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PRELIMINARY DRAFT INTER-AMERICAN PROGRAM ON ACCESS
TO PUBLIC INFORMATION

[AG/RES. 2727 (XLII-O/12) “Access to Public Information and Protection of Personal Data”]

(Working document prepared by the Department of International Law)

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Resolution AG/RES. 2727 (XLII-O/12), “Access to Public Information and Protection of Personal Data,” adopted by the OAS General Assembly in June 2012, instructed the General Secretariat of the Organization, through its Department of International Law, to prepare and submit to the Committee on Juridical and Political Affairs prior to the forty-third regular session of the General Assembly, a proposal for an Inter-American Program on Access to Public Information, for its consideration.

Pursuant to that mandate, the Department of International Law has drawn up the following proposal, which is intended to provide preliminary input and serve as a basis for subsequent deliberations in the respective political bodies of the Organization, with a view to drafting an Inter-American Program for adoption by the General Assembly.

In drawing up this initial proposal, the Department of International Law has worked on the basis of the following criteria:

1. It has limited the scope of the Program to concrete measures whose implementation can be evaluated objectively according to certain progress indicators and that will have minimum budgetary impact on the Organization.
2. It has limited the scope of the Program to measures that can be carried out by actors that the Organization can call upon in some way, for example, the member states themselves, or that can be asked to implement certain mandates, for example, the OAS General Secretariat. It understands that establishing measures which other actors are responsible for implementing does not ensure an effective monitoring system with concrete results.
3. It has focused mainly on the adoption of domestic legislation by the OAS member states in light of the Model Inter-American Law on Access to Public Information, recognizing that said law establishes a series of consolidated parameters that can contribute to specific, measurable progress in any actions the member states take to facilitate greater access for its citizens to public information.
4. It has avoided repetition of the principles and contents of the provisions of the Model Inter-American Law on Access to Public Information, given the commitment the states have made to promote the Model Law, supported by the measures adopted for its domestic implementation, with the exception of those cases where it was considered appropriate to give greater emphasis to the provisions contained in the Model Law.

The Department of International Law proposes that the following measures be included in the possible Inter-American Program:

A. With regard to the member states

1. To move toward the adoption and implementation of domestic legislation on access to public information on the basis of the provisions of the Model Inter-American Law in the area, in particular through the following actions:
 - a. Adoption, sound management, and dissemination of flexible, modern publication schemes to allow access to information held by the public authority so as to minimize the need for individuals to make requests for information.
 - b. Incorporation into their legislation of provisions that identify “key information” subject to proactive disclosure.
 - c. Implementation of a system for maintenance, filing, and deletion of information assets.
 - d. Creation, maintenance, and publication of a request and disclosure log.
 - e. Promotion of tools and mechanisms for monitoring and evaluating application of the rules and practices of institutions obliged to comply with the law, including, among others, use and analysis of indicators and statistics.
 - f. Incorporation into their domestic legislation of a clear and precise system of exceptions.
 - g. Establishment of a clear system for the burden of proof.
 - h. Implementation of clear legislation regarding procedures for making a request for information, its contents, reproduction costs, response times, responsibilities of the public authority, the role of interested third parties, and forms for providing information.
 - i. Implementation of clear legislation regarding appeals of the refusal to provide information and judicial review.
 - j. Clear establishment of civil and criminal responsibility of the public authority and information officers.
 - k. Creation and/or strengthening, as the case may be, of an Information Commission with operational, budgetary, and decision-making autonomy.

1. Promotion of access to public information in all branches of government (executive, legislative, and judicial) and all levels of the internal government structure (central or federal, regional, provincial or municipal), both at the federal, state, and local levels and within government owned or controlled independent or autonomous organs, agencies, or entities and within private organizations that receive substantial public funds or benefits (directly or indirectly) or perform public functions and services.
2. To promote the right to access public information as part of national growth and development strategies and of sectoral policies including public-awareness campaigns targeted at more vulnerable groups.
3. To approve a budget for each public agency, pursuant to legal provisions, on access to public information to enable it to comply fully with its obligations in this area.
4. To establish an appropriate system for training officials responsible for providing information.
5. To conduct, in collaboration with civil society, research and studies on the socioeconomic impact of access to public information and to disseminate the findings among the key players.
6. To participate actively in the yearly special meetings, in the framework of the Committee on Juridical and Political Affairs of the OAS Permanent Council, to evaluate the progress made by countries in implementing the Model Law, exchange best practices, and assess implementation of the present program with a view to enhancing and strengthening it, as well as the project executed by the Department of International Law to improve the capacity of member states in the area of transparency and equitable access to public information.

B. With regard to the General Secretariat of the Organization of American States

1. To support efforts by the member states to take legislative and other appropriate measures to guarantee access to public information and, in particular, to implement the Model Law or continue moving closer to it.
2. To facilitate opportunities for the exchange of best practices and successful experiences that ensure flexible and effective access to public information.
3. To disseminate the contents of the Model Inter-American Law on Access to Public Information through the preparation of publications and the organization of events such as conferences, workshops, and technical meetings, among others.
4. To promote channels of collaboration with other international organizations and with cooperation agencies involved in the matter, in order to facilitate the exchange of information and cooperation.

5. To maintain a virtual platform containing, among other things, national legislations of the member states on access to public information and best practices in this regard.
6. To promoter capacity building programs oriented at judges and national tribunals on the adequate implementation of judicial guarantees that protect the access to public information.

C. With regard to non-state actors

1. To invite civil society organizations to support states in their initiatives to update legislations and public-information publication schemes and to actively participate in and support the implementation of this program.
2. To encourage the media to promote dissemination among the citizenry of guarantees of better access to public information.
3. To request cooperation agencies, development banks, and donor countries to support the member states, by financing initiatives to update domestic legislation, implement projects designed to improve the capacity of said states to increase the transparency of public information and equitable access to it, and implement the present program.