MEMORANDUM ON THE BOLIVIAN DRAFT LAW FOR TRANSPARENCY AND ACCESS TO PUBLIC INFORMATION

March 2011

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Summary of Recommendations

- All references to the "right to access public information" should be replaced by the "right to information" in the draft law.
- The preamble should indicate that the draft law shall be interpreted in accordance with Bolivia's Constitution and its international legal obligations.
- The general provisions should indicate a *presumption* that all information held by public bodies is subject to disclosure and that this presumption may be overcome only in very limited circumstances.
- Article 3(IV) ought to be clarified to define the organisations covered by this provision.
- Article 25(I) paragraph I should assert that "everyone shall have the right to information without distinction on such grounds as gender, race, ethnic origin, age, sexual orientation, nationality ..."
- The definition of information in Article 26(II) should be amended to apply to any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the body that holds it and whether it not it is classified.
- The draft law should state that a body may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the harm to the protected interest outweighs the public interest in disclosure.
- Provisions on "secret, reserved and confidential" information should be replaced to include a narrowly-defined list of types of information which may justify non-disclosure if they pass the harm and public interest tests.
- The draft law should set the maximum duration of classified information to ten years.
- The draft law should provide that it is possible to submit a request for information in person, by post (or mail) or through a lay or legal representative.
- Article 30 should be amended to state that bodies should have a duty to provide and assistance if a request is unclear or overly broad.
- Article 31(II) should be amended to provide that the period of delivery of a response may be extended by twenty days.
- Article 31(I) should be amended to state that if the requested information is not held by the entity, that body shall transfer the request to the appropriate body within no more than two days and inform the requester of information of that transfer.
- Article 31(IV) should be amended to state that a body should communicate the refusal or rejection of a request for information to the requester and give reasons for its decision.
- Article 31 (VII) should be amended to state that bodies should provide information in the form requested by the requester.
- Article 32 should provide that no reproduction fees should be charged for persons with low income. In addition, that provision should state that fees should be set by law by a central body established to determine the level of fees.
- The provisions on the Ministry of Institutional Transparency and Combating Corruption should be omitted.
- The draft law should provide for an independent body, called the Information Commissioner or Ombudsman, specialized in transparency and access to information to resolve disputes concerning the right to information.
- In terms of appointment, the draft law should set out that the process of nomination for appointment must be open and transparent, the minimum qualifications for appointment; that the appointment must be approved by the legislature and that the appointment is for a fixed term of five years with the possibility of renewal.
- The draft law should state that the Information Commissioner or Ombudsman should

report and be accountable to the legislature, who can remove the post-holder (for criminal violation, serious dereliction of duties, or a clear inability to conduct the job).

- The draft law should state that bodies are required to use language which is clear, accessible and comprehensible for users.
- The draft law should also provide a complaints procedure for failure to comply with the principle of transparency and also provide for a system for increasing the requirements for proactive dissemination of information.
- The draft law should state that adequate resources should be set aside for the promotion of transparency and implementing the provisions of the legislation.
- The draft law should provide for administrative and civil sanctions, including fines, for deliberate violations of the law.
- The draft law should provide for sanctions against bodies for failure to proactively disseminate public information.
- Legal fees and damages should be available to requestors when the oversight body finds that information is being unlawfully withheld.
- The draft law should provide that sanctions may be directly issued by the oversight body for the law.
- The draft should provide protection for whistle-blowers.

1. Introduction

This is Memorandum examines the draft "Law for Transparency and Access to Public Information" (the "draft law") proposed by the Bolivian Ministry of Transparency and Combating Corruption in August 2010.[1] The purpose of this Memorandum is to examine the draft law from an international human rights perspective. In doing so, the Memorandum draws upon international law, standards[2] as well as best practices of other states.[3]

ARTICLE 19 recommends the adoption of legislation that properly guarantees and implements the right to information (RTI) in Bolivia for several overlapping reasons. *First*, the right to information is a fundamental human right that is crucial to the functioning of a democracy and key to the protection of other rights. Protection of RTI also serves to increase a sense of trust amongst the population about governmental and public authorities, whether at the national or local levels. RTI legislation in Bolivia would also enhance the role of the media which has been restricted by rigid defamation laws and censorship by the government to undermine journalists' work in bringing information to the public. *Second*, the adoption of such legal protection would allow Bolivia to join the international community of nearly 90 states who have adopted legislation or national regulation on RTI to date, with over 80 states recognising the right to information as a constitutional right.[4] This collection of states includes countries as diverse as Sweden[5], Jordan[6] and Indonesia[7] as well as many states in Latin America including Chile,[8] Columbia,[9] Mexico[10], Nicaragua[11] and Uruguay.[12] *Third*, the adoption of effective RTI law by Bolivia would also address the gap between Bolivia's domestic legal protection and practice, on the one hand, and international legal obligations, on the other; Bolivia acceded to the International Covenant on Civil and Political Rights (ICCPR) on 12 August 1982. In addition, Bolivia ratified the UN Convention Against Corruption (UNCAC) on 5 December 2005.[13]

Furthermore, the right to information is a fundamental right protected under regional human rights law, most notably under Article 13 of the American Convention on Human Rights (ACHR)

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[1] For the text of the draft law, see the Annex to this Memorandum.
[2] The Lima Principles http://www.cidh.org/Relatoria/showarticle.asp?artID=158&lID=1; the Declaration of SOCIUS Peru http://www.britishcouncil.org/az/socius_peru_declaration.pdf; the Johannesburg Principles on National Security Freedom of Expression and Access to Information http://www.article19.org/pdfs/standards/joburgprinciples.pdf; Ten Principles on the Right to Know http://portal.unesco.org/ci/en/ev.php-URL_ID=29655&URL_DO=DO_PRINTPAGE&URL_SECTION=201.html; the Declaration of Chapultepec http://www.declaraciondechapultepec.org/english/declaration_chapultepec.htm; and the Atlanta Declaration and Plan of Action for the Advancement of the Right of Access to Information http://www.cartercenter.org/news/pr/ati_declaration.html; ARTICLE 19, *The Public's Right to Know: Principles on Freedom of Information Legislation* ("ARTICLE 19 FOI Principles") (London: June 1999); ARTICLE 19, *A Model Freedom of Information Law* ("ARTICLE 19 Model FOI Law") (London: July 2001).
[3] See ARTICLE 19, *Global Right to Information Index* http://www.article19.org/pdfs/press/rti-index.pdf (released 21 September 2010).
[4] See Privacy International, *National Freedom of Information Laws, Regulations and Bills 2010* http://www.privacyinternational.org/foi/foi-laws.jpg
[5] The principle of public access to information has been established in Sweden since the 1766 Freedom of Press Act.
[6] See Law 47 of 2007 on Access to Information.
[7] See the Openness of Public Information Act of 3 April 2008.
[8] Law No 20.285 on Access to Information published in Official Gazette on 20 August 2008.
[9] Law 57 of 1985 on Disclosure of Official Acts and Documents published in Official Diary 12 July 1985.
[10] Federal Transparency and Access to Public Government Information Law of June 2002.
[11] Law No 621 on Access to Public Information adopted on 22 June 2007.
[12] Law No 18.381 on the Right to Public Information adopted on 17 October 2008.
[13] See Appendix 1.

which Bolivia ratified on 20 June 1979.[14] In a landmark judgment delivered on 19 September 2006, the Inter-American Court of Human Rights held that the general guarantee of freedom of expression contained in Article 13 of the ACHR protects the right to information held by public bodies.[15] In *Claude Reyes et al v Chile*, the court stated that Article 13 of the ACHR "encompasses the right of individuals to receive ... information and the positive obligation of the State to provide it, in such form that the person can have access in order to know the information or receive a motivated answer when for a reason recognised in the Convention, the State may limit the access to it in the particular case."[16] This remains an extremely important decision and showed the Inter-American Court leading the way for other regional human rights courts on the recognition of the right to information. At the same time, there were earlier developments recognising the right to information in the region, including the *Inter-American Declaration of Principles on Freedom of Expression*,[17] the *Lima Principles*,[18] the *Declaration of the SOCIUS Peru Access to Information Seminar*,[19] as well as the Resolution of the General Assembly of the Organisation of American States.[20] In terms of regional standards, the *Model Inter-American Law on Access to Information* which was presented on 29 April 2010 provides an important guide for the implementation of the right to information within the domestic laws of states parties to the ACHR.[21]

ARTICLE 19 considers the draft law as a positive step towards the effective protection of RTI in Bolivia. We welcome a number of features of the draft law. In particular, its broad application, including to private bodies performing public services (Article 3(II)), and measures to promote public transparency in public management (Chapter II). It is also recognises the possibilities of email in making requests and sending information to requesters (Article 32). However, as this Memorandum highlights, the draft law has a number of shortfalls which should be addressed before it is adopted. There is no clearly stated presumption of disclosure and there is a broad regime of exceptions for types of information that are "secret, reserved or confidential" which takes no account of the public interest in having such information. Furthermore, the Ministry of Institutional Transparency and Combating Corruption is supposed to be the oversight body for the legislation, but is not independent of government but an integral part of it. The law also lacks specific protection for whistleblowers who release information on wrongdoing or which would disclose a serious threat to health, safety or the environment. Finally, the language of the draft law is extremely difficult to understand in many parts – words such as gratuitous, complementation, impugnation which do not make sense are used (this may be because of poor translation, of course) – and the numbering of the provisions is wrong – for example, there are no Articles 48 and 49. It is clear that the draft law needs more work from a substantive and language point of view before it is adopted.

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[14] Within Europe, on 27 November 2009, the Council of Europe adopted the Convention on Access to Official Documents which has been open for signature since 17 June 2009. Even more recently, in its recent decision concerning the Hungarian Civil Liberties Union, the European Court of Human Rights recognised that when public bodies already hold information that is needed for public debate, the refusal to provide it to those who are seeking it is a violation of the right to freedom of expression and information. *Társaság a Szabadságjogokért v. Hungary*, Application no. 37374/05 14 April 2009. The African Commission on Human and Peoples' Rights has also adopted a Declaration of Principles on Freedom of Expression in Africa which includes the right to information. Adopted at the 32nd Session, 17-23 October 2002.

[15] *Claude Reyes et al v Chile* Judgement of the Inter-American Court of Human Rights of 19 September 2006 Series C.

[16] Ibid at para 77.

[17] 108th Regular Session, 19 October 2000.

[18] Adopted in Lima, 16 November 2000.

[19] 28 November 2003.

[20] AG/RES. 1932 (XXXIII-O/03), of 10 June 2003.

[21] *Model Inter-American Law on Access to Information*, 29 April 2010 OEA/Ser.g CP/CAJP-2940/10 Corr.1 presented by the Group of Experts on Access to Information coordinated by the Department of International Law of the Secretariat for Legal Affairs, pursuant to General Assembly Resolution AG/RES. 2514 (XXXIX-O/09).

2. General Provisions

a. Title and lack of preamble

The title of the draft law, "for transparency and access to public information", reflects a positive approach to RTI legislation and suggests that the state has a duty to proactively disseminate public information. We welcome the right-based approach to transparency embodied in the law. Ideally however, references to the "right to access public information" should be substituted with the "right to information" to ensure the broadest possible application of the law. Although the draft law lacks a preamble, its object and purposes are set down in Articles 1 and 2. Whilst we do not suggest that the draft law requires an especially elaborate preamble, we do suggest that that the draft law would be strengthened by including a preamble identifying its central goal. The preamble may also refer to relevant international legal sources, such as the UDHR, the ICCPR, the ACHR, the UNCAC as well as relevant provisions of the Bolivian Constitution. It is an important and positive feature of the draft law that the Final Provisions indicate that any legislation which conflicts with the law is repealed.

b. Goals and principles

The aims of the draft law are indicated in Articles 1 (on the object) and 2 (on the purposes) of the draft law. The object of the draft law is to "regulate transparency in public management and guarantee all citizens full exercise of access to public information which is under the custody, administration or possession of the State".

We welcome the purposes of the draft law, which are three fold: to "(a) ensure transparency in public administration for correct management of public matters"; "(b) ensure full and effective exercise of every person to access public information generated or in the power of all institutions and entities of the Plurinational State"; and "(c) determine the procedures and mechanisms before public administration for transparency and access to information which is in its power". We also welcome the identification of the principles underpinning the draft law, in Article 4. These encompass the following: suma qamaña (coexisting well); public ethics; public interest; speed; accessibility; maximum publicity; gratuitous (which is probably a mistranslation for freely accessible); good faith; and inclusion. These principles should not only guide relevant bodies in the implementation of the law, but also adjudicators and courts in its interpretation. The provision is important because it allows transparency and RTI – alongside suma qamaña – to be identified as values which are important to Bolivians and the "Plurinational State" of Bolivia, in particular.

Although these initial provisions are positive, the draft law would be further enhanced if they included a provision that there is *a presumption* that all information held by public bodies is subject to disclosure and that this presumption may be overcome only in very limited circumstances. This would follow the approach of the Mexican federal right to information law.[22] The Mexican law also provides that it must be interpreted with the constitutional guarantee of the right to information, as well as the Universal Declaration of Human Rights and the ICCPR.

Recommendations:

- All references to the "right to access public information" should be replaced by the "right to information" in the draft law.

[22] Federal Transparency and Access to Public Government Information Law of June 2002, Article 6.

- A preamble to the draft law should be included which introduces the draft law as "an Act to promote transparency and maximum disclosure of information in the public interest, to guarantee the right of everyone to information and to provide for effective mechanisms to secure that right".
- The preamble should indicate that the draft law shall be interpreted in accordance with the Constitution, the international legal obligations, including those under the UDHR and the ICCPR, the UNCAC, the ACHR and other international legal instruments to which Bolivia is party.
- The general provisions should indicate a *presumption* that all information held by public bodies is subject to disclosure and that this presumption may be overcome only in very limited circumstances.

3. Scope

a. Bodies covered

The scope of the draft law, in terms of the bodies covered, is broad and deserves to be welcomed. The scope of application encompasses four categories of bodies. *First*, Article 3(I) indicates that the law applies to public bodies: "four state bodies, at all levels, to the Public Prosecutor's Office, the Public Defender's Office, Federal Inspector's Office, Attorney General's Office, Armed forces, Bolivian Police and the autonomous territory entities. To public entities, companies and decentralized public institutions, devolved bodies, independent agencies and mixed companies. For the effects of the present law, the subjects indicated in this paragraph are called public entities." *Second*, Article 3(II) indicates that the draft law applies to "service providing entities", specifically "private persons, individuals or corporate entities... that have signed contracts with the state or have its authorization for the provision of public services are also under obligation." *Third*, Article 3(II) also indicates the draft law applies to "private entities in which the Plurinational State has economic interest and to private entities that receive funds or good of any origin for obtaining public interest aims or social aims." *Fourth*, Article 3(IV) states rather confusingly that the draft law "shall not be restricted to social organisations, social agents or other organisations of civil society of the Plurinational State, which has the willingness of making information known to society which is considered to be of the public interest". The wording of the provision is assumed to mean that civil society organisations who wish to make public interest information available are also subject to the terms of this law, although this ought to be clarified.

b. Personal scope

Article 25 establishes the "right to access to information" from the state for "all citizens without distinction of sex, color, age, sexual orientation, gender, origin, culture, nationality, citizenship, language, religious beliefs, ideology, political or philosophical affiliation, marital status, economic or social condition, type of profession, level of education, disability, pregnancy or other aspects." While the inclusion of the principle of non-discrimination – including on the grounds of nationality – in this provision is positive, it is somewhat undermined by the fact that RTI is available for *citizens only* rather than everyone. The essential characteristic of human rights is that they are available to all within the jurisdiction of a state. The universal nature of the right of information has been underlined by the Columbian Constitutional Court which has stated that "all persons [have] the right to inform and receive information that is true and impartial"[23] and the Constitutional Chamber of the Supreme Court of Costa Rica which has indicated that "the active

[23] Appeals Chamber of the Constitutional Court of Columbia. Judgment T-437/04 File T-832492 6 May 2004.

subject of [this] right ... is any person ..., which reveals that the aim of the constituent assembly was to reduce administrative secrecy to its minimum expression and expand administrative publicity and transparency".[24]

Furthermore, and as stated earlier, the right should be expressed as a "right to information".

c. Definition of "information"

In addition, we note that the draft law does not provide a clear definition of "information." Article 26(II) states that "the public information in its phases of beginning, processing and conclusion, may be contained in written documents, photographs, recordings, electronic or digital support, or in any other format or support". In our opinion, the draft law should identify that it covers simply "information", rather than "public information", which should be defined to encompass *all* recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the body that holds it and whether it not it is classified. The Mexican law on the right to information provides a good example for the development of the Bolivian law. The Mexican law defines everything contained in documents that public bodies generate, obtain, acquire, transform or preserve. Documents are defined as any records regardless of form that are related to the exercise of the functions or activities of public bodies and public servants, regardless of their source, date of creation or form.[25]

Recommendations:

- Article 3(IV) ought to be clarified to define the organisations covered by this provision. It is proposed that the provision should state that the law "applies to" (rather than "shall not be restricted to") "civil society organisations".
- Article 25(I) paragraph I should assert that "everyone shall have the right to information without distinction on such grounds as gender, race, ethnic origin, age, sexual orientation, nationality ...."
- The definition of information in Article 26(II) should be amended to apply to any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the body that holds it and whether it not it is classified.

4. Duties of Bodies

Articles 25 and 26 set out the various duties of the various bodies and entities identified in Article 3 of the draft law. They are obliged to: *first*, "watch over the exercise and effect of the right of access to information, without restriction"; *second*, to provide the "information found under their power and in their files"; and *third*, to "[promote, develop and establish] policies, measures and actions to guarantee the attention to, processing and delivery of the public information and documents in an opportune, complete and efficient and gratuitous way". Entities may not deny information for any reason unless it falls within one of the exceptions provided under the draft law. In addition, the entities must "ensure that the delivery of information is carried out regardless of the means used" and "corresponding technical precautions" are applied in that regard (Article 28). Furthermore, a "judicial order or request to the prosecutor shall not be necessary to request and obtain information and public documents" (Article 28). Entities subject to the present law are obliged to conserve, maintain and take care of the public information under

[24] Constitutional Chamber of the Supreme Court of Costa Rica Exp 05-001007-0007-CO, Res 2005-04005 San Jose Costa Rica 15 April 2005.
[25] Mexican Federal Transparency and Access to Public Government Law adopted in June 2002.

their power in accordance with the legal provisions in effect (Article 46). Public and private entities that provide public services are obliged to "create, maintain and manage files of public information (Article 9).

We support the draft law's recognition of the important role that websites can play in promoting RTI. Article 23 states that the "web portal of the government as a centralised information processing system and electronic means or support, in addition to the functions established in the legally pertinent provisions, shall be an instrument of access to public information".

5. Exceptions

Article 34 indicates that rejections of requests for information should be justified by bodies under the regime of exceptions under Article 42. Article 43(I) later emphasises that the exceptions contained in Article 42 are the "only ones that the authorities or entities may allege so as to restrict or deny access to information". It is also positive that the draft law provides: that "in case of doubt, interpretation must always be made in favour of the right of access to information". Furthermore, the "character of classified information may not be invoked when dealing with investigation of serious violations of fundamental rights or offenses of personal injury" (Article 45) and "the information that all jurisdictions of the state have in relation to forced disappearance, death, political violence and violation of human rights in the past are in the public domain as of the validity of this Law" ((I) of the Final Provisions).

However, the regime of exceptions, under Article 42 in particular, is problematic in various other ways. *First*, the draft law lacks any provision which allows for a record to be reasonably severed if part of the requested information falls within the scope of a legitimate exception indicated in the law.[26] The draft law should provide for the possibility of redacting documents in a way that provides as much information as possible to applicants.

Second, there is no overarching provision indicating that the fundamental principle of maximum disclosure should apply unless it can be shown that disclosure of information would: (1) cause substantial harm to a legitimate aim in order to qualify as an exception ("the harm test"); and (2) that harm outweighs the public interest in having the information made public ("the public interest test"). Therefore, the harm to a specific legitimate aim should be weighed against the public interest in having the information made public; where the latter is greater, the draft law should provide for disclosure of the information.

Third, instead of such a provision encompassing the harm and public interest tests (the "public interest override"), the draft law develops a hierarchy of types of information which may not be disclosed apparently as a matter of principle (Article 42), unless certain criteria are met (Article 43). The effect is a sweeping approach to exceptions and the state is accorded enormous discretion to determine what constitutes secret, reserved and confidential information.

Information classified as "secret, reserved or confidential" is not subject to the right to information.

- Secret information is information "related to internal or external security of the State, whose disclosure or spread may put at risk the Plurinational State". Such information "shall be restricted to a maximum period of twenty years when dealing with information

[26] *Article 19 Model FOI Law*, Article 24.

regarding external security and ten years when dealing with information regarding internal security".

- Reserved information is information which has been "reserved... through supreme laws or decrees approved in separate matters of State security" or "through the classification procedure established in the present law only when dealing with internal or external State security." Reserved information shall be withheld unless there is a court order granted or there a "regulation equal or greater than that which has served to restrict it, which leaves the restriction without effect" has been issued.

- Finally, confidential information is information that "referring to the health, intimacy or privacy of persons; protected by professional secrets, in accordance with the Law, whose disclosure or spread may put at risk the life, integrity or safety of persons; referring to children and adolescents whose disclosure or spread puts at risk their health, integrity or safety". Such information shall only be accessible by court order. The draft law makes clear that the restriction of confidentiality is not applicable to the titleholder of the information.

The draft law indicates that upon termination of the time periods, the restricted information shall be free and public access" (Article 43 and Article 44(IV)) Article 44(IV). However, the very blanket nature of the period of restrictions means that it would be impossible to challenge the decision to classify information as "secret" before those restrictions expire.

Furthermore, the maximum period of twenty years for exempting secret information concerning security is too long. The current trend is to set shorter limits on the maximum duration of exempt information to *between ten and twenty years*. Under Mexican Federal Law of Transparency and Access to Public Government Information, "privileged information" may remain as such for a period of up to twelve years.[27] In the UK, a special committee set up by the UK government recommended early this year that the UK's 30 year rule be reduced to 15 years.[28] In the US, the Executive Order on Classification sets a default that information can only be classified for ten years.[29]

Fourth, in addition to including the public interest override and dispensing with the hierarchy of types of information, the draft law should include a "narrow, carefully-tailored" list of types of information which may justify non-disclosure, as indicated by the Joint Declaration of the UN, OAS and OSCE Special Rapporteurs in 2004.[30] These aims should include protecting information that is personal information, privileged, commercial and confidential, concerning health and safety, law enforcement, defence and security or pubic economic interests. *The Model Inter-American Law on Access to Information* also states that "public authorities may deny access to information only ... when it is legitimate and strictly necessary in a democratic society".[31]

The Mexican federal right to information law contains a reasonable set of specific exceptions to the principle of disclosure, namely in cases where disclosure would: compromise national or

[27] See s 15 of the Mexican Federal Law of Transparency and Access to Public Information.
[28] Review of the 30 Year Rule, January 2009 http://www2.nationalarchives.gov.uk/30yrr/30-year-rule-report.pdf
[29] Executive Order 12958, 25 March 2003.
[30] International Mechanisms for Promoting Freedom of Expression, Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 6 December 2004 http://www.article19.org/pdfs/igo-documents/three-mandates-dec-2004.pdf
[31] Article 41, Ibid n21.

public security of defence; impair ongoing negotiations or international relations, harm the country's financial or economic stability; pose a risk to the life, security or health of an individual; or severely prejudice law enforcement, including the prevention or prosecution of crime and the administration of justice, amongst other things.[32]

In relation to exceptions concerning security which is currently covered by Articles 42 (I) and (II) of the draft law for example, the draft law should draw from the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, in particular the general principle that no restriction on the right to information on the ground of national security may be imposed unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate security interest.[33] In relation to categories of information which may be exempted on privacy grounds, the draft law should include a standard of reasonableness so that only the unreasonable disclosure of personal information about an individual would be exempt. It should also specifically state that information about the activities of public officials in their official capacity is not exempt under this provision.[34]

Recommendations:

- The draft law should state that a body may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the harm to the protected interest outweighs the public interest in disclosure.
- Provisions on "secret, reserved and confidential" information should be replaced to include a narrowly-defined list of types of information which may justify non-disclosure if they pass the harm and public interest tests.
- The draft law should set the maximum duration of classified information to ten years.
- The draft law should state that information may be withheld on national security grounds only if the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate security interest.
- The draft law should state that information may be withheld on privacy grounds only if it would be unreasonable to disclosure that information. The draft law should also state that information about the activities of public officials in their official capacity is not exempt.

6. Procedures

[32] Federal Transparency and Access to Public Government Information Law of June 2002, Article 13.

[33] In other words, the genuine purpose and demonstrable effect of any restriction must be to protect the state's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat. It is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest. See the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information* http://www.article19.org/pdfs/standards/joburgprinciples.pdf The Principles were developed by a working group of experts in 1995 and have been subsequently endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression, the UN Commission on Human Rights and various courts. See for example, Report of the Special Rapporteur, Promotion and protection of the right to freedom of opinion and expression, UN Doc E/CN.4/1996/39, 22 March 1996, para 154; Commission Res 1996/53; *Gamini Athukoral "Sirikotha" and Ors v Attorney-General*, 5 May 1997, SD Nos. 1-15/97 (Supreme Court of Sri Lanka) and *Secretary of State for the Home Department v. Rehman* [2001] UKHL 47 (House of Lords).

[34] See eg, South Africa, Promotion of Access to Information Act, § 34.

There are a number of positive aspects of the provisions on procedures, such as the absence of any requirement upon an individual making a request for information to give a "cause or motive" for exercising his right (Article 25(I)), to prove his/her identity (Article 29 (III)) and the provision that "delivery of public information shall not have any cost" (Article 32 (I)).

However, the procedures for submitting requests for information require revision in various ways. *First*, although Article 29(I) provides that requests may be submitted in writing, verbally or electronically, the law should also expressly provide that a request may be made in person, by post (or mail) or through a lay or legal representative. *Second*, in relation to requests which are unclear, the draft law states that the entity must contact the requester to clarify the request within a period of ten days, otherwise the original petition would be disregarded. This potentially disadvantages requesters who are not able to properly identify or specify the nature of their request. The draft law should instead provide that bodies have a duty to provide advice and assistance if a request is unclear or overly broad. *Third*, the period for a response to a request is ten days (Article 31 (I)) which may be extended, upon justification, by twenty days if the "gathering or processing ... is complex or difficult" or "the volume of information is large". This extension period is excessive and should be minimised to a maximum of fifteen days.

Fourth, if the "entity does not have the request information but knows where it is located, it must communicate such circumstances to the petitioner within this time period". Yet it should be for the entity to transfer the request to an appropriate body which it knows possesses the information given the greater resources and capacity of the entity. The draft law should provide that a public or private body which does not have access to the information requested but knows that another body holds the record should transfer the request to that body within two days and inform the requester of information of that transfer. The time limit responding to requests in such cases should begin to run from the date of transfer.

Fifth, the draft law should state that if an entity rejects a request for information, it should communicate this rejection to the requester and give reasons for that decision. Currently, the draft law indicates that the non-provision of a response or delivery of the information within ten days should be considered a denial of the request (Article 31 (IV)).

Sixth, the draft law emphasises that information "must be delivered in the form in which it is found and the petitioner may not oblige the entity to process the information in such a way that it requires additional extraordinary resources and means". It is both impractical and inappropriate for information to be delivered "in the form in which it is found" partly because original documents may well need to be copied or reproduced before they are handed to the requester, particularly if they are archival. Furthermore, individuals should be able to request information in any form – something especially important for individuals with disabilities.

Seventh, the draft law's provisions on costs should also contain provisions indicating that no reproduction fees should be charged for persons with low income and that fees should be set by law by a central body established to determine them.

Recommendations:

- The draft law should provide that it is possible to submit a request for information in person, by post (or mail) or through a lay or legal representative.
- Article 30 should be amended to state that bodies should have a duty to provide and assistance if a request is unclear or overly broad.
- Article 31(II) should be amended to provide that the period of delivery of a response may

be extended by twenty days.

- Article 31(I) should be amended to state that if the requested information is not held by the entity, that body shall transfer the request to the appropriate body within no more than two days and inform the requester of information of that transfer. The time limit responding to requests in such cases should begin to run from the date of transfer.
- Article 31(IV) should be amended to state that a body should communicate the refusal or rejection of a request for information to the requester and give reasons for its decision.
- Article 31 (VII) should be amended to state that bodies should provide information in the form requested by the requester.
- Article 32 should provide that no reproduction fees should be charged for persons with low income. In addition, that provision should state that fees should be set by law by a central body established to determine the level of fees.

7. Appeals

It is positive that Article 36 indicates that the burden of proof falls on the requested entity to show "that the requested information is subject to one of the exceptions established in this Law". It is also positive that private, public and non-profit organisations are able to "promote or sponsor the request of any individual or corporate entity or, on their own initiative, legal suits for access to public information when the information has been denied" (Article 41). This would provide requesters wishing to challenge a denial for information with support, particularly if the disclosure of information was in the wider public interest.

a. Internal Appeals

Article 33 provides that the requester has twenty four hours after receiving the information to inform the body that the information is incomplete. The body must then process and deliver the information that is lacking within two days. If the body does not respond, the requester must assume that the request is denied. The period of twenty four hours is far too short a period for the requester to file an internal appeal for review of the request concerning the completeness of the information received. Indeed, depending on the method of communication used to convey that a request has been rejected, the requester for information may not even receive the news that her/his request for information has been rejected in time to be able to appeal. Most obviously, if the postal service is used as the method communication, the requester is almost certainly going to be out of time to appeal a refusal to disclose information.

A requester for information should have at least twenty working days to file such an internal appeal. The body should then decide on the appeal within twenty days and notify the requester of the decision.

b. External Appeals

Article 34(II) indicates that the requester may challenge a refusal of a request in an "administrative way in accordance with the Law, or through constitutional measures foreseen in the Constitution". Article 35, on "tacit negation and impugnation" elaborates on the process for external appeals, but does so in a very unclear way. Apart from the lack of any clear indication of the possibility of judicial review of decisions of bodies to refuse disclosure of information, the draft law provides no possibility for appealing to an external body, such as an Information Commissioner or Ombudsman, which can review complaints about a failure of bodies to release

information. The role, appointment and authority of the Commissioner or Ombudsman need to be clearly set out in the draft law.

Recommendations:

- Article 33 should be amended to state that an applicant should have at least forty days to file an appeal for review of the decision to refuse information or if the information received is incomplete. The draft law should state that body should then decide on the appeal within twenty days and notify the requester of the decision.
- The draft law should clearly state a person who has made a request for information may apply to the Information Commissioner (or Ombudsman) for a decision that a public or private body has not complied with the terms of the law by failing to (1) indicate whether or not it holds a record, or to communicate information; (2) respond to a request for information within the time limits; (3) provide a notice in writing of its response to a request for information; (4) communicate information; (5) charged an excessive fee; or (6) communicate information in the form requested.
- The draft law should state that the Commissioner's decisions are binding.
- The draft law should state that a requester or body may appeal the decision of the Commissioner within 45 days and the burden of proof shall be on the body to show that it acted in accordance with its obligations.

8. Institutions and Oversight body

Article 27 of the draft law envisages that there are, within bodies, "Units of Transparency, whose responsibility, in addition to that established by standards in effect, is to receive and process requests for information" or at minimum a designated "Information Official responsible for serving, processing and delivering the public information requested". Article 39 indicates that "control in due attention, processing and delivery of requested information shall be exercised by the hierarchical superior, and he/she in turn by the supreme authority, and the Supreme Authority by the entity that exercises control over him/her".

Article 50 establishes the "Ministry of Institutional Transparency and Combating Corruption" as the oversight body of the law. It is empowered to supervise and control compliance with the "standards of transparency and access to information" through "supervision and monitoring of compliance with standards and the promotion of legal suits against those responsible for lack of compliance; issuing of "recommendation [sic] regarding compliance with the standards of active transparency; promotion and encouragement and participation, cooperating in efficient management of public resources; promotion or sponsorship of requests for access from individuals or corporate entities, or through its own initiative, of legal suits of access to public information when this has been denied". However, as a part of government, such a ministry lacks independence and autonomy from government which makes it fundamentally flawed as an oversight body to any RTI law.

We note that over sixty states including as Chile, Honduras and Mexico provide for an independent, administrative oversight body to review refusals to provide access to information and oversee the implementation of the law. Such oversight bodies are crucial to the effective functioning of right to information systems in countries, particularly when direct appeals to the court process are too time-consuming and expensive for most applicants, as campaigns in the United States and South Africa for the establishment of an oversight body have highlighted.[35]

[35] T Mendel, *The Right to Information in Latin America: A Comparative Legal Survey* (UNESCO: 2009) at 168.

Recommendations:

- The provisions on the Ministry of Institutional Transparency and Combating Corruption should be omitted.
- The draft law should provide for a body, called the Information Commissioner or Ombudsman, specialized in transparency and access to information to resolve disputes concerning the right to information. The body should be independent and impartial, and have budgetary, operational and decision-making autonomy. Its powers should include: the authority to hear and to determine appeals from persons whose requests for information have been denied; the power to issue binding decisions which are final for bodies; the authority to monitor and follow up on compliance with its decisions; the authority to receive and hear the facts on violations of access to information legislation; have the full powers to gather information and demand testimony; the authority to evaluate the actions of the bodies covered by the law; the authority to review and order declassification of information; the authority to provide general guidelines; the authority to verify compliance with rules on transparency.
- In terms of appointment, the draft law should set out that the process of nomination for appointment must be open and transparent, the minimum qualifications for appointment; that the appointment must be approved by the legislature and that the appointment is for a fixed term of five years with the possibility of renewal.
- The draft law should state that the Information Commissioner or Ombudsman should report and be accountable to the legislature, who can remove the post-holder (for criminal violation, serious dereliction of duties, or a clear inability to conduct the job).

9. Proactive transparency

There are number of positive provisions on proactive transparency, an area where Latin American countries generally have very progressive rules.[36]

Through the provisions in Chapter II, the draft law places great emphasis on "transparency in public management", which is positively defined as an "authentic and responsible dialogue between the government and society, which is developed in an ethical and trusting environment to establish commitments directed to achieving general well being and which, as a process, requires political, social and institutional changes". Article 6 indicates that "all public bodies and those that provide services shall publish and disclose by official means all the standards of a general nature they dictate". Furthermore, the "Plurinational State ... shall promote their disclosure through all means possible, in such a way as to come to those interested and to society in general, for its knowledge, with priority being given to those sectors where access to the means of publicity established in this Law is limited." According to the draft law, the disclosed information must also be *useful* to citizens and others who should be "able to participate and exercise social control of public management" (Article 7(II)).

Some of the positive features of the draft law concern its provisions on accessing government held information through the internet. It is interesting to note that "the means for publishing and disclosing public information" includes "internet web portals" (Article 7(I)) which should have, at minimum, the following: general data on the entity; a list of public servants or personnel; a list of national, strategic, institutional and other plans; financial and budgetary information;

[36] Ibid.

information regarding hiring; the relevant legal framework; any legal or other proceedings involving the entity; information on the unit of transparency in the entity (Article 8). Furthermore the web portal should indicate who is responsible for it, be published in Quechua, Aymara and/or Guarani language or in other languages recognised by the state and publish information related to indigenous peoples of rural origin. This provision is in keeping with the approach of the Nicaraguan law which also emphasises that the diversity of the state through the provision of languages in different languages.[37]

Article 23 also states that the "web portal of the government as a centralised information processing system and electronic means or support, in addition to the functions established in the legally pertinent provisions, shall be an instrument of access to public information". The Legislative Assembly is obliged to publish and continually update on "its website or portal the complete texts of all bills of law which passed through the Assembly" (Article 20).

The draft then goes on to identify different state entities and the particular kinds of information they should disclose. The state's Contracting Information System is obliged to publish minimal information and data regarding public contracting (Article 10). The Federal Inspector's Office should publish and disclose information, including on the opinion and results of audits performed on public entities and recommendations (Article 11). There should be transparency in management of public finances which shall be carried out by the creation and implementation of mechanisms to access information of a tax nature (Article 12). The Ministry of the Economy and Public Finances should publish on its web portal minimal and disaggregated information about the general budget, on financial statements and balances of the public sector, income and expenses of the central government and decentralised agencies, investment projects, on public debts, information on credit management (Article 13). The Attorney General's Office should publish and disclose information including information on concerning legal and administrative suits in which the Attorney General intervenes and appeals and actions involving the state (Article 15). The Ministry of Planning and Development must publish and disclose information on such matters as the economic and social development plan, territorial planning and organization policies, the list of NGOs and private non-profit entities that receive funds or goods for carrying out purposes of public or social interest and a list of international cooperation agencies that work in Bolivia (Article 16). In addition, the judiciary should publish information on cases won, resolved and the length of proceedings and the list of judges and magistrates and their location (Article 21). The Central Bank of Bolivia, the Inspection and Social Control Authorities, the Public Defender's office and the Public Prosecutor are all obliged to publish certain kinds of information. Furthermore, the "Supreme Executive Authorities" and the "responsible parties of the entities" are required to send the Ministry of Institutional Transparency and Combating Corruption, a report on requests for information, data on responses and rejections from the previous year (Article 37).

In ARTICLE 19's opinion, whilst the draft law contains many positive provisions on transparency, it should also establish clearer *basic rules* for the publication of information. All public bodies should use language which is clear, accessible and which facilitates comprehension by its users, indicate the administrative division responsible for generating the information for each item, provide a complaints procedure for failure to comply with the principle of transparency and also provide for a system for increasing the requirements for proactive dissemination of information.

[37] Article 3 of Law No 621 on Access to Public Information adopted on 22 June 2007 to give effect to the right to information.

Recommendations:

- The draft law should state that bodies are required to use language which is clear, accessible and comprehensible for users. Bodies should ensure that the information is regularly updated, indicates the date of the update, the administrative body responsible for the update.
- The draft law should also provide a complaints procedure for failure to comply with the principle of transparency and also provide for a system for increasing the requirements for proactive dissemination of information.

10. Training

It is positive that the draft law includes a provision on training of state officials on transparency. Under Article 47 "public entities of the plurinational State shall implement, in accordance with their competencies and budgetary possibilities, programs for spreading knowledge and training regarding transparency and access to information, directed both to public servants and organisations of civil society, with the objective of ensuring greater and better social participation in the management and activities of the State". In addition, universities and other institutions of the educational system shall develop programmes for awareness activities, disclosure and promotion of the right to access to information". Furthermore, "educational centers of the national educational system shall integrate the mechanisms of exercise of citizens' rights to transparency, information and communication in their curriculum".

The draft law should require that adequate resources and attention are devoted to the question of promoting the goals of the legislation.

Recommendations:

- The draft law should state that adequate resources should be set aside for the promotion of transparency and implementing the provisions of the legislation.

11. Sanctions

a. Civil Responsibility and Criminal Sanctions

The draft law provides no civil liability or criminal sanctions for violations. It is important to include sanctions for individuals who wilfully obstruct access to information or wilfully destroy records in order to protect the integrity and availability of records. Nearly every RTI law includes such provisions. In India, officials who violate the law can be held personally responsible and fined by the Information Commission.[38] In Turkey, the Right to Information Law provides that:

> the officials and other civil servants who negligently, recklessly or deliberately obstruct the application of this law, shall be subject to disciplinary sanctions as provided in the relevant regulations of personnel regime.[39]

[38] Right to Information Act, s20.
[39] Law on Right to Information, s 29.

A system of sanctions should be narrowly focussed to serve the particular objectives of the law, and should encompass a range of administrative, civil and criminal sanctions to deter violations of the law.

Recommendations:

- The draft law should provide for administrative and civil sanctions, including fines, for deliberate violations of the law.
- The draft law should provide that it is a criminal offence to wilfully – (a) obstruct access to any information contrary to the provisions of the act; (b) obstruct the performance by a public body of a duty under the act; (c) interfere with the work of the oversight body; or (d) destroy records without lawful authority. It should go on to state that anyone who commits such an offence shall be liable on summary conviction to a fine not exceeding an appropriate amount and/or to imprisonment for a period not exceeding two years.
- The draft law should provide for sanctions against bodies for failure to proactively disseminate public information.
- Legal fees and damages should be available to requestors when the oversight body finds that information is being unlawfully withheld.
- The draft law should provide that sanctions may be directly issued by the oversight body for the law.

12. Protections

Article 40 indicates that the public servant or employee of the entities "shall not be submitted to any type of sanction or reprisals by his hierarchical superior" for having delivered information that was requested. Protections for public officials should include protection from defamation actions when they have released information in good faith. In the absence of such protection, officials would be excessively cautious about requests for information to avoid any personal risk which would lead to a culture of secrecy. Members of the public should be also protected from criminal or civil actions (including defamation actions) if they publish information obtained from a public authority under the draft law.

The act does not address the issue of whistleblowers, persons who release information on wrongdoing. In the absence of comprehensive legislative protection for whistleblowers, the draft law should provide for this in accordance with international standards and the best practice of states. Whistleblower protections are an important complement to access to information laws by facilitating the disclosure of information in the public interest. A number of international and regional instruments require the adoption of these protections to fight corruption. The UNCAC recommends that countries adopt "appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention".[40] Whistleblower protection laws have gained a strong interest around the world in recent years, although such protections have not – so far – been a feature of RTI laws in Latin America.[41] However, in some countries such as Chile, other laws provide for whistleblower protection.[42]

[40] Article 14, UN Convention on Anti-Corruption s 33
http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf
[41] David Banisar, *Whistleblowing: International Standards and Developments* in I Sandoval (ed), Corruption and

Recommendations:

- The draft should provide for protection against any legal, administrative or employment related sanctions for individuals who release information on wrongdoing, or which would disclose a serious threat to health, safety or the environment. This protection should apply where the individual acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment. Wrongdoing should be defined to include the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty or serious maladministration regarding a public body.[43]

Transparency: Debating the Frontiers Between State, Market and Society, World Bank-Institute for Social Research, UNAM, Washington, D.C., 2011 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1753180

[42] See protection in Law No 20.205 of 2007 Ley que Protege al Funcionario que Denuncia Irregularidades y Faltas al Principio de Probidad.

[43] See *ARTICLE 19, FOI Principles*, Principle 9, and *ARTICLE 19, Model FOI Law*, Part VII.

ANNEX

BILL OF LAW
FOR TRANSPARENCY AND ACCESS TO PUBLIC INFORMATION

CHAPTER I
GENERAL PROVISIONS

Article 1. - (Object). – The object of the present law is to regulate transparency in public management and guarantee all citizens full exercise of access to public information which is under the custody, administration or possession of the State.

Article 2. - (Purposes). – The purposes of the present law are:

a) Ensure transparency in public administration for correct management of public matters.

b) Ensure full and effective exercise of the right of every person to access public information generated or in the power of all institutions and entities of the Plurinational State.

c) Determine the procedures and mechanisms before public administration for transparency and access to information which is in its power.

Article 3. - (Area of application and reach).-

I. The present law applies to the four State Bodies, at all levels, to the Public Prosecutor's Office, the Public Defender's Office, Federal Inspector's Office, Attorney General's Office, Armed Forces, Bolivian Police and the autonomous territory entities, including the indigenous autonomous entities of rural origin. To public entities, companies and decentralized public institutions, devolved bodies, independent agencies and mixed companies. For the effects of the present Law, the subjects indicated in this paragraph are called public entities.

II. Private persons, individuals or corporate entities, not included in the previous paragraph that have signed contracts with the State or have its authorization for provision of public services are also under obligation. For the effects of the present Law, those indicated in this paragraph are called service providing entities.

III. The provisions of the present Law shall also be applied to the private entities in which the Plurinational State has economic interest and to private entities that receive funds or goods of any origin for obtaining public interest aims or social aims. For the effects of the present Law, those indicated in this paragraph are called private entities.

IV. The provisions of the present Law shall not be restricted to social organizations, social agents or other organizations of civil society of the Plurinational State, which has

the willingness of making information known to society which is considered to be of public interest.

Article 4.- (Principles).- The present Law is upheld by the following principles:

a) Suma Qamaña (Coexisting Well).- Transparency and access to information are instruments that allow Bolivians to participate in the construction of the Plurinational State, so that all may Live Well.

b) Public Ethics. – The conduct of the public servant must be regulated by the principles and values established in the Political Constitution of the State.

c) Public interest. – All information that is found in public entities and private entities subject to the present Law is of collective interest and therefore of public domain.

d) Speed. – The information requested by individuals or corporate entities must be provided in the shortest time possible.

e) Accessibility. – The information requested must be granted without any restriction, except in cases specifically established in the present Law.

f) Maximum Publicity. – The information generated and conserved in the public entities is of a public character; consequently it may be made known to the population by any reputable means of information and communication.

g) Gratuitous. – The information requested by individuals or corporate entities shall be provided without any cost.

h) Good Faith. – Access to information must be regulated by the legal provisions in effect and the ethical or moral principles foreseen in the Constitution

i) Inclusion – Citizens without any type of discrimination shall have access to all public information, so as to actively participate in building a Plurinational State which brings about the equality of Bolivians.

CHAPTER II
TRANSPARENCY IN PUBLIC MANAGEMENT

Article 5. - (Transparency in public management). – is an authentic and responsible dialogue between the government and society, which is developed in an ethical and trusting environment to establish commitments directed to achieving general well being and which, as a process, requires political, social and institutional changes.

Article 6. - (Publication of State standards). -

I. All public entities and those that provide services shall publish and disclose by official means all the standards of a general nature they dictate.

II. The Plurinational State, in addition to publishing standards, shall promote their disclosure through all means possible, in such a way as to come to those interested and to society in general, for its knowledge, with priority being given to those sectors where access to the means of publicity established in this Law is limited.

Article 7. - (Means of disclosure or publicity). -

I. The means for publishing and disclosing public information includes but is not limited to Internet web portals, printed means, means of mass communication, audiovisual means and all reputable means or resources that allow achieving maximum publicity and public disclosure.

II. The disclosed public information must allow society, its citizens, organizations, social movements and social actors to be able to participate and exercise social control of public management for adequate rendering of accounts from authorities.

Article 8. - (Minimum content of a web portal). -

I. Public and private entities that provide services indicated in paragraphs I and II of article 3, through their official web portals, shall publish and make disclosure of at least the following information:

a) General data of the entity: name of the entity or institution, supreme authority, organizational chart, mission, vision, ends and purposes, domicile, telephone numbers, fax, institutional e-mail and address of the web portal.

b) Public servants or personnel: list of authorities and of dependent personnel, in all their levels and hierarchies, manner of hiring, salary scale and remuneration by position.

c) Planning: National Plans, Sectorial Plans, Strategic Planning, Institutional Planning Annual Operating Program (scheduled, performed and management results) and projects in progress and investments.

d) Financial and budgetary information: institutional budget, budgetary execution, with details of profits, expenses, financing and the operating results, in conformity with the budgetary classifiers in effect; management balance; management report; report of the results of trips abroad of authorities; research work; report of public rendering of accounts; and auditing reports and their results, as well as the measures assumed.

e) Information regarding hiring: list of suppliers, call notice for acquisition of goods and services, list of all companies and people contracted, assignments made and contracts signed and follow-up reports on execution of contracts.

f) Legal framework: Political Constitution of the State, laws, supreme decrees and other standards in the sector, regulations and resolutions of the entity which are of public interest, manual of functions, procedural forms, flow of processes (those responsible and times), and drafts of bills of Law and other regulatory proposals of the entity.

g) Proceedings: legal proceedings, arbitration, administrative and tax assessments in which the entity participates, indicating the causes or motives, amount, parts of the proceeding and stage they are in.

h) Unit of Transparency or its equivalent: with information regarding the Action Plan, activities, results, information regarding rendering of accounts, social actors, addresses for contact, complaint form, procedures for formulating a request for information and for challenging its refusal and a simple guide regarding its document maintenance systems, the types and forms of information under its control, in addition to statistical data regarding requests for access to information.

II. The portals, the official web sites must indicate in a permanent way the dates of updating the minimal information contained in the web portal, in the terms established by this Law and regulations.

III. The Supreme Executive Authorities of the public entities and the entities that provide services shall designate the one responsible for creation, maintenance and updating of the minimum information of the web portal. Lack of compliance to this obligation shall create liability.

IV. In addition to publishing the minimum required information indicated in the present article on their web portals, they must publish and disclose all additional information they consider necessary so as to encourage proactive transparency.

V. All Web portals must respect the plurinational aspect and, insofar as possible, they must be published in the Quechua, Aymara and/or Guarani language, or in other languages recognized in the State.

VI. Likewise, when applicable, it must publish information related to projects, activities, operations, purchases or other information related to indigenous people of rural origin.

Article 9. - (Public Records and Files). – It is the responsibility of public entities, and of private entities that provide public services, to create, maintain and manage files of public information, in accordance with the Law.

Article 10. - (Transparency in Public Contracting). – The State, by means of the State Contracting Information System, shall publish and disclose specific information and data regarding all the procedures of contracting of goods and services undertaken by public entities.

The minimum information to be published in matters of public contracting shall be: record of suppliers, the plan of contracting and consultants, the call notices, assignments and contracts signed, the amounts of the contracts, the penalties and sanctions and final cost, as may be the case, and all that information that permits publicity and transparency of the proceedings of public contracting.

Likewise, all information that has been sent to the Federal Inspector's Office regarding direct contracting shall be published.

Article 11. - (Federal Inspector's Office). – The Federal Inspector's Office shall publish and disclose at least the following information:

1. The opinion or results of audits performed on public entities; as well as recommendations for measures to be adopted.
2. The results of any type of audit concluded in the financial year of each one of the public entities.
3. The Sworn Statements of Assets and Income, in accordance with regulations.
4. Reports and evaluations of supervision and control over public entities.
5. Reports of social impact and development of national and sectorial policies.
6. List of audits scheduled for future administration or administrations.

Article 12.- (Publicity in Public Finances). – Transparency in management of Public Finances shall be carried out by the creation and implementation of mechanisms to access information of a tax nature. The preferential means to be used shall be the Internet, without excluding other means foreseen by this Law.

Article 13. - (Information from the Ministry of the Economy and Public Finances). -

I. The Ministry of the Economy and Public Finances shall publish on its web portal, in addition to the minimum mandatory information and other information it considers necessary, the following information:

1. Annual Aggregated and Consolidated General Budget of the public sector. This information shall be separated by sectors, institutions, public entities and companies, including the Legislative Body, Judicial Body, National Electoral Body, Public Defender's Office, Attorney General's Office, and other entities corresponding to Central Administration and Territorial Administration, composed of governing bodies, municipalities and other autonomous territorial entities.

2. The Financial Statements and Balances of the public sector as a whole within 100 business days from conclusion of the financial year, together with the balances of the two previous financial years.

3. The income and expenses of the central government, the decentralized entities, and the autonomous territorial entities included in the General National Budget or Finance Law, in accordance with the budgetary classifiers, including current income and expenses and entrance of capital and capital expenses. This information shall also be separated in accordance with the criteria that are indicated in regulations.

4. Information regarding public investment projects whose study or execution have required resources equal to or greater than 100 thousand UFVs quarterly, including: total budget of the project, the executed budget, accumulated and annual executed budget.

5. Detailed information regarding the balance and profile of the external and internal public debt adjusted or guaranteed by the public sector, consolidated quarterly, including: the type of creditor, the amount, the due date, the agreed upon rate of amortization, the capital and the interest paid and earned.

6. The timetable of disbursements and amortizations performed for each source of financing quarterly, including: official credit operations, other deposits and balances.

7. The trusts constituted with public funds, whatever their destination. Minimum information to be published shall include partnership agreements and their modifications, as well as respective audits and reports of fulfillment of trusts.

8. Information regarding the operations that are performed through information processing systems under State management.

9. Other information and data regarding tax, budgetary and credit management.

II. The social programs, projects and plans which consist of transfers or assignment of public funds or subsidies must publish information that renders account of the amounts, beneficiaries, conditions and procedures that govern them.

Article 14. - (Report on governmental administration). – The Executive Body, through the Ministry of the President, shall publish a report of that accomplished during his administration, in a necessary time period in advance of the date established for change in government administration.

The report shall furthermore include analysis of the investment commitments already assumed for the following years, as well as financial obligations, including contingent items and others, included in the Budget or not.

Article 15.- (Information from the Attorney General's Office). – The Attorney General's Office must publish and disclose the following specific public information:

a) Legal and administrative suits in which the Attorney General's Office intervenes
b) Denunciations interposed for corruption before courts with jurisdiction
c) Appeals and defense actions of the State which were presented and which moved forward and their results.
d) Assessment and recommendation reports formulated for the juridical units of the public entities.
e) Denunciations presented by social control, their treatment and processing and the results obtained.

Article 16. - (Information from the Ministry of Planning and Development). – The Ministry of Planning and Development must publish and disclose the following specific information:

a) Economic and Social Development Plan.
b) Territorial planning and organization policies.
c) The policies of the Integrated State Planning systems and of the State System of Development Financing and Investment.
d) Development plans of the Autonomous and Decentralized Territorial Entities.
e) Outside financing covenants and agreements negotiated and signed with international economic and financial cooperation.
f) Strategic National and Intersectorial Plans.

g) List of NGOs and private non-profit entities that receive funds or goods for carrying out purposes of public or social interest, with details of the results obtained, funds or resources, and place of operations.
h) List of international cooperation agencies that work in Bolivia, with details of the institutions they work with, the funds invested in them and their main activities.

Article 17. - (Information from the Central Bank of Bolivia). – The Central Bank of Bolivia must publish and disclose the following specific information:

a) Issuing, placement and administration of government bonds.
b) Contracting of international consultants for investment of reserves
c) Statistical information regarding renegotiation and conversion of the foreign public debt.
d) Information and figures of administration and management of the International Reserves.
e) Contracting for printing of currency coins and bills

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Article 18. - (Information from the Inspection and Social Control Authorities). – The Inspection and Social Control Authorities, in addition to the minimum information established by this Law, must publish and disclose the following specific information:

a) Resolutions of reversing appeals
b) Reports and opinions of inspection and control.
c) Standards and policies or promotion of regulation and control policies.

Article 19. - (Information from the Public Defender). – The Public Defender must publish and disclose the following specific information:

a) Denunciations and investigations concluded regarding violations of human rights concluded with resolution from the Public Defender in accordance with violating entities.
b) Constitutional suits interposed and their results.
c) Reports, opinions and recommendations issued and formulated by the Public Defender.
d) Activities for promotion and defense of human rights and the rights of indigenous nations of rural origin.

Article 20. - (Information from the Plurinational Legislative Assembly). – The Plurinational Legislative Assembly shall publish and continually update on its website or portal the complete texts of all bills of law which passed through the Assembly, indicating the Commission or Committee of destination, the date of presentation and the name of the sponsor of the bill.

Article 21. - (Information from the Judicial Body). – The Judicial Body shall publish and continually update the following information:

a) Data regarding the suits won, resolved and the time of proceedings per administration at all levels.
b) The list of judges and magistrates and the place where they exercise their functions, as well as the list of administrative personnel.

c) Detailing of the disciplinary suits which passed through legal channels and were resolved.
d) Resolutions and circulars issued in the administration.
e) The income generated by the institution itself.

Article 22. - (Information from the Public Prosecutor's Office). – The Public Prosecutor's Office shall publish and continually update the following information:

a) Data regarding the suits won, resolved and the time of proceedings per administration at all levels.
b) The list of inspectors and the place where they exercise their functions, as well as the list of administrative personnel.
c) Detailing of the disciplinary suits which passed through legal channels and were resolved.
d) The instructions issued in the administration.

Article 23.- (Government On Line). – The Internet web portal of the government as a centralized information processing system and electronic means or support, in addition to the functions established in the legally pertinent provisions, shall be an instrument of access to public information.

Article 24. - (Sending of financial information). – Public entities are under obligation to send financial, budgetary and contracting information to the Ministry of the Economy and Public Finances within the time periods established in regulations for their inclusion in the centralized web portal of this office.

CHAPTER III
ACCESS TO INFORMATION

Article 25. - (Right to access to information).-

I. All citizens, without distinction of sex, color, age, sexual orientation, gender, origin, culture, nationality, citizenship, language, religious beliefs, ideology, political or philosophical affiliation, marital status, economic or social condition, type of profession, level of education, disability, pregnancy or other aspects, has the right to request and receive public information from the State. In no circumstances shall petitioners or requesting parties be required to express the cause or motive for exercising this right.

II. It is the obligation of all entities considered in article 3 of the present Law to watch over the exercise and effect of the right of access to information, without restriction.

III. The State has the obligation of promoting, developing and establishing policies, measures and actions to guarantee the attention to, processing and delivery of the public information and documents in an opportune, complete, efficient and gratuitous way.

Article 26. - (Obligation to inform). -

I. The entities considered in article 3 of the present law have the obligation of providing the information found under their power and in their files.

II. The public information in its phases of beginning, processing and conclusion, may be contained in written documents, photographs, recordings, electronic or digital support, or in any other format or support.

III. A judicial order or request of the prosecutor shall not be necessary to request and obtain information and public documents.

Articles 27. - (Units of Transparency and Information Official). -

I. The entities foreseen in paragraph I and II of article 3 of this *Law* must rely on Units of Transparency, whose responsibility, in addition to that established by standards in effect, is to receive and process requests for information.

II. The entities indicated in the previous paragraph that do not have the necessary capacity and budget to have a Unit of Transparency must designate an Information Official responsible for serving, processing and delivering the public information requested.

III. In addition to the obligations indicated in the standards in effect and in those entities which do not have specialized personnel, the Unit of Transparency or the Information Official shall have the responsibility of promoting the best practices within the entity in relation to maintaining and filing of documents.

IV. Contact information of the Unit of Transparency or Information Officials must be published in the web portal of the public entity and must be of easy access to the public.

Article 28.- (Restricted negation). -

I. The requested information may not be denied for any reason, unless for the exceptions provided for in the present Law, under penalty of the established sanctions.

II. The entities foreseen in paragraph I and II of article 3 of this Law must have a system through which they ensure that the delivery of information is carried out regardless of the means used; for that purpose, corresponding technical precautions must be taken.

Article 29.- (Procedures). -

I. The request for information may be made in a written or verbal way or by electronic means after verification that said information is not found on the web page or other means of information of the public entity and must be duly registered.

II. The request shall be directed to the Unit of Transparency, the Information Official or, in the case of the entities indicated in paragraphs II and III of article 3, to the responsible party designated by the entity. In the event that he/she has not been designated or is unknown to the interested party, the request shall be directed to the Supreme Executive Authority of the entity that has the information.

III. The request for written information must contain:

a. Full name of the petitioner.
b. Description or clear and precise detailing of the information requested

c. Contact information for receiving notifications and receiving the information.

IV. If the petition is verbal, the public servant responsible must duly register or transcribe the data indicated in the previous paragraph on a special form which the petitioner must sign. There must be no cost for presentation of requests.

V. The entities subject to the application of the present Law may create alternative mechanisms or means for receiving petitions for access to information and its delivery, such as fax, e-mail and telephone.

Article 30. - (Clarification of the request). -

I. When a request is not clear, the requested entity must contact the petitioner to request him to clarify it within a maximum period of ten business days. If this deadline passes without clarification of the request, the original petition shall be disregarded.

II. Upon verifying the existence of the requested information on the institutional web site, the entity must indicate the link where the information may be found.

Article 31. - (Delivery of information and extension of delivery deadline). -

I. The requested entity to which the request for information has been presented must grant it within ten business days. If the entity does not have the requested information but knows where it is located, it must communicate such circumstances to the petitioner within this time period.

II. The period for delivery may be extended by twenty additional business days when: i) gathering or processing the information is complex or difficult or ii) the volume of information is large. Extension of the deadline must be duly justified.

III. Extension of the deadline must be communicated to the interested party by any means before the deadline established for providing the information.

IV. From the non-provision of a response or delivery of the information within the time period foreseen in paragraph I, the petitioner may consider his petition to have been denied.

VI. In the case of loss or destruction of public documents, the requested entity has the obligation of communicating such facts to the petitioner in writing and promoting the taking of corresponding legal actions.

VII. Public information must be delivered in the form in which it is found and the petitioner may not oblige the entity to process the information in such a way that requires additional extraordinary resources and means.

Article 32.- (Costs on delivery of information). -

I. The delivery of public information shall not have any cost to the petitioner.

II. When possible, the requested entity shall send the requested information by e-mail.

III. When the information is requested in other means, the entity shall ask for such means from the petitioner.

IV. When the use of paper, photocopies or other means of reproduction is necessary, the requested entity shall calculate the cost and communicate this to the petitioner so that he/she covers this amount.

Article 33.- (Complementation of information).- If the petitioner in the period of twenty four hours after receiving the information advises that it is incomplete, he/she may request complementation of the information that is lacking from the entity. The requested entity must process and deliver the information that is lacking in the period of two consecutive days. If there is no response, the request is considered as denied, opening the way for administrative impugnation.

Article 34.- (Negation and impugnation for information withheld).-

I. The negation of access to information may only be justified when dealing with information subject to the exceptions foreseen in article 42 of this Law. This must be duly founded and justified by the requested entity.

II. Under the circumstances indicated above, the petitioner may impugn the negation in an administrative way in accordance with the Law, or through the constitutional measures foreseen in the Constitution.

Article 35.- (Tacit negation and impugnation).-

I. In the cases established in paragraph IV of article 31 and article 33 of this law, the petitioner has the option of presenting the impugnation in an administrative way, which shall be processed in accordance with the procedures in effect, only in that which concerns recourse to revocatory action.

II. Exhausting recourse to revocatory action, the petitioner who does not obtained the requested information may present the constitutional measures foreseen in the Constitution.

Article 36.- (Burden of Proof).- In the case of negation of access to information for the reasons established in article 43, the burden of proof falls on the requested entity, which must show that the requested information is subject to one of the exceptions established in this Law.

Article 37.- (Reports to the Ministry of Institutional Transparency and Combating Corruption).-

I. In the first quarter of each year, the Supreme Executive Authorities and the responsible parties of the entities obliged by the present Law shall send to the Ministry of Institutional Transparency and Combating Corruption, a report or accounting of requests for information, the results and their situation, including the negations and impugnations presented from the previous year.

II. This consolidated information shall be published on the web site of Institutional Transparency and Combating Corruption.

III. The entities must publish statistical or general information in respect to requests for information received and the treatment granted to them.

Article 38.- (Responsibilities for obstruction).- Lack of compliance with the provisions contained in this Law by public servants and the entities indicated in article 3 of this Law are subject to the corresponding responsibilities.

Article 39.- (Control of requests).- Control in due attention, processing and delivery of requested information shall be exercised by the hierarchical superior, and he/she in turn by the supreme authority, and the Supreme Authority by the entity that exercises control over him/her.

Article 40.- (Functional Compliance).- The public servant or employee of the obliged entities that has delivered public information requested in accordance with that foreseen in this Law shall not be submitted to any type of sanction or reprisals by his hierarchical superior.

Article 41.- (Gratuitous promotion and sponsorship).- Private entities or non-profit social organizations, whatever may be their legal nature, and public entities in the realm of their competency, may in a gratuitous way promote or sponsor the request of any individual or corporate entity, or, on their own initiative, legal suits for access to public information when the information has been denied.

Article 42.- (Exceptions to access to information).-

I. The right of access to information may not be exercised over information classified as secret, reserved or confidential.

II. Secret information is considered that related to internal or external security of the State, whose disclosure or spread may put at risk the Plurinational State. The secret information shall be classified through Laws that shall be promoted by the entities that so require them. These laws shall contain a specific list of information which they consider must be kept secret.

III. Reserved information shall be considered as:

a) that whose characteristic of being reserved is established through supreme laws or decrees approved in separate matters of State security.
b) that information which is classified as reserved through the classification procedure established in the present law only when dealing with internal or external State security.

IV. Confidential information is considered to be that:

a) Referring to the health, intimacy or privacy of persons.
b) Protected by professional secrets, in accordance with the Law.

c) Whose disclosure or spread may put at risk the life, integrity or safety of persons.
d) Referring to children and adolescents whose disclosure or spread puts at risk their health, integrity or safety.

Article 43.- (Period of restriction). -

I. The exceptions indicated in article 42 are the only ones that the authorities or entities indicated in article 3 of this law may allege so as to restrict or deny access to information; nevertheless, in case of doubt, interpretation must always be made in favor of the right of access to information.

II. Information which is already secret, reserved or confidential shall be published in accordance with the following criteria:

1) Secret information shall be restricted to a maximum period of twenty years when dealing with information regarding external security and ten years when dealing with information regarding internal security.

2) Reserved information shall be withheld while: i) there is no court order issued by a judge within a suit or ii) a regulation equal or greater than that which has served to restrict it, which leaves the restriction without effect, has not been issued.

   The procedure established in article 44 of the present law shall only be applicable to classify as reserved that information related to State security, whether internal or external.

3) Confidential information shall be accessible by court order. The restriction of confidentiality is not applicable to the titleholder of the information.

III. Upon termination of the established time periods, the restricted information shall be of free and public access, without greater procedures or formalities than that established by the present Law for requesting it.

Article 44.- (Classification of public information).-

I. Information regarding State security, whether internal or external, may be classified at reserved, in compliance with article 237 of the Constitution.

II. The one responsible for classification is the Supreme Authority of the entity.

III. Classification shall be made through an express resolution which shall contain at least: the date, mention of the document or information to be classified and the legal reason and basis.

IV. The period of restriction may not be greater than that established in article 43 of this Law. Upon termination of the time period, the document or information shall automatically be declassified.

V. The titleholder of each department or entity must adopt the measures necessary for due custody and conservation of classified documents.

VI. The classification of the information may not be made after a request for information.

VII. The previously classified information may be declassified before termination of the period of restriction through a well based and justified decision issued by the corresponding authority whenever the reasons that gave rise to the classification no longer exist.

Article 45.- (Exemption in the case of human rights violations). - The character of classified information may not be invoked when dealing with investigation of serious violations of fundamental rights or offenses of personal injury. This information shall be accessible without greater requirements than those established in article 30 of this Law.

Article 46.- (Conservation and custody of information).- Entities subject to the present Law are obliged to conservation, maintenance and custody of the public information under their power in accordance with the legal provisions in effect.

Article 47.- (Promotion and training).-

I. All public entities of the Plurinational State shall implement, in accordance with their competencies and budgetary possibilities, programs for spreading knowledge and training regarding transparency and access to information, directed both to public servants and organizations of civil society, with the objective of ensuring greater and better social participation in the management and activities of the State.

II. Universities and other institutions of the educational system shall develop programs for awareness activities, disclosure and promotion of the right to access to information.

III. Educational centers of the national educational system shall integrate the mechanisms of exercise of citizens' rights to transparency, information and communication in their curriculum.

Article 50.- (Supervision of compliance with the standards of transparency and access to information).- The Ministry of Institutional Transparency and Combating Corruption shall supervise and control compliance with the standards of transparency and access to information through:

1. The supervision and monitoring of compliance with the standards of transparency and access to public information, and the promotion of legal suits against those responsible for lack of compliance with the standards contained in this Law.
2. The issuing of recommendation regarding compliance with the standards of active transparency.
3. Promotion and encouragement of better practices and innovation in publication of public and governmental information.
4. Promotion of a citizenship culture of transparency and participation, cooperating in efficient management of public resources.
5. The promotion or sponsorship of requests for access from individuals or corporate entities, or through its own initiative, of legal suits of access to public information when this has been denied.

FINAL PROVISIONS

Sole Final Provision.-

I. Information regarding State security, whether internal or external, which has been classified in advance to the promulgation of this Law shall be accessible whenever the time periods and procedures established in this Law have passed.

II. The information that all jurisdictions of the State have in relation to forced disappearance, death, political violence and violation of human rights in the past are in the public domain as of the validity of this Law.

TRANSITORY PROVISIONS

Sole Provision.-

In the maximum period of two years from promulgation of this Law, those entities that so require shall promote the approval of laws that contain the specific list of information that they consider must be secret.

REPEALS

Sole Provision.-

I. The D.S. No. 28168 of May 17, 2005 is repealed.

II. Article 18 of Law no. 2341, Law of Administrative Procedure; item d) of article 5 of the D.S. No. 23318-A of November 3, 1992, Regulation of Responsibility by Public Function is repealed.

III. All other provisions contrary to the present Law are annulled and repealed.

Ministry of Transparency and Combating Corruption.
August 2010.