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**MOBILISING PEOPLE:
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Short Session Report: Global Solutions

Session Title: Fighting the ghosts of the past in new democracies: information rights and transition legacies

Date & Time: 10 November, 9.00-11.00

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Experts:

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Saad Filali Meknassi, TI Morocco

Tanti Budi Suryani, Tifa Foundation

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Moderated by:

Natalia Torres, Center of Studies on Freedom of Expression and Access to Information (CELE), University of Palermo

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

Featuring experts from Latin America, the Middle East and Northern Africa (MENA), and Asia, this session explored the passage, implementation and use of freedom of information (FOI) laws and procedures in recently established and emerging democracies, and the challenges that NGOs, journalists and citizens face in demanding that governments implement comprehensive FOI laws and – just as if not more importantly -- honour their letter and spirit. Research, legal

analyses and real-life examples were used to highlight the crucial importance of FOI laws, the difficulty in implementing them, and the challenge to ensure that they are enforced in practice.

FOI laws and access to public information, according to Saad Filali Meknassi of TI Morocco, are seen as the “oxygen of democracy,” particularly in countries with long histories of oppressive, dictatorial regimes that routinely denied citizens access to government information. FOI laws are being ambitiously pursued by journalists and NGOs as part of wide-scale efforts to establish accountable democracies in “Arab Spring” countries, in the MENA region, and in Asian countries such as Indonesia. “You cannot have access to information without a working democracy,” Meknassi said.

Many of these new laws, particularly in Latin America and the MENA region, are being used by NGOs, journalists and citizens to learn about and expose the “ghosts from the past” – human rights abuses, torture, corruption, disappearances, repression and other atrocities carried out by authoritarian regimes in the past. In many cases, governments in these regions have refused to release information, for example, to family members of disappeared individuals, citing spurious claims that the information is “personal”, and that the individuals need to be protected – even if they are missing or dead.

In the well-known Gomes Lundt case in Brazil, the Inter-American Court of Human Rights ruled in 2010 that the Brazilian government must publicly accept responsibility for grave human rights violations committed during the military regime, open its archives to the families of victims of repression, and pay millions of dollars in reparations. The court’s decision could become a benchmark in the search for truth, accountability and justice for human rights offenses in Brazil as well as Latin America as a whole.

In a powerful example of government backlash against its very own policies, the government of Indonesia – one year after passing an FOI law and before it even went in to effect – proposed a state secrecy bill that would criminalise the release of classified information. Possible penalties for violators include imprisonment or a death sentence. Tanti Budi Suryani, Tifa Foundation said that the definition of “classified” is very broad and open to interpretation. Citing another challenge, Suryani said that only 17 of 33 Indonesian provinces have established

Information Commissions.

In Latin America, a number of countries have denied public access to information on the grounds of “national security.” The problem with this, said Edison Lanza, is that this concept has been poorly defined in the region. Because of this, governments have used this vague definition to withhold information about past wrongdoing.

In an example of how FOI laws can serve the public interest, citizens in Uruguay used the FOI law to find out about schools that lacked proper fire equipment. This led the government to install proper equipment.

Main Outcomes/Outputs

Panellists and audience members alike agreed that much more effort needs to be exerted on governments to pass and credibly implement comprehensive FOI laws; that NGOs, journalists and citizens need to use these laws once that are in place; and that these laws should be used to hold governments – past, present and future – to account.

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

There was a consensus that NGOs, journalists and citizens need to work together to push for comprehensive FOI laws, to use these laws once they are on the books, and to monitor their implementation in practice. The growing international FOI movement can be tapped in order to bring pressure in individual countries.

Highlights (200 words please include interesting quotes)

Commenting from the floor, a member of Pakistan's Parliament said that the country's military government instituted an FOI law in 2002. As of 2008, however, not a single complaint had been filed with the Ombudsman's Office regarding the denial of an information request. This would suggest a great lack of public awareness of the FOI law. Interestingly, the Parliament member said that the law was passed without any demand from the public. Another audience member suggested that some governments pass FOI laws in response to international pressure, or in order to comply with donor requirements.

Related to this, Saad Filali Meknassi of TI Morocco said that Jordan passed an FOI law in 2007 without any demands from NGOs. The entire debate on the bill in Parliament lasted a total of 30 minutes. In Tunisia, Meknassi said, the transition government recently passed a decree on public access to administrative documents – like in Jordan, without any public demand.

These comments raised a question about why a government would pass a law that would serve the public interest without any demand from the public. The comments also stimulated a discussion about the best ways to go about lobbying for FOI laws, and how existing expertise can be used to improve these efforts.

Key Insights Recommended to be included in the IACC Declaration

All governments must have comprehensive freedom of information laws. These laws must be credibly enforced and not be exploited to withhold information that may be embarrassing to past or current government leadership.

Rapporteur's name and date submitted

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10 November

Remember! This Short Report needs to be emailed to Mariya Gorbanova Mariya Gorbanova (mgorbanova@transparency.org) within 2 hours after the session. Thanks!