

Role of CSOs in the promotion of Access to Information in the Western Hemisphere

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I. Introducción

□ **Background Statement**

- Since the beginning of this decade Access to Information has been an issue in the Inter American Agenda both at the domestic and transnational level
- But despite great advances (new laws, etc) can we really talk about CSOs being relevant in the “creation” of an International Norm with Regard to Access to Information?
 - Or is the Role of CSOs just limited to after-the-norm-Promotion?

Why Is this Important?



- Because under the classical view, International Law is a law for States. Thus states are the ones called upon negotiating and “creating” the norms.
- Because this view, in turn minimizes the role of CSOs, reducing opportunities for CSOs to have a formal role in the process that leads to recognition of international law.
- And because, the evolution of Access to Information in the Western Hemisphere has proven this theory wrong

...why the Americas? and why Atol?

- Because the combined actions from CSOs (journalists, academia, NGOs) have effectively produced an impact on Inter American Law
 - By:
 - (1) getting a cascade of domestic law Atol passed (you will say big deal, maybe the same in other places..)
 - (2) But...Also by getting an international body (the OAS through its Inter American Court) to effectively recognize Atol as a Fundamental Human Right and as a condition of Democracy thus creating a binding precedent within OAS member countries (impact in international law)

Transnational Networks in Atol



When It comes to Atol we can say that in the Americas International and domestic NGOs working in coordination with other groups (media, academia, etc) have contributed greatly in the process of Internationally recognizing, expanding, and then internalizing Atol by promoting a change of discourse and “official” state attitude towards Atol

Note “Official” – We still need changes of behavior.

CSOs COMBINED STRATEGY IN THE AMERICAS

CSOs STRATEGY:

FORMATION OF "ALL INCLUSIVE" NETWORKS

- GAINING CITIZENRY SUPPORT
- ADVOCACY
- DISSEMINATION AND AWARENESS
- TECHNICAL ASSISTANCE/ SHARING OF KNOWLEDGE
- STRATEGIC LITIGATION

Inter American Level
(OAS efforts)

Domestic Level



The interaction of CSOs and OAS

SECOND

- Nueva Leon Declaration
- 2003-2008 General Assembly Resolutions and Reports from OAS Rapporteur for FoE

Inter American Level
(OAS efforts)

THIRD

- 2006 Effective Recognition of Aol by Inter American Court
- Support via Trust for the Americas to networks of CSOs that promote Aol both for the passage of subsequent laws
- And for the Implementation of existing laws

FIRST

- CSOs push for passage of Aol laws at the Domestic Level (Mexico, Panama, Dominican Republic)
- CSOs Push for the Regional recognition of Aol as a Fundamental Human Right (Reyes v. Chile decision)

Domestic Level
CSOs efforts

FOUR

- CSOs coalitions: Nicaraguan, Honduran, Guatemalan Aol laws
- First round of cases based on Reyes decision passed in Paraguay (Municipal Judge, 2007), Colombia (Constitutional Court and Supreme Court)
- Principles on Access to Information by IJC

How this Interaction has translated into the Life Cycle of Atol as a norm in the Americas?

<p>Emergence</p>	<p>Up to mid 90s: Secrecy, discretionally as General Rule</p> <p>NGOs unite, call for greater transparency. First laws adopted (Mexico, Dominican Rep, Panama)</p> <p><u>Regional Level (Mx)</u>- Nuevo Leon Declaration</p>
<p>Cascade</p>	<p>CSOs through domestic networks urge States to adopt laws</p> <p><u>OAS' Reyes v. Chile</u> is decided</p> <p>Increased number of States adopt laws (Nicaragua, Honduras)</p>
<p>Internalization- Current efforts where there is law</p>	<ul style="list-style-type: none"> - Creation of OAS/Trust regional Alliance for Access to Information - NGO collaborate with State: Training, awareness, exchange of experts. In seeking expertise States look for NGOs

To achieve this, it a change of attitude by CSOs was necessary...

- Old behavior
 - Working alone, non sharing of experiences, fear of losing leadership, no collaboration between media and NGOs produced failed and dispersed efforts...
- In promoting Atol, CSOs in the Americas
 - Have begun working together domestically and then internationally (*Some places still a challenge*) allowing for:
 - Greater specialization
 - A coordinated advocacy strategy
 - An common message to civil society with regards to the importance of Atol

Today we can talk about true CSO networks when it comes to Atol in the Americas

How Journalists and NGOs interact in these networks

- NGOs are providing technical expertise and training to journalists in the application of access to information.
- In turn, journalists have become excellent allies in dissemination Atol principles by doing “widespread” informing citizens about the issue, by effectively using Atol to do investigative reporting
- NGOs and Journalists/media outlets together advocate with government for changes

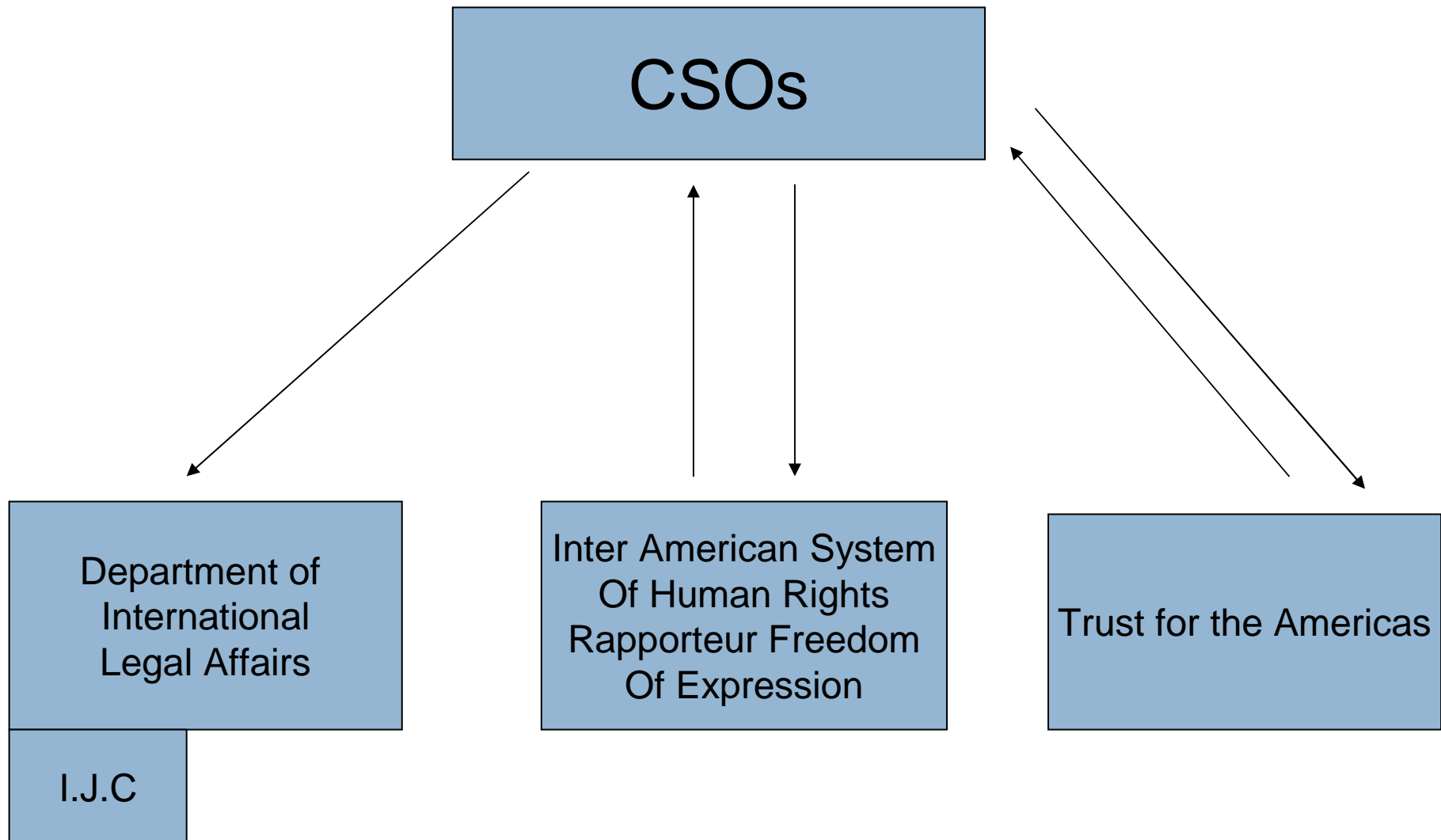
What specific results have these CSO networks produced in the Americas

- Domestic Laws
- Landmark case: Reyes v. Chile Decision Oct, 2006
 - ▣ Atol is a Fundamental Human Right recognized by Art. 13 of Inter American Convention (“Seek/receive”)
 - ▣ Access to information is also a necessary condition for Democracy
 - ▣ Atol Could be subject only to those limitations permitted by the Convention (rights and reputations of others, protection of national security, public health/order)
 - ▣ Recognizes principle of Maximum Disclosure
 - ▣ Call upon States to pass Atol laws or accommodate existing laws so that they do not conflict with Atol principles
- 2008: Principles on Access to Information by Inter American Juridical Committee.

The OAS response to these networks

- OAS Strategy Since First Summit of the Americas (Miami, 1994) has been to foster greater CSO participation in OAS processes
- Particularly, with regards to Atol:
 - OAS AG/Resolutions on Atol call for support to CSOs via
 - Seminars and forums designed to foster, disseminate, and exchange experiences and knowledge about access to public information
 - Seeking of Sources of funding to support Atol initiatives
 - Call for consultative process in Access to Information involving Civil Society

OAS-Since 2007 Organized Policy



CURRENT CHALLENGES



- Set backs in the Implementation of the Law. Nicaragua
- Maintain donor interest
- Lack of trained government officials.
- Ignorance about the Atol itself. Still considered an issue for journalists and lawyers and not a citizen issue.
- In general, need to recognize that Atol laws per se will not produce any result unless they are better known, and used by everybody
- CSO networks losing momentum after passage of law. Networks disappear instead of adapting (to provide training, etc)

What is next?



- Continue pushing for laws in countries without legislation (El Salvador, Costa Rica, Colombia)
- Monitoring of effectiveness of existing laws (Alliance Transparency-Trust for the Americas)
- Access to Information in NGOs?
- At the Inter American Level:
 - Discussion about either a Inter American Convention or a model law
 - OAS adoption of Access to Information Policy?

Principles of Access to Information

IAJC

- **In principle, all information is accessible. Access to information is a fundamental human right which establishes that everyone can access information from public bodies, subject only to a limited regime of exceptions.**
- **The right of access applies to all public bodies, including the executive, legislative and judicial branches at all levels of government, constitutional and statutory bodies, bodies which are owned or controlled by government, and organizations which operate with public funds or which perform public functions.**
- **The right to access applies to all significant information, defined broadly to include everything which is held or recorded in any format or medium.**

Principles of Access to Information IAJC



- **Public bodies should disseminate information about their functions and activities on a routine and proactive basis, even in the absence of a specific request.**
- **Clear, fair, non-discriminatory and simple rules should be put in place regarding the processing of requests for information.**
- **Exceptions to the right to access should be established by law, be clear and narrow.**
- **The burden of proof in justifying any denial of access to information lies with the body from which the information was requested.**

Principles of Access to Information IAJC



- Anyone who wilfully denies or obstructs **access to information** in breach of the rules should be subject to sanction.
- Measures should be taken to promote, to implement and to enforce the right to **access to information** including creating and maintaining public archives in a serious and professional manner, training public officials, implementing public awareness-raising programmes, improving systems of **information** management, and reporting by public bodies on the measures they have taken to implement the right