Drafting a Model Law and Implementation Guide on Access to Public Information for the Americas

Group of Experts Meeting September 2-3, 2009

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Department of International Law -- Secretariat for Legal Affairs
Organization of American States

In Attendance: John Wilson, Dante Negro, Amb. Jorge Skinner-Klée, David Stewart, Pablo Saavedra, Maria del Carmen Palau, Patricia Milagros Guillén Nolasco, Damian Cox, Melanie Anne Pustay, Sandra Coliver, Karina Banfi, Laura Neuman, Issa Luna Pla, Annie Goranson, Leslie Bar-Ness, Josée Villeneuve, Sarah Rivard and Ana Maria Villena.

NOTE: *Participation in the drafting committee is strictly in member's individual capacities as experts interested in furthering the right of access to information in the Americas. There is an open policy for meetings, documents and deliberations. However, to foster the freest exchange of opinion and ideas, all presentations, comments and documents presented by individual members are not for attribution to their respective governments and/or organizations.*

September 2, 2009

Opening Remarks

Mr. John Wilson, Legal Advisor in the Department of International Law at the OAS opened the meeting by explaining the role of the Department in this project as the coordinator of the group of experts, per the mandate received from the General Assembly. The opportunity was given for all those present at the meeting to introduce themselves and elaborate on the work their respective governments or organizations play.

Mr. Wilson introduced Ambassador Jorge Skinner-Klée, President of the Committee on Juridical and Political Affairs, who welcomed the group of experts to the OAS and stressed the importance of the project in advancing the topic of access to information within the OAS. Amb. Skinner-Klée highlighted the history of the subject of access to information in the OAS, stemming from the Third Summit of the Americas in 2001. Amb. Skinner-Klée's outline of the history included emphasis on the annual General Assembly resolutions since 2002, the Special Rapporteur on Freedom of Expression's study on the right to access to information as well as the minimum standards required by the case law of the human rights system of the Americas, and the Inter-American Court of Human Rights' ruling in the Reyes case. Additionally Amb. Skinner-Klée mentioned the Inter-American Juridical Committee's set of ten fundamental principles on access to information, as well as the policy and legal recommendations developed by the OAS and presented to the Committee on Juridical and Political Affairs.

Amb. Skinner-Klée said the Committee on Juridical and Political Affairs, which he chairs, looks forward to receiving the final model law and implementation guide at their meeting in April of next year. He stated that the Committee will then work on drafting a resolution for the General Assembly on the next steps Member States should take with regards to the model law. In the second half of 2010, Amb. Skinner-Klée said the Committee will hold a Special Session on access to information, during which it will be determined whether there will be an Inter-American Program on Access to Public Information developed. He assured the group of experts that the model law that is developed will be taken into account at the time when the Member States are grappling with the issue of whether or not to develop an Inter-American Program and with how to

follow-up on the standards set by the group. Amb. Skinner-Klée closed by thanking everyone for their valuable contribution and wishing the group fruitful discussion.

Principles of Access to Information

Mr. Dante Negro, Director of the Department of International Law, welcomed everyone to the OAS and laid out the mandate that the Department had received from the General Assembly of the OAS to work with various actors including departments within the OAS, member states, and civil society, to develop an Inter-American Model Law on Access to Information and an accompanying Implementation Guide. Mr. Negro went on to highlight the work done thus far by the OAS on the topic, including recommendations produced by the Department of International Law, standards set by the Member States in General Assembly resolutions, and principles on access to information stated in a resolution of the Inter-American Juridical Committee.

In highlighting the different standards and principles on access to information at the OAS, Mr. Negro raised the following points:

- In principle, all information is accessible. Information has been defined as all significant information in possession of public bodies. It is important that it is broadly defined in order to include everything which is held or recorded in any format or medium.

- Everyone has the right and the freedom to seek, receive, access and impart information. In last year's resolution, for the first time the General Assembly included the word "right," stating that everyone had both the freedom and the right to seek, receive, and impart information.

- States must respect and promote respect for everyone's access to public information. The right of access to information applies to all public bodies at all levels of the government including, the executive, legislative, judicial, constitutional and statutory bodies, bodies which are owned or controlled by governments, organizations which operate with public funds, and organizations which perform public functions.

- States have duties in regards to legislation, including the duty to adopt any necessary legislative or other types of provisions to ensure recognition of access to public information and its effective application. Additionally, states must prepare and/or adjust their respective legal and regulatory frameworks, as appropriate, so as to provide the citizenry with broad access to public information. When preparing or adjusting their respective legal and regulatory frameworks, states must provide civil society with the opportunity to participate in that process.

- States must take into account clear and transparent exception criteria. They should be established by law, be clear and narrow, in keeping with a democratic society and proportionate to the interest that justifies them.

- Public bodies should disseminate information about their functions and activities, including, policies, opportunities for consultation, activities which affect members of the public, budget, subsidies, benefits, contracts, etc. The information should be presented in a manner which ensures that the information is accessible and understandable. Public bodies should disseminate information about their functions

and activities: on a routine and proactive basis, even in the absence of a specified request.

- Clear, fair, non-discriminatory and simple rules should be put in place regarding the processing of requests for information. In particular, these should include clear and reasonable timelines, provision for assistance to be given to those requesting information, and free or low-cost access. Where access is refused, reasons, including specific grounds for refusal, should be provided in a timely fashion. The burden of proof in justifying any denial of access to information lies with the body from which the information was requested. Anyone who willfully denies or obstructs access to information in breach of the rules should be subject to sanction. Individuals should have the right to appeal against any refusal or obstruction to provide access to information to an administrative jurisdiction. There should also be a right to bring an appeal to the courts against the decisions of this administrative body.

- States must take measures to promote, to implement and to enforce the right to access to information. These measures should include the following: creating and maintaining public archives, training public officials, implementing public awareness-raising programmes, improving systems of information management, and reporting on measures taken by public bodies to implement the right of access, including in relation to their processing of requests for information, etc.

- States must take into consideration the principles of access to information in drawing up and adapting national security laws. However, it was noted that this reference in General Assembly resolutions has this past year been removed.

- Access to public information is a requisite for the very exercise of democracy.

Discussion of Principles

Following Mr. Negro's presentation of the principles and standards on access to information thus far elaborated by the OAS, Mr. Wilson opened the floor to thoughts on how the group of experts might work to ensure that these principles are covered in the model law and implementation guide, noting that several laws have preambular sections, while others have an introductory provision on the principles contained in the law. Mr. Stewart stated that while it may be tradition in some states to include a perambulatory section to the law, perhaps it would be best for the group to draft a section and leave it up to the states on whether it incorporate it into their own law. Ms. Luna echoed Mr. Stewart's comments, stating that there is a need for having principles and citing as an example the revised principles in the Mexican law that are aimed at ensuring local legislation lives up to the federal legislation.

Mr. Wilson raised the Department of International Law's thought on possibly adding in commentary to help states interpret the legislative text and solicited thoughts and or comments from the group on that idea. Ms. Coliver suggested including more sections in the model law than necessary for any given country and then stated that the group could further explain why a state might want to include a given section.

Mr. Cox suggested looking at the Right to Information Act in Queensland, Australia, which has a preamble section containing principles that might be of use were the group to draft a set of principles for the model law. Additionally, he stated that the Jamaican law has an objects section that contains similar provisions. Mr. Wilson wondered whether the differences in whether countries have or do not have a preambular section stems from whether they are common

law or civil law jurisdictions. Mr. Wilson suggested that the Department of International Law could try to figure out what the member states of the OAS have done in regards to principles.

Ms. Pustay pointed out that some of the principles will naturally be built into the model law, citing as an example that exceptions will be narrow and the burden of proof will be on the public body. She suggested the group reduce down the principles to things that aren't a part of the law, such as the fact that everyone has a right to information and then include those areas in a section that proceeds the law in order to set up a framework and be an option for states adopting the model law.

Ms. Guillen suggested that it could be possible to reduce the number of principles and make sure we include: exercise of right of access to information should be free or limited to cost of reproduction and all information in hands of the government should be of public character. Amb. Skinner-Klee commented that for sitting judges it might be a good guide to have a principles section in the model law. This was echoed by Dante Negro who stated that there is a need for some basic principles. However, he noted that the group need not be so precise with the principles as long as they are general and comprehensive.

Ms. Villaneuve explained that the Federal Canandian legislation has preambles, but that they don't focus on reasons why the law is enacted, since that is reserved for the legislative history. The Canadian law has three principles: presumption is towards disclosure, exceptions are limited and narrowly interpreted, and an oversight body will ensure legislation is implemented.

Mr. Saavedra explained that it is often the case that principles are an article in the law, whereas there might be a separate explanation of the motive for passing the law. He stressed what had earlier been stated by others, that judges could use the principles in interpreting the law. Ms. Luna further elaborated that the preamble is not binding in civil law countries. She agreed that it would be a good idea to acknowledge principles stressed by the Inter-American Court of Human Rights and the OAS as political standards and then use more concrete legal language for the model law.

Mr. Wilson concluded the conversation by suggesting that there be a preamble that sets the stage for this law while also having a category of principles that are agreed upon in the text of the model law. All were in agreement that this would be a good idea.

Discussion of Methodology

Ms. Wilson began a conversation on methodology for the experts group, stressing that the concept paper was meant to be a guideline as how we move forward, but that the Department of International Law is looking for ways to improve the process. He stated that so far the Department has realized that the process can not move forward without translation and interpretation in the remaining stages and stressed that the Department is currently looking for resources to make sure that happens so that more people can participate in the process. Mr. Wilson welcomed comments on how the group could do its work better. As there is limited time for comments on each chapter during the meeting, Mr. Wilson suggested that individuals email the respective chapter authors with additional comments on their chapters if they have them.

Going forward during the meeting, Mr. Wilson asked that participants pay attention to which areas of the law may be missing. Highlighting the objectives of the drafting committee, Mr. Wilson read the mandate the Department of International Law received from the General Assembly in resolution 2514, operative paragraph 9. He stressed that further than complying with the mandate, the Department wants to provide states with an important tool to implement the right of access to information. Since most states have access to information laws, Mr. Wilson suggested that the real value of the model law itself will be to provide states with a basis for evaluating existing legislation as well as with implementation.

Mr. Wilson went over the objectives for this first meeting, asking that at this stage participants focus on concepts and content and not the specific statutory language as this would

be handled in subsequent meetings. He also hoped that for this first meeting the group could begin to bridge the divide between the implementation guide and the model law, looking at such issues as whether comments to the model law are necessary.

The key dates in the drafting process were presented by Mr. Wilson, who asked that following the distribution of the minutes of this meeting, that participants incorporate comments and revise their respective chapters by October 2nd, at which point the Department will consolidate the chapters into a single text to be distributed on October 19th. From there, Mr. Wilson asked that the emphasis shift more to the text instead of concepts, and that participants provide comments on the revised draft before November 20th. The second meeting of the group of experts will be held on December 1-2, to discuss that consolidated text and the comments received on it.

Mr. Wilson presented several ideas on how the group could, if it so desired, incorporate commentary into the model law or implementation guide, stressing that the group could provide examples of how the draft provisions should operate, special considerations for drafting the law, references to Inter-American court cases pertaining to relevant areas of the law, or explanation of different alternatives from which a state could choose a particular article.

In terms of the second and third meetings of the group of experts, Mr. Wilson explained that the Department is looking to invite additional participants from civil society to attend those meetings to provide comments. In selecting those individuals, Mr. Wilson suggested that the Department might make the most of the limited spaces in the meeting room and try to get representatives from civil society to attend who can work with other civil society organizations to gather comments on the draft text and thus have a greater participation from civil society in the process.

The role of the Department of International Law in this process, according to Mr. Wilson, is to coordinate the drafting process as well as to present the final product to the Committee on Political and Juridical Affairs.

Mr. Wilson explained that the Department had believed that due to limited resources that the work could be done in English. However, he stressed that it is now apparent that that will not work and explained that the Department will have all meetings and documents going forward in both English and Spanish. The end product will be produced in all four official languages of the OAS.

Mr. Wilson suggested that the group adopt a non-attribution policy as many individuals around the table might not have authorization to speak authoritatively for their organization, government, or department. As such, he suggested that the following policy be adopted by the group:

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Mr. Wilson went on to state that individuals who do speak authoritatively and don't want to be excluded from attribution should let the group know. Mr. Wilson opened the floor to comments from the group on the methodology, commentary, and timelines.

Ms. Coliver suggested that there may be a value added in referencing relevant jurisprudence and resolutions of the OAS in some sort of commentary to the law. She highlighted two possible functions for commentary – advice to the drafters on how to draft the law and advice to the interpreters in the judicial context. Separate from those two functions would also be the need for the text in the implementation guide on how to implement the law.

Mr. Wilson questioned whether the group would prefer eliminating comments and incorporating them into the implementation guide, or whether perhaps we lose the importance of

the comments if they are not linked directly to the model law. Mr. Cox suggested that the commentary in the model law could be how to interpret a particular example, while the implementation guide could go into length on issues and options on how to proceed with the law.

Ms. Neuman informed the group that The Carter Center is currently preparing an implementation assessment tool to look at the extent and capacity of the government to receive requests for information. Touching on whether there is a need for the commentary in the model law, Ms. Neuman suggested that putting too much commentary in the statutory language may dilute the model law since some provisions would end up with a lot of commentary. However, she also suggested that moving the commentary out might encourage governments to look at this as a cookie cutter approach and that governments might fail to look at the commentary in the implementation guide. As such, Ms. Neuman suggested trying to find a way to ensure that the commentary and implementation guide are not disassociated with the model law.

Ms. Pustay stated that the most important thing is to have the law, arguing that if the model law is muddied up with commentary, it might be so overwhelming that states don't focus on the core things the group wants to convey, which are the actual statutory provisions. Following up on what Ms. Neuman stated earlier, Mr. Cox suggested that the group stress that the model law and implementation guide are complementary to one another so that they are not viewed as separate documents.

Ms. Palau reminded the group that the policy makers, and not just the legislatures, should be kept in mind when talking about commentary to the law.

Since the big issue now for countries with laws is the implementation and the related challenges, Mr. Cox stressed that the group need not fear that the implementation guide will be disregarded.

Ms. Goranson pointed out that the audiences for the implementation guide and model law may be very different and that this should be taken into consideration when figuring out where to put the commentary. Mr. Wilson echoed this and suggested that perhaps there are multiple types of comments, some for how states should deal with alternatives presented in the model law, which might be best placed in a section purely devoted to commentary. Ms. Coliver suggested that the group consider the best place for commentary as each chapter is discussed and then at the end of the chapter presentations think about formatting.

Mr. Wilson questioned whether there were thoughts on getting a wider participation from civil society in the form of commentators on the draft document. Bearing in mind the interest in getting more voices from civil society, Ms. Coliver stated that she, and others in the room, are in positions to be in touch with the freedom of information advocates network, which could be a forum for seeking comments. Another suggestion was to solicit feedback from the information commissioners network as well. Mr. Wilson explained that due to limited seats at the table, he is happy with the role Ms. Banfi plays for civil society at the table, since she will take the draft back to her alliance and solicit comments from them and then present those comments at the meetings.

Touching upon whether the group would feel comfortable circulating and publicizing the drafts of the model law and implementation guide, all were in agreement that this could be done so long as the draft copy stated that it was a draft and was thus a working document.

Model Law – Scope

Mr. Stewart took the floor to present the chapter he drafted on the scope of the model law. He stressed that the notion he kept in mind when drafting the section was that the model law should be extensive in its reach and should apply to the government, broadly understood. Touching on how one would define government, Mr. Stewart explained that he chose to include governmental authorities and public bodies, as well as nongovernmental entities which act for the government or are vested with public or administrative functions. He expressed the need for the law to apply to all entities at all levels.

Going through the article he drafted, Mr. Stewart explained that point B states that the law should cover all branches of government, including independent bodies that are owned or controlled by government. He stressed that the first two points, A and B, were meant to encompass government as broadly understood. However, these two points leave out non-governmental bodies that receive public funds or benefits or perform public functions, so a provision was included in point C to cover public services on behalf of or subject to the direction of the government.. Mr. Stewart stressed that point D was derived from language elsewhere, concerning the fact that the law should apply to private corporations where it involves the protection of any human right. However, Mr. Stewart stated that this leaves open what is meant by a human right and the protection of it in this context. He questioned whether the group would know if this was a provision common in laws in the hemisphere. The last point in the article, point E, would apply the law to entities engaged in exploiting public resources. However, Mr. Stewart said he thought the point may go a step too far and might be redundant since the regulatory entity would likely have the information and thus it could be accessed through the government.

Mr. Wilson stressed that points C, D, and E are where there are big differences, noting that many of these notions on scope come from the Atlanta Declaration from the Carter Center's conference. Touching on some of the areas Mr. Stewart had pinpointed as controversial, Mr. Wilson asked how one would determine what a human right is, which entities perform public functions, and which information held by an entity that performs a public function would be public.

Ms. Neuman commented that for point C, on covering nongovernmental entities that receive public funds, one should be cautious in drafting it since there is a question of whether an entity that receives benefits, such as tax exemptions, would be covered under this area of the law. She urged everyone to bear in mind that the scope must be looked at in parcel with the section on exceptions and that the goal should be to have as large a scope as possible and then to include such areas as confidentiality for business secrets within the section on exceptions. Touching on what would be a human right, Ms. Neuman suggested using the International Bill of Human Rights as a basis for determination and thus referencing it in that section of the law. Ms. Neuman explained that point E on exploitation of public resources was the most contentious point of discussion at the Atlanta conference. She stressed that it is the reality that there is environmental exploitation going on so it is worth the group's time to consider its inclusion. However, she also suggested that perhaps the point could be contained in commentary, where it could be explained that it was not included at this time but that states should consider it in greater depth. Lastly, Ms. Neuman posed a question to the group as to whether political parties should be included within the scope.

Ms. Luna explained that the federal law in Mexico does not cover political parties, but that the local laws do. She suggested that if political parties are not included here, that there should be an explanation that the list is not a restrictive list and there are other entities that could also possibly fall under the scope of the law. As an example, Ms. Luna raised whether labor unions would fall under the scope of the law. She also noted that civil society organizations are recognized under the scope of the law in the Dominican Republic, Guatemala, Honduras, and some Mexican local laws.

Mr. Cox suggested that the model law should make governments stretch themselves a bit and that he feared that if you say everyone is covered by the law, governments will say it simply isn't feasible. Instead, he suggested having a model law with best practices that will make states move out of their comfort zone but that will not at the same time throw the kitchen sink out. He raised a question as to whether entities in which government has any stake would be covered? Mr. Cox explained that in Jamaica, the legislation covers those entities where government composes fifty percent or more of the shares. Mr. Cox further noted that the Jamaican legislation contains a provision whereby the government, specifically the Prime Minister, has the ability to

bring an entity under the scope of the law. However, he noted that the provision has not yet been used by the government.

Ms. Coliver suggested adding in commentary saying these bodies are covered by laws in the following countries. On private entities that receive public funds or performs public functions, Ms. Coliver suggested saying they are subject to disclosure, but only for those functions and things that are relevant to the public function or receipt of funds. She went on to say it would be too onerous to expect small companies and NGOs to have an information officer responding to requests.

Ms. Pustay stressed that the group should not lose sight of the fact we must open up government operations, not every entity that is of interest to people. Ms. Guillen spoke to the experience in Peru, stating that the legislation includes a widened margin of scope and is interpreted as applying to nongovernmental organizations. However, she said it presents a difficult enforcement problem for the executive branch and has little oversight. She reminded the group to consider implementation when drafting the model law. Ms. Villaneuve urged that the group not create a law so encompassing that it is too costly to implement.

Looking at the draft text, Ms. Coliver suggested for point A, taking out all references to nongovernmental bodies and combine points A and B and add in "natural and legal persons in so far as they exercise administrative authority."

Mr. Cox disagreed on including the courts, stating that if you include judicial functions, you get into the problem of anyone being able to access judicial notes, views on evidence as a case is ongoing, etc. He also explained that under the Jamaican law, communications between the governor general and the prime minister are not covered since they would encroach too much on the functions of the state.

Ms. Neuman reminded the group that there will be an exemptions section for the law. She went on to say that within the scope section it doesn't make sense to say which functions are covered for government bodies, but instead to use the exceptions section to do this. She added that somewhere in this section or another section, there needs to be a provision on how this law works with other laws.

Mr. Saavedra suggested combining points A and B to say that the law applies to all state authorities (judicial, executive and legislative). He also reminded the group that the Claude Reyes case concerned a private company and that in his view, autonomous bodies when they receive money or are providing public functions, should be covered.

In a discussion of what is meant by a public function, Ms. Neuman explained that the increasing privatization of electricity, telephones, jails, etc. led to this development of public function. She explained that the importance for the user isn't who is providing the water, but instead what the rate determinations are, etc. She suggested adopting a following the money approach, whereby those who perform public functions and those who receive lots of public funds are covered. Ms. Pustay echoed Ms. Neuman's suggestion on the follow the money approach, saying there needs to be a logical connection back to the government. Mr. Cox stated that there are other ways to follow the money outside of the access to information legislation – for example, through a water regulator, who would be covered under the access to information law.

Mr. Wilson suggested that the chapter on scope should be coordinated closely with the chapter on exceptions to make sure that scope is not being dealt with in a vacuum. He also suggested that the best approach for handling point E would be to do so in the commentary, and for D would be to include it. Ms. Coliver suggested that perhaps the implementation guide could have a list of public functions to be addressed.

Model Law – Presumption of Publicity

Mr. Cox, author of the chapter on Presumption of Publicity, presented his chapter to the group, explaining that the first section on proactive disclosure of public sector information states

that the Access to Information Act should be a part of the comprehensive Strategic Information Policy of the Government. He went on to elaborate that public authorities shall release public information in a range of languages and user-friendly formats. However, he stated that if governments restrict access to information, they must have legal, policy, administrative or public interest reason for not doing so.

Touching upon the guidance on duty to publish, Mr. Cox explained that Jamaica gave themselves five years for implementation and there were still problems they encountered. However, he mentioned that Jamaica chose the phased-in approach. He suggested that twelve months may be an appropriate amount of time for implementation in the model law.

Mr. Cox included a requirement on the publication of publication schemes, saying that Jamaica's law includes a provision stating that each time something changes that affects the publication scheme, it has to be updated. His draft chapter includes a list of the types of information that would be included in the publication scheme.

Mr. Cox touched upon a difficulty that Jamaica is facing, whereby if the law is not specific enough in terms of the information that should be automatically published, then some entities will simply list the laws that established them. In terms of guidance on the duty to publish, Mr. Cox warned that if it is left up to the agencies to set up their own publication schemes without oversight, there will be a problem of ensuring consistency across the board. As such, he recommended that there be firm guidance and oversight of this area.

One question Mr. Cox raised concerned the possible automatic publication of reports produced by consultants. He stated that entities will often hire consultants to prepare reports that are then made public for a fee, so that the government can collect revenue. He cautioned that the government needs to be able to continue to allow for the purchase of those documents but that there should be a way of requiring that an announcement be made that the publications exist.

In terms of maintenance of records, Mr. Cox suggested that the United Kingdom experience is a good one, where the information commissioner is working alongside an archivist and that they are mandated to work together. He stressed the importance of information asset registers, stating that often government agencies do not know what information exists and that the inclusion of the mandate to publish the register will force entities to do a record audit. Similarly, he suggested that public authorities should be required to publish disclosure logs of all documents released in response to requests. However, he cautioned that there must be a way to protect the requesters identity when the information concerns personal information. Lastly, Mr. Cox said public authorities must report to the responsible authority/commissioner on their activities pursuant to this act.

Ms. Neuman commented that some of the sections in the chapter do not seem to fit under presumption of publicity and are perhaps best suited for the section on the duties of information commissioners or officials. Similarly she suggested that the maintenance of records might also fall best under the duties section. Mr. Wilson reminded the group that at the end of the day there will be a discussion of the overall structure and that for the purposes of the draft outline, the Department followed the legislative recommendations on access to information produced by the OAS. He suggested that perhaps this structure may not lend itself as easily to a model law.

Ms. Villaneuve stressed that proactive publication is at the heart of new legislations and so the chapter should be tightened up so that the message is not lost. She suggested including a presumption of disclosure article as well that would state that the legislation is based on the presumption that all documents are accessible to anyone that would want access to them. Ms. Luna suggested that it might be simply stated as a principle – openness is the rule, secrecy is the exception. Ms. Cox, Mr. Wilson, and Ms. Guillen echoed this suggestion that the presumption of disclosure be set out in a preamble.

Mr. Cox explained that with an access to information law you are typically viewed as pulling information from the government, when what you should be doing is pushing it out. He stressed that good regimes follow the push model and that the pull model should be the last resort.

Mr. Guillen noted that some of the points in the section refer more to legislation on transparency. However, Mr. Wilson noted that the group will be unable to produce two model legislations and so must make the one on access to information more inclusive for those states that might not have a law on transparency as well.

Ms. Villaneuve explained that proactive disclosure is a culture of openness and that the publication schemes are a good way of promoting this culture. She went on to suggest that the implementation guide could further elaborate on this culture. Looking at the structure of the chapter, Ms. Villaneuve suggested that the section II might be best handled in the implementation guide. She also pointed out that publication schemes are but one way of approaching the issue and that another possibility would be centralized or decentralized register. Mr. Wilson suggested that perhaps an example of a detailed publication scheme could be included in the implementation guide.

Ms. Luna added a general comment that it would be important at the end to make a special reference to the obligation to implement, noting it is similar to section 1 of this chapter. Mr. Wilson noted that at some point need to address transitory or administrative rules at end of model law. Ms. Pustay said she likes having all of this in the law and doesn't see the chapter as lesser or something that would need to go in implementation guide.

Mr. Saavedra asked what the purpose of the law was, and noted that it should be the minimum standard for any law in Latin America. He noted this law should be very much tied with the concept of transparency.

Ms. Neuman said she did not understand point 2B about authority to revoke duty. She asked whether there should be a provision saying once information is released it should automatically become public and be posted under the minimum documents released. She explained it should be more than just being a list of documents that have been disclosed but instead should be the actual documents. She stressed the need to change it to be the actual documents instead of just a log. Mr. Cox wondered though whether Ms. Neuman's suggestion would cause resource problems. Instead, Ms. Neuman suggested making a note that the information once it has been released once is available and shouldn't have to go through the clearance process again to release it.

Ms. Pustay said once information has been disclosed to one person it can simply be photocopied to give it to another. She said it doesn't make sense to have government spend resources on posting documents if its something only one person would be interested in. She noted her section has a similar provision making it publically available online if it is believed others would want it.

Mr. Cox turning to Ms. Neuman's comment on the guidance on the duty to publish, saying the public authority has duty to publish publication scheme and oversight entity would approve these schemes and that they could revoke it if it did not take into account certain things. Ms. Neuman thought this should be moved to an oversight section and instead of saying revoke you should say they have the power to enforce or ask them to do it differently.

Ms. Coliver suggested four other categories for information disclosure, including information about the budget of the public body, information on public procurement procedures (both before and after issuing contract), contact information for the information officer, and possibly proactive disclosure of salaries or salary bands of a category of employees. Mr. Cox said a lot of that will depend on particular countries in terms of salaries or salary bands. Ms. Coliver said it could be recommended though that they release the salary or salary band.

Ms. Guillen said that agencies will view the list of minimum things that need to be published as a complete list, particularly if the list becomes very long. She explained that those considerations are what prompted the government in Peru to do a law on access to information as well as a transparency law that went into more detail.

Ms. Luna said that included in the list should also be the performance indicators in terms of the Millennium Goals. In Mexico she said the addressed Ms. Guillen's point by also having

something in the law that says "any other information that is socially relevant." She noted they have in Mexico a software that has everything that has been published since enforcement of the law, although she noted that this likely could not be the case in every country.

Mr. Cox said that in looking at the provisions and drafting he tried to write in the text "but not limited to." He said the publication schemes should also cover things that might not be in the list that is mentioned in the law.

Model Law – Making a Request

Ms. Guillen presented the chapter of the model law on making a request, stating that access to information should have no cost and that requests should not require any justification. She explained that the filing of requests may be done in writing, electronically, in person, by phone, or by alternative means, with the objective being to avoid discrimination and make the process as accessible as possible for people. Touching on the means and requirements for the request, Ms. Guillen noted that the requester need not direct the request to a specific individual or functionary. Instead, the corresponding obligation lies exclusively in the authority to direct the request to the appropriate person. As a general principal, Ms. Guillen said that the formalities established for requesting information should facilitate access and not constitute a barrier. She stated that the request should include the name of the petitioner or representative, as well as the home/office and/or electronic address of the petitioner for the receipt of notices. Additionally, she stressed the importance of having a clear and precise description of the information requested in order to facilitate the public servant's search for and delivery of the document. Lastly, the request should include an indication of the delivery means for the information requested, whether it be electronically, physically, in an exhibit to see the information, or mailed to the home address.

Discussing the cost or fees associated with the request, Ms. Guillen said the petitioner should only pay for the cost of reproduction and delivery, which should not exceed the referential value of the same service in the market. Ms. Guillen raised a suggestion that was not included in the draft, that perhaps there should be a minimum number of copies that should be available free of charge since most of the cost of communicating to the requesters on how much they should be paying for the request could be higher than the actual cost of reproduction.

Turning to the issue of access to original data, Ms. Guillen suggested that the exhibition of public documents should be made at no cost. She concluded that if other norms exist they should not limit the right to information granted within the scope of action in this model law.

Ms. Pustay commented that in point number 1, instead of saying it should bear no cost, it should say bear no cost except for the cost of reproduction. She also raised the point that in many circumstances you can't give access to the original since you have to make redactions. Mr. Wilson suggested that perhaps this is due to a difference in practice between the US and Latin America, where in Latin America, you often have a right to request a document and view it there in person. Ms. Pustay followed up saying she was unclear of the value in having the provision in the law if the public body is required to look at every document. Ms. Guillen suggested that the provision could be taken out, or could be stated so that information that isn't redacted could be provided in original form. Ms. Villaneuve stated that the Canadian Federal Act calls for a reading room and that it is well used in Canada. Ms. Bar-Ness stated that the reading room would make sense for the user if they want to look through some eight hundred pages and only need eight of those pages photocopied. However, Ms. Pustay pointed out that all of the eight hundred pages would have to be reviewed and redacted. Ms. Villaneuve said that Canada occasionally has requests that are very general so sometimes the ability for the reader to review the documents will actually reduce the workload for the institution. Ms. Neuman argued that the provision is important as it concerns the expansiveness of the right. However, in terms of the provision on

access to original data, she raised the issue of whether it would also cover such information as maps, microfiches, databases, etc.

Turning to point one B, Ms. Neuman stated that the law is missing that if a public servant does ask for a reason for the request, there should be a sanction. She also questioned whether a name should be required for the request, citing that Mexico's law allows for anonymous requests that work well particularly in small state societies where there are fears of retaliation for making a request. Ms. Neuman said she liked Ms. Guillen's suggestion of including a provision stating that a certain number of copies would be free. She suggested that if others were not comfortable with the idea, then another alternative would be to make an exemption of any cost if you are below a certain income level or if you need the document for the public interest. She also suggested removing point 5A and applying it to the whole law, since it would say that this law trumps inconsistent laws.

Ms. Guillen agrees that the meeting should be used to discuss whether or not a name should be required on the request. She also agreed with Ms. Neuman that when the information is in the public interest or the requesting party falls below an index of poverty, the information should be free of charge. Ms. Pustay suggested that perhaps there shouldn't be any charge since she stated that the amount the United States gets in fees is only about 3% of the total costs. She said the copying costs are nothing compared to the other costs involved in responding to a request. Ms. Coliver confirmed that the reviewing costs are the largest and that perhaps the cost of reproduction is only 3% in the United States because the hourly wage of the reviewers is higher than it is in other countries.

Ms. Villaneuve stated that fees can be used as an impediment for access. However, the government in Canada feels that the $5 fee charged per request is a measure to limit fishing expeditions or multiple requests. Ms. Neuman argued however that no studies have shown that the $5 fee has had an impact on reducing the abuse of requests. She restated that there should be a certain number of requests given for free. However, she acknowledged that the fee may help to establish the buy in of the public administration and help the law gain support. She suggested Ms. Guillen add in a provision granting a certain number of documents for free.

Ms. Pustay suggested adding into the provision concerning the ability to view original documents, that documents are available as redacted and subject to exceptions.

Mr. Saavedra suggested adding in a principle that access is free. However, he stated that if states do put any kind of fee in place, economic circumstances of the person cannot be an exclusion to having information. Ms. Palau pointed the group to the report of the Special Rapporteur on Freedom of Opinion and Expression where there is mention of the fees associated with access to information. Ms. Banfi urged the group in drafting a document of this type to air for the most general principle as opposed to specifics. Ms. Guillen said in principle access to information should be free for all citizens, but there is a cost involved. She questioned whether if you do abolish the cost completely, whether there will be excessive requests made. She concluded that at a maximum the charge should be the cost of reproduction and should not include the costs on the state in searching for the information.

Mr. Wilson said that Ms. Guillen should write the second draft of her section in Spanish so that the group can ensure that nothing is lost in translation.

Ms. Luna mentioned that the law must include a part on the obligations of information officers, but was not sure if this was the appropriate section for that information.

Mr. Cox explained that the law in Jamaica says that you do not have to ask why the individual is seeking the information, however, the duty of the information commissioner is to help assist the individual and so the reason why they want the information may naturally come up. He was wary of attaching any sort of sanctions on information commissioners if the reason why the individual wants the document comes up.

Ms. Coliver suggested a provision making it clear that everyone has the right to request information, its not just a citizens right. Mr. Cox touching upon the costs and fees suggested a section covering waiver of fees when certain criteria are met.

Model Law – Responding to a Request

Ms. Pustay provided an overview of the section on responding to a request, stating that it had three main topics: obligations of public or private bodies, time limits to respond to requests, and requirements for responding to the requester. One of obligations of public or private bodies, according to Ms. Pustay, is to establish an information office whose contact information is readily available, logging. Ms. Pustay said that in logging, interpreting and tracking the request, these bodies must reasonably interpret the scope and nature of the request, contact the requester to clarify what is being requested, and forward the request to the proper body for processing. She stated that all requests should be handled in the order in which they are received. To handle this, she suggested the creation of multiple queues of pending requests. Requesters should be notified of which queue their request has been assigned to and should have the opportunity to narrow their request if they so desire. In terms of searching for records, Ms. Pustay said that upon receipt of a request, the public or private body must undertake a reasonable search for records which are responsive to the request.

Addressing the time limits to respond to requests, Ms. Pustay suggested that there be a time limit prescribed by law and suggested that thirty working days might be adequate. In the event the request was routed to the public or body from another body, Ms. Pustay said the date of receipt shall be the date the proper body received the request, but in no event shall that date exceed ten working days from the date the request was first received by a public or private body designated to receive requests. Ms. Pustay said that extension of the response period should be granted if the request involves the need to search for or review voluminous records or the need to search offices physically separated from the receiving office or the need to consult with other public or private bodies prior to reaching a disclosure determination, the public or private body processing the request may extend the time period to respond to the request by another thirty working days. She reminded the group that the requester must be notified of the extension and given an opportunity to narrow or modify the scope of the request. Upon failure to complete the processing of the request within thirty working days, or if the conditions specified in Section 2(A) are met, the failure to respond to the request within sixty days, Ms. Pustay said shall be deemed a denial of the request.

Ms. Pustay addressed the requirements for responding to the request stating that each request must be assigned a tracking number. She said the requester should be advised the request has been received, should be provided with the assigned tracking number for the request, should be advised of the queue to which the request has been assigned, and should be provided a point of contact for making inquiries about the status of the processing request. The requester should be notified of the estimated fee to be assessed and the requester's agreement should be obtained to pay the estimated fee. However, Ms. Pustay noted that if the group decides to abolish all fees, then this section would no longer be relevant. If a record has been requested more than once or a determination has been made that the records would be of interest to the general public, then the information should be posted on the web. Ms. Pustay said it is beneficial to provide interim responses along the way in a request.

If a record is denied, Ms. Pustay said an explanation must be provided that touches upon the estimated volume of material that is being withheld and the bases for the withholding, as well as notification of the right to file an administrative appeal.

Ms. Luna stated that the problem many countries are facing now is with information that does not exist. She suggested that perhaps if the document doesn't exist they should say so, as opposed to saying they can not find it. She also wondered about whether there should be an

obligation on states to create a new document when there isn't any and it's the type of information that should have been recorded. Ms. Luna also stressed that it would be a good idea to include a provision saying it is not only the obligation of public and private bodies to respond when it is a denial of a request or if the information doesn't exist, but that they must provide the legal reasons for the denial.

Mr. Saavedra said any decision must be accompanied by an explanation. He said it is a serious problem when there is no reason given as to why more time is needed or why the information is not given, etc.

Ms. Neuman stressed that the problem in Mexico at the moment is that agencies are saying the information doesn't exist. She echoed Ms. Luna's suggestion of including a provision that suggests that when a document should exist in the regular course of business, then it is the obligation of the agency to create the document. She suggested that this will take away the incentive agencies have to not put something down in writing. Ms. Neuman also suggested that the redactions provision go in this section, not in the exceptions section. She also wondered when time for the time limits begins. Lastly, she said she was not a fan of extensions or transfers and suggested that the implementation guide could give suggestions on when information can be transferred.

Ms. Pustay said time should begin upon receipt of the request. She also touched upon the issue of transferring the request, explaining that changes in the law in the United States say that if the request isn't sent to the proper body the clock will start ticking for the time limit.

Ms. Villaneuve reminded the group that the oversight body will do the checks and balances to make sure the rights of users are respected in terms of the time limits. Mr. Stewart stated his concern that the group need not get too bogged down in the procedures. He explained that in producing a model law the group should not be too wedded to certain procedures and should provide some flexibility for governments adopting the law.

Ms. Guillen noted that one problem Peru has had is when information doesn't exist, citing as an example files that were destroyed in a fire. She stressed that there should be internal controls that should be in place to make sure that the information is kept and protected.

Model Law – Oversight and Appeals

Ms. Coliver presented the chapter of the model law on oversight and appeals that she drafted. She began by stressing the need for an internal appeals mechanism, which she said should be required before taking an appeal to an independent body or to court. She put a question to the group on whether the internal appeal should be mandatory, suggesting that it seemed like a practical requirement. In terms of the process for the internal appeal, Ms. Coliver recommended a long timeline of 60 days to allow the requester to get assistance in carrying an appeal forward. She suggested that the commentary section could include recommendations on time frames. She included a section in her chapter on late appeals, recognizing that there may be a good reason for the delay in the appeal.

In terms of external appeals, Ms. Coliver explained that she tried to describe three or four options for governments to adopt and wondered whether there should be guidance on which of the options is the best. She stressed in the section on external appeals the importance of budgetary and decision making autonomy, saying that part of the section had been modeled after Article 34 of the Mexican Law. She pointed the group to articles covering selection procedure for the appeals body members. She wondered whether the section she had included on salary level for the appeals body members might be better suited for the implementation guide or for commentary. According to Ms. Coliver, the Mexican law pegs the salary level for commissioners to a high level, but suggested maybe it is more appropriate to peg it to the level of judges.

Under the duties and powers section Ms. Coliver suggested that there may be additional duties and powers to include, offering one suggestion of the duty to establish guidelines for management of personal safety and data of information, as well as data protection.

Ms. Coliver suggested that the most controversial section is likely dealing with the power of an Ombudsman to review classification decisions. If the commissioner or obmudsman is able to review those decisions, then he/she will need a security clearance.

In section 15 of her chapter dealing with compliance, Ms. Coliver said she would make clear that the requester has the right to appeal to a court. If the commissioner orders disclosure and there is no compliance, then the requester or commissioner has the ability to go to court.

Ms. Villaneuve stated her surprise by the internal and external appeals process. She said in her experience, when an institution receives a request and makes a decision on that request, the institution would not then review that decision. Mr. Cox said that internal review exists in Jamaica where the decision has been taken by a lower ranked official. He stressed that if the head of the body has taken the decision, then there is no internal appeal. In responding to the requester, he noted that the explanation would state whether or not the head of the agency was involved in the decision or not. Ms. Neuman praised Jamaica as a good example of a situation where usually the more senior officials, when involved in the decision, will side on the side of disclosure. Mr. Saavedra stated that his concern is not with whether there is an internal appeal, but that the last decision in the appeals process be made by a judicial body.

Ms. Luna said that one thing that works well in Mexico is that the Ombudsman can do something they call correcting the complaint from the side of the petitioner. She further explained that it's the duty of the oversight body to correct any formalities that are not complied with in the original complaint. She advocated that this process defends the users of the law since they do not need to hire a lawyer in order to file the complaint. She also pointed out that there was a reference in the document to Mexico having four information commissioners when in reality they have five. She stressed the importance of having the information commissioners staggered so that they don't all leave and arrive at the same time.

Ms. Coliver suggested that it should be specified in the law that review by the court should be expedited because it is a fundamental right. Ms. Pustay mentioned that this is how it used to be in the United States, but that the experience was that it didn't work and so the law was changed.

Ms. Banfi stressed the importance of having the judicial review and not just the administrative appeal, reminding the group that the judicial review is needed in order to use the Inter-American system of review.

Mr. Cox said it is important to have a body that can look at the request and order the release of the information. He also questioned whether the review would be substantive or procedural. Ms. Villaneuve explained that in Canada there is an oversight body that conducts reviews. She said that once the commissioner makes a recommendation to the institution and the institution fails to release the information, there is an action in court you can make that is a de novo procedure and thus all facts are discussed. However, Ms. Neuman pointed out that in Jamaica the commission has order power so the appeal to court would only look at procedural issues, not the substance. Mr. Saavedra stressed the importance of having a complete judicial review on the substance.

Ms. Coliver asked the group whether the model law should include a review on the merits or procedure or whether options should be given. Ms. Neuman suggested it should include both and said the threshold would vary, depending on whether the body has order power or can make recommendations. Ms. Neuman also pointed out a unique element of the Mexican law, whereby only the requester has the right to judicial review.

Mr. Wilson wondered whether if nothing is said about whether an appeal is procedural or on the merits, whether it is understood that it means it can be both. He stressed the need to have as broad a scope as possible and as broad an appeals system as possible.

In terms of judicial review, Mr. Cox said that the Jamaican law does not say that there is a right to the review, but that is because it's in the Constitution. Ms. Coliver suggested that perhaps the standard for review should be in the implementation guide. Ms. Guillen and Mr. Saavedra advocated for also mentioning the third system of review, which would be the Inter-American system, in the implementation guide.

Ms. Neuman stated that there was much overlap between the sample commentary in the chapter and the implementation guide. She also suggested that there should be a mention of mediation in the chapter.

Ms. Villaneuve recommended the addition of the duty to investigate under the duties of the Commissioner. She also echoed Ms. Neuman's comment that there should be some sort of mediation process included, since she said approximately 90% of the appeals in Canada's federal system are handled through mediation.

Ms. Coliver questioned whether time limits should be addressed at all in the model law or whether they should be included in the implementation guide.

Mr. Wilson suggested waiting until later meetings to decide whether that would be appropriate.

September 3, 2009

Exceptions

Mr. Wilson began the morning with a discussion of the Exceptions chapter, noting that unfortunately the chapter's author, Juan Pablo Olmedo, was unable to attend the meeting and present a chapter. In order to facilitate the drafting of this chapter, Mr. Wilson suggested brainstorming some points on the topic as a group. The group proceeded to examine the Mexican law's section on exceptions in order to build the conversation from that point.

Ms. Luna explained that the Mexican law has three articles establishing provisions on exceptions that separate those matters that are harm and others that are treated as public interest matters. She went on to explain that in article 13, there are listed possible dangers to public interest which are subject to a harm test, and in article 14, there are interests that would fall within a public interest test – however, this test is missing from the law. She commented that article 18 tends to overlap with article 14. Article 18 says the following information is deemed as confidential information, including personal data. Ms. Luna suggested the need to regroup the interests that involve public interest and those that need the consent of an individual, which is personal data. Ms. Luna stated that the thing that doesn't work well in the law is the harm test in Article 13 as it is too abstract to be applied. The burden of proof was not established in this law but in secondary legislation, which Ms. Luna explained, requires that the burden rests with the state in terms of the harm test, but not the public interest test.

In further discussing personal data, Ms. Luna stressed that Mexico, as many other countries, has multiple laws that define what can be considered confidential information. She stressed that when faced with a situation that involves the access to information law and another law, the Commission has been making an interpretation of both laws.

Mr. Wilson stressed that it would be important to include the burden of proof in our model law and that perhaps there could be an explanation in the implementation guide as to how the burden of proof would work. He also suggested combining articles 13 and 14 of the Mexican law. Looking at the Mexican law's sunset provision in article 15, Mr. Wilson posed a question as to whether the model law should state a number of years as mentioned in the Mexican law, or else leave the time period blank. Ms. Coliver asked whether the 12 year period in the law could be renewed, to which Ms. Luna clarified that there was a provision that said that it could be renewed.

Ms. Villaneuve raised a point concerning the language in the Mexican law in terms of the language "shall" be deemed privileged. She explained that in Canada there are mandatory sections and discretionary sections and wondered whether the use of "shall" would make the

provisions fall within the discretionary area. Ms. Luna clarified that the categories are used only for when the Committee says it might fall into the exemptions – not all documents would go through this analysis, only if the document might fall into the category. She also stressed that there could be redacted versions or public versions (when the government has redacted most of the information.) Mr. Wilson stressed the need to ensure that there is a system of partial disclosure established in the model law.

Mr. Stewart mentioned that the text of the section on exceptions for the Mexican law was rather broad. He suggested that there should be a principle on if a document falls within an exception, burden falls on person considering request to see if it can be redacted in part. Mr. Stewart said the United States has an exception for deliberative process, which excludes the document on which major decisions are made, since intrusions on that process do effect the legitimacy of deliberations. He went on to say he isn't sure that the United States should be a model for this, but that the model law should have a provision that covers documents, the release of which would adversely affect government. Ms. Luna pointed to article 14, section VI where there is similar language on judicial decisions, as well as article 13, section V, and suggested that the Chilean law might also have more language on deliberative process. Ms. Neuman said that Peru and Jamaica also have deliberative process covered as well.

Ms. Coliver suggested that the Council of Europe treaty might be a better framework for exceptions to start from. She explained that the treaty has two articles. One on limiting the right of access to official documents and describes what official documents are, including those in preparation. It states that limitations should be set down precisely in law, and then lists interests, including: national security, defence and international relations; public safety; the prevention, investigation and prosecution of criminal activities; disciplinary investigations; inspection, control and supervision by public authorities; privacy and other legitimate private interests; commercial and other economic interests; the economic, monetary and exchange rate policies of the State; the equality of parties in court proceedings and the effective administration of justice; environment; or the deliberations within or between public authorities concerning the examination of a matter.

Ms. Coliver went on to explain that that article includes a public interest test as well. Mr. Stewart asked why the environment was included in the list. Ms. Coliver responded saying that she would suggest taking it out since it should be in the public interest. Mr. Cox stressed that the Jamaican law has an exemption for environmental information, which could include the location of animals the government is trying to protect. He explained that the information has a public interest test that is applied to the exemption.

Mr. Wilson wondered whether a detailed list of these issues should be covered in the law or in the commentary. Mr. Cox said there is pretty much a consensus of what the exceptions are, so its best to state the acceptable exceptions so that it isn't left to create any possible exceptions. However, the bigger question according to Mr. Cox is whether there will be absolute exemptions or some exemptions that are covered by a public interest test. Jamaican law, according to Mr. Cox, gives executive the power to issue a certificate that can make a document exempt and then it is not subject to review.

Ms. Neuman echoed Mr. Cox's feeling that there is an existing list of appropriate exemption. She went on to say that there must be a public interest test that covers all areas and that there should be a process of appeal when it is classified. She said she does not like the idea of certificates, but if it is included in the model law, it should be reviewable. Ms. Coliver said the public interest and harm tests are the most important things for the law, since governments are often uncomfortable talking about these areas. In the list of the Council of Europe, they included economic and monetary exchange rate of the state. Ms. Coliver stressed that it should be qualified with "to the extent it impacts national security of the state."

Mr. Stewart raised the question of whether a public interest or harm test is appropriate for all categories of information. He specifically mentioned whether commercial information should

also be subject to it. Ms. Pustay did not agree with blanketing economic stability with national security, stating that there are interests in protecting financial stability, which is its own harm. Ms. Pustay said in the United States there is a public interest for privacy, however, where they don't is for commercial entities where they will be competitively harmed. Touching on whether there should be a sunset provision and how much time it should cover, Ms. Pustay said she would suggest having a presumption that after a certain amount of time that something could be made public, but felt that harm is a better indicator rather than age. Ms. Pustay stated with the Obama Administration, the United States has put an overlay of foreseeable harm on the Freedom of Information Act.

Ms. Coliver suggested looking at the Claude Reyes case for the public interest test. Ms. Neuman suggested that the group determine whether data privacy would be included in this topic or not. She suggested keeping them as two separate issues since they are dissimilar in many ways. Mr. Wilson stated that the treatment of the issue within the OAS had been for a long time to ignore data privacy. He explained that dealing with the two topics together often confuses the discussion.

Ms. Luna pointed to article 14 of the Mexican law in terms of exemptions for human rights. She stressed though that the provision has not been used frequently as it has been difficult to define. However, she did cite as an example its use in revealing documents on a dictator for crimes against humanity.

Ms. Pustay urged others to bear in mind that in order to get buy in from government officials, the group will need to realize that they won't embrace the model law if everything is releasable. She went on to say its important to sell this to government officials so that they know that if there really is a harm, they can protect it.

Mr. Cox stressed that if a country does not have data protection legislation, there should be a provision for it in the model law.

Responding to Ms. Pustay, Ms. Coliver recommended that the group keep in the model law that public interest test applies to all the protected interests, but that the commentary include recognition that in many countries the public interest test does not apply to all of the interests and give a comparison to some of the examples in Latin America. That way the model law could be the best standard but the implementation guide could elaborate on other options.

Ms. Neuman reminded everyone that we should try to put out the ideal law, while bearing in mind that states will water it down anyway. She proposed thinking outside of the box and trying to be creative to include best practice, even if it isn't the most universal of practices. Mr. Wilson explained that the document received from the Special Rapporteur includes the minimum standards, but that we should try to push the envelope some.

Mr. Wilson concluded the conversation saying that in the coming weeks, the Department will try to put together the elements discussed here and put together some provisions to the group and Juan Pablo Olmedo to touch up for inclusion in the model law.

Implementation Guide – Comprehensive Framework

Ms. Luna reviewed the structure of her chapter stating that the topics she covered included: study of existing laws and policies, adoption and amendments to existing laws, rescinding of contrary legislation, supporting legislation, and the phased-in approach. She also stated that the chapter contained several underlying assumptions, including: incorporating the new law to the existing administrative procedure norms when possible, promoting an inclusive and participatory adoption process, considering the various oversight models proposed in the model law and the implementation is stipulated in the law, plan and responsibilities. Further elaborating on these assumptions, Ms. Luna recommended that when regimes are revised, attempts should be made to try to adopt or localize the laws to a country's own procedures. On

the adoption process, Ms. Luna stressed the need to have civil society and the media involved directly.

Ms. Luna noted the importance of supporting legislation, but asked of the group how far they wanted to go in covering related areas. She stressed the need to repeal secrecy laws and questioned whether data protection should also be included.

She questioned whether the group would want to incorporate whistleblower projection as a necessary supportive legislation, citing that in her own empirical research she has never found a case where the whistleblower law worked without the worker being fired. She asked the group whether they really wanted to introduce the concept in Latin America.

On the phased in approach, Ms. Luna described the model of the British legislation with four phases as follows:

- Phase 1 – include general/federal, judiciary and parliament
- Phase 2 – local states and municipalities
- Phase 3 – general services and police/intelligence
- Phase 4 – decentralized, autonomous, parastatal

Ms. Luna explained that she didn't put a specific time for implementation when the law comes into force, but gave the example that in Mexico they had one year and in the United Kingdom they had five years.

Mr. Wilson suggested having a firm statement on existing legislation that is contrary to access to information and provides guidance on the types of laws that do play a role in limiting access to information. He stressed the need to advocate for the reform or revocation of those laws in one way or another. He also suggested possibly sharing best practices in that area.

Ms. Pustay said the model law has to have a way to take other laws into account or else there will be gridlock and confusion within the implementing bodies when there are conflicts between the laws. Ms. Neuman stressed that this is one area the group could have a lot of impact in, stating that its hard to draft something that incorporates every piece of legislation. Instead, she said the easiest thing to do is to say the access to information law is primary and where possible, it will trump other laws. However, she noted that in reality that doesn't always work. She stated her belief that there is no need to map other existing laws, noting that she worked on a project where they tried to do this and stopped after a month because it just became too difficulty. Instead, she advocated for a statutory construct that will direct when you look at the access to information law or look at more specialized laws.

Ms. Pustay explained that it is a constant struggle in the United States since there are more laws added everyday. What she said works well is that there are laws that pull in other laws. She suggested having access be governed by the standards in the model law, or else to say laws enacted after access to information law has to do A, B, and C. She added that there must be a separate provision that deals with existing laws.

Ms. Neuman noted that many Latin American countries have access to information in their constitutions, making it easier to say that this is a primary law and older inconsistent ones are null and void. She suggested adding something in saying new legislation has to conform and reference the constitutional provision where there is one.

Ms. Villaneuve said in Canada there is a statutory provision that deals with restrictions in other laws. She explained that the government decided that some laws would restrict access. She said in Canada's experience it wasn't an exhaustive search through laws, but a process of government deciding which laws should restrict access.

Ms. Luna said she believed the only one who should have the last word to decide if a law overrides previous law is the courts. Ms. Coliver wondered whether it might be appropriate to ask the information commissioner to develop a list of inconsistent laws. She said the legislature could then confirm if they wanted to. She stressed the utility in also surveying a list of laws that

provide access since they may be used in reinforcing the culture of access, providing as examples consumer protection, security exchange laws, etc.

Mr. Saavedra said the support for this concept of having the access to information law be a primary law comes from the constitutions as well as the Inter-American Convention on Human Rights. In some countries he noted that the Convention and the decisions of the Inter-American Court of Human Rights are part of the constitution. Mr. Wilson wondered whether there could be statutory language for those states who are parties to the Convention and then strong language for those countries that are not party.

Mr. Cox said that for the phased in approach he doesn't believe you will ever be fully ready for access to information. He said in Jamaica they gave themselves two years to phase in entities, saying for some things like records management and training you need to give yourself time. He did say though that he would not recommend giving more than two years.

Ms. Coliver said the United Kingdom approach did not work as many officers were trained and then left their positions. Ms. Neuman explained that in Peru they gave themselves six months for automatic publication and longer for other areas. This, she explained, ensures you give markers, which are helpful in the process. In terms of Jamaica's phased in agencies, Ms. Neuman said she was originally supportive of the idea however does not believe it worked as well as it was expected to. She explained that people would make a request to one agency and it would be transferred to another agency that wasn't yet implementing the law. Mr. Cox echoed Ms. Neuman's comments concerning the need to have it phased in at the same time to all agencies.

Implementation Guide – Information Management Policies and Framework

Ms. Goranson and Ms. Bar-Ness presented the chapter, noting that information is being generated at an unprecedented pace, including data that is dispersed and unstructured. They stressed that there is too much irrelevant information existing on systems. In terms of search and retrieval of information, they said searching for information is time-consuming and inefficient and that manual collection is costly and diverts valuable resources.

The basic principles Ms. Goranson and Ms. Bar-Ness outlined include the following:

- Understand the universe of data and where it is located
- Reduce the amount of information on systems
- Control the information that exists by automating retention policies, having the ability to quickly search and retrieve information, and having a legal hold capability.
- Technology cannot do everything
- Each organization's policies will be different

Ms. Goranson and Ms. Bar-Ness said that in the adoption of effective information management policies, the archiving and record keeping should involve assessing the current process of how the organization creates and stores information and whether there is a records retention policy. Next they suggested considering a data map to figure out what information exists, where it is located and who is responsible for it. In determining the appropriate retention policies, they said it must include electronic, paper and any other media and should be as simple as possible. Ms. Goranson and Ms. Bar-Ness stressed the need to publish the policies and schedules as well as having adequate training on the appropriate retention policies. Lastly, they said that for archives and record management there should be the possibility of suspension of routine destruction, noting that this is especially relevant in countries with legal requirements of suspending destruction during an ongoing investigation.

For information production, Ms. Goranson and Ms. Bar-Ness suggested the first step be identifying relevant information and determining what information will need to be searched. In terms of the production format, Ms. Goranson and Ms. Bar-Ness wondered whether the model

law would contain a default format. They said it is necessary to maintain a record of requests in order to ensure transparency.

On proactive disclosure, Ms. Goranson and Ms. Bar-Ness said it is likely to reduce the number of requests received. However, they stressed the need to consider what types of information will be disclosed and in what format, as well as whether there is a publication schedule.

Ms. Goranson and Ms. Bar-Ness explained the value in technology in effective information management, stating that archiving technology can help to provide a central repository of information providing categorization, searching, preservation and destruction capability. In addition they said it could automate retention policies and allow for searches in one location for the information requested. They urged the use of backup technology, designed for disaster recovery situations, but noted that it is not designed for searching and retrieving information. They said it is often inefficient and cumbersome to use backup technology to search and that information should be kept on back up systems for as short a time as possible. For implementing solutions for technology, Ms. Goranson and Ms. Bar-Ness stressed that it can be a time-consuming process and that it is best to establish a timeline for when specific milestones will be met. There are best practices that they said should be shared across agencies.

Ms. Goranson and Ms. Bar-Ness asked whether there are any state specific issues that should be addressed in the chapter. Ms. Pustay said that in the United States there are still situations where people search email on a local computer or have to go down to files in the basement to look for information. She said that working groups to share ideas and best practices exist, but that within the United States they are pretty far behind in terms of automation. Additionally, she noted that each agency can choose their own provider of record management technology.

Ms. Villaneuve said the situation in Canada is quite similar. She said for emails, employees are on their own device to determine what should be put in paper format and sent in a paper file to the basement. She said the biggest problem is that the institution doesn't know what records they have, where they are located, etc. or else there is only one person who knows how to retrieve the information. She noted that when the information does get to the access to information office, it is then in electronic format. There also exists in Canada an archival ministry that scrapes government websites every three months and puts what they find on there in a central database.

Ms. Pustay noted that the problem in the United States with email is that there can be twenty copies of the same email if every person copied on it has kept a copy. Ms. Palau noted how the topic is closely linked with the issue of capacity building. She explained the importance of including e-government and proactive disclosure. The Department of State Modernization is currently working to produce a set of indicators for those e-government webpages.

Mr. Cox noted that different public authorities have different financing mechanisms, so there are some agencies with top systems and others without them. He said part of the problem is the cost of the systems. Ms. Guillen said in Peru they are conscious about using information technology. However, she noted that it often depends on the political will of politicians to give the topic importance and suggested that the group could stress that governments should do just that. In doing capacity building on records management, Ms. Guillen said the demands from the people are for systemization of the processes. However, she noted that the problem is a lack of resources. She explained that the current list of archives is contained in an excel document. Ms. Guillen advocated that the model law should contain some solutions or guidelines so that they can reach an efficient operation of their records management.

Mr. Wilson shared that it would be a good idea to find a way to take three components – the model law, the section on training of officials, and on technology – and try to find a way to link the three components in a cohesive value added manner.

Ms. Neuman said capacity building is a large part of the problem and that in an ideal world every civil servant would be trained in how to create, manage, and store documents. Mr. Wilson wondered whether there are more electronic than paper documents now and whether there will come a point when there is a complete transition to electronic documents. Ms. Bar-Ness said paper documents still are very common and that there seems to be more of an understanding of what is a public record in paper as opposed to electronically. She noted as an example that many public officials still don't realize that text messages and private email messages are discoverable. Ms. Goranson added that in regards to the point raised by Mr. Wilson, there are big consequences of not getting control of the electronic information. Mr. Wilson wondered whether there could be a cost saving argument to be made to the use of technology but wondered how it could be shown.

Mr. Cox said he did not believe they would ever go completely paperless. He also noted that systems exist that allow for the classification of a document at the same time it is created. He stressed the need to make sure issue of records management is so tied in with access to information that you can't have one without the other and thus need to make investments in training and technology. Mr. Wilson added a suggestion that the chapter could perhaps elaborate further on the types of technology available and how they would transfer into a government system. He said there should be a technology that would take electronic information and provide a list for proactive disclosure of those documents.

Ms. Palau noted that bearing in mind the specific needs of countries is useful. She suggested considering research to identify problems the countries currently face and then provide solutions for those problems.

Ms. Bar-Ness noted there are two tiers of information, one being public information through proactive disclosure where it would be useful to have an index and then an index of the second tier that is private information. Mr. Wilson noted that it is clear technology is not being used to its fullest ability in the hemisphere and thus perhaps the chapter could include various options available in terms of technology for the governments who are at different stages in the process.

Implementation Guide – Capacity Building for Information Providers (and Receivers)

Ms. Palau presented the chapter on capacity building for information providers noting the importance of having both information providers and receivers together since they are the supply and demand sides of the equation. She outlined three parts of her presentation, including: legal framework, comments for implementation, and initiatives in some countries. In the process of implementing the law, Ms. Palau stated there are some basic steps including the creation of institutional mechanisms and processes in accordance with the law, as well as formulating and implementing policies. She stressed the need to promote a culture of transparency and raising awareness among leaders, public servants and citizens on the importance of access to public information. Ms. Palau also noted that capabilities should be developed to make norms, institutional mechanisms and processes function adequately. Lastly, she stressed the need for monitoring and assessment.

Ms. Palau pointed to the international standards included in the Claude Reyes case that say a state should provide training to public entities, authorities and agents as well as the resolution of the Inter-American Juridical committee indicating measures should be taken to promote and implement the right including creating and maintaining public archives. Ms. Palau said she was thinking of including some sort of norm or examples of national laws in her chapter, particularly as they state the need for capacity building, citing as an example the laws in Chile and Ecuador that stress this point.

In terms of implementation, Ms. Palau said promotion and capacity building are essential parts of a greater strategy that pursues a culture of transparency and responsibility among leaders,

public servants and citizens. She advocated for the development of a comprehensive approach that would include the following:

- Training and capacity building are essential parts of a greater strategy that pursues a culture of transparency and responsibility among leaders, public servants and citizens.
- Develop a comprehensive approach that includes training and dissemination of information on procedures and technical aspects of access to information as well as methodologies that integrate people's values, perspectives and behaviors in order to have a deeper and long lasting impact at the cultural level.
- Information providers should be trained to guide citizens in formulating and presenting information requests.
- Basic concepts and elements of transparency and access to public information should be accessible to all members of public institutions at all levels.
- Effective cooperation between government and civil society organizations to develop training programs is an effective way to ensure that advances are made.
- Monitoring and assessing effectiveness and cultural impact of AI strategies are crucial. They are also important means for setting goals and generating incentives.

Ms. Palau concluded noting that she was thinking about including types of issues that should be included in a capacity building program in the chapter, citing as an example information management.

Mr. Wilson wondered whether there should be guidelines on document retention policies in the law. He stressed that government officials have to understand the types of documents and that its equal parts capacity building and technology and that there could be a third element of using the model law where appropriate to ensure this. Ms. Luna said she would send Ms. Palau a study completed by IFAI in Mexico that interviewed 2000 public functionaries who are linked to handling of public information requests to find out what the cultural obstacles are that they face. The study reveals that many of them don't understand what is being requested. She also noted another study by Suzanne Petrovsky on the perception of public officials that she said she would send to Ms. Palau.

Ms. Palau noted that one issue is promoting a culture of transparency and the other is training and how to manage problems. Ms. Villaneuve said in Canada that they are working to make information officers a professional class within the public service and to give them a certification. She also noted that the University of Alberta has a certificate program that at the moment is not mandatory for information officers.

Ms. Pustay said it is easy to fall into the trap in implementing the law to think of the work as a clerical duty, yet in reality it is a professional responsibility. She noted that the United States has a special job series called FOIA Specialist.

Mr. Cox said it is important to have capacity building that includes guidelines. He noted that Jamaica's experience is that there is high turn over in records management staff and that there is a feeling that there is a lot of money spent on the training and then the staff leave. Ms. Villaneuve noted that her office's website has a link to manuals called GRIDs that are an investigator's book to see how certain exemptions should be applied, etc.

Mr. Wilson suggested recommending in this section that there be the development of a manual of standards and practices. Ms. Luna noted that there is a manual for how to use Mexico's online request system as well as manuals for how public servants should handle problems in answering the request. She cautioned the dangers of having public servants doing legal analysis since not all of them are lawyers.

Ms. Villaneuve noted that the Canadian government is currently conducting a pilot project on a course to all public servants as orientation when they join the government. She stressed the importance of training the body of the government that will generate the information.

Ms. Palau wondered about including in the law the issue of capacity building. Mr. Wilson noted that perhaps the section written by Mr. Cox could include training and that it might also fit under the duties of an information commissioner. Mr. Cox said it isn't necessary to say what the guidelines are, but that they should exist. He stressed the need to spell out in this chapter that training is across the board from the top all the way down. Ms. Villaneuve noted that the culture of openness is behavioral, stressing that it's a question of leadership, attitudes, etc. that has to come from the top down.

Mr. Stewart questioned whether it might be within the mandate of this group as to what the OAS itself might do in this area. Ms. Palau noted that it should be. Ms. Colvier noted that Mr. Stewart's point probably touched more on internal policies within the OAS, including whistleblower policies. Ms. Coliver suggested including in the principles before the model law to have a statement on presumption of publicity and transforming the culture of secrecy. She noted that perhaps the capacity building element should go in the section on presumption of publicity as it might be too honorous of a responsibility to place it with the information commissioner. Ms. Coliver followed up on Ms. Villaneuve's comments concerning incentives and added that perhaps an interesting idea would be to include merit increases for performance on information disclosure. She asked Mr. Wilson whether he would be creating resources for the member states. Mr. Wilson noted that following Ms. Neuman's presentation that afternoon there would be a discussion of the website and resources that should be made available.

Implementation Guide – Monitoring Enforcement/Effectiveness of Law

Ms. Neuman presented the chapter on monitoring enforcement/effectiveness of law explaining that she had used the chapter to explain how to establish an oversight body. She tried to desegregate oversight from enforcement as they are two distinct things, although she acknowledged that in some states they are combined. She stressed that she had put in the chapter value laden judgments which she wondered whether to take them out or not. Ms. Neuman said it's best practice that there is a statutory mandate for the enforcement and oversight. She raised concern that her chapter and the chapter in the model law on oversight and appeals overlap quite a bit and was struggling with how best to use the two chapters. She wondered though whether missing from the law was the role for someone to raise public education. According to Ms. Neuman civil society tends to assume the role of public education campaign. She believes it's good for civil society to support the government in the process, but says the ultimate responsibility of public education and trainings should remain with governments.

Ms. Villaneuve suggested that there are particular principles for the oversight and appeals that can't really be put in the model law, such as independence, which could fit best in the implementation quite. She suggested having a checklist of what you need to go through when implementing an oversight or appeals body.

Mr. Wilson suggested that perhaps there was too much detail in Ms. Coliver's section of the model law concerning salaries, highering, firing, etc. He suggested Ms. Coliver and Ms. Neuman coordinate what content would be more appropriate for model law and what is more important for the implementation guide. He explained that there are difficulties in drafting the implementation guide when the model law has yet to be written, but noted that due to the timeline for fulfilling the mandate it would be difficult to wait to write the implementation guide after the model law had been written. Mr. Wilson said his preference would be to have commentary accompany the model law where it is absolutely necessary, such as when there is a choice between multiple options. He wondered where the line would be drawn between commentary and implementation guide. Another option he raised would be to have an annotated law.

Ms. Pustay suggested having a strict standard whereby the default is that if there is a question as to where it would go, then it goes in the implementation guide. However, if it is necessary for choosing between options then it goes in the law as commentary. Mr. Wilson said

there is a danger in putting to much information in the implementation guide that is an interpretation of the model law since the two will be stand along documents and ounce they are decoupled they may become separate resources for member states. Ms. Neuman suggested that the two documents not be viewed as distinct and that they be included in the same document when presented. This was echoed by Mr. Saavedra.

Ms. Pustay wondered whether another option would be to have one version of the model law plain and then another annotated. Ms. Guillen noted that the law should be so clear in the text and so flexible so that states can adopt it. She suggested that the commentary be contained in the implementation guide.

Mr. Wilson summarized the discussion of the group, asking if there was consensus that essential comments, such as alternatives, should be included in the model law as commentary and those other areas would go in the implementation guide. He said the group should try to figure out ways to add additional topics or comments to the implementation guide. He said the Department of International Law would give more guidance on what should be added to each section.

Ms. Neuman suggested calling the implementation guide "Commentary and Guide for Implementation." All were in agreement. Mr. Wilson noted that the implementation guide and the model law would be combined in one document with one classification number.

Ms. Neuman noted that perhaps she would need to add more to her chapter on the internal appeals system. She said in her chapter she talked about which enforcement mechanisms are optimal, touching upon three different models and how some of them met the requirements she identified as important and others did not. She asked of the group whether they wanted to suggest that the judicial review model, similar to the United States set up, is a model that should be adopted. Ms. Neuman stated her belief that there is enough evidence to show that the United States appeals system is broken because there is no expedited system, you need a lawyer to file an appeal, etc. She wondered whether it should be taken out as an option and it should simply be noted that the United States has another system.

Ms. Luna said the Claude Reyes case is clear on the area Ms. Neuman discussed. She said an exception should not be made for the United States. Instead she suggested pointing out the recommendations of the Inter-American Court of Human Rights. Mr. Saavedra urged the group to avoid any footnotes mentioning particular states or saying that a system is broken.

Ms. Pustay said the United States' system is not broken and that the difference lies in that there are states where people do not trust the courts, but this is not the case in the United States. Mr. Cox explained that Ms. Neuman's concerns likely stem from the heavy burden placed on the requester because of the need to go to court and the high costs of retaining a lawyer, etc. Mr. Cox suggested putting one option in the model law and in the commentary make references to other options that exist. Ms. Coliver said she supported Mr. Cox's suggestion because there are instructions in the document on recommendations produced by the OAS that say that the system must be impartial, have order making powers, etc. Ms. Coliver asked Mr. Wilson whether the instructions for the group include following the recommendations in the OAS document. Mr. Wilson noted that the document is purely recommendations and that the model law will provide stronger options for states. He suggested that perhaps the implementation guide could urge against certain options for appeals, but noted that there may be circumstances where states do not have the ability to put together a new appeals body.

Mr. Cox suggested having options in the model law in terms of oversight and appeals and then make a greater discussion of the costs and benefits of the options in the implementation guide. Ms. Neuman clarified that they would keep the three options and add in the benefits and potential obstacles encountered with each option. She wondered whether the group had thoughts on whether oversight and enforcement should be separated such as in Mexico or Canada. She suggested that sanctions should be handled in Ms. Coliver's section of the model law as well as in her own section of the implementation guide. Ms. Neuman said she would use her chapter to go

through the establishment of a commission, touching upon issues such as independence, selection process, term lengths, potentials for dismissal, etc. In essence she said she would provide a road map for countries. Ms. Villaneuve suggested that her chapter on the budget would be similar in that it would be a checklist of things. Ms. Neuman also said she would include a checklist in her section as well.

Ms. Guillen asked if Ms. Neuman could clarify her comment on sanctions being included in the text. Ms. Neuman stated that if sanctions are covered in her chapter it would not be to say which body should apply sanctions, but simply that there should be a different body to put sanctions into effect.

Ms. Luna wondered whether it might be beneficial to include indicators for states to judge their performance under the law. Mr. Wilson suggested including timetables that provide for periodic review of the implementation to see how the system is functioning. Ms. Neuman noted that The Carter Center is developing a tool to look at implementation. However, she noted that doing overall effectiveness of the law in the chapter would be an enormous undertaking. Mr. Cox suggested though that there be recognition that the government can not do it alone and needs the help and oversight of civil society.

Ms. Neuman stressed her fear that the chapter would end up being very long. Ms. Luna said that one solution would be to split the chapter into two different chapters.

Ms. Neuman asked whether the group would want to use the implementation tool the Carter Center is developing as an annex to the implementation guide and model law. Mr. Wilson suggested that if there are annexes that add value to the text then perhaps they should be included or else added to the group of expert's webpage.

Discussion of Website

Mr. Wilson introduced Mr. Montero who coordinates the website for the Department of International Law. Mr. Wilson provided an overview of the existing website and wondered whether additional resources from other groups should be included on the site, noting that at the moment its more of an OAS specific website and that there probably aren't the resources to put up too many resources. However, he noted the department wants to make the site as useful as possible for everyone.

Ms. Neuman said it would be great to have a link between all of the OAS sites that deal with access to information since at the moment there are multiple OAS pages on the topic, broken down by specific departments. Ms. Palau stated that she agreed with Ms. Neuman and said there should be a way to link all of the pages with other initiatives within the OAS on the topic.

Ms. Bar-Ness suggested that perhaps for a time defined project such as this one it might be best to have a wiki page instead of a website. Ms. Coliver stressed that a wiki page is technologically a bit complicated.

Mr. Wilson wondered whether there should be some sort of portal to give individuals the opportunity to submit comments. He questioned what documents the group would like to put on the website for the public. Ms. Pustay said she agreed the minutes and other draft documents should be made public and that it be made clear that nothing is for attribution to the government.

Mr. Saavedra suggested that when there is a final draft document that it be opened up to the public for a period of a month for comments from academia, civil society, governments, etc. He suggested also having a small group of three to four people meet after the next group of experts meeting to consolidate the draft texts. Ms. Banfi concurred, noting that she can send the draft document to the regional alliance to gather comments and then share those comments with the group. However, she stressed the importance of making the documents available throughout the process in both English and Spanish.

Mr. Wilson stated that it was clear the documents should be available in both English and Spanish and noted that he will begin the process of looking for additional funding to make that

happen. He also noted that in order to have sufficient time for the translation, the calendar will have to be changed some.

Ms. Coliver suggested that the next draft be circulated to civil society to comment upon. She suggested an email informing people of the process and letting them know the document will be reviewed twice more. She also suggested informing others that we recognize the document has duplication and differences in quality and style at the moment, yet we welcome comments at this point. If we are unable to translate the documents soon, she suggested noting that the documents are in English but that we hope to have translated copies by December. She said the longer the process isn't disclosed to others in the community, the more misunderstanding will occur and people will begin to question the process. Mr. Cox suggested that it would be problematic to say you only have the documents in one language and so suggested waiting until they were available in both languages.

Mr. Wilson said it is his hope to have the model law document with the statutory text ready by December so that the group can begin to talk about specific language. The real question he said was how the group would collect comments from civil society. He understood that Karina Banfi would collect comments from the Alliance however was unsure of who would collect the additional comments. Ms. Neuman said she collected comments on the Atlanta Declaration and received nearly 60 suggestions but that it was not that much work. She suggested having a small group go through the document to make sure tone is consistent. She suggested taking the penultimum draft to civil society after it has gone through this small group process. She indicated her willingness to help if such a small drafting group were formed.

Mr. Saavedra suggested that he could also be involved in that process as well as Ms. Botero. Mr. Wilson agreed with the consensus that it should be the penultimum draft that is shared with civil society for comments. He thanked everyone for coming and said he looks forward to the continued work of the group over the coming months.