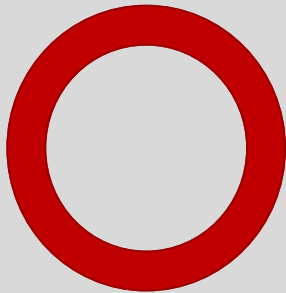
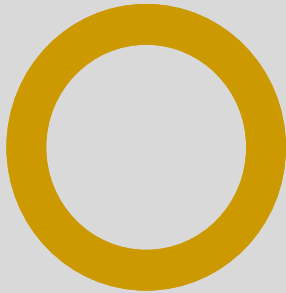


CARTER CENTER



Pilot Findings from Select Agencies: GUATEMALA

The Carter Center's
Access to Information Legislation
Implementation Assessment Tool



Pilot Findings in Select Agencies: Guatemala

The Carter Center's Access to Information Legislation
Implementation Assessment Tool

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One Copenhill
453 Freedom

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Acknowledgments

The development and pilot application of The Carter Center's access to information legislation Implementation Assessment Tool (IAT) would not have been possible without the efforts of many talented and dedicated

1. Establish a comprehensive set of access to information implementation benchmarks
2. Identify the extent (and in some cases quality) to which a ministry/agency has implemented its law
3. Provide a road map for improvements, based on the tool's findings
4. Contribute to scholarship on implementation and to the understanding of implementation successes and challenges

The IAT looks at “the boring bits¹,” the ingredients necessary to ensure the effectiveness of implementation and the desired outcomes. The findings from the assessment provide key stakeholders the data necessary to easily identify the extent and quality of access to information (ATI) implementation in each government agency. It also signals places there is a need for additional input or focus, so that the public administration may overcome challenges and positively advance in their implementation efforts.

Experience has demonstrated that governments are not monolithic and that not all parts of government are as successful (or unsuccessful) as others. Thus, it is misleading to characterize a government as succeeding or failing in implementation. The IAT targets assessments to individual public administrative bodies rather than to the government as a whole. Moreover, for the IAT to meet its stated goals and be accepted and used by governments² /

Developing the IAT

The Carter Center designed and created the IAT through desk research, consultant support, and periodic peer reviews. As a first step, the Center engaged



Methodology

The IAT is intended to assess the specific activities/inputs that the public administration has engaged in furtherance of a well-implemented access to information regime. A series of indicators is used to assess the extent to which the agency is capacitated and prepared to provide information and respond to requests, proactively disclose information, and assure quality records management. These inputs/activities are similar to what others might call “good practices.” At present, there is no universal consensus or norm on what constitutes access to information implementation “best/good practices.” This fact is useful in understanding the limitations of the tool.

The tool is designed not to focus on the sufficiency of the legal framework, the user side of the equation or the overall effectiveness of the country’s access to information regime. Because the IAT is not designed to measure outputs/compliance, its methodology does not include the systematic filling of information requests.

Moreover, the IAT is constructed as an “open instrument,” carried out with the collaboration of public authorities. Its success does not depend on the level of confidentiality held during its application. On the contrary, it is crucial for governments to welcome the tool’s application, as gathering many of the key data points requires access to documents and information in the ministries/agencies’ possession.

The Architecture

The IAT is designed as a matrix, with indicators related to government functions/responsibilities on the x-axis and baskets of components/elements on the y-axis. Regardless of the type of information an agency possesses, there are universal components that allow public officials to fulfill their functions of managing information properly, handling requests for information adequately, and making information

available to the public efficiently. These functions and elements were identified and serve as the framework for the IAT.

Functions

All access to information regimes rely on the public agencies’ capacity to fulfill three main functions: 1) receiving and responding to requests; 2) automatically publishing certain information; and 3) managing records. There are a number of initiatives/efforts specific to these functions while others apply to more than one of the functions. For those initiatives/efforts that apply more broadly—for example, the designation of a responsible officer or the agency’s strategic plan—we have created the category “fundamental functions.”

Components

In order to successfully implement a comprehensive access to information law, government needs a number of verifiable components. These elements are assessed by a set of indicators that can be observed through different data-points or sources of information. The elements are the bone and marrow of access to information implementation, and include leadership, rules, systems, resources, and monitoring.

Key Elements

The components are comprised of key elements that have been identified as necessary for supporting successful implementation. When properly combined, these elements provide government with the capacity to successfully perform all access to information duties and obligations. The elements that comprise the assessment, among others, included whether the agency has established, reviewed, and

Pilot ng the IAT

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countries applied all revised IAT indicators and were joined by the researchers from pilot phase I and pilot phase II who applied all new or modified indicators in their respective countries.

Country Context⁴

A

Public authorities are required to appoint and train Information Officers; and the law provides for sanctions to be imposed on authorities that undermine the right of the public to access information. The Procurador de los Derechos Humanos (Human Rights Prosecutor) is identified as the central body responsible for implementing the legislation, and like individual agencies, is required to report annually on implementation efforts. The ATI law is nonetheless limited in several respects. The law does not override existing secrecy provisions. Requesters do not have the option to appeal to an independent oversight body, nor does one exist to oversee implementation, adjudicate appeals, or impose sanctions in case of obstruction of the right to information. Their only avenue of appeal is to the judiciary, and the procedures for doing so are not made clear in the legislation. Additionally, the law does not call for mandatory public awareness-raising efforts and fails to outline standards for maintaining records.⁸

As of fall 2014, the law has not been reviewed or amended; however, in August of 2009, with implementation of the ATI law underway, President Alvaro Colom published a resolution that classified information related to presidential communication (with both public and private bodies) for up to five years. NGO Article 19 called for the repeal of this resolution on the grounds that it violated the ATI legislation.⁹ Reports do not indicate that the resolution has been moderated or repealed.

In spite of this challenge, Guatemala demonstrated a continued commitment to transparency by joining the Open Government Partnership (OGP) in 2011. Through the OGP, it undertook several commitments related to ATI. The government created the Transparency and Control Secretariat in 2012, but it was struck down by the Constitutional Court later that year. Immediately thereafter, the Presidential Commission for Transparency and Electronic Government (COPRET) was established and tasked with coordinating OGP activities.¹⁰

Implementation

Even before the ATI Law went into effect, transparency experts in Guatemala predicted that the government would have difficulty obtaining the resources necessary for its full and effective implementation.¹¹ According to several reports, those fears may have been realized, as many experts assert that the law has been poorly implemented.

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difficult for bodies that are subject to the law to retrieve requested documents. Additionally, some information that would be useful to the public, such as information related to infrastructure and geographic boundaries, simply has never been documented/reduced to writing.

Use of the Law

A report by the Moynihan Institute of Global Affairs indicates that citizen usage of the law was very low in the months immediately after the ATI legislation went into effect.²⁰ More recently, though, awareness and use of the law has increased. According to a report released by the Human Rights Ombudsman, the number of requests has increased every year since the inception of the law and nearly tripled between 2009 and 2013.²¹

The cultural constitution of Guatemala presents a substantial barrier to achieving widespread usage of the law. Guatemala has a very large indigenous population, which is mostly made up of Mayans, for which Spanish is their second language. The language disconnect between the government and the indigenous population creates a substantial obstacle to guaranteeing the right to information for the entire Guatemalan population.²² Many Guatemalans, but especially the indigenous population, lack access to the Internet, which prohibits them from accessing information that is made available online or from making requests for information through the internet.²³

Citizens pay no fees to make information requests, thus encouraging them to take advantage of the right to do so. This aspect of Guatemala's ATI regime is especially important as it eliminates a potential financial barrier that could dissuade many requesters.²⁴

Enforcement of the Law

According to experts, the enforcement mechanisms of the Guatemalan ATI Law are deeply flawed. Requesters who receive unsatisfactory responses cannot appeal the decision to an independent oversight body. Instead, requesters seeking to appeal are forced to do so through the court system. There are a num-

Pilot III Findings for Guatemala

Fundamental functions, Rules														
Question:	Guatemala	Guatemala	Guatemala	Guatemala	Guatemala	Guatemala	Guatemala	Guatemala	Guatemala	#	Indicator			
	Agriculture	Communications	Education	Finance	Governance	Health	Statistics							
Does the agency create or adopt specific guidelines on	Findings: [red]	Findings: [red]	Findings: [red]	Findings: [red]	Findings: [red]	Findings: [red]	Findings: [red]	Findings: [red]	Findings: [red]					

Fundamental functions, Systems															
11	Does the agency's public outreach specifically include a component regarding ATI?	Findings: red	B	Findings: green	A	Findings: red	B	Findings: red	B	Findings: green	A	Findings: green	A	Findings: green	A

Fundamental functions Resources				Indicator questions			Customs Agriculture	Customs Communications	Customs Education
Customs Finance	Customs Governance	Customs Health	Customs Statistics	Indicator questions			Customs Agriculture	Customs Communications	Customs Education
				19 Has one or more public official been formally trained for the functions and duties of the position?					
				20 Does the public official(s) tasked/appointed responsible for AIT functions and duties have regular access to necessary equipment?					
Findings: red	Findings: red	Findings: red	Findings: red	Findings: green	Findings: green	Findings: green	Findings: green	Findings: green	Findings: yellow

Receive and Respond to Requests, Systems															
Indicator question:	Guatemala Agriculture		Guatemala Communications		Guatemala Education		Guatemala Finance		Guatemala Governance		Guatemala Health		Guatemala Statistics		#
Has the agency created or adopted a system for receiving requests?	Finding: green	A	Finding: green	A	Finding: red	C	Finding: green	A	Finding: green	A	Finding: red	C	Finding: red	C	32
Has the agency created or adopted a system for responding to requests?	Finding: green	A	Finding: green	A	Finding: red	C	Finding: green	A	Finding: green	A	Finding: red	C	Finding: red	C	33
Has the agency created or adopted a system for transferring requests to other agencies?	Finding: n/a	D	Finding: n/a	D	Finding: n/a	D	Finding: n/a	D	Finding: n/a	D	Finding: n/a	D	Finding: n/a	D	34

Receive and Respond to Requests, Resources														
[This section contains a large number of rows with various finding indicators (green, red, yellow, purple) across the 15 columns.]														

Receive and Respond to Requests, Monitoring															
37	Does the agency capture statistics related to receiving and responding to requests?	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: red	C

Receive and Respond to Requests, Wild Card														
[This section contains a large number of rows with various finding indicators (green, red, yellow, purple) across the 15 columns.]														

Proactive Disclosure, Rules														
[This section contains a large number of rows with various finding indicators (green, red, yellow, purple) across the 15 columns.]														

Proactive Disclosure, Systems									
Guatemala	Guatemala	Guatemala	8	Indicator question:	Guatemala	Guatemala	Guatemala	Guatemala	Guatemala
				Has the agency/department/office established the policy/strategy for					

Proactive Disclosure, Resources									
Has official licenses/formally									Has one or more public

Proactive Disclosure, Monitoring									
Does the agency capture statistics related to proactive	Finding:	Finding:	Finding:	Finding:	Finding:	Finding:	Finding:	Finding:	Finding:
Finding:	Finding:	Finding:	Finding:	Finding:	47. Does the agency monitor its proactive disclosure?	Finding:	Finding:	Finding:	Finding:

Proactive Disclosure, M&E									
Finding:	Finding:	48. In your expert opinion, in practice does the agency	Finding:	Finding:	Finding:	Finding:	Finding:	Finding:	Finding:
		effectively fulfill its function related to proactive							

Records Management, Leadership													
#	Indicator question:			Guatemala Agriculture	Guatemala Communications	Guatemala Education	Guatemala Economic	Guatemala Governance	Guatemala Health	Guatemala Justice	Guatemala Labor	Guatemala Social Services	Guatemala Statistics
51	Does the agency have a written policy on the classification of documents?			Finding: green	Finding: green	Finding: green	Finding: green	Finding: green	Finding: green	Finding: green	Finding: green	Finding: green	Finding: green

Records Management - Rules													
52	Has the agency created or adopted written guidelines for classification of documents?			Finding: yellow	Finding: green	Finding: yellow	Finding: red	Finding: green	Finding: red	Finding: red	Finding: red	Finding: red	Finding: red
53	Does the document(s) detailing instructions for a records-implementation and/or operations for...			Finding: red	Finding: green	Finding: green	Finding: red	Finding: green	Finding: green	Finding: green	Finding: red	Finding: red	Finding: red

Records Management, Systems													
54	Has the agency created or adopted a system to manage its paper records?			Finding: green	Finding: green	Finding: green	Finding: yellow	Finding: green	Finding: red	Finding: red	Finding: red	Finding: red	Finding: red
55	Has the agency created or adopted a system to manage its electronic records?			Finding: yellow	Finding: yellow	Finding: red	Finding: red	Finding: green	Finding: yellow	Finding: yellow	Finding: yellow	Finding: yellow	Finding: yellow



Ministry/Agency Summary of Findings

Table 3. Ministry of Agriculture



Table 5. Ministry of Education



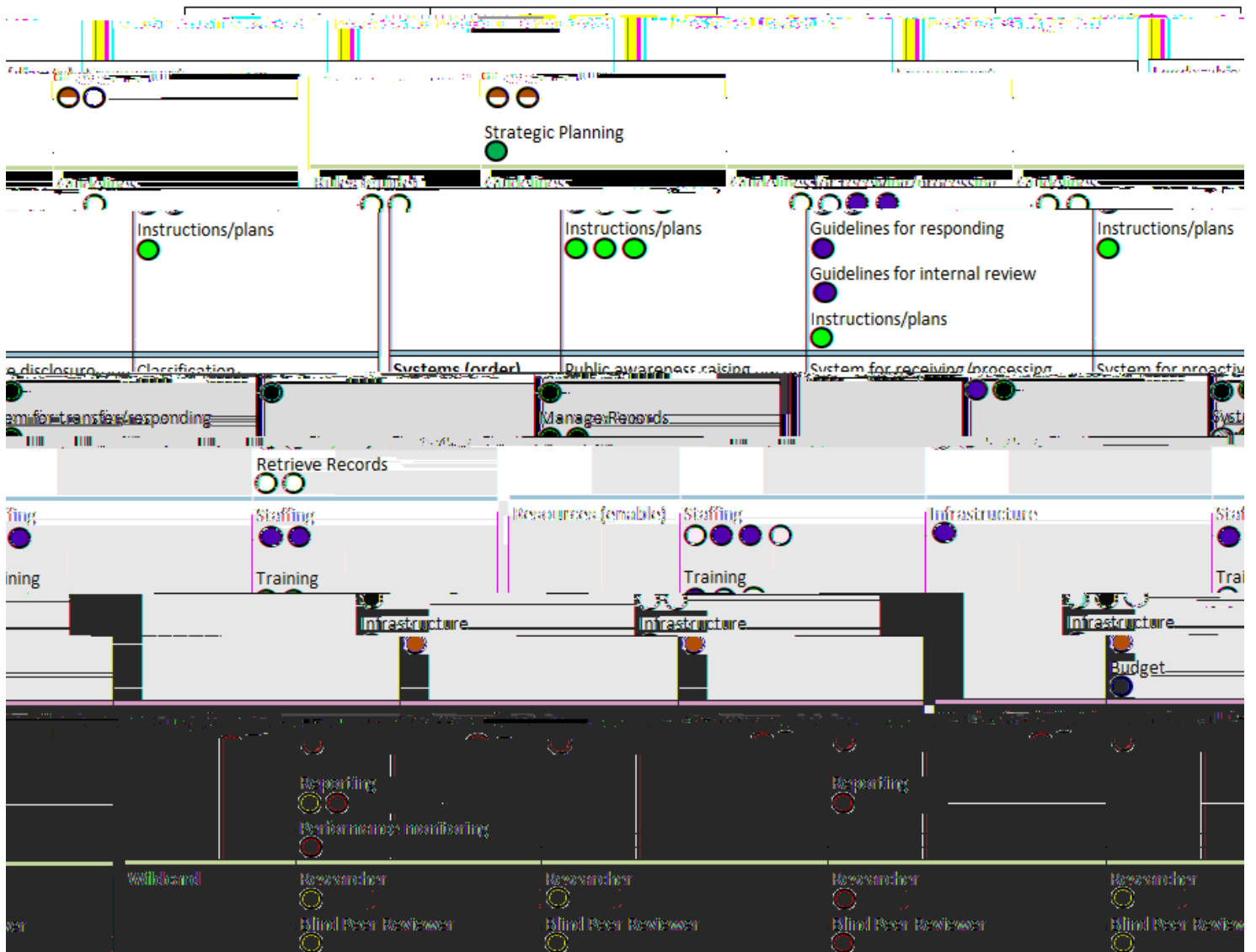
Table 6. Ministry of Finance







Table 9. Ministry of Statistics



Focal Group Narrative³⁴

At the conclusion of Pilot Phase III of the IAT, researcher Marvin Pol and colleagues from Acción Ciudadana convened a focus group comprised mainly of civil society actors with experience in advocating for and using the right of access to information. The focal group participants were selected for their experience in access to information and transparency. Among those engaging in the focal group were researchers and consultants that enriched the pool of knowledge and information on the practice of ATI in Guatemala.

This objective of the focal group was to share the preliminary IAT findings from the seven Guatemalan public institutions in which it was applied and to discuss the experiences of the participants in relation to the specific indicators, thus cross-checking the results in light of their practical experiences. Overall, the focal group confirmed the IAT findings, validating the weakness in leadership, rules, systems and monitoring. The experts particularly emphasized a lack of awareness of ATI principles and insufficient training in good implementation practice.

In reviewing the indicators and findings related

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determine the procedures for paying for the reproduction of documents. One participant said that some institutions prefer the requester to take copies from original files outside of the public building without any security precaution. The researchers also perceived that this could be an opportunity for public servants/functionaries to receive a monetary benefit for reproduction of copies.

Summary of Findings³⁵

Overall, the ministries and agencies assessed have not made sufficient strides

systems for proactive disclosure. Though in most cases there is a public official informally tasked with



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