom of Information in Central and Eastern Europe, published by ARTICLE 19 in October 2002.

^{xxxviii} Implementation of the Freedom of Information Act 2000, Study Visit to Australia and New Zealand, Report by Edward Adams and Andrew Ecclestone, submitted to Department of Constitutional Affairs, United Kingdom, September 2003.

^{xxxix} The authors facilitated this process as a part of the Carter Center's Access to Information Project.

^{xl} See, House of Commons Constitutional Affairs Committee, Freedom of Information Act 2000 – progress towards implementation, Volume 1, 30 November 2004.

^{xli} House of Commons Constitutional Affairs Committee, Freedom of Information Act 2000 – progress towards implementation, Volume 1, 30 November 2004.

^{xlii} December 9, 2004 Leap in records scrapped prior to FOI, www.yomiuri.co.jp.

^{xliii} House of Commons Constitutional Affairs Committee, Freedom of Information Act 2000 – progress towards implementation, Volume 1, 30 November 2004.