The implementation of access to information legislation in Latin America: what does the Global Data Barometer show?

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ILDA

Global Data Barometer

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Context[1]

A large number of countries around the world have a regulatory framework through which individuals can request information held by the State, as well as information that must be proactively disclosed. This is commonly referred to as the right of "access to public information" (API). These regulatory frameworks may incorporate requirements to collect and/or publish data on their implementation and compliance, and even to provide them as open data so that they can be reused. In this aspect, significant differences can be found in the content of the regulations and their implementation in countries that have such regulations. Furthermore, although in the vast majority of cases this right is protected by a specific law, in other cases there is a constitutional article (without ensuring the exercise of the right in a simple way through administrative channels), or by a regulation with an inferior standing than a national law.

Beyond the differences in the type of regulation, the right to API allows the disclosure of information and data flow for the public good through the exercise of other fundamental rights. On a global level, indicator 16.10.2 of the Sustainable Development Goals (SDGs) seeks to measure the status of the adoption and implementation of constitutional, legal or statutory guarantees for public access to information. Among the tools to achieve this objective is the annual survey on public access to information administered by UNESCO[2], in its role as watchdog of this SDG goal.

On the other hand, given the importance of providing the public with data on the exercise of the right to API globally, and to complement the information provided by

[2] The objective of this survey is to collect information at the international level on the adoption of legal safeguards for API, as well as the principal strategies for implementing such safeguards. The survey consists of two sections: the first covers the legal requirement and the second covers its implementation. In 2021, the results of the survey allowed UNESCO to conclude that the production of data on the exercise of the right and implementation of regulations continues to be one of the main areas of improvement for the oversight bodies. The production of data on the requests and appeals received is key to improving the implementation of the right. Without this type of data, it is difficult to know the status of exercise of the right and, therefore, it cannot be improved (UNESCO, 2021).
For more information, visit:
https://survey.unesco.org/3/upload/surveys/472136/files/Manual%20de%20instrucciones%20ODS%2016.10.2.pdf

countries with an independent assessment, the first edition of the Global Data Barometer[3] (GDB) developed two indicators to examine transparency around the implementation of the right to API in a country and the performance of responsible parties and watchdog entities, which it also complemented with the results of the RTI Rating as a secondary indicator. Having this information available enables any interested persons or organizations to know the content and implementation of the regulations on the right to public information and, thus, to compare and analyze the different realities, which fulfills two objectives: accountability (for the public) and lessons for improvement (for the responsible parties and watchdog entities themselves). This data should be supplemented with surveys conducted by UNESCO, and vice versa, in order to have a thorough understanding and different views of the various parties involved. For example, some key points for monitoring the exercise of the right are that data be updated in a timely manner and that historical data be available to compare performance over time. All of this data should be published in open formats with corresponding open licenses for easy reuse and analysis. The latter is not monitored by UNESCO surveys and the GDB indicators may complement them.

This report will first discuss the importance of the oversight bodies in the exercise of the right to information and in ensuring proper implementation of the law. Then, it will examine the Global Data Barometer and the two indicators that evaluate the implementation of API laws, focusing on data relevant to Latin America. Finally, several recommendations will be shared to complement UNESCO's efforts for data collection (through the annual survey) and reporting on SDG indicator 16.10.2.

Transparency in the implementation of API legislation

In line with the recommendations made by the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, people should have a simple, easily accessible resource for the exercise of their right to public information, where only the fulfillment of basic requirements and the implementation

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[3] For more information, visit: https://globaldatabarometer.org/

of effective, expeditious, non-burdensome or low-cost mechanisms are required. This is intended not to discourage the request for information and, in turn, to establish channels to challenge or appeal the decisions of public officials who refuse the right of access to certain information or simply fail to provide a response. In order to achieve this, the Office of the Special Rapporteur has found that it is essential to establish an autonomous and specialized oversight body that is responsible for ensuring the implementation of legislation on access to public information and for reviewing the negative responses of the responsible parties with the purpose of making a decision on the matter (IACHR, 2016). In this way, the entities responsible for ensuring compliance with the API law are responsible for ensuring its proper implementation, as well as settling any disputes that may arise in relation to access to information[4]. In many cases they are also responsible for the proactive publication of information (Fumega and Mendiburu, 2016).

Transparency about the work of the oversight bodies is essential to understand how the right is exercised in a given country, as stated in Articles 65 and 66 of the Inter-American Model Law 2.0. on Access to Public Information[5]. However, it should be clarified that the existence of an annual report, as indicated in the Model Law, should be complemented with a dashboard[6] that is constantly updated as well as the option of obtaining this data in open formats for reuse. This way, people would be able to access data regarding the number of requests, response times, and information on refusals, their reasons, and appeals, among other matters. Collecting and publishing all this data would allow a more informed diagnosis about the full exercise of the right and the measures that the oversight bodies are taking (or failing to take) to safeguard it. This would allow

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[4] According to the instruction manual for the annual survey on public access to information administered by UNESCO, these responsibilities are a) oversight, b) resolution of appeals, c) follow-up/monitoring of the implementation of access to information and e) mediation. It is important to note that while these duties are found in the survey, the categories do not appear to be mutually exclusive. For more information visit: https://survey.unesco.org/3/upload/surveys/472136/files/Manual%20de%20instrucciones%20ODS% 2016.10.2.pdf

[5] To consult the Inter-American Model Law 2.0: https://eurosocial.eu/wp-content/uploads/2021/04/publicacion_Ley_Modelo_Interamericana_2_0_so bre_Acceso_Informacion_Publica-1.pdf

[6] As an example, see the Controladoria-Geral da União (CGU) dashboard: https://centralpaineis.cgu.gov.br/visualizar/lai

interested entities to effectively monitor the implementation of the API legislation, as well as a responsible party to evaluate its performance in relation to its peers. Likewise, in the event that a proactive publication is made of the responses to requests, individual effort becomes public knowledge (Fumega and Mendiburu, 2016).

Nevertheless, not all legislation concerning the right to information stipulates the need to produce and publish data on its performance, which is why some oversight bodies do not publish figures so that society can learn about the state of the law in a given country. And of those that do produce and publish data, not all do so in open formats. In order to allow anyone interested to understand more about the state of the data, the GDB designed two indicators to aggregate the information on a global scale, since the independent international rankings are based on the content of legislation that recognizes this right. Having information about regulation and its implementation gives us a better understanding about the condition of the right at the national, regional and global levels and can complement the publication efforts of the countries, as compiled by the UNESCO survey.

Global Data Barometer and the implementation of API legislation

The Global Data Barometer (GDB) is a project of the Data for Development Network (D4D.net). It follows a predecessor study, the Open Data Barometer (ODB), developed by the Web Foundation and other partners between 2013 and 2020 (with the last global edition in 2016, and the last regional edition, based in LAC, developed by ILDA in 2020). In 2021, the development and implementation of the first edition of this new metric began at the global level[7], which aimed to provide a new benchmark on the state of data for public good. The GDB focuses on 4 pillars:

- Governance: examines the policies in place to promote a trustworthy public data ecosystem.
- Capabilities: maps the capabilities of governments, civil society, and the private sector to collect, manage, share, and use data.

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[7] For more information, visit: https://globaldatabarometer.org/

- Data availability: assesses the availability, openness, and characteristics of a wide range of public datasets, aiming to understand the condition of the data.
- Use and impact: concerns the extent in which data is used to deliver social benefits, address major challenges, and navigate risks.

Under this framework, the results of this first edition of the GDB are based on primary data from a global expert survey conducted in mid-2021 across 109 countries, in addition to a review process and the aggregation of secondary data to build robust metrics. This edition covers the period between May 1, 2019 and May 1, 2021.
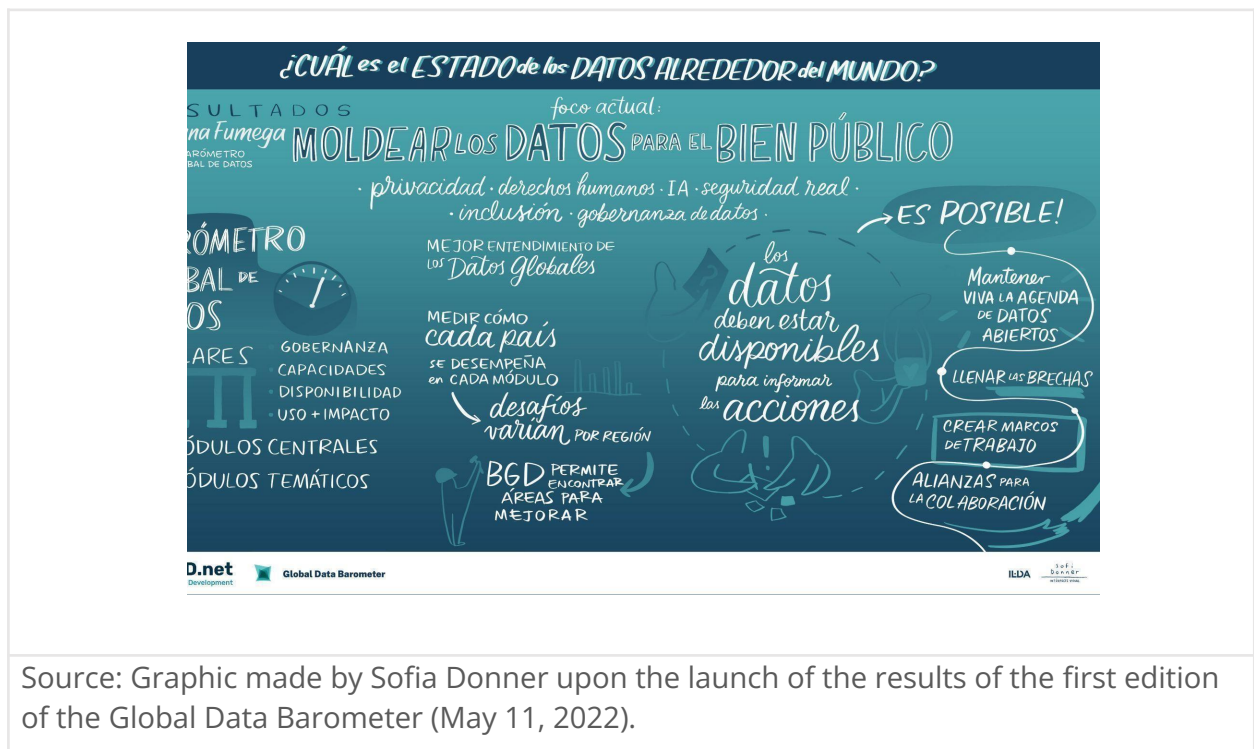
Source: Graphic made by Sofia Donner upon the launch of the results of the first edition of the Global Data Barometer (May 11, 2022).

In addition to the 4 pillars mentioned above, the Global Data Barometer has 7 topical modules. The most extensive of these is the Political Integrity module, developed in conjunction with the Open Government Partnership (OGP) and Transparency International (TI). This module contains the two indicators related to the implementation of the right of access to public information. The first indicator[8] focuses on the framework governing the implementation of API processes (governance pillar), examining whether the governing body or responsible party of the right is mandated by

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[8] In the particular case of the API, the primary data on the implementation of regulations collected through the two indicators is supplemented as a secondary source by the results of the RTI Rating developed by Access Info Europe and the Centre for Law and Democracy (CLD).

law or other regulation to generate or collect performance data related to API, by looking at the following elements:

- It is mandatory to collect and publish information on the number of API requests submitted and processed.
- It is mandatory to collect and publish information on the response times of the responsible parties.
- It is mandatory to collect and publish information on the information denied to applicants, either partially or fully, and the reasons for such refusal (exemptions)
- It is mandatory to collect and publish information on API appeals and decisions made by the oversight entities.
- It is mandatory that the published information be linked to the relevant agency, department or the relevant government entity.

It is also important to know how regulatory frameworks are implemented in practice (availability pillar). The second indicator focuses on the availability of administrative data on the performance of a country's law on access to public information. Such administrative data may be required by law or simply provided by governments as good practice. Therefore, this second indicator is based on the availability of such data.

Several of the elements gathered in these two indicators are also found in the second section of the survey administered by UNESCO, but the formats in which the information is published for public consumption are not analyzed. This is key to understanding the state of the exercise of the right in a given country.

The following are some of the main findings in Latin America regarding both of these indicators, which allow anyone interested to learn more about the implementation of the right to API in the region, and which can complement the information gathered through the survey administered by UNESCO.

GDB results for countries in the region

The results included in this report regarding the two GDB indicators mentioned above are drawn from the 15 countries in the region covered by this measurement: Argentina,

Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru and Uruguay[9].

The first results relate to the secondary indicator (RTI Rating) regarding the legal requirements of API law in the 15 countries of the region covered by the GDB. According to this indicator, 80% of the countries in Latin America have a score of over 50 (on a scale of 0-100), with Mexico (90.7) and El Salvador (81.3) standing out. It is also worth noting that the average score for API regulations in Latin America is higher (62.8) than in the other regions. However, this strong performance does not translate into high scores when analyzing the inclusion of the production and/or publication of implementation data in the legislation of these same countries. While Brazil and Uruguay are the countries in the region with the highest score (52.3), when comparing regional averages, Latin America (18.3) is only above Africa and the Middle East and North African region.

When analyzing the components of the indicator, it can be seen that 10 Latin American countries include some article on the production and/or publication of information on the performance of the exercise of the right to API, but not all of them include the publication in an open data format[10]. Consequently, Latin America is among the regions with the highest share of countries that have yet to publish information using open data standards, behind only the Caribbean and South and East Asia.

In the case of "elements"[11], Paraguay is the only country whose regulations require the collection and publication of information on the time it takes government agencies to comply with requests. Brazil's regulations require the collection and publication of information on appeals regarding API denials and their results. With regard to the "outreach"[12] subcomponent, Latin America stands out as one of the regions with the

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[9] In all of these countries, the people who collected the information did so taking into account regulations, beyond their hierarchy. An example of this is the lack of a national law for access to public information in Costa Rica (Executive Decree) and Bolivia.

[10] 7 out of 10 require the publication of data while only 1 of those 7 specifies the requirement that such publication be made in open formats.

[11] Typically divided into two parts for evaluation:1. characteristics related to the quality of a law, a dataset or a capacity; and 2.2. Characteristics related to the openness of data in a law or dataset, by using a common set of sub-questions to assess issues such as references to/presence of structured data and permissions.

[12] It assesses whether the governance, capability or data assessed are applicable, relevant or useful across the country and to all citizens, or whether they have limitations.

broadest scope in its legislation, with 60% of the countries covering all three branches of government.

Beyond what the legal requirements establish, it is essential to know the effective availability of data on the exercise of the right. To this end, the availability indicator places Argentina (76.1) and Mexico (75.9) at the top of the ranking. Although the regional context indicates that the average is 33 and only 5 countries have a score higher than 50, an analysis shows that out of the number of countries analyzed (15) that have some type of data available from the government or as a result of government actions (10), Latin America is the region in the world with the highest proportion of countries that comply with this variable. Finally, it should be noted that Paraguay is the Latin American country with the second highest score in terms of "openness, timeliness and data structure"[13] in this indicator but shows a poor performance in the " quality and data fields"[14].

At the regional level, Latin America excels in four variables:

- The dataset includes details on the number of applications filed and processed.
- The dataset is linked to the relevant agency, department or other government entity.
- The dataset is freely available.
- Historical data that enables users to track changes or progress over time is available.

The dataset includes details on the number of applications filed and processed by region.

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[13] Some of the questions include: Is the dataset freely available? Is the data open licensed? Are there accessible, open, and available official tools to help users explore the data? Is the data timely and up to date? Is historical data available to allow users to track changes over time? Is the data provided in machine-readable format(s)? Is the machine-readable dataset available in bulk?

[14] Some of the questions include: Does the dataset include details on the number of applications submitted and processed? Does the dataset include details on how long it took the relevant government agency or agencies to complete or respond to applications? Does the dataset include details on denied applications and their reasons (exemptions)? Does the dataset include details on appeals of API refusals and their outcomes? Is the data linked to a relevant government agency, department or other relevant entity?

Source: Global Data Barometer (2022)
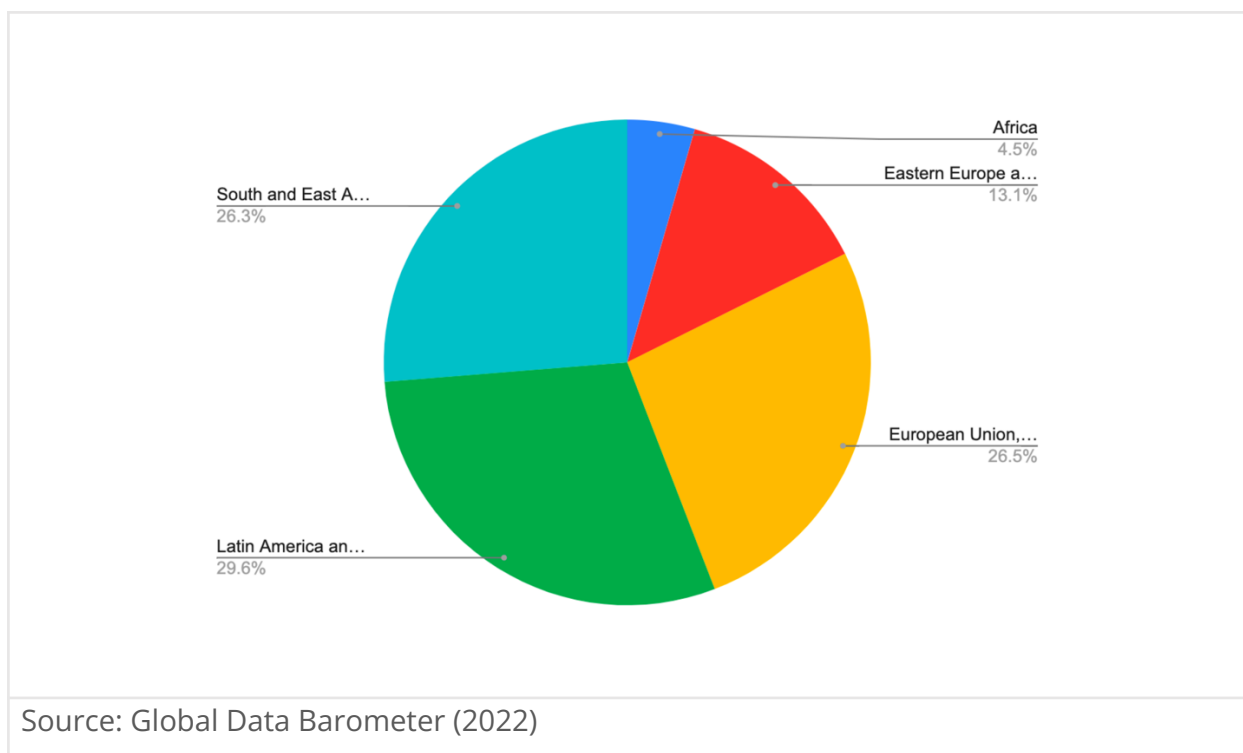
Globally, data on what information is denied and the grounds for refusal is not available as frequently as it should be. Despite the importance of having this information to corroborate the proper operation of the law and institutions, the number of countries that have this data is low. This is the case even in the set of countries with the highest scores in this category (only 8 countries publish this data, 4 publish partially and 14 do not publish[15]). In the case of Latin America, the figures are slightly lower (3 publish, 1 partially and 11 do not) while in the case of the Middle East and North Africa region none of the countries analyzed publish this type of information. The indicator on the time taken by agencies to respond to requests is notably absent in almost all regions, except for countries belonging to the European Union, the United Kingdom, the United States, Israel, Australia and New Zealand (although less than half of the countries in this group publish this type of data).

The dataset includes details on how long it took the relevant government agency or entities to complete applications.

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[15] This group is composed of countries belonging to the European Union, the United Kingdom, the United States, Israel, Australia and New Zealand.

South and East A…
9.1%

Africa
6.1%

Latin America an…
27.2%

European Union,…
57.6%
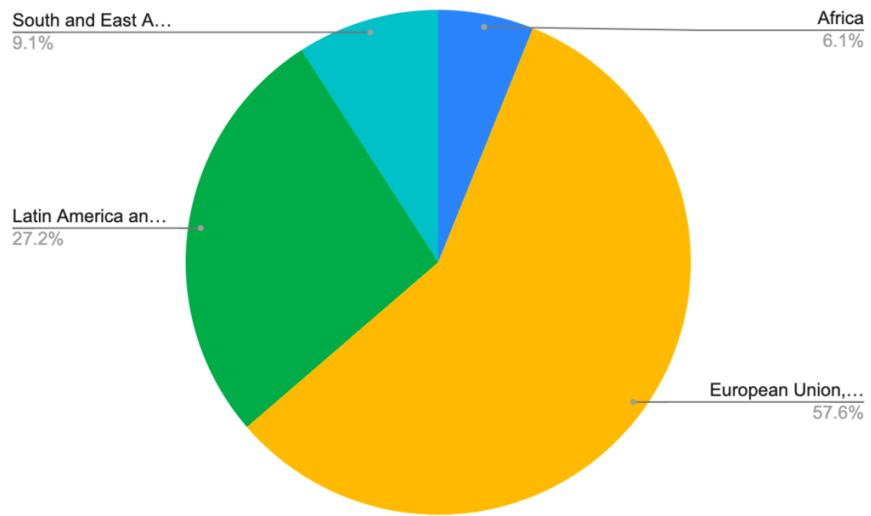
Source: Global Data Barometer (2022)

The dataset includes details on denied requests and the rationale for refusals.

South and East A…
16.6%

Africa
11.4%

Eastern Europe a…
8.4%

Latin America an…
25.0%

European Union,…
38.5%
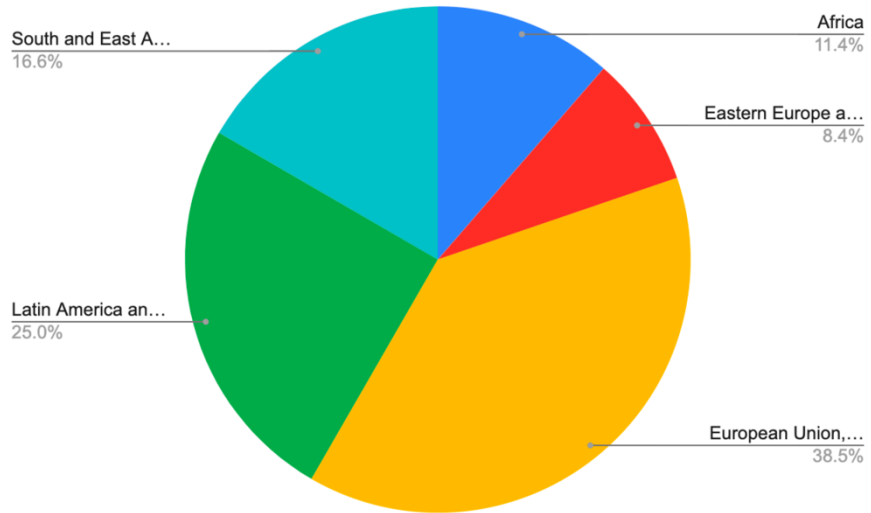
Source: Global Data Barometer (2022)

Recommendations

According to the Sustainable Development Goals, all States must possess and implement a legal requirement for the effective exercise of the right to API (goal 16.10.2). Specifically, for the assessment of this target to be possible, all countries must ensure that they collect and publish data on the implementation of API laws.

UNESCO is the organization responsible for reporting on these indicators by collecting information through an annual survey in each country. The publication of the results of these surveys shows that many countries do not have data on the implementation of their API laws. This is a particularly grave omission, given that access to information is fundamental as an essential right to obtain data on the progress of the other SDGs. After this brief overview of the data needed to effectively monitor the exercise of the right to API, the following are a few of the most relevant considerations to take into account:

- All countries should ensure that they collect and publish data on the implementation of access to public information laws, as well as take the opportunity of future reforms to the API law to incorporate this obligation, if it does not already exist. In the event that the legal requirements do not make it mandatory to collect and publish this information, the opportunity should be taken in API law reforms to incorporate these key elements in order to understand and improve the exercise of the right to API in a given territory, in accordance with article 65 of the Inter-American Model Law 2.0.

- It should be noted that both the UNESCO survey results and the data on the implementation of laws in each of the countries require data published in the most disaggregated form possible, in open data formats and with their corresponding open licenses (the latter is not monitored by the UNESCO surveys and can be complemented by the GDB indicators). Although the annual reports are useful for a certain audience, they do not allow for further cross-referencing and other types of analysis that could enrich the understanding of the subject.

- It is vital for monitoring the implementation that data be updated in a timely manner and that historical data be available to allow comparisons on performance over time. Information collected by independent researchers on the implementation indicators of the right to API included in the GDB can be a very important source of information for future monitoring and follow-up by UNESCO and for the oversight bodies in every country that want to improve their efforts.

- Civil society actors (national, regional and/or global) can be allies that can collaborate through improvements in the measurement of the exercise of the right to API. In the same way that Access Info Europe (2022) used the results of the GDB to analyze their region and offer recommendations, this report on the results offered by the GDB for Latin America aims to be a tool for collaborating with the effective exercise of the right to API in the region, as well as to complement the measurements of target 16.10.2 of the SDGs. It is therefore necessary that all countries in the region collect and publish, in a disaggregated and open manner, detailed data on the implementation of API laws: from requests, times, refusals and appeals disaggregated by public agency and other entities that have obligations under the law and that allow civil society organizations and actors to collaborate in monitoring and making recommendations to improve the exercise of the right to API as well as in measuring the advances made.

- All relevant data should be centralized by the entity in charge of overseeing the exercise of this right[16]. The lack of such data prevents the different stakeholders from being able to make an effective assessment of the fulfillment of their social rights. It also hinders the effective monitoring of the implementation of API regulations by the oversight bodies and thus the assessment of how close countries are to achieving the SDGs.

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[16] They should also coordinate with the statistics offices that are typically responsible for the development of the Voluntary National Report and that will allow all this data to feed the reports and joint actions.

In conclusion, there is a need for more and higher quality data and in open formats to be able to assess the performance of States and the exercise of the right to accessible public information.

Bibliography and references

- Access Info Europe (2022). Global Data Barometer Report – RTI Performance. https://www.access-info.org/

- Centre for Law and Democracy y Access Info Europe (2022). Global RTI Rating. https://www.rti-rating.org/

- CIDH (Comisión Interamericana de Derechos Humanos) (2016). Los órganos de supervisión del derecho al acceso a la información pública, RELE. https://www.oas.org/es/cidh/expresion/docs/publicaciones/accesoes.pdf

- Fumega, S. y Mendiburu, M (2016). Transparencia activa y legislación sobre acceso a la información pública: una aproximación desde Brasil, Chile y México. RTA y Banco Mundial. https://redrta.files.wordpress.com/2016/04/nota-rta-transparencia-activa-final.pdf

- Global Data Barometer (2021). Global Data Barometer Handbook. https://handbook.globaldatabarometer.org/2021/

- Global Data Barometer (2022). First Edition Report – Global Data Barometer. ILDA. https://globaldatabarometer.org/wp-content/uploads/2022/05/GDB-Report-Engli sh.pdf

- Organización de los Estados Americanos (2021) Guía de Aplicación de la Ley Modelo Interamericana 2.0 sobre Acceso a la Información. (OEA/Ser.D/XIX.12 2020); (OEA/Ser.P AG/RES.2958 (LO/20) ISBN 978-0. https://www.oas.org/es/sla/ddi/docs/publicacion_Ley_Modelo_Interamericana_2_ 0_sobre_Acceso_Informacion_Publica.pdf

- UNESCO (Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura) (2021). To Recovery and Beyond: UNESCO 2021 Report on Public Access to Information (SDG 16.10.2), Paris. https://unesdoc.unesco.org/ark:/48223/pf0000380520