



Module 1 of the Learning Alliance on Citizen Oversight discussed how Freedom of Information Acts, regional institutions and civil society initiatives have helped advance the right to information and set strong bases for civil society to work on improving social justice.

STRENGTHENING THE LEGAL FRAMEWORK TO ENSURE TRANSPARENCY AND ACCESS TO INFORMATION

SUMMARY

This document summarises conclusions drawn from an ELLA online Learning Alliance (LEA) on Citizen Oversight of Public Policies during which experts and participants, mainly from the global south, discussed the Latin American legal frameworks and institutional conditions that have enabled or prevented the effective realisation of the right to information. In countries where this right has been formally recognised and institutionalised, political actors (states, international human rights agencies and civil society) have mobilised to demand respect, protection and promotion of the right to information. These actors have developed and engaged in important oversight activities. The rich LEA discussions allowed participants from Africa, Asia and Latin America to explore similarities and contrasts between their regions and to identify issues and conclusions that seem to be critical for the different themes.





The LEA was moderated by experts from Fundar, with guest experts from Latin America invited to share their perspectives and experiences during the online debates. The discussions that took place between participants and Latin American experts focused around three main issues: 1) The current situation in Latin America regarding access to information; 2) National legal frameworks and their enforcement as mechanisms to realise the right to information; 3) The role of civil society in promoting the right to information.

KEY ISSUES:

Several key conclusions were drawn from the exchange between participants and experts on the promotion of citizen participation mechanisms:

- The acknowledgement of the right to information as a human right by national and regional legal frameworks is the keystone to the advancement of the right to information. Strong legal frameworks provide civil society with sufficient backup to demand rights and enhance social justice.
- Regional legal frameworks and institutions promote and guide national processes to implement Freedom of Information Acts (FOIAs). Likewise, rulings by regional courts play a crucial role in compelling governments to comply with their obligations regarding disclosure of public information.
- The active participation of civil society through strong coalitions helps to enforce the right to information, either through appealing to national and regional courts to set precedents, lobbying for the approval of FOIAs, continuously demanding access to public information or by raising awareness amongst citizens and public officials.
- Mechanisms for improving access to information are more likely to achieve their objectives if they are easily accessible by citizens and take their needs into account.

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FIRST DISCUSSION THEME: THE CURRENT SITUATION IN LATIN AMERICA REGARDING ACCESS TO INFORMATION

The objective of the first set of discussions was to present an overview of the current situation regarding access to information in Latin America and to reflect on the factors that have made the legal recognition of this right possible in the region, as well as in Africa and Asia. Special attention was paid to the role of the Inter-American System of Human Rights and its promotion of the right to information at the national level, in particular how the model Inter-American Law on Access to Information and several rulings by the Inter-American Court have shaped the design of national Freedom of Information Acts (FOIA).

The following sections summarise the discussions that took place between the LEA participants, the Moderator and invited experts. Participants were asked to reflect on the following three issues in particular:

1. The contextual elements (actors, networks, political context and resources) that enabled progress on access to information in Latin America
2. The similarities and differences between the current situation regarding access to information in Latin America and participants' own countries in Africa and Asia, in particular the existence and role of regional human rights institutions
3. The potential impacts of such institutions in regions where they do not yet exist

Related Sources

The Current Situation Regarding the Right to Information in Latin America:

- [ELLA Brief: Building the Legal Framework to Support Transparency and Access to Information in Latin America](#)
- [Where do We Stand? The Situation of the Rights to Information and Transparency in Latin America](#)

The Role of the Inter-American System of Human Rights in the Promotion of the Right to Information:

- [The Role of IAHRs in the Promotion of the Right to Information](#)
- [Claude-Reyes et al vs. Chile](#)
- [Gomes Lund et al vs. Brazil](#)



Part 1: The Current Situation Regarding the Right to Information in Latin America

This discussion set the basis for the whole Learning Alliance by providing an overview of the right to information in different regions and countries as well as an exploration of key factors that enable citizens to access public information and oversee public institutions.

First, participants discussed the factors that enabled Latin America to reach its current situation regarding the right to information, and compared them with the context in their own regions. The learning materials and experiences shared by participants show that democratisation processes that many countries in the world have gone through over recent decades provide the backdrop to progress on the right to information. In particular, democratisation opened up the space for citizens to lobby for the right to information and to participate in political decision-making processes. Another key element has been the incorporation of the right to information as a human right in regional and national legal frameworks. At the same time, a Model Law was elaborated for the region and the Inter-American Human Rights System has sanctioned states in violation of this right. Likewise, national FOIAs have been implemented across the region, and in some countries, these have been strengthened by the creation of independent bodies in charge of overseeing compliance of the law.¹

Although much is still to be done in Latin America, several participants stated that the region stands out in comparison with Africa and Asia. Indeed, even though Africa has a regional standard - the [Model Law on Access to Information for Africa](#) - several African countries, such as Ghana, are still to pass such laws, while many other countries face serious implementation challenges. Several African and South Asian participants also commented that significant scepticism still exists amongst public authorities and civil society, especially in Ghana and Nepal, where access to information is considered a privilege rather than a right and where civil society participation and lobbying is rather weak. The discussion raised several questions including the ways the citizenry and the media can be made aware of their rights and the importance of requesting access to public information.

Part 2: The Role of the Inter-American System of Human Rights in the Promotion of the Right to Information

In Latin America, the Inter-American Human Rights System has played a key role in promoting the right to information, elaborating a [Model Inter-American Law on Access to Information and an Implementation Guide](#) that set standards for states to take into account when drafting national law. The Inter American Court has also made several benchmark rulings mandating states to meet their obligations regarding access to information.

Participants from Africa explained that despite the existence of the African Commission and Court of Human and People's Rights, these institutions are not being used effectively to promote access to public information and the region faces serious issues regarding the implementation of regional regulations at the national level.² For example, only six out of 53 African countries seem to have passed a FOIA. Three key obstacles to this process were identified as: 1) failure of political leadership; 2) low public awareness, and; 3) institutional barriers. Other participants explained that there is no regional human rights system in South Asia and implementation issues and low citizen involvement have weakened much of the legislation regarding access to information.

¹ The case of the Mexican Federal Institute of Access to Information and Data Protection was discussed during the Learning Alliance, and a summary of this can be found on page 7.

² The Declaration of Principles on Freedom of Expression in Africa acknowledges the right to information as a human right.



Group reflection highlighted a few reasons why the Inter-American System seems to have been more successful than the system in Africa at encouraging member states to pass FOIAs and take the necessary measures to implement them properly. The main element behind this success seems to be the Inter-American Court's rulings in favour of access to information. Two in particular stand out - the [Claude Reyes et al. vs. Chile](#) case and the [Gomes Lund et al. vs. Brazil](#) case. These rulings have set standards throughout the region, not only because the governments of Chile and Brazil were ordered to provide access to the information in question, but also because both governments were mandated to adopt measures that would ensure the right of access to state-held information in the future. As well as influencing several Latin American countries to pass FOIAs (Nicaragua, Chile, Guatemala, Uruguay, El Salvador and Brazil), these rulings and the Model Law have provided a strong basis for civil society to lobby governments about the FOIA agenda, to call upon states to disclose information and to provide open investigations of human rights violations. It became clear to participants that another crucial element of progress in Latin America has been the active participation of civil society, especially appeals that were made to regional courts when governments had not complied with their obligations.

Lessons Learned

- The acknowledgement of the right to information as a human right in national and regional legal frameworks constitutes the keystone to the advancement of access to information
- Court rulings at the regional level that acknowledge the obligations of governments to respect the right to information can provide the precedent needed to make this right a reality at the national level
- A regional framework on access to information such as the Model Inter-American Law is highly relevant since it sets the minimum criteria and standards that access to information laws in the region should meet
- Although regional networks and institutions exist and participate actively in the definition of common criteria to promote the access to information, government compliance still strongly depends on political will



SECOND DISCUSSION THEME: NATIONAL LEGAL FRAMEWORKS AS THE FOUNDATION TO REALISING THE RIGHT TO INFORMATION

The second set of discussions focused on national legal frameworks, in particular the factors that have led to the approval of Freedom of Information Acts in specific contexts and the legal and institutional arrangements that have been key to ensuring effective enforcement of the right to information. Participants also had the opportunity to reflect on the role of the institutions in charge of overseeing government compliance. They also discussed the challenges and opportunities related to the implementation of access to information laws and possible enforcement strategies. Participants were asked to reflect on three main issues:

1. The enabling and contextual factors that have made the approval and enforcement of legal frameworks on access to information possible in Latin America, as well as the factors that underpin these processes in their own regions
2. The challenges and opportunities of institutional and legal arrangements regarding the right to information
3. Strategies to address the main challenges

Related Sources

The Process of Approval:

- [The Process of Approving the Freedom of Information Act in El Salvador](#)
- [The Process of Approval of the FOIA in Brazil](#)
- [ELLA Spotlight on Publications: Design, Adoption and Implementation of Latin American Freedom of Information Acts](#)
- [Civil Society Networks Playing a Role in the Adoption and Implementation of Freedom of Information Acts](#)

The Creation of Institutions in Charge of Monitoring Compliance of the Law:

- [The Creation of the Mexican Institute for Access to Public Information and Data Protection](#)

Challenges and Opportunities Facing the Law

- [Challenges and Opportunities of the Right to Information: Experiences in Latin America](#)



Part 1: Approval Process

The aim of this discussion was to learn about the factors that have contributed to the approval of Freedom of Information Acts in Latin American countries. Participants examined approval processes in Brazil and El Salvador, which were initiated from the grassroots level. Participants commented that similar processes have taken place in India and South Africa regarding the enactment of access to information laws, first at the local level, then nationally.

However, many participants indicated that there is still a lack of legislation on access to information in their countries. Other participants stated that in many cases political debates and actual enactment of the law are lengthy processes. In Ghana and Kenya, for instance, FOIAs have been the subject of legislative discussions for the past 10 and 6 years, respectively. In Ethiopia, civil society participated in the drafting of the FOIA. However, many of the suggested amendments were not taken into account in the final version of the bill, raising important doubts about political commitment to civil society involvement. According to participants, this is a common scenario across Africa and Asia.

In terms of identifying factors that have contributed to the approval of Freedom of Information Acts in Latin American countries, participants used the learning materials and drew on experiences from their own countries to identify some key elements. First, the capacity of civil society to network and to work with the legislative branch, such as in El Salvador, Brazil, India and South Africa, where civil society coalitions drafted or have actively participated in the drafting of FOIAs. Participants also highlighted the role of multi-stakeholder coalitions that combine representatives from the media, academia, civil society and proactive bureaucrats. In several countries, these coalitions have lobbied for FOIAs and participated in their drafting to ensure compliance with regional and international standards. In Brazil, the government went one step further by inviting the general public to participate in discussions about access to information. Another enabling factor that was raised by participants from El Salvador, Brazil and South Africa is the exchange between neighbouring countries, both between governments and between CSOs, that resulted from bilateral and multilateral donor-funded regional networks and partnerships (formal and informal), as well as the lobbying power generated by such partnerships. For instance, being part of the Organisation of American States and its Inter-American Human Rights System implies high levels of commitment towards access to information from governments and has played a significant role in the implementation of FOIAs in Latin America.

Part 2: The Creation of Institutions In Charge of Monitoring the Compliance of the Law

The objective of this discussion was to identify the legal and institutional arrangements that are key to enforcing the right to information, in particular the creation of institutions in charge of overseeing government compliance with access to information laws. Participants discussed the case of the [Mexican Federal Institute of Access to Information and Data Protection](#) (*Instituto Federal de Acceso a la Información y Protección de Datos* - IFAI) and also shared different case studies with one another. One example provided was that of Peru, where the Ombudsman Office is responsible for government oversight. In India, there is no provision for the oversight of the implementation of the FOIA, instead Central and State Information Commissions request reports from government agencies and the Information and Public Relations Department publishes compliance assessments.



Drawing on the knowledge materials provided, as well as experiences from their own countries, participants identified various institutional and legal issues that seem to be crucial for the approval and implementation of FOIAs. The first is that the institution in charge of oversight, whether it already exists or has been created for this purpose, should have financial, administrative and political autonomy, adequate human resources and sufficient enforcement capacity to guarantee compliance with its resolutions. Another key ingredient is a straightforward and accessible procedure for requesting information. Likewise, awareness raising amongst the general public and civil servants was perceived to be important. Proactive disclosure measures were also considered essential in order to get public agencies to disclose information regardless of whether a specific request has been made. Finally, participants pointed out the importance of clear procedures for the appointment of information commissioners, who should possess considerable technical expertise on access to information and maintain autonomy from political parties and the government.

Part 3: Challenges and Opportunities Facing the Law

This discussion centred on the challenges and opportunities related to the implementation of access to information laws. The video shared with participants provided testimonies from Latin American experts and activists on the challenges faced by the region regarding inconsistencies between the institutions in charge of enforcing the law, the existence of other laws contradicting FOIAs, the lack of human, financial, and technological resources to effectively implement the law, a lack of knowledge about legal obligations amongst bureaucrats, a lack of awareness amongst the public of its rights, and the lack of political will to disclose and deliver information. Interestingly, in the discussion that followed participants indicated that most of these challenges are common to Africa and Asia too. For example, the secrecy bill currently in discussion in South Africa constitutes a preoccupying setback.

Participants then went on to discuss possible strategies for tackling these challenges. Some imply gaining political leverage to push through long-lasting institutional changes in order to make access to information mechanisms more accessible and effective. Other strategies involve mobilising citizens and community-based organisations so that they are aware of their rights and engage in advocacy work and communication campaigns to denounce specific cases that put public authorities in the spotlight. Participants agreed that combining a legal battle, through strategic litigation, say, with social pressure is key since each strategy can achieve different changes. While the legal route seeks to achieve long-term improvements to the institutions and procedures on access to information, public pressure provides the continuous oversight required to monitor the enforcement of the right to information. Interestingly, participants seemed more familiar with social mobilisation strategies, perhaps due to the complexity of legal processes.



Lessons Learned

- Access to information is more likely to become a reality if the FOIA includes a clear timeline for implementation and establishes the institutional changes that are to be undertaken, providing, for example, real political autonomy to the agency in charge of the oversight so that it can enforce its resolutions
- The procedure for requesting information should be tailored to citizens' needs, meaning it is free, accessible and straightforward
- The FOIA provides a strong legal foundation to which citizens can appeal to when requesting information
- Citizen oversight, lobbying and mobilisation are other key elements to the effective enforcement of the right to information, given that public authorities tend to avoid disclosing information or proactively implementing the law. In order to speak with a unified voice and link-up strategies, civil society must be well organised, with clear and common goals.



THIRD DISCUSSION THEME: THE ROLE OF CIVIL SOCIETY IN USING AND STRENGTHENING THE RIGHT TO INFORMATION

In the preceding discussion, it became clear that civil society plays a significant role in the enforcement of the right to information. This discussion therefore offered participants the chance to explore two replicable strategies that civil society can employ in this regard. First, participants reflected on several case studies involving Latin American civil society groups accessing and making use of public information to undertake social audits. In particular, participants assessed the factors that have made these experiences possible, the opportunities that they have opened up and the obstacles that they have met concerning political change. Second, participants examined strategic litigation and court rulings as means to enforce the right to information in the absence of a specific legal framework.

The following sections summarise participants' reflections and discussions around three key questions:

1. What are the main enabling factors behind the experiences presented in these discussions?
2. How has the right to information been used by civil society groups to undertake social audits and/or strategic litigation in Africa and Asia and how could lessons learned from Latin American experiences be applied in those contexts?
3. What successful examples and strategies exist in participants' countries?

Related Sources

Practical Use of Legal Frameworks by Civil Society

- [Farm Subsidies: Making Farm Subsidies Transparent in Mexico](#)
- [ELLA Brief: Using Information for Accountability and Justice](#)
- [ELLA Spotlight on Organisations: Key Civil Society Groups Using the Right to Information](#)

Strategic Litigation and Court Decisions as Means to Enforce the Right to Information and Transparency in the Absence of a Specific legal Framework:

- [Strategic Litigation as a Mechanism to Enforce the Right to Information in Latin America: a Case from Argentina](#)



Part 1: Practical Use of Legal Frameworks by Civil Societies

The objective of this discussion was to delve deeper into real life oversight experiences. Several examples of Latin American civil society groups accessing and making use of public information to undertake social audits were presented to participants. First, the monitoring of farm subsidy beneficiaries in Mexico, during which four civil society organisations, including Fundar, used public information to highlight inconsistencies in the targeting of the beneficiaries and exposed 577 civil servants for having benefitted illegally from the programme; findings which were disseminated in the media and published on the [Subsidios al Campo \(Subsidies to the Countryside\)](#) website. This initiative helped make farm subsidies more transparent, including revised limits for subsidies and improvements to overall programme management. Second, by tracking the distribution of oil revenues to public institutions, [Grupo Faro](#), an Ecuadorian civil society organisation, shed light on the fact that the revenue was benefitting privileged groups instead of contributing to social justice and equality. Consequently, Grupo Faro raised this issue in public and political debates. These two initiatives provided participants with examples of social assessments carried out in countries with FOIAs in place, but where public institutions are still reluctant to provide information.

Finally, the third initiative presented to participants was the monitoring of sustainable development in Costa Rica by a research programme lead by the country's four public universities. The 17 [State of the Nation Reports](#) elaborated so far have assessed Costa Rica's progress and identified setbacks in economic, social, environmental and political areas. These findings have helped improve the methodology used to measure poverty, among other outcomes. With no existing FOIA in Costa Rica, civil society and the academia have had to lean on other arguments and legal provisions to support their requests for public information, such as court resolutions and other laws that guarantee the right to information in the country.

The first reaction from participants was that social audits are quite common in the three Learning Alliance regions. They can take different forms, pursue various objectives and achieve different outcomes: from introducing the issue of access to information onto the public agenda, such as in Ghana, to achieving long-lasting change in government actions. Several common challenges to social audits were identified, aside from political reluctance and manoeuvring in order to avoid obligations. These include legal restrictions preventing civil society organisations from assessing public information in Ethiopia and South Africa, a lack of financial and technical capacity amongst civil society groups, a lack of awareness on the links between secrecy and corruption, and between corruption, poor service delivery and job creation, such as in South Africa. Several strategies for tackling these challenges were mentioned by participants, including raising awareness of the right to information at the grassroots level through education and training and by involving communities in social assessments. Similarly, participants highlighted the possibility of using appeal mechanisms (where these exist) to force public institutions to comply with their obligations. CSO coalitions, the use of ICTs to make information available to the general public and the involvement of the media to pressure public institutions were also named as key strategies for maximising the impact of social audits.



Part 2: Strategic Litigation and Court Decisions as Means to Enforce the Right to Information and Transparency in the Absence of a Specific Legal Framework

This discussion focused on strategic litigation related to access to public information. Strategic litigation refers to an appeal made to a court with the aim of achieving structural reforms in public institutions and legislation, and is common practice in Latin America. The case of the Argentinean Association for Civil Rights (ADC) kick started the conversation. The ADC used strategic litigation to gain access to the official methodology used for estimating the Consumer Price Index. Consequently, the ADC accused the government of falsifying inflation rates, key for measuring the real national poverty index. The case also triggered debates in the country regarding the most accurate ways to calculate inflation and on the need to improve statistics and access to public information policies. The knowledge materials and discussions between LEA participants showed that different objectives can drive strategic litigation, such as generating public debate on a relevant issue, encouraging debate amongst key decision makers, generating new legislation, gaining a favourable resolution that benefits specific groups (usually marginalised or vulnerable), and clarifying the mandate of public agencies when this is not clear. Some participants stated that strategic litigation could provide a great alternative to lengthy and complex advocacy and networking processes in countries like Ghana. Several challenges to strategic litigation were identified by participants, as well as strategies to overcome these obstacles. First, slow judicial systems, like in Ghana, could make strategic litigation a very lengthy and costly process both in terms of financial and human resources. In Mexico, for instance, only a few civil society organisations have the resources to litigate. Participants agreed that a possible way to tackle this challenge could be to build strong coalitions. Second, the fact that judges sometimes fail to acknowledge the right to information as a fundamental right might constitute a challenge to strategic litigation, as has been the case in Peru. This can be tackled by involving other actors, especially universities, to show judges that these cases are emblematic and can serve as precedents. Some participants asserted that enforcing court orders and settlements can represent a significant challenge, especially in Nigeria, and requires constant monitoring of court decisions. Finally, a good communication strategy is needed to get the media interested and involved.



Lessons Learned

- Strategic litigation can serve as a means to pursue enforcement of the right to information and open up public and political debate around transparency, access to information and the obligations of public authorities
- Civil society organisations carrying out social audits and strategic litigation are more likely to push through changes if they have the technical capacity to assess public policies and programmes and engage in strategic litigation, come up with specific recommendations, engage relevant stakeholders and design an advocacy and communication strategy
- Strategic litigation should be combined with other strategies, such as applying political pressure through the media or advocacy work

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FIND OUT MORE FROM [ELLA](#)

To learn more about Citizen Oversight in Latin America, visit the [ELLA website](#), which has a full list of the knowledge materials available on this topic. To learn more about other development issues, browse other [ELLA Themes](#).

Daniela worked with the following experts during this LEA. All can be contacted through the ELLA project coordinator, Janet Oropeza, Researcher at Fundar, janet@fundar.org.mx.

[The Current Situation in Latin America Regarding Access to Information](#)

- María Sánchez de Tagle, lawyer working at Fundar in the Area of Analysis and Strategies from a Legal Perspective and former lawyer in the Inter-American Court of Human Rights
- Karina Banfi, Executive Secretary of the Regional Alliance for Freedom of Expression and Information

[National Legal Frameworks as the Foundation to Realise the Right to Information](#)

- Atzimba Baltazar Macías, Programme Officer for the Mentoring Government Capacity for Budget Transparency and Participation Programme of the International Budget Partnership

[The Role of Civil Society in Using and Strengthening the Right to Information](#)

- Alvaro Herrero, Executive Director of ADC
- Ana Joaquina Ruiz Guerra, former Fundar Researcher on the Farm Subsidies Project, consultant in transparency and access to information and doctorate candidate

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