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RECOMMENDATIONS ON ACCESS TO INFORMATION

(AG/RES. 2288 (XXXVII-O/07): Operative Paragraphs 8.a and 13.a)

Joint Document: Prepared by the Department of International Law, Department of State Modernization and Good Governance, Inter-American Juridical Committee, Special Rapporteurship on Freedom of Expression (IACHR), Inter-American Juridical Committee, and the Trust for the Americas, with the representation of the Committee on Juridical and Political Affairs and the participation of the Carter Center and other civil society organizations.

Work organized by the Department of International Law of the Secretariat for Legal Affairs

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AG/RES. 2288 (XXXVII-O/07)

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I. Introduction

This study on Recommendations on Access to Information, with background and detailed recommendations, is presented pursuant to the operative paragraphs 8.a and 13.a of resolution AG/RES. 2288 and in compliance with the decisions made by the member states in the meetings of the Committee on Juridical and Political Affairs of the Permanent Council.

After a brief summary of the procedural history of the study, the document is divided into two main parts: one containing background on the establishment of access to information as a basic right (sections III and IV), the other with recommendations to the Organization of American States and its member states for advancing the effective exercise of this right (sections V and VI).

To provide applicable background, section II on procedural history describes the mandates of the General Assembly and the Committee on Juridical and Political Affairs that gave rise to this study. The next section, section III, describes access to information as a human right under international instruments and applicable jurisprudence. Section IV presents access to information as a democratic right of fundamental importance for good governance of states.

As regards recommendations, section V offers several policy recommendations for the states and the OAS with a view to establishing the processes, initiatives, systems, and legislation needed to guarantee the right of access to information. Section VI presents several legislative recommendations to support the states, the OAS, and other international organizations in creating comprehensive and effective legal frameworks for access to information. The study ends with brief reflections on the importance of implementing its recommendations and possible next steps in this process.

II. Procedural History

The General Assembly, through its resolution AG/RES. 2288 (XXXVII-O/07), adopted at the fourth plenary session held on June 5, 2007, in Panama City, Panama, called for the present study on Recommendations on Access to Information. This resolution contains several important mandates on access to information, and protection of personal data. However, this study only addresses mandates

stemming from operative paragraphs 8.a and 13.a of that resolution. A study on protection of personal data includes topics beyond the scope of this study, and is recommended for a subsequent phase.

By way of reference, operative paragraph 8.a instructs the Department of International Law to prepare a study with recommendations on access to information and protection of personal data, based on contributions from the organs of the inter-American system and civil society, and the preparatory work of the special meeting on access to information of the Committee on Juridical and Political Affairs. Operative paragraph 13.a recommends that the Permanent Council, via its Committee on Juridical and Political Affairs (“CAJP”), prepare a basic document on best practices and the development of common approaches or guidelines for increasing access to information—a mandate to be completed taking into account the report of the special meeting of the CAJP, and with the participation of member states, the Special Rapporteur on Freedom of Expression (IACHR), the Inter-American Juridical Committee, the Department of International Law, the Department of State Modernization and Good Governance, interested organs, agencies, and entities of the Organization, and civil society representatives.

At a meeting of the CAJP on November 20, 2007, member states expressed the sentiment that there was substantial technical overlap between OP 8.a and OP 13.a. As a result, they decided that technical work and planning completed prior to that date merited combining the two mandates into one. The member states therefore formed a working group on this matter consisting of the actors mentioned in OP 13.a and appointed the Department of International Law as the technical area in charge of coordinating the effort. The Chairman of the CAJP, Ambassador Roberto Alvarez (Permanent Representative from the Dominican Republic) then designated Minister Eduardo Acevedo Diaz (Vice-Chair of the CAJP) to participate in the working group in representation of the CAJP. The specific mandate to the working group was to prepare the present report on Recommendations on Access to Information and a supplementary report on Best Practices.

The present study also includes two annexes and the supplementary report mentioned. The first annex is a list of sources for the study. The second annex contains the text of the Declaration of Atlanta and Plan of Action for the Advancement of the Right of Access to Information, which is a source of recommendations for this study. The supplementary report is based on a CAJP questionnaire on legislation and best practices on access to information intended to shed initial light on some practices on access to information. The questionnaire was referred to the member states and civil society organizations in a CAJP meeting on November 20, 2007. The supplementary report compiles responses to the questionnaire and consists of the following elements: 1) the CAJP questionnaire; 2) a table of member states’ replies to the questionnaire and their corresponding texts; 3) introduction of replies from civil society to the questionnaire, table and corresponding texts; and 4) recommendations.

III. Access to information -- Human Right

Access to information has been clearly established as a human right in various relevant international instruments and in the jurisprudence of the inter-American system. Article 19 of the International Covenant of Civil and Political Rights establishes that the right to freedom of expression includes the right to seek, receive, and disseminate information. In addition, Article IV of

the American Declaration of the Rights and Duties of Man recognizes that every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas by any medium whatsoever. Article 13 of the American Convention on Human Rights also protects the right and freedom to seek, receive, and impart information and ideas of all kinds. Finally, the 2001 Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights echoes this right to access public information and once again underlines that access to information held by the state is a fundamental right of every individual.

A. *Inter-American jurisprudence*

According to the jurisprudence of the inter-American system, the provisions of its governing instruments, including the American Declaration, must be interpreted and applied in the context of the evolution of international human rights law. The American Convention on Human Rights can be considered as the authorized expression of the basic principles set forth in the American Declaration. Therefore, where applicable, the pertinent provisions of the American Declaration are interpreted and applied in the light of the current evolution of international human rights law. The regulations and jurisprudence from the American Convention clarify the meaning and scope of the right to freedom of expression established in Article IV of the American Declaration, and with it the right of access to information.

Among these precedents, in an historic case, *Claude Reyes et al vs. Chile*, the Inter-American Court of Human Rights interpreted that Article 13 of the Convention recognizes the human right of access to information. On this point, the Court established the following guidelines:

- That by expressly stipulating the rights “to seek and receive information,” Article 13 of the Convention protects the right of all persons to have access to information held by the state, with the safeguards permitted under the Convention’s system of restrictions.
- That the state must follow the principles of the public nature of information, transparency, and maximum disclosure—the latter of which establishes the presumption that all information is accessible, subject only to a narrow system of exceptions.
- That silence cannot be a response to a request for information.
- That this right has the counterpart of specific obligations by the state.
- That the state must eliminate norms and practices that result in the violation of the rights protected by the Convention, and enact laws and develop practices leading to the effective respect for these guarantees.
- That the state must guarantee the efficacy of an appropriate administrative procedure for processing and responding to requests for information, with deadlines for response and delivery of the information, handled by duly trained officials.
- That the state must guarantee the right to be heard and provide a rapid and simple remedy for exercising this right.
- That the state must train agencies, officials, and public agents in access to information.

Based on the foregoing, and taking into account the international studies on the law of access to information, it should be stressed at the outset that information belongs to persons and is not the

property of the state, but rather is held by it only as the representative of individuals. The state, for instance, has the duty to gather, record, and publish official information of public interest in its possession. However, the concept of information held by the state must be given a broad interpretation and does not refer only to official documents.

In addition to the concept of access to information as a human right, it is necessary to note the following elements of fundamental importance:

B. Active and Passive Legitimation

Active legitimation is the capacity conferred by law on a person to assume the position of actor or holder of a right. In the case of access to information, all persons hold this right since it is a human right, regardless of their migratory status or any other characteristic. Furthermore, this broad application means that the requestor does not have to prove direct interest or personal involvement in order to obtain the requested information.

Passive legitimation is the state's obligation to provide the information requested. This must be broad in scope and means that the duty to provide requested information should apply to all types of public authorities and agencies. Moreover, for full exercise of the right to access to information, private firms, international organizations, and intergovernmental and nongovernmental institutions that provide public services or handle information of public interest must also respond to requests for information and be governed in their conduct by principles of public accessibility and transparency.

C. Obligations of the State

A counterpart of recognition of access to information as a right is the government's obligation to guarantee the effective exercise of that right. Hence the state must fulfill various obligations in order to guarantee that this right is effectively exercised.

The state has the general obligation to guarantee human rights and the duty to adapt the domestic law and operations of the state to the Convention, which implies the obligation to organize the structure of the state apparatus in a way that ensures the full exercise of human rights.

In addition, the state is obligated to gather all information required for carrying out its administration and to provide the information requested, or else to provide a well-founded reason in writing for denying such a request. The information should be provided to the requesting party in a clear and precise administrative procedure used by all public entities to respond promptly to requests, within a reasonable period of time, and without being burdensome, so the requester has to pay only the minimal costs for copying and sending the information.

Finally, it is the state's duty to guarantee the right of persons to be heard with due guarantees and in a simple, prompt court proceeding to validate said right. If no judicial recourse of this nature exists, the state must create one for cases in which the request for access was denied. It must be possible to bring such action before an organ previously created by law that is independent and is a higher authority than the one that denied the request.

D. Exceptions allowed

As regards the system of allowed exceptions, and further to the principle of maximum disclosure, the Court stated in the *Claude Reyes* case that the grounds for denial of a request for information should be minimal and indispensable and must: a) be established by law; b) be clearly defined, limited, and reduced to the absolute minimum; c) have a legitimate purpose, understood to mean protection of the rights or reputation of third parties, national security, and public order or ethics; and d) be necessary and proportional to a democratic society. In other words, whatever action least restricts the right must be chosen and must be used only for the purpose of avoiding a greater damage to the public interest as a result of obtaining the information.

The strict requirements under which a state may impose legitimate limits are intended to prevent arbitrary action in the reasons used to deny requests for information in the hands of the state and each authority from which information is sought. Also, the restriction must be temporary and/or contingent upon the end of its justification, so that after time the individuals can receive the information that was restricted. If the information requested from the state falls under one of the allowable exceptions, the burden of proof is reversed and the applicant can allege an overriding interest so that the state should give him or her the information requested if from the conflicting rights it is determined that matter should be resolved in the requester's favor.

In conclusion, it is important to point out that both international instruments and inter-American jurisprudence have established that access to information is a human right and, as such, it is the obligation of the state to guarantee its exercise by acting on the basis of the principles of the public nature of information, transparency, and maximum disclosure, limiting the number of exceptions permitted to the fewest possible, and guaranteeing in all cases the right of persons to be heard in a simple, prompt proceeding, to ensure the effective exercise of said right.

IV. Access to Information—Democratic Right and Good Governance

Besides being a human right, access to information is a democratic right necessary for good governance of the state. This concept of access to information as a political right in the democratic system stems from the Inter-American Democratic Charter (approved on September 11, 2001, in Lima, Peru), which takes into account the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights. Article 4 of the Charter recognizes that transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy.

The Democratic Charter also indicates in Article 6 that citizen participation and transparency in government activities are basic principles of democracy, stating that: "This is also a necessary condition for the full and effective exercise of democracy. Promoting and fostering diverse forms of participation strengthens democracy."

The right to access is an essential aspect of both provisions because in a system where people lack access to information, they do not have the information they need to inform their political

decisions. By contrast, in a system that protects this right, people have the information required to participate and effectively exercise their political rights guaranteed in any representative democracy.

Therefore, informed decisions based on due access to information are an indispensable requisite for the effective exercise of political rights and hence a requisite for the functioning of democracy and for improving a country's governance. In this regard, the right to access to information is a primary and autonomous right, and a tool for political construction based on people's right to elect their leaders, and the consequent right to know how they are carrying out their mandate.

A. *Citizen participation*

Article 6 of the Inter-American Democratic Charter reflects the importance assigned by the hemisphere countries to citizen participation as a means for consolidating democracy. The article says that it is the right and responsibility of all citizens to participate in decisions relating to their own development. So to achieve permanent, ethical, and responsible participation of citizens it is indispensable to ensure broad and effective access to information and adequate systems for education, as also noted in the Charter.

Access to information is therefore an indispensable requirement for encouraging citizen participation because in order to evaluate their government's performance people must have access to the greatest amount of information that will enable them to take part in the public debate, exchange ideas and views, and reach conclusions on government performance. For this, they must have broad and sufficient information so they can reach these conclusions that can be shared and compared with those of other citizens.

In short, recognition and guarantee of the right of access to information are essential requirements so that people can freely form and express their opinions; when they compare and contrast these with those of others, there is a pluralistic dialogue for the responsible exercise of democratic participation.

However, to be properly exercised, the right of access to information demands mechanisms to guarantee compliance with the obligation of the branches of government to properly inform the public. In this regard, the mechanisms for access to information that permit free participation include consultations and public hearings, open meetings, public involvement in drafting of regulations and similar instruments, and increased opportunities for citizens to learn about and participate in government.

B. *Governance – Transparency, Accountability, and the Fight against Corruption*

Article 4 of the Inter-American Democratic Charter reaffirms that “transparency in government activities” is an essential component “of the exercise of democracy.” This transparency can only be guaranteed through free access to information. Similarly, both the Inter-American Convention against Corruption and the United Nations Convention against Corruption advocate the establishment of governmental systems designed to increase transparency in governance by means of appropriate adjustments in each state's legal structure. The latter convention contains a specific call on states to take such measures as may be necessary to enhance transparency in their public administration, including with regard to adoption of procedures or regulations allowing members of

the general public to obtain information on the organization, functioning, and decision-making processes of its public administration.

The state must therefore facilitate procedures by which people can make inquiries, request information, monitor the execution of proceedings, and cooperate actively with the public oversight bodies and the justice system by reporting cases of corruption, illegal enrichment, or conflict of interest. These kinds of actions will heighten responsibility and require officials to truly work for the public good, thereby fulfilling the political pact that brought them to office.

Access to information is therefore a vital tool in the fight against corruption, which has become one of the most powerful threats to every country's economic and social development and undermines the correct and proper management of public resources. By contrast, exercise of the right of access to information effectively implements the principle of public disclosure of government acts, making corruption more difficult and promoting greater responsibility in the work of the official concerned. This contribution of access to information opens channels for control and citizen participation, and opportunities for accountability by public servants, thereby making it possible to reveal abuses, errors, and weaknesses in the public service.

C. Governance—Legitimacy and Trust in Government

The people's disparagement of and distrust in vital democratic institutions, such as political parties and the organizations of the different branches of government, including the executive, legislative, and judicial branches, undermines the concept of authority and has a negative impact on conditions for good democratic governance.

This situation is worsened by public skepticism and indifference, and the increasing gap between the upper echelons of government and the people, all of which is ultimately reflected in the poor social performance of democratic governments. As a result, public deception leads people to become "dissatisfied members of a democracy" who are willing to sacrifice democratic government for real socioeconomic progress.

Failure to respect the right to information thus creates situations in which resources are concentrated in the hands of a few and it may even weaken the governments themselves, because without the support of aware, participating citizens they would be exposed to various pressures, for example from de-facto powers and interest groups.

Access to public information brings greater legitimacy to governments, at the same time as it enhances efficiency and eliminates bureaucratic obstacles. As a result, it improves government administration and governance conditions. In other words, access to public information is seen as an intrinsic and reciprocal responsibility of the commitment between government and the governed in a democratic society.

D. Governance—Efficiency in Public Administration

Access to information is a sine qua non for maintaining efficiency in the management of public resources. Pursuit of this objective—the right to information as both a political and democratic right, and a human right—has the unquestionable effect of strengthening accountability, trust in

government institutions, and efficiency and integrity in management of public resources. It is also essential for making the state more transparent in its operations, more effective in its actions, more responsible in respecting and promoting individual rights, and more responsive to public needs and demands.

Access to information is also an essential social tool for promoting open competitiveness, investments, and economic growth, and plays a key role in the improvement of living conditions by empowering people to request or demand information on government decisions and public programs that affect progress, their social rights, and government programs (including health and education) that have an impact on the economy and society. It enables the public to demand the services to which it is entitled and to protect its social, cultural, and economic rights.

In conclusion, the right to access information facilitates good governance, and it is a key tool to ensure government transparency and accountability, and to facilitate citizen participation. Thus, promulgation and implementation of systems for access to information contribute to the fight against corruption, help increase foreign investment and free competition, and provide persons with the tools needed to exercise their fundamental human rights in a democratic system. In this way, citizens become active political subjects and access to information guarantees channels for participation and constant dialogue between governments and their citizens. A good government requires informed citizens.

V. Policy Recommendations:

While the two previous sections have presented a summary of access to information as a human and democratic right, the following two sections present the recommendations needed for the states, the OAS, and other actors to move forward in faithful compliance with the promotion and protection of this right.

General Assembly Resolution AG/RES. 2288 (XXXVII O/07) on Access to Public Information and Strengthening Democracy instructs the Department of International Law to prepare recommendations on access to information with the input of OAS organs and civil society. In compliance with this mandate, section A, which follows, provides policy recommendations to member states aimed at ensuring compliance with access to information obligations. This section also provides policy recommendations to the Organization of American States to assist member states in ensuring full compliance with this right and to set an example to the states and other international organizations in guaranteeing compliance with it. Section B provides legislative recommendations for implementation in member states that are considering (or in the process of) reforming their current legal frameworks on access to information.

A. *Recommendations to OAS Member States*

The Heads of State and Government of the Americas have called for establishment of the structures and conditions needed to guarantee the right of access to information set forth in inter-American instruments and jurisprudence. The OAS General Assembly has reaffirmed that everyone has the freedom to seek, receive, access, and impart information and that access to public information is a requisite for the very exercise of democracy.

So that these policy mandates may be fully carried out, it is recommended that the states:

- Make access to information an inherent aspect to all public duties and a central element of state functions and policies.
- Enact legislation on access to information based on the legislative recommendations enumerated in Section VI of this study and taking into account the particularities and specific needs of each country.
- Rescind any laws contrary to the right of access to information.
- Consider the possibility of participating in a process of drafting and promulgation of a convention, model law, or other international instrument on access to information.
- Ensure effective implementation of the law and mechanisms to monitor compliance.
- Allocate the financial resources necessary to create and maintain an effective access to information system.
- Designate information offices (or officials) in government agencies and/or entities or autonomous and independent commissions with responsibility for responding to access to information requests.
- Create an appeals body or court system to hear appeals for information requests that have been delayed, denied, or infringed in some way.
- Provide training to all officials on the right of access to information as well as education in the creation of a culture of transparency.
- Undertake public information campaigns to make the public aware of the right of access to information.
- Adopt effective information management policies and systems to properly create, maintain, and provide access to public information.
- Develop the use of information systems and technologies to improve access to information and all other governmental services.
- Provide means for sharing experiences and best practices with other states between governmental agencies and levels of government.
- Facilitate the participation of the OAS and of civil society organizations in the development of the right of access to information.

B. *Recommendations for the Organization of American States*

The General Assembly has also repeatedly called on the technical and political bodies of the Organization of American States to promote and support the establishment of the right of access to information, assist member states in drafting legislation and developing mechanisms in the area of access to information, prepare studies and recommendations on a gamut of topics concerned with access to information, report on the current status of access to information in the region, and identify resources needed to support the member states' efforts in this area.

So that these policy mandates may be fully carried out, it is recommended that the Organization of American States:

- Adopt and implement an internal information policy, consistent with the legislative recommendations enumerated in Section VI of this study.
- Consider the drafting and promulgation of a convention, model law, or other international instrument on access to information.
- Assist the member states in establishing and implementing the right of access to information.
- Assist the member states to establish the necessary mechanisms for reporting on their progress in the enactment, implementation, and enforcement of the right of access to information, ensuring the participation of civil society and the media.
- Assist states in providing education and training to officials (information officers) responsible for providing access to information.
- Facilitate participation of civil society organizations and the media in the development of effective access to information systems, in informing and educating the general public of the existence and the exercise of this right, and in creating follow-up and monitoring systems.
- Help the member states to share their best practices and lessons learned.
- Continue to include in the annual report of the Special Rapporteur on Freedom of Expression of the IACHR a report on the situation regarding access to information in the region.
- Encourage and prepare seminars, workshops, and other events to promote access to information.
- Encourage donors to support state efforts to establish a right of access system.
- Make a study with background and recommendations, similar to this one, on the topic of protection of personal data.

VI. Legislative Recommendations:

This section provides a set of general legislative recommendations for member states and international organizations, including the OAS, to consider in the development of a legal framework on access to information. The intent of this section is not to provide legislative text, but only a general overview of the elements recommended for inclusion in an access to information law.

A. Recommendations—*Fundamental Principles*

Access to information, essential to protection and promotion of democracy and human rights, must be the rule in all states and must follow the principle of maximum disclosure. The right of access to information must apply to all branches and levels of government, as well as private actors that carry out public functions, receive public funds, or use public or natural resources.

To give full effect to this principle, it is recommended that states:

- Adopt comprehensive legislation that guarantees the right of access to information held by the state based on the principle of maximum disclosure.
- Provide as broad and inclusive a right to information as possible, in all its forms, without limitation to the manner in which information/documentation is defined or recorded, to its form or source, to the date of creation or official status, and without limitation to whether or not it was created by the body that holds it, or whether or not it is classified.
- Ensure that the right of access to information applies to all state agencies and officials without exception, including those from all branches of government, whether established under the Constitution or by statute, and to all nongovernmental actors that receive public funds or benefits, carry out public functions, or exploit natural resources.
- Require private corporations to divulge requested information when it pertains to the exercise or protection of human rights.

B. Recommendations—*Presumption of Publicity*

The presumption upon which the right to access to information is based is that all information in possession of the state is public and, thus, should be disclosed to all persons in a transparent and accessible manner. This creates on one hand the right of any individual to request and receive information, and on the other, a positive obligation of all states to comply with such requests. Moreover, the state must automatically make public as much information as possible proactively—a practice that increases transparency and accessibility, reduces the number of possible requests for information, reduces costs to the state and individuals, ensures more effective management of the law, and makes information immediately accessible to all.

To give full effect to this principle, it is recommended that states:

- At their own initiative (without the need for an access to information request), make all core public information and documentation accessible in a clear and understandable manner.
- Create a compulsory list of core information that must be published preemptively and ensure its widest possible dissemination.

C. *Recommendations—the Requesting Process*

States should establish a clear, simple, and without cost (insofar as possible) process by which persons can request information. This system should require only minimal information from the requesting party and should not require an express or implicit interest in the information requested.

To give full effect to this principle, it is recommended that states:

- Allow persons to make information requests personally or in writing, either verbally or in electronic or written form.
- Implement a user-friendly system in which information requests need only contain data needed to locate the document(s) requested, and data needed to give that information to the requester.
- Accept requests for information without the requesting party needing to prove a personal interest in, connection to, or justification for the information requested.
- Establish a system that does not entail any cost to the requester for making or submitting the request, or for searching for and compiling the information requested. Any cost should be minimal, clearly established by law, and limited only to the copying and delivery or mailing of the information requested. This cost must not be a barrier to the exercise of the right of access to information.
- Guarantee that persons exercising their right of access to information are not subject to any type of sanction, punishment, or persecution.

D. *Recommendations—Response to the Request*

The states must also establish a clear and simple process by which the government offices respond to information requests received, including the establishment of a deadline for response to the requests.

To give full effect to this principle, it is recommended that states:

- Establish a clear process for reaching decisions on information requests and for processing the information requested.

- Establish a deadline for responding to requests received.
- Permit extensions of the deadline only in exceptional cases when it is difficult to identify or locate the information.
- Notify the requester in writing when it is not possible to satisfy the request within the deadline, including detailed information explaining any unusual circumstance for the delay.
- Create an information office (or designate an information officer) in every government agency with the authority and duty to process and respond to information requests received. These officials should help applicants, when necessary, to prepare and present their requests.
- Respond to requests by directly delivering all relevant documents requested, which should also be made available to the general public proactively.
- Deliver any denial of a request in writing, clearly stating the reason why the information requested was not provided and giving sufficient information so that the requester can understand and exercise the right to review and appeal of that adverse decision.
- Include sanctions and punish public officials who fail to fulfill their obligation to implement and comply with access to information legislation.

E. Recommendations—Exceptions

States must always err on the side of full disclosure and greatly limit cases in which requests for information are refused or denied. Exceptions must be narrowly drawn and limited to circumstances permitted by international law. State agencies that seek to deny access to information bear the burden of proof to justify a legitimate interest in maintaining information confidential. Furthermore, even in those cases in which it is found that the information is covered by an exception, there should be an additional legal instance to weigh the public interest in disclosing the information in question against the public interest in keeping it secret. In cases where the public interest in disclosure is greater, the state should deliver the information despite the applicable exception.

To give full effect to this principle, it is recommended that states:

- Ensure that any exception is previously established by law and responds to an objective permitted under international law.
- Ensure that exceptions interfere as little as possible with exercising the right to access information.
- Establish a system in which any exception is itself subject to the exception of public interest override, which requires that information normally exempt from disclosure

be divulged when the public interest in support of disclosure outweighs the interest against it.

- Adopt a process of partial disclosure for cases in which some (but not all) information in a document is protected by an exception. In such cases, protected information may be redacted. Information not protected from disclosure in a same document, however, must be delivered to the requesting party and made available to the public.
- Adopt a compulsory sunset system that mandates eventual disclosure, after a reasonable period of time, of any document that was classified secret under an exception permitted by law.

F. Recommendations—Oversight and Appeals Process

A party whose requests have been delayed, denied, or infringed in any manner by state agencies has the right to an appeal process to an independent review authority with the power to make binding and enforceable decisions. Infractions and decisions of agencies or commissions must always be subject to eventual appeal in the domestic legal system.

To give full effect to this principle, it is recommended that states:

- Establish an independent and impartial oversight system consisting of an agency or commission with the authority and duty to monitor that legislation on access to information is effectively implemented, to make annual reports on its operation, and to increase understanding of the right of access to information.
- Ensure that a party whose request for information has been delayed, denied, or otherwise infringed has access to an effective and low-cost appeal procedure before an independent and impartial body.
- Create an independent and impartial appeals system composed of an independent agency, commission, or court (or any combination of the three) to hear cases of denied appeals.
- Establish that the state has the burden of proof that the information requested is subject to a permitted exception and may remain secret. In no case shall the requester have the burden of proof that the information requested is subject to disclosure.

VII. Conclusion

Access to information is a human right and a political/democratic right of every person in the hemisphere, and therefore the OAS member states are obligated to ensure it. To this end, the states must act in accordance with the principles of the public nature of information, transparency, and maximum disclosure, and in a framework of complete and efficient norms that enable all persons to exercise their right of access to information, limiting the number of exceptions under which

information can be kept secret, and providing an appeal remedy for cases in which the right has been violated.

This study presents a series of recommendations to help states in these areas: the protection and exercise of individuals' human rights; the promotion of a key aspect of democracy; compliance with an essential element for good governance; the encouragement of citizen participation; the combat of corruption; accountability, confidence-building in government agencies; increased efficiency and responsibility in management of public resources; and the effective exercise of social, civil, and political rights of all citizens.

To accomplish this it is not enough to legislate or make recommendations. It is necessary to advance with implementation of the right of access, strengthening control and oversight systems, and dissemination and promotion of the right. These objectives can only be achieved through specific actions that generate greater awareness of the opportunities, rights, and responsibilities afforded by the democratic system, in order to reach the final goal—that the right of access to information becomes an integral part of the civic culture of the community, and the organizational culture of the state institutions.

This study is presented, as directed in resolution 2288 of the General Assembly, in the hope that it may assist the member states and political and technical bodies of the OAS in this task.

ANNEX I

List of Sources for the Study on Recommendations on Access to Information

List of Sources for this Study on Recommendations on Access to Information

Sources for section II - Procedural History

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ANNEX II

**Atlanta Declaration and Plan of Action for the Advancement
of the right to access to information**

**Atlanta Declaration and Plan of Action for the Advancement
of the right to access to information**

We, over 125 members of the global access to information community from 40 countries, representing governments, civil society organizations, international bodies and financial institutions, donor agencies and foundations, private sector companies, media outlets and scholars, gathered in Atlanta, Georgia from February 27-29, 2008, under the auspices of the Carter Center and hereby adopt the following Declaration and Plan of Action to advance the passage, implementation, enforcement, and exercise of the right of access to information:

PREAMBLE:

Recognizing that Article 19 of the Universal Declaration of Human Rights, Article 19 of the International Covenant of Civil and Political Rights, Article 13 of the American Convention on Human Rights, and Article 9 of the African Charter on Human and People's Rights provide for a right to "seek, receive and impart information," and Article 10 of the European Convention on Human Rights establishes a similar right to "receive and impart information;"

Emphasizing that the Inter-American Court of Human Rights in the case of *Claude Reyes v. Chile* found that Article 13 of the American Convention on Human Rights recognizes a general right of access to information and that states must provide a system for exercising that right;

Considering that the Council of Europe, the Organization of American States, and the African Commission on Human and People's Rights have adopted clear statements and declarations on the right of access to information, that there are important right to information initiatives underway at the Organization for Economic Cooperation and Development, and that the recent United Nations Convention Against Corruption calls on all states to ensure that the public has effective access to information;

Acknowledging that the right of access to information is a foundation for citizen participation, good governance, public administration efficiency, accountability and efforts to combat corruption, media and investigative journalism, human development, social inclusion, and the realization of other socio-economic and civil-political rights;

Appreciating that the right of access to information promotes efficient markets, commercial investment, competition for government business, fair administration and compliance of laws and regulations;

Convinced that political commitment to the right of access to information is necessary for adoption and full implementation and enforcement of access to information legislation and instruments;

Stressing that although there have been great advances in the right of access to information over the past decade, there remain many challenges including the absence of national legislation, widely varying levels of implementation, and continued political resistance;

FINDINGS:

The assembled conference hereby finds that:

1. The fundamental right of access to information is inherent in all cultures and systems of government.
2. A lack of access to information disproportionately affects the poor, women and other vulnerable and marginalized people, and as such the right should be guaranteed to all sectors of society.
3. The right of access to information is fundamental to human dignity, equity and peace with justice.
4. Transparency is a necessary and powerful instrument for promoting human and state security.
5. New technology offers a great potential for facilitating access to information, yet factors that limit access and data management practices have prevented many from benefiting from its full potential.
6. Enacting a comprehensive law is essential, but insufficient, to establishing and sustaining the right of access to information.
7. Equally important is constructing an appropriate institutional framework and developing public administration capacity to manage and provide information.
8. It also is critical to raise public awareness of the right of access to information, ensure capacity to exercise the right including through public education, and foster support for transparency among all sectors of society.
9. A free and independent media is a fundamental component to the establishment and full enjoyment of the right of access to information.

PRINCIPLES:

Further to these findings, we set out the following key principles:

1. Access to information is a fundamental human right.
2. All states should enact legislation to give effect to the right of access to information.
3. The right of access to information applies to all intergovernmental organizations, including the United Nations, international financial institutions, regional development banks, and bilateral and multilateral bodies. These public institutions should lead by example and support others efforts to build a culture of transparency.

4. The right of access to information should be entrenched in international and regional instruments as well as national and sub-national laws and should respect the following tenets:
 - a. Access to information is the rule; secrecy is the exception;
 - b. The right of access to information should apply to all branches of government (including the executive, judicial and legislative bodies, as well as autonomous organs) at all levels (federal, central, regional and local) and to all divisions of the international bodies listed above;
 - c. The right of access to information should extend to non-state actors under the conditions enumerated in principle 5 below;
 - d. The right of access to information should include a right to request and receive information, and a positive obligation on public institutions to disseminate information related to their core function;
 - e. The right to request information is independent of a personal interest in that information, and there should never be a need to provide a justification or reason;
 - f. The instrument or law should include procedures designed to ensure the full implementation and ease of use, with no unnecessary obstacles (such as cost, language, form or manner of request) and with an affirmative obligation to assist the requester and to provide the requested information within a specified and reasonable period of time;
 - g. Exemptions to access to information should be narrowly drawn, specified in law, and limited only to those permitted by international law. All exemptions should be subject to a public interest override, which mandates release of otherwise exempt documents when the public benefit of release outweighs the potential public harm;
 - h. The burden of proof to justify a denial should always fall on the holder of information;
 - i. The instrument should mandate full disclosure, after a reasonable period of time, of any document that was classified as secret or confidential for exceptional reasons at the time of its creation;
 - j. The instrument should include clear penalties and sanctions for non-compliance by public officials; and
 - k. The requester should be guaranteed a right to appeal any decision, any failure to provide information, or any other infringement of the right of access to information to an independent authority with the power to make

binding and enforceable decisions, preferably an intermediary body such as an Information Commission(er) or Specialist Ombudsman in the first instance with a further right of appeal to a court of law.

5. The right of access to information also applies to non-state actors that: receive public funds or benefits (directly or indirectly); carry out public functions, including the provision of public services; and exploit public resources, including natural resources. The right of access to information extends only to the use of those funds or benefits, activities or resources. In addition, everyone should have the right of access to information held by large profit-seeking corporations where this information is required for the exercise or protection of any human right, as recognized in the International Bill of Rights.
6. States and international organizations should ensure a system of implementation that provides for:
 - a. The equitable exercise of the right of access to information;
 - b. Training of all public officials on the practice and application of the right;
 - c. Public education and training to empower persons to make full use of the right;
 - d. Allocation of necessary resources to ensure efficient and timely administration;
 - e. Strengthening of information management to facilitate access to information;
 - f. Regular monitoring and reporting on operation of the law; and
 - g. Review of the operation and compliance with the law, by legislative and key oversight bodies.
7. Companion legislation that would further promote the right of access to information and provide a supportive legislative framework should be enacted, including: laws compelling disclosure of political party and campaign financing; lobbying disclosure; archiving legislation; whistleblowing protection; and professional public administration laws. Moreover, contradictory provisions, such as those contained within an Official Secrets Act, should be repealed.

PLAN OF ACTION

To give effect to the Findings and Principles, the following action plan should be undertaken:

For the International Community:

1. Intergovernmental organizations - including the United Nations and all of its bodies, Council of Europe, Organization of American States, African Union, the Organization for Economic Cooperation and Development and international financial institutes, regional development banks, and trade bodies - and international and domestic non-governmental organizations should give effect to the right of access to information in accordance with the findings and principles enumerated above.
2. As the first intergovernmental institution to formulate a specific convention on the right of access to information, the member states of the Council of Europe should ensure that the above findings and principles are respected in the future “European Convention on Access to Official Documents.”
3. During the World Bank Group’s forthcoming review of its Policy on Disclosure of Information, the Bank should engage in an open and consultative process to bring its policy into line with the findings and principles enumerated above. Other international governmental organizations also should take steps to adopt or bring their information policies into line with the findings and principles.
4. International and regional bodies should:
 - a. take measures to ensure that all states have effective mechanisms to promote and protect the right of access to information;
 - b. develop instruments on the right of access to information;
 - c. conduct ongoing monitoring of compliance with this right, through formal and informal follow-up mechanisms such as peer review.
5. International donors should support countries’ efforts to establish, implement and enforce the right of access to information by providing technical assistance and sufficient long-term funding, including through new aid modalities such as program-based and sector-wide approaches.
6. Donor funding agreements should require that donors and recipients provide access to information regarding the amount and use of international funds.
7. Regional and international bodies considering the establishment of right of access to information instruments should ensure that they consult fully with civil society and with experts in the right of access to information. A panel of experts should be convened to support these efforts.

8. Passage and implementation of access to information laws should be prioritized as essential to reporting on progress toward and achievement of the Millennium Development Goals.
9. Donors should provide funding to support monitoring, analysis and assessment of the implementation and impact of the right of access to information, including through scholarly research, the development of appropriate indicators and practical evaluation tools.

For States:

10. Every state should provide for the right of access to information in keeping with the findings and principles enumerated above.
11. States should integrate promotion of the right of access to information into their own national development and growth strategies and sectoral policies.
12. States should seek multi-stakeholder partnerships to enhance their capacity to implement the right of access to information in practice.
13. States should establish independent enforcement mechanisms, such as Information Commissions, that provide for accessible, affordable, and timely appeal remedies. Where appropriate these bodies should have the power to make binding decisions and order disclosure of information.
14. States should put in place effective information management policies and systems, which facilitate their ability to properly create and maintain records and discharge their right to information obligations.
15. Effective training methods should be developed for officials charged with the responsibility of providing access to information along with structures for the sharing of best practice from around the world, and support from non-governmental organizations and donors should be sought.
16. To give effect to the right of access to information held by profit-seeking corporations, states should establish rules which ensure minimal administrative burdens, exemptions in accordance with general principles governing the right of access to information, and a threshold test for size to define which entities are subject to this duty.
17. Access to information regimes should incorporate some mechanisms for monitoring and evaluation, including quantitative and qualitative measurement, collection of statistics, and mandatory annual reporting.

For Corporate, Professional and Civil Society Organizations:

18. Multi-national corporations and large domestic businesses should establish voluntary commitments to proactively disclose information in the public interest, and such efforts should be encouraged and supported.
19. Technology innovators should develop and share new methods for the promotion of the right of access to information.
20. Additional scholarship and study on the right of access to information, implementation of relevant laws, socio-economic impact, politics of compliance, exercise of the right, its enforcement, and how it changes peoples' lives should be undertaken.
21. Right of access to information advocates should focus further efforts to develop and update guidelines on the drafting of right to information instruments and national laws, as well as on their implementation. These guidelines should be widely disseminated with a view to promoting right to information regimes that conform to the above principles.
22. All stakeholders should engage in the monitoring and assessment of the implementation and impact of the right of access to information, including through the development of appropriate indicators and practical evaluation tools.
23. Civil society should ensure full enjoyment of the right of access to information by demanding and using public information, and promoting and defending the right.
24. A free and independent media should be developed and promoted, and journalists should be trained in use of the right to information.
25. The access to information community should strive to build solidarity with a full range of stakeholders who share a common transparency agenda.
26. The Carter Center will work with others to disseminate the Atlanta Declaration, through high level communications, publications, conferences and meetings.

We call upon all states, international and regional bodies, and the global access to information community to establish, develop and nurture the right of access to information across the world, in accordance with the findings and principles enunciated in this Declaration and to commit to the plan of action in furtherance of our common objective.

Atlanta, Georgia
February 29, 2008