

Access to Information in Latin America and the Caribbean*

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Abstract

A survey of recent information-access legislation in the countries of Latin American and the Caribbean considers how well those measures are working in practice. While there are many positive trends, thanks to the work of the news media and civil society organizations, and the responses of some government agencies, freedom of information laws have yet to prove their power in practice. The next step for the governments of Latin America and the Caribbean is to translate the intent of information laws into uncompromised access to information.

Resumen

Un análisis de la legislación sobre acceso a la información reciente en los países de América Latina y el Caribe presenta qué tanto estas medidas funcionan en la práctica. Aunque existen muchas tendencias positivas, gracias al trabajo de los medios y las organizaciones de la sociedad civil, y a las medidas tomadas por algunas entidades del gobierno, las leyes de acceso a la información todavía deben probar su poder en la práctica. El siguiente paso para los gobiernos de América Latina y el Caribe es convertir el intento de leyes de acceso a la información en acceso a la información intransgredible.

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1. Introduction

This article surveys the state of freedom of information in the countries of Latin America and the Caribbean. In particular, the paper (1) critically examines recent bills and laws affecting freedom of information in the region; and (2) assesses the implementation and overall effectiveness of the existing legal framework on freedom of information. Freedom of information is here defined as the right, enforceable in court, of any person to access any records held by a public body, except to the extent that such records are protected from disclosure by a narrowly and clearly defined prior exemption.¹ This definition purports to

1 Article 19, a UK-based organization advocating world-wide freedom of expression and information, puts forth nine useful, overarching international standards for access to information to which domestic legal systems should aspire: freedom of information legislation should be guided by the principle of maximum disclosure; public bodies should be under an obligation to publish key information; public bodies must actively promote open government; exceptions should be clearly and narrowly drawn and subject to strict "harm" and "public interest" tests; requests for information should be processed rapidly and fairly and an independent review of any refusals should be available; individuals should not be deterred from making requests for information by excessive costs; meetings of public bodies should be open to the public; laws which are inconsistent with the principle of maximum disclosure should be amended or repealed; and individuals who release information on wrongdoing whistleblowers should be protected.

Article 19 defines information in the context of freedom of information as including "all records held by a public body, regardless of the form in which the information is stored (document, tape, electronic recording and so on), its source (whether it was produced by the public body or some other body) and the date of production. The legislation should also apply to records which have been classified, subjecting them to the same test as all other records".

Public body, meanwhile, should according to Article 19 be defined on the grounds of the type of service provided rather than on formal designations. To this end, it should include all branches and levels of government including local government, elected bodies, bodies which operate under a statutory mandate, nationalized industries and public corporations, non-departmental bodies or quasi-non-governmental organizations, judicial bodies, and private bodies which carry out public functions (such as maintaining roads or operating rail lines). Article 19 posits that private bodies themselves should also be included if they hold information whose disclosure is likely to diminish the risk of harm to key public interests, such as the environment and health. Inter-governmental organizations should also be subject to freedom of information regimes.

capture habeas data, which permits any person to have access to data banks in order to correct any inaccurate or false personally identifiable information.²

The key findings of this paper are two-fold. First, growing numbers of Latin American and Caribbean countries are today adopting freedom of information laws which, despite their rather numerous exemptions, represent important steps toward full-fledged guarantees on citizens' access to information. Second, the implementation of the laws has failed to measure up to their intention: While many countries have adopted solid legal standards for freedom of information, access to information often remains circumscribed by the vagueness and interpretability of the laws, cumbersome bureaucratic procedures, frequent reluctance by government officials to provide access to information, and judicial failure to enforce the legal frameworks. Encouragingly, however, freedom of information is today on a much more solid footing in many countries of the region than only a decade ago.

The first section of this paper briefly reviews the developments pertaining to freedom of information and freedom of the press in general in Latin America and the Caribbean. The second section consists of country studies. It pays most attention to countries with recent legal changes in the area of freedom of information—Chile, Jamaica, Mexico, Panama, and Peru. The conclusion summarizes the main findings.

² Habeas data is a procedure that provides an individual a right to protection against information that is abusive, inaccurate, or prejudicial through access to public and private databases or records referring to him or her or to his or her property for the purpose of updating, correcting, removing, or reserving information about him or her. Habeas data, in short, allows the protection of personal privacy.

2. Regional Overview: Legal Improvements Amid Inadequate Implementation

Freedom of information has grown into a globally salient issue in the wake of the terrorist attacks of September 11, 2001 on New York and Washington, DC. Over the past year, the United States and many other countries have revised the balance between pressing national security concerns and citizens' right to obtain information on their government's actions.³ Restrictions on national and local freedom of information have been most notable in the United States and Canada; however, many European countries also have tightened controls on the flow of information. The UK, for instance, has delayed the implementation of the long-awaited information act until 2005 (Banisar 2002).

Latin American and Caribbean countries have been less active in limiting their citizens' access to information on the grounds of September 11. Yet, freedom of information issues are at the forefront of national debate and policy-making in many countries of the region. Indeed, in a remarkable turnaround from only a decade ago, Latin American and Caribbean countries are increasingly accepting and codifying three key freedoms—freedom of the press, expression, and information—set forth in the Inter-American Press Association's (IAPA) 1994 Chapultepec Declaration. The continued rigorous work of the Office of the Special Rapporteur for Freedom of Expression (OSFRE) created in 1998 by the Inter-American Commission on Human

³ Article 19 of the Universal Declaration of Human Rights refers to the freedom of information by stating that "everyone has the right to the freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

Rights, an organ of the Organization of American States, is helping to solidify this encouraging trend.⁴

To be sure, Latin American and Caribbean countries' growing embrace of freedom of information laws is arguably but a part of a global wave in this area: over the last decade, more than 40 governments have adopted comprehensive laws to facilitate access to governmental records, while more than 30 are in the process of enacting such laws (Banisar 2002). However, it is also the case that freedoms of the press, expression and information in Latin America and the Caribbean compare favorably to those in the other developing regions. The Freedom House's annual Press Freedom Survey released in April 2002 rates 19 countries of Latin America and the Caribbean as free (or 58 percent of 33 countries), 12 as partly free (36 percent), and two countries, Cuba and Haiti, as not free (6 percent). These ratings, comprising a number of variables including access to information, have remained relatively unchanged from the few preceding years.⁵ However, they far outshine Africa, where 52 percent of the

4 The Inter-American Declaration of Principles on Freedom of Expression establishes that "Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.

Every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.

Access 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".

5 In 2001, 18 countries of the region were classified as free, 14 as partly free, and one (Cuba) as not free. In 1999, the corresponding figures were 17, 14, and two.

countries were classified as not free in 2002, Asia (57 percent), the Middle East (86 percent), as well as Eastern Europe and the Newly Independent Republics, where press freedoms were rated free in 33 percent of the countries, partly free in 41 percent, and not free in 26 percent.

These comparisons notwithstanding, freedom of information remains wanting in Latin America and the Caribbean. The region faces two major tasks in efforts to improve freedom of information: strengthening legal frameworks, and guaranteeing an effective and impartial implementation of the new or already existing laws.

First, there is notable variation across the countries of the region in the extent to which constitutions and legal frameworks guarantee freedom of information. Separating constitutional guarantees into (1) free access to state-held information at local and national level, and (2) action of habeas data, the OSRFE (2001) reports that the constitutions of six countries (Argentina, Brazil, Colombia, the Dominican Republic, Peru, and Venezuela) of the 20 surveyed in Latin America and the Caribbean featured both, while the constitutions of four countries (Guatemala, Honduras, Mexico, and Nicaragua) contained access to information-provisions but no habeas data clauses. The Paraguayan constitution has habeas data provisions but no access to information provisions. The constitutions of Bolivia, Costa Rica, Cuba, Ecuador, Jamaica, Panama, Trinidad and Tobago, and Uruguay feature neither of the two. However, constitutional guarantees are hardly a prerequisite for freedom of information: neither Canada nor the United States, countries with high standards for freedom of information, have access to information or habeas data clauses in their constitutions (OSRFE 2001).

Also the existence and content of laws regulating freedom of information vary from country to country. For in-

stance, whereas Belize, Bolivia, Colombia, Ecuador, and several countries particularly, those in the Caribbean, have a longer tradition of freedom of information laws, Chile, Jamaica, Mexico, Panama, and Peru have only recently made notable legal improvements. Encouragingly, some countries-Argentina, Costa Rica, Dominican Republic, Guatemala, Paraguay, and Uruguay-are considering freedom of information laws, albeit often painstakingly slowly. However, some countries, including El Salvador, Honduras, Brazil, and Venezuela, lack a comprehensive and solid legal framework beyond constitutional guarantees of access to information-although it is also the case that even the most comprehensive legal frameworks may not be effective should they disguise numerous exemptions and high degree of discretion by public authorities. Constitutional and legal guarantees of freedom of information remain particularly inadequate in Cuba and Haiti.

Second, laws protecting freedom of information are still frequently violated or implemented only partially. In many countries, governments resist releasing information, delay the processing of information requests, or impose unreasonable fees on access. Access and enforcement mechanisms are still often weak, particularly in countries where courts outright undermine the intent of the law. The effectiveness of freedom of information laws may also be undermined by related legislation. For instance, some governments have sought to narrow press accreditation to those with a diploma from an acceptable journalism school; moreover, the strict defamation laws in many countries may deter even accredited journalists from pursuing, much less publishing, information guarded by the government.

3. Country Studies

This section reviews the state of freedom of information laws and their implementation in the countries of Latin America and the Caribbean. The first part centers on countries that have pursued recent legal reforms in freedom of information. The second part looks at countries that have recently witnessed some movement toward legal reforms in the area of information freedoms. The third part reviews the handful of countries where implementation of the legal framework comes perhaps closest to approximating the intent of the laws. The fourth part focuses on countries where the implementation of the existing legal framework rests on precarious bases and where legal reforms may be needed; the fifth part juxtaposes these cases with the two most troubled cases of the Hemisphere, Cuba and Haiti. The sixth part briefly discusses the relatively positive environment for freedom of information in the smaller countries in and around the Caribbean.

A. Legal Advances: Chile, Jamaica, Mexico, Panama, Peru

a) Chile

One of the most pressing concerns in the Chilean media is the lack of pluralism: the country's newspaper and magazine industry remains dominated by conservative business interests that were closely identified with General Augusto Pinochet's 17-year dictatorship (*Oxford Analytica Daily Brief* 08/27/02). This problem was long coupled with Chile's restrictive press laws; indeed, the Inter-American Press Association viewed the Chilean press laws as among the most restraining in the hemisphere. However, the legal framework improved markedly in June 2001 with the long-

awaited Law of Freedom of Opinion and Information and Journalistic Practice, which is Chile's first law to facilitate access to official information.⁶ It provides access to information on the grounds that it is "the right of society, of all sectors, groups and persons to be duly informed about all existing cultural, social and political expressions".

Administrative acts and state agency documents are treated as public. The law provides recourse of appeal before a judge to defend the right of access to information. The law establishes habeas data. It also replaces Pinochet-era legislation and pre-Pinochet laws that imposed severe sanctions on journalists publishing unfavorable information about the government.⁷

Encouragingly, the law has been followed by court rulings to lift a two-year ban on a book that exposed corruption in the judiciary, and to uphold the right to access information provided under the law by ordering a forestry company to release information to the public. However, the law's contents have aroused concerns on two fronts. First, the law limits the definition of a journalist to one holding a university degree from a recognized journalism school, and also restricts the right to protect sources to "recognized" journalists, recent journalism graduates, publishers, editors, and foreign correspondents, thereby cre-

⁶ It was initially sent to Congress eight years earlier in 1993, and had been prepared for nearly two years by a commission made up of representatives of the government, the Association of Radio Broadcasting of Chile, the National Press Association, the Professional Association of Journalists and the Schools of Journalism of the University of Chile and the Catholic University (IAPA Law).

⁷ For instance, the notorious Article 6b of the 1958 internal state security law was finally repealed. The article provided for up to five years in jail for anyone who had insulted or defamed top state officials. Some 30 people had reportedly been threatened with such prosecution since the return of democracy in 1990. The law also stipulates that civilian courts rather than military ones hear defamation cases brought against civilians by members of the military, and repeals prior legislation that gave judges discretionary power to ban press coverage of court proceedings.

ating a legal distinction between journalists who may protect their sources and journalists who may not. Second, the law fails to repeal all insult provisions from the penal code; libel and slander remain criminal offences. The government has, however, sought to rectify the latter problem in a bill presented in August to modify various articles of criminal and military justice codes in order to eliminate the special protection of government officials under the existing contempt laws (IAPA 2002b).⁸

b) Jamaica

In May 2002, the Jamaican legislature passed the Access to Information Act. Prior to the Act, there were no specific freedom of information laws, and as such, no agencies obliged to provide information to the press. The long-awaited legislation allows the public “a general right of access” to official documents held by public authorities. Government officials who destroy, conceal or deface documents after these have been requested by the public will be penalized. Information relating to issues of national security and matters relating to foreign governments will be classified; national security-related information may be made public after seven years. Other exempted issue areas are the management of the economy and certain personal medical records.

The act had been stalled for 11 years in the legislature. It was passed following extensive consultations with civil society groups and deliberations by the Parliament’s joint select committee.⁹ However, non-governmental organiza-

⁸ In another positive development, both the president’s office and the legislature quickly repealed their recent measures to regulate media access to presidential sites and certain parts of the Chamber of Deputies after coming under staunch criticism by the National Journalists Association (IAPA 2002b).

⁹ Numerous organizations participated in the crafting of the law, including Jamaicans for Justice, Transparency International (Jamaica), the Jamaica Civil

tions have expressed three-fold concerns about the law. First, the law exempts the judicial functions of a court, the Office of the Governor General, and the country's "security or intelligence services in relation to their strategic or operational intelligence gathering activities." Second, it empowers ministers to exempt any government company. Third, it exempts "opinions, advice or recommendations (and) a record of consultation or deliberations" of civil servants, including Cabinet members from disclosure.¹⁰ In addition, the law lacks some regulations in order to become fully operational (IAPA 2002b). Positively, however, the Act was preceded by the passage of new provisions for the monitoring and elimination of corruption in the performance of public duties under the Anti-Corruption Bill (IAPA 2002a).¹¹ The government also launched the Access to Information Unit responsible for monitoring the Act.¹²

Service Association, the Jamaican Bar Association, the Media Association of Jamaica, and the Press Association of Jamaica.

¹⁰ The limitations will reportedly only apply to documents prepared by civil servants that relate to the workings of the Cabinet. The ban on public disclosure of Cabinet documents expires in 20 years. The government argued that releasing such information might deter civil servants from offering their advice and views. However, civil society groups posit that the provision would result in the public having little or no access to government documents, since most of these would contain some form of advice, opinion or recommendation.

¹¹ Furthermore, in July, the government honored the Act by releasing to the public archives more than 150 files containing Cabinet submissions, agendas, notes and minutes between 1962 and 1972, as well as documents of the Executive Council from 1949 to Independence were handed over. In July 2002, a senator called for the repealing of the 1911 Official Secrets Act alongside the passage of the Access to Information Act, noting that the former act contradicts the latter's provisions for the right to freedom of information.

¹² For its part, the House of Representatives passed the Legal Deposit Act, which strengthens the legislative mechanism for the collection and preservation of material published in Jamaica in both print and electronic form as a central part of the country's national heritage.

c) Mexico

Mexico took important legal steps toward freedom of information in April 2002, when the Congress unanimously approved the Federal Transparency and Access to Public Government Information Law. A compromise between two bills, the law was signed by President Vicente Fox in June 2002 to take effect a year later. The result of relentless efforts by various non-governmental organizations, the law is widely seen as helping to put an end to decades of government secrecy under the single-party rule.¹³ It allows all persons to demand information from government departments, autonomous constitutional bodies and other government bodies. Government agencies must respond to requests in 20 working days, and also publish in a routine and accessible manner all information concerning their daily functions, budgets, operations, staff, salaries, internal reports, and the awarding of contracts and concessions.¹⁴ Agencies are also required to set up information committees to review classification and nondisclosure of information, and, in a significant improvement over US law, to produce an index of their classified files that is to be published biannually (Doyle 2002). The law also creates a Federal Institute for Access to Public Information to implement the law at a national level. The Mexican Senate can reject a presidential nominee to the Institute with a majority vote.¹⁵

¹³ "For the longest time, the Mexican public has had no access to information about the most fundamental ways in which government affects daily life. For ordinary citizens, information on such issues as local school budgets, crime statistics, anti-pollution controls, the salaries of public officials, the number of police patrols, and contracts are out of reach" (Doyle 2002).

¹⁴ Every government body is also required to publish an extensive amount of information in electronic form, including structure, directories, aims and objectives, audits, subsidies and contracts.

¹⁵ The Institute will advise individuals on how to find information and file requests and hear their appeals. It will educate citizens and public servants alike about the new right, prepare a guide on access to federal information, and pro-

The law contains five categories of classified information that can be withheld if the release will harm the public interest: national security; public security or national defense; international relations; financial, economic or monetary stability; life, security or health of any person at risk; and verification of the observance of law, prosecution of crimes, collection of taxes, immigration or strategies in pending processes. There are an additional six categories of exempted information.¹⁶ Innovatively, the law expressly prohibits the government from classifying or withholding information about crimes against humanity or gross human rights under any circumstance.

Assessments of the law have been favorable. According to one close observer, the law is “well-conceived, well-articulated and unequivocal in its intent to guarantee the right of citizens to obtain information about their executive branch” (Doyle 2002). However, at the same time, four concerns have been voiced over the law’s content. First, it is not clear how government agencies will interpret the 11 exemptions set out in the law.¹⁷ Second, because of

duce an annual report to Congress on government responsiveness. The Institute will also work within the government by helping agencies to establish classification criteria, provide training and technical support on how to publish open information and respond to requests, create guidelines for the management of personal information, alert internal oversight bodies of alleged infractions and receive reports from them.

¹⁶ These include information protected by another law, commercial secrets, prior investigations, judicial or administrative files prior to a ruling, liability proceedings before a ruling, and/or deliberative process prior to a final decision. Information can be classified for only 12 years or less if the reasons for nondisclosure cease to exist.

¹⁷ Doyle (2002) lists three potential concerns on this front. “First, the law includes a clause contained in the earlier Fox draft exempting any information that, if disclosed, could ‘harm the country’s financial, economic or monetary stability’ (13,III): a potentially sweeping protection, depending on agency interpretation. Second, judicial and law enforcement bodies are given great latitude to withhold their files, including anything related to ‘prior investigations’ (14,III) and court documents ‘when there has been no ruling’ (14,IV). Finally, and disappointingly, the law exempts altogether records of the government’s internal deliberative

its focus on executive transparency, the law is seen as setting inadequate information standards for the Congress and the judiciary. Mexico is currently considering new transparency standards that would open the traditionally closed judiciary to public scrutiny. Third, although the law seeks to hold all Mexican government and quasi-government institutions—including the Federal Election Institute, the national universities, and federally owned commercial interests such as the oil giant PEMEX—to equal disclosure standards, some cases come up short. For instance, political parties are not required to publish information about their funding sources. Fourth, agencies are feared to resist the information committees, as these are to be established and operated with their respective agency's budget. The law also leaves room for executive influence through the nomination of the five commissioners to head the Federal Institute for Access to Public Information. The nomination process was, indeed, controversial; however, the Senate did ratify four of the five candidates proposed by the executive on October 10, 2003.

The law's success depends ultimately on the ability of civil society groups to educate people on how to use the law in their favor (Doyle 2002). Freedom of information debate will likely continue in general in Mexico for two reasons. First, after signing the law, President Vicente Fox declassified Mexico's secret police files running from 1952 through 1985.¹⁸ And second, some state governments, most prominently Michoacán, are considering following the

process reflecting opinions, recommendations and points of view (14,VI). That differs sharply with the case history behind the comparable exemption in the U.S. Freedom of Information Act (exemption 5), which has required the government to separate and release factual material contained in the documents".

¹⁸ The president has also personally released information about his income and investments, and published documents on the Internet detailing expenditures by his administration.

example of Sinaloa that in April 2002 adopted a freedom of information act-which is hailed as going beyond the provisions of the federal legislation, due, for instance, to requiring political parties to report campaign contributions.¹⁹

d) Panama

Panama enjoys independent news and commentary in numerous daily and weekly publications and radio and television stations. However, the country's press and freedom of information laws have long been surrounded by controversy and contention.²⁰ A notable improvement came in January 2002, when President Mireya Moscoso signed the Law for Transparency in Public Administration. The first access to information legislation in Central America, the law includes norms for transparency in public administration, access to information on government transactions, and habeas data clauses.²¹ Public officials failing to re-

¹⁹ Notably, the Sinaloa state government is seeking to put in place programs to educate citizens and journalists about the law and applying it.

²⁰ Law number 55 of 1999 gave the interior ministry power to censor media and close newspapers. In July 2000, President Mireya Moscoso signed Law 38, which sharply curtails public access to information. Among other things, the law establishes that information can be withheld from the public if it has the potential of causing severe harm to the society, the state, or the person in question, such as in the case of negotiations on international treaties, national security, health, political ideas, marital status, sexual orientation, criminal or police records, or bank accounts. Furthermore, Panama's administrative code, the penal code, and other laws punish defamation with prison terms; several journalists have been prosecuted under these provisions in 2000. Indeed, according to the Latin American organization Journalists Before Corruption (PFC), Panama has the greatest number of prosecutions against journalists in Latin America. Currently, 90 of the country's 200 active journalists face insult or defamation charges, mostly by public officials.

²¹ Panama also had pre-existing laws on press freedoms. Constitutional Article 41 guarantees the right to submit petitions and complaints to public officials for reasons of social or personal interest and to receive prompt response from them. Law 67 of 1978 provides journalists access to all public acts and information sources, and also obliges the state to facilitate journalists' access to information sources for the full implementation of their mission, except in special cases. There is also a constitutional provision on the right to petition that involves monetary

spond to information requests within 30 days will face a fine or replacement. Should a request not be met satisfactorily, the requester can appeal to a Supreme Court tribunal.

While applauding the law's content, many local observers complain that access to official information has not improved in practice.²² Moreover, there have been repeated impulses to restrict press freedoms; positively, however, these efforts have been kept in check by active opposition by civil society groups. Three examples are illustrative. First, the Executive Decree 124 of May 2002 intended to provide enabling regulations to the transparency law came quickly under criticism of undercutting the law's access to information provisions, such as by giving government officials discretion for determining the type of information that can be withheld.²³ The decree was subsequently challenged at the Supreme Court on the basis that it is both unconstitutional and unenforceable because rules cannot contradict or overrule a law (IAPA 2002b). Second, in July, the Legislative Assembly approved Law 127, which regulates the practice of journalism. The law was vetoed, however, by President Moscoso in the face of domestic and international criticism that it contradicted existing domestic laws and violated the Inter-American Human Rights Convention and other international agreements on freedom of expression.²⁴

finer on public officials who fail to respond to a petition within 30 days. However, although these provisions seemingly uphold the right of access, in practice Panamanian officials have been seen as failing to supply information in a timely manner.

²² For instance, the budget office failed to respond to an information request by a journalist, citing lack of implementation of the law's enabling legislation, even though the law does not require enabling regulations (IAPA 2002a).

²³ This is in spite of the fact that the law itself clearly establishes the possible exemptions. The decree also complicates information requests by requiring them to be made on forms prepared by the public entity in question.

²⁴ Although the law contained positive references to freedom of expression and information, it would, for instance, have limited press accreditation to those with a journalism diploma.

Third, also in July, the government announced the creation of a commission to revise and update in 180 days the country's press laws, and present recommendations to the executive. However, the initiative was criticized for being one-sided for failing to incorporate media representatives (IAPA 2002b). In August, various groups, organizations, universities and enterprises formed the National Council of Journalism to defend and promote freedom of expression and right to information, calling, along with Panama's Ombudsman, on the Moscoso government to reform the existing defamation and insult as well as censorship laws. The government has reportedly responded to these efforts by moderating its positions, with President Moscoso having pledged to veto any law that threatens press freedom (IAPA 2002b).

e) Peru

Freedom of information was strengthened in Peru with the July 2002 congressional approval of the Law of Transparency and Access to Public Information. The law guarantees citizens access to all documentation concerning the work of state entities, including information on their finances and administration. It affirms the provision of the 1993 Constitution that every person has the right "to request any information he requires and to receive it from any public entity, within the legal timeline and at the cost the request incurs". The law also buttresses the two relatively recent improvements in the definition of habeas data forged in by the Constitution and its subsequent modifications: enabling citizens to request information from the authorities and receive a reply within the legal time limits, and banning informational services from supplying or disclosing information related to personal or family privacy.

Much like the new access to information legislation in Mexico, the Peruvian law is widely seen as a step in the right direction.²⁵ Moreover, some provisions of the law that were initially considered imprecise are being improved. For instance, although the law provided that the executive branch could exempt information related to national security, Congress is currently debating an amendment supported by the Peruvian Press Council and IAPA to abrogate such exemptions (IAPA 2002b). Congress has also approved a number of articles that would affect press freedoms in the context of constitutional reform; for instance, the reforms have inserted the right to seek information under the heading of the right to impart information and express opinions and thoughts, and also incorporated the right to exercise freedoms related to journalism and the right to establish media outlets (IAPA 2002b). A number of further recommendations from the Peruvian Press Council have been incorporated into congressional debates on constitutional amendments.

B. Movement Toward Reform

a) Argentina

Freedom of information issues have been overshadowed in Argentina by the country's serious economic and political situation, which has not only inflicted the media with declines in revenue, but also spurred attacks, beatings and threats against journalists, particularly those involved in covering the social unrest.²⁶

²⁵ The law's approval was preceded by two positive events: President Alejandro Toledo's signing of the Chapultepec Declaration, and releases by the Peruvian Congress of a number of documents declassified by the United States government, which, among other things, provide facts linking the death of the newspaper *La República's* former editor, Gustavo Mohme Llona, to a plot devised by Peru's former intelligence chief Vladimir Montesinos (IAPA 2002a).

To be sure, freedom of information issues also warrant concern. As yet, Argentina has no specific laws to regulate access to public records. In principle, the 1994 Constitution provides citizens with the rights to invoke habeas data and to access information on matters pertaining to public interest, and also authorizes journalists to pursue legal action in order to obtain permission to access official documents. Hearings in the judiciary are to be public (OSRFE 2001). However, Argentine journalists continue criticizing a number of measures to restrict access to information, and notably so at the level of provincial and city governments (IPI 2000, 1999).²⁷

Positively, however, some Argentine provinces, such as those of Buenos Aires and Chubut, do recognize the right to free access to information. Moreover, there have been a number of recent law proposals to facilitate access to information. In early fall 2002, a freedom of information bill presented by two legislators passed the Constitutional Affairs Committee of the Argentine House of Representatives. The bill, similar to Law No. 104 on access to information in the City of Buenos Aires, provides citizens access to documents of all government entities. It also would punish officials in charge of the entity in question for a failure to provide access to information.

In a further positive development, in August 2002, the U.S. State Department sent copies of 4,677 documents on the "dirty war" waged by Argentina's military regime in

²⁶ Both TV and print media have suffered notable losses due to the recession and also due to the government's 2001 decision to impose a 10.5 percent value-added tax (VAT) on the sale of newspapers and magazines (IPI 2001).

²⁷ For instance, in January 2000, a local press union alleged that the province of Santa Cruz instructed all chiefs of police not to reveal any information to journalists regardless of the subject matter. This followed the November 1999 prohibition by the legislature of the City of Buenos Aires of the distribution, publication, and commentary of the results of electoral polls 48 hours prior to the end of voting.

1976-1983; these are considered central to legal proceedings in Argentina and other countries aimed at determining the fate of the disappeared.

b) Costa Rica

Besides the Constitutional Articles 27 and 30, which guarantee the right of access to information, Costa Rica lacks specific freedom of information laws. Article 27 of the Constitution stipulates that the interested party can submit a letter to the public official in question, who will subsequently have 10 days to respond to the request. In the absence of a response, the petitioner can turn to the Constitutional Court.

In July 2001, leaders of Costa Rican media presented the country's Legislative Assembly with a proposal to enhance press freedoms, including reforming the country's criminal codes. The proposal covers freedom of information issues as well as provisions enabling journalists not to reveal their sources. In August 2001, the Assembly formed a committee to study eight bills affecting press freedom (IAPA 2002a). However, only two of the bills have been passed thus far, namely the repeal of the crime of contempt, and a change in the Code of Criminal Procedure to modify some time frames to the benefit of the defendant. The Assembly is also considering two law projects on habeas data (*La Nación* 09/04/02). In an April 2002 poll by newspaper *La Nación*, 99 percent of Costa Rican journalists considered a reform of the country's press laws to be necessary. Eighty percent opined that the state guarantees freedom of information only "at times", while 7 percent answered "never" and 13 percent answered "frequently" or "always".

c) The Dominican Republic

Article 8 of the Dominican Republic's Constitution provides that the media have free access to government and private news sources consistent with public order and national security. There are no other specific regulations pertaining to freedom of information.

In September 2000, President Hipólito Mejía submitted a bill to revise the 1962 Law of Expression and Dissemination of Thought (Law 6132) (CPJ 2000). The amendments would enhance access to information, establish that primary legal liability for publication does not rest with the editor of the media outlet, and provide for civil — not criminal — penalties in cases of defamation committed through the press (IAPA 2002a). Drafted by local press organizations, newspaper executives, and media law specialists, the bill incorporates the 10 principles of the Declaration of Chapultepec into its preamble (CPJ 2000; IAPA 2002a). The bill was vetoed after passing the Senate, but was re-introduced in late-February 2002 in the House of Representatives (IAPA 2002a). It is awaiting passage (IAPA 2002b).

d) Guatemala

In 2001, the Government of Guatemala submitted to Congress a bill on access to information that would regulate the right to state-held information and the action of habeas data (OSRFE 2001). The bill is still being considered in Congress (Congress of Guatemala 2002). An access to information legislation could strengthen Guatemala's 1986 Political Constitution, which, despite establishing solid foundations for freedom of information,²⁸ is not accompa-

²⁸ Article 35 stipulates that access to sources of information is free and cannot be limited by any authority. Under Article 30, interested parties are entitled to

nied by any legal provisions that would regulate the effective exercise of the constitutionally granted rights (OSRFE 2001). Nor is there an independent body to which appeals can be filed when information is withheld.

The need for a freedom of information legislation is all the more pressing given the many obstacles Guatemalans face when attempting to obtain information. Official sources are often not accessible, and officials continue impeding journalistic work.²⁹ Furthermore, the 2001 Law on the Obligatory Licensing of Journalists requires mandatory licensing of journalists, compulsory membership in a professional association, and possession of a university degree for anyone seeking to practice journalism. According to the IAPA and Guatemala's local press, the law contradicts article 35 of the Constitution, which states that the right to freedom of thought through any medium "cannot be restricted by law or any government regulation" (IPI 2001).

e) Paraguay

Freedom of information has been a salient issue before the Paraguayan legislature over the past few years. Except for constitutional provisions, Paraguay has no specific guarantees of access to official records,³⁰ and the two laws

obtain at any time reports, copies, reproductions and certifications that they request and also to examine any files, unless the contents pertain to military or diplomatic affairs of national security, or to data provided by private persons under guarantee of secrecy. Article 31 establishes habeas data.

²⁹ IAPA reports that there is "a continuous effort to limit information from government agencies, particularly with respect to cases of corruption involving high-level government officials including President Alfonso Portillo and Vice President Francisco Reyes López" (IAPA 2002a).

³⁰ Article 40 of the Constitution grants a right to petition authorities and their duty to respond within a set time. Article 135 provides for habeas data, stating that "Every person may have access to information and data about himself or his assets contained in official registries or private ones of a public nature, as well

that went effect in July 2001 were widely seen as not enhancing, but restricting access to information (IAPA 2002a).

The first law is the Transparency in Government Law (Law 1728), which came under staunch criticism for obstructing investigative reporting by making it more difficult to secure public records and by enabling officials to refuse to hand over requested material. Under heavy domestic and international pressure, Congress and the executive branch repealed the law in September 2001. A host of civil society organizations submitted a substitute bill "Free Access to Public Information" (OSFRE 2001); however, this measure is also feared to have restrictions likening those in the repealed law. The second is a law regulating private information (Law 1628), which prohibits making public "sensitive" information about people and restricts publication of information about their assets, and, as such, curbs investigations into government corruption. However, in the face of criticism by the media of the law's potential to undercut access to information, the Chamber of Deputies approved and passed to the Senate modifications to the law in May 2002. The new format stipulates that the law will not apply to any database, information related to journalistic work, or freedoms to inform.

as to know the use made of these and their purpose. He shall be entitled to demand in court their updating, rectification or destruction in the event they are inaccurate or would unlawfully infringe his rights. "Article 28 stipulates that "Sources of information are free to all. The law shall regulate the corresponding modalities, terms and penalties so that this right may be effective". However, there has not been an enabling legislation on this right.

f) Uruguay

On 8 October 2002, the lower house of the Uruguayan Congress approved a bill on the right to public information and habeas data. If approved by the Senate, the bill will provide citizens with free access to all government documents and a right to receive and distribute official information.

A well-enforced freedom of information legislation appears to be a necessity. There are no laws requiring the state to reveal information, nor any legal or judicial mechanisms empowering journalists to force the state to provide information. Moreover, although the Uruguayan Constitution permits citizens to petition the government and enables them to obtain a reply to their petitions, public access to information rests on shaky grounds. According to IAPA, Uruguayan government agencies and state-owned companies are notorious for failing to provide even basic information (IAPA 2002a), reportedly to the point that certain ministries such as education, public health, and social welfare threaten their employees with fines if they provide information to the press. Education Minister Antonio Mercader recently admitted that a "culture of secrecy" pervades the Uruguayan government. Moreover, the press law and the criminal code punish defamation and slander with prison terms, and the print media are susceptible to pressure from the government, which is the largest advertiser (FH 2002).

C. Implementation Approximating Intent

a) Belize

The Constitution of Belize provides for “reasonable” restrictions on press freedom in the interest of defense, public safety, public order, morality, or health (FH 2002). Moreover, Belize has a Freedom of Information Act dating back to 1994 (Banisar 2002). The law provides for access to documents held by government departments.³¹ Agencies are to respond to requests within 14 days. Exemptions under the law are extensive, however, including documents affecting national security, defense, international relations, and Cabinet proceedings; in addition, courts and the Office of the Governor General are not obliged to follow the law.³² Denials of requests can be appealed to an ombudsman who can force the disclosure of documents falling outside the exempted categories. The losing party may appeal to the Supreme Court.

b) Colombia

Journalism in the civil war-torn Colombia is a life-threatening profession: more than 100 journalists have been killed in the line of duty over the past 15 years, more than in other country in the world. As such, the situation has

³¹ The definition of documents includes “public contracts, grants or leases of land, or any written or printed matter, any map, plan or photograph, and any article or thing that has been so treated in relation to any sounds or visual images that those sounds or visual images are capable, with or without the aid of some other device, of being reproduced from the article or thing, and includes a copy of any such matter, map, plan, photograph, article or thing, but does not include library material maintained for reference purposes”.

³² Other exemptions can be imposed should a “test for harm” suggest that releasing documents would adversely affect trade secrets, personal privacy, confidence, privilege, operations of ministries, enforcement of the law, and the national economy.

severe implications to reporting and decision making by the country's media, manifesting itself first and foremost in self-censorship.

However, Colombia's freedom of information provisions compare rather favorably to the other Latin American countries. The news media are generally free of legal restrictions, even though the penal code and anticorruption law prohibit the publication of certain information related to criminal investigations (FH 2002). Indeed, Colombia has an extensive history of laws on freedom of information dating back to the 1888 Code of Political and Municipal Organization, which allowed individuals to request documents held in government agencies and archives. The Law Ordering the Publicity of Official Acts and Documents was adopted in 1985, and Colombia's 1991 Constitution provides for a right of access to government records.³³ However, on the negative side, the list of classified documents has recently been enlarged (IAPA Law), and some legislators are calling for a law to require a certificate for journalists and create a council to regulate and oversee journalists' work (IAPA 2002b). Colombia's enforcement of the information laws is also viewed as haphazard (Banisar 2002).

³³ The law allows any person to examine the actual documents held by public agencies and obtain copies, unless these documents are protected by the Constitution, another law, or national defense or security considerations. After 30 years, all secrecy is removed and the document becomes a public record. Information requests must be processed in ten days. If a document request is denied, appeals can be made to an Administrative Tribunal. The Constitutional Court ruled in December 1999 that under the 1985 Act and the 1998 amendment, legislative acts would only be in force against individuals once they were published. The Constitutional Article 15 provides a right of "habeas data" that allows individuals to access information about themselves held by public and private bodies. Article 20 allows individuals to receive information. Article 78 regulates consumer product information, Article 112 allows political parties the right of "access to official information and documentation" and Article 135 allows Congress to demand information except for information exempted in Article 136.

e) Ecuador

Ecuador has a tradition of respect for press freedom. A variety of laws give private citizens the right to access official information. Article 81 of the 1998 Constitution requires the state to guarantee the right to have access to sources of information, including official and public information.³⁴ Notably, Article 94 guarantees that constitutional exemptions related to national defense can be discarded when individuals require access to information that affects them directly. Article 23 gives all private citizens the right to present both grievances and petitions, and the right to have a relevant response within a reasonable period. The 1975 Law of Practice of Professional Journalism provides additional guarantees of freedom of information, and also contains habeas data clauses.³⁵ The Law of Modernization of the State provides detailed rules on the processing of information requests.³⁶ For its part, the Criminal Code sanc-

³⁴ Specifically, there cannot be any restrictions to access to information contained in public archives, except for information guarded for national defense and other reasons prescribed by the law.

³⁵ Article 39 stipulates that "Within the limitations established by this law, professional journalists shall have free access to authorized sources of information, and in this context, they are to receive whatever legal aid is needed from all agencies of the state, private corporations with social or public objectives and private persons".

³⁶ Article 28 states that "All claims, requests or petitions must be processed within 15 days from their date of submission, except when a legal instrument expressly provides a different time frame. No administrative body shall suspend traditional practice or refuse to issue a decision on petitions or claims submitted by individuals under their administration. In each case, upon expiration of the above-cited period, silence on the part of the administration shall be understood to mean the request or petition has been resolved in favor of the petitioner. Should an administrative authority not accept a petition, suspend an administrative procedure or fail to issue a resolution within the time period prescribed, this fact may be denounced before judges with criminal jurisdiction as an act contrary to the right of petition guaranteed by the Constitution in accordance with Art. 213 of the Penal Code and without prejudice of other actions provided in different laws. A top-ranking administrative authority that confirms that a lower-ranking civil servant has suspended an administrative procedure or failed to resolve it within 15 days after submission, shall report this fact to the Minister Prosecutor of the relevant district for legal action".

tions anyone who may have obstructed the exercise of the right to petition.³⁷ The Law of Constitutional Control institutionalizes habeas data.

Two recent efforts further improve the legal grounds for freedom of information. On September 18, Congress approved a law improving access to radio and television frequencies and prohibiting racist broadcasting (*Expreso* 09-19-02). On September 30, the Ecuadorian Association of Newspaper Publishers submitted a bill for a Law on Dissemination and Access to Public Records, which aims at enhancing government transparency; the executive has pledged to support the bill (IAPA 2002b).

To be sure, some obstacles remain. Some self-censorship takes place on sensitive subjects such as politics or the armed forces (FH 2002). Four articles of the Criminal Code penalize defamation of the president, court officials, or corporate heads. These restrictions are seldom enforced, however (FH 2002).³⁸

The same rule cited in Article 32 refers as follows to access to documents: "Unless provided by special laws, and in order to assure orderly administrative practice and promote impartial conduct, anyone interested in trusteeship of legally protected situations shall have the right to access administrative documents in possession of the state and other entities of the public sector".

Article 33 states that "The public official or civil servant who breaches any of the provisions contained in this chapter will be penalized with termination, without prejudice of civil, criminal or administrative liabilities provided in other laws".

³⁷ Article 212 states that "A fine of 40 to 100 sucres and imprisonment from one to six months shall be applied to authorities that in any way obstruct the free exercise of the right to petition".

³⁸ IAPA argues that Ecuador's press freedoms have stumbled somewhat recently given some censorship of radio broadcasts, an effort to implement obligatory licensing, and the temporary suspensions of news programs of four radio stations in the city of Orellana after the government decreed a state of emergency in the Orellana province. On 14 December 2001, the navy refused to allow reporters to cover a military ceremony. This coincided with a dispute over a reported overcharge on insurance for Ecuadorian air force airplanes. However, press freedoms were reaffirmed five days later, as the navy commander apologized publicly. A bill is being drafted to protect individuals vis-à-vis the press in regard to their rights to privacy and information affecting the family.

D. Troubled Implementation; Room for Reforms?

a) Bolivia

The Bolivian Constitution does not include provisions regulating access to state-held information or habeas data action (OSRFE 2001). The 1984 Fundamental Laws of the Journalist stipulate that no one may restrict a journalist's freedom of expression and information without risking being accused of violating the journalists' constitutional rights;³⁹ however, there are concerns both about the media's access to information, and, given that the criminal code punishes slander and defamation of public officials with up to three years imprisonment, journalists are prone to self-censorship.

On a positive note, journalists' organizations have succeeded in pressuring the legislature to curb recent efforts to limit press freedoms. For instance, in April 2002 Congress passed a law to suspend Article 119 of the December 2001 Electoral Code (IAPA 2002b). The article authorized the National Electoral Court to select which media will be allowed to circulate political propaganda and to impose sanctions on or suspend unauthorized media outlets (FH 2002). The law took effect after the 30 June 2002 general elections. In another development, legislature, pressured by the media, has corrected proposed amendments to the 1925 Print Law that would have compromised the confidentiality of the journalists' sources (IAPA 2002b).

³⁹ Under Article 10, "Full freedom of information belongs to the journalist and it gives him the right to access all sources of information in order to communicate facts and events, with no other restrictions than those established by the Printing Law of January 19, 1925." Article 20 stipulates that "No one may alter or hide newsworthy information in prejudice of the truth and the public interest. If it is done, the journalist may denounce publicly this fact, which cannot constitute the subject for dismissal or retaliation".

b) Brazil

Article 5 of Brazil's 1988 Constitution guarantees any individual's access to information. There are, however, no other laws pertaining to freedom of information, such as granting investigative journalists access to public information. In a setback to the constitutional guarantees, in December 1999, the Chamber of Deputies passed a law that hampers public officials, police officers, prosecutors, attorneys general, judges, and officers of the tax auditing office from providing information to the press (IPI 2000). The law is feared to obstruct media's investigations into corruption in government.

The Brazilian media is also troubled by constraints on the freedom of expression. In numerous incidents in 2001, state courts prohibited newspapers from publishing stories seen as damaging to government or public officials (FH 2002). In October 2002, the IAPA claimed that its annual report on press freedoms in Brazil was the grimmest one on the country in 20 years, given highly troublesome cases of censorship (IAPA 2002b).

c) El Salvador

The 1982 Constitution of El Salvador recognizes in Article 18 the right of every person "to address petitions... to the legally constituted authorities, seeking redress and information about how the matter has been resolved." However, in practice, the right does not guarantee access to information. Officials in the national and local governments systematically refuse to meet with journalists and to provide information of public interest (IAPA 2002a). Furthermore, on September 26, 2002, the Legislative Assembly approved changes to the Enabling Law of the State Audit Court. These prohibit making public the results of the

Court's audits of government officials responsible for handling tax revenues until the officials have been either convicted or acquitted. After the measure was denounced by Salvadoran journalists, the president moderated the amendment; however, it still provides discretion to the presiding judge of the Audit Court to decide when results of audits will be made public (IAPA 2002b). Besides suffering lack of access to information, Salvadoran journalists and publications are occasionally targets of intimidation, which has fuelled some self-censorship (FH 2002).

d) Honduras

Article 80 of Honduras's 1987 Constitution stipulates that "All persons or association of persons have the right to petition the authorities, whether for reasons of personal or general interest, and to receive a prompt reply within the legal time limit." However, some observers argue that the provision does not guarantee access to public information (IAPA Law). Positively, laws that prohibit defamation and require journalists to reveal sources are not widely abused to stifle press freedom (FH 2002).

e) Nicaragua

Article 66 of Nicaragua's 1987 Constitution stipulates that all Nicaraguans have a right to "accurate information", and are entitled to seek, receive and impart information and ideas. Article 52 provides citizens with the right "to petition, denounce anomalies and issue constructive criticism individually and collectively to those in power in the state or any authority, to obtain a prompt resolution or response and be informed of the result in the time the law provides." Article 131 obliges public officials to inform the public about their work and official activities.

However, rather than facilitating access to information, the Constitution arguably inhibits the work of the media because the government will be able to prevent the publication of information it deems inaccurate (IPI 2000). Laws on the confidentiality of public records likely further hamper access to information (IPI 2000; OSRFE 2001). The penal code renders it unlawful to disclose state secrets as well as official information pertaining to national security. Journalists and editors behaving "irresponsibly" are criminally liable for their acts (IPI 2000). On October 11, the IAPA protested a proposal before the Nicaraguan Congress that would set lengthy jail terms for those found guilty of the breaching the insult law.

The several concerns about freedom of information laws have been coupled by related laws and practices restricting press freedoms. For instance, a law approved in December 2000 states that journalists must be entered in the registry of journalism professionals, only journalists with ten or more years of experience would be able to obtain licenses, and anyone working in the profession without the proper credentials would be subject to fines or imprisonment (IPI 2001). Furthermore, the previous government of President Arnoldo Alemán was long criticized of attempting to introduce self-censorship among the media by awarding advertising contracts to those media that follow the government's policy line (IPI 2000).

f) Venezuela

Freedom of information is a turbulent topic in President Hugo Chávez's Venezuela. Article 51 of the 1999 Constitution, created at Chávez's initiative, guarantees the right to petition authorities or public officials on matters within their competence and to obtain a timely and appropriate response. Violators will be punished under the law and

could be dismissed from their position. Article 58 provides everyone with “the right to timely, truthful, impartial and uncensored information”, while Article 28 deals with *habeas data*.⁴⁰ The 1981 Organic Law on Administrative Procedures also provides for access to public information, even though documents classified as confidential are exempt (OSFRE 2001).

These guarantees notwithstanding, observers posit that access to information is lacking. In its 1999 report, OSFRE expressed concern that the right to “timely and truthful” information under constitutional Article 58 represents *ex ante* censorship prohibited in the American Convention on Human Rights. Also the official practices have raised controversy. In January 2001, Venezuela was placed on the International Press Institute’s list of countries that would be closely monitored over the following six months on freedom of expression issues. The decision, which coincided with the removal of Peru from the same list after Alberto Fujimori’s departure from the presidency, came in the wake of complaints by the Venezuelan press of President Chávez’s allegedly hostile attitude toward the press. In January 2002, more than 500 journalists signed a public manifesto demanding that Chávez “stop his aggressions.” The IAHRC’s February 2002 mission to Venezuela found that there are no adequate mechanisms to ensure the effective exercise of the right of access to information. Government-media relations have deteriorated further in the aftermath of the coup of April 2002. The Human Rights

⁴⁰ It states that “everyone has the right to access information and data about himself or his assets that is contained in official or private registries, with the exception that the law may establish, as well as to know to what use such information is put and the purpose thereof, and to ask the appropriate court for it to be updated, corrected or destroyed should the information be erroneous or unlawfully harm his rights. Similarly, he shall be able to access documents of any kind that contain information whose content may be of interest to communities or groups of people”.

Ombudsman's detailed draft report to the National Assembly on the events surrounding the coup outlined a number of violations of the editorial independence of media by the president (IFJ 2002).⁴¹ A September 2002 joint mission of the IAPA and the International Press Institute (IPI) determined that there is no press freedom in Venezuela (IAPA 2002b). The Inter-American Commission on Human Rights has extended the protective measures for journalists and the media issued at the beginning of the year (IAPA 2002b).

E. Restrictive Laws and Practices

a) Cuba

Cuba's press laws are among the most restrictive in the world. The legal framework does not recognize the media's right to seek and gather information from public sources; only the state is empowered to provide information, with the Party being the supreme issuing entity. Access to government documents is restricted under the State Security Law, which applies to all the central government agencies. Violation of the law is a crime under the penal code. Although the law provides for declassification of information, IAPA reports that the government has been known to order the destruction of such material prior to declassification in order to prevent later analysis of the information (IAPA Law).⁴² Official and unofficial disinformation abounds, and

⁴¹ However, the Ombudsman also blamed the media for having failed to maintain citizens' rights to receive information of public interest (IFJ 2002). Private media acknowledged the failure, justifying it on the grounds of fears of attacks in the violent atmosphere. The media and various international organizations, such as the International Federation of Journalists (IFJ), have stepped up allegations of harassment by the government.

⁴² Journalists in Cuba are either servants of the regime or, if working outside the government propaganda apparatus, increasingly subjected to beatings, harassment, and imprisonment (FH 2002). Five small news agencies established

accurate and impartial news is difficult to obtain. Cubans tuning in to foreign radio broadcasts for information risk being charged with a punishable offense.

b) Haiti

Journalists are frequently subject to politically motivated violence and harassment in Haiti. Journalism is a challenge also given the country's poor press laws and inadequate enforcement of the existing laws. Article 40 of the 1987 Constitution makes it an obligation of the state to provide access to public information. However, access to information is inadequate, and there are no databases available to journalists.⁴³

F. The Caribbean: An Overview

a) Aruba and Dutch Caribbean

According to IAPA (2002), there have been no reports of restriction of press freedom in Aruba and the Dutch Caribbean. In 2001, the government of the Dutch Antilles and Aruba passed a law calling for more transparency in gov-

outside state control have been subjected to continued repression. Foreign news agencies can hire stringers only from government offices.

⁴³ The Freedom House reports that "Independent radio stations and newspapers exist in name only. Those critical of the government are targets of official intimidation and of inspired mob attacks. Harassment of some 15 journalists throughout 2001 culminated in the December attack on the popular news director of Radio Echo 2000, who was stoned and hacked to death by a mob of alleged supporters of President Jean-Bertrand Aristide. The president was accused by Reporters sans Frontieres of obstructing justice in the investigation of murdered journalists. The inquiry into the April 2000 murder of prominent radio commentator Jean Dominique continued throughout the year. In April (2001), three radio stations were attacked and robbed, part of a wave of assaults suffered by the Haitian media during the past two years. One positive development during the year was the re-emergence of the Haitian Journalists' Association and the increased prominence of other media associations" (FH 2002).

ernment in order to enable the media to obtain official information without problems. Citizens are also allowed access to information from the government, as long as the information "will not be used to jeopardize the government in any way".

b) Antigua & Barbuda

On September 13, the government took an important step toward improving press freedoms by signing the Declaration of Chapultepec. This is expected to increase the range of opinion in the media, much of which is controlled by the ruling Antigua Labor Party and the Bird family (IAPA 2002b; FH 2002). The country's first independent radio station, Observer Radio, began broadcasts in April 2001 after a five-year effort to secure a license to operate.

c) Bahamas

The present government has not used the strict libel laws to restrict the work of the news media. Opposition politicians argue that state-run television does not accord them the same coverage as that given to the ruling party (FH 2002).

d) Barbados

Freedom of the press is unrestricted, and a range of political views is available through private and government owned radio stations and the two major independent newspapers (FH 2002).

e) Dominica

Free expression is protected in law and in practice.

f) Grenada

A free media is guaranteed by the law (FH 2001, 2002). However, legal suits have recently been brought against a number of media outlets on slander or libel charges.

g) Guyana

The constitution provides for press freedom and the government generally respects this right in practice (FH 2002; IPI 2001). The government has also recently signed the Declaration of Chapultepec. Private newspapers provide a wide range of views; the only radio station is state-owned, but the government has pledged to submit a new broadcasting legislation that would entail the issuing of radio licenses to private parties.

h) Puerto Rico

Judges, legislators and government officials reportedly continue issuing laws, regulations, and orders that obstruct access to information produced by the public sector or personally concerning government officials.

i) St. Kitts and Nevis

Opposition publications freely criticize the government, and international media are available. Radio and television are government-owned but managed by a local company. There are some restrictions on the opposition's access to them (FH 2002).

j) St. Lucia

The media carry a wide spectrum of views and are largely independent (FH 2002).

k) St. Vincent & the Grenadines

The press is independent. The only television station is privately owned and free from government interference (FH 2002). Equal access to radio is mandated during electoral campaigns; however, the ruling party takes advantage of state control over programming.

l) Suriname

The constitutional provisions for freedom of expression and of the press are generally respected (IPI 2001). There have been improvements in political coverage under this government; however, observers report a pervasive lack of investigative journalism.

m) Trinidad and Tobago

The media scene in Trinidad and Tobago is vibrant (IPI 2001, FH 2002). Newspapers have been able to conduct investigative reporting and to criticize of the government and its polices. Constitutional guarantees of press freedom are generally respected in practice (FH 2002). However, during his tenure until 2001, Prime Minister Basdeo Panday refused to sign the Chapultepec Declaration.

4. Conclusion

Countries of Latin America and the Caribbean have made strides at fortifying legal bases for freedom of infor-

mation over the past decade. Much of the credit for this positive trend goes to the tireless work by media and civil society organizations on behalf of press freedoms. Besides calling for improved legal frameworks and perfecting the content of the new laws, local groups have also proven successful at counteracting measures to restrict freedom of information: they have challenged restrictive bills and executive decrees, introduced their own law proposals, and mounted vocal campaigns to gain domestic and international support for their cause. International actors such as IAPA and the Special Rapporteur of the OAS have helped propel governments to improve information freedoms by pointing to gaps in legal frameworks in the region and by promptly exposing violations of freedom of information.

The positive developments notwithstanding, freedom of information laws have yet to prove their power in practice. The next step for the governments of Latin America and the Caribbean is to translate the intent of information laws into uncompromised access to information.

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