

**Civil Society Follow-Up Strategy to the Implementation  
of the Quebec Plan of Action**

**MERCOSUR REPORT**

**(Argentina, Brazil, Chile, Paraguay and Uruguay)**



**CITIZEN PARTICIPATION IN THE SUMMIT OF THE AMERICAS**

# **Civil Society Follow-Up Strategy to the Implementation of the Quebec Plan of Action MERCOSUR REPORT**

## **Coordinating Agency**



## **Supporting Agencies**

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Inter-American Development Bank (IDB)  
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Corporación Andina de Fomento (CAF)

The opinions expressed in this document do not necessarily reflect those of the Organizations supporting the Project, neither of its bodies or of its staff nor that of the Member States of these Institutions.

### **Project Citizen Participation in the Summit of the Americas**

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## I. INTRODUCTION

The present report is in line with the Project Citizen Participation in the Summit of the Americas. In its coordination efforts, PARTICIPA Corporation works in alliance with the Canadian Foundation for the Americas (FOCAL), the Regional Coordinator for Economic and Social Research for Central America and the Caribbean (CRIES), Universidad de Los Andes from Colombia, the Latin American Faculty of Social Sciences (FLACSO) of Chile and the Inter-American Democracy Network (IADN). This project started seven years ago and, at present, involves Civil Society Organizations (CSOs) from 21 countries of the Americas.

The Project seeks to educate citizens and CSOs on the Summits of the Americas processes, on the commitments undertaken by the Governments during the Summits meetings, and on how these processes are linked to the development of the countries and to the life of its citizens. It also aims at supporting efforts to influence governments in the fulfillment of the commitments they undertake.

During this six working years, two Summits of the Americas have taken place. For the Second Summit of the Americas held in Santiago, Chile (1996) the project organized two Hemispheric-wide meetings with the participation of representatives of the government, Civil Society Organizations and multilateral agencies from 34 countries. They contributed noteworthy proposals on the thematic areas of Education, Strengthening of Civil Society, the Role of Women in Eliminating Poverty and Discrimination and the Fight against Corruption. Several proposals presented by CSOs were incorporated to the Plan of Action of Santiago. For the Third Summit of the Americas, held in Quebec (2001), PARTICIPA (Chile), FOCAL (Canada) and the Esquel Foundation (USA) carried out a consultation process involving 900 Civil Society Organizations from 17 countries and formulated 243 proposals to the Summit of Quebec. More than half of these proposals were incorporated into the Final Plan of Action.

Between July 2002 and March 2005, the "Civil Society Follow-up Strategy to the Implementation of the Quebec Plan of Action" is being carried out to provide follow-up and promote the fulfillment of the Quebec Plan of Action in the thematic area of strengthening democracy. This will be undertaken through the enhancement and broadening of citizen participation with a network of CSOs designing and applying outreach and advocacy mechanisms at the Hemispheric, regional and national levels.

The selected topics to provide follow-up and support the implementation of the Plan of Action are:

- 1) Access to information
- 2) Freedom of expression
- 3) Local government and decentralization
- 4) Strengthening of civil society
- 5) Judicial reforms and access to justice

For this follow-up process a methodology was devised which permitted the use of quantitative and qualitative sources of information. A set of indicators for each of these topics was defined and on their bases questionnaires were designed for gathering information on the level of fulfillment of the Quebec mandates in each of the countries. For the topics of access to information, freedom of expression, access to justice and the autonomy of the Judiciary, questionnaires that had been applied to a group of experts, were used. For local governments and decentralization, the questionnaires were addressed to Municipal authorities as well as

representatives of CSOs working for the Municipalities. Lastly, in the case of civil society participation, the questionnaires were applied to representatives of Civil Society Organizations trying to include a wide diversity of organizations. To this end, the main topics of their agendas, their size and their coverage was examined<sup>1</sup>.

From the results achieved, recommendations and suggestions were prepared to support the implementation of the mandates in these topics.

The results of these initiatives will be widely disseminated, as well as being used to actively support efforts to incorporate the recommendations into the final document of the Special Summit of Mexico to be held in January 2004 and in the Summit of the Americas in Buenos Aires in the year 2005.

Following we present the main results achieved in the MERCOSUR region, formed by Argentina, Brazil, Chile, Paraguay and Uruguay, for each one of the following topics:

- 1) Access to information
- 2) Freedom of expression
- 3) Local government and decentralization
- 4) Strengthening of civil society
- 5) Judicial reforms and access to justice

The presentation of these results is divided into legal subjects and into practical issues<sup>2</sup>.

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<sup>1</sup> For additional information on sources of information used in each of the countries, please refer to the national reports in [www.sociedadcivil.org](http://www.sociedadcivil.org)

<sup>2</sup> For more information on the results by country, please consult the national reports, by country, at [www.sociedadcivil.org](http://www.sociedadcivil.org)

## II. RESULTS

### 1. ACCESS TO INFORMATION

#### 1.1. Quebec Plan of Action Commitments

The Plan of Action<sup>3</sup> establishes that the countries "will work together to facilitate cooperation among the national institutions responsible for guaranteeing (...) free access to information, with the aim of establishing best practices to improve the administration of information held by governments about individuals, facilitating citizens' access to this information".

#### 1.2 Results

##### a) Legal aspects

The right of access to information is legally recognized in all the countries of the region. This right is guaranteed by the Constitution and, in some cases, special national laws are in force. Account should be taken of the fact that the level of legal rules varies from country to country: in Argentina it is based on a decree issued by the current President, H.E. Mr. Néstor Kirchner. Notwithstanding, the MERCOSUR countries have signed international treaties to protect the right of access to information. Among these, mention can be made of the Inter-American Commission on Human Rights (better known as the Pact of San José de Costa Rica of 1969), and the Declaration of Chapultepec, 1994.

**Table No. 1: Existence of constitutional references on access to information, by country**

|   |                                      | COUNTRY   |        |       |          |         |
|---|--------------------------------------|-----------|--------|-------|----------|---------|
|   |                                      | Argentina | Brazil | Chile | Paraguay | Uruguay |
| Existence of constitutional references on access to information | Free access to information           | ✓         | ✓      | ✓     | ✓        | ✓       |
|   | Petition of Habeas Data <sup>4</sup> | ✓         | ✓      | x     | ✓        | x       |
| Total <sup>5</sup>  |                                      | 2         | 2      | 1     | 2        | 1       |

In those countries where no special national law is in force (Argentina, Paraguay and Uruguay), several legislative initiatives are being suggested to promote the enactment of a law guaranteeing access to information. These initiatives include discussions in Parliament of Bills guaranteeing and regulating in an appropriate manner access to information. The case of Argentina is highlighted as in this country this initiative stemmed from Civil Society Organizations.

<sup>3</sup> The Quebec Plan of Action can be accessed at [www.oas.org](http://www.oas.org)

<sup>4</sup> Habeas Data follows from the right of freedom of information. It provides the citizen the opportunity to request information kept in government and private data banks. It not only obliges the State to facilitate the person access to the information, but also the person can request the rectification, update or even destruction of the personal data registered in public or private data bases.

<sup>5</sup> x=0, ✓=1. This value is applied to all tables using these symbols.

**Table No. 2: Legislative initiatives and setbacks shown on material relating to freedom of information, by country.**

| Country          | Main legislative initiatives on freedom of information  | Recent setbacks shown on material relating to freedom of information   |
|------------------|---|--|
| <b>Argentina</b> | Bill on freedom of information (2002)   |  |
| <b>Brazil</b>    | Federal Constitution of 1998, subsections XIV and XXXIII of article 5, establishing the right of citizens of access to information<br>Law 8159/91 ensuring public access to official documents                                    | Bill preventing public servants from disclosing information  |
| <b>Chile</b>     | Law on Administrative Integrity (1999), Decree No. 26 of the Ministry of General Secretariat of the Presidency (2001). This Law gives the base for the administrative policies governing the bodies of the Administration (2003). | Ruling on Secrecy and Exceptions of the Acts and Documents of the Administration (2001)  |
| <b>Paraguay</b>  | Law enforcing transparency in the Administration, repealed in 2001, amendments to the Law on Private Information protecting access of the media to this information (2002)  | Bill on access to information repealed in 2001, Civil Society Organizations are working to present a new Bill to Parliament during this year |
| <b>Uruguay</b>   | Bill on the right of access to public registers (1998), Bill of petition of Habeas Data and access to information (2002).   |  |

Some of the main **positive aspects** embodied in the Constitutions or laws guaranteeing this right are:

- They establish the Principle of Transparency and Publicity
- The information can be requested by any citizen
- Information requests must not necessarily state the motive for which the information is solicited
- Officials withholding information will be held accountable

From the information given by the above table it can be concluded that the country enjoying the best legislation on access to information is Paraguay since it covers a wide range of aspects. Argentina, on the other hand, is the country where legislation on this subject is less advanced.

**Table No. 3: Characteristics of the laws that regulate Access to Information, by country**

| The legal norms that govern access to information establish that:  | COUNTRY   |        |       |          |         |
|--|-----------|--------|-------|----------|---------|
|  | Argentina | Brazil | Chile | Paraguay | Uruguay |
| 1. Information held by the State can be requested by any person.   | ✓         | ✓      | ✓     | ✓        | ✓       |
| 2. Information requests must not necessarily state the motive for which the information is solicited.  | ✓         | ✓      | ✓     | ✓        | ✗       |
| 3. The government is obligated to provide all the requested information that it holds, with exceptions that are specifically specified.  | ✓         | ✓      | ✓     | ✓        | ✓       |
| 4. The cases in which the State is not allowed to provide information (e.g. protection of privacy or national security) are stated in a clear and explicit manner.                                 | ✓         | ✓      | ✓     | ✓        | ✓       |
| 5. Exceptions to the principle of public access to information have been reduced to the bare minimum.  | ✗         | ✗      | ✗     | ✓        | ✗       |
| 6. The legal system has the authority to exercise oversight in all cases of exception to the principle of public access to information   | ✗         | ✗      | ✓     | ✓        | ✓       |
| 7. When a document contains a combination of both permitted and restricted information, the permitted information must be provided upon request.   | ✗         | ✗      | ✓     | ✓        | ✓       |
| 8. The principle of public access to information held by the government serves as a guide to interpret the law when specific cases come up.  | ✓         | ✓      | ✓     | ✓        | ✓       |
| 9. Short time periods have been established for responses from offices where information has been requested.   | ✓         | ✓      | ✓     | ✓        | ✗       |
| 10. When information has been unjustifiably denied, the legal system can be used as a means of recourse.   | ✓         | ✓      | ✓     | ✓        | ✓       |
| 11. Persons requesting information can resort to the legal system in order to receive an explanation from the State regarding unnecessary delays   | ✓         | ✗      | ✓     | ✓        | ✓       |
| 12. Clear responsibilities are established for officials providing information as well as clear sanctions for those that withhold information without sufficient justification.                    | ✓         | ✓      | ✓     | ✓        | ✓       |
| 13. The right to request information includes the right to duplicate the requested information.  | ✗         | ✓      | ✓     | ✗        | ✓       |
| 14. The costs established by the State for the search and duplication of the information must not exceed a "reasonable" amount, which in the last instance will be determined by the legal system. | ✗         | ✗      | ✓     | ✗        | ✓       |
| 15. Laws which do not comply with the principle of maximum access to information have been modified or eliminated.   | ✗         | ✓      | ✗     | ✓        | ✗       |
| <b>Total</b>   | 9         | 10     | 13    | 13       | 10      |

The main **negative aspects** found in the Constitutions or laws guaranteeing this right are:

- The law providing access to information is the same one that presents obstacles for its application, given the fact that the body from whom the information is requested can, in certain cases, withhold this information on grounds of secrecy and exception instances.
- Some of the reasons for withholding information are the prerogative of the Administration. Not only is the law the body that establishes reasons for refusing information, but this faculty also applies to the government of the day, who by decreeing a set of exceptions, can fail to comply with the general rule.
- The set of rules regulating access to information are not contained in a single body of law. It is therefore necessary to make an effort to systematize and elucidate the legal regulations to find the legal framework regulating this right.
- The legal system does not have the authority to exercise control over the exceptions to access to information
- The costs established by the State for the search and duplication of information exceed "reasonable" amounts
- Laws which do not comply with the principle of maximum access to information are not modified nor eliminated
- The rules on access to information do not specifically refer to all State bodies: in some cases the Judiciary or the Legislative Power are not included.

## 2. Availability of information in practice

Even though some progress has been made in the processing and publishing of laws regulating the principle of access to information, in practice they are not effective and, therefore, citizens do not have access to information held by the State. The results of the research show that in the majority of cases there is no real availability of information for the citizens, especially that related to public finances and to finances of private companies providing public services.

**Table No. 4: Real Availability of Information**

| Real availability of information   | COUNTRY   |        |       |          |         |
|--|-----------|--------|-------|----------|---------|
|  | Argentina | Brazil | Chile | Paraguay | Uruguay |
| <b>Public finance</b>  |           |        |       |          |         |
| 1. Government spending   | x         | x      | ✓     | x        | ✓       |
| 2. Public contracts with private sector (bids)                           | x         | ✓      | ✓     | x        | ✓       |
| 3. Economic measures (e.g., privatizations and international agreements) | ✓         | ✓      | ✓     | x        | ✓       |
| <b>Activities by public and other senior officials</b>                   |           |        |       |          |         |
| 4. Public servants' income   | x         | x      | x     | x        | ✓       |
| 5. Public servants' assets   | x         | ✓      | ✓     | x        | x       |
| 6. Voting in Parliament  | x         | ✓      | ✓     | ✓        | ✓       |
| <b>Results of Government activities</b>                                  |           |        |       |          |         |
| 7. Levels of poverty and inequity  | ✓         | ✓      | ✓     | ✓        | ✓       |
| 8. Students' achievements and other educational indicators               | ✓         | ✓      | ✓     | ✓        | ✓       |
| 9. Health care and other health indicators                               | ✓         | ✓      | ✓     | ✓        | ✓       |
| 10. Accusations of police abuse and use of excessive force               | x         | ✓      | x     | ✓        | ✓       |

|  |   |   |   |   |   |
|--|---|---|---|---|---|
| 11. Accusations of human rights violations   | ✓ | ✓ | ✓ | ✓ | ✓ |
| <b>Support for vulnerable groups</b>   |   |   |   |   |   |
| 12. Sources of support for victims of domestic violence and sexual abuse           | ✓ | ✗ | ✓ | ✗ | ✓ |
| <b>Accounting, audits and finances of private firms providing public services</b>  |   |   |   |   |   |
| 13. Performance indicators of public or private firms that provide public services | ✗ | ✗ | ✓ | ✗ | ✗ |
| 14. Price and quality of consumer products   | ✗ | ✗ | ✗ | ✗ | ✗ |

In a comparison by countries, Table No. 4 shows that Chile and Uruguay are the ones offering better availability of access to information, while in Argentina and Paraguay the possibilities of access to information are low and important obstacles exist to gain access to this right.

With the aim of verifying if the various government departments responded positively to the requests for information of the citizens, the research team carried out a practical exercise, assessing that there is no real access to public information for citizens as the majority (over 65%) of government offices did not provide the data requested. For example, in Chile information was requested from 14 governmental offices and only five replied to the request, in Argentina 17 departments were approached and only 2 answered, while in Uruguay data was solicited from 14 offices and only one responded.

Finally, an important aspect to consider is the availability of Internet. In this context, the governments have used the instruments provided by this system to make available to the citizens relevant information. Even though Internet has contributed significantly to the socialization and democratization of information, it is necessary to develop this topic even further and to improve the quality of the information offered on the websites.

For example, in Argentina most of the offices of the Government at the National and Provincial levels offer a website of very different quality and the majority of the sites only offer information of an institutional character.

In Brazil a great number of websites are available, nevertheless their quality is not always adequate because, even though, they offer enough information, people do not know how to access it.

In Chile during the last years websites in Internet belonging to State organisms have spread especially at the level of the Central government, while decreasing for regional governments and municipalities. Most of the information offered on these websites is mediocre.

In Paraguay, most of the Ministries run a website. The Municipalities and Departments have little or no information available, but an opening-up process is underway where the Civil Society Organizations have an important role to play.

In Uruguay, the quality of websites at the National and Central Government level is good, nevertheless it worsens at the City Council level. Modernization programmes are being supported by the State, comprising a vigorous process to enter on the website all information relating to the use made of State resources.

## 1.3 Proposals

To progress on this topic, we propose

- To promote the passing of laws guaranteeing free access to information, in those countries where they are not available. For those countries where the law exists, improve its application so that citizens are guaranteed effective and timely access to information.
- Guarantee that Public Services comply with the current legislation on access to information so that citizens are guaranteed effective access.
- Educate and raise awareness in citizens and public officials in the exercise of this right in order to reduce the gap between those who rule and those who are ruled.
- Extend the use of official websites at the regional and local spheres to increase public institutions' transparency in the contracting processes at these levels, as well as to enhance accountability of government institutions.

## 2. FREEDOM OF EXPRESSION

### 2.1 Plan of Action Commitments

The Plan of Action<sup>6</sup> declared that governments will *"ensure that national legislation on freedom of expression is applied in an equal manner to all, respecting this liberty and access to information for all citizens, and for States to ensure that journalists and opinion leaders are free to investigate and publish without fear of reprisals, harassment or vindictive actions, including the misuse of anti-defamation laws"*.

### 2.2 Results

#### a) Legal aspects

The right of freedom of expression has a legal standing in the five countries of the region, either in the Constitution or by special laws. Furthermore, the countries have signed international treaties to protect this right. Among them, mention can be made of the Inter-American Commission on Human Rights known as the Pact of San José de Costa Rica of 1969 and the Declaration of Chapultepec of 1994.

Individuals and institutions have recourse to the Inter-American Commission on Human Rights (IAHCR) when the right of freedom of expression has been violated. During the period 2001-2002, at least two accusations were presented to this Commission by the countries of the region. Paraguay is the country presenting the largest number of accusations, totalling 14 cases.

Both in Chile and in Uruguay, legal impediments restricting freedom of expression still exist, among them the "desacato" laws to protect the honor of public funcionarios acting in their official capacity. This unjustifiably grants a right to protection for public officials that is not available to other members of society.

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<sup>6</sup> The Quebec Plan of Action can be accessed at [www.oas.org](http://www.oas.org)

The "desacato" laws were repealed in Argentina in 1993. In Uruguay, demands have been made to the government requesting its elimination<sup>7</sup>, and in Chile a derogatory project for these rules is being discussed in Parliament. The same rules and regulations can be found in Brazil.

As an example, mention can be made in Chile of the case filed in the year 2001 against Eduardo Yañez, panelist in a televised program who, after listening to the testimonies of citizens who had been traumatized by judicial errors and had been denied compensation, expressed his opinion of the Chilean legal system stating that it was "immoral", "cowardly" and "corrupt" and that the action taken showed "unmanliness" and was a betrayal<sup>8</sup>. The cause was opened by initiative of the Supreme Court, and Mr. Yañez was charged on one of the norms of "desacato" of the Penal Code<sup>9</sup>. The defendant appealed to the Inter-American Commission on Human Rights, which manifested its concern for the constant use of these norms in Chile. In September 2002, and due in great part to the Yañez Case, the Government sent to Congress a Bill to repeal these norms<sup>10</sup>. In April 2003, Yanez was acquitted by the Court of Appeals of Santiago.

In general, the punishment for this kind of offense is light, alternating between imprisonment or payment of a fine. Often, this second option is the one applied.

The existence of these rules in the national legislation, together with the attitude of some magistrates, have been a key factor in supporting actions intended to restrict this right. Example of these acts are the action taken against journalists and opinion leaders for expressing dissident views, the constant threats to journalists, in some cases, assassination threats, confiscation of materials and censorship applied to programs. In general, the journalistic milieu is seen as a space where implicit pressures are applied leading to a series of distortions in the free exercise of journalism, i.e., loss of independence, deprivation of creativity, and loss of the right to dissent or to criticize.

In this regard even if there are current international treaties in the five countries studied, national legislations do not reflect what these treaties support, therefore barriers to freedom of expression are set up. For example, the concept of censorship is ruled out by the Inter-American Commission on Human Rights, nevertheless both in Chile and in Uruguay censorship instances have occurred in the past three years. Furthermore, the Commission has repeatedly stated that "desacato" laws violate the principles of the Commission; but they are still operative.

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<sup>7</sup> In October 2003, the trade unions of the media of MERCOSUR demanded to the Government of Uruguay the repeal of the legislation which sanctions "desacato" laws

<sup>8</sup> "Con la sogá al cuello", newspaper El Mercurio, January 13, 2002, page D-12.

<sup>9</sup> "Procesan por desacato a panelista de TV", newspaper El Mercurio, January 16, 2002, page C-1.

<sup>10</sup> See Human Rights Watch, Annual Report 2003, events of the year 2002, Chile.

**Table No. 5: Existence of constitutional references to freedom of expression, norms regarding contempt of court, and court decisions restricting freedom, by country**

| Country   | Constitutional references on freedom of expression | Norms regarding contempt of court | Court decisions that restrict freedom of expression <sup>11</sup>   |
|-----------|--|-----------------------------------|---|
| Argentina | Yes  | No                                | Yes, the Newspaper El Día was sentenced for the publication of an article   |
| Brazil    | Yes  | Yes                               | Yes, censorship applied by the Court to a newspaper to avoid the publication of information on the death of 3 journalists (2002)  |
| Chile     | Yes  | Yes                               | Yes, application of the "desacato" law to a TV panelist (December 2001)   |
| Paraguay  | Yes  | No                                | Yes, charges against a journalist of the newspaper ABC Color de Concepción (September 2001). Prior censorship by the government of the day to a TV program, this measure was later suspended. |
| Uruguay   | Yes  | Yes                               | Yes, accusation for defamation and slander against the journalist and Director of the weekly publication "Década de Santa Lucía" (April 2002).  |

## 2. Freedom of expression in practice

The general trend indicates that in the five countries studied there is a heavy concentration of media ownership reflected in the existence of "holdings" owning several media conglomerates; nevertheless in Uruguay a deconcentration pattern is appreciated. The media is in the hands of large economic groups who, in general, do not represent the ideological differences present in these countries. One of the main causes for this concentration phenomenon is that in the countries of the region no law regulating this issue is in force (Argentina, Brazil, Uruguay), or it is not fully operative.

The case of Brazil is the most dramatic of the region as, apart from having to tackle the problem of concentration of ownership, the media coverage is very restricted. As an example, newspapers have a daily circulation of 8 million copies for a population reaching 170 million inhabitants.

**Table No. 6: Ownership of the media, by country**

| Concentration of ownership | COUNTRY      |              |              |              |                               |
|----------------------------|--------------|--------------|--------------|--------------|-------------------------------|
|                            | Argentina    | Brazil       | Chile        | Paraguay     | Uruguay                       |
|                            | Concentrated | Concentrated | Concentrated | Concentrated | In process of deconcentration |

<sup>11</sup> Even though there are numerous cases on Court decisions restricting freedom of expression in the five countries, only one example per country will be given here. For additional information, please check the National Reports at [www.sociedadcivil.org](http://www.sociedadcivil.org)

Relating to the possibility that the local and ethnic communities, national groups or others may have their own communications media, the national legislation grants this opportunity. Nevertheless, the costs implied in running this undertaking prevent this possibility from becoming a widespread reality. Likewise, the same concentration of ownership of the media entails a barrier which restricts the access.

## 2.2. Freedom of expression by citizens

Citizens can express themselves freely, and this right is respected. Repression is exercised by the Public Force in public demonstrations, although in very precisely demarcated situations and appropriate measures have been taken to investigate and deal with the problem. The consensus is that this repression is exercised when the groups demonstrating do not respect the limits enforced by the authorities (granting or not granting of permission, spaces to be occupied which have been previously demarcated, etc.).

**Table No. 7: Existence of cases that restrict freedom of expression**

| Existence in the period 2001 – 2002 of                                       | COUNTRY   |        |                 |          |         |
|--|-----------|--------|-----------------|----------|---------|
|  | Argentina | Brazil | Chile           | Paraguay | Uruguay |
| Legal procedures against journalists based on limiting freedom of expression | x         | ✓      | ✓               | ✓        | ✓       |
| Assassination of journalists due to their work                               | x         | ✓      | x               | x        | x       |
| Exile or displacement of journalists because of their work                   | x         | x      | ✓ <sup>12</sup> | x        | x       |
| Obstruction in the dissemination of information                              | x         | ✓      | ✓               | x        | ✓       |
| Confiscation of publications   | x         | x      | ✓               | x        | x       |
| Threats against journalists  | ✓         | ✓      | ✓               | x        | ✓       |
| Pressures on the media because of the content of their programs              | ✓         | ✓      | ✓               | ✓        | ✓       |
| Censorship of media or others  | x         | ✓      | ✓               | x        | x       |
| <b>Total</b>   | 2         | 6      | 8               | 2        | 4       |

In relation to the difficulties experienced by journalists on account of their work, only Argentina presents no indictment cases against members of the press due to limitation of the freedom of expression. In all countries, pressure has been exerted on the media on account of the content of their programs. Journalists in Argentina, Chile, Paraguay and Uruguay have suffered intimidation.

Chile is the country showing the largest number of impediments to the right of freedom of expression where, besides obstacles faced by journalists in the exercise of their duties, there are cases of censorship of works and confiscation of publications

<sup>12</sup> This case refers to the incident of Alejandra Matus whose book "El Libro Negro de la Justicia Chilena" was confiscated and banned. When she learned of her imminent arrest, she left the country for Buenos Aires and then the United States.

## 2.3. Proposals

To progress on this topic, we propose:

- To ensure that national legislation on freedom of expression is consistent with international standards. To specifically remove the practice of censorship in any of its forms, faithfully observing the mandates of the Inter-American Commission on Human Rights.
- Raise awareness in legal authorities on subjects relating to freedom of expression and jurisprudence related to similar matters through an advanced course and a vocational training course.
- To promote a process of reforms to the existing legal framework whereby monopolies are restricted, in order to eliminate the risks of concentration of ownership.
- To ensure that the national legislation in every country guarantees freedom of association and the expression of cultural and artistic manifestations, as well as the possibility of minority groups having freedom of expression.
- Set up channels, apart from the Judiciary, through which complaints can be lodged against abuses or violation of freedom of expression and which guarantee journalists and opinion leaders the possibility of investigating and publishing without fear of reprisals.

## 3. LOCAL GOVERNMENT AND DECENTRALIZATION

### 3.1. Plan of Action Commitments

The Plan of Action establishes<sup>13</sup> *"in recognition that adequate citizen participation and political representation constitute the foundations of democracy, and that local governments have a more significant presence in the daily lives of citizens, the governments will:*

*"Promote mechanisms to facilitate citizen participation in political life, especially in local or municipal governments"*

*"Promote the development, autonomy and institutional strengthening of local governments, to help create favorable conditions for the sustainable economic and social development of their communities".*

### 3.2. Results

The characteristics of local governments<sup>14</sup> vary according to each country since in each of of them the politico-territorial division is different. For example, from the politico-territorial standpoint the Uruguayan State is organized as a unitary State divided in 19 departments. These departments are equivalent to the provinces in a federal system. Argentina is a country

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<sup>13</sup> The Quebec Plan of Action can be found at [www.oas.org](http://www.oas.org)

<sup>14</sup> Local government is defined as the elected or appointed responsible organisms for a unit of the territory, contemplated in the politico-administrative division of a country.

with a federal structure. This means that there are three levels of government: the national federal, the provincial and the municipal.

Each country has laws regulating local governments. These laws establish, among others, their powers, functions and electoral system. In general, Local Governments are autonomous.

## 1. Autonomy of Local Governments

### a) Mechanisms to elect authorities

In general, there are two systems for the election of authorities:

- i) authorities are appointed
- ii) authorities are elected by the citizens through a secret and universal casting of vote

The second is the most widely used mechanisms. Only in the case of Argentina, can one find some Local Governments using the first system. The decision on which mechanism to apply depends on the rulings of the Constitution applicable to Local Governments in each individual country.

### b) Local Government Tasks

The different set of rules administering Local Governments in each of these countries establishes that the powers bestowed on them are those relating to the management and development of the territory they govern, as their aim is to satisfy the needs of the local community and ensure its participation in the economic, social and cultural progress of the borough.

To reach this objective, the main powers entrusted to the Local Governments are:

- To execute a local development plan and the necessary programs for its realization
- To elaborate, approve, modify and execute the local budget
- To organize and provide public services of local importance
- Area management
- Protection of the historico-cultural heritage

**Table No. 8: Local Government tasks, by country**

| Country          | Local government tasks  |
|------------------|---|
| <b>Argentina</b> | The functions proper of each Local Government depend on each province. Functions are outlined in the Ley Municipal Orgánica (Municipal Organizational Law)  |
| <b>Brazil</b>    | The principal tasks established by the Federal Constitution are: organize and provide public services of local necessity, mainly public transport, education, health, area management and protection of historico-cultural heritage.  |
| <b>Chile</b>     | According to the Ley Orgánica Constitucional de Municipalidades (Constitutional Organizational Law of Municipalities), their functions are: <ul style="list-style-type: none"> <li>- execute the communal development plan and the programs required for its implementation</li> <li>- elaborate, approve, modify and execute the municipal budget</li> <li>- administer municipal and national assets of public use</li> </ul> |

|                 |   |
|-----------------|---|
|                 | - dictate compulsory resolutions of a general or specific character, among others   |
| <b>Paraguay</b> | Chapter III of the Ley Orgánica Municipal de la Intendencia Municipal (de la Autonomía) (Municipal Organizational Law on the Autonomy of the Local Government) establishes:<br>Art. 11: The Municipalities are autonomous in the political, legal, economic and administrative spheres. Said autonomy will be exercised in accordance with the terms of the National Constitution and of this law.<br>Art. 12: The bylaws, rules and resolutions adopted by the Municipalities can be repealed only in accordance with these regulations.<br>Art. 13: No State institution can take over Municipal income or properties and other assets, but only in accordance with these regulations.<br>Art. 14: The Municipalities shall not lose their sources of income, unless other sources are assigned to them.<br>Art. 15: The Municipalities are not forced to collect taxes, but only in accordance with the law.<br>Art. 16: Members of the Municipal Council, the Mayor or any other staff cannot be suspended or separated from office, but only in accordance with the law. |
| <b>Uruguay</b>  | The functions of the Local Governments are multiform. Among the public services they offer, mention can be made of the setting up and maintenance of urban infrastructure, roads in rural zones and the sanitation network.   |

### c) Autonomy in the administration of finances

The autonomy of Local Governments in the administration of finances is sanctioned by the laws of the given country.

The main sources of financing of Local Governments in the region are:

- Remittances from the Central Government (for Argentina remittances come from the Provincial Governments).
- Collection of taxes or licence fees
- Payment for services
- Others

**Table No. 9: Existence of a tax redistribution system, by country**

| <b>Country</b>   | <b>Existence of a tax redistribution system</b>  |
|------------------|--|
| <b>Argentina</b> | Yes, National Law 23.548 stipulates the Federal Redistribution of Taxes, resolving that the Government must distribute the income collected from taxes among the 23 provinces and, that they in its turn, must establish their own Redistributing Law towards their municipalities |
| <b>Brazil</b>    | Yes, there is a law defining redistribution of taxes. This law states that 5% of the income received from taxes must be redistributed to the municipalities. Furthermore, other funds are distributed according to the number of inhabitants of each local government              |
| <b>Chile</b>     | Yes, Art. 169 of the property tax states that 70% of the the amount collected by each municipality will stay in their coffers, 15% will go to the respective department and the remaining 15% will be redistributed among the municipalities having less resources.                |
| <b>Paraguay</b>  | Yes, the Municipal Organizational Law establishes the Tax System for the Municipalities and also empowers the Local Governments with the charging of a tax. The amount collected will be distributed among the municipalities having less resources.                               |
| <b>Uruguay</b>   | No   |

It is important to mention the existence of redistribution systems directed towards the compensation of income inequalities among the different Local Governments. This system operates in Argentina, Brazil, Chile and Paraguay. For the Chilean case, this fund called "Fondo Común Municipal" (Common Municipal Fund), formed in its entirety by municipal contributions (no financial support from the central State), constitutes the main source of financing of Local Governments in this country.

#### **4. Legal modifications geared towards supporting decentralization**

For the last ten years legal modifications aimed at supporting decentralization have been implemented in the areas of administrative flexibility, supervision, citizen participation and financing<sup>15</sup>.

For example, in Argentina, in the reform to the National Constitution of 1994, Art. 123, it was promulgated that the provinces in their own constitutions must seek recognition of the municipal autonomy, regulating its scope and content in the institutional, political, administrative and financial spheres which, in turn, must be reflected in the Municipal Organizational Law of each locality.

In the year 2000, Brazil promulgated laws relating to decentralization. An example at the municipal level is Law 13.399/02 applicable to São Paulo, proposing the creation of sub- Town Councils. Furthermore, there is Law 10257/01, dealing with the managing of the Municipality focusing on urban aspects (2001).

In Chile several amendments have been introduced to the Constitutional Organizational Law of Municipalities to promote decentralization. The last modification took place in June 2001. The following modifications can be emphasized:

- The faculty of the Municipalities to create or eliminate posts, to determine remunerations and to establish the organisms sanctioned by the law.
- To incorporate concepts on municipal planning and broadening of competence in the different areas.
- Proposal to make more flexible contracting and remunerations systems.
- Approval of the amendments introduced to the Income Law.
- Incorporation of the bylaw on citizen participation, an information and complaints bureau and more detailed statements of the public account.

In Paraguay a group of civil society organizations are working together with the Asociación de Gobernaciones Autónomas (Autonomous Governments' Association) in the drafting of a Bill on decentralization to be submitted to the National Parliament.

In Uruguay, in addition to the incorporation of a programmatic norm (Art.50) which constitutionally compels the State to formulate decentralization policies, a Comisión Sectorial (Sectoral Commission) has been created to execute and propose decentralization policies, and to give advice on the percentage of the total budgetary resources to be allocated to the Departmental Governments.

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<sup>15</sup> Does not apply to the case of Argentina, as this country already has a Federal structure.

### 3. Civic participation in local governments

With the exception of Paraguay, the different Constitutions require the Municipalities to establish instances of civic participation and gives the citizens the necessary instruments to ensure their participation in decision-making activities relevant to the community.

The following table provides some of the instances of participation existing in each of the countries of the region.

**Table No. 10: Instances of participation, by country**

| Country   | Instances of citizen participation <sup>16</sup>  |
|-----------|---|
| Argentina | Yes, popular consultation process in Mar del Plata and Córdoba. Practice of having local public audiences for inviting tenders for public services: water, garbage, etc. There are also isolated cases of redistribution of budgets.  |
| Brazil    | Yes, Economic and Social Community Councils. Although they have no legal foundation, there is some form of redistribution budgets in various cities. This cities depend on the political will of the City Hall and rely on a percentage of the total budget, not exceeding 20%. |
| Chile     | Yes, Economic and Social Community Councils   |
| Paraguay  | Yes, public hearings on budgetary matters   |
| Uruguay   | Yes, working committees with the participation of the community to satisfy basic needs. In some isolated cases, the practice of redistribution budgets can be found.  |

Nevertheless, the following shortcomings could be appreciated:

- In practice, the legal instruments promoting citizen participation in decision-taking processes on matters relevant to the community are not honoured.
- No proper information is disseminated on the instances of participation, therefore the community is very ill-informed on these issues.
- The citizens do not show a spontaneous interest to participate, responding only when invited.
- Local governments do not have a comprehensive policy for participation. There are instances where citizen participation is welcomed but only for the discussion of specific subjects as health, education, etc. There are no instances where these subjects are dealt with as a whole. The influence of citizens in decision-making processes is low and decreases if the Municipalities have scarce resources or are situated in very remote areas. The possibility does exist of participating in

<sup>16</sup> There are more instances for citizen participation in the local governments of these five countries. The one cited is only an example. For further information, please check the national reports at [www.sociedadcivil.org](http://www.sociedadcivil.org)

committees or working groups of different programs or projects but with almost no decision-making power.

- The possibility of influencing in decision-taking vanishes if the decisions to be made are related to the municipal budget for investment and development.

**Table No. 11: Civil Society influence on Local Governments' decisions, by country**

| Influence of Civil Society on:                               | COUNTRY   |        |        |          |         |
|--|-----------|--------|--------|----------|---------|
|  | Argentina | Brazil | Chile  | Paraguay | Uruguay |
| Budgetary decisions  | Low       | Low    | Low    | Low      | Low     |
| Consultations with local governments                         | Low       | Medium | Medium | Medium   | Medium  |
| Discussions about issues that directly affect the population | Low       | Medium | Medium | Medium   | Medium  |
| Committee work   | Low       | Low    | Medium | Medium   | Medium  |

The use of websites as instances of participation of the community in their development is low, as very few Local Governments run a website. This is not the case for Chile, where the majority of Local Governments do have a website, although they do not permit the participation of citizens in decision-making processes. These websites are mainly directed to provide information or to respond to enquiries.

**Table No. 12: Local Governments websites available for participation, by country**

| Country          | Existence of Local Governments websites available for participation  |
|------------------|--|
| <b>Argentina</b> | Yes, even though Local Governments increase their websites at a great speed, less than 10% of these governments make use of the services offered by Internet |
| <b>Brazil</b>    | Scarce, only a quarter of the municipalities run websites  |
| <b>Chile</b>     | Yes, websites decrease in communities with less resources  |
| <b>Paraguay</b>  | The majority of the Municipalities do not have a Website nor an Internet connection  |
| <b>Uruguay</b>   | Yes, great differences can be appreciated among the different municipalities   |

### 3.3. Proposals

To progress on this topic, we propose:

- To ensure that the points of view of the citizens are incorporated in all decisions taken on the development of the community. To this end, it is necessary, among other measures, to create and strengthen instances for participation through consultation with citizens, websites, annual accounts.
- Insist on strengthening the autonomy of the Municipalities to promote favorable conditions for sustainable economic and social development of their communities.
- To provide technical and institutional training to support the modernization process of local administration, particularly the generation and collection of the Municipalities' own resources.
- To educate citizens on the exercise of all their rights and responsibilities to make their participation at the local level more effective.

## **4. STRENGTHENING OF CIVIL SOCIETY**

### **4.1. Plan of Action Commitments**

The Plan of Action<sup>17</sup> establishes that governments *"Recognizing the importance of civil society's participation to the consolidation of democracy, as well as the fact that this participation is a vital element for the success of development policies", will seek to contribute to the strengthening of civil society's participation in national and hemispheric processes through the following measures:*

*"The creation of public and private financing mechanisms to help strengthen the capacity of civil society organizations (CSOs) to publicize their work and its results, as well as to promote social responsibility".*

*"The elaboration of strategies, at the national level and through the OAS, other multilateral organizations and multilateral development banks, to help increase the participation of CSOs in the inter-American system and in the political, economic and social development of their countries and communities, promoting representativeness and facilitating the participation of all sectors of society. These strategies are also aimed at increasing governments' institutional capacity to receive, integrate and incorporate civil society's proposals and contributions, especially through the use of information and communication technologies".*

### **4.2. Results**

#### **1. Laws aimed at strengthening civil society**

All the countries of the region have one or more legal framework to regulate the creation of Civil Society Organizations (CSOs) and to promote the strengthening of civil society organizations as a whole. The freedom of association and the efficient exercise of this right is guaranteed. Nevertheless, in the case of Brazil, Chile and Uruguay this is limited and does not always help the work performed by CSOs. Bureaucratic barriers are set up and Civil Society Organizations working in the public interest are positively discriminated.

The main problem faced by CSOs in these countries is the difficulty of finding financing and the absence of fiscal support for their functioning. In general, the main source of financing for these Organizations comes from the Funds Accessible by Application<sup>18</sup>.

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<sup>17</sup> The Quebec Plan of Action can be checked out at [www.oas.org](http://www.oas.org).

<sup>18</sup> The term Funds Accessible by Application applies to public processes where private organizations apply for public funds to develop socially-oriented programs. These funds are allocated after taking into account several factors, predominantly the quality of the projects introduced, the professional qualities of the team working for these projects, the areas they cover, etc.

**Table No. 13: Existence of a legal framework that regulates the formation of CSOs, by country**

| Country          | Legal framework regulating the formation of CSOs  |
|------------------|---|
| <b>Argentina</b> | The national Constitutions guarantee the right of freedom of association, while the Civil Code provides legal recognition to all forms of social organizations. Additionally, the Ley de Fundaciones (Law on Foundations) (Law 19.836) supports and regulates civil society organizations                                   |
| <b>Brazil</b>    | In Brazil, the right of freedom of association is guaranteed by the Constitution, even though the norms regulating this right are not adequate  |
| <b>Chile</b>     | No laws to strengthen civil society are available, although there are several initiatives. Several proposals have been tabled to guarantee freedom of association and the functioning of various organizations, but there is no formal recognition of the role of NGOs<br>There is a Bill, though, on citizen participation |
| <b>Paraguay</b>  | The current norm facilitates the existence and the activities carried out by CSOs. There are well-recognized  |
| <b>Uruguay</b>   | The new Law on Foundations is a step forward, in spite of its limitations (for example, the failure to consider tax exemptions)   |

**Table No. 14: Existence of public and private financial mechanisms aimed at strengthening Civil Society Organizations, by country**

| Country          | Public and private financial mechanisms aimed at strengthening CSOs   |
|------------------|---|
| <b>Argentina</b> | In Argentina the financial support for CSOs is not significant. The financing provided by the institutions to be used freely comes mainly from the private sector while the financing necessary to disseminate their ideals is mostly private   |
| <b>Brazil</b>    | When examples were requested of public and private programs to finance CSOs, 52% were provided by the public sector, while 48% (of the second and third sectors) came from private entities<br>If these percentages are divided by source of power, the federal government provides 60%, the State 19%, and the Municipal sources 11%                       |
| <b>Chile</b>     | The main source of financing is the Funds Accessible by Application (although according to CSOs, these funds are insufficient, of difficult access and lack proper information)<br>The creation of a Fondo Mixto de Fortalecimiento Institucional (Combined Fund for the Strengthening of Institutions) is being supported                                  |
| <b>Paraguay</b>  | Discriminate financing: civil society organizations constitute a varied and complex mass  |
| <b>Uruguay</b>   | As there is no unlimited support from international organizations, NGOs seek alternative financial mechanisms, therefore the State has become an important source of financing<br>For the NGOs which are part of ANONG,<br>60% of its budget comes from international organizations<br>25% is generated by the NGOs proper<br>17% comes from national funds |

Furthermore, few countries have a law permitting individuals or legal entities to make donations to CSOs and deduct these funds from their taxes. In this regard, Chile is the country where the contributions made to civil society organizations carrying out work of public interest by individuals and enterprises enjoy some recognition. In Chile, at present, a Bill is being enacted in Congress relating to the creation of a Fund, financed with public contributions for the development and strengthening of organizations that qualify as working for the public interest, for the support of dissemination of information for citizens on policies of public nature and also for backing amendments to the legal rules and regulations to facilitate the creation and association of legal entities. The Bill does not include mechanisms for a semi-direct democracy

nor does it represent a step forward in the creation of instruments for participation at the local level.

In Argentina the situation is completely different. The trend indicates that in this country neither Civil Society Organizations nor contributors financing their activities are encouraged. An example for this is the reversion of the legislation favouring donations: in the decade of the 1970s contributors could deduct up to 20% from the taxable net annual profit; today only 5% can be deducted and only for a certain type of donations, so the great part is not deductible. Furthermore, from 2003 onwards, the civil foundations and associations which conduct commercial or industrial activities will have to pay tax on their profits.

## 2. Civil Society Participation in the Inter-American system

In the region, participation of Civil Society Organizations in the Inter-American system is almost nil. This is mainly due to the lack of information on the part of CSOs about the Inter-American system. There is some interaction between CSOs and the Ministry of Foreign Affairs on subjects relating to the Inter-American system, but this system does not work properly. In no case can this interaction be termed active, as the expected role given to Civil Society Organizations is more to validate the processes carried out than to actively participate in them. Very rarely are CSOs invited to participate in official delegations representing the countries.

**Table No. 15: Incorporation of CSOs to official delegations, by country**

| Country                                       |           |        |       |          |         |
|---|-----------|--------|-------|----------|---------|
| Incorporation of CSOs to official delegations | Argentina | Brazil | Chile | Paraguay | Uruguay |
|   | x         | ✓      | ✓     | x        | x       |

**Table No. 16: Ministries of Foreign Affairs that maintain ongoing interaction with CSOs, by country**

| Country   |           |        |       |          |         |
|---|-----------|--------|-------|----------|---------|
| Ministries of Foreign Affairs that maintain ongoing interaction with CSOs | Argentina | Brazil | Chile | Paraguay | Uruguay |
|   | ✓         | ✓      | x     | x        | x       |

## 3. The relationship between Governments and Civil Society Organizations

There is no legal mechanism guaranteeing participation of CSOs in the design, execution and assessment of plans for political, economic and social development programs for the communities or the countries. An exception being the cases of the redistribution budget in which citizens participate in the selection of priority projects for the investment of local funds.

Nevertheless, it must be taken into account that the region has a number of civil society organizations who exercise both the role of civic control of public policies and also disseminate its results.

Even though there are some governmental offices that maintain ongoing interaction with Civil Society Organizations, these are not institutionalized instances, they take place occasionally and are subject to the will of the government's institutions. Furthermore they are interactions of an

informative nature and rarely the agreements or suggestions put forward in these meetings are implemented. Civil Society Organizations have no possibilities of influencing the decisions taken, especially the budget-related issues.

#### **4. Civil Society Organizations' criticisms of multilateral processes and international governmental forums**

The principal criticisms made by CSOs of these five countries' multilateral processes and international governmental forums are the following:

- Lack of information on the objectives and nature of these processes.
- Lack of mechanisms for civil society participation; there are no equal opportunities of participation for all the CSOs.
- Civil Society Organizations are convened to prepare the agenda and give a degree of legitimacy to the decisions taken by the governments.
- The agreements reached are not honoured and economic topics have priority over social and cultural subjects.

Civil Society Organizations believe that this criticism is known and accepted by the authorities, nevertheless little or nothing is done to correct this situation.

#### **4.3. Proposals**

To progress on this topic, we propose:

- To establish a legal framework which addresses the diverse character of Civil Society Organizations, and guarantees the existence of different instances for participation at the local, national and international levels.
- Promote the design, discussions and approval of legislation regarding citizen participation. These rules should be broad in scope, unitary and coherent, regulating important subjects and reflecting a national policy.
- Guarantee that citizen participation plays a central role in the administration of public policies, ensuring their participation in the design, execution and assessment of decisions where resources are involved and focussed on strategic subjects affecting citizens.

## 5. JUDICIAL REFORMS AND ACCESS TO JUSTICE

The Plan of Action<sup>19</sup> establishes that *"equal access to an independent, impartial and expeditious justice system is a fundamental pillar of democracy and social and economic development"*. In recognition of this, the countries pledged, among other things, to:

*"Support public and private initiatives and programs to educate people about their right of access to justice, and promoting measures to ensure expeditious, equitable and universal access to justice."*

*"Promote measures to strengthen the independence of the judicial branch, for example, through initiatives related to transparency in the selection of judicial officials, judges' job security, appropriate codes of conduct and accountability mechanisms."*

### 5.2. Results

#### 1. Access to justice

In the region access to justice is guaranteed by the Political Constitution of each country. In general, the Constitutions establish that individuals are born free and are accorded the same dignity and rights. Furthermore, this Body also guarantees access to free legal services to those citizens who need it but cannot afford it. In this respect, mention can be made of the Ombudsman and the programs of Free Legal Assistance. These two figures are present in some of the countries with the exception of Uruguay where you can only find the newly created Intendencia de Maldonado (2003). In the case of Chile, the Ombudsman does not have sufficient power to carry out his tasks.

Despite what is established by the laws in force in the different countries and the Programs for Legal Assistance, it is not possible for all citizens to have access to justice, as these services offer only a partial coverage. Furthermore, the poorer strata are the ones generally excluded from having access to justice. For example, the results show that in Brazil only 30% of the population have access to justice. The existence of this problem in the

region is due to a number of factors like the large number of complaints to be dealt with by the legal system and the shortage of personnel to respond to these complaints, the ignorance of the population on their rights, especially in the medium, medium-low, poor and destitute segments<sup>20</sup>, as well as the shortage of resources faced by the legal system of the countries of the region, thereby limiting its efficiency. As a result, the citizens have little or no trust in the legal system, which is at the lowest in Brazil where only 12% of the population considers that they can implicitly trust the system.

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<sup>19</sup> The Quebec Plan of Action can be checked at [www.oas.org](http://www.oas.org).

<sup>20</sup> Some initiatives relating to the education of citizens on their rights on the part of the government and the legal system can be acknowledged. Example, the ANEP program developed by the legal system in Uruguay to educate persons on their right of access to justice. Unfortunately, these initiatives do not run for a long time nor do they reach the population as a whole, therefore they are termed as specific and restricted in coverage.

**Table No. 17: Existence of Governmental Policies aimed at educating citizens about their rights of access to justice, by country**

| Country   | Government Policies aimed at educating citizens about their right of access to justice   |
|-----------|--|
| Argentina |  |
| Brazil    | There are some State initiatives and programs, but as not all citizens are party to this information and very few of them have proper knowledge of their rights and duties   |
| Chile     | There are several State institutions and programs working at educating citizens on their right of access to justice. Example, the Ministry of Justice, the Ministry of Labour, SERNAM, SENAME, SERNAC, the Defense Commission for Citizens, etc. |
| Paraguay  | Yes, through some NGOs projects and initiatives financed by international organizations. The District Attorney' Office publishes its functions and activities in a newspaper enjoying widespread coverage  |
| Uruguay   | Not as policies, but there have been some specific experiences on the topic of educating citizens about this right.  |

In the five countries studied, the level of education of citizens on their right of access to justice is considered low, especially in low-income socioeconomic sectors. There are no systematic policies to disseminate information on this right and deficiencies on this subject can be found in the formal education, so access to knowledge of fundamental rights is acquired mainly by experience. With the exception of Chile, in the other countries of the region the role played by the State in encouraging education on access to justice is not significant, as this is not one of its main concerns.

The level of State recognition of mechanisms to administer justice among indigenous peoples is considered limited as one cannot affirm that the figures present in the Criminal Law in any way conform with the local customs of the indigenous peoples. This is not the case in Paraguay, where there is ample legal recognition and the indigenous peoples are governed by their ancient rights.

## 2. Independence of the Judiciary

It is not possible to ensure that the legal systems of the countries of the region have the necessary autonomy for the proper exercise of their functions. This statement is supported by the fact that the selection of judicial authorities responds to political criteria, there is no significant increase in the number of actors participating in the selection process, there are no objective criteria for appointments by merit, the personal history of the candidates is not published nor are there public mechanisms to oppose the candidates. Despite the above-mentioned facts, there is some progress, especially in the case of Argentina. After a decade of questionable issues affecting the Supreme Court of Justice, in the year 2003 a process was started whereby the most questionable judges were indicted. Likewise, female judges have been designated for the first time in the democratic history of Argentina.

Another significant case in point is what recently happened in Paraguay. After the resignation of two members of the Supreme Court of Justice and the indictment of four others, in March 2004 four new members were appointed. This process enjoyed the active participation of Civil Society Organizations, making it possible for the curriculum vitae of the candidates to be introduced on the Internet. In addition, a system was established to receive favourable and unfavourable opinions. This process was headed by Civil Society and the Magistrates' Council, later taken up

by Public Assemblies within the Magistrates' Council before forwarding to the Senate the short list of three candidates.

Although the Magistrates' Council did not inform on the criteria used for the selection of these three candidates, it was the first time in the history of Paraguay that civil society participated actively in the process and that citizens were given further details of the process of selection of judicial authorities.

The Senate also held Public Assemblies and for these meetings the 18 candidates were convened. Even though the candidates elected were the ones agreed upon between the political parties and the Executive, the process was widely disseminated and monitored by the public opinion.

Further to this, for the first time in the history of Paraguay a female juror is now member of the Supreme Court of Justice.

**Table No. 18: Transparency in the selection of the Judiciary**

| Country          | Transparency in the selection of the Judiciary   |
|------------------|--|
| <b>Argentina</b> | Low, but improving. After a year when the process for selecting judicial authorities to the Supreme Court of Justice was questioned, additional mechanisms have been designed which include the publication of the candidates' personal history as well as a sworn statement on their assets   |
| <b>Brazil</b>    | Low. The designation of judges is the prerogative of the President of the Republic. Nevertheless, although this appointment must be approved by the Senators, they seldom question the decision of the President   |
| <b>Chile</b>     | Low, there is no significant increase in the number of actors participating in the selection process, there are no objective criteria for appointments by merit, there is no legal period for their term in office and/or this is not honoured, the personal history of the candidates is not published nor are there public mechanisms to oppose the candidates |
| <b>Paraguay</b>  | Low but improving. Even though the selection responds to political criteria during the last exercise it was the first time in the history of Paraguay that civil society actively participated in this process and citizens were given further details on the system used for selecting judicial officials.  |
| <b>Uruguay</b>   | Low. There is no criteria for the selection of judicial authorities. This process is a closed one. There are no public mechanisms to oppose the candidates nor publication of their personal history   |

**Table No. 19: Number of women members of the Supreme Court of Justice, by country**

| Country   |           |        |       |          |         |
|---|-----------|--------|-------|----------|---------|
| Number of women members of the Supreme Court of Justice | Argentina | Brazil | Chile | Paraguay | Uruguay |
|   |           | 1      | 1     | 1        | 0       |

### 5.3. Proposals

To move forward on this topic, we propose:

- To favour the creation of educative programmes on the subject of democracy and human rights at all educational levels
- To disseminate information referring to free legal service to promote in the least favoured sectors the possibility of going to justice when their rights have been violated
- To increase the number and diversify the background of individuals taking part in the selection of judicial authorities; to establish objective criteria for the selection in accordance to their merits; to define and respect the legal period they can remain in office, to publish the personal history of the candidates and of public mechanisms to oppose them.
- To incorporate changes in the composition of the Judiciary to better reflect the social diversities of gender, ethnic background, etc.

### III. CONCLUSIONS

The aim of the follow-up process to the mandates of the implemented Quebec Plan of Action was to identify the advances and pending issues on two levels. On one hand, the legal frameworks were analysed and, on the other, the practices carried out in each of the countries were assessed. This analysis covered the five themes of the follow-up exercise.

1. Access to information
2. Freedom of expression
3. Local government and decentralization
4. Strengthening of Civil Society
5. Legal reforms and access to justice

From this study it can be concluded that the governments of the MERCOSUR region have advanced in strengthening democracy in relation to the five themes being followed-up. Several initiatives have been put forward to achieve this objective, some of which have been consolidated, while others are still trapped in the legislative system or the political will was not there to carry them forward.

It can be stated that the main progress was shown in the legal sphere, as the governments have executed several processes to broaden the existing legal framework and ensure that citizens have access to their basic rights whenever they are not included in the national legislations, especially in the themes of access to information and freedom of association. Therefore, it could be said that since the Summit of Quebec in the year 2001 progress has been made in the legal sphere.

The analysis shows that the activities carried out relating to strengthening democracy are not the best, with the result that citizens are not ensured that they can exercise their rights guaranteed by the Constitution and by the legal rules and regulations. An example of this situation is to be found on the theme of access to information. Even though progress has been made in the enactment and passing of laws encasing this principle, in practice they are not effective and citizens cannot have real access to public information. In a practical exercise carried out with the aim of corroborating whether the various government offices responded in a positive way to information requested by common citizens, the majority of these offices failed to make this information available. For example, in Chile information was requested from 14 governmental offices and only 5 responded to the request, in Argentina 17 were approached and only 2 provided the data, while in Uruguay it was requested from 14 and only one responded.

There is no legal mechanism guaranteeing participation of citizens or of Civil Society Organizations in the design, execution and assessment of programs for the political, economic or social development of their communities or countries. Although there are government offices which maintain ongoing interaction with CSOs, these are not institutionalized, they take place occasionally and are subject to the will of government's institutions. Furthermore, they are interactions of an informative nature and rarely are the agreements or suggestions put forward implemented. Civil Society Organizations have no possibilities of influencing the decisions taken, especially on budget-related issues. The CSOs term the functioning of these instances as mediocre, and its quality deteriorates as the level of centralization increases.

From the observation carried out on each of the monitored themes and from the information gathered, it can be established that there are different levels of implementation.

## **ACCESS TO INFORMATION**

The Quebec Plan of Action established that in respect of access to information the governments will work with the aim of instituting best practices to facilitate access of citizens to information. This presupposes the existence of a legal framework guaranteeing this right and that citizens have real access to the data.

The Constitutions of all the countries of the region guarantee the right of access to information, nevertheless in Chile and Uruguay there is no legal recognition of the figure of Habeas Data, which is duly acknowledged in Argentina, Brazil and Uruguay.

Of the different legal frameworks available for each of these countries, those offering the largest number of aspects favouring access to information (right of duplication, the requests must not necessarily state the motive for which the information is solicited, repeal of clauses restricting access to information, among others) are the ones of Chile and Paraguay, followed by Brazil, Argentina and Uruguay. Argentina and Uruguay cover the same number of aspects.

Chile and Uruguay offer real availability of information, while in Argentina and Paraguay the possibilities of accessing data are low and important obstacles exist for the use of this information. Uruguay is in an intermediate situation, there are subjects for which information is available while there are others where it is non-existent. In general, the subjects offering less transparency in the information are those related to public finances.

From the above it can be concluded that in issues relating to access to information, Argentina shows the lowest level of fulfillment of the mandates emanating from the Plan of Action. On the other hand, the country showing a higher level of fulfillment is Chile, followed by Uruguay, Brazil and Paraguay. Brazil and Paraguay register the same level.

## **FREEDOM OF EXPRESSION**

The Quebec Plan of Action states that the governments will ensure that national legislation on freedom of expression is applied in an equal manner to all, and that journalists and opinion leaders are free to investigate and publish without fear of reprisals.

The Constitutions of the five countries include references guaranteeing freedom of expression, nevertheless, in Brazil, Chile and Uruguay legal impediments like the "desacato" laws still prevail. The existence of these norms is a critical factor when assessing the level of implementation of the mandates, as they constitute an important obstacle to freedom of expression. The fact that these laws are included in the Constitution of the countries prevents them from incorporating what is established in the international treaties. The laws on expression offensive to public officials ("desacato"), violate the principles of the Inter-American Commission on Human Rights.

**Table No. 20: Comparability of legal aspects on freedom of expression, by country**

| Country   | Constitutional references to freedom of expression | "Desacato" Laws |
|-----------|--|-----------------|
| Argentina | Yes  | No              |
| Brazil    | Yes  | Yes             |
| Chile     | Yes  | Yes             |
| Paraguay  | Yes  | No              |
| Uruguay   | Yes  | Yes             |

Concerning the practice, it is outlined that all the countries suffer from concentration of ownership of the media, nevertheless Uruguay is in a process of deconcentration.

**Table No. 21: Concentration of ownership of the media, by country**

| Concentration of ownership | Country      |              |              |              |                               |
|----------------------------|--------------|--------------|--------------|--------------|-------------------------------|
|                            | Argentina    | Brazil       | Chile        | Paraguay     | Uruguay                       |
|                            | Concentrated | Concentrated | Concentrated | Concentrated | In process of deconcentration |

Chile is the country showing the largest number of cases restricting freedom of expression (censorship acts, prosecution of journalists, others). This fact, together with the concentration of ownership of the media and the existence of "desacato" laws included in the Chilean Constitution shows that this country has the lowest level of fulfillment of the mandates in this area. Brazil and Uruguay also register a low level of achievement because, as in the case of Chile, the "desacato" laws are still in force and they also represent an important number of cases where, in practice, freedom of expression is restricted.

The countries having a higher level of achievement of the mandates of the Plan of Action in the theme of freedom of expression are Argentina and Paraguay. These countries do not have "desacato" laws and few cases have been presented of restriction to freedom of expression. Nevertheless, the repeal of the "desacato" laws in these two countries preceded the Summit of Quebec.

## LOCAL GOVERNMENT

Touching on local governments, the Plan of Action states that the governments will create mechanisms to facilitate citizen participation and will also promote the development, autonomy and institutional strengthening of local governments, to help enhance favourable conditions for the sustainable economic and social development of their communities.

This theme shows the greatest progress in all the countries of the region. Apart from the different legal amendments introduced to support the process of decentralization, all countries, with the exception of Uruguay, have already implemented a mechanism for the redistribution of income. Likewise, in four out of the five countries in the region, authorities are elected by direct vote. Argentina is the only country where officials are designated, a practice that reduces the level of autonomy.

Although autonomy is one of the issues showing great progress, the other component of the mandate, i.e., the promotion of mechanisms that will facilitate citizen participation in local governments shows a low level of fulfillment in the five countries studied. In each of them several mechanisms with different levels of implementation are available, nevertheless they have received some criticism too. Mention can be made of:

- The legal instruments promoting citizen participation in decisions which are important for the communities are not honoured in practice.
- Local governments have no comprehensive policy of citizen participation. Some instances exist where citizen participation is welcomed but only for the discussion of specific subjects like health, education, etc. There are no instances where these subjects are dealt with as a whole. The influence of citizens in decision-making processes is weak. The possibility is open to participate in committees or working groups of different programs or projects but with almost no decision-making power. Furthermore the influence of citizens decreases if the Municipalities have little resources, are situated in very remote areas or if the decisions relate to the municipal budget for investment and development. Most instances of participation are of an informative nature. No proper information is available on the instances of participation, therefore the community is under-informed on these issues.

It is worth mentioning that in the five countries of the region, citizens do not show a spontaneous interest to participate, responding only when invited.

Therefore, on the theme of local governments we can ascertain that there is a medium level of implementation and that this level is considered identical in the five countries. We can term the implementation level as average because an important degree of achievement of the mandate related to autonomy can be appreciated, while the degree in respect of the promotion of mechanisms of participation is low. The level is considered identical because all the countries show important progress in respect of the mandate supporting autonomy and an insignificant one in the promotion of mechanisms of participation.

## **STRENGTHENING OF CIVIL SOCIETY**

For the strengthening of Civil Society, the Plan of Action establishes that the governments will create public and private financing mechanisms and will increase the participation of CSOs in the Inter-American system and in the political, economic and social development of their communities and countries.

Touching on legal matters, all the countries, with the exception of Chile, have a legal framework regulating the creation of Civil Society Organizations (CSOs). Even though in the case of Chile some entities like Foundations or Corporations enjoy legal recognition, there are some difficulties for its establishment. On the other hand, all countries count with some funds for financing CSOs, nevertheless this support is not important on account of the large number of Organizations that need funding and also due to the problems faced when accessing to these resources.

**Table No. 22: Legal framework that regulates the formation of CSOs and public and private financial mechanisms aimed at strengthening Civil Society Organizations**

| Existence of a legal framework that regulates the formation of CSOs and public and private mechanisms aimed at strengthening CSOs | Country   |        |       |          |         |
|---|-----------|--------|-------|----------|---------|
|   | Argentina | Brazil | Chile | Paraguay | Uruguay |
| Legal framework   | ✓         | ✓      | ✗     | ✓        | ✓       |
| Financial mechanism   | ✓         | ✓      | ✓     | ✓        | ✓       |
| <b>Total</b>  | 2         | 2      | 1     | 2        | 2       |

**Table No. 23: Incorporation of CSOs to official delegations and Ministries of Foreign Affairs that maintain ongoing interaction with CSOs, by country**

| Incorporation of CSOs to official delegations                             | Country   |        |       |          |         |
|---|-----------|--------|-------|----------|---------|
|   | Argentina | Brasil | Chile | Paraguay | Uruguay |
| Incorporation of CSOs to official delegations                             | ✗         | ✓      | ✓     | ✗        | ✗       |
| Ministries of Foreign Affairs that maintain ongoing interaction with CSOs | ✓         | ✓      | ✓     | ✗        | ✗       |
| <b>Total</b>  | 1         | 2      | 2     | 0        | 0       |

Participation of Civil Society Organizations in the Inter-American system is low. In general, these Organizations are not included in official delegations nor do they have the possibility of maintaining ongoing dialogues with the authorities. Brazil is the exception. In that country Civil Society Organizations are taken into account by the Ministry of Foreign Affairs. From this fact, and from the existence of a legal framework regulating the existence of CSOs and of financial mechanisms aimed at strengthening their capabilities, we can conclude that Brazil is the country showing the greatest level of implementation of the mandates on this theme. Argentina, Chile, Paraguay and Uruguay follow, the latter three register the same level of implementation.

## JUSTICE

The Plan of Action establishes that in respect of justice, the governments will support initiatives and programs to educate people about their right of access to justice and will promote measures to strengthen the independence of the Judiciary through initiatives related to the transparency in the selection of judicial officials.

Not all the States support or carry out programs to educate people about their rights of access to justice. This is the case of Uruguay where even though no specific programs are available, some specific experiences can be found on the subject of educating citizens. Furthermore, in the rest of the countries although programs are available and in that respect the mandate is fulfilled, these are of a limited coverage and an important percentage of the population remains ignorant of their rights and duties.

**Table No. 24: Existence of Government Policies aimed at educating citizens about their rights of access to justice, by country**

|   | PAÍSES    |        |       |          |         |
|---|-----------|--------|-------|----------|---------|
|   | Argentina | Brasil | Chile | Paraguay | Uruguay |
| <b>Existence of government policies aimed at educating citizens about their rights of access to justice</b> | Yes       | Yes    | Yes   | Yes      | No      |

In respect of measures taken to support the autonomy of the Judiciary like promoting transparency in the selection of judicial officials, even though the development of initiatives on this line of work is limited in the countries of the region, in Argentina and Paraguay processes are taking place to incorporate greater participation of civil society and the publication of the personal history of the candidates.

**Table No. 25: Transparency in the selection of judicial authorities**

|  | Country            |        |       |                    |         |
|--|--------------------|--------|-------|--------------------|---------|
|  | Argentina          | Brazil | Chile | Paraguay           | Uruguay |
| <b>Transparency in the selection of judicial authorities</b> | Low, but improving | Low    | Low   | Low, but improving | Low     |

Taking into consideration the educational programs available to inform citizens on their rights of access to justice and for transparency in selection of officials, Argentina and Paraguay are the countries showing higher level of implementation of the mandates, while Uruguay presents the lower and Chile and Brazil are ranked on an intermediate level.

Nevertheless, many issues remain pending on this theme. It is not possible to state that in the countries of the region all citizens have access to justice.