

Day 4 – Thursday, 29 November 2007
Parallel Sessions – Session 2B 9.00am-10.30am

Speaker: Eduardo Bertoni, Executive Director
Organisation: Due Process of Law Foundation, USA

Presentation Title: Disclosing justice:
A study on access to judicial information in Latin America

DPLF has recently finished a report that is a review of legal frameworks for access to judicial information in ten Latin American countries.¹ While mentioning some practices, particularly the use of Web sites to make information available, this report is focused on the review of laws and pertinent case law in Argentina, Chile, Colombia, the Dominican Republic, Ecuador, Honduras, Mexico, Panama, Peru, and Uruguay.

In analyzing the information for writing this report a difference between countries with FOI laws and countries without those laws should be highlighted: while the FOI laws always provided some reference to draw a legal panorama on access to judicial information, the same task in countries lacking such an act had to be done in bits and pieces. It could be said that, where there is no FOI law, drawing the legal framework was like solving a jigsaw puzzle without having the reference of the photo that the final product should look like. The FOI law, even where it does not apply fully to the judicial system, offers a pattern composed of allowed restrictions and principles that make it easier to find the corners, the borders, and to group the different sets of information. However, the differences between the countries with FOI laws and those without, by no means ensures that those with FOI laws are free of concerns and challenges. For example, the Honduran FOI law offers much fewer guarantees than those established by case law in Argentina, a country with no FOI law at the national level.

Finally, it is also interesting to highlight how judicial information is considered in Latin American FOI laws. According to our study, it would be possible to divide the countries into three groups: those where the provisions fully apply to the judiciary, those giving autonomy of regulation to the judicial system, and those limiting the scope of the application of FOI provisions to a particular set of information.

i. Full application of FOI provisions to the judicial branch: This has been the most common model to regulate access to information from the judiciary, since it is used in Panama, Honduras, Ecuador, and Peru.

ii. Autonomy of regulation of the judicial system: In Mexico, the judicial system has been tasked by FOI law to develop its own implantation procedures. But the substantive provisions in the FOI law establishing obligations of transparency, information to be published, and restrictions allowed apply fully to information from the judiciary.

iii. Limited application to specific judicial information: The third way FOI laws deal with access to judicial information is by limiting its application to a specific type of information. This is the case in the Dominican Republic, where the FOI law applies fully to information related to administrative matters of the judiciary, but it does not apply to information from judicial proceedings.

² The research that we will be presenting at the conference was carried out by DPLF and commissioned by the Open Society Justice Initiative as part of its project on Access to Information: Best Law & Practices (forthcoming 2008).

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