

ANNEX 3

Conclusions of *Encuentro Evidencia* -- 21 September 2011

The findings of the Lima meeting emerged from our discussions about the impact of information on our work in human rights and justice, and an exploration of some of the successes we have achieved and the obstacles we have encountered. Participants came up with a broad range of conclusions and areas for continued dialogue: from ideas about how to launch a regional campaign for the right to truth, to concrete recommendations on judicial proceedings, access to government records, human rights archives, FOI laws, public awareness and privacy issues.

I. Latin American campaign for the right to truth

The Inter-American Court's ruling on Araguaia is an important development in defining states' obligations to disclose human rights-related information. Civil society groups in the region have to mobilize around the ruling in their own countries as well as monitor the outcomes inside Brazil in solidarity with human rights groups there and the families of the Araguaia disappeared.

Strategies for strengthening the principles outlined in the Araguaia ruling include:

1. For the first anniversary on December 14: Institutions should prepare a call across the Americas about the ruling, its outcomes, and Brazil's compliance.
2. Organize an event to acknowledge of the anniversary and express the concern about the lack of compliance by providing official letters from groups involved in transparency and access to information, and encouraging press outlets to write articles on noncompliance within and outside the country.
3. Medium Term: Analyze the final arguments of the Inter-American Commission and of CEJIL to identify the arguments and requests that were not incorporated in the Court's ruling resolving the failure to interpret the resolution in favor of justice and the right of access to information.
4. Identify the people who can write articles to draw attention to the opinion of the Court about the aspects that were not touched in the case, such as memorial reparations, with the intention of encouraging the Court to incorporate them in its future resolutions, such as the Guatemalan Diario Militar case.
5. Long term: Form a group of international experts to do an audit to monitor and measure the response of and level of compliance in Brazil and in other countries in order to prepare activities and actions for the 2nd anniversary (could be spearheaded by an institution such as the Carter Center).

6. Identify a forum (via Evidence Project) to organize a closed-door meeting of judges in Brazil to discuss the ruling.
7. Present a thematic hearing at the CIDH about access to information and human rights with a focus on the ruling (second anniversary, December 14, 2012).

II. Networks related to access to information, archives and human rights

Government institutions and civil society groups that work in areas linking archives with human rights and justice seek to create transnational networks in order to share information, build capacity, swap ideas and mobilize change. Lima participants viewed the September meeting as a first step in building such a network, and agreed that the National Security Archive's Evidence Project should provide the leadership necessary to maintaining communication and acting on the conclusions proposed during the meeting.

1. We need to create a forum where we can share information about investigations into crimes against humanity the hemisphere.
2. People identified a specific need for creating a network among "human rights archives," those special holdings of military, intelligence or police records that have a particular significance for the recovery of historical memory and human rights investigations.
3. Everyone agreed that we should convene a second meeting in 2012 in order to continue the conversation as well as follow up on the recommendations made in Lima. Although the National Security Archive's Evidence Project could assist in planning the meeting, our staff expressed the hope that another group would take the lead in organizing it in one of the countries represented in Lima (such as Colombia or Brazil).

III. Human Rights and the Right to Truth

1. We have to recognize that access to human rights information is not uniform across the hemisphere. There are different levels of accessibility depending on the political situation of the country and the administrative development of the national archives system.
2. Every country has archives but not every government is willing to admit the existence of archives. There needs to be discussion about how to pinpoint the physical location of archives even when the government denies their existence.
3. Governments need to establish patrimonial responsibility for human rights records, eventually incorporating them into the national archives system.
4. There needs to be discussion about the privacy challenge posed by human rights archives. How do privacy laws conflict or complement access to information laws?

Should victims be able to authorize the release of personal information in records concerning human rights violations?

IV. Archives and Prosecutors: Government Documents as Evidence

1. There is an urgent need for the declassification of secret government records, with a commitment by all implicated parties. Judicial officials should collaborate with archives to help in the search for material.
2. Judicial officers and archive staff need to reinforce litigation strategies together and streamline communication about investigation objectives.
3. Create an “Archives standard of practice” so that written reports from archives include direct links to the documents used as evidence in the case. This would be an easy way to show the documents to judicial officials.
4. Construct multidisciplinary national and international teams in order to exchange information and experience. Find common strategies for accessing documents, organizing testimony and pursuing litigation. For example, the archives of Uruguay, Paraguay and Argentina should organize an information exchange.
5. Government institutions, judicial officers and archives should take proactive steps to expedite access and avoid bureaucratic obstacles, including the development of access protocols.
6. Train archive staff in research, testimony, and litigation to improve (and expand) the use of archives in judicial processes. Establish partnerships with universities or research institutions, such as FLACSO in Guatemala, which could give courses for training archive staff in preparation for trials.
7. Archives must produce guidelines on establishing chain of custody of their collections in order to ensure that documents maintain their probative value.
8. Promote the use of documents as evidence in judicial processes among key actors.
9. Improve and streamline document delivery systems, so that judicial officers can request records transnationally in an expedited way. Countries need to make agreements that permit prosecutors and judges from one country to avoid lengthy bureaucratic delays when seeking documents from another.
10. Judges, prosecutors and archive staff must be aware of the social function they play in justice and truth processes.

V. Archives and Public Access

1. Use communication networks in each country to promote the public use of Archives.

2. Recognize the diversity of archives and avoid generalizing about them. The archive's policies and access depends on the origins and location of an archive.
 - a) There are archives generated in conflict situations that were later located, rescued, organized and preserved (Paraguay, Guatemala, DIPBA of Argentina)
 - b) There are archives created after the conflict and their management is a political matter (Colombia)
 - c) There are archives that are dispersed throughout distinct public, civil, military and police institutions and decentralized, subject to the logics of each field (Uruguay).

It is important to not forget the specific situation in each country and to understand the problems and the possible solutions

3. There are administrative archives that do not refer directly to human rights, but they hold information about repressive periods that can be crossed with other records. There are also private donations, some of them anonymous. Not all public archives accept private donations.
4. Human rights archives should promote and encourage access to private collections by offering support for their preservation or by establishing networks. Private collections do not necessarily have to be donated and can thus avoid being subjected to the logic of the public archive. The relation can be created through agreements.
5. Recorded audio and visual archives need specific treatment and resources.
6. Recognize the importance of Memory Archives (human rights archives that also serve as a museum or site for reparation and reconciliation)

VI. Access to Information Laws and other legal tools

General conclusions from the working group:

1. Access to public information democratizes state agencies and promotes a change in the mentality of public officials
2. We need to promote awareness within civil society that the use of this legal tool is a great responsibility. Problems in using the law are no different from those associated with using other laws.
3. It is important to use national laws without losing sight of their standing within the greater context of regionally acceptable indicators in order to be able to make comparisons.

4. Using access to information laws is more efficient when there is a strategy that includes:
 - a) selecting a research issue (such as the common agenda between human rights and the right to access to information), b) identifying litigation strategies (both judicial and administrative), and c) not losing sight of the tools afforded by the Inter-American system.

We need to explore:

5. Training of government officials and creating awareness of the right to access to information within the human rights NGOs
6. Evaluating the quality of access to information laws, archives laws, and the protection of personal information
7. Highlighting the importance of Archives at a regional level, a) in the inter-American system (through the office of the Special Rapporteur, for example) and b) in the national agenda (for historical memory purposes)
8. Generating synergies between the State and NGOs to promote changes in public information management (example of the working relationship between CELS and the Foreign Relations Ministry in Argentina)