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**Bridging the Gap: The Right to Information and Human Rights
Accountability**

Wednesday, January 26, 2011, 9:30 – 10:30am

Facilitator:

Conrad Martin, Steward R. Mott Foundation; Sandra Coliver, Open Society Justice Initiative

Panelists:

Sandra Coliver, Senior Legal Officer, Open Society Justice Initiative

Kate Doyle, Senior Analyst, National Security Archive; Director, NSA Mexico Project

Robert Rosenthal, Executive Director, Center for Investigative Reporting

Sponsors:

Stewart R. Mott Foundation; Open Society Justice Initiative

Conrad Martin started the session by emphasizing the need for transparency and for HR funders to focus on the fact that transparency is tool in accountability

Dinner Dialogue discussion raised notion that this is a fundamental right (funders should frame it this way)

Robert Rosenthal: Access to info is important but often difficult. Journalists work to get story before the right audiences. Ex: sex trafficking in former Soviet Union/Balkans → woman traveled all over to track down story, which is different from what HRW type investigation would do. Question of funding and access to information is important part of what HR are.

Downsizing of corporate newsrooms and expense of investigative reporting. Investigative news network tries to coordinate the work of investigative reporting in US. Coordinating on stories in a way that could not have been done before. Through FOIA and documents publicly available, put together all homeland security spending and made database available to anyone who wanted it. Part of role of new model is to get the information and use technology to make it available for those who want it.

Kate Doyle: Latin America consensus on right to information. Latin American HR community has used forced disappearance to explain what HR atrocities in LA mean. Speak of the “Disappeared” snatched off the streets. What disappeared means has also evolved → disappeared archives, information etc. from periods of State violence and periods of transition when violent states step down and democratic governments take power. Exhumation teams go out and try to find bodies of the disappeared. HR investigators try to find disappeared records to use them in creative ways for accountability and justice. Emerging consensus having on HR side and also on openness and transparent side. There are 17 national FOI laws in Latin American countries. Saw opening of repressed archives in Paraguay, Guatemala (depose of deteriorating records giving HR activists tools they need to get to the bottom of how and what happened and who was behind it).

December 14: HR Court groundbreaking ruling against Brazil → Brazil responsible for disappearance of 60+ guerrillas in 1970s and contemporary government of Brazil is obligated to produce records of military's role in the disappearance of those guerrillas. Formal finding on part of the Court that leads to information requests. Accountability of States re: HR violations to produce files and records. Put records in a place where people need them can access them, incorporate them into their understanding of what happened. This consensus exists but no regional agreement in LA on what it means in terms of Legislation, State obligation.

Needs framework that places right to information on HR agenda. NSA has experiences working with truth commissions, representing victims of families of those who have disappeared, judges, prosecutors using declassified records. Demonstrates power of this information. Confirm and clarify survivor accounts. When HR crisis ends, what's left is survivor accounts, bodies, not archive of what happened. Prosecutors have to rely on HR reports and survivors' testimonies (maybe exhumation data). Files help rewrite historical narrative from perspective of making national history for scholars, students' of country's history. Accountability, prosecution, convictions, right to access the info strengthens rule of law in these countries and empowers judicial systems.

Ex: successful prosecution of former President of Peru → used declassified US documents, and evidence for overseeing military death squads. Unprecedented conviction of former elected president for HR atrocities. Mexico → last in line to address or account for Dirty War of 1970s, 1 family member touched by violence (kidnapping and murder of both her parents), spent months in national archives, police records, etc., she was able to track down her brother who was adopted as infant when his parents were disappeared. Used in Inter American Commission case in hopes of getting official acknowledgment → files were powerful testimony for her

U.S. → US Justice Department has new Unit evolving out of old Nazi-hunting unit in 1970s and 1980s (track down and deport for trial), transformed into HR perpetrators unit, look for former perps living in US and try them for visa and nationalization fraud and deport them. Declassified US documents of Guatemala massacre convinced Justice Dept. that they needed to track down perps. Last example: move justice systems in ways they have not been moved for 30 years. Investigators in police archives found info of well-known, loved Guatemalan who was disappeared (Union leader),

investigators found records of documents naming people who disappeared him. Led to trial and conviction.

Problems/challenges:

1) States claiming to defend HR of their citizens can still hide secret archives that they own and sit on. No sanction on States who refuse to open files of their perpetrators → legal and publicity problem; no sharing of experiences and lessons learned; fierce resistance on part of governments to turn over information/document; archive laws are flawed and nonexistent. No regulations that help preserve or make public. Uncertainties and doubt of legal use of these records. Created course for training for expert testimony

1st obligation is to get the conversation going and get HR and openness advocates to sit in room together

Martin Tisne: Transparency and Accountability Initiative is a new donor collaborative Collaborative is composed of 8 funders: OSI, DFID UK, Omidyar Network, Hewlett, FORD, HIVOS, Revenue watch institute, intl. budget partnership..?

Look at nascent work in field, seize momentum, make links with accountability and HR funding community.

Funding community can be myopic

Starting to think about strategy

Focus: 1) Learning, 2) Advocacy/policy influence 3) harness the potential of new technologies (a lot of funding still going to tools, software, etc.) now trying to combine tools with wealth of knowledge. How can they bring info available and link it to citizens to make sure they are engaged

Impact and focus so far: 1) influence on funding and programming (research and recommendations – all done by civil society groups) 2) support to policy 3) forging a common agenda on T & A (get sense of how disparate eco-system fits together, (ex: transparency of foreign aid, budgets, right to info, tech etc.) 4) lessons learned 5) Resources for members

Lessons learned and impact:

Would like to achieve a lot more than new research and get to point on how all the info can be linked together and have a basis of evidence

Open Government Initiative (Obama administration at UN General Assembly meeting last year had a section around open society discussing fighting corruption, transparency, engaging citizens and calling countries to come back 2011 with new commitments). What's emerged → commitments that stretch countries (G-20 countries to learn from innovations of India, Indonesia, etc. and help reformers in countries which haven't gotten to that stage and energize them), aiding govt reformers in countries, multi-stake holder initiative, multi sector, multi country initiative. Peer to peer assistance/learning is most exciting (transparency and accountability).

Sandra Coliver: Role of litigation directed at corps to stop them from committing mass HR violations. Access to information litigation is vibrant. Ex: Malawi case on Iranian mine that is leaking into water and killing fish. Malawi has right to information. 85 countries have national access to information laws. Huge growth in incorporation of a right and embedded is litigation. Strategy is to bring together civil society groups and say they are beneficiaries and are entitled to information. South Africa has law that allows people to ask for info from companies. Ex: Can ask for info re: mining in Zimbabwe

Collaborations: Journalists are supported and freedom of expression. Journalists around the world are saying they need information. Latin America has alliance of journalists working on access to information. Anti-corruption networks have been slow.

Role of Universities: Reports globally launching Freedom of Information clinic. Need help in managing records and digitizing info. Engaging and motivating the next generation.

Conrad: One goal is to talk about how this is relevant to field of funders.

Questions:

Has there been any interest and ability to develop intl. software so that reporting can be digitized and shared?

Robert: Yes, it is starting. Making documents accessible through FOIA, but in nascent steps and as tech gets better, it will be more do-able

Kate: Managing data is a need

Martin: Degree to which data is open.

Conrad: Project on Govt Oversight: Misconduct database: looked at data where there was fraud, collusion, etc. NY Times ran article on the misconduct database. Why can't US Congress do this? Now they do misconduct monitoring

Lesley:

How can we get citizens engaged in this?

Journalists can broadcast why this is important to make communities wrap their mind around why being able to read and analyze a public budget is important to their lives. Ex: in Mexico, investigative journalists training on how to use FOI laws, use data to write stories. Get journalists to recognize they readers and audiences to recognize why open governments are important to their lives. Govt. info is property of people not property of the State

Katerine McGraw:

Wikileaks exposure of govt. actions:

Robert: Does not consider Julian Assange as a "journalist" → he had to go journalism orgs to get the story out, get story to macro level and describe what it means to their lives and show them. US reaction = impact on type of info and docs available. Any meeting will be concerned wit how info will come out. Distribution of "disinformation" and credibility of info, fact checking are issues. Overseas → they saw it as an American issue, does not know what other govts. doing to protect their info. Necessity of collaboration and information and those who make it available. Crucial to tell a story.

Kate: Low level information, some scandalous, fun documents/silly info. A couple of instances of real impact (ex: Panama govt and corrupt leaders dealings and embezzlement). Info did not surprise anyone and led to convos. NSA → pointed to dysfunction of secrecy system in US. US has low fences around vast info whereas they should only keep very small amount of info secret.

Martin: Wikileaks is not a paradigm shift in how civil society orgs function. Globally, it provides opportunity to have dialogue on:

1) Natl security exceptions on FOI

2) Internet freedom: influence of private actors on the internet and how private companies have abused their rights; Budgets: how do you make info meaningful for citizens? Journalists, distribution of info to citizens. Working with Churches, trade unions, to inform citizens about their rights.

Sandra: whistleblower protection. FOIA laws do not help if you do not know what you are asking for.

Whistleblower can give you info that govt. will not give you. Julian Assange has set back protection to whistle blower protection. Will set back efforts internationally. Donors should engage convo. with grantees on how to rehabilitate profile of whistleblowers (ex: Bradley Manning – broke the law, but should not be solitary confinement). Some countries have good whistleblower protection laws (Ex: Ghana, some countries in Europe).

Kate: Congress is the one that used Wikileaks to crush Whistleblower laws.