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Abstract

The Model Law on Access to Information for Africa portends a great opportunity in the promotion and protection of access to information in the region. The effective implementation of such a model law could benefit by looking towards other regional systems and how different strategies were used to advance legislation. In the Americas, there had been a progressive trend in the legal recognition of the right to access public information and the implementation of access to information legislation at the national level, and in 2010, the Organization of American States (OAS), with the support of civil society experts, developed a Model Law on Access to Information as well as an implementation guide for use by governments. This legislation, the Model Law, and the work of civil society have been instrumental in influencing the states in the region. It is thus through this lens that this chapter aims to provide strategies for the implementation of the Model Law in Africa. The chapter thus examines the adoption process of the model laws in both the Americas and Africa. It also discusses the main differences between the Inter-American Model Law and the African Model Law. We also consider litigation and advocacy strategies, among others, developed in the Americas, taking into account the differing political, social, economic and cultural contexts of both continents, which may shed some light on the development of access to information legislation in countries in Africa and the implementation of the African Model Law.

1 Introduction

With the rising influence that regional human rights systems have upon their member states, model laws concerning certain rights have become increasingly common. The Model Law on Access to Information for Africa portends a great opportunity in the promotion and protection of access to information in the region. However, there are lessons to be learnt in looking to other regional systems to analyse how their member states

came to enact access to information laws and the extent of the influence, if any, of the Model Inter-American Law on Access to Information.

In 2010, the Organization of American States (OAS), with the support of civil society experts, developed a Model Law on Access to Information as well as an implementation guide for use by regional governments. Before the Model Law was accepted, the Americas had been experiencing a progressive trend in the legal recognition of the right to access public information and the implementation of access to information legislation at the national level.¹ This legislation, the Inter-American Model Law, and the work of civil society has been instrumental in influencing the states in the region that did not have the right protected in law or that had legislation which did not comply with international standards.

It is thus through the lens of the enactment of access to information laws in the Americas and the Organization of American States' own Model Law on Access to Information that this chapter aims to provide strategies for the implementation of the Model Law in Africa. As the OAS system has 35 member states, the chapter will focus on selected countries that can provide a particular insight into the processes and strategies behind the adoption of their access to information laws.

The chapter first examines the adoption process of the Model Laws in both the Americas and Africa. Next, the main differences between the Inter-American Model Law and the African Model Law are discussed. Litigation and advocacy strategies, among others, developed in the Americas are then considered, resulting in recommendations for the implementation of the African Model Law on the African continent while taking into account the differing political, social, economic and cultural contexts of both continents.

2 Process of adoption: OAS and African model laws

Freedom of expression was recognised as a fundamental right worldwide with the adoption of the Universal Declaration of Human Rights (Universal Declaration)² and the American Declaration on the Rights and Duties of Man,³ both of which occurred in 1948. Since then, access to information has become well established in international human rights

1 Mexico, Panama and Peru had access to information legislation enacted in 2002; Ecuador, Jamaica and the Dominican Republic established such legislation in 2004; Honduras and Nicaragua did the same in 2006 and 2007, respectively; and Chile, Guatemala and Uruguay passed access to information laws in 2008. Right2Info, 'Constitutional provisions, laws and regulations', <http://www.right2info.org/laws/constitutional-provisions-laws-and-regulations> (accessed 20 August 2017).

2 Universal Declaration of Human Rights, General Assembly Resolution 217 A, art 19.

3 American Declaration of the Rights and Duties of Man, art IV.

law, both as part of freedom of expression and in its own right. The right of access to information has increasingly been codified and protected during the latter half of the twentieth and into the twenty-first century.

2.1 Americas

The right of freedom of expression in the Americas was first protected at the regional level in 1969. The American Convention on Human Rights guarantees the right to freedom of expression in article 13.⁴

In 1997, the OAS Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights (Commission).⁵ In the 1999 Annual Report, the Special Rapporteur stated:⁶

The right to access to official information is one of the cornerstones of representative democracy. In a representative system of government, the representatives should respond to the people who entrusted them with their representation and the authority to make decisions on public matters.

The Office of the Special Rapporteur for Freedom of Expression also worked on the Declaration of Principles on Freedom of Expression, which was approved by the Commission in 2000.⁷ In principle 4, it is recognised that

[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.

Not only were the regional human rights institutions in the Americas reaffirming access to information as a fundamental human right, but the associated political body also did so. Since 2003, the OAS General Assembly has issued several resolutions affirming the importance of the

4 American Convention on Human Rights, adopted at San José, Costa Rica, 22 November 1969, OAS Treaty Series 36, entered into force 18 July 1978.

5 Inter-American Commission of Human Rights Press Release 2/98, 6 March 1998, paras 14-15.

6 OAS 'Annual Report of the Inter-American Commission on Human Rights 1998, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression' 16 April 1999, OEA/Ser. L./V/II.102, Doc. 6 rev., ch III 24.

7 OAS Inter-American Commission on Human Rights, 108th regular session, 19 October 2000, <http://www.iachr.org/declaration.htm> (accessed 20 August 2017).

right of access to public information⁸ and instructing the Special Rapporteur for Freedom of Expression to prepare a special chapter in the annual report to assess the situation of access to information in the region.⁹

In 2006, the Inter-American Court of Human Rights, the apex authority as regards the interpretation of the American Convention, acknowledged the right of access to information in the *Claude Reyes v Chile* case. Regarding state-held information, the Court ruling affirmed that article 13 of the American Convention on Human Rights 'protects the right of the individual to receive such information and the positive obligation of the state to provide it'.¹⁰

Following all these developments – and especially the Inter-American Court ruling – the right of access to information became more fully entrenched in the Americas.¹¹ The countries that did not already have legislation in place started drafting and adopting their own laws.¹² The Model Inter-American Law on Access to Information was thus a natural outcome in the region.¹³

In 2009, the OAS General Assembly instructed that a model law on access to information and accompanying implementation guide be drafted by the Department of International Law in co-operation with the Inter-American Juridical Committee, the Special Rapporteur for Freedom of Expression, and the Department of State Modernisation and Good Governance, with the co-operation of member states and civil society.¹⁴

8 OAS General Assembly 'Access to Public Information: Strengthening Democracy' 5 June 2007, AG/RES. 2288 (XXXVII-O/07), https://www.oas.org/dil/AG-RES_2288_XXXVII-O-07_eng.pdf (accessed 20 August 2017); OAS General Assembly 'Access to Public Information: Strengthening Democracy' 3 June 2008, AG/RES. 2418 (XXXVIII-O/08), https://www.oas.org/dil/esp/AGRES_2418.pdf (accessed 20 August 2017).

9 OAS General Assembly 'Access to Public Information: Strengthening Democracy' 10 June 2003, AG/RES. 1932 (XXXIII-O/03), http://www.oas.org/juridico/english/ga03/agres_1932.htm (accessed 20 August 2017); OAS General Assembly 'Access to Public Information: Strengthening Democracy' 8 June 2004, AG/RES. 2057 (XXXIV-O/04), https://www.oas.org/dil/AG-RES_2057_XXXIV-O-04_eng.pdf (accessed 20 August 2017).

10 *Claude Reyes v Chile* IACHR 9 September 2006 Series C No 151 para 77.

11 Alianza Regional por la Libre Expresión e Información 'Saber Más VIII: Una Década de Acceso a la Información en las Américas' 3, <http://www.alianzaregional.net/wp-content/uploads/INFORME-SABER-MAS-SR-1.pdf> (accessed 20 August 2017).

12 OAS Special Rapporteur for Freedom of Expression 'The right to access to public information in the Americas: Specialised supervisory and enforcement bodies' para 4, <https://www.oas.org/en/iachr/expression/docs/reports/ACCESS/Thematic%20Report%20access%20To%20public%20information%202014.pdf> (accessed 20 August 2017).

13 Evidence and Lessons from Latin America (ELLA) 'The role of the Inter-American Human Rights system in the promotion of the right to information' 6, http://foiadvocates.net/wp-content/uploads/LEA2_Mod1_Week2-1_Role_of_IAHRS_in_the_promotion_of_RTI.pdf (accessed 20 August 2017).

14 OAS General Assembly 'Acceso a la Información Pública: Fortalecimiento de la Democracia' 4 June 2009, AG/RES. 2514 (XXXIX-O/09) para 9, https://www.oas.org/en/sla/dil/docs/AG-RES_2514-2009_eng.pdf (accessed 4 August 2017).

In order to fulfil the mandate, the Special Rapporteur, along with a group of experts, met three times to discuss, edit and finalise the Model Law and implementation guide.¹⁵ The final versions were approved in March 2010, and in April 2010 they were presented to a committee of the Permanent Council, which in turn submitted a resolution and the text of the Model Law to the General Assembly in May 2010.¹⁶ The General Assembly approved the resolution and Model Law one month later, in June 2010.¹⁷

The Model Law aims to set standards for access to information that countries in the region should follow when drafting access to information legislation, or in order to fill gaps or measure compliance in those countries that have already enacted access to information laws.¹⁸

2.2 Africa

Even though discussions concerning an access to information Model Law in Africa began in 2010, at nearly the same time as in the Americas, the African Model Law came into existence in 2013, a few years after the Inter-American version had been accepted. The realisation of the Model Law in Africa was different from that of the Americas because of a number of factors. First, the proceedings were more open and participatory, which might have contributed to lengthening the process in Africa as compared with the Americas. Second, many countries in the Americas had already enacted access to information legislation by the time the discussions started concerning a model law – 17 in the Americas versus six in Africa.¹⁹ It could be argued that the accumulated years of experience in the Americas facilitated the consultation process as many countries already had experience in drafting and enacting their own national legislation and

15 OAS Inter-American Commission on Human Rights 'Report of the Office of the Special Rapporteur for Freedom of Expression' para 14 4 March 2011, OEA/Ser.L/V/II. Doc 5, <https://www.oas.org/En/Iachr/Expression/Docs/Reports/Annual/Informe%202010%20P%20ENG.Pdf> (accessed 4 August 2017).

16 OAS Permanent Council and Committee on Juridical and Political Affairs, Model Inter-American Law on Access to Information 29 April 2010, OEA/Ser.G. CP/CAJP-2840/10 Corr.1, https://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf (accessed 18 August 2017).

17 OAS General Assembly, Model Inter-American Law on Access to Public Information 8 June 2010, AG/RES. 2607 (XL-O/10), https://www.oas.org/dil/AG-RES_2607-2010_eng.pdf (accessed 18 August 2017).

18 As above. In the Model Law it was recalled that the OAS General Assembly instructed a model law to be drafted 'to serve as a model for reform in the hemisphere'. See also OAS Special Rapporteur for Freedom of Expression 'The Right to Access to Information in the Americas: Inter-American Standards and Comparison of Legal Frameworks' (2012), <https://www.oas.org/en/iachr/expression/docs/publications/access%20to%20information%20in%20the%20americas%202012%2005%2015.pdf> (accessed 4 August 2017). In this document, various countries' legal frameworks for access to information are compared with one another and with the standards set in the Model Law.

19 V Brobbey et al 'Active and passive resistance to openness: The transparency model for freedom of information acts in Africa – Three case studies' (undated) 1.

there had been almost a decade of work related to access to information performed by specialised institutions in the Americas.

The Special Rapporteur on Freedom of Expression in Africa was established in 2004. However, work leading towards a model law was still being carried out in the region before this. In 2002, the African Commission on Human and Peoples' Rights (African Commission) issued the Declaration of Principles on Freedom of Expression in Africa which recognised that '[p]ublic bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law'.²⁰

The process of debate and adoption of the Model Law lasted about two and a half years.²¹ In 2010, the African Commission decided to begin drafting a Model Law for access to information.²² The development of the draft was led by the office of the Special Rapporteur on Freedom of Expression and Access to Information, in collaboration with the Centre for Human Rights at the University of Pretoria, and with the participation of civil society organisations from across the continent.²³ The African Commission finally adopted the Model Law on Access to Information for Africa in February 2013.²⁴

Even though it took substantially longer to adopt the African Model Law than its Inter-American counterpart, it was a more involved process: The entire document was fully debated and the process was open to participation from civil society with no restrictions. In fact, the preface states:²⁵

To ensure further and more in depth consultation with stakeholders, between June 2011 and June 2012, four sub-regional consultations were held in Mozambique, Kenya, Senegal and Tunisia, to elicit feedback on the draft Model Law. Additionally, a public call for comments on the draft Model Law was made by the African Commission.

The influence of civil society had a marked effect upon the outcome of the document, some of which may be evidenced in the following section.

20 See African Commission on Human and Peoples' Rights 'Declaration of Principles on Freedom of Expression in Africa', <http://www.achpr.org/mechanisms/freedom-of-expression/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression%20in%20Africa/> (accessed 20 August 2017).

21 African Commission on Human and Peoples' Rights 'Model Law on Access to Information for Africa' Preface: Drafting Process 8.

22 African Commission on Human and Peoples' Rights ACHPR/Res.167 (XLVIII) 10: 'Resolution on Securing the Effective Realisation of Access to Information in Africa' adopted 24 November 2010, <http://www.achpr.org/sessions/48th/resolutions/167/> (accessed 20 August 2017).

23 G Sendugwa 'Secrecy on the wane in Africa' 29 April 2013, <http://www.osisa.org/law/blog/secrecy-wane-africa> (accessed 4 August 2017).

24 Adopted at the 53rd session of the African Commission on Human and Peoples' Rights.

25 Model Law on Access to Information for Africa (n 21 above) 9.

3 Comparative analysis of African and American Model Laws

This section does not pretend to analyse both documents in fine detail. However, it is useful to examine and compare what may be the strengths and weaknesses of both documents. This section will thus attempt to describe the main differences between the Model Laws.

In addition to the Model Law, the Inter-American system adopted an implementation guide in order to provide guidance for the application and interpretation of certain provisions of the Model Law. This guide is extremely useful as it also provides countries with practical recommendations for the implementation of access to information legislation. For example, guidelines are given to member states on how to establish a realistic budget and for initial capacity building.²⁶ The African Model Law was not accompanied by an implementation guide.

The African Model Law established a more expansive scope regarding the categories of bodies with obligations to disclose information. The Inter-American Model Law includes public bodies (including the executive, legislative and judicial branches at all levels of government), constitutional and statutory authorities, and 'non-state bodies that are owned or controlled by government'. The legislation also applies to 'private organisations which operate with substantial public funds or benefits (directly or indirectly) or which perform public functions and services', but only to the extent that information requested concerns those funds, public functions or public services.²⁷

In addition to the bodies listed in the Inter-American Model Law, the African Model Law includes private bodies more broadly to the extent that information they hold 'may assist in the exercise or protection of any right', regardless of whether the information requested is related to public funds or the performance of a public function or service.²⁸ Thus, this significantly expands the amount of information that may be requested from a private entity.²⁹ It could be argued that this provision as worded in

26 OAS Group of Experts on Access to Information 'Commentary and Guide for Implementation for the Model Inter-American Law on Access to Information' 25 and 53, OEA/Ser.G CP/CAJP-2841/10, https://www.oas.org/dil/cp-cajp-2841-10_eng.pdf (accessed 20 August 2017).

27 Model Inter-American Law on Access to Public Information (n 17 above) sec I art 3.

28 Model Law on Access to Information for Africa (n 21 above) sec 1 (definition of 'relevant private body') and secs 2(a) and (b).

29 African Commission on Human and Peoples' Rights 'Declaration of Principles on Freedom of Expression in Africa' principle IV (2), <http://www.achpr.org/mechanisms/freedom-of-expression/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression%20in%20Africa/> (accessed 20 August 2017).

the Law may be so broad as to have the potential to be used against private news organisations to release journalistic sources.³⁰

The Inter-American Model Law explicitly states that the requester can be anonymous,³¹ whereas a similar provision does not appear in the African Model Law. Being able to anonymously request information is important so that citizens can exercise the right of access to information without fear of repercussions. It should be noted that, although the African Model Law is silent on this issue, it also does not require the requestor to furnish his or her name. However, a requester must furnish his or her name when information about a third party is requested and a response must be given within 48 hours.³² Regarding this issue, in their comments to the draft Model Law, the Centre for Studies on Freedom of Expression and Access to Information stated: 'It is essential that any freedom of information legislation respect the right of a person to anonymously request information' and recommend to 'explicitly recognise the requester's right to anonymity'.³³

Both laws provide for a list of exceptions or exemptions to the disclosure of information.³⁴ However, the Inter-American Model Law further includes a provision stating that the 'exceptions in article 41 do not apply in cases of serious violations of human rights or crimes against humanity'.³⁵ This means that extra protection is explicitly provided in matters of grave importance.

Further, regarding exceptions, the Inter-American Law added another layer of protection by requiring that every limitation must be 'legitimate and strictly necessary in a democratic society, based on the standards and jurisprudence of the Inter-American system'.³⁶ The African Model Law does not include such a statement, but the list of exceptions is more developed with explanations that are more detailed. A more problematic difference could be the inclusion in the African Model Law of the exception that provides that '[a]n information officer may refuse a request if the request is manifestly vexatious'.³⁷ This exception has the potential to

30 Centre for Studies on Freedom of Expression and Access to Information (CELE) 'Draft Model Law for African Union States on Access to Information: Comments and Recommendations' 2, <http://www.palermo.edu/cele/pdf/investigaciones/AU-Draft-Model-Law-CELE.pdf> (accessed 20 August 2017).

31 See Model Inter-American Law on Access to Public Information (n 17 above) sec I art 5(d).

32 Model Law on Access to Information for Africa (n 21 above) sec 39(9).

33 CELE (n 30 above) 3.

34 Model Inter-American Law on Access to Public Information (n 17 above) sec IV para 41; Model Law on Access to Information for Africa (n 21 above) Part III, in particular secs 27-36.

35 Model Inter-American Law on Access to Public Information (n 17 above) sec IV para 45.

36 Model Inter-American Law on Access to Public Information (n 17 above) sec IV para 41.

37 Model Law on Access to Information for Africa (n 21 above) sec 37.

be interpreted extremely broadly to preclude the state from furnishing the requested information.

When requested information has been refused, a person may appeal the decision internally from the entity from which the information was requested, and externally from an oversight body. However, the internal appeal step is not mandatory in the Inter-American Model Law.³⁸ On the other hand, the African Model Law has a mandatory internal appeal procedure.³⁹ The relevant section in the African Model Law states:

A requester or third party may only apply to the oversight mechanism for the review of a decision of an information holder under section 71 if the requester or third party has exhausted the internal review procedure in Part IV of this Act.

It should be noted, however, that there are a few exceptions where one may appeal to the oversight mechanism without exhausting all of the internal appeal processes.⁴⁰ One may make use of the direct access procedure when:

- (1) ...
 - (a) the information requested is the personal information of the applicant and the initial request to the information holder has been refused;
 - (b) the information requested was previously in the public domain; or
 - (c) the head of the information holder is the information officer of that body.
- (2) A requester who requests access to information reasonably believed to be necessary to safeguard the life or liberty of a person and is
 - (a) refused access to the record within 48 hours of the request; or
 - (b) receives no notice of the decision of the information officer within 48 hours of the request.⁴¹

While these exceptions lessen the burden for a person seeking direct access to an independent oversight body when requested information has been denied, they only apply to relatively limited categories of information. At the essence of the right to access to information is that the process of disclosing information should be conducted in an expeditious manner.⁴² However, it could also be argued that ‘appeals to the Commission or Courts would potentially be more costly in terms of time and resources’. Therefore, following the Inter-American implementation guide, ‘whether

38 Model Inter-American Law on Access to Public Information (n 17 above) sec V.

39 Model Law on Access to Information for Africa (n 21 above) sec 73.

40 Model Law on Access to Information for Africa (n 21 above) sec 74.

41 Model Law on Access to Information for Africa (n 21 above) sec 74.

42 See Model Law on Access to Information for Africa (n 21 above) sec 2(a), which states: ‘Every person has the right to access information of public bodies and relevant private bodies expeditiously and inexpensively’; Joint Declaration of the Special Rapporteur on Freedom of Opinion and Expression for the United Nations (UN), the Representative on Freedom of the Media for the Organisation for Security

mandatory or optional, it is beneficial for the legislation to provide some system of internal appeals'.⁴³

As just explained, there are a number of distinctions between the Inter-American and African Model Laws on access to information. This list is not exhaustive of all the differences between the laws. However, these are several of the most important distinctions that have practical and significant effects on the exercise of the right.

4 Strategies of adoption: Litigation, training and advocacy

Out of the 35 member states of the OAS, 22 states have enacted national access to information legislation.⁴⁴ Seventeen of these countries had already passed legislation before the Inter-American Model Law was adopted in 2010, and five have done so in the years that followed. Of these five, Brazil and El Salvador passed their laws in 2011, and thus are unlikely to have been affected by the Inter-American Model Law since the process of drafting their laws started years before. This only leaves Guyana, which passed its law in 2013; Colombia, in 2014; and Paraguay, in 2014, as possible examples on how the Model Law was implemented.

Therefore, this chapter will look not only at the process of implementing the Inter-American Model Law, but also more generally at the process that surrounded enacting strong access to information laws in the Americas. Because both processes are not substantively different, the lessons learned from each are equally valuable when extrapolated to Africa.

In the following section, the chapter addresses the general mechanisms used in the promotion of access to information legislation in the region and will examine whether or not, and the extent to which, the Inter-American Model Law influenced these processes.

and Co-operation in Europe (OSCE), and the Special Rapporteur on Freedom of Expression for the Organization of American States (OAS) (2004), <https://www.oas.org/en/iachr/expression/showarticle.asp?artID=319&IID=1> (accessed 4 August 2017), which states: 'Access to information is a citizen's right. As a result, the procedures for accessing information should be simple, rapid and free or low-cost.'

43 OAS Department of International Law and Secretariat for Legal Affairs 'Model Inter-American Law on Access to Public Information and its implementation guidelines' 54, https://www.oas.org/en/sla/dil/docs/Access_Model_Law_Book_English.pdf (accessed 20 August 2017).

44 OAS 'Comparative law database: National laws by country: Access to information', https://www.oas.org/en/sla/dil/access_to_information_base_CL_laws_country.asp (accessed 20 August 2017); Right2Info (n 1 above).

4.1 Regional

Within the broader region, there are several factors that contributed to both the strength of access to information laws and the number of countries that developed such laws. Both civil society and the regional mechanism were instrumental in this regard.

4.1.1 *Work of regional civil society networks*

An important part of the civil society story in the Americas, is the work of the Regional Alliance for the Freedom of Expression and Information (Alliance).⁴⁵ The Regional Alliance is a network of 23 civil society organisations (CSOs) from 19 different American countries that was created in October 2005 with the objective of ‘strengthening its members’ abilities and knowledge to perform interventions aimed at improving the conditions of access to information and freedom of speech in their countries, based on collective co-operation and action’.⁴⁶

The creation of a regional network of organisations is crucial to the success of an advocacy strategy. The experience of the Alliance reinforces this idea. One could argue that the ‘lack of co-ordinated advocacy work and co-operation undermines civil society’s capacity to push for greater transparency and freedom of expression, particularly at the regional level’.⁴⁷

The Alliance promotes access to information through different activities, such as strategic litigation, training and technical assistance, advocacy and applied research. All this work has had a significant impact on the adoption of access to information laws in the region.

The work of the Alliance in support of the creation of advocacy groups at the national level is of paramount importance. The Alliance has expertise on access to information that can be shared at the domestic level, and each national organisation can in turn adapt the lessons learnt from these experiences to the particular context of each country.

45 Alianza Regional por la Libre Expresión e Información, <http://www.alianzaregional.net/> (accessed 17 August 2017). Although a comparative institution in Africa exists, known as the Africa Freedom of Information Centre (AFIC), <http://www.africafoicentre.org/> (accessed 17 August 2017), the aim of this section is to provide some insight into the work of the Regional Alliance in the Americas.

46 See Alianza Regional ‘Miembros’, <http://www.alianzaregional.net/miembros/> (accessed 17 August 2017) (author’s translation from Spanish).

47 Evidence and Lessons from Latin America (ELLA) ‘Civil society’s regional network for advancing freedom of expression and access to information’ 1, http://ella.practicalaction.org/wp-content/uploads/files/120106_GOV_TraAccInf_BRIEF1.pdf (accessed 17 August 2017).

However, the expertise of the Alliance goes beyond advocacy and extends to intervening in litigation processes and research projects.⁴⁸ For example, the Alliance has intervened in litigation at the national level in the form of *amicus* briefs in order to emphasise and promote international standards on freedom of expression and access to information.⁴⁹

The Alliance played a vital role in the drafting process of the Inter-American Model Law⁵⁰ and has subsequently worked on the promotion of access to information in the region by encouraging states to adopt legislation in compliance with the standards developed therein. For example, it provided technical assistance in the drafting of access to information legislation in Honduras, Nicaragua, Guatemala, Colombia, Paraguay, El Salvador and Venezuela and in seminars about the Inter-American Model Law and Inter-American standards in Bolivia, Mexico and the Dominican Republic.⁵¹

It should be highlighted that not all civil society networks will be as efficient in tasks such as these. One aspect contributing to the influence of the Alliance is its permanent nature. The Alliance was not created with the aim of being a temporary collaboration among civil society organisations to promote a single issue. Instead, it is a stable network, with working rules, a fixed structure and funding for the activities it performs, and has its own identity separate from the organisations from which it is constituted.⁵²

4.1.2 Regional institutions

The OAS and its two organisms with the mandate to promote and protect human rights – the Inter-American Commission and the Inter-American Court of Human Rights – have also played an important role in the promotion of access to information. This has occurred not just by defining the contours of the right in the form of the Model Law, but also by putting pressure on states in the region to enforce the right of access to information.

Within the Inter-American Commission of Human Rights, the Office of the Special Rapporteur for Freedom of Expression has been paramount

48 For the research projects the organisation has undertaken, see Alianza Regional 'Investigación aplicada' <http://www.alianzaregional.net/contenidos/acciones/investigacion-aplicada/> (accessed 20 August 2017).

49 Alianza Regional 'Litigio Estratégico' <http://www.alianzaregional.net/contenidos/acciones/litigio-estrategico/> (accessed 20 August 2017). A number of strategic litigation initiatives throughout the region are outlined here, which include submitting *amici curiae* for cases in, *inter alia*, Honduras, Colombia and Argentina.

50 Alianza Regional por la Libre Expresión e Información (n 11 above) 5.

51 Alianza Regional por la Libre Expresión e Información (n 11 above) 5-6.

52 Alianza Regional 'Fuerza Colectiva: Aprendizajes de la Alianza Regional para la incidencia' 37, <http://www.alianzaregional.net/wp-content/uploads/FUERZA-COLECTIVA1.pdf> (accessed 20 August 2017).

in the development of access to information as a right and the enforcement of the right in the region. Since its creation, the right of access to information has been one of the recurrent topics of the annual reports and publications of the Office of the Special Rapporteur.⁵³ In these reports, the Special Rapporteur gives a very detailed explanation of the state of access to information in each country in the Americas, with special reference made to the adoption of access to information legislation. When applicable, these reports also give specific recommendations regarding the ways in which legislation may be improved in accordance with the Inter-American Model Law.

In addition, after the adoption of the Inter-American Model Law, the OAS created a specific project within the Department of International Law in order to '[i]mprove OAS member state capacities in transparency and equitable access to information, through promoting and publicising local implementation of the Model Law on Access to Public Information'.⁵⁴ The project aims to assist those countries which do not already have a specialised access to information law in place and that want such a law. Towards this end, it 'promote[s] the Model Law and Implementation Guide, and work[s] to generate consensus toward the adoption of national legislation in this area, in accordance with the most coherent, modern, and generally accepted legal practices in the Americas'.⁵⁵

The foregoing demonstrates that a collective effort has the potential of strengthening the work of individual organisations in the region and, therefore, further the access to information agenda. In addition, strong support from the regional mechanism can provide the necessary technical assistance, expertise, and possibly the political forum to debate access to information legislation.

In the following country-specific sections, more factors that benefitted – or that served as an impediment, where applicable – to the enactment of strong access to information laws are examined. As noted above, many countries in the Americas already had access to information laws in place, and only a few states have enacted such laws since the Inter-American Model Law was adopted. In such circumstances, the chapter will analyse the particular situations surrounding the enactment of some access to information laws in the region, such as Mexico, Chile and Brazil. In addition, Paraguay, a country whose access to information law was

53 OAS Special Rapporteurship for Freedom of Expression 'Annual Reports', <https://www.oas.org/en/iachr/expression/reports/annual.asp> (accessed 20 August 2017).

54 OAS Department of International Law 'Access to information project objective', https://www.oas.org/en/sla/dil/access_to_information_project_objective.asp (accessed 20 August 2017).

55 OAS Department of International Law 'Access to information project strategy', https://www.oas.org/en/sla/dil/access_to_information_project_strategy.asp (accessed 20 August 2017).

influenced by the Inter-American Model Law, will be contrasted with the aforementioned countries

4.2 Mexico

The Right of Access to Public Information is established in article 6 of the Political Constitution of the United States of Mexico.⁵⁶ In 2002, Mexico adopted the Federal Law for Transparency and Access to Public Governmental Information.⁵⁷

Before the eventual success of passing an access to information law in 2002, Mexico attempted three times to pass such legislation: once in 1977 after the adoption of the new Constitution; again in 1981-1982; and, finally, in 1997.⁵⁸ The political context was particularly special in 2000, due to the fact that for the first time in more than 70 years, the Partido Acción Nacional (PAN) won the presidential elections against the party Partido Revolucionario Institucional (PRI).

Mexico, like many of the other countries, experienced a mix of factors that contributed to the development of an access to information law. In this instance, it was the work of civil society organisations, the media, and a particularly beneficial context, namely, a shift in regime through presidential elections, which all positively contributed towards the development of the law.

Civil society largely drove the effort to enact the legislation and capitalised on the change in regime after the ruling party of 70 years was ousted in the elections of 2000.⁵⁹ An access to information Bill, developed as part of an anti-corruption initiative by an arm of the executive, was leaked to the press. This jump-started debate within civil society on the need to influence the direction of the access to information Bill.⁶⁰ This in turn led to the formation of the Oaxaca Group, which was an amalgamation of academics, non-governmental organisations (NGOs), social activists, journalists and mass media owners that convened to

56 Constitución Política de los Estados Unidos Mexicanos, art 6, <http://www.ordenjuridico.gob.mx/Constitucion/cn16.pdf> (accessed 20 August 2017).

57 See Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, <http://inicio.ifai.org.mx/LFTAIPG/LFTAIPG.pdf> (accessed 20 August 2017).

58 E Bertoni 'Freedom of information. Three harmless words? The role of the media and access to information laws' 5-6, <http://www.palermo.edu/cele/pdf/ATIandMedia.pdf> (accessed 20 August 2017).

59 A Puddephatt 'Exploring the role of civil society in the formulation and adoption of access to information laws: The cases of Bulgaria, India, Mexico, South Africa and the United Kingdom' 14, http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2009/04/03/000333038_20090403043021/Rendered/PDF/479920WBWP0Acc10Box338877B01PUBLIC1.pdf (accessed 4 August 2017).

60 Puddephatt (n 59 above) 15.

discuss best practices learned from other countries.⁶¹ The result was the Declaration of Oaxaca, which explained the Group's platform based on six democratic principles, which was disseminated to the public through mass media on 26 May 2001.⁶² The Group also created a draft Bill enshrining the right of access to information, which was endorsed by PRI (and other opposition parties) and presented as its own before congress after lobbying by the Group.⁶³ The Mexican government had also prepared its own Bill, which did not meet the Oaxaca Group's standards.⁶⁴ Due to the competing Bills,⁶⁵ the Mexican Congress called on both the government and the Oaxaca Group to participate in discussions concerning the legislation in order to produce a single united Bill.⁶⁶ This endeavour was successful and resulted in the Federal Law on Transparency and Access to Official Information, which was approved in April 2002 and passed into law later that year, in June.⁶⁷ After the adoption of the law, the Oaxaca Group decided to dissolve.

Ultimately, the media also played a crucial role in getting the access to information legislation enacted. For example, news outlets decided to publish principles developed by the Oaxaca Group on their front pages.⁶⁸ However, in previous attempts, the media could be said to have hindered the process due to a number of factors. Some commentators have noted that some media institutions relied on state subsidies to survive,⁶⁹ and

- 61 The name *Grupo de Oaxaca* was first used by the *New York Times* reporter Ginger Thompson, and subsequently caught on. It was so named because the group met in the city of Oaxaca in 2001. See G Thompson 'Mexicans move to pry open potentially explosive files' *The New York Times* 12 October 2001 <http://www.nytimes.com/2001/10/12/world/mexicans-move-to-pry-open-potentially-explosive-files.html> (accessed 3 August 2017).
- 62 Puddephatt (n 59 above) 16.
- 63 D Soto Abril 'The role of civil society in the recognition of access to information as a fundamental human right in the Americas' 227 https://www.oas.org/es/sla/ddi/docs/publicaciones_digital_XXXV_curso_derecho_internacional_2008_Dario_Soto_Abril.pdf (accessed 4 August 2017). See also Human Rights Watch 'Lost in transition: Bold ambitions, limited results for human rights under Fox' 38 <https://www.hrw.org/reports/2006/mexico0506/mexico0506web.pdf> (accessed 4 August 2017). Ultimately, five opposition parties decided to sign and sponsor the Oaxaca Group's Bill. Puddephatt (n 59 above) 18.
- 64 Soto Abril (n 63 above) 227. See also Puddephatt (n 59 above) 18.
- 65 There was in fact a third proposed Bill by a major opposition party, Partido de la Revolución Democrática (PRD). Puddephatt (n 59 above) 18.
- 66 Soto Abril (n 63 above) 227; Puddephatt (n 59 above) 19; Human Rights Watch (n 63 above) 39.
- 67 Human Rights Watch (n 63 above) 39; Soto Abril (n 63 above) 227; Puddephatt (n 59 above) 19. This development did not occur without controversy, as many in civil society criticised the process as they were not part of the Oaxaca Group and thus did not take part in the deliberations.
- 68 JF Escobedo 'Movilización de opinión pública en México: el caso del Grupo Oaxaca y de la Ley Federal de Acceso a la Información Pública' 79, <http://historico.juridicas.unam.mx/publica/librev/rev/decoinc/cont/2/art/art3.pdf> (accessed 4 August 2017).
- 69 G Michener 'Engendering political commitment: The Grupo Oaxaca. Expertise, media projection and the elaboration of Mexico's access to information law', presented at the Southern Political Science Association 2005 conference.

others noted the controlling party's influence on parts of the media.⁷⁰ Additionally, in the 1977 attempt, reluctance on the part of the media was as a result of the proposed Bill regulating both access to information and media activity.⁷¹

At the time the Mexican law was enacted, it was one of only a few in the world to create an autonomous oversight body that had the authority to ensure compliance with an access to information legislation.⁷² This entity was known as the Federal Institute for Access to Public Information (IFAI).⁷³

Due to this and other aspects, this legislation has been regarded as one of the most progressive laws on the topic, and it has been exceptionally well-rated. When measured against a variety of factors, it scored 117 points out of a possible 150,⁷⁴ which places Mexico in the top 10 countries with the strongest access to information legislation in the world.⁷⁵

One of the important aspects of the success of the Oaxaca Group was that it was a temporary coalition with the sole goal of promoting the implementation of the law. This may be contrasted with the Regional

70 Bertoni (n 58 above) 6.

71 As above.

72 Evidence and Lessons from Latin America (ELLA) 'Video: From the law to practice: The creation of the Mexican Federal Institute for Access to Public Information and data protection', <http://ella.practicalaction.org/knowledge-multimedia/video-from-the-law-to-practice-the-creation-of-the-mexican-federal-institute-for-access-to-public-information-and-data-protection> (accessed 4 August 2017). According to ELLA, the Mexican law created the first true autonomous oversight body, as previously the oversight function was performed by the court system or an ombudsman. For example, the United Kingdom has had the Information Commissioner's Office, which was established in 1984, and has overseen compliance with the Freedom of Information Act 2000 since its inception; however, it is a semi-autonomous body that reports directly to parliament.

73 As the functions of the organisation has grown, so has its name. In 2010, the name changed to the Federal Institute for Access to Information and Data Protection (Instituto Federal de Acceso a la Información y Protección de Datos) (IFAI), and in 2015 it changed to the National Institute for Transparency, Access to Information and Data Protection (Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales) (INAI).

74 Access Info Europe (AIE) and Centre for Law and Democracy (CLD) 'Global Right to Information Rating', <http://www.rti-rating.org/> (accessed 3 August 2017). The Right to Information Rating is a programme founded by Access Info Europe and the Centre for Law and Democracy, which has a rating system whereby points are awarded based on whether the country's access to information legislation meets certain indicators for a possible total of 150 points. See <http://www.rti-rating.org/methodology> (accessed 20 August 2017). With the exception of Paraguay (61), other states that enacted legislation after the Model Law – such as Brazil (108), El Salvador (122) and Colombia (102) – were among the highest in the region. However, the states that already had legislation in place also fared quite well: Chile (93); Ecuador (73); Guatemala (94); Mexico (117); Panama (100); Peru (93); and Uruguay (91). Understandably, with Venezuela and Bolivia there was no data to be obtained as they have no legislation on the issue, and Argentina (66) scored low due to the limited protections provided by its comparatively less developed framework.

75 Access Info Europe (AIE) and Centre for Law and Democracy (CLD) 'Global Right to Information Rating: Mexico', http://www.rti-rating.org/view_country?country_name=Mexico (accessed 3 August 2017).

Alliance, which has a continuing influence and impact on the conditions of access to information in the region. The upshot of these two different approaches to advocacy is that these strategies can go hand-in-hand and may complement each other.

Another important element was the diversity of the Group: It included not only civil society organisations, but also the media and academics.⁷⁶ This diversity played a central role since it combined disparate interests into one goal. The integration of the media provided a platform whereby civil society and academics could reach a much broader audience than by themselves, allowing them to explain to most members of society the benefits in having, as well as the need for, an access to information law.

However, one must also be mindful of the potential for such a group to become exclusionary. The Oaxaca Group became such an important part of the debate and adoption of the law that some civil society organisations resented it and argued that it should be a more participatory process as the Group did not represent the whole spectrum of civil society.⁷⁷

Mexico illustrates the importance the media can play in adopting an access to information law, as well as the impact civil society can have when it comes together to promote a single cause.

4.3 Chile

Chile adopted a specific law in 2008, the Transparency Law of Public Service and Access to Information of the State's Administration, which entered into force on 20 April 2009.⁷⁸

This legislation is the result of a historical decision made by the Inter-American Court of Human Rights in the *Claude Reyes v Chile* case. In this case, the Inter-American Court called on Chile to, among other things, 'adopt, within a reasonable time, the necessary measures to ensure the right of access to state-held information, pursuant to the general obligation to adopt provisions of domestic law established in article 2 of the American Convention on Human Rights'.⁷⁹

The case was initiated in Chile in 1998, when the Terram Foundation, a Chilean environmental NGO, filed a request for information with the Chilean Foreign Investment Committee regarding a major logging

76 Puddephatt (n 59 above) 16.

77 Puddephatt (n 59 above) 19.

78 This legislation is available at <http://www.leychile.cl/Navegar?idNorma=276363> (accessed 4 August 2017).

79 *Claude Reyes v Chile* (n 10 above) para 77.

operation, known as the Condor River project. The requests were ignored and subsequent appeals were dismissed.⁸⁰

After this decision, the Terram Foundation decided to take the case to the Inter-American Commission on Human Rights, which in turn lodged an application against Chile with the Inter-American Court of Human Rights. At this point in time, the Court had only tangentially referred to the right of access to information.⁸¹ Civil society came together and devised a strategy to encourage the Court to recognise access to information as a fundamental right, and several NGOs and academics submitted *amici curiae* in support of this position.⁸² The end result of this combined effort was the first decision by an international body recognising access to information as a human right.

Without a doubt, the Inter-American Court decision was fundamental for the later development of legislation in Chile.

4.4 Brazil

Since 1988, access to information has been protected by Brazil's Constitution.⁸³ More than 20 years later, in 2011, the Law of Access to Public Information was adopted and entered into force 180 days thereafter.⁸⁴

The discussions surrounding the access to information law in Brazil were also led by civil society. In 2003, the first Bill on the subject was drafted and proposed by a legislator.⁸⁵ This was followed by another that included a broader consultation process.⁸⁶ Then, in the lead-up to the presidential elections of 2007, civil society organisations pressured the candidates to commit to adopting an access to information law if they were elected to office.⁸⁷ All the candidates agreed to this commitment. By 2009, a new proposal by the executive was sent to the legislature to be reviewed along with the older 2003 proposal.⁸⁸

80 Resolution of Corte Suprema de Chile, para 31, 18 August 1998.

81 Soto Abril (n 63 above) 232.

82 As above. Eg, the Asociación por los Derechos Civiles (ADC) and the Centre for Legal and Social Studies (CELS) were NGOs that submitted *amici* for this case.

83 Constitution of the Federative Republic of Brazil, art 5, XIV and XXXIII.

84 Brazil Câmara dos Deputados, Decree 7.724, 16 May 2012, <http://www2.camara.leg.br/legin/fed/decret/2012/decreto-7724-16-maio-2012-612993-norma-pe.html> (accessed 20 August 2017).

85 Article 19 'Brazil: New Access to Information Law becomes effective today' 16 May 2012, <https://www.article19.org/resources.php/resource/3208/en/brazil:-new-access-to-information-law-becomes-effective-today> (accessed 17 August 2017).

86 'Brazil' <http://www.freedominfo.org/regions/latin-america/brazil/> (accessed 14 August 2017).

87 As above.

88 See history of the approval process, 'Lei de acesso a informações públicas: um breve histórico', http://informacaopublica.org.br/?page_id=1948 (accessed 14 August 2017).

A number of contextual factors favoured the passing of access to information legislation in Brazil. One was the commitment by the executive – two different presidential candidates’ support for such legislation applied pressure on their political parties. Civil society also played a significant role in the process. Over the years, it became extremely well organised, and in 2011 civil society was able to involve the general public and to explain the importance of the right and its potential positive impact on their lives.⁸⁹ The diversity of the groups – which included human rights groups, anti-corruption groups and right to truth groups – was also influential. Initially, the media was not involved in the process as much as could have been expected. However, upon seeing the extent to which the public was interested in the issue, the media started to cover the process in more detail and campaigned to send the Bill to the legislature in 2008. In the end this proved to play a crucial role.⁹⁰

Towards the end of the process, in 2011 Brazil assumed a commitment at the international level through the Open Government Partnership (OGP). President Rousseff of Brazil was going to announce the Partnership at the opening session of the United Nations (UN) General Assembly, and civil society realised that the Bill would likely not be passed by the time she was going to make her remarks. Civil society then used this potential hypocrisy to leverage the government – it would be shameful to go abroad to discuss a partnership on transparency while not being able to pass access to information legislation at the national level.⁹¹

Pressure was also applied in other areas throughout this process. For example, in 2007 the Brazilian Board of Lawyers filed a direct action in the Federal Supreme Court challenging the constitutionality of certain provisions of the National Archive Policy Law and the Documents Classification Law that allowed for the unconstrained classification of documents.⁹²

The combined effect of pressure on a number of fronts was instrumental to the enactment of a strong access to information legislation

89 See, eg, Fórum de Direito de Acesso a Informações Públicas ‘Sobre o Fórum’, http://informacaopublica.org.br/?page_id=2 (accessed 14 August 2017); S Harlow ‘Brazil pushing forward with information access law, joining US for transparency partnership’, <https://knightcenter.utexas.edu/blog/brazil-pushing-forward-information-access-law-joining-us-transparency-partnership> (accessed 17 August 2017).

90 G Michener ‘Why isn’t the Brazilian press covering the freedom of information law? (Analysis)’, <https://knightcenter.utexas.edu/blog/why-isn%E2%80%99t-brazilian-press-covering-freedom-information-law-analysis> (accessed 17 August 2017).

91 The Freedom of Information Advocates Network (FOIANet) ‘Podcast – The process of approval of the Freedom of Information Act in Brazil’, http://foiadvocates.net/?avada_portfolio=podcast-the-process-of-approval-of-the-freedom-of-information-act-in-brazil (accessed 14 August 2017).

92 Particularly, these were the National Archive Policy Law (8.159/91) and the Documents Classification Law (11.111/05). See ‘Brazil’, <http://www.freedom.info.org/regions/latin-america/brazil/> (accessed 14 August 2017).

in Brazil. The legislation's rating reflects this with a score of 108 out of 150, and it is rated among the top 20 worldwide.⁹³

4.5 Paraguay

In Paraguay, Law No 5282 On Free Citizens' Access to Public Information and Governmental Transparency was promulgated on 18 September 2014.⁹⁴

The process started with a Supreme Court decision, *Daniel Vargas Télles v Municipality of San Lorenzo*, that ordered the judicial branch to deliver information on the salaries of the public officials employed there. The decision of the Supreme Court was one of the first instances where the principles established by the Inter-American Court of Human Rights case of *Claude Reyes v Chile*, discussed above, was applied.⁹⁵

In 2013, a Bill supported by civil society organisations was introduced in parliament.⁹⁶ This Bill was influenced by the Inter-American Model Law.⁹⁷ However, the Bill went through several modifications and certain portions of the Bill were hotly debated. For instance, one such area was the proposed exceptions regime. Among the modifications introduced in this regard was a provision that stated:⁹⁸

Confidentiality would be granted to information on public security or national defence, information that might prejudice international relations or negotiations and information that could damage the financial stability of the state, among other things.

In light of regressive suggested changes such as these, civil society organisations, supported by the Regional Alliance, demanded that the access to information law should meet the international standards

93 Access Info Europe (AIE) and Centre for Law and Democracy (CLD) 'Global Right to Information Rating: Brazil', http://www.rti-rating.org/view_country?country_name=Brazil (accessed 14 August 2017).

94 Inter-American Press Association (IAPA) 'Paraguay enacts new law on access to information and transparency' 25 September 2014, https://www.ifex.org/paraguay/2014/09/25/access_info_law/.

95 Instituto de Derecho y Economía Ambiental (IDEA) 'Paraguay tiene su ley de acceso a la información/Paraguay has its law on access to information', <https://web.archive.org/web/20151023165921/http://www.idea.org.py/v1/paraguay-tiene-su-ley-de-acceso-a-la-informacion-paraguay-has-its-law-on-access-to-information/> (archived version, accessed 7 August 2017).

96 'Seven Senators offer FOI Bill in Paraguay drafted by NGOs', <http://www.freedominfo.org/2013/10/seven-senators-offer-foi-bill-in-paraguay-drafted-by-ngos/> (accessed 14 August 2017).

97 'Paraguayan NGOs launch campaign to pass FOI law', <http://www.freedominfo.org/2010/09/paraguayan-ngos-launch-campaign-to-pass-foi-law/> (accessed 14 August 2017).

98 'Paraguayan senate passes access law amendments', <http://www.freedominfo.org/2013/12/paraguayan-senate-passes-access-law-amendments/> (accessed 14 August 2017).

described in the Inter-American Model Law. In a letter to the legislative branch, the Regional Alliance stated:⁹⁹

The Regional Alliance along with academics and journalists have been supporting the Institute for Environmental Law and Economics (IDEA) in the process of drafting, discussion and review of the original project that was submitted by the Steering Group on Access to Information (GIAI). That submission met all the minimum standards that we hope will serve as a basis and guidance for the legislative process.

Even though civil society was satisfied with the approval of the access to information law, it appears that the final law did not comply with international standards set in the Inter-American Model Law. Paraguay's legislation was rated 61 out of 150 points, placing it in the bottom 15 of the countries ranked.¹⁰⁰

The most problematic aspects of the legislation, which also probably explains the lower rating, is that it neither includes an exceptions regime nor an oversight mechanism.¹⁰¹

Regarding the latter issue, the Special Rapporteur of the Inter-American system noted that 'Law 5282 does not provide for the creation of an authority in charge of applying the law and controlling its fulfilment' and that such a body 'is of fundamental importance to achieve effective satisfaction of the right'.¹⁰² The Office of the Special Rapporteur also

urged the countries to adapt their legislation to strengthen the institutional structure for supervision and implementation of laws for access to public information, pursuant to the highest standards in this field, such as those adopted by the General Assembly of the OAS, in its Resolution AG/RES. 2607 (XL-O/10), by means of which it adopts the 'Model Inter-American Law on Access to Information'.¹⁰³

Furthermore – and in contrast with the Mexican case – according to Ezequiel Santagada, a lawyer for the Paraguayan Environmental Law and Economy Institute,¹⁰⁴ the press, or a portion of it, was not in support of the adoption of an access to information law.¹⁰⁵

99 Alianza Regional 'Ref: Ley de Acceso a la Información Pública de la República del Paraguay', <http://rendiciondecuentas.org.mx/wp-content/uploads/2013/12/Carta-al-Presidente-del-Senado-del-Paraguay-por-proyecto-de-ley-de-acceso-a-la-informaci%C3%B3n.pdf> (accessed 20 August 2017) (author's translation from Spanish).

100 Access Info Europe (AIE) and Centre for Law and Democracy (CLD) (n 93 above).

101 As above.

102 OAS 'Annual Report of the Inter-American Commission on Human Rights 2014, Volume II, Annual Report of the Office of the Special Rapporteur for Freedom of Expression' 9 March 2015, OEA/Ser. L/V/II., Doc. 13, para 844, <https://www.oas.org/en/iachr/expression/docs/reports/annual/Annual%20Report%202014.pdf> (accessed 20 August 2017).

103 As above.

104 Known in Spanish as the Instituto de Derecho y Economía Ambiental de Paraguay.

105 Bertoni (n 58 above) 3 fn 9.

Paraguay may serve as a cautionary tale. Even with a strong model law and legal precedent in place, Paraguay exemplifies how the process of enactment may be derailed so that the resultant legislation is weakened.

5 Conclusion

This article highlights useful experiences in the Americas region concerning the development of access to information legislation in light of particular contexts, international jurisprudence, advocacy strategies and the Inter-American Model Law. These experiences may shed some light on the development of access to information legislation in countries in Africa and the implementation of the African Model Law.

It is important to recognise the differences in the political, economic and cultural contexts of both regions. Most of the countries in the Americas, by the time the access to information debate started to develop, had already transitioned from dictatorial regimes and civil war to more democratic forms of governance. The public's need to know about the relatively recent human rights violations that were committed, as well as the opportunity to build and strengthen democratic institutions, provided the perfect platform for a broad discussion on access to information and transparency. These differences may also have resulted in divergence in the adoption process of the model laws, as well as the several significant differences in the substance of the model laws from both regions.

The lessons learned from the experiences of civil society and other actors in the Americas may be translated to the African region in order to develop effective strategies to foster the implementation of access to information laws. As shown above, there are a number of ways in which civil society may encourage the implementation of such laws, whether it is through the effective use of the media and proposing a draft Bill, using contextual situations to an advantage and exerting pressure on presidential candidates, or through strategic litigation. It is also important to keep in mind that the existence of a model law does not necessarily mean that the domestic law will live up to the model's standards.

More specifically, the role of regional human rights institutions is paramount and the use of its expertise to develop further and more specific guidelines for the implementation of access to information. In this regard, the Special Rapporteur on Freedom of Expression and Access to Information in Africa, working with civil society organisations, could use the example of the OAS so as to develop an implementation guide to the Inter-American Model Law. Such a document would be useful in guiding each member state on implementation issues that are not usually included in a model law, such as budgeting for the implementation of the access to information law or initial capacity building.

Furthermore, it is important to strengthen regional coalitions – such as the Africa Freedom of Information Centre (AFIC) – in relation to the implementation of access to information legislation on the continent. These institutions should have a specific budget to carry out the necessary activities, such as monitoring access to information legislation on the continent, advocacy at the international and national level, and to perform research on the subject.

Strategic litigation at the national and regional levels could also be potentially useful to initiate the debate about access to information in a particular country. Sensitive information that is more likely to attract the attention of the general public could be used to create a broader campaign about the need for access to information. Therefore, civil society organisations could create spaces to share experiences and best practices on the continent as well as litigation and advocacy opportunities.

Finally, regional institutions should prioritise the right of access to information on the continent and, among other activities, should create a project with the objective of assisting states to develop access to information legislation.