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FEATURED Q&A

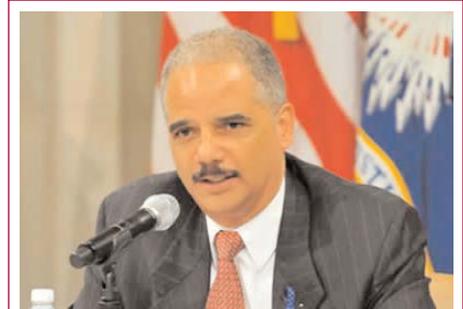
How Well do Freedom of Information Laws Boost Openness?

Q A new freedom of information law took effect in Brazil last month, making it one of the last such countries in the region to adopt such legislation. What are the challenges of implementing freedom of information laws in Latin America? How does the Brazilian law compare with similar measures in the hemisphere? Have such laws been effective in increasing transparency and fighting corruption and other abuses of power?

A Greg Michener, professor at IBMEC in Minas Gerais: "The new Brazilian law is reasonably well-regarded and has been well received, with more than 10,000 requests, 7,000 of which have already been answered. The measure has incorporated much of what is proposed in the Inter-American Model Law on Access to Information Legislation, as sponsored by the OAS and the Regional Alliance for Access to Information. The positive points are the law's broad scope and positive intent. 'Openness is the rule and secrecy, the exception' (Article 3) and the Constitution guarantees the right, which applies to all three branches of government and all levels of the federation. The procedures for requesting information and responding to requests conform to better practice laws. Comparatively, the law is highly advanced and unique in its open-data attributes; it allows requesters to receive bulk data in open formats, making

it possible to re-use data. The law falls short on a couple of critical areas. First, the oversight agency assigned to enforce the law is the comptroller general, a highly competent but over-stretched institution with limited resources, multiple responsibilities and questionable autonomy from the president. Second, reserved information falls into three categories (ultra-secret, secret and reserved) and can be withheld up to 25 years. Three levels of secrecy are redundant and the maximum reserve period is excessive. Uruguay has the second-longest

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U.S. House Holds Atty. Gen in Contempt Over Gun Operation

The U.S. House of Representatives on Thursday voted to hold Attorney General Eric Holder in contempt of Congress for refusing to hand over some documents related to "Operation Fast and Furious," which allowed weapons to be taken into Mexico illegally. See brief on page 2.

File Photo: U.S. Department of Justice.

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NEWS BRIEFS

U.S. House Holds Atty. Gen. in Contempt Over Gun Operation

The U.S. House of Representatives on Thursday voted to hold Attorney General Eric Holder in contempt of Congress for his refusal to hand over some documents related to a botched operation that allowed guns bought illegally in the United States to be taken to Mexico. The vote of 255-67 marked the first time in U.S. history that Congress held a sitting presidential cabinet member in contempt, BBC News reported. The Justice Department has refused to hand over some documents related to "Operation Fast and Furious," saying their release could affect continuing criminal investigations.

Foreign Ministers Eye Suspending Paraguay From Mercosur

Foreign ministers from Mercosur plan to recommend suspending Paraguay from the trade bloc over former President Fernando Lugo's ouster last week, the Associated Press reported. Brazilian foreign minister Antonio Patriota said that the final decision will be announced today after a meeting of heads of state. The ministers attending the summit will recommend against economic sanctions, he added.

Oriental Financial Group to Buy BBVA's Puerto Rico Operations

Puerto Rico's Oriental Financial Group plans to buy the local operations of Banco Bilbao Vizcaya Argentaria for \$500 million, the Associated Press reported. The deal would make Oriental the third biggest bank in Puerto Rico by asset size. In a statement Thursday, Oriental Board President José Rafael Fernández said the bank has raised \$84 million in a private placement and will use excess capital to help fund the deal.

Political News

Peña Nieto Poised to Return PRI to Power in Mexico

Enrique Peña Nieto, the telegenic former governor of Mexico state, is poised to return the former long-ruling Institutional Revolutionary Party, or PRI, to Mexico's presidency in Sunday's national elections. In a poll taken June 25-27 by Mexico City-based GEA-ISA, Peña Nieto had 39.5 percent support, giving him a double-digit lead over Andrés Manuel López Obrador of the Party of the Democratic Revolution, or PRD, who had 24.1 percent support, Bloomberg News reported. Josefina Vázquez Mota of

“I'm part of a generation that has grown up in a democracy, and I aspire to be a president who governs respecting liberties.”

— Enrique Peña Nieto

the ruling National Action Party, or PAN, trailed with 18.9 percent support. The poll, which had a margin of error of three percentage points, queried 1,144 registered voters. The PRI held Mexico's presidency for 71 years until the PAN's Vicente Fox was elected in 2000. However, Mexico's brutal drug war has led Mexicans to sour on the currently ruling PAN. Peña Nieto has put a fresh face on his old party, portraying it as the party of change. He has also sought to quash memories of PRI cronyism and corruption. "I'm part of a generation that has grown up in a democracy, and I aspire to be a president who governs respecting liberties," Peña Nieto said June 24 in a speech in Mexico City, Bloomberg News reported. The PRI candidate has pledged to reduce violence in Mexico by focusing on the most heinous crimes, such as murder, and aims to end President Felipe Calderón's tactic of using soldiers to fight drug cartels. The country's drug-related

violence is blamed for some 47,000 deaths since Calderón took office in December 2006. Peña Nieto has rejected his rivals' accusations that he will negotiate with gangs. Peña Nieto has also vowed to improve Mexico's economy by increasing salaries and backing legislation to make it easier for employers to hire and fire workers. He also supports private investment in the country's oil sector. López Obrador, who recently surpassed Vázquez Mota in the polls, expressed confidence to his supporters during a final rally on Wednesday, BBC News reported. "We are going to win the presidency again," López Obrador said in Mexico City's central square, the Zócalo. He narrowly lost the 2006 election to Calderón and then proceeded to lead protests that paralyzed parts of the capital and portrayed himself as Mexico's "legitimate" president. In a final rally in Guadalajara, Vázquez Mota told her supporters that Peña Nieto and López Obrador represent an old system and that she would represent "the Mexico of the future." Also in the race is Gabriel Quadri de la Torre, of the New Alliance Party, which has ties to the country's teacher's union. His support is in the single digits. On Sunday, Mexicans will also be casting ballots for members of Congress and some state governors.

Economic News

Brazil's Rousseff Unveils \$57 Billion Agricultural Loan Program

Brazilian President Dilma Rousseff on Thursday outlined a new 115 billion real (\$57 billion) agricultural loan program that aims to strengthen the sector as the country braces itself against global economic turmoil, EFE reported. The program is "a new tool against the global crisis," Rousseff said, adding that the initiative will help create employment in Latin America's largest economy. "This plan will show that Brazil is one of the few



Rousseff

File Photo: Brazilian Government.

countries that can create new jobs amid the very serious sovereign debt crisis affecting the world," she said in a speech at the presidential palace. The public and private loans will help boost productivity in the agricultural sector while also safeguarding the environment. "Growth is not and cannot be incompatible with environmental preservation," said Rousseff. "I can proudly say that Brazil is a country that produces, expands its production, uses technology and does so with full respect for the environment." Almost 60 percent of the loan proceeds will be used to finance programs for improving market products and distribution chains, said Agriculture Minister Jorge Mendes Ribeiro, EFE reported. Family farming, which contributes 70 percent of Brazil's food production, will receive special attention in the program. The funds allocated for the 2012-2013 growing season represent a 7.5 percent increase from a similar loan program last year. The interest on the new loans will also drop to 5.5 percent in the new program from 6.5 percent last year. The program also has the support of Brazil's National Agriculture Confederation. "Our markets are China, Europe and many other nations where Brazil will be able to sell its output without failing to meet domestic demand," said the confederation's president, Sen. Katia Abreu. By 2050, "most of the world's countries will be consuming Brazilian food," she added.

Company News

Anheuser-Bush InBev Buying Remainder of Grupo Modelo

Anheuser-Busch InBev, the world's largest brewer, has agreed to purchase the half of Mexico's **Grupo Modelo** that it does not already own for \$20.1 billion, *The New York Times* reported today. Anheuser, which has brands including Budweiser and Stella Artois, announced that it will pay \$9.15 per share of Modelo. That price represents a 30 percent premium above Modelo's closing price on June 22. The combined company will have \$47 billion in combined annual revenue and 150,000 employees.

Featured Q&A

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reserve period in Latin America, but it is only 15 years and most modern laws stipulate between five and 12 years, with the possibility of renewing the reserve period. As is true of all laws, the most

“The most pressing challenge is to transition from a political culture of opacity to openness.”

— Greg Michener

pressing challenge is to transition from a political culture of opacity to openness. Mexico and Chile, among other countries in the region, have made strong progress in this direction. Their success, however, can largely be attributed to strong sectors of independent media and robust partisan competition. Where these two critical factors are lacking, laws are typically not promoted or enforced and therefore lack credibility and use."

A Gil Castello Branco, secretary general of Contas Abertas:

"The law is a relevant legal milestone in the expansion of transparency and social control in Brazil. In Brazil, it is said that laws are like vaccines: some work, others do not. It is essential for this law to be enforced because access to information is a fundamental right of citizenship. The executive branch created a Web site where requests can be routed in a simple system. However, the legislative and judiciary branches have not prepared themselves properly. Despite having six months between the signing of the act and its effective validity, they only adopted the desired action at the end of this period. Similarly, we found that the federal government prepared with greater zeal than state and local governments. On the first day of its validity, we sent 100 requests—43 of which were not even answered. We also revealed that even the

Brazilian Supreme Court is not complying fully by denying information about the travels of the court's ministers. According to the Supreme Court, the matter is still being regulated, which is inconceivable since the legal period for adaptation expired on May 15. The biggest challenges for the implementation of access to information laws in Latin America are not of formal or objective order. The greatest difficulty is overcoming the culture of secrecy that has been rooted in these countries for so many years. In most nations, there is no perception that information about public administration is a public good. The simple establishment of an act is not enough to change this. The Brazilian law is modern and comparable to those existing in countries where access to information was discussed longer ago. Most NGOs, including Contas Abertas, disagreed with the fact that the comptroller general of the union (CGU)—which is linked to the presidency—has been chosen as the 'appeals body.' The minister of the CGU is on the same level with other government authorities and it is unlikely that he would diverge from colleagues in other ministries. The promotion of transparency and access to information will contribute to combating corruption and building a more egalitarian society."

A Natalia Torres, senior researcher on Access to Information at the Center for Studies on Freedom of

Expression and Access to Information at Palermo University School of Law: "On May 16, Brazil finally opened its archives. The law on access to information has one distinctive aspect: the regulation seems to focus on the management of information in the policies that public entities should follow in order to effectively answer information requests. With this innovative approach, Brazil makes use of international experiences in the implementation of access to information regulations considering the drawbacks that

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may arise from the arid reality of institutions. However, this approach can be hindered by the challenge of the scope of the legislation and the enforcement needed to make the regulation effective. The law must be implemented across 5,565 municipalities, 26 states and one federal district, a real challenge for the giant of the region. But Brazil faces another crucial challenge: there is no authority in charge of the implementation and enforcement of the regulation. Even if we consider Article 41, which states that the executive branch shall designate an organ from the public administration responsible for some implementation activities, it is uncertain whether this agency may have competence at the level of the legislative and judicial branch, or at the local level. The role of the comptroller general has been mentioned, but, according to the law, it only has competence on deciding appeals and, following Greg Michener's analysis of the law: '[it] is inappropriate to the task; its multiple attributions and dubious independence from the presidency make it a sub-optimal oversight mechanism.' In the implementation guide for the OAS' Model Law on Access to Information, it is clearly stated that: 'In instituting a functioning access to information regime, it is critical to pay great attention to the oversight and enforcement mechanisms and to the establishment of tools for determining effectiveness of the system.' Brazil has learned from the international experience to pay attention to information management. Now it should follow this crucial advice to make the right to know effective."

A Lucia Nader, executive director of Conectas Human Rights: "It is still early to assess the challenges pertaining to the law's implementation. However, at least four issues already raise concern: (a) There is a Brazilian saying that we never know if a law will actually 'stick.' In other words, a law's passage and its implementation are two very distinct steps, and the

first one is no guarantee for the second. Citizens and organizations have to familiarize themselves with the law and its mechanisms in order to use it; (b) The allocated budget and mechanisms being put into place for the law's implementation in all 27 federative units or the 5,565 municipalities are still unclear. However, important areas of public interest fall under the responsibility of federative states and municipalities, including information related to public security and educational policies; (c) Human rights groups are also concerned with information that is not yet gathered or systematized. In some cases, the challenges are not only about the necessity to make the information public, but also about the need to collect and systematize important data; (d) Finally, the law stipulates that information that puts the 'security of society or State' at risk can be classified. This is a broad definition which leaves much room for interpretation and can be a real challenge to the law's implementation. The law also states that information related to human rights violations committed by public agents cannot be classified. This is a victory for the human rights movement and Brazil is among a few countries in the region to have such a clause. It can be of extreme value to the truth commission that is being currently established. We hope that it will be properly implemented and not weakened by arguments of 'personal privacy.' The law states that public entities have to actively disclose information—what is being called 'active transparency.' This means that information related to the budget or proper use of resources will, at least in theory, have to be made public. With the option of permanent secrecy off the table, our hope is that the law will progressively change a 'culture of opacity' at all levels."

The Advisor welcomes reactions to the Q&A above. Readers can write editor Gene Kuleta at gkuleta@thedialogue.org with comments.

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