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Short Session Report: Global Solutions

Session Title: Access to Information – Going beyond laws

Date & Time: 9 Nov at 15:00

Report prepared by: Hamilton Cruz, Special Advisor, Office of the Comptroller General, Brazil

Experts:

Expert #1

Name: Mr. Stuart Gilman

Organisation: Global Integrity Group

Topic: Freedom of information and building integrity in ministries

Expert #2

Name: Ms. Vania Vieira

Organisation: Office of the Comptroller General, Brazil

Topic: Challenges and lessons learnt in the implementation of Law 12.452, the Brazilian Access to Information Law

Expert #3

Name: Mr. Paulo Otto

Organisation: Petrobras

Topic: Application of Access to Information Laws to state-owned companies

Expert #4

Name: Ms. Jacqueline Peschard

Organisation: Instituto Federal de Acceso a la Información Pública

Topic: Lessons from the Mexican-Experience on Access to Information

Moderated by:

Name: Mr. Kevin Dunion

Position: Professor

Organisation: University of Dundee School of Law, first Scottish Information Commissioner between 2003 and 2012.

Main Issues Covered (500 words or more, narrative form)

The moderator started by introducing himself and by making a very useful remark that governments need to identify the many uses of access to information acts and their implementation infrastructure in the combat of corruption. Ms Vânia Vieira was given the floor and shared the experience in the implementation and enforcement of the Brazilian Access to Information, which will soon commemorate its 6-month anniversary since its enactment. She pointed out that the Law benefitted from being approved in the middle of the discussion of open government, since it had been then possible to insert the provision for open data format in the Law. She raised the issue of the necessity of political will and full support from the top, which in the case of Brazil made it possible to implement the law in such a short period : the period between the promulgation of the Law and the time the Law took legal effect was of only 180 days. She highlighted Brazil was taking advantage of its tradition of attaching value to active transparency absence of a law by encouraging agencies to spontaneously publish public information and data online, which she hoped would reduce the number of requests for information. Requests until now total more than 45 000. Next speaker, Mr. Paulo Otto, discussed the impact of Access to Information in hybrid organizations - according to him is the case of Petrobras – that are partially owned by governments but need nevertheless to survive in a competitive market. He also called the audience’s attention to the international presence of its company and raised the interesting question of to what extent international branches and subsidiaries have to comply with the Brazilian legislation and to the complexity of the theme and of the task of addressing several requests. He acknowledged Petrobras had been resorting to the exemptions put forth by the Law in order to preserve its competitiveness and protect commercial and industrial interests. He nonetheless admitted, without turning a blind eye to the size of this challenge and the impracticability to act otherwise when commercial interests are concerned, Petrobras was willing to comply with changes brought about by the openness route the Brazilian society had choose to follow. Ms. Jacqueline Peschard then described the roadmap of transparency and access to information in Mexico, which begun in an one-party country in 1977 – with no transparency and no accountability - and culminated in a 2007 amendment in the Constitution that normalized to a higher standard different state and municipal-level legislations on the subject. She made clear that transparency is as corollary of the democratic transition in Mexico,

where now even political parties are obliged to comply with the law. Ms Peschard highlighted the role played by a civil society group – the Oaxaca group – in passing the Access to Information Act in 2000 and the importance of the IFAI in enforcing the law since its creation in December 2000. She also provided the audience with different manners in which the law has been used in Mexico to access government information, varying from the surprising use by government agencies to access government-held data to requests to PEMEX – state-owned Mexican oil company – to disclose the payroll of an international subsidiary. She finished her panel by presenting the big change the access-to-information flow is going through in Mexico because of the Mexican participation in the Open Government Partnership: civil society is now being given the opportunity to decide on what agencies should disclose, instead of the top-down (government-citizens) approach by which disclosure of information usually is driven around the world. The last speaker, Mr. Stuart Gilman, chose a controversial title to his presentation: The Illusion of Integrity. However pessimistic its title, Mr. Gilman's presentation actually seemed very balanced in terms of analyzing the limits of access to information acts, mainly by deeming access to information a positive good if it is seen as a tool - not if it is an end in itself; a caveat that set the tone for his entire presentation. He said that sometimes government loses the meaning of access to information and misses the point ; he then illustrated his point by two examples: one being the US given access to every single email sent by a public official without paying attention to the very use of this disclosure and its costs; the second example made reference to financial disclosures and asset declarations, which are in fashion worldwide despite the absence of any planned employment or scanning of this data. Countries are asking for this disclosure without asking themselves why they need that information and not even knowing if they are looking for conflict of interests or illicit enrichment, if any. It is of no use, he then added, releasing information about civil servants remuneration, interests and assets held, if no further step will be taken to reveal whether those people are in violation. Mr. Gilman moved on another, for want of a better word, naïve uses of transparent-guided mechanisms, such as electronic procurement, which according to him provide public view but does not solve the problem of corruption. Professor Kevin Dunion finished his moderation of the session by rightly stating that access to information laws may be misleading in the way they create expectation in the public but the State may not be ready to address the

problems and enforce the law.

Main Outcomes/Outputs

- **We were shown the usefulness of sharing best practices. Brazil's Access of Information system was inspired by the Mexican one. On the other hand, Mexican portal was based on the Brazilian Transparency Portal.**
- **Spill over effects to other government level should not be underestimated. The case of Brazil and Mexico shows that federal governments by leading by example induce local-level governments to enhance their transparency policies**
- **Countries follow different paths but may end up reaching high levels of openness. In Mexico, proactive transparency grew after passive transparency; Brazil in its turn not earlier than this year enacted a law addressing requests for information, although having been long recognised as a champion in active transparency**

Recommendations, follow-up Actions (200 words narrative form)

Governments should analytically review their transparency policies in order to address the issues of enforcement of the law and usefulness of the data they have been releasing. An interesting initiative should encourage countries to release their data in an open-data format, which would allow informational technology experts and amateurs to freely download data, build mobile phone application to employ the data, and translate the information to a friendly language. A great need for local level officials training has been identified by looking at the questions made by the audience; therefore, higher levels agencies with better qualified staff will have to pay attention to this issue.

Highlights (200 words please include interesting quotes)

An interesting dialogue emerged between the presentation by the Mexican Commissioner, when she addressed the Pemex case, and the presentation by the Petrobras Ombudsman regarding confidentiality of information. Anonymised salaries (without names) have not been treated as subject to specific exemptions related to competitiveness in Mexico, whereas Petrobras has not yet publicly released the remuneration of its employees.

Access to information affairs cannot and should not be treated separately from discussions about public participation in the political process and agencies' decisions, accountability, corruption fight, government transparency, including the cutting-edge debate on open data.

"Several government agencies have been voluntarily disclosing data and information that go beyond what they were obliged to disclose by the law's literal wording"

Vania Vieira

"Information is the currency of democracy"

"access to information is only one piece that helps understanding integrity in government"

Mr. Stuart Gilman

"Each officer was eventually accountable only to the President, who in turn was accountable only to the historical ghosts of the Mexican Revolution."

Commissioner Peschard, citing Andreas Schedler on the time in Mexico when there was no access to information right.

Key Insights Recommended to be included in the IACC Declaration

- **Countries should better link their access to information and transparent policies to the fight of corruption. An idea would be the most efficient use of disclosure systems and administrative sanctions to dismiss dishonest civil servants.**
- **A clear recognition should be given to efforts put together worldwide by the Executive branch in terms of obliging their officials to disclose interests and assets. Although much is yet to be done in this regard, a clear signal that the Legislative and Judiciary lag behind the Executive must be sent.**

Rapporteur's name and date submitted
Hamilton Cota Cruz – 9 November
