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Open Government and Targeted Transparency

Trends and Challenges for Latin America and the Caribbean

Nicolás Dassen and Juan Cruz Vieyra

Editors

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- Transparency is a key public policy tool for promoting greater efficiency in the use and distribution of public resources and improving public services.
- In the spectrum of possible intervention models, targeted transparency policies have the fundamental characteristic of using information disclosure as a way of achieving a concrete public policy goal, such as improving public service delivery in healthcare, education, and transportation, among other sectors.
- In Latin American and Caribbean (LAC) countries, targeted transparency policies do not always originate in the legislative branch or public sector agencies. Organized civil society, particularly the media, plays a central role in bringing targeted transparency policies onto the public agenda and, in turn, raising awareness among citizens and private sector representatives that the use of public information can be valuable for decision making.
- The concept of open government can—and must—be employed to spur public sector modernization in the LAC region. Open government must be understood as a process that goes beyond merely “digitalizing bureaucracy,” reducing the number of transactions and decentralizing public services; it is a platform for rethinking the role of the state from a pro-citizen perspective that can open up opportunities for participation and collaboration between the public sector, civil society, and the private sector.
- Given the importance of subsidies in LAC economies, transparency is vital to ensure that the criteria of efficiency and fairness are considered during allocation (this is the case, for example, in Argentina). When the public entities responsible for disclosing information do not do so in a way that facilitates citizen participation, then civil society must step up to generate and disseminate that information.
- As demonstrated in the case of Brazil’s Comptroller General (Controladoria-Geral da União, or CGU), internal monitoring agencies can use targeted transparency to identify irregularities. Likewise, these agencies can positively influence the adoption of new practices by public officials in favor of transparency and integrity. The accessibility of information on the quality of public expenditure allows for the comparison and analysis of vulnerabilities in all sectors, and the encouragement of healthy competition between ministries.
- Poor accessibility, technical complexity, and the wide dispersion of information in the oil industry hamper good governance and decision making in this sector which in turn, impacts efficiency and imposes a high economic cost on countries. Civil society occupies a central role in the design and implementation of minimum, integrated, and participatory standards of transparency. The application of these standards can help public and private sectors find innovative solutions for enhancing transparency at every step of the value chain (as in the case of Ecuador, for example).

- Targeted transparency policies are a fundamental instrument for preventing and penalizing money laundering. As the case of Guatemala demonstrates, these policies should be centered on the incentives and capacities (often divergent) of the main actors in the anti-money laundering system. Information requirements and the relationship between state agencies, financial and nonfinancial entities, and the people or organizations that conduct transactions throughout the financial system are defined by the international standards to which countries adhere. However, the most important requirements reside in the regulatory framework at the national level, which opens up opportunities for targeted transparency policies to be promoted as part of the regulatory process.
- Housing construction and the allocation of loans with low, nonexistent, or state-subsidized interest rates create opportunities for discretionality. As in the case of Colombia, targeted transparency policies can play a vital part in guaranteeing that information is disclosed about beneficiaries' identities and criteria for decision making in the sector. This has the potential to prevent the unlawful influence of private interests and unjustifiable costs in contracts, thereby enhancing the quality of the housing delivered, among other benefits.
- The creation of highly specialized and institutionally robust monitoring units can lead to improvements in the infrastructure sector, as can be seen in the case of Chile. Defining specific compliance goals for government instruments that evaluate the monitoring and performance of public management can help guarantee the sustainability of pro-transparency policies. This, in turn, must be accompanied by the political will to make the necessary investments in human and financial resources that would facilitate the design and implementation of tools to encourage transparency in the public works procurement and monitoring system.

Latin American and Caribbean (LAC) countries are rapidly evolving. The last two decades have seen progress on a scale that few would have believed possible. The advances have been solid, accompanied by institutional reforms in fiscal and financial management that have established the bases for the stability and strengthening of the region's financial systems. New institutions and policies have improved the capacity of governments to support human capital formation and to offer social protection to lower income families. Today, the gains in structural poverty reduction, education, and service coverage are well recognized.

Despite the remarkable progress, however, the LAC region still faces important challenges in its efforts to achieve the goals of sustainable growth and poverty reduction. One of these is creating more integrated, transparent, and responsive governments capable of satisfying citizens' demands for better public goods and services.

The Inter-American Development Bank (IDB) has a long-term commitment to strengthening the institutional capacity of the region's public sector administrations. For more than a decade, it has helped design strategies and action plans to support countries in their efforts to enhance governance. This includes promoting transparency and accountability as prerequisites for better government at both the national and the subnational levels.

The Bank's approach highlights the benefits of integrity in public management in numerous economic and social sectors, including, among others, the financial sector, the extractive industries, and infrastructure. Likewise, it supports strengthening and modernizing the units of fiduciary and financial administration, public investment and procurement systems, and integrity and control frameworks. The IDB recognizes that without these efforts over the long term, equitable and shared development cannot be achieved. It is for this reason that the Bank supports civil society organizations in their efforts to promote transparency and prevent fraud and corruption.

The Anticorruption Activities Trust Fund (AAF) has positioned itself as a key and catalytic instrument to support the Bank's transparency agenda, by helping countries in their efforts to prevent and control corruption. Moreover, the lessons learned from the AAF have helped expand the frontier of knowledge regarding the effects of targeted transparency. In this way, the AAF contributes to the new paradigm of open government increasingly being implemented in the LAC region.

With the crucial support of the Norwegian government, the AAF has enabled the IDB to respond swiftly and opportunely to calls for assistance. Since its inception, the AAF has backed efforts at the regional level and in 10 specific countries. After four years in operation, the fund has gained recognition, both inside and outside the Bank, as a source of innovation and best practices in terms of access to information and targeted transpar-

ency. This publication compiles some of the experiences and lessons learned from five different countries (Argentina, Brazil, Colombia, Ecuador, and Guatemala), with direct support from the AAF.

In the AAF's second phase—as the Transparency Trust Fund—the IDB will focus on the key issues on the region's reform agenda, such as transparency in natural resource management, modernization of the monitoring agencies, and strengthening of financial integrity. In this way, we hope to reinforce the Bank's commitment to achieving these objectives in the context of greater political responsibility and growing citizen demands for open government, embodied in the recently created Open Government Partnership.

Latin America and the Caribbean are faced with a unique opportunity to maintain growth and eliminate poverty, which continues to affect one in eight of the region's inhabitants. This means that all key actors—governments, civil society, the private sector, as well as the bilateral, regional, and global organizations of the international cooperation community—must join forces and act decisively. The IDB will continue to join in with these efforts.

I wish to take this opportunity, once again, to acknowledge the government of Norway for its support of the AAF and for accompanying the IDB in its commitment to strengthen transparency and accountability in the region.

Luis Alberto Moreno

President

Inter-American Development Bank

Washington, September 2012

Transparency and integrity are key factors in consolidating democratic governance and deepening the modernization of the state. Citizenship is built with transparency. Modern and effective governments are characterized by open and agile public management that is able to meet the needs and expectations of the citizens.

In the last decade, countries in the Latin American and Caribbean (LAC) region have made significant progress in strengthening their legal and institutional frameworks for the prevention and control of corruption in a context of economic growth and fiscal responsibility. These achievements include the sanctioning of access to information laws that promote citizen participation in public affairs. In addition, institutions have been created to follow up on and monitor the provisions of these frameworks. However, there is still a gap between the quality of the institutional framework to prevent corruption and its effective implementation. According to perception indexes, citizens in the region continue to distrust their governments due to the impunity, lack of independent oversight, opacity in the management of public resources, and bureaucratic bottlenecks that hinder public service delivery.

Anchoring transparency in government requires a cultural and institutional change in the ways in which public affairs are managed, so as to reduce the risk of corruption and enhance the quality of public service delivery. This entails more transparency and more demand for transparency. Through targeted transparency policies, governments can disseminate useful information to citizens in a timely manner. Citizens, meanwhile, should maximize the benefits that openness and accountability bring about, leveraging the use of new information and communication technologies. These efforts allow citizens to visualize how pro-integrity reforms contribute to state reform and public sector modernization, placing them, both as users and controllers, at the heart of the creation of public policies to improve the administration and distribution of public services.

The Inter-American Development Bank (IDB) has been supporting country efforts to achieve open government, providing technical support and knowledge on transparency in the LAC region. In March 2007, with the support of the Norwegian government, the IDB created the Anticorruption Activities Trust Fund (AAF), aimed at strengthening the institutional capacity of the Bank's borrowing countries in their efforts to prevent and control corruption. Through this catalytic facility, the government of Norway and the Bank contributed more than US\$8 million in nonrefundable resources. Additionally, the AAF has directly supported the design of lending operations aimed at preventing and controlling corruption in Bolivia and Brazil.

The AAF's support is concentrated in three areas: (i) promoting the development and implementation of innovative practices to facilitate access to information as a tool to prevent corruption and improve service delivery; (ii) strengthening the capacity of public institutions, civil society organizations, and the private sector to access information to promote integrity and corruption monitoring; and (iii) strengthening the strategies for the prevention and monitoring of corruption in Bank operations. After the AAF's first four years in operation, concrete results have been achieved in these three areas. Regarding the implementation of innovative practices to facilitate access to information, it has supported the development of knowledge on frontier issues, such as institutionalization and strategic management of the institutions in charge of monitoring and enforcing the laws relating to provisions of access to information laws in Chile and El Salvador, among other issues.

With regard to strengthening the capacity of public institutions, the AAF has increased access to information in key sectors, such as extractive industries, the financial and banking sector, public subsidies, and financial management systems. With the technical and financial support of the AAF, countries have achieved concrete results in these sectors. In Brazil, for example, the support to the Public Expenditure Observatory (Observatório da Despesa Pública, or ODP) allowed the government to identify irregularities in the use of unemployment insurance for small-scale fishermen, resulting in significant savings for the federal government. In Ecuador, barriers to access to information in the oil sector were removed through the adoption of information disclosure standards in the extractive industries. In Argentina, there was a lack of information on the allocation of subsidies in the agricultural product, gas, and transportation sectors. The AAF has supported the strengthening of entities in charge of overseeing the implementation of access to information laws, as in the case of El Salvador and Chile.

The AAF also made an important contribution through the strengthening of prevention and oversight in Bank operations. In 2009, the fund supported the development of the “Bank Action Plan to Support Countries in their Effort to Fight Corruption and Foster Transparency,” and provided technical assistance to incorporate transparency components in Bank country strategies in more than six countries in the region.

This publication represents an effort to consolidate some of the lessons learned in the context of the AAF, and document some of its results, which is useful to generate knowledge on what works, what does not, and why. It does not pretend to cover every initiative on targeted transparency in the region, nor even all those that the AAF supports. The intention is to present some experiences financed by this facility over the past four years in an attempt to generate knowledge, identify lessons learned, and anticipate the challenges ahead.

The effort continues, and we hope that this publication will encourage countries in Latin America and the Caribbean to continue investing in innovative ways to promote transparency, taking advantage of the platform offered by the Open Government Partnership. We hope that this publication will also encourage other donors to join this strategic initiative to explore new frontiers in the promotion of transparency. It is in this new phase that the AAF will become the Transparency Trust Fund.

Carlos Santiso

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Transparency as a Public Policy Tool	
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This chapter aims to describe, from a conceptual perspective, how **transparency can be used as a public policy** tool and what fundamental aspects must be considered when **designing or implementing targeted transparency policies in Latin American and Caribbean countries.**

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Chapter 1

Transparency as a Public Policy Tool

Ezequiel Molina and Juan Cruz Vieyra

Introduction

Transparency and access to information are fundamental tools for preventing and controlling corruption (Baena and Vieyra, 2011). They help create channels for citizen participation and identify deficiencies in both the public and private sectors that might become entry points for corrupt practices. In addition to identifying shortcomings, transparency can also be useful in enhancing efficiency in the use and allocation of public resources in sectors, such as education, justice, and extractive industries, and in functions, such as public budget formulation, execution and monitoring, and political campaign financing, among other sectors.

It is here that the concept of targeted transparency enters the picture. The concept involves the disclosure of information to achieve the goals of a specific public policy, for example, to reduce the level of contamination found in a certain city or population's water supply or to decrease violence and criminality among youth between 15 and 30 years of age. In this sense, targeted transparency policies attempt to translate the purpose of public policy into the realities of specific user groups, bearing in mind the target population's needs, incentives, and capacity to understand the information, by using simple and efficient mechanisms that facilitate access to and use of the information. Therefore, the starting point for any targeted transparency initiative is to understand who the information users are, their motives and incentives, and the dynamics of the sector in which they operate, given that these characteristics determine the contents of the information and the vehicles used for disclosing it.

This chapter aims to describe, from a conceptual perspective, how transparency can be used as a public policy tool and what fundamental aspects must be considered when designing or implementing targeted transparency policies in Latin American and Caribbean (LAC) countries. It begins with a description of the conceptual model of targeted transparency policies, developed by Fung, Graham, and Weil (2007), and an explanation of what these policies are, and how they operate. Information users are described in the context of the application of targeted transparency policies. These are often citizens, but they might also be corporations, judges, monitoring agencies, or even public officials. Lastly, the mechanisms through which targeted transparency operates are examined, along with the role of targeted transparency as a public policy tool.

Second, the chapter discusses certain aspects of the institutional setting in LAC countries that might have an impact on the implementation of targeted transparency. In this context, it is important to consider the incentives of the actors (citizens, public officials, and the private sector) that demand or disclose information, and how these incentives might affect the possibilities for coordinating and linking dissimilar

interests and capacities which, in turn, affect the implementation of targeted transparency policies. Likewise, some of the aspects that might have an important impact on the implementation of targeted transparency policies in the region are examined, such as the role of legislature, the short-term view that prevails within the framework of policy design and implementation, and the processes of learning lessons and providing feedback in public management.

The application of the targeted transparency approach to the realities of LAC countries discussed in this chapter has placed special emphasis on the incentive systems and coordination scenarios needed to ensure that the goals of targeted transparency policies are achieved. To close the chapter, recent literature was also examined with the aim of identifying the characteristics and impacts of access to information and transparency policies that were structured around key elements of targeted transparency.

Transparency Policies: Rethinking the Theoretical Model

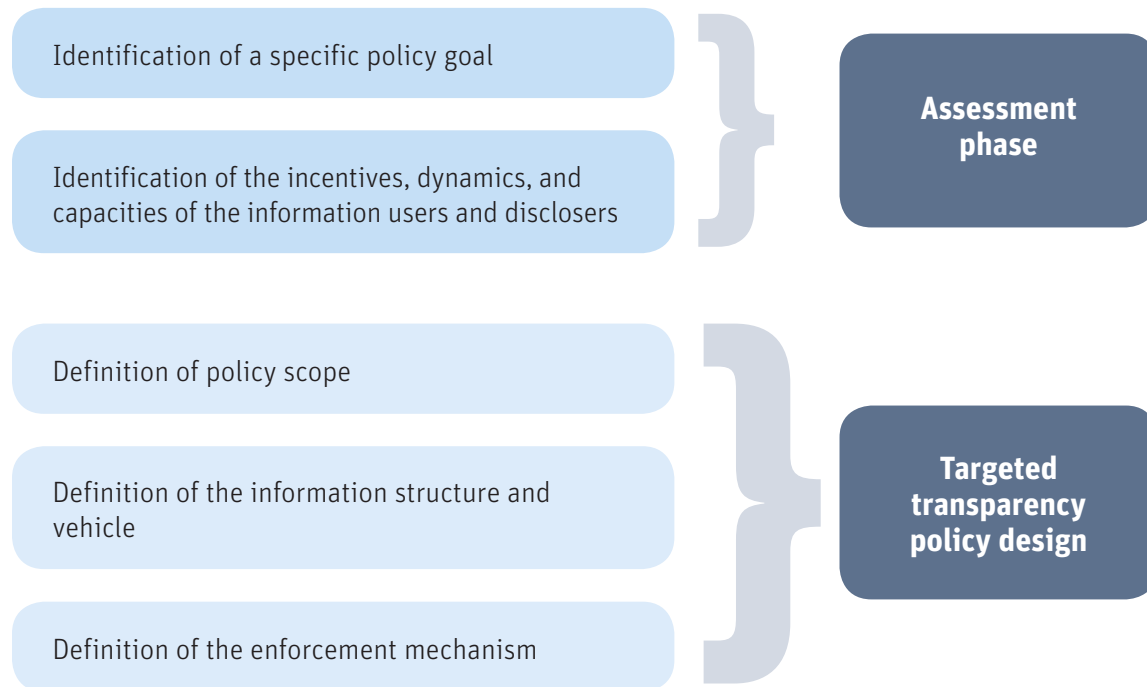
The study of targeted transparency policies, at least with regard to the most comprehensive and structured theoretical framework that exists in this area, begins with *Full Disclosure*, a book written by Fung, Graham, and Weil (2007). These authors examined whether governments could introduce transparency regulations in order to reduce risks in matters, such as health, public safety, and financial stability, or with the aim of improving performance in key institutions, such as schools, hospitals, and banks. These authors designed a model by which it would be possible to determine whether transparency served any purpose, beyond being an amorphous concept grappled with in political marketing campaigns. In particular, they attempted to identify what use transparency might have in the area of public service delivery, or what would have to be done to make it serve a purpose.

To begin their analysis, Fung, Graham, and Weil started out from some important premises. The first is that transparency policies, regardless of the countries in which they are implemented, the sectors upon which they are focused, or the actors that they involve, can be divided into two groups. The first group aims at opening up official records or improving public access to information, given that this is a universal value or right. These are the so-called “first generation” transparency policies, whose best-known expression is found in access to information laws. The kind of monitoring and accountability that first generation transparency policies propose is basically vertical. If citizens have access to public information, then they will possess the fundamental tools to better scrutinize what governments are doing (Rose-Ackerman, 1999).

For first generation transparency policies, citizen participation in government management is, moreover, a fundamental value in a modern democracy. Dahl (2002) expressed that the idea of democracy presupposes a critical mass of active and well-informed citizens, and when the citizenry lack the necessary elements to fulfill the role demanded of them, democracy slides towards tutelage.

Second-generation, or targeted transparency policies, are those that seek the disclosure of specific information, generally from private corporations or organizations, and that also achieve a specific aim, for example, to buttress a particular public policy or to reduce a risk that affects the quality of a certain public service, such as education, healthcare, and so on. By their nature, targeted transparency policies go through an important assessment phase, in which the specific policy objective to be achieved by information disclosure is identified, as well as specifying the dynamics, the capacities, and the incentives of both users of information and disclosers.

Figure 1.1
The Transparency Policy-Making Process



Source: Authors' elaboration based on Fung, Graham, and Weil (2007).

One key aspect that distinguishes targeted transparency policies from other transparency policies is that their implementation is accompanied by the expectation of tangible results in the short and the medium term. As they are related to improving public services, the impacts of targeted transparency policies can be translated into specific benefits, but if they have been badly designed or implemented, their consequences can be catastrophic. If the disclosed information is distorted, incomplete, or misunderstood, it can mislead and cause panic (Graham, 2002). In this sense, the examples presented by Fung, Graham, and Weil (2007) to illustrate the impact of targeted transparency policies range from incentives to help the automobile industry manufacture cars with more and better safety features, leading to the reduction of traffic fatalities (positive impact), to disclosing information about drinking water contamination levels in such a complex and confusing way bringing about high rates of poisoning among consumers (negative impact).

Likewise, the kind of information disclosed through targeted transparency differs from that which is sought by first generation transparency policies. In the latter case, the information tends to be prescriptive, and its users do not necessarily understand automatically how, or for what purpose, the information could be used. By contrast, through targeted transparency, specific information is provided that also contains a course of action for users. Following the examples in the preceding paragraph, these actions might include the purchase of safer vehicles, or avoidance of drinking tap water.

Other important factors in identifying a targeted transparency policy is the origin of, and the reason, for the disclosure. The majority of the cases presented by Fung, Graham, and Weil (2007) demonstrate that targeted transparency arose as a result of major risks that traditional public sector intervention channels (such

as taxes and subsidies) did not resolve. These were risks that not only captured the citizens' attention, but also spurred them into action. In summary, targeted transparency does not spring from a comfortable situation, a successful political campaign, or the mind of some luminary in the executive or legislative branch. On the contrary, it is generally borne out of a context of crisis that requires action by legislators, citizens, corporations, or organized civil society.

In contrast, access to information laws, which represent the clearest example of first-generation transparency policies, do not always arise from a crisis situation but, rather, from a context of political change-over at the national level. They have wide-ranging and abstract purposes, and citizens do not always understand how they relate to their daily lives (Vieyra, 2009). National anticorruption strategies, action plans, and the creation of agencies and commissions that specialize in the fight against corruption are also illustrative examples of this kind of transparency policy that arises in the context of political transition, especially in the executive branch.

The Uses of Targeted Transparency

The effectiveness of targeted transparency can be examined with regard to its capacity to disclose information at the appropriate moments and places, and using vehicles that enable users to make decisions. In other words, targeted transparency does not necessarily augment the quantity of information; rather, it creates mechanisms and translates or generates specific information from which a benefit can be obtained in the short or medium term.

Users of the information released through targeted transparency might be citizens, civil society organizations, trade unions, monitoring agencies, corporations, or public sector units or ministries. Whereas first-generation access-to-information policies recognize that citizens are information users, in a generic and uniform way, targeted transparency policies are structured on the basis of the target user group's incentives, capacities, and needs.

Fung, Graham, and Weil (2007) explain in detail the use of targeted transparency by two kinds of users: citizens and corporations. However, one interesting aspect is that monitoring agents, financial intermediaries, and public officials can also use targeted transparency policies. In Brazil, for example, the federal government's internal monitoring agency, the Comptroller General Office (Contraloría Geral da União, or CGU) has designed a tool, the Observatory of Public Expenditure (Observatório da Despesa Pública, or ODP), which provides the basis for analyzing information about federal public spending anomalies. The information is disclosed to public officials with the idea that they take action to prevent or remedy vulnerabilities that might eventually lead to an act of corruption (see Chapter 4 of this publication). Although not a typical example of what Fung, Graham, and Weil denote as an example of targeted transparency policies, the ODP does have the fundamental characteristics that define these policies. Table 1.1 presents some illustrative examples.

Table 1.1
Targeted Transparency and the Case of Brazil's ODP

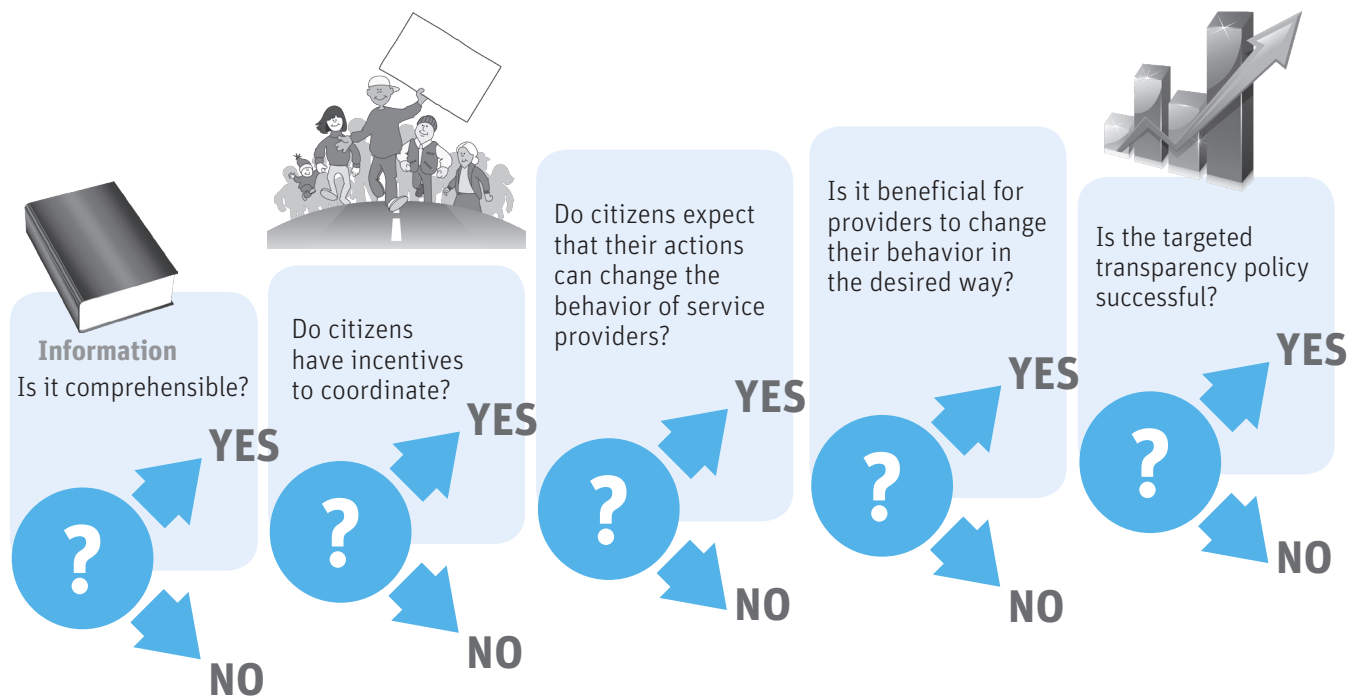
Elements of Targeted Transparency policies	Brazil's ODP
Identification of a precise policy purpose.	Prevention and monitoring of corruption in federal government public expenditure.
Identification and study of the discloser that presents shortcomings in terms of providing access to information, and assessment of the intermediary groups that play a role in demand and distribution of information.	Interventions are structured on the basis of the dynamics, capacities, and incentives that each sector or federal government ministry might have to prevent and monitor corruption in public expenditure.
Definition of policy scope, which generally entails political negotiations and decision making according to the scale of the intervention.	The scope of the interventions conducted by the ODP is limited to analyzing procurement and acquisition of goods and services by specific federal government public sector ministries.
Definition of the structure and the means of disclosing information: the structure of information requires a qualitative and a quantitative specification; likewise, the frequency of information disclosure must be established, alongside the means by which it is transmitted.	The data that give rise to recommendations (qualitative information) are presented via an official letter. The CGU has also created a web interface, so that civil servants can gain access to quantitative information upon which to base their recommendations (graphs, statistics, sources, etc.). The frequency of disclosure depends on each individual case.
Policy compliance capacity: the agencies that scrutinize and monitor compliance with access to information policies must be identified.	The CGU has institutionalized the use of the ODP and required that the information provided to public managers be monitored within the framework of the audits to which the federal government public sector ministries are subject.

Targeted Transparency Mechanisms

The principal mechanism of targeted transparency policies is disclosure of information on government or private sector activity. Armed with this information, citizens, civil society, the private sector (in particular, the “competition”), and monitoring agencies are better equipped to conduct monitoring and demand improved performance in public and private sector management. This disclosure may work by creating a threat of potential losses caused by a drop in sales in the private sector case, or a loss of popularity in the case of public servants or political representatives. In particular, this mechanism can be broken down into three necessary conditions for the success of targeted transparency:

1. **Comprehension** of previously unknown information. This must be sufficient to change the information user’s previous opinion about a particular subject.
2. **Coordination** among users in order to take action, based on the new information.
3. **Change in behavior** expected from the entity about which the information is disclosed, whether it is a corporation, monitoring agency, public servant, or other. This condition can be subdivided into two further conditions:
 - *Benefits outweigh the costs.* The benefit of acting in the desired way must be greater than the associated cost ignoring the inducement for corporations, public servants, and other agencies.
 - *Expectations regarding the entities’ behavior.* The information users’ expectations about the response of the affected entities to the users’ actions must be positive.¹ This means that the users must believe that the entities will obtain net benefits by responding to their demands and resolving the problem.

Figure 1.2
Anatomy of the Mechanisms That Make Targeted Transparency Function



¹ In the case that the actors behave as rational agents, according to economic theory, there would be no distinction between these two conditions. However, if the human behavior theories used take into account individuals’ limited rationality, compliance with one condition does not conclusively establish that the second condition has also been fulfilled.

The design of targeted transparency policies has placed great emphasis on: (i) knowing who will use the information and for what purposes, and (ii) confirming that the information disclosed is comprehensible and that its users are capable of resolving the problem of collective action. However, the issue related to the incentives for disclosers to change their behavior has received relatively less attention. This section goes on to examine, in more detail, each of the conditions needed to increase the effectiveness of targeted transparency.

Comprehension of the Information

One of the first factors that conditions the success of targeted transparency is what information is to be disclosed (content), and how it is to be presented (vehicle), so that it will have an impact on the users. This means that the information has to be not only comprehensible, but also relevant to those receiving it. The fact that people are previously unaware of the information might be due to what Sims (1998, 2003, 2006) describes as “rational inattention.” This theory holds that individuals have a limited capacity to pay attention, and must therefore choose what to pay attention to. Consequently, it might be optimum behavior for people not to pay attention to certain information, given that it is irrelevant and competes with other, relatively more important, information. As a consequence, introducing new information does not always lead to new beliefs or changes in behavior. In order for information to change behavior, it must win many battles for the user’s attention before it can inform decision making.

Box 1.1

Targeted Transparency and Civic Comprehension

According to Lupia (2004), there are certain necessary conditions before targeted transparency can improve civic understanding. For this to occur, disclosed information must be:

- previously unknown by the individuals;
- sufficiently relevant and reliable so that individuals pay attention and the aforementioned information is retained in the memory;
- incorporated into the individual’s long-term memory, so that it can be recalled later, when necessary; and
- utilized at the opportune moment for decision making.

Source: Lupia (2004).

Coordination among Users

The importance of this component for the effectiveness and impact of targeted transparency policies depends, to a large extent, on the kind of coordination that exists among the information users. Two categories of coordination—automatic and complex—can be identified. Automatic coordination is said to exist when the individual benefit of making a decision is greater than the cost, regardless of what the other actors do. This is the case in many targeted transparency policies oriented toward the private sector or designed to mitigate risks in the public sector. It is in evidence, for example, when people receive information about

defects in a certain brand of automobile and their reaction is to stop buying that brand, or when consumers decide to change their dietary habits as a consequence of the publication of nutritional information. In the public sector, initiatives aimed at preventing risks stand out, such as information campaigns that seek to encourage adoption of certain rules of hygiene, in order to prevent certain illnesses. In these cases, the benefits and costs associated with the information users' decision does not depend on the actions of other users.

Complex coordination exists when the cost or the benefit of a certain action depends in part on those taken by the other information users. This is the case, for example, of targeted transparency policies that disclose information about the poor quality of public service delivery. In order for these actions to achieve the desired positive effect on service quality, some citizens must pay the cost of monitoring the service. The nature of these services (schools, hospitals, roads, etc.) means that all citizens in a given region can enjoy the associated benefits. In this case, citizens will have incentives not to participate in the monitoring, in the hope that other citizens will do so, and that they will be equally able to enjoy the benefits. If all citizens thought this way, it would be very difficult to achieve coordination in such cases, and the level of public service quality would decline. The following is a detailed description of citizen coordination mechanisms, using recent advances in game theory to understand citizen decision-making mechanisms.

Automatic coordination

There is no better way to illustrate this point than to summarize the case presented by Fung, Graham, and Weil (2007) of targeted transparency implemented by the United States Congress in 2000, which exposed the faulty design of sports utility vehicles (SUV) that had caused a large number of fatalities in the 1990s. In order to conceptualize this case using the game theory, a utility value must be assigned to citizens regarding the various courses of action that they might have chosen to follow. The utilities chosen make it possible to identify a case in which information user's decisions are independent of the decisions of others. Any utilities scheme that complies with this principle will achieve the same conceptual result arrived at here. Every citizen who has been informed about the problems inherent in the design of SUVs, upon buying the vehicle, obtains a cost in terms of utility equal to 1 and a benefit equal to 0. In the case of not buying the vehicle, the citizen has a cost of 0 and a benefit of 0. It is important to note that the payoffs do not depend on what the other citizens do.

Table 1.2

Automatic Coordination Game in the Purchase of SUVs

		Citizen 2	
		Buy (B)	Not Buy (NB)
Citizen 1	Buy (B)	-1, -1	-1, 0
	Not Buy (NB)	0, -1	0, 0

Table 1.2 reads the following way: the top left-hand corner symbolizes the payoffs for citizens when both of them decide to buy the vehicle. The first number stands for the utility of Citizen 1 when he decides to buy, when Citizen 2 does the same. The second number (-1) symbolizes Citizen 2's utility when he decides to buy the vehicle, when Citizen 1 buys too. In the top right-hand corner, the first number (-1) is Citizen 1's utility when he decides to buy the vehicle, although Citizen 2 decides not to. The second number (0) is the utility

of Citizen 2 when he decides not to buy the vehicle, but Citizen 1 does buy it. The citizens' utility values can be read in the other scenarios in the same way.

According to the table of payoffs, each citizen's strategy is clear: if the citizen buys the vehicle he or she obtains 0-1=-1 utility, a figure that is below zero, which is the utility of not buying the SUV. This analysis makes it possible to predict that, in these conditions, the dominant strategy for citizens, once they have obtained and understood the disclosed information, would be not to buy the SUV. As previously mentioned, the utility that each citizen derives is independent of the choices of the others. This makes it possible to conclude that the coordination of individuals in the "Not Buy" strategy (NB, NB) is the only Nash equilibrium in this game.² This can be easily proven in the following manner. What would be the utility obtained by Citizen 1 if he or she deviated from the action predicted by the Nash equilibrium? If a person decided to buy the SUV, that person would obtain a lower utility than if he or she decided not to buy it. The result is the same for Citizen 2. Therefore, the conclusion is that there are no incentives to stray from the predicted equilibrium (NB, NB). When there are no incentives to deviate, this indicates the presence of a Nash equilibrium. It is worth noting that coordination is automatic in this case, and the predicted equilibrium is efficient. This means that there is no other equilibrium in which the sum of utilities for participants is greater than that found in this equilibrium.

Complex Coordination

Let us imagine a case of a targeted transparency policy that discloses information to parents about poor teacher-attendance records, as well as poor average pupil performance, at their children's school. Likewise, information is provided about how they can get involved in school affairs via the parents' association. It is also assumed that, in this case, the parents have no doubts that, in response to their complaints and monitoring, the teachers and the school will respond by improving performance.³ Each parent that received the information must decide what action to take. It is assumed that there are only two courses of action possible: (i) complain and get involved in school administration through the parents' association, or (ii) not complain and not get involved.

Although parents receive a benefit in terms of better school performance that will be reflected in a greater number of teaching hours and better-quality education for their children if they involve themselves in social monitoring, they know that there are other parents who could also take responsibility for monitoring school performance. If there were only one parent and one pupil, the parent would have the incentive to take part in monitoring, given that his or her absence will mean a complete lack of oversight. However, as the number of parents increases, their incentive not to take part also increases, as they expect other parents to bear the brunt of monitoring. This is the so-called "free-rider problem," given that the parents in our example, just like free riders, wish to obtain a service (in this case, enhanced school performance) for free, without paying the cost of monitoring. If all parents think in a similar way, a situation arises in which there is no social monitoring and, consequently, service quality cannot be improved.

These scenarios can now be conceptualized using the game theory. If there is only one parent who complains and gets involved in monitoring, this parent pays a cost of 3 units and receives a benefit of 5 units in

² In game theory, a Nash equilibrium (formulated by John F. Nash, Jr., winner of the Nobel Prize for Economics in 1994) is defined as a way of obtaining an equilibrium prediction in games that involve two or more players. If there is a combination of strategies such that no player benefits from changing his strategy condition on the other players not changing theirs, then that strategy combination and the corresponding payoffs constitute a Nash equilibrium.

³ It is important to clarify that paying attention to this kind of assumption is one of the key aspects for studying the effectiveness of targeted transparency in Latin America from the game theory perspective.

terms of utility.⁴ If a parent does not get involved while the other one does, the nonparticipant avoids paying the cost and still receives a benefit of 5 units. If both parents participate in complaining and monitoring, the cost is less (2 units),⁵ and the benefit is 5 units for each one. The expected benefit is, therefore, $5-2=3$. If both decide not to complain or monitor, they neither pay the associated costs nor receive the benefits.

Table 1.3
Complex Coordination in the Parents Association Game

		Parent 2	
		Complain (C)	Not Complain (NC)
Parent 1	Complain (C)	3, 3	2, 5
	Not Complain (NC)	5, 2	0, 0

In this game, there are two Nash equilibria in pure strategies (the strategy is independent of the probabilities with which the other individual chooses his strategies) and one in mixed strategies.

- **Equilibrium in pure strategies:** If Parent 1 complains and monitors, it is not in Parent 2's interest to complain, and vice versa. Therefore, in equilibrium, only one parent gets involved in school monitoring. It is worth noting, again, that there is no profitable deviation open to the parents.
- **Equilibrium in mixed strategies:** This first considers Parent 1, denominating q as the probability that Parent 2 complains and gets involved. The utilities for Complain (C) and Not Complain (NC) for this individual are:
 - $U_1(R, q) = 3q + 2(1-q)$, given that if Parent 1 complains, he or she has a utility of 3 units when Parent 2 also complains (which occurs with a probability of q) and of 2 units when Parent 2 does not complain (which happens with a probability of $1-q$).
 - $U_1(NR, q) = 5q + 0(1-q)$, given that if Parent 1 does not complain, he or she receives a utility of 5 units when Parent 2 complains (which occurs with a probability of q) and of 0 units when Parent 2 does not complain (which happens with a probability of $1-q$).

In order to find equilibrium in mixed strategies, the following condition applies: a citizen must remain indifferent between the options he or she is "combining," for example, when Parent 1 is indifferent about the Complain and Not Complain options when $U_1(R, q) = U_1(NR, q)$. This condition holds when the probability that Parent 2 complains is $q=1/2$. If the same analysis is conducted for Parent 2, who has the same preferences, Parent 2 is indifferent about monitoring or not monitoring when there is a probability of Parent 1 getting involved in monitoring (which we denominate p) is $p=1/2$. Therefore, the Nash equilibrium in mixed strategies consists of random choices by citizens with a probability of monitoring equal to $p=q=1/2$, which turns into an expected utility of 2.5 for each one. The resulting pattern of probabilities is presented in Table 1.4.

⁴ Once more, the choice of specific payoffs is arbitrary. Only the relationship between the payoffs and the different actors is important.

⁵ This reflects the presence of a cost function in which each parent has a lower cost as more and more parents get involved.

Table 1.4
Probability of Complaining and Joining the Parents Association

		Parent 2	
		Complain (C) ($q=1/2$)	Not Complain (NC) ($1-q=1/2$)
Parent 1	Complain (C) ($q=1/2$)	0.25	0.25
	Not Complain (NC) ($1-q=1/2$)	0.25	0.25

It is noteworthy that in this Nash equilibrium, 25 percent of the cases produce inefficient results, in which neither parent gets involved in their child's education through the parents' association. This is inefficient, because nobody is monitoring the school, and the sum of the benefits is thereby lower than in other equilibria.

If the analysis is extended to N Parents, it is found that:

- As the number of persons involved increases, there is a possible convergence toward a single pure strategy equilibrium, in which not a single parent will get involved in the parents association. This is because the gap between the benefits and the costs shrinks as to become negative. This means that, marginally, adding another citizen increases the cost of monitoring a school with a greater number of pupils, whereas the benefit remains the same.
- With regard to the equilibrium in mixed strategies, in contrast to the case in which there are just two parents, the problem of apathy becomes more serious the more the number of parents involved increases. The greater the number of citizens, the greater the probability that one of them will decide not to get involved. Moreover, the probability that nobody (amongst all parents) complains also increases as the number of parents goes up. When N is very high, the possibility exists that nobody complains or gets involved in any of the mixed strategy equilibria, which would imply an inefficient result.

This simple model makes it possible to determine reasons why coexistence between many people can lead to apathy and a lack of participation. The interpretation of this result is that, faced with the plethora of persons who have a stake in the game, the free-rider problem arises, as a result of which nobody chooses to pay the costs of complaining and monitoring their children's education, assuming that someone else will do it. This problem occurs when the majority of people have a similar reasoning, increasing the probability that none of them gets involved.⁶

The literature on cooperation is much more extensive than what is cited in this chapter. Some authors (Axelrod, 1984; Matsui, 1991; Kim and Sobel, 1995; Fudenberg and Levine, 1998; Mailath, Morris, and Postlewaite, 2001; Ely, 2002; Grief, 2000; and Grief and Laitin, 2004) emphasize the role of the "capacity to cooperate" to produce the evolution towards efficient equilibrium, in which coordination between actors takes place. This instrument can range from communication between citizens (so-called "cheap talk"), to mutual commitment agreements.

⁶ It is not difficult to imagine situations in Latin America in which the free rider problem arises. An example is the need for citizens to hold the transport companies accountable, so that they maintain quality standards in service provision, especially in large cities.

In summary, the targeted transparency policies analyzed in this chapter provide certain lessons. In order for these policies to be effective, it is important to take into account not only the content and vehicles to disclose information, or the capacity of users to understand such information. It is also crucial to address what mechanisms allow coordination among information users. If this aspect, which is often forgotten in the targeted transparency design framework, is not considered, there is a risk of policy failure.

Change in the Behavior of the Entities Responsible to Disclose the Information

Until now, the focus has been on the community of information users. However, the success of targeted transparency often rests on the incentives of entities responsible to disclose the information (disclosers).⁷ These entities will not always be motivated to change their behavior when presented with demands from information users; they will only do what is required of them when the benefit associated with the change—whether in terms of reputation, popularity, or future sales—is greater than the cost of doing nothing. When the incentives for the disclosers and users are not aligned with the purposes of the targeted transparency, it is unlikely that it will deliver the desired results.

In the first case, mentioned above, the incentives of the disclosers are not aligned with the information users' goals. This occurs when the benefits for disclosers of taking the desired action are lower than the cost associated with the action. In the second case, examined below, the problems observed in developing countries are analyzed.

In the first case, there are two scenarios in which the benefits for corporations, civil servants, and other agencies might be less than the cost associated with the change in behavior expected due to the new information. In the first scenario, the associated cost of any deviation from the current course of action is greater than its benefit. This case might be termed a clash of interests. One example of such a clash is the experience of the large fast food chains in the United States, which devoted considerable resources through their lobbying activities to be exempted from regulations requiring disclosure of certain nutritional information about the products being offered.⁸ Knowing that this would exert an adverse effect on the survival of the fast food corporations, they decided to adopt a proactive strategy to hinder legislators from ruling on the matter. Consequently, in many states, targeted transparency policies have not reached the fast food industry. This has been a genuine missed opportunity for a country with such a high obesity rate as the United States.

The second scenario arises when, although there is a change in behavior, it varies from the change desired by the policy goals. These changes can be termed the undesired consequences of transparency policy. Gavazza and Lizzeri (2006) and Prat (2005) provide several examples that might be understood from this perspective, among them, disclosing how much time it takes for government agencies to carry out the simplest procedure, such as providing a driver's license. The problem about disclosing this information is that it can generate excess demand on these agencies, without providing a commensurate change in the public employee compensation system. Anticipating this, the staff of these agencies might reduce their efficiency once the targeted transparency mechanism is put in place. Generally speaking, therefore, in those markets where there are price rigidities (in this case, public sector salaries), transparency policy can be

⁷ In some cases, the discloser of information could be an intermediary between the entity on which information is being disclosed and the information users, for example a civil society organization that “translates” public data into actionable information.

⁸ For more information, see the article by Lyndsey Layton and Dan Eggen published in the Washington Post, July 9, 2011.

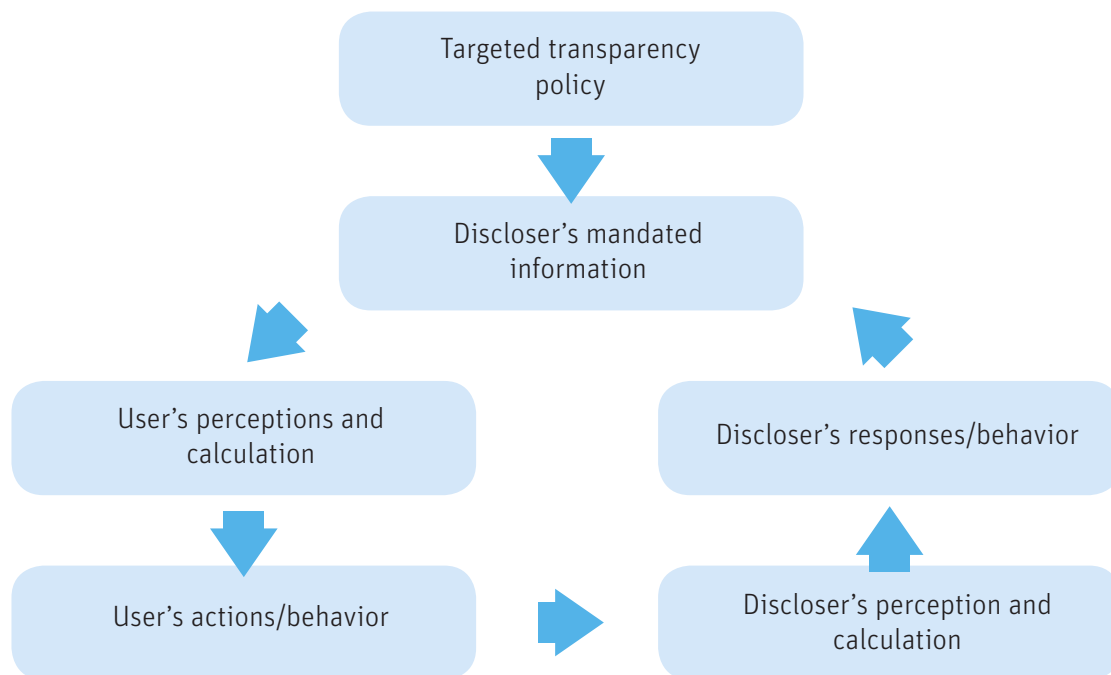
counterproductive.⁹ Another similar case relates to the implementation of targeted transparency policies aimed at measuring performance in teachers, schools, and hospitals. These policies can give rise to incentives for agents to behave strategically, and not in the spirit that the targeted transparency intended. For example, think about standardized tests used to assess teachers' performance. This policy may generate unintended consequences, as teachers may put more effort into teaching students the techniques to excel in these tests rather than teaching the curricula. Therefore, if the transparency policy is not correctly implemented, or if it is not regularly updated to ensure that the original spirit is maintained, incentives may be created for teachers to teach how to solve standardized exams, or for schools to admit only the best students.

The Role of Targeted Transparency as a Public Policy Tool

Before examining the use of targeted transparency as a public policy tool, it is important to look at the transparency action cycle, through which Fung, Graham, and Weil (2007) were able to reveal how to reveal the links between information disclosure and risks associated with public service consumption. This cycle, illustrated in Figure 1.3, takes into account: (i) perceptions and calculations, (ii) actions and conduct of information users, (iii) perceptions and calculations, and (iv) responses and/or conduct by the agencies responsible for information disclosure.

Figure 1.3

Targeted Transparency Policy Action Cycle



Source: Fung, Graham, and Weil (2007).

⁹ It would be interesting to examine the use of nonmonetary instruments for motivating staff in this context. For an example of another study that attempts to describe the conditions under which transparency policies might be negative, see Bouton and Kirchsteiger (2012).

Generally speaking, targeted transparency can become a public policy tool when the action cycle described above is completed, or when the information disclosed generates a change in users' perceptions and, thereafter, a change in their behavior. This, in turn, leads to a change in the perception of the disclosers and, therefore, a change in their own behavior. To illustrate this point, suppose that an internal monitoring agency, such as Brazil's CGU, establishes a regulation indicating that the officials at the Ministry of Education must disclose information in a specific format and frequency about the expenditures incurred by paying per diem allowances and travel expenses to its civil servants. After this new regulation has been implemented, the information users (in this case, for example, the auditing unit within this very monitoring agency) perceive discrepancies between what the ministry has presented to the auditors and the information in the hands of the monitoring agency, based on the analysis of the information on public spending that this agency is conducting. Subsequently, this auditing unit conducts a series of special audits and provides instructions to the auditors, so that they can understand the reasons and possible justifications behind these discrepancies, which—in this example—might represent illicit deviations. Based on the actions of the auditing unit, civil servants at the ministry might perceive a threat and immediately install a series of internal regulations that changes the systems and requirements for soliciting reimbursements for per diem allowances and travel expenses. In this case, the action cycle of the targeted transparency policy was effectively completed, with a positive result that led to the institutionalization of practices aimed at reinforcing transparency and efficiency in the system for reimbursing civil servants for per diem allowances and travel expenses.

Targeted transparency can be employed as a public policy tool in various ways. Other studies (Baena and Vieyra, 2011) have dealt with the use of targeted transparency within the framework of corruption prevention and monitoring. In this chapter, some ideas about other possible uses are put forward, including reducing the risks associated with public service delivery and improving the efficiency and effectiveness of the provision of these services.

With regard to reducing the risks associated with public service delivery, it is worth recalling the transparency policy evaluated by Jalan and Somanathan (2008). In India, an awareness-raising campaign was conducted about the degree of fecal contamination found in the drinking water supply by using a simple testing mechanism. After the study, it was observed that the families that had initially lacked any sort of water purifying system, before being informed of the high probability that their drinking water supply was contaminated, changed their behavior. On average, eight weeks after having carried out the awareness-raising campaign, it was 11 percentage points more probable that these families were now using some form of water purifying system. In this case, the coordination is automatic, given that the benefit for families of buying the purifying system does not depend on the actions of others.¹⁰

With regard to public service provision, Banerjee et al. (2010) study the impact of an intervention to increase community participation to improve the education system in India's most backward areas. The study mentions three possible interventions: (i) provide information on how to participate in the parents' association responsible for monitoring school activities, (ii) train the community in ways of testing the knowledge acquired by pupils in order to monitor their progress, and (iii) train neighborhood volunteers to impart literacy classes to children with learning difficulties.

The authors' results are revealing. Neither intervention (i) nor (ii) had any effect at all on citizen participation, on the willingness of teachers, or the pupils' learning achievements. The only intervention that had any success in improving the children's education is (iii), which is to be expected given the theoretical framework explained earlier herein, when discussing the mechanisms of targeted transparency policies. As this

¹⁰ It is assumed that the supply of water purification systems is great enough that a sudden spike in demand from citizens does not alter their price. But, even if this assumption were incorrect, the coordination of citizens would still be faster than under "normal" conditions.

framework suggests, the problem of coordination is more complex in cases (i) and (ii), given incentives must be generated for other actors to change their behavior. This is especially problematic in developing countries, where citizens' expectations about the possibility of changing behavior in the public sector are very low. In this case, it is predictable that information users should respond with apathy to the possibility of using the parents' association as a mechanism for improving their children's education. Furthermore, in India's case, the parents preferred to choose the action that did not depend on public services to achieve success.

The debate on the implications of transparency for improving service provision is important in LAC countries, given that a high percentage of citizens, even when they systematically use information and communications technologies (ICTs) for private matters, are still not fully aware of the potential benefits of using information about public service quality and availability.

Applying the Targeted Transparency Model in LAC Countries

In recent years, public interest in targeted transparency policies has grown, and academic studies on the subject have proliferated. However, there is still much that remains to be known about the elements that explain their effectiveness, especially in LAC countries. Based on the conceptual framework developed above, we will now attempt to outline certain aspects of the institutional scenario in LAC countries that might influence the implementation of targeted transparency policies. In this context, special attention has been paid to the role of incentives for the actors (citizens, civil servants, and the private sector) that demand and provide information, and how these incentives might impact the possibility of coordinating and linking interests and capacities. In particular, the effects of targeted transparency will be observed in countries or societies where: (i) the role of the legislative branch is seen to be less important than that of the executive branch, which gives rise to the so-called "delegative democracies"; (ii) high percentages of citizens and public and private sector representatives do not expect for public policies to be maintained over the long term; and (iii) feedback and lesson learning within the field of public policy making is relatively low.

In applying the targeted transparency model to LAC countries, special attention has been placed on the incentives systems and coordination scenarios needed to meet targeted transparency goals.

The Role of the Legislature

One of the most outstanding characteristics of targeted transparency policies in the United States is the constant reference to the central role of the legislature, both in cases where the targeted transparency policy was designed and implemented efficiently and where it turned out to be counterproductive. In most cases that are presented by Fung, Graham, and Weill (2007), the legislature in fact constitutes a fundamental element in the framework of promoting targeted transparency to improve public services, regardless of its impact.

Without trying to characterize the legislative branches in Latin America and the Caribbean, various authors concur that their role tends to diminish in the face of initiatives of the executive branch (Saiegh, 2010). The resulting trend is a "delegative democracy," in which the executive branch transgresses or legally breaches the established institutional boundaries (O'Donnell, 1994; 1999). This is an important debate, because if the legislature and the judicial branches, and institutions such as monitoring units, general and specialized auditors, or ombudsmen, are controlled or co-opted by the executive branch, it is only to be expected that they cannot propose transparency measures that may conflict with an interest of the executive branch.

However, the provisions on compliance with targeted transparency policies are not necessarily designed by legislators but, rather, they are related to regulatory processes. The legislator can lead the way in designing these policies, but subsequent implementation falls to the regulatory bodies. In Latin America and the Caribbean, the 1990s bequeathed different scenarios among countries in the region regarding the capacity and operational autonomy of the agencies responsible for regulating public service provision.

There is an additional problem in LAC countries: success in a legislator's political career is associated more with being more answerable to the political party leadership than to the electorate (Jones et al., 2002; 2007). Consequently, there are incentives for not investing in the acquisition of the very legislative capacities necessary to pass laws promoting targeted transparency policies. In these cases, legislators are inexperienced; there is more frequent turnover in legislative committees; there is less specialization; and, therefore, the legislature acts as an appendage to the executive branch, limiting its role in public policy making (Saiegh, 2010).

The Short-Term View

One of the fundamental aspects that determines the effectiveness of targeted transparency policies is their sustainability. In other words, over time, they benefit information users, provide reliable and up-to-date information, and continue to achieve the public policy goal for which they were designed. In the LAC region, however, there is a peculiar situation with regard to the "continuity" of policies, and of politicians. Although there are some exceptions in the region, such as those countries with robust public sectors and well-paid public servants (Chile, Brazil), most countries display an alarming rate of political turnover, which has a detrimental effect on the continuity of public policies. In Ecuador, in 2008, the Inter-American Development Bank (IDB) began to draft a targeted transparency policy of the oil sector (see Chapter 5 of this publication). From the beginning of 2007 until mid-2010, when project implementation was at the halfway point, the country underwent a constitutional change, and the Ministry of Mines and Petroleum (Ministerio de Minas y Petróleo), thereafter the Ministry of Nonrenewable Natural Resources (Ministerio de Recursos no Renovables), went through five different ministers.

To be accountable to citizens by means of implementing transparency policies is a long-term investment. In the short term, the private sector, the executive branch, and the legislature have to bear the additional cost of adapting the rules and implementing the policies. This increased attention, as well as larger amounts of resources for improving services or products, is only allocated in the expectation that it will be reciprocated by citizens in the future in their roles as voters and consumers. For example, when corporations decide to invest in improving the nutritional content of the foods they produce, or in reducing the environmental contamination they cause, they are making a long-term decision. Although it might be costly in the short term, given that sales of the new product might decline, or there might be increased research and development costs, over the long run the corporations gain the reputation for doing what their clients consider to be "the right thing."¹¹

These incentives are less evident in countries where the discount rate is greater, because corporations or the political incumbent are unsure whether they will be sitting down at the negotiating table the day after

¹¹ In these cases, there is also a coordination problem, given that corporations are loath to take the first step without first knowing what their competitors will do. In this situation, the legislature's conduct is important because it can facilitate coordination through the promotion of relevant new laws. The role of the executive branch is also important in implementing these new laws. Finally, the judiciary is necessary to ensure compliance with these laws. This relates to the importance of institutions and the constitutional state to ensure the correct operation of targeted transparency policies.

tomorrow to enjoy the benefits of their investments. In developed countries, the political party system acts restricts the combination of potential decisions that any given administration might take. In countries where the party system is weak, this restriction is more flexible. If this is complemented by co-opted legislative and judicial branches, the incentives to make long-term investments on transparency are reduced even further. Furthermore, in countries where company success depends more on political connections than on the aggregate value they generate in the market, where the state is the major buyer of goods and services, and where the political arena is very volatile, there are also fewer incentives for the private sector to make long-term investments. Therefore, in countries with high institutional volatility, there are greater impediments for the action cycle of targeted transparency policies being effectively completed. This does not mean that these policies are not useful in LAC countries. Rather, during the design phase the conditions of the context in which they will be deployed must be borne in mind and, in particular, the mechanisms that encourage coordination between information users and the capacity of the discloser to change its behavior must be considered.

The Phenomena of “Lessons Learned” and “Feedback” in Public Policy Making

One of the most interesting aspects of the orchestration of targeted transparency policies is that they are experiments in the strictest sense of the word. It is not known, a priori, whether or not they will be successful. It is considered that they might be successful if certain conditions are present, but the reality is that, until the users use the information over a long period, and it is proven to be useful and accurate, no pronouncement can be made about policy success or failure. Moreover, the principal ingredients within the framework of this “experimentation” are the information users’ incentives, needs, and capacities.

How, then, can the information users’ incentives, needs, and capacities be addressed? There is the possibility of conducting surveys and putting into practice models for obtaining information about user target groups. However, the most efficient method consists of observing what failed or succeeded during the implementation of past policies. If lessons are learned from what worked and what did not, and if there are genuine feedback channels, those responsible for policy making will be able to combine these ingredients when policies are put forth.

Rigorous policy evaluations that include baselines, an experimental design to identify what would have happened in the absence of a certain policy, and objective performance indicators are fundamental elements for the making of targeted transparency policies. Countries with solid institutions have mechanisms by which they can promote the scientific evaluation of public policies and lessons learned from past experiences. In the LAC region, the capacity of many states to generate high-quality public policy and to learn lessons from past success or failures is limited (Stein et al., 2008). Learning lessons from past public policy implementation has been seen sporadically in the field of social protection, as in the case of Mexico’s “Opportunities” conditional cash transfer program.¹² However, the political revolution based on empirical results has yet to arrive in the transparency and accountability area. It is hoped that studies like the one presented in this publication, as well as the transparency projects of the IDB in this field, will serve to help the countries in the region kick start this revolution.¹³

¹² See, among others: Schultz (2000), Parker and Skoufias (2000), Behrman et al. (2005). Mexico, through its National Council for Evaluating Social Development Policy (Consejo Nacional de Evaluación de la Política de Desarrollo Social) (Coneval), and at present via CLEAR, has been a pioneer in the use of scientific methods for evaluating public policy.

¹³ The IDB’s Transparency Fund has taken interesting steps in this direction. The 13 technical cooperation projects financed between 2009 and 2012 were built on solid assessments, and an acceptable percentage of their budgets was earmarked for establishing baselines when the interventions got underway, and also for the necessary impact measurements at the end.

What Determines the Success or Failure of Transparency Policies?

As previously mentioned, the success of targeted transparency policies can be explained through three necessary conditions: comprehension, coordination by information users, and a change in the disclosers' behavior. It is worth highlighting how the degree of institutional development has an impact over these conditions. In particular, it is important to analyze some of the key aspects of how the institutional idiosyncrasies of LAC countries affect the operational mechanisms of targeted transparency policies.

If the above mentioned conditions are taken into account when designing or implementing targeted transparency policies, information users will end up demanding changes in the behavior of disclosers, either by not buying their products or services, or by complaining and voting accordingly. It will then be the turn of the corporations, the civil servants, or any other discloser to determine whether it is in their interest to respond to the information users' complaints and to see what possible action would optimize their expected net benefits, bearing in mind the actions that the citizens, in turn, would take in response.

In the case of transparency policies in which coordination is automatic and the relevant payoffs are associated with actions taken by the individual rather than the response adopted by corporations, civil servants, or other disclosers, the probability of policy success is high, regardless of institutional context. This is true, for example, in the cases of information dissemination about best hygiene practices or disease prevention, returns to primary and secondary education, technical defects detected in automobiles, and so on. Consequently, these policies will only fail when some of the scenarios identified earlier in the description of the mechanisms of targeted transparency policies (under "Comprehension") are absent (for example, that people do not understand the message, or that they do, but the information contained in the message fails to change their beliefs and therefore does not affect their decision making).

Box 1.2

The Formation of Beliefs and Social Rules

At the beginning, nobody knows the "reality" of a system—socioeconomic or political—but human beings construct their beliefs about the nature of this reality. Such beliefs constitute a positive model of the way in which the system functions and, at the same time, a regulatory system of how it should operate. Individuals who belong to different environments will have differing belief systems; they will interpret the same information differently and, therefore, will arrive at different decisions.

The belief systems that evolve based on learning induce the definition of a structure of rules, regulations, conventions, and beliefs. This process of learning by doing as time goes by (scaffolding) not only restricts the entirety of choices at any given moment, but is also the source upon which history depends.

Source: North (1990, 2005).

In other targeted transparency policies, achieving coordination and mobilization is more complex. This complexity has two main components:

- When there is an incentive to let others pay the cost of involvement and complaining in order to improve the services/products consumed by society, coordination becomes more complex, as in the case of coordination by the parents analyzed above. This occurs both in developed and in developing countries, such as those in Latin America and the Caribbean.

- The second component is correlated to a country's degree of institutional development. It refers to the citizens' perception of the probability that there will be a behavioral change by the private sector, the bureaucracy, or political representatives. If the public believes that, even after having paid the opportunity cost of comprehension and coordination to solve the collective action problem, the chances of generating changes are low, it will decide not to mobilize in the first place. In this situation, a vicious circle or a political trap might develop: citizens do not expect their complaints to lead to changes in behavior and therefore they decide not to act. This is known as a "self-fulfilling prophecy" (Molina, 2012).

To clarify this point, it is worth recalling the case of the transparency policy that discloses information to parents about the poor teacher attendance record, as well as low pupil grades, at their children's school. As mentioned earlier, it was assumed that the parents had no doubts that, when faced with the complaints and public monitoring, the school would respond by improving its performance. Now, suppose that the probability that the public officials respond satisfactorily is low, specifically, 20 percent.¹⁴ This drastically changes the example. In this case, the expected benefit from complaining and getting involved in the parents' association is considerably reduced. Two problems must now be overcome: (i) the problem of coordination with other parents to see who pays the cost of monitoring the school, and (ii) the problem of low expectations of a positive response from the authorities. Given that parents expect that, even after solving the coordination problem, the complaint will not induce a change in behavior from the teachers, school authorities, or local government, the value associated with the complaint diminishes. In this case, if values for the probability of success are low, parents will prefer not to complain.

Faced with this information, public officials have to decide what resources, in terms of time, effort, and budget, they should devote to improving the quality of the education provided in the school. If the parents decide not to get involved in trying to improve their children's education through institutional channels, it is likely that, when faced with an improvement, they will be hard pressed to recognize it. And even if they do recognize it, it is not clear that they will give the credit to the public officials. The result is the self-fulfilling prophecy. The fact that citizens do not wish to exercise monitoring because they perceive that they will receive no satisfactory response, or because it will be ineffective, also determines that the public officials will not be "rewarded" in the event of improved performance. Consequently, there is a decline in the incentives for public officials and school employees to try harder.

Let us now try to explain this following the game theory. If Parent 1 is the only one who complains and gets involved in monitoring, he or she pays a cost of 3 units and receives an expected benefit of 1 (5×0.2 [probability of success] = 1). If Parent 1 does not participate in monitoring, but another parent does, he or she pays no cost, but receives a benefit of 1. If both citizens participate in complaining and monitoring, the cost is 2 and the benefit 1. The expected benefit is thus $1 - 2 = -1$. If both decide not to complain or monitor, they have neither associated costs nor benefits.

¹⁴ A specific number is assumed in order to make formal treatment of this problem simpler using game theory. Note that in order to develop this case, it is unnecessary to assume that the agents lack rationality or have limited cognitive capacities.

Table 1.5
Accountability in Weak Institutional Systems

		Parent 2	
		Complain (C)	Not Complain (NC)
Parent 1	Complain (C)	-1, -1	-2, 1
	Not Complain (NC)	1, -2	0, 0

In this scheme, the only Nash equilibrium is the one in which both citizens decide not to complain or involve themselves in their children's education. Note that there is no favorable deviation for the players. Any deviation by Parent 1 brings negative benefits, given the action taken by Parent 2, and vice versa. Furthermore, it is worth noting that complaining would not be an equilibrium, even if there was only one parent involved.

Empirical Evidence of the Impact of Targeted Transparency Policies

The aim of the following is to use the theoretical framework herein to understand the different impacts of targeted transparency policies in developing countries.¹⁵ The literature on this subject can be divided into three types of groups: (i) studies on interventions that attempt to deliver transparency about the use of public resources, (ii) studies on interventions that disclose information in order to mitigate risks and take advantage of opportunities in the health and education sectors, and (iii) studies on interventions that disclose information about the performance of public representatives.

Table 1.6
Targeted Transparency Policies in Developing Countries: Group I

Authors	Country/ Sector	Intervention	Impacts
Peisakhin and Pinto (2010)	India/ General transparency policy	Three alternative mechanisms were implemented to accelerate the process for receiving ration cards from the government: (i) Information laws applied after the card was provided. (ii) Bribes attached to the application. (iii) Control group only applied to the card.	Whereas paying a bribe ensures receipt of the card in about 83 days, using the access to information law means getting it in about 150 days. This is less than half the time that it took for the control group. In this case, it took 350 days to obtain the card.

¹⁵ This does not mean that all of the countries mentioned enjoy the same degree of institutional development.

Table 1.6Targeted Transparency Policies in Developing Countries: Group I (*continued*)

Authors	Country/Sector	Intervention	Impacts
Reinikka and Svensson (2003)	Uganda/ Public resources/ Education	Information campaign to disclose the amount of public resources each school received and should receive.	The information campaign reduced resource capture from 80 percent in 1995 to less than 20 percent in 2001.
Di Tella and Schargrodsky (2003)	Argentina	Information campaign to disclose the price of inputs paid by hospitals in Buenos Aires.	The information campaign reduced the price for inputs by 15 percentage points in the short term, and 10 percentage points in the medium term.
Khwaja (2004)	Pakistan	Introduction to citizen participation in the selection of 132 infrastructure projects in 99 rural communities in northern Pakistan.	Greater citizen participation in decisions, for which no technical knowledge is required, increased the efforts in infrastructure project maintenance. However, there are opposite results in the case of decisions that do require technical knowledge.
Olken (2007)	Indonesia/ Public resources/ Infrastructure	In infrastructure projects, two interventions were conducted to increase efficiency: (i) The probability of central government audits increased. (ii) Citizen participation in social monitoring meetings increased.	(i) There was a reduction in the missing resources, the difference between project expenditure, and the benchmark under perfect efficiency. (ii) Missing resources reduced by 7 percentage points when participation was encouraged via invitations.
Molina (2012)	Colombia/ Public resources/ Infrastructure	Community training and facilitation of community meetings increased transparency, the use of royalties, and social monitoring.	There was substantial improvement in the availability of information about the project, as well as community perceptions on project implementation and efficiency. Additionally, there was increased use of community organization technology to solve problems in the community.
Beck, Lin and Ma (2011)	Central and Eastern Europe/ Public resources/ Financial system	The degree of sophistication and development of systems to facilitate credit and financial information sharing increased.	Tax evasion was reduced.

In the first group, the evidence indicates that in the case of targeted transparency policies that bring transparency to public resources, the interventions have, on average, a positive and significant effect, although there is still much room for improvement. Olken (2007) evaluates the effect of two alternative strategies aimed at reducing corruption in road-building projects in the villages participating in the Kecamatan Development Program (KDP) in Indonesia: (i) to encourage citizen participation in the social monitoring meetings, and (ii) to increase the probability of audits by the national government. In order to calculate the effects of the two targeted transparency policies, a sample of “missing funds” was generated. For this purpose, a group of engineers was trained to inspect road surfacing projects and estimate the cost of the work carried out. The difference between their estimates per project and the costs reported by the villages became the measurement of corruption, given that it represented project funds that were not being used to resurface the roads. In some villages, some teams were forewarned that their work would be audited with a 100 percent probability. Based on the anticipation of a national government audit, there was an 8 percent reduction in missing funds.

Citizen participation only had a significant effect when it was encouraged through formal letters delivered to schools, contrary to the usual practice of distribution through the neighborhood leaders. Even in the cases in which citizen participation was a success, only the corruption associated with reporting salaries higher than those actually paid was reduced, whereas there was no effect on the corruption linked to resources allocated for building materials. With regard to LAC countries, the evidence suggests that targeted transparency that provides information to the community for project monitoring purposes can be beneficial with regard to the quality of project implementation (Molina, 2012). In this case, the study evaluated the impact of Visible Audits (*Auditorías Visibles*) in Colombia, a program that enables citizens to monitor the execution of infrastructure projects through social monitoring meetings, for which the participants are previously trained. In contrast to the KDP program in Indonesia, citizens cannot, in this case, select which project is executed. This is important, given that it reduces the problem of regulatory capture. The evidence also suggests that, although the program was successful in enhancing the quality of project implementation, it did not improve the accountability of representatives in other public service components provided by the local government. This is due, in part, to the low level of citizen participation that, in turn, was determined by the low expectations of a response and behavior change by politicians. However, the perceived success of the project generated a rise in the number of communal organizations aimed at resolving the community’s day-to-day problems. This is consistent with the theoretical framework herein, in which low expectations of receiving a response from the authorities caused apathy among citizens and scant participation in public service monitoring.

Furthermore, the studies conducted by Reinikka and Svensson (2005) in Uganda, and Di Tella and Schargrodsky’s (2003) in Argentina denote the importance of examining the dynamic behavior and sustainability of targeted transparency policies. In both cases, the policy’s effect was sustainable over the short term. However, if citizen mobilization in response to information disclosed about the misappropriation of public funds loses steam over time, and the citizens get used to the way things are again, it is foreseeable that politicians will respond by dedicating fewer resources to monitoring these programs, that the effect of the policies will be reduced over time, and that the way in which embezzlement is carried out will change (for example, reporting lower prices in hospital inputs, but at the cost of lower quality). Based on these possibilities, it is important to update the ways in which transparency is delivered, since in countries where the expected cost of violating the law is low, the actors will have incentives to find ways around transparency policies.

Table 1.7
Targeted Transparency Policies in Developing Countries: Group II

Authors	Country/Sector	Intervention	Impacts
Banerjee et al. (2011)	India/ Education	Three interventions were carried out: (i) information was provided about the parents' association, (ii) a testing system was provided parents, and (iii) training was offered for volunteers to help children with learning difficulties.	In (i) and (ii), there was no impact on citizen participation, or in the knowledge acquired by the pupils. In (iii), there was improvement in pupils' reading skills (3-8 percentage points).
Kefeer and Kemani (2011)	Benin/ Education	Increased benefits of access to education by radio broadcasts.	Politicians' behavior was unchanged, but literacy levels increased between 2.6 percent and 4.6 percent.
Jensen (2010)	Dominican Republic/ Education	Information provided about the financial returns of completing secondary education.	Increase in the return expected for attending secondary education, as well as attendance levels, by 0.2 additional years in the four years following. In low-income families the information increased the expected return, but not attendance levels.
Andrabi, Das and Khwaja (2009)	Pakistan	Information provided about the quality of primary schools and the childrens' achievements therein.	Increase of 0.10 standard deviations in knowledge acquired by pupils, as well as an 18 percent reduction in school fees.
Fitzsimons et al. (2012)	Malawi/ Health and nutrition	Information provided about child nutrition to mothers with babies under six months old.	Substantial increase in protein consumption by children, as well as improvements in children's health.
Madajewicz et al. (2007)	Bangladesh/ Health and water	Information disclosed about concentrations of arsenic in drinking water wells.	Substantial increase in the probability that individuals use uncontaminated sources of drinking water (from 8 to 60 percent).
Jalan and Somanathan (2008)	India/ Health and water	Information provided about the presence of fecal material in drinking water, and about the cost of water purifying systems.	Increased probability of using water purifying systems by 11 percentage points.

Continued

Table 1.7
Targeted Transparency Policies in Developing Countries: Group II (*continued*)

Authors	Country/Sector	Intervention	Impacts
Dupas (2011)	Kenya/ Health and AIDS	Information provided about the relative risk of contracting AIDS, depending on the characteristics of the sexual partner.	Reduced unwanted pregnancy rate by 28 percent. In particular, the rate of pregnancies caused by older men declined by 61 percent.
Cohen and Dupas (2010)	Kenya/ Health	Access to free malaria testing ensured.	Reduced purchases of anti-malaria drugs by 40 percent for those who took the test and were found to be negative.
Cairncross et al. (2005)	India/ Health	Information provided to promote good hygiene habits.	Substantial improvement in hygiene habits (washing hands with soap), sustained over the long term.
Kremer and Miguel (2007)	Kenya/ Health	Implementation of informative campaign, focused on children, about how to reduce the probability of contracting intestinal infections.	No noticeable effect, probably because it was addressed to children instead of to their parents.
Björkman and Svensson (2009)	Uganda/ Health	Nongovernmental organization trained to encourage the community to get more involved in the social monitoring of health service provision.	Social monitoring increased, as well as performance of the professionals responsible for the health service. Consequently, infant mortality decreased, and the weight of newborn babies improved.

The second group of targeted transparency policies includes the meta-analysis that evaluates the impact of these policies on the health and education sectors. This specialized literature is the most abundant, as well as the most sophisticated, in terms of identifying policy impacts. Important lessons can be drawn in this case. The first lesson relates to the conduct of citizens when faced with the possibility of participating in one of the institutional channels that exists for demanding improvements in public services. As in the case of Colombia's Auditorías Visibles, Banerjee et al. (2010) observe that the only intervention that improves performance in Indian schools is giving people the possibility of training to help them teach their children to read. The other interventions, which provide information about getting involved in school administration via the parents association, have no effect at all, because parents tend to decide against using that institutional channel to resolve the problem. This also coincides with the results that Keefer and Khemani (2011) obtained in Benin on the impact of raising awareness about the benefits of access to education. In this case, information did not succeed in making the government provide better services, but it did generate a change in family behavior, which led to an increase in literacy among their children. Once more, these studies coincide with the mechanisms emphasized in the theoretical framework. Citizens' low expectations that entities will deliver accountability prevent them from complaining through institutional mechanisms.

Jensen (2010) finds a similar result in the Dominican Republic concerning access to secondary education. Delivering information about returns to secondary education generated an increase in the number of years spent studying by pupils belonging to middle-income families, which was financed by a greater number of working hours invested by their parents. However, in the case of lower-income families, the information produced no significant change. In these cases, in order to increase the probability of success, transparency policies should be accompanied by greater access to credit, favoring lower-income families.

The second lesson concerns the substantial impact of transparency policies on peoples' health habits. This can be understood by virtue of the theoretical framework introduced in the discussion herein of the mechanisms of targeted transparency policies. In this kind of intervention, the crucial factor is presenting the information and targeting beneficiaries so that the information is useful and has an impact on behavior. If the design allows beneficiaries to understand the information, then the policies have a better chance of success, as they possess automatic coordination and do not depend on any institutional channel, but rather on changes in the conduct of each individual or family. Consequently, it is likely that these policies will function correctly in developing countries. The only policy that has failed to have an impact is the one that provides information to the children (rather than to the parents) about how to prevent intestinal infections (Kremer and Miguel, 2007). It is a well-known fact that it is harder for children to concentrate and fully grasp the consequences of their actions.

Finally, Björkman and Svensson (2009) demonstrate the importance of helping the community to monitor public officials in situations where institutions are weak and when individuals can see that participation in monitoring processes might be risky, with few possibilities of success. This might help to move from a citizens' apathy equilibrium and a self-fulfilling prophecy, to a community social monitoring equilibrium and accountability delivered by the public officials. Björkman and Svensson evaluate the impact of delivering transparency and monitoring the activities of 50 dispensaries in nine different districts of Uganda. The objective is to determine whether or not the performance of workers in the health sector improved, and if there was commensurate progress in the uptake of health services and in the population's overall health.

Local NGOs facilitated three series of meetings in the community to support the social monitoring process. First, about 150 members of the community, the most vulnerable as well as the elite, discussed the situation of healthcare services and ways to identify the steps that service providers should take in order to improve service delivery. Second, a professional staff meeting was held to compare citizens' opinions on service provision with those of the healthcare workers themselves. Finally, there was a joint meeting between members of the community and the healthcare staff, which involved a debate about patients' rights and the responsibilities of service providers.

The result was a common action plan in which agreement between the community and the service providers about what must be done, how, when, and by whom, was reached. Six months after the monitoring process was initiated, further community gatherings and meetings with healthcare workers were held to review progress and suggest improvements. A year after the first round of meetings, the village healthcare centers, when compared to the monitoring facilities, were 36 percent more likely to have a suggestions box and 20 percent more likely to have numbered the tickets in the waiting room. Likewise, there was a 12-minute reduction in waiting times, and a 13 percent reduction in staff absenteeism. This study proves that, although it is possible to use the official channels to improve public service provision, interventions must be designed to provide incentives for service providers to carry out their task.

Table 1.8
Targeted Transparency Policies in Developing Countries - Group III

Authors	Country/Sector	Intervention	Impacts
Banerjee et al. (2011)	India/ Politics	Information given to citizens about politicians' performance.	Voting participation increased by 3.6 percent, and votes for politicians with best performance increased.
Chong et al. (2011)	Mexico/ Politics	Three interventions were carried out, disclosing the following: (i) information on total expenditure, (ii) information about the distribution of resources to the poor, and (iii) information on corruption.	Interventions (i) and (ii) increased participation by 3 percent, giving credit to the incumbents; intervention (iii) reduced participation by almost 6 percent.
Humphreys and Weinstein (2012)	Uganda/ Politics/ Congress	The creation of information cards that evaluate the performance of members of parliament.	Voters use the information to update their perceptions about the candidates. Being forewarned of this system does not generate changes in the behavior of congressmen. Results of municipal audits conducted by the CGU were disclosed.
Ferraz and Finan (2010)	Brazil/ Monitoring and auditing	Results of municipal audits conducted by the CGU (Auditor General) were disclosed. Disclosure of the audit reports reduced the probability of re-election by 7 percent.	Disclosure of the audit reports reduced the probability of reelection by 7 percent.
Bobonis et al. (2011)	Puerto Rico/ Monitoring and auditing at the subnational level	Studied medium-term effects of disclosing municipal audit reports on levels of corruption.	Disclosure of the audit report results reduced corruption in the short term, but in the period following the election, corruption returned to its pre-election level.

The following focuses on the third group of studies, which address the impact of targeted transparency interventions in the political arena. In these studies, the key is citizen mobilization in response to information regarding the consequences of government policies and accountability following information disclosure. Based on the theoretical framework herein, it is predictable that this kind of transparency policy would have a lower chance of success than those that do not involve institutional channels to resolve problems. This is due to the fact that, in the case of this group of interventions, there are coordination and accountability problems that are exacerbated by the institutional volatility present in these countries.

Once more, it is possible to draw various lessons from the literature. The first lesson is that—in accordance with our theoretical framework—information disclosure does not always have the expected impact. The study by Chong et al. (2010) demonstrates that when voters in Mexico were given information about

corruption, the population responded with apathy, and fewer people turned up to cast their votes. Second, the work of Humphreys and Weinstein (2012) shows that congressmen in Uganda do not improve their performance when faced with exposure to greater transparency, nor does this transparency affect their chances of reelection. Finally, as in the case of public resources, it is important to understand the impacts of increasing the probability of auditing on the chances of reelection and the incentives to embezzle funds from the public purse.

In 2003, the Brazilian government initiated an anticorruption program in which municipalities were randomly audited by the Comptroller General Office. The main objective of the program was to reduce the misappropriation of municipal funds and stimulate civic participation in monitoring public expenditure.

Ferraz and Finan (2008, 2011) evaluate the impact on municipal election results in Brazil of publicly exposing corrupt politicians. Public disclosure of the audit reports reduced the probability of reelection of mayors in the constituencies where two or more acts of corruption were reported. The effect of disclosing information about corrupt politicians was most pronounced in those municipalities that possessed a local radio station. However, this study did not present evidence concerning the medium-term impact.

Bobonis et al. (2011) study a case in Puerto Rico that is similar to the one in Brazil, but that is focused on anticorruption measures. They observe that the disclosure of audit reports reduces corruption over the short term, but in the period following the elections, corruption increases back to levels similar to those in municipalities where no information was disclosed. These findings do not imply that targeted transparency policies that demand a response from the public sector, or another objective entity, are doomed to fail. However, this work makes it clear that these potential problems must be borne in mind. They can appear anywhere over the course of targeted transparency policy implementation, from design to intervention. Being aware of these potential problems would enable a more solid design of targeted transparency policies, leveraging the use of tools that will help achieve citizen mobilization and accountability from the public sector.

Final Remarks

Like all public policies, there is no single or best way to design and implement targeted transparency policies. The processes and characteristics of the institutional framework are key (Schelling, 1984), as is the complex operation of the market, in which actors constantly choose between imperfect alternatives (Komesar, 1994). However, Fung, Graham, and Weil's model for analyzing the effectiveness of targeted transparency policies has given rise to an interesting, although inconclusive, debate that has diverse ramifications for political science, economics, and communications, among other disciplines.

This chapter has proposed some ideas that merit re-thinking from a conceptual point of view. Specifically, it identifies the mechanisms by which targeted transparency policies operate, placing the emphasis on channels for facilitating the information users' comprehension, cooperation, and behavior change. This conceptual framework has enabled the identification of some important aspects upon which the chances of targeted transparency policy success can be evaluated, particularly in countries with weak institutional arrangements, as is the case in various LAC countries. Furthermore, it attempts to explain the reasons for possible bottlenecks in targeted transparency policy implementation, especially with regard to changes in perception and behavior by the public sector and the corporations.

On the understanding that care must be exercised with universal political schemes that supposedly operate independently of the time and place where they are adopted (IDB, 2006), some common factors have been identified that are found in a wide range of successful targeted transparency policies. Some of these

factors have been noted by Fung, Graham, and Weil (2007); for example, the recognition that: (i) not all actors or information users have the same incentives, needs, and capacities to access and use information, and (ii) although content is important, the frequency and the mechanisms by which information is disclosed are equally relevant.

Some concepts are also offered that complement the targeted transparency model, taking into account the political economy of LAC countries. This chapter has identified different scenarios or coordination games between information users and the mechanisms available to avoid undesirable effects, such as the free-rider problem. After reviewing the empirical evidence, it appeared that in cases where it is necessary to change the conduct of entities targeted by information disclosure, perceptions are just as important as these entities' responses.

In many LAC countries, citizens or information users do not believe that their complaints about public sector performance will suffice to effect a change in its behavior and resolve historical problems, such as those associated with poor-quality service delivery.¹⁶ Another important aspect for countries in the region is the recognition that targeted transparency policies represent a unique platform for implementing lesson learning and feedback mechanisms, above all in the field of public management. Thanks to their constituent elements (identification of a precise policy goal, identification of the entities with access to information shortcomings, definition of policy scope, definition of the structure and vehicle of information, and so on), these policies make it possible to find out whether the specific public policy goals targeted have been achieved or not. They also enable the investigation of the causes of success and failure. In this sense, the fundamental steps suggested for the design of policy evaluation include the following:¹⁷

- Identify the hypothesis that motivated the intervention. One suggested question is the following: how is the transparency policy expected to achieve the specific policy purpose? For example, in the case of creating transparency portals (now very much in fashion in the LAC region) it should be indicated, step by step, how transparency leads to a reduction in overpricing in public management.
- Establish an appropriate methodology for measuring the intervention's effects. For this purpose, it is crucial to first establish the counterfactual, or what would have happened to the target impact if the intervention had not taken place (for example, what would be the overprice in absence of the transparency policy).
- Develop a metric whereby each impact can be calculated. In other words: how is overpricing to be measured? Or, how is the market price to be established?

The conceptual model developed above has also given us some indication that, contrary to the majority of examples presented in Fung, Graham, and Weil (2007), in Latin America and the Caribbean, targeted transparency policies do not, or cannot, always begin from within the legislative branch. This is either

¹⁶ Citizens' distrust might have various causes. For example, they may distrust the information provided by the public sector, and if they are unconvinced by the information they receive, they will be still less inclined to change their behavior in response. This phenomenon takes place, in part, because official statistics in many countries are perceived as being co-opted by political power, or because the public sector lacks the financial or technical capacity to generate and update reliable information that would provide lessons learned and feedback for policy making.

¹⁷ For more details about the appropriate technique for rigorously evaluating transparency policies, see Gerber and Green (2012); Gertler et al. (2011), and Dufflo, Glennerster, and Kremer (2007).

because of the dynamic of “delegative democracies” or because the political careers of legislators in many countries in the region appear to depend more on the political party leadership than on the electorate. The literature indicates that targeted transparency policies in the region still have much ground to gain in the field of policy decision making, in both the public sector and the legislative branch.

In simple terms, this means that it is not good for targeted transparency policies to attempt to do more than is permitted by the institutional arena in the LAC region. This comment does not imply throwing in the towel, but rather it is intended to encourage debate about what steps are to be taken, and where to begin in order to create a viable policy. This chapter does not attempt to give direct answers to this question, but rather to identify the elements that policymakers can consider when it comes to designing a targeted transparency policy.¹⁸

Finally, as previously mentioned, a key aspect that characterizes these policies is that their implementation goes hand-in-hand with the expectation of concrete impacts in the short and medium term. Here, there is a specific link with the Open Government Partnership (OGP), whose characteristics will be examined in detail in Chapter 2 of this publication, given that, within this partnership’s framework, countries are invited to establish and monitor commitments that can be fulfilled in the short or medium term.

¹⁸ For example, an intervention by the IDB’s Transparency Fund, disclosing subsidies to the private sector in Argentina—presented in the second part of this study—suggested the need for coordination between civil society and specific public sector actors, in order to implement a database, wherein information users could find out about certain subsidies and the criteria governing their allocation. At the end of the program, it was concluded that, before the policy was designed, it was important to communicate with, and advise, the media, which performs a fundamental role, not only with regard to pushing certain topics onto the agenda, but principally as an agent that encourages citizen empowerment to use the channels through which they can demand the information that might affect their decision making.

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The efforts of open government are aimed at strengthening the democratic system, increasing citizens' trust in their political institutions, maximizing civic engagement and commitment, **and improving the quality, effectiveness, and efficiency of governments and their public administrations, based on the principles of fairness, integrity, and transparency.**

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Chapter 2

Open Government: The Route Toward a New Agenda of State Reform and Modernization of Public Management in Latin America and the Caribbean

Álvaro V. Ramírez Alujas and Nicolás Dassen¹

Introduction

In recent years, a number of countries around the world have joined an ongoing process to promote and develop strategies linked to the concept of open government. Their popularity has been gaining ground, thanks to the momentum of various government initiatives, large and small. This trend is accompanied by the emergence of a new network of connected activists and communities (so-called “netizens”) who advocate for their implementation. All of this has not come without difficulties. Placing open government on the public agenda has given rise to its own problems in terms of operational definitions. The very ambiguity of its meaning (due to the wide variety of interpretations) has broadened the debate and led to the superposition of other concepts, such as electronic government (e-Government), digital government, and good governance, thereby confusing the ends with the means, channels, and practices that sustain them.

In general, open government refers to certain principles, such as: (i) **improving transparency and access to information** via the disclosure of public information (for social monitoring and accountability purposes) and the reuse of public sector information (to promote innovation and economic development); (ii) **facilitating citizen participation** in the design and implementation of public policy (and thereby influencing decision making), and (iii) **fostering the creation of opportunities for collaboration among diverse actors**, particularly the public sector, private sector, and civil society, in order to co-design and/or co-produce public value. These efforts come under the objective of strengthening the democratic system, increasing citizens’ trust in their political institutions, maximizing civic engagement and commitment, and improving the quality, effectiveness, and efficiency of governments and their public administrations, based on the principles of fairness, integrity, and transparency. All of this comes about by creating new opportunities for institutional innovation, developing mechanisms for co-creation in public service provision, joint

¹ The authors would like to thank Alfredo González Briseño for his help in analyzing the action plans presented to the Open Government Partnership (OGP).

effort, and establishing new organizational networks and management systems oriented to fostering openness and a new form of governance in the Internet age.

In this scenario, the role of the Internet, digital technologies, and digital culture have proven vital for the current combination of elements that are redefining the concept of open government. Today, the digital environment constitutes the basic infrastructure that facilitates more fluid access to information and knowledge management. The digital culture, with its interactive models, promotes transparent, participatory, and collaborative practices. These are all necessary, but insufficient, conditions for building open governments. As never before in history, there is a need for institutional frameworks and legal bases that are adapted to the new context, more sophisticated data management systems, and a profound shift in the culture of public organizations to make the promise of open government a reality. This effort goes hand in hand with putting into practice the pillars that sustain it: transparency and openness, citizen participation and collaboration, and accountability. This chapter attempts to: (i) briefly present the concept of open government and its implications, (ii) review the Latin American experience in light of the recently created Open Government Partnership (OGP), and (iii) analyze the prospects for a new state reform and modernization agenda within the region’s public sector, outlining a frame of reference that guides efforts to promote policies based on open government as a paradigm for change and renovation for the 21st century.

Open Government: What It Is and What It Is Not? Concept, Range, and Perspectives

[Open Government] This is government that opens its doors to the world; co-innovates with everyone, especially citizens; shares resources that were previously closely guarded; harnesses the power of mass collaboration; drives transparency throughout its operations; and behaves not as an isolated department or jurisdiction, but as something new—a truly integrated and networked organization.

Don Tapscott (Lathrop and Ruma, 2010: XVI)

The debate surrounding the idea of open government is not new.² Historically, various movements have tried to promote government openness towards its citizens. If the evolution of the debate in recent years is examined, it is clear that the notion of open government includes the need for “transparent” governments that create greater access to public information and that are “accountable” in order to encourage social monitoring of public management and prevent corruption. But the matter does not rest there. Public transparency policies are oriented towards the proactive production of information and open public data in order to improve the quality of public service provision and promote better use of resources by citizens/beneficiaries. For this reason, it is not a question of simply publishing more information, but rather that there is higher quality, more useful, and more focused information so that current and potential users of the services can make better decisions. It should also be published in formats that make it more intelligible.

² The expression first appeared at the end of the 1970s in the sphere of British politics. In its original conception, it concerned diverse questions relating to government secrecy and initiatives to “open the windows” of the public sector to scrutiny by citizens in order to reduce bureaucratic opacity. At present, it has become the new hub for efforts to improve government capacities and modernize public administrations (OECD, 2010), all of which is enhanced by the possibilities latent in the Web 2.0, which facilitates the exchange of interactive and real-time information, interoperability, user-centered design, and collaboration.

There are many definitions of open government that, with some nuances, coincide in the central aspects established by the Organization for Economic Co-operation and Development (OECD).³ The OECD (2003) put forth a preliminary notion of open government as a basic platform for the establishment of solid legal, institutional, and political frameworks that govern access to information, consultation, and public participation, which contribute to improving public policy design and formulation, combating corruption, and increasing society's confidence in the public sector. The original concept and proposal alluded to the need for government and public administration to connect much more smoothly with civil society within the framework of greater citizen involvement in policy design and in promoting good governance. "To inform, consult, and involve citizens are the pillars of good government, the proper means for promoting openness, and a good investment to improve public policymaking" (OECD, 2003). Later, it would be argued that open government refers to "the transparency of government actions, accessibility to public services and information, and the government's responsiveness to new ideas, demands, and needs" (OECD, 2005).⁴ Within this frame of reference, an open government would be one in which companies, civil society organizations (CSOs), and citizens are able to "know things" (obtain relevant and comprehensible information), "get things" (obtain services from, and carry out transactions with, the government), and "create things" (participate in the decision-making process) (OECD, 2005).

For the OECD, the term has evolved from a viewpoint based on the three aforementioned dimensions, calling for **a transparent, accessible, and receptive public administration that is responsible and has the capacity to respond** (OECD/INAP, 2006), into an approach that considers it to be **a platform for resolving how government can work with society and individuals to co-create public value** (OECD, 2010). Accordingly, the OECD promotes the idea of open government on the basis of the benefits that it would bring, which are defined as follows:

1. **Establishing greater trust in government.** Trust is an outcome of open government that can reinforce government performance in other aspects. In addition, if citizens trust government or specific government policies, then they may be more willing to pay (fees, contributions, taxes) to support these policies.
2. **Ensuring better outcomes at less cost.** Co-design and delivery of policies, programs, and services with citizens, businesses and civil society offers the potential to tap a broader reservoir of ideas and resources.
3. **Raising compliance levels.** Making people part of the process helps them to understand the stakes of reform, and can help ensure that the decisions reached are perceived as legitimate.

³ An interesting definition is the one found in the first book written in Spanish about the subject (Calderón and Lorenzo, 2010: 11): "An open government is one that ensures constant conversation with its citizens in order to hear what they say and want, takes decisions based on their needs and preferences, facilitates collaboration between citizens and civil servants in developing the services that it offers, and communicates everything that it decides, and does so in an open and transparent manner."

⁴ At present, there are legal frameworks regarding the idea of open government in the majority of OECD member countries, and among them the following aspects, at least, are reflected: (i) legislation concerning access to information and press freedom; (ii) legislation about privacy and data protection; (iii) laws concerning administrative procedures; (iv) legislation regarding ombudsmen; and (v) laws regarding the Supreme Auditing Institutions (SAIs) (OECD, 2010). This list, however, should be broader and more detailed, and should include rules regarding administrative management and the use of technology in public administration; decentralization of public services; administrative procedures for implementing consultative and participatory processes with civil society; regulations on e-Government, digital signatures, and the different management monitoring agencies with specific powers in terms of public integrity, prevention, and monitoring of corruption; and regulatory frameworks for public services.

4. **Ensuring equity of access to public policymaking by lowering the threshold for access to policy-making processes** for people facing barriers to participation.
5. **Fostering innovation and new economic activity.** Public engagement and open government is increasingly recognized as a driver of innovation and value creation in both the private and public sectors.
6. **Enhancing effectiveness by leveraging knowledge and resources of citizens who, otherwise, face barriers to participation.** Public engagement can ensure that policies are better targeted and address the needs of citizens, eliminating potential waste.

From this perspective, open government is a multifaceted public policy aimed at improving transparency and accountability in public administration, and favoring the creation of specific opportunities for participation by, and interaction with, citizens. This endeavor enshrines the commitment to promote the following:

- Transparent and accessible government (meaning that the actions of public leaders and institutions are under public scrutiny and can be challenged, and that citizens can have access to understandable information, obtain services, and carry out transactions any time and anywhere).
- Responsible government that is accountable for its actions and omissions.
- Sensitive and responsive government (in terms of consultation, participation, and interaction with citizens and their demands).

This would have a direct impact on at least three levels:

- **Democratic legitimacy.** An open government clarifies and strengthens the contractual relationship between governors and the governed.
- **Social pact.** An open government helps to ensure that decisions that might be considered, a priori, to be “unpopular” are better received and understood by society, which would reduce their negative impact in terms of social coexistence.
- **Economic development.** An open government contributes to enhancing economic development by promoting intelligent and innovative public expenditure, and by reducing privileged access to information, thus facilitating a free and fair market.

In summary, all aspects of the ways in which government and public services operate should be open to effective public scrutiny and supervision by society (transparency), and the authorities must be responsible and accountable to the citizens, particularly in preventing and combating corruption. This must be accompanied by a progressive expansion of opportunities for dialogue, participation, and deliberation with the citizenry. Collaboration is critical in order to find better solutions to more significant public problems and to make full use of the potential and energy available and dispersed throughout society and in the market, as well as in voluntary and nonprofit organizations (Ramírez-Alujas, 2011).

Open Government in Practice: Its Principal Ingredients and Aims

Presently, the United States is on the cutting edge of progress on open government. Following the enactment of the Memorandum on Transparency and Open Government, issued on January 21, 2009, President Barack Obama gave fresh impetus to the movement, with the intensive use of technology as a catalyst for efforts to advance government openness with respect to the challenges of the new millennium. The three basic pillars (Obama, 2009) that support this new approach are the following:

- 1. Transparency.** A transparent government provides information about what it is doing, about its action plans, its data sources, and everything that might make it more responsive to society. This fosters and promotes the administration's accountability to citizens and permanent social monitoring.
- 2. Participation.** A participatory government promotes the citizens' right to actively collaborate in public policymaking, and enables the government to use the knowledge, ideas, and experience of its citizens. It promotes the creation of new opportunities for engagement and involvement of citizens in public affairs.
- 3. Collaboration.** A collaborative government commits and involves its citizens and other social agents in the effort to work together to resolve national problems. This presupposes cooperation and coordinated actions, not just by members of the public, but also by associated enterprises and other agents. Likewise, it benefits from crosscutting inter-administration partnerships, as well as partnerships between administrations and civil servants

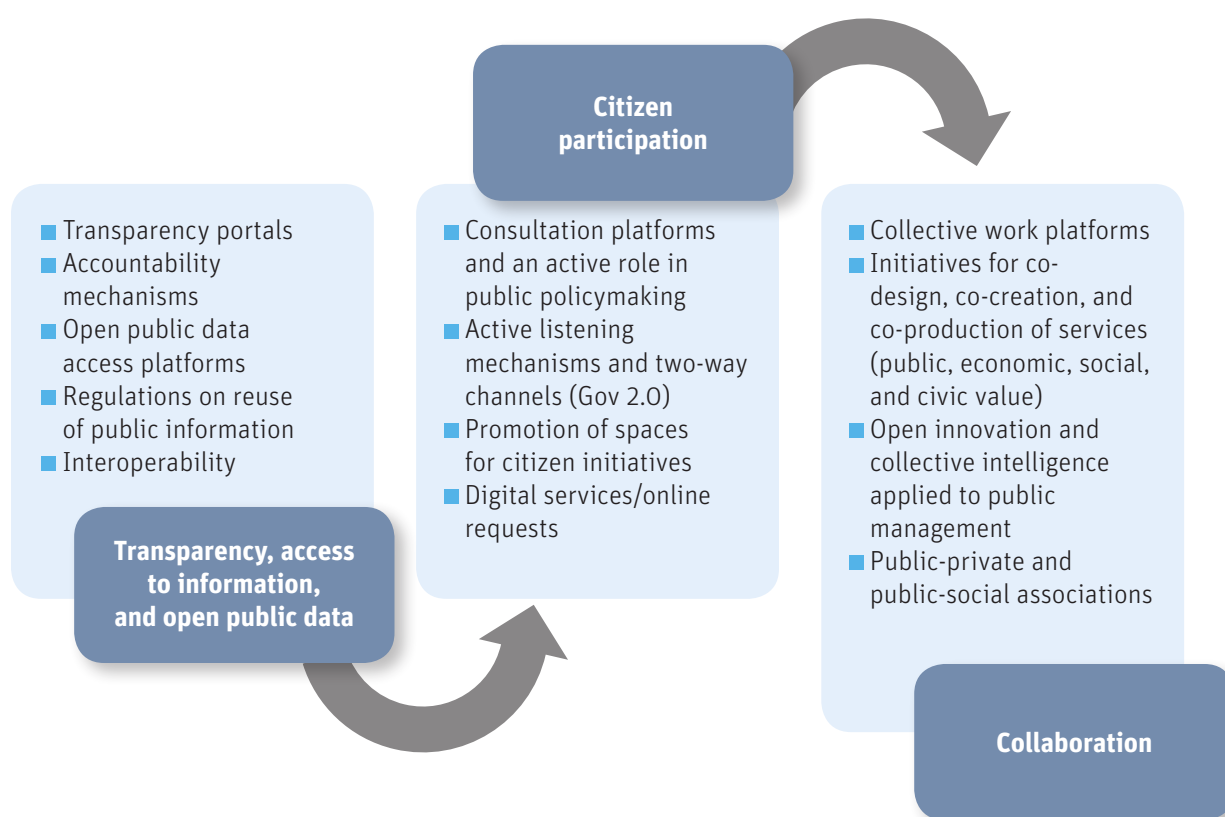
In practical terms, and in order to define these principles, the strategies of open government have steadily crystallized into two fundamental pillars:

- 1. The use of open data.** On the one hand, the government promotes innovation by using or reusing public data as a catalyst for new applications and services, thereby transforming service-providing governments into platform managers (enabling other entities and/or users, using the liberated data, to create new Internet applications, generate new economic activities, and add public value). On the other hand, the public regains control of its own data, thereby increasing transparency, accountability, and permanent public scrutiny.⁵
- 2. Open processes and the use of social networks (also known as Government 2.0).** Social networks facilitate communication and participation, utilize the knowledge and experience of members of the public to help in policy design and public service provision, and increase collaboration (networking) within and between public administrations, and beyond. This can be seen in what we might term "open decision making" (participation) and "open service provision" (collaboration).

⁵ In addition to the "raw" format, which allows downloading of software programs in machine-readable form, the open data portals can accomplish the following: enable advanced searches to be made; allow for electronic notifications to be sent whenever the database is updated; enable links to be created with other data combinations (so-called mashups); encourage discussion forums and wikis (blogs, micro-blogs, social networks to be created, and photos and videos shared); and further develop visualization tools for identifying greater patterns or trends and programs able to analyze a vast amount of data or create collaborative filters and so-called crowdsourcing analysis (segmenting the database so that different people can analyze it or discovering user interest by knowing what part of the database was clicked on). For more details, see Robinson, Yu, and Felten (2010).

This frame of reference has served as an example for many different countries to begin to adopt similar parameters on the path toward constructing a model of open government that adapts to the realities in each society. Under this approach, although the three outlined principles are interdependent and intimately intertwined, a progression could be proposed by which transparency, access to information, and open data could constitute the essential ingredients for promoting citizen participation and, thereafter, for sustaining opportunities for collaboration and the co-creation of public value (Figure 2.1). On the basis of an open government, a development ecosystem can be proposed that links the three principles and the elements that constitute its being put into practice (Figure 2.2).

Figure 2.1
The Principles of Open Government in Action



Source: Authors' elaboration.

On the basis of an open government, a development ecosystem can be proposed that links the three principles and the elements that constitute its being put into practice (Figure 2.2).

Figure 2.2
Open Government Development Ecosystem



Source: Authors' elaboration.

Open Government: What Is It Not? Beyond Electronic Government Strategies

The concept of open government is frequently linked to the evolution and development of e-Government strategies in recent years. Although there is a relationship between the two terms, it is important not to confuse the means with the ends. By definition, the concept of e-Government refers to facilitating, via the use of information and communications technology (ICT), access by civic organizations and government to information, services and/or dialogue with the government, at all hierarchical, organizational, and territorial levels (Pryme/Promoges, 2003).

Based on the Ibero-American Charter on Electronic Government, until recently, e-Government relies on the use of ICTs within administrative organs to improve information and service provision to the public, to increase the effectiveness and efficiency of public management, and to substantially increase transparency and citizen participation in the public sector (CLAD, 2007: 7). Although e-Government, as a strategy, favors increased transparency in administration by facilitating smoother and more expeditious and accessible operations for citizens and endowing them with greater control over their transactions and official business, it does not solve the outstanding issue of broadening opportunities for participation and collaboration, nor does it offer the option of profound changes in the paradigm of how modern public bureaucracies have traditionally been sustained. It does not focus on rethinking public management, but rather on automating processes that have a visible impact by making life easier for the citizen in his or her relationship with public services. That is the end of its mission. For advocates of open government, however, technology is a medium that favors the promotion and definition of changes, but its substantial meaning lies in the profound transformation of the historic relationship between the rulers and the governed, and calls for a paradigm shift that guarantees openness, transparency, participation, and collaboration.

This is no trivial matter, given that in many cases the trap of e-Government is found in the simple seduction of intensive (and adequate) use of ICTs, per se, in public organizations. Its reach is limited to the mere introduction of technology to do the same things as before, only more conveniently, such as digitalizing bureaucracy. What was previously a transaction requiring one's presence at a window is now transformed into an online form on a screen, without changing the underlying practices or the organizational culture which, imperceptibly for the citizens, shields the senior managers or those responsible for decision making. Therefore, e-Government does not decidedly tackle the genuine transformation of the relationship between administrations, citizens, companies, nonprofit organizations, and social agents in general. This phenomenon might lead to a situation where, in more than one case, the incorrect is being done more efficiently (Ramírez-Alujas, 2010).

E-Government strategies rest on the almost mechanical application of technological tools in public services, in order to improve processes and services from the instrumental perspective, from the inside out, unilateral and generally "closed," where the citizen continues to be only a final user/beneficiary and a passive spectator of what is on offer from the administrative apparatus. In contrast, open government operates from a much wider dimension, which, although it also rests on this kind of effort, aspires to a paradigm shift based on openness and beyond. In other words, e-Government occurs (preferably) on the inside of public services, and the point of contact with the outside is the window, generally digital (the institutional website). Open government, however, resides in the ideas of a platform, so that other agents from across the boundaries can contribute to the creation of public, economic, and social value.

The only point that the two concepts share has to do with the use of technology. Whereas electronic government operates on an instrumental and operational plane (means), open government responds to the legitimate aspirations of citizens to change the form and the substance of interaction with their governments, on a political and strategic plane, and thereby to be able to contribute to strengthening and improving democratic systems (ends). This has to do with civic culture, values, commitment, and responsibilities,

issues that go far beyond any reductionist approach. This is sustained in the progressive creation of new democratic practices and innovations linked to the building of meeting spaces and interaction and collaborative work between authorities, public officials, and citizens.

OGP: A New Global Agenda for Transforming the State

In all parts of the world, we see the promise of innovation to make government more open and accountable. And now, we must build on that progress. And when we gather back here next year, we should bring specific commitments to promote transparency; to fight corruption; to energize civic engagement; to leverage new technologies so that we strengthen the foundations of freedom in our own countries, while living up to the ideals that can light the world.

President Barack Obama,
speech before the United Nations General Assembly,
September 23, 2010

The OGP is a new global effort aimed at pushing the boundaries in the improvement of government performance and quality. Its foundations lie in the fact that citizens desire more transparent and effective governments that are accountable, with institutions that energize popular participation and respond to society's needs and aspirations. The OGP is therefore configured as a multilateral initiative, oriented toward facilitating definite government commitments, promoting transparency, augmenting citizen participation in debate and decision making in public affairs, combating corruption, and taking full advantage of the new technologies to enhance democratic governance and the quality of public services.

Inspired by a pluralistic, collaborative, and inclusive spirit, this initiative has a steering committee composed, in equal numbers, of governmental representatives and CSOs (OGP, 2011). This system of co-leadership has given the CSOs unprecedented influence in this kind of initiative, compared to the range of mechanisms that monitor implementation of conventions on human rights, the environment, corruption, or anti-money laundering initiatives. Furthermore, the CSOs share the presidency within this committee, which is composed of two representatives from government and one from the CSOs. All of this entails co-responsibility for designing the partnership's strategic guidelines, in consultation with the countries within the framework of their action plans, and to officially liaise with the media and public opinion, in general, in order to report on the OGP's progress and implementation of the commitments included in these plans. From civil society, moreover, a network of contacts is coordinated, known as the OGO Network, which links the offer of open government-related services by the private sector and other CSOs, and the international community, to the demands of governments. In this context, in order to join the OGP, participating countries must confirm their willingness to comply with the following four common expectations that underpin it:

- Sign the Open Government Declaration and ratify it at the highest level.⁶
- Assume definite commitments, by drafting and implementing a national action plan that goes beyond the country's current practices, that must be developed via a process of consultation with the multiple interested stakeholders and with the active participation of citizens and civil society.

⁶ For more details, consult the OGP's Open Government Declaration (September 2011), of which the four principal pillars are: (i) increase the availability of information about government activities, (ii) support citizen participation, (iii) apply the highest standards of professional integrity throughout all administrations, and (iv) widen access to the new technology for openness and accountability.

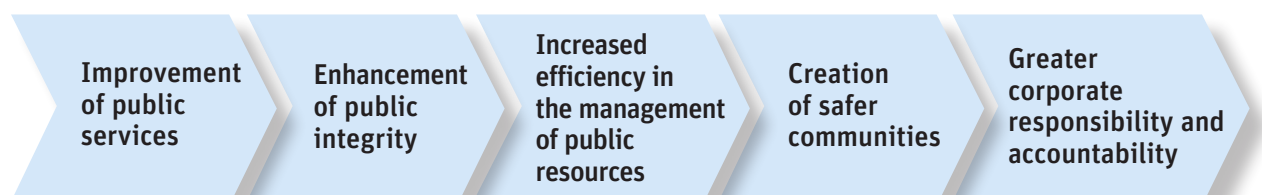
- Commit to drafting an evaluation report, by an independent panel of experts, examining the country’s progress in fulfilling its commitments and its action plan.
- Contribute to the promotion of open government in other countries through the exchange of best practices and technical expertise, technology, and resources, among other inputs.

The Five Major Challenges of the OGP

The OGP commitments are aligned around a set of five major challenges facing governments (Figure 2.3). In the first year, member countries are asked to choose at least one of these major challenges and to develop specific commitments to resolve it.

Figure 2.3

The Five Major Challenges of the OGP



Source: Adapted from OGP (2011).

Each of these challenges implies undertaking diverse tasks and actions, which include the following:

- 1. Improvement of public services.** Promote improvement and innovation in service delivery and management of the wide range of public services offered to the population (health, education, justice, potable water supply, electricity supply, and telecommunications, among other services).
- 2. Enhancement of public integrity.** Make efforts to advance in the field of public ethics; prevent and combat corruption; allow access to information; effect financial reforms; and promote and consolidate the freedoms of civil society and the media.
- 3. Increased efficiency in the management of public resources.** Use budgetary resources rationally, both for internal and external financing; exploit and conserve natural resources.
- 4. Creation of safer communities.** Make progress on matters of public safety; respond to natural disasters, environmental risks, and civil protection needs.
- 5. Greater corporate responsibility and accountability.** Promote corporate responsibility on issues such as the environment, consumer protection, community participation, and the fight against corruption.

At the same time, all of the commitments to be included in the action plan must reflect and be guided by four central principles of open government:

- 1. Transparency.** Information regarding government decisions and business must be open, comprehensive, timely, free, and easily accessible to the public. This supposes that public data must comply with commonly recognized standards and parameters, such as availability in raw form, susceptibility to processing, accessibility via technological and communications tools, and others.
- 2. Citizen Participation.** Governments must try to engage and involve citizens in the public debate, offering the appropriate channels (providing information and opportunities for consultation) and through contributions that lead to a more effective, innovative, and responsive government that meets the needs of society.
- 3. Accountability.** Presupposes the existence of regulations, procedures, and mechanisms whereby public servants can justify their actions, respond to any requirements and/or criticism made of them, and admit responsibility for their actions and omissions whenever they deviate from the regulations or the agreed commitments.
- 4. Innovation and Technology.** Governments should provide citizens with increasingly open access to new technology, and understand the key role that they play in innovation, as well as the importance of increasing citizens' capacity to use them.

The OGP in the Latin American Context

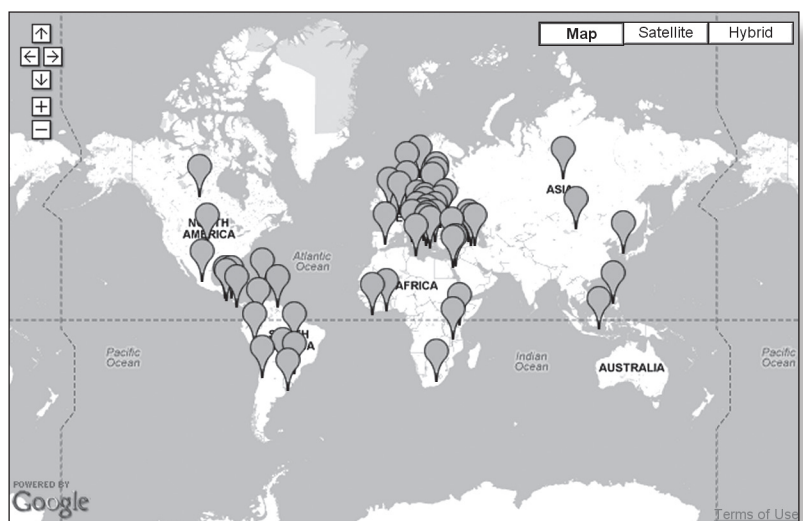
The summons and the call to integrate the principles of open government have had an unexpected response, awakening enthusiasm and obtaining good reception in the region. Of the 55 countries (Figure 2.4) that currently make up the OGP, 14 are in Latin America and the Caribbean (LAC) region.⁷ At present, nine of them have action plans and agreed commitments, the first-phase analysis of which is due to be carried out shortly, whereas the other five are in the development, definition, or formalization phase.⁸

⁷ Of the 55 countries that signed on to the initiative, 25 have already assumed specific commitments through their action plans and are in the execution phase, whereas 20 others are developing their action plans, subject to fulfillment of the OGP's eligibility requirements and criteria. For more details, see OGP (2012).

⁸ The countries with an action plan currently in the execution phase are Brazil, Chile, Colombia, the Dominican Republic, Guatemala, Honduras, Mexico, Peru, and Uruguay. El Salvador and Paraguay are at an intermediate point as, although they are listed as being in the "development phase" of their commitments, they have already published their draft plan on the OGP website. Finally, the countries still in the formulation phase are Costa Rica, Panama, and Trinidad and Tobago.

Figure 2.4

Commitments by Countries within the OGP Framework



Source: OGP (2012).

This first account illustrates the relative importance that governments have assigned to the idea of open government within the LAC context. However, the specific initiatives, commitments, and activities in the action plans currently in the execution stage are worth investigating in greater detail in order to form a crosscutting, reliable, and comparable view of the efforts being undertaken and the possibilities of creating opportunities for collaboration and cooperation between countries. This exercise must take into account the fact that this is a field lacking definitive answers, where experimentation with various strategies and provisions have been carried out and whose impact has yet to be evaluated.

The Roadmap to Open Government in Perspective: Action Plans, Commitments, and Initiatives in the LAC Region

There have been 11 action plans already published, including formalized commitments and draft plans that are available on the OGP website. The contents can be broken down in order to define a taxonomy of initiatives that, according to information set out in each, enables them to be grouped together within the five strategic pillars or challenges that the OGP has defined for drafting national commitments (Table 2.1). It is important to point out that this analysis is a snapshot of the present moment, given that the action plans are conceived as “living documents,” and their operational details can be broadened or modified at any time by the countries, respecting the medium- and long-term strategic vision that guides each OGP member country to where it wishes to go.

Table 2.1

Overall Summary of Open Government National Action Plans and Initiatives in Latin America (within the OGP Framework)

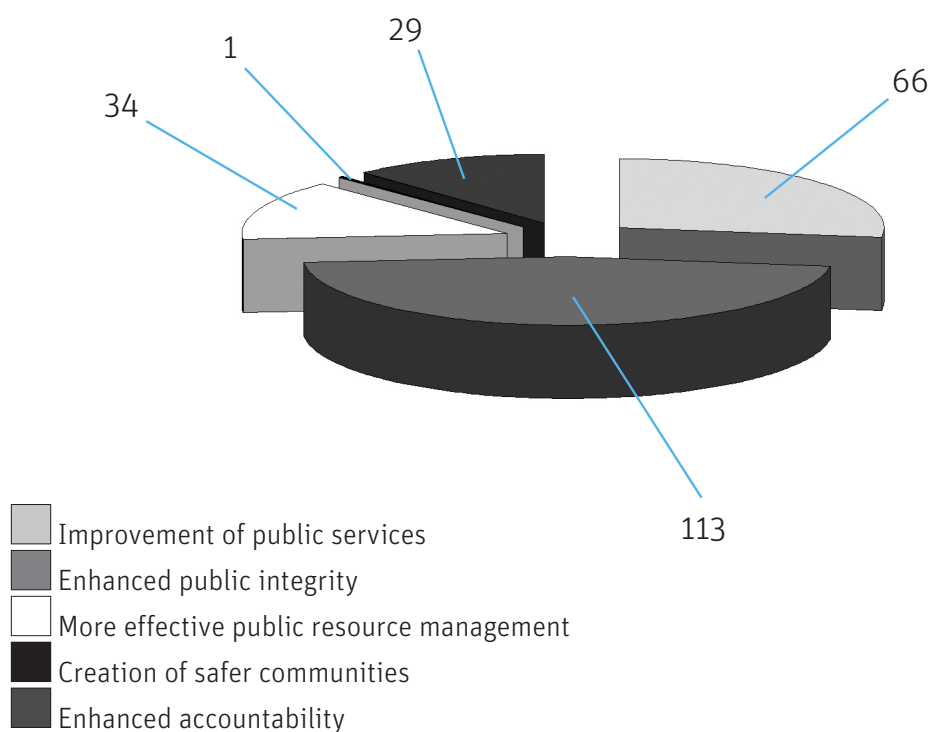
Country/number of initiatives in the action plan	Major Challenges for Open Government (Number of initiatives per sphere of application present in OGP action plans)				
	Improvement of public services	Enhancement of public integrity	Increased efficiency in the management of public resources	Creation of safer communities	Greater corporate responsibility and accountability
Brazil (32)	4	22	5	--	1
Chile (19)	4	11	--	1	3
Colombia (27)	8	13	6	--	--
Dominican Republic (24)	7	12	2	--	3
El Salvador (21)	9	10	--	--	2
Guatemala (3)	--	1	2	--	--
Honduras (20)	7	6	7	--	--
Mexico (19)	4	9	3	--	3
Paraguay (15)	7	4	4	--	--
Peru (45)	9	19	--	--	17
Uruguay (18)	7	6	5	--	--

Source: Authors' elaboration based on a breakdown of the action plans, OGP (2012).

Breakdown of the Action Plans: Efforts to Promote Open Government in the LAC Region

According to the data presented in Table 2.1, an aggregate value can be assigned to the focus areas toward which the 11 sample countries have oriented their initiatives and commitments, in relation to the challenges put forth by the OGP. This might provide some idea of the needs, priorities, and available capacities (in relative terms) found in the Latin American OGP member countries for adequately ensuring compliance with these action plans. In Figure 2.5, it is noteworthy that of the 243 initiatives contained within the 11 action plans of the countries analyzed (herein termed “the regional agenda of open government”), 113 have to do with commitments about public integrity (approximately 46 percent) and 66 with improving public services (27 percent). Both challenges are seen to be the region’s preferred options of all those contained in the declaration roadmap. On the other hand, but just as importantly, the themes relating to effective management of public resources and enhancing accountability appear to be quite balanced, with 34 commitments (14 percent) and 29 initiatives (12 percent), respectively.

Figure 2.5
Breakdown of the Commitments to Open Government by Strategic Pillar (Major Challenges) Present in OGP Action Plans in the LAC Region, according to Number of Initiatives



Source: Authors’ elaboration, based on a breakdown of the action plans, OGP (2012).

It is important to note the degree of dispersion, diversity, and focus with which each country has drafted its respective action plan. In some cases, the commitments are presented as regulatory initiatives, either with regard to the formulation and approval of laws or other legal provisions, or their reform or implementation (above all, in terms of access to information and transparency, public integrity, and the fight against corruption, fiscal monitoring, etc.). As a counterpoint, in other cases the plans are **excessively operational or incremental**, and are aimed at promoting technological changes through a wide range of e-Government initiatives, e-services, or public data portals. Others announce their commitments **without providing details**, omitting, for example, what is actually to be done, or not identifying the people responsible, the estimated deadlines for compliance, or the goals and indicators for evaluating progress and results. In spite of this heterogeneity, however, it is possible to select a sample of initiatives for each sphere of application that will permit examination under equivalent terms of reference and in accordance with the set of ideas on open government presented in this paper. Table 2.2 presents a sample of those important initiatives undertaken with the OGP conceptualization in mind, such as improvements in public services, in which distinct portals aimed at the same objective stand out (e.g., portals for open data, transparency, or public services).

Table 2.2

Synthesis of Major Initiatives by Sphere of Application in the National Action Plans

Country	Improvement of public services	Enhancement of public integrity	Increased efficiency in the management of public resources	Greater corporate responsibility and accountability
Brazil	<ul style="list-style-type: none"> - Supervisory Panel and Integrated Monitoring System (Panel de Control y Sistema Integrado de Seguimiento) - Guide to Public Services Portal Portal (Guía de Servicios Públicos) 	<ul style="list-style-type: none"> - Model for organizing services providing access to information - Publication of public data catalogue - Restructuring of the transparency portal, based on open data principles - Development and implementation of the Open Data National Infrastructure Plan (Plan de Infraestructura Nacional de Datos Abiertos) 	<ul style="list-style-type: none"> - Capacity building and access to information - Transparency portal: citizen access to information about federal budget, increased execution, transparency, and monitoring of public expenditure - ICT Services Contracts Management (Gestión Contractual de los Servicios de TI) 	<ul style="list-style-type: none"> - Implementation of the Business Ethics Register (Registro Mercantil Pro-Ética) to showcase companies that invest in ethics, integrity, and corruption prevention

Continued

Table 2.2
 Synthesis of Major Initiatives by Sphere of Application in the National Action Plans (*continued*)

Country	Improvement of public services	Enhancement of public integrity	Increased efficiency in the management of public resources	Greater corporate responsibility and accountability
Chile *	<ul style="list-style-type: none"> - “Chile Atiende”: state multiservice network - Interoperability framework - Open Government (and Open Data) Portal - Digital identity 	<ul style="list-style-type: none"> - Improvement of Access to Public information Law (Ley de Acceso a la Información Pública) - Draft legislation on Integrity in Public Service (Ley de Probidad en la Función Pública) - Transparency portal 	----	<ul style="list-style-type: none"> - Promotion of citizen participation - Draft legislation on community referendums - Project to reform the citizens’ initiative law
Colombia	<ul style="list-style-type: none"> - E-Government - Open data - Public service regulations to promote transparency and improve service provision for citizens 	<ul style="list-style-type: none"> - Access to Public Information Law - Redesign of government website - Transparency policy and the Anticorruption Plan/Observatory (Plan/Observatorio de lucha contra la corrupción) - Consolidation of the National Citizen Participation Policy “Glass Ballot Box” (Política Nacional de Participación Ciudadana/la “urna de cristal”) - Municipal pilot plans 	<ul style="list-style-type: none"> - Improve the economic transparency website and public procurement mechanisms - Online fiscal monitoring, scrutiny of public investments 	--
Dominican Republic **	<ul style="list-style-type: none"> - Portal for State Service Provision (Portal de Servicios del Estado) - Sector-Based Single Window Systems (Sistemas de Ventanilla Única Sectoriales) - Punto Gob. portal and interoperability standards 	<ul style="list-style-type: none"> - Presidential Balanced Scorecard (BSCP) - Open data portal - Administrators for access to public information and personal data 	<ul style="list-style-type: none"> - Procurement Transaction Portal (Portal Transaccional de Compras) - Institutional evaluation system - Treasury Single Account System (Sistema de Cuenta Única del Tesoro) 	<ul style="list-style-type: none"> - Internal/external auditing and monitoring system - Legal creation of participative anticorruption initiative - Citizen participation in drafting regulations

Table 2.2
Synthesis of Major Initiatives by Sphere of Application in the National Action Plans (*continued*)

Country	Improvement of public services	Enhancement of public integrity	Increased efficiency in the management of public resources	Greater corporate responsibility and accountability
El Salvador	<ul style="list-style-type: none"> - Inauguration of information and public service bureaus - Citizen monitoring of public services. - Single portal for Targeted Transparency 	<ul style="list-style-type: none"> - Reform of the Ombudsman Law (Ley del defensor del pueblo) - Publication of users' rights charters - Implementation of integrity agreements - Inauguration of the fiscal transparency portal. - Publication of the priority project catalogue 	--	<ul style="list-style-type: none"> - Improve quality of accountability exercises (institutional culture and irrevocable government commitment) - Expansion of accountability exercises by the departmental management cabinets
Guatemala	--	<ul style="list-style-type: none"> - Monitoring and transparency, through implementation of various initiatives in the construction sector, the extractive industries, etc. 	<ul style="list-style-type: none"> - Implementation of the Results-Based Management Evaluation System (Sistema de Evaluación de Gestión por Resultados) (GpR) - Strengthening of monitoring of public credit 	--
Honduras	<ul style="list-style-type: none"> - Great National Agreement (Gran Acuerdo Nacional) on public expenditure - Cooperation Agreements (Convenios de Cooperación) and the Project e-Regulations Honduras: a portal for transparency and simplification of administrative transactions - Joint evaluations with CSOs of fiscal management and public services 	<ul style="list-style-type: none"> - Promotion of compliance with the Transparency and Anticorruption Plan (Plan de Transparencia y Lucha contra la Corrupción) - More efficient monitoring mechanisms and strict application of penalties regarding access to information - Draft legislation Internal Monitoring Law (Ley de Control Interno) - Integral Anticorruption Policy (Política Integral Anti-corrupción) 	<ul style="list-style-type: none"> - Disclosure of information about public finances (open budget) - Citizen empowerment strategy regarding budgetary information. - Framework agreements on public procurement - Extension of decentralization 	--

Continued

Table 2.2
 Synthesis of Major Initiatives by Sphere of Application in the National Action Plans (*continued*)

Country	Improvement of public services	Enhancement of public integrity	Increased efficiency in the management of public resources	Greater corporate responsibility and accountability
Mexico	<ul style="list-style-type: none"> - Citizen evaluation of 300 procedures and services - Redesign of government portal - Integration of processes (interoperability and open data) - Public digital goods 	<ul style="list-style-type: none"> - Disclosure of socially useful information - Strengthening of budgetary transparency - Transparency commitments in important sectors 	<ul style="list-style-type: none"> - Improvement of Public Treasury System (Sistema de Hacienda Pública) - Development of a National Auditing System (Sistema Nacional de Fiscalización) - New Public Tenders System (Nuevo Sistema de Contrataciones Públicas) 	<ul style="list-style-type: none"> - Business integrity and disclosure of corporate information - Promotion of the design and implementation of self-regulatory mechanisms, and corporate integrity
Paraguay **	<ul style="list-style-type: none"> - Governmental representation portal - Local e-Government/e-healthcare - Integrated Procedures and Information Management System (Sistema Integrado de Gestión de Trámites y de Información) 	<ul style="list-style-type: none"> - Integrated Complaints System (Sistema Integrado de Denuncias) - Internet portal for compliance with anticorruption regulations 	<ul style="list-style-type: none"> - Tenders and procurement management system by e-catalogue - Standard model for internal monitoring 	<ul style="list-style-type: none"> - Creation of permanent dialogue with civil society

Table 2.2
Synthesis of Major Initiatives by Sphere of Application in the National Action Plans (*continued*)

Country	Improvement of public services	Enhancement of public integrity	Increased efficiency in the management of public resources	Greater corporate responsibility and accountability
Peru	<ul style="list-style-type: none"> - Promote progressive disclosure of open data between public agencies - Digital agenda and closing the digital gap - Interoperability platform - Procedural simplification (digital/online) 	<ul style="list-style-type: none"> - National Anticorruption Plan (Plan Nacional de Lucha Contra la Corrupción 2012-2016) - Strengthen the Supreme Anticorruption Committee (Comisión de Alto Nivel Anti-corrupción or CAN), the National Grievance Response System (Sistema Nacional de Atención de Denuncias, or SINAD), and the National Civil Service Authority (Autoridad Nacional del Servicio Civil, or SERVIR) 	--	<ul style="list-style-type: none"> - Provide user-friendly, updated, and easily understood information - Transparency Standards Portals (Portales de Transparencia Estándar) - Diverse mechanisms aimed at improving access to information and the use of technologies to build capacities, etc.
Uruguay	<ul style="list-style-type: none"> - Online procedures and services - Electronic citizen funds and technology (e-Government) - Digital Single Windows (Ventanillas Únicas Digitales) - New government services portal 	<ul style="list-style-type: none"> - Strengthening culture of transparency: Access to Public Information Unit (Unidad de Acceso a la Información Pública, or UAIP) - National Transparency Prize (Premio Nacional de Transparencia) - Creation of the public data platform - E-Participation - Digital Literacy Plan (Plan de Alfabetización Digital) 	<ul style="list-style-type: none"> - Creation of public procurement agency - Electronic register system - National Public Software Portal (Software Público Nacional) 	--

Source: Authors' elaboration based on a breakdown of the action plans, OGP (2012).

* Given that only Chile has presented a commitment in the area, "Creation of Safer Communities" (via the initiative Citizen Participation in the Environment (Participación ciudadana en materia medioambiental), this component has been omitted from the table to facilitate comparative analysis between the strategies and action plans of the different countries in the sample.

** In the case of the Dominican Republic and Paraguay, the different initiatives were grouped under the criterion corresponding with one or other of the five OGP challenges, given that the commitments were not classified that way in their respective action plans.

Comparative Synthesis and Overall View of the Potential for Progress for Open Government Strategies in the LAC Region

By observing and contrasting the initiatives defined as important in the action plans of the 11 Latin American countries analyzed in the sample, certain common patterns regarding strategies emerge that, with minimal differences, are consistent with similar approaches to the objectives and challenges set out by the OGP. First, a greater relative weight is detected in initiatives associated with strengthening and enhancing public integrity (113 in total). Here, the breakdown follows, in general terms, objectives to improve units, regulations, and processes of access to public information, and to strengthen pro-transparency initiatives and instruments (ownership and interests, anticorruption policies and integrity pacts, and—what seems most auspicious, as it is a novelty in the region—targeted transparency or socially useful policies). Second, there is a strong bias towards initiatives that enable improvements in public services and amenities (66 in total), above all from the e-Government approach in its multiple dimensions. Notwithstanding, the idea of open government, although it is directed towards the use of technological platforms and tools, and the intensive use of digital social networks (so-called Government 2.0), it cannot be reduced to a mere strategy circumscribed by the concept of e-Government. Both initiatives are important but differ in their origin, meaning, and social impact. Finally, there is a certain balance between initiatives designed to achieve more effective public resource management (34 in total) and those whose primary objective is to improve corporate accountability and responsibility (29 in total).

In the first case, most actions are based on improving fiscal transparency and public procurement mechanisms, results evaluation, fiscal monitoring, and oversight of public expenditure by citizens. This makes the information about budget execution more accessible and understandable and, in some cases, includes technological components that foster the efficient use of resources and generate savings (electronic registers and the use of open-source software, respectively). In the second case, and in a much more timid and dispersed manner, there are a number of initiatives in which accountability, corporate responsibility, and participation are crosscutting themes. The idea is to institutionalize the accountability mechanisms in particular (within the public sphere) on the basis of a new culture of transparency that might extend similar behaviors and practices to the private sector. However, some action plans put forward interesting initiatives, such as the design, implementation, and promotion of self-regulatory mechanisms for corporate integrity, and fostering practices that enhance access to information under similar criteria as those demanded for the public sector (Mexico), or registers recording the practices of companies that invest in ethics, integrity, and corruption prevention (Brazil). Furthermore, another kind of action exists, which is linked more to the creation of opportunities for intermediation and citizen participation in public affairs and other related matters (Chile, El Salvador, and Peru).

This is one of the least explored territories within the pillars that relate to open government. Additional efforts are therefore needed to generate frames of reference that are adaptable to a variety of national realities, as well as a certain standard model that enables attractive initiatives, which are viable and sustainable over time, to be promoted. Moreover, by specifically including the private sector, a more integrated view of open governance can be configured (Fung and Weil, 2010). Opportunities are created for the government and its institutions (the state), civil society, and the private sector to join forces and share responsibilities in order to provide information and jointly promote the common good.⁹

⁹ In the words of Tapscott and Williams (2011), the five principles of the new scenario presuppose a crosscutting effort by all actors in the spheres of: (i) collaboration (rather than hierarchy), (ii) openness and transparency, (iii) interdependence, (iv) sharing of intellectual property and, (v) integrity. In similar terms, Fung and Weil (2010) discuss extending, in the future, the need to demand more information from the giant corporations, such as those that affect peoples' daily lives in matters relating to mortgages, food, the environment, or with regard to transport reliability and safety.

One common denominator present in the majority of the action plans is the design and implementation of open data portals and catalogues. This should come as no surprise, as in a recent analysis (Iglesias, 2012), it was reported that, of the 55 OGP member countries, 28 explicitly promise open public data as an essential plank of their open government strategies. This is the catalyzing hub that enables transparency and accountability to be increased. It also favors innovation and the co-creation/co-production of services and new facilities for public use, using technologies and reusing public data and information. Brazil, Chile, Colombia, the Dominican Republic, Mexico, Peru, and Uruguay have initiatives underway and projects either announced or at the formation stage and close to implementation. One thing that clearly stands out is the abstract and nonspecific wording of the action plans and their initiatives. The majority of them, except for some notable examples, use excessively formal, normative and/or technical language to explain the measures and commitments undertaken. This is inconsistent with the idea of their being *designed with the citizens in mind*, as it inhibits comprehension and the direct commitment of those who are meant to be the recipients of the potential benefits and who are asked to participate, get involved, and collaborate—the citizens. This is rather paradoxical, since in order for the plans to be drafted, civil society has to be consulted. One might conclude that the consultative processes are reduced, in some cases, to a mere formality, or that the countries are in a hurry because of the deadline set for presentation to the OGP.

With regard to the remaining action plans, some are overly ambitious in their objectives and scope, which may jeopardize compliance with the commitments. This leads to the subject of expectations and the danger of falling into what is expressed by the old proverb “the remedy is worse than the illness it seeks to cure.” During the second half of the 20th century, the LAC region was used as a laboratory for some more or less painful experiments with various types of state reforms and public administration restructuring processes, always with the promise of improving peoples’ quality of life and reaching the desired common good and development for everyone. This was not necessarily the outcome and, therefore, prudence should be exercised before committing to initiatives that may not be fully implemented, without considering possible collateral effects (as occurred with the phenomenon of institutional isomorphism linked to the introduction of New Public Management schemes to the region). It is preferable to implement well-defined and achievable programs, taking into consideration the institutional capacities, available resources, and possibilities of their being carried out, rather than grand programs full of epic pronouncements that will become dead letters as soon as they are attempted, and might further undermine the citizens’ already low trust in government and, therefore, be counterproductive.

The OGP’s success depends, to a large extent, on the capacities that are located precisely outside of government and are actively mobilized and adequately channeled: CSOs, citizens, and private companies, among other actors. This reveals an evident paradox. In order to advance towards consolidating open government in the LAC region, greater commitment and participation are required from nongovernmental actors. The idea of configuring an open ecosystem seems attractive in this context. Above all, it must be based on the creation of opportunities for reciprocity, trust, and collaboration based on a permanent dialogue among all actors.

You Make the Path as You Go: Contrasting the Latin American Reality of Open Government with Evidence from the Rest of the World

The results of the OGP presented in the previous section coincide, for the most part, with the findings of a recently published study by Global Integrity (2012). Based on an exhaustive review of the action plans of all the countries with formalized commitments, it maps out the actions taken on the reforms promoted within the OGP framework.¹⁰ Some of the results of this study worth highlighting are the following (see Figure 2.6):

- The themes of **open public data** (190 initiatives) and **e-Government** (199 initiatives) are the most popular and are at the forefront. These two categories represent **nearly a third of all open government activities** subscribed to by the OGP member countries.¹¹
- **Citizen participation** is the third most important category according to number of activities (131). In spite of the evidence and the criticism by civil society that there have not been specific opportunities for consultation during the formulation of many of the plans presented, the relative popularity of the commitments to citizen participation offers an opportunity for citizens to create opportunities for greater participation and commitment with the state in a wide variety of matters linked to open government.
- The next most important priority for governments concerns **access to information**, with 93 initiatives in this category.
- Private sector-related themes are visibly underrepresented in the national action plans: there are only 44 plans covering public-private partnerships, regulations, private sector transparency, and corporate social responsibility initiatives, among others. This constitutes a gap that must be closed, especially in areas such as extractive industries and financial services. Furthermore, the private sector's capacities must be harnessed to contribute to the overall push for transparency and accountability beyond the boundaries of government.
- **Legislate, Do not Just “Innovate”**: as previously mentioned, a further shortcoming in the action plans is the paucity of components related to the legislative and judicial branches. The majority of commitments center on government units within the executive branch, giving priority to “innovative” solutions over more fundamental and politically viable reforms within the legislative and judicial spheres, which are vital if the OGP is to turn the grand ideas underpinning open government into reality. In this aspect, there may be concerns because some of the commitments are ambitious enough to tackle changes of a more structural nature, such as political campaign financing, disclosure of public goods, and transparency in the financial sector,

¹⁰ The available data regarding commitments were gathered, catalogued, and analyzed from 45 action plans in the universe of 55 OGP member countries (July 26, 2012).

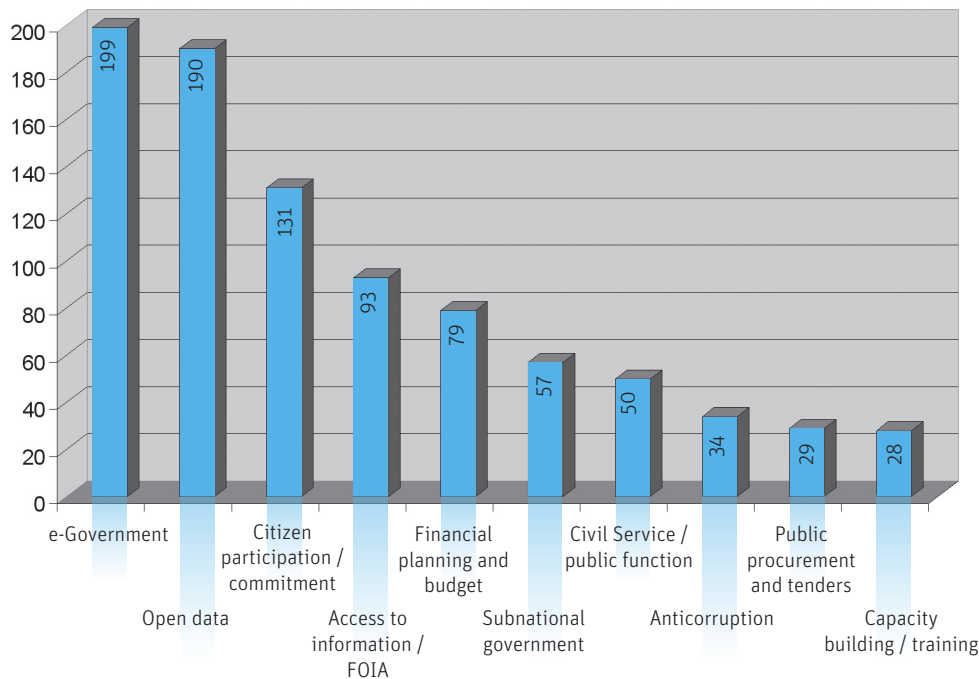
¹¹ “It is always encouraging to see countries strive to modernize the machinery of government, but the preponderance of information technology projects in national action plans deserves further consideration. The appetite for neat technological fixes to complex problems should not eclipse the need for politically difficult but fundamental reform. Eventually all technological solutions run into the limits imposed by the institutional, legal, political, and socio-cultural contexts in which they are embedded. Therefore, essential reforms should be encouraged from the outset to alleviate the unique structural constraints prevalent in particular country contexts. Doing that would expand the frontier of possibility so open data and related technologies can maximize their potential” (Global Integrity, 2012).

among other issues.¹² This presupposes that countries will have to confront major institutional challenges by making legislative progress, so that the change in the culture of government sought by the OGP can be firmly consolidated in the near future.

An additional detail in which Global Integrity's overall view coincides with the case of Latin America reviewed in this paper is that, in general, the OGP action plans lack an implementation plan for the proposed activities. In many cases, responsibilities are not clearly defined, nor is it known whether the institutional capacities and resources needed to implement the proposals are available.

Figure 2.6

The 10 Principal Focus Areas in the OGP Action Plans



Source: Authors' elaboration based on Global Integrity (2012).

Finally, and in contrast with the analysis made for the LAC region, ascribing the initiatives to one or other of the OGP's five major challenges, the breakdown (in aggregate terms) presents coincidences that should be taken into consideration (see Table 2.3).

¹² It is noteworthy, for example, that not a single country is directly committed to promoting the openness of financial and service institutions, despite the effects and consequences of the current crisis.

Table 2.3

Total Commitments in Action Plans According to Challenges (OGP Criteria)

Major OGP challenges	Overall number of commitments
1. Improvement of public services	237
2. Enhancement of public integrity	353
3. Increased efficiency in the management of public resources	154
4. Creation of safer communities	15
5. Greater corporate responsibility and accountability	19

Source: Global Integrity (2012).

From Open Government to Public Sector Reform: An Opportunity for the LAC Region

Based on the previous analysis, it is worth outlining some thoughts on whether the advance of open government in the region might constitute the birth of a new process of public sector reform within a new paradigm of change and renovation, which includes more and better interaction among government, public administrations, and citizenry in order to generate public value. Although the country action plans are heterogeneous, they represent the first ripples of what might become a wave of institutional reforms, understood as actions that affect institutional design and operation in at least two ways: through changes in the organization of power (the political dimension) and through changes in the public agencies and services that design and execute policies (the administrative dimension). As previously seen, a large number of the commitments acquired within the OGP framework can be situated in either of these two dimensions.

Moreover, the governments that participate in this initiative are, in general, represented by the units in charge of public sector reform and modernization and, therefore, close to each country's head of state. This constitutes an additional strength, because it confirms its position as a priority pillar of the government's agenda. An essential ingredient for the present and future success of this type of program is political will and unwavering support to construct a global vision and make definite efforts in the matter, beyond the fragmented or isolated approaches that fall under the responsibility of one sector or another (transparency on the one hand, improvement in public services on the other, etc.). Therefore, due to either the visibility that being part of the OGP offers (in the sense that it is a multinational platform) or to the level at which member countries sign the action plans and commitments, using such a framework for rethinking more holistically about how to modernize the state represents the natural and desirable path.

This analysis is based on the understanding that the aspiration underpinning the idea of open government is to radically transform the ways that governments and their public administrations have traditionally related to their citizens. If this is true, then the initiatives promoted in its name represent an extraordinary opportunity, with peculiar characteristics that need consideration, and which gives rise to certain optimism. Traditionally, state reform and modernization processes worldwide have usually been designed from the inside out, from a hegemonic, unilateral position and, in contrast with the thrust of the analysis herein, with a generally closed attitude that is largely indifferent to public opinion. This is exactly what the paradigm

of open government has been changing: reducing asymmetries of various kinds and tilting the balance of power toward a much more active role for society in public affairs. The empirical evidence shows that the networked state increasingly requires a networked society (Castells, 2009).

In this context, reform proposals must aspire to be technically correct (not necessarily perfect) and politically viable. Therefore, open government policies, if they are to be successful, viable, and sustainable, must contain and offer a medium- and long-term vision, and be considered as policies of state beyond temporary changes in government, in the same way as other initiatives, which require time to mature (such as civil service reforms or professionalizing public management, regulatory reform, or health and education policies). This is even more important when considering that the changes that follow the implementation of open government, above all, operate across the institutional architecture of government. The rules governing access to public information and data disclosure, the obligation to be accountable at all levels and provide monitoring and evaluation mechanisms, to mention only a few, are initiatives whose correct application impacts directly on the what, how, when, and why services are offered, in such diverse areas as housing, transport, or road and rail infrastructure.

Many of the initiatives gathered together under the umbrella of open government are not new to the LAC region. Efforts to promote transparency and combat corruption, as well as actions tending toward better public service provision, have been on the agenda of the majority of the countries in the region in the last ten years.¹³ However, the region lags behind in areas as important as the effective implementation of access to information laws or mechanisms for strengthening monitoring systems and public integrity. The creation of the OGP offers an excellent opportunity to consolidate these efforts within the framework of a cooperative environment that offers multiple advantages for sharing experiences and best practices, defining common standards that make implementation of open government easier. All of it, with a central element: from, for, and with the support participation and collaboration of actors beyond the state boundaries.

In contrast to the reform experiments that many countries in the region have promoted, inspired by the doctrine and tools of the so-called New Public Management (in some cases, with a 20-year delay), the open government paradigm is currently in its first phase of development. It is possible to affirm, without fear of contradiction, that it is an area in which there are neither predefined rules nor set answers. No government can have the last word on the matter and, in the majority of cases, all are found in the beta test stage (a stage of experimentation, trial and error, and testing of virtuous combinations, which benefits from the learning opportunities offered and guaranteed by the use of new technologies and the support of a new proactive and vigilant citizenry).

This emerging paradigm represents a kind of new open-source software that must pass the test of compatibility with respect to the institutional hardware in which governments and their administrative apparatuses operate. This is a challenge on a large scale. It will determine, in the immediate future, whether it is possible to envision a real and radical change from the basic level (from one to one, from one to many), whereby the government “provides, offers, and shares” (data, information, services, knowledge, power) toward a more complex level (many to many), and whereby the citizens and the government “co-design, co-create and co-produce” within a set of new practices inspired by openness, transparency, participation, and collaboration.

¹³ It is noteworthy, for example, that not a single country is directly committed to promoting the openness of financial and service institutions, despite the effects and consequences of the current crisis.

Conclusions and Pending Challenges

This chapter has attempted to accurately establish the concept and the scope of open government as the inspiration for the new wave of public sector reforms, and to shed light on its distinctness from e-Government and open data portals, as media or tools in the service of a wider objective. It is not about merely “digitalizing bureaucracy,” reducing red tape, and decentralizing public services—although this is an important priority—but, rather, about rethinking the relationship with the state from a pro-citizen standpoint and opening opportunities for participation and collaboration on matters of public interest with civil society and the private sector, making full use of technology in a way never before seen in modern democracies.

One political theory sees open government as a new concept of democracy, called “collaborative democracy,” in contrast to other modern theories, such as “deliberative democracy” (Noveck, 2010). The element that distinguishes one from the other is that the latter emphasizes the robustness of the debating process that accompanies public decision making, while the former centers on the capacity for co-creation with citizens. It is about using the public’s knowledge and abilities so that, through “collective intelligence,” the challenges and the needs of society at the different levels of government are better resolved.

The challenges pending in order to achieve collective self-government are enormous, and it will take many decades to consolidate it. At present, successful co-creation processes cover questions linked to local government, such as potholes in the roads, public safety or traffic problems, which improve the quality of peoples’ daily lives, but are still a long way from influencing the major decisions of public life.¹⁴ A similar challenge is the use of information in open data portals, despite efforts made up until now. Indiscriminately publishing data does not guarantee that all of it will be used. When the state has scarce resources, it has to choose carefully where to concentrate its efforts, publishing the most sought-after databases and those with the most likelihood of being reused. Often, the databases are incomplete, or there are fields that very few users understand, in which case they have to be refined and clarified, and their storage systems have to be modernized. These databases should also be centralized, and updates and changes notified, so that software designers can make pertinent adjustments to their programs. Another necessary action in this regard is to stimulate demand so that the databases are used by civil society and the private sector, which could also be said for other, more traditional citizen participation instruments.¹⁵

The second part of this study discusses the OGP as an interesting initiative that is distinguished by its voluntary nature and the flexibility for each country to present and implement its own plan of action according to its specific priorities and available capacities. Another distinctive feature of the OGP is, without doubt, the opportunity it offers to engage the active participation of civil society, from the initial consultation process for designing the plans, to jointly monitoring and evaluating the acquired commitments. This implies a paradigm shift, as the organizations have turned from their traditional role of social monitors or observers, to becoming responsible for the co-management of an international initiative. Although the membership of the OGP enjoys

¹⁴ The British initiative, Fix My Street (<http://www.fixmystreet.com>), is worth mentioning. This enables instances of disrepair and problems in the road infrastructure to be reported by citizens, as well as providing a varied range of other services and applications created by My Society (<http://www.mysociety.org/>) for the civic enhancement of persons and communities through the use of technology. Show us a Better Way (<http://bit.ly/QzQsaE>) is an initiative conceived so that citizens can present their ideas about what to do with public information, among other matters. All these are at the forefront of co-creation and citizen participation, alongside the emblematic examples of Spain’s autonomous regions: the Basque government, under the name *Irekia* (meaning “open” in Euskara: <http://www.irekia.euskadi.net/en>), or the government of Navarre (<http://gobiernoabierto.navarra.es/>).

¹⁵ For example, the United States’ open data website, which contains 3,500 databases, has only 250 applications that were created by citizens, which represents a less-than-10-percent participation rate (Robinson and Yu, 2012).

the support of governments more accustomed to commitment to these organizations in matters of public interest, it remains to be seen how it will coexist with governments that, although they have joined the OGP, are historically more disinclined towards this kind of openness. These governments will have to submit to dual monitoring of action plan implementation by society and by the OGP's independent review mechanism.

With regard to the OGP's own governance, the following challenges lie ahead:

- 1. Political sustainability.** The OGP gained high visibility and registered unusually rapid progress for this kind of worldwide initiative, probably due to the leadership of the United States government and, in the LAC region, thanks to the governments of Brazil and Mexico. This has created high expectations regarding its sustainability over time, after the political actors have changed. In this respect, it is now difficult to turn back, although the path ahead is not free of difficulties in certain countries, due to: (i) the expectations created in a large part of civil society in OGP member countries, which will demand from their governments continued support and presence in the initiative, and (ii) the hopes invested in the fact that governments can really benefit from the OGP and improve their performance in different areas.
- 2. Financial sustainability.** The expansion of the OGP, which went from having only 8 to 55 member countries at the time of this writing, meant that its rules of governance now stipulate a contribution of US\$50,000 from members in order to absorb this impact. This additional financing should strengthen the Technical Secretariat's human resources and endow the OGP with building infrastructure and more stable working tools, including translation of the documents into various languages and a budget for travel and communications.
- 3. Technical sustainability.** It remains to be seen what the first reviews by the Independent Review Committee of the action plan implementation will reveal, and how detailed the information provided by the countries taking part in the evaluation process will be. The sudden growth in member countries might carry the risk of a loss of quality in the country reports, as in similar global convention monitoring initiatives. So-called "dumbing down" is common, that is, the substantive work loses depth, or the process is slowed down.

The OGP is at a turning point that is crucial for its future. After one year of existence, it can claim notable achievements that demand recognition. It has placed the debate about open government policies firmly onto the world agenda, promoting a global dialogue about best practices in terms of openness, transparency, participation, and accountability. It also enabled the incorporation of 55 member countries by the time this chapter was written, which have committed to open government action plans, creating expectations and goals, particularly with respect to civil society.

Many sectors have expressed doubts about the inescapable "institutionalization" of the central team coordinating these efforts, and the need for leadership, resources, and capacities to provide the OGP with continuity and sustainability (Heller, 2012), especially as the first fruits of the work are appearing in many of the countries that joined the initiative early on, via the progress reports on compliance with the commitments, the independent evaluation mechanism, and the system of civil society monitoring. This is a pending matter about which nothing has been decided, but one that will be crucial for revealing the prospects for the future of the OGP and for promoting open government around the world.

With regard to the commitments contained within the action plans, the challenges include the creation of opportunities for exchange of lessons learned, the identification of best practices, and the possibility of reproducing them through collaborative work, even beyond national boundaries and the actors that promote such initiatives internally (CSOs, open data communities, etc.). This will reduce barriers to the flow of knowledge and expand the frontiers and available capacities so that the expectations and goals set by the OGP member countries can be fulfilled.

Another challenge is to include the legislative and judicial branches, and expand the action plans to include subnational governments. One possible explanation for the scant presence in these areas is that the OGP was signed at the executive branch level. It therefore lacks the hierarchy of a traditional treaty, which has to be approved by the legislature and thereby makes its implementation a legal requirement for the three branches of government, as well as for subnational governments. In any case, even if it were an international treaty, it is normal for the administrative powers to take charge of implementing such commitments. It is likely that, over time, based on accumulated experiences and CSO advocacy actions, as well as the awareness-raising and dissemination campaigns by the central authorities, the importance and demands of the OGP will become established throughout the LAC governments.¹⁶

With regard to the LAC countries themselves, if progress is to be made on the challenges presented in the open government agenda, they will need an integrated, strategic vision that engages all the relevant actors, but which offers specific actions and reforms to the critical links of the public service value creation chain. For this challenge, the targeted transparency policies included in certain countries' action plans will constitute a fundamental, crosscutting tool for supporting management. In order to achieve it, the following aspects must be considered:

- **Assembling multidisciplinary teams.** The majority of actions contained in the action plans have a sector-based focus, which calls for teams of technical experts, both in matters relating to health-care or energy, for example, as well as in transparency and accountability, regulatory analysis, technologies, and others.
- **Strengthening institutional cooperation.** The implementation of a transparency or state modernization policy throughout the public sector requires cooperative agreements between ministerial authorities. This is not always easy, as the policies are imposed orders, not understood to be “part of the job” by civil servants in certain sectors, who might lack the necessary capacity to implement an open government policy. The action plans, within the framework of the OGP, create the opportunity for the authorities to open channels of discussion that reinvigorate the possibilities and incentives for inter-institutional coordination.
- **Investing in technology.** Implementation of the action plans, in the majority of cases, requires investment in both hardware and software. The new data systems must be compatible with the existing ones, and information must be made available through the open data portals, so that the public sector and civil society can conduct data analysis and exchange.
- **Measuring the impact of interventions.** The consolidated results and successful experiences must be transmitted from country to country, which will strengthen South-South cooperation.

Finally, as Fung and Weil (2010) point out, progress is needed beyond open government towards an open society, in which powerful private companies and organizations share information, given that the decisions of these companies and organizations also affect the daily lives of people. This calls for the creation of a much broader and more diverse transparency ecosystem that favors a model of better governance, with enhanced and more extensive opportunities for participation and collaboration by, and with, all stakeholders. This would, without a doubt, help pave the way towards healthier democracies and more prosperous societies in the region.

¹⁶ An example of a recent effort in this direction is Opening Parliament, a forum aimed at connecting civic organizations around the world that participate in monitoring the support and openness of their respective countries' parliaments and legislative institutions. For more detail, see <http://www.openingparliament.org/>. The forum has recently launched the Declaration on Parliamentary Openness: <http://bit.ly/U4dKnw>.

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Transparency in the allocation of subsidies depends on a number of requirements: accessible and clear rules; execution based on need and not political reward; **sufficient oversight by auditors and citizens; and the availability of disaggregated information** on each individual beneficiary and the amount he or she has received.

”

Chapter 3

Transparency in Transfers: The Allocation of Subsidies on Gas, Transportation, and Agricultural Products in Argentina

Luciana Díaz Frers, Sandra Elena, and Estefanía Casadei¹

Introduction: The Importance of Public Transparency

Transparency in public management means giving greater visibility to government actions, promoting accountability, and increasing citizen participation. To do this, there must be effective access to information. This right is the basis for strengthening democracy, but it can also lead to increased opportunities for illegal activities, inefficiency, and incompetence, which might otherwise go unnoticed (Michener and Bersch, 2011). Access to information is a necessary, but not sufficient condition for transparency. Besides ensuring this right, the government must also be held accountable for its actions. In this sense, implementing open data policies means that third parties will have access to information that can be reused. All information generated by the state—in its broadest interpretation—is a public asset and, as such, must be available for public scrutiny. The pursuit of this type of policy involves the dissemination of information that is easy to find and understand, as well as available in a format that can be updated and reused to generate assumptions or conclusions. An open data policy is complementary to an access to information policy, as both types promote a more responsible and transparent government.

Transparency can work as an incentive to increase efficiency (Cunnil Grau, 2004). Experience has shown that, when a government is exposed to the pressures and demands of oversight agencies and the public, services improve and efficiency increases. When public officials have to explain their performance, they are encouraged to maintain a good level of efficiency and effectiveness, and even improve it (Kaufmann, 2000).

While there is no single definition of transparency in public management, the level of transparency in public management can be established as a result of the flow of accessible, accurate, understandable, and timely information that is made available (Gruenberg et al., 2007). In this sense, and according to Michener and Bersch (2011), optimal transparency exists when there is complete and traceable information, which must also be verifiable and usable.

¹ This work was made possible thanks to the research team, which included Manuel Garrido, Sabrina Ayub, and Diego Dequino.

Increased attention has been focused on the provision of subsidies to the private sector in Argentina, both because they take an increasing share of the national budget and because they are perceived as not being transparent transactions. A subsidy can be defined as “(...) any government assistance or incentive, in cash or in kind, to private sector producers or consumers, for which the government does not receive any equivalent compensation” (Gruenberg et al., 2007: 1). The Argentine government grants this type of transfer to three types of beneficiaries: people (especially in the form of social programs), private companies, and nonprofit organizations. At times there is a lack of transparency in their allocation, which can create opportunities for corruption, clientelism, and economic inefficiency.

Transparency in the allocation of subsidies depends on a number of requirements: accessible and clear rules; execution based on need and not political reward; sufficient oversight by auditors and citizens; and the availability of disaggregated information on each individual beneficiary and the amount he or she has received.

The information provided in Table 3.1 highlights importance of subsidies in the Argentine economy. The total national expenditure, authorized in the 2011 budget, was ARS 450.5 billion, of which 72 percent was allocated to transfers or subsidies. Most of these expenditures are prior obligations, and finance the social security system (retirements, pensions, social programs, etc.), so they are considered nondiscretionary expenditures. The other portion of these transfers can be considered more flexible, as the government has greater discretion as to how to allocate them. This is the case for transfers that are considered as economic services (accounting for 25 percent of the total), which are all those expenses for actions to promote, regulate, and oversee the production of the private and public sectors. Over 90 percent of subsidies for economic services are allocated to energy, fuels, and mining; transportation; and agriculture. In 2011, these expenses amounted to ARS 78.7 billion.

Table 3.1
Total National Expenditure and Subsidies, 2011

Expenditure item	Millions of ARS
Total accrued expenses	450,548.24
Transfers	323,765.16
Economic services transfers	83,937.72
1. Energy, fuels, and mining	49,719.12
2. Transportation	26,747.79
3. Agriculture	2,207.06

Source: Prepared by Center for the Implementation of Public Policies Promoting Equity and Growth (CIPPEC) based on data from the Ministry of Economy and Public Finance.

Note: Transfers considered within this item include not only the gas sector, but also all amounts transferred under the concept of economic services to the energy (mainly electricity), fuels and, mining sector.

Given the importance of subsidies in government spending, which also represent a significant portion of the discretionary funds managed by the government, it is essential that their allocation be managed transparently. In this context, in 2009 the Center for the Implementation of Public Policies Promoting Equity and Growth (Centro de Investigación de Políticas Públicas para la Equidad y el Crecimiento, or CIPPEC) began a project to promote greater transparency in the allocation of government subsidies and compensation to Argentine private companies in three economic sectors: gas, transportation, and agricultural products.

Political and Institutional Context

The project implemented by CIPPEC was developed during a period of fluctuation in terms of transparency. A major milestone was the enactment of the National Executive Decree (Decreto del Poder Ejecutivo Nacional, or PEN) No. 1,172 of 2003, which regulates access to public information produced by the executive branch. The decree determines what is considered public information and the reason why it is important to have access to it. It states that any individual or corporation, public or private, has the right to request, access, and receive information without having to prove subjective right or legitimate interest. While this seemed to be an initial step toward creating a policy on open access to public information, it turned out to be an isolated action that was not matched at other levels of government. In fact, recently there have been setbacks in transparency. In 2004, for example, valuable information published by the Social Program Information Evaluation and Monitoring System (Sistema de Evaluación y Monitoreo de Programas Sociales, or Siempro) disappeared, and in 2007, the National Institute of Statistics and Censuses (Instituto Nacional de Estadísticas y Censos, or INDEC) intervened, eroding the credibility of official price indices.²

The subsidy programs are no strangers to the institutional context of lack of transparency. The National Office for the Control of Agricultural Trade (Oficina Nacional de Control Comercial Agropecuario, or ONCCA), responsible for managing subsidies in the agricultural product sector, came under investigation in 2008. Massive subsidies to food consumption were provided by the ONCCA to industrial producers, who sold their products in the domestic market of wheat, corn, sunflower, and soy, as well as to poultry slaughterhouses, dairy producers, the dairy industry, pig production companies, and livestock-raising businesses. Allegations began in the media and continued through various courts, denouncing the granting of subsidies to fictitious companies, the dismantling of the information systems of the agricultural sector, and the lack of transparency and available information on grant management.³ In fact, some public officials were investigated because of complaints regarding irregularities in subsidies granted.⁴

In the case of the other two sectors (gas and transportation), the subsidy scheme was implemented through trust funds. To manage transportation subsidies, a trust fund was created through Decree No. 976 of 2001, which established the National State as trustor, the National Bank of Argentina (Banco Nación de Argentina, or BNA) as the trustee, and the private companies that make up the Transport Infrastructure

² See <http://www.econ.uba.ar/www/institutos/economia/Ceped/publicaciones/2010/informe%20-%20UBA.pdf>

³ See http://www.anticorruccion.org.ar/index.php?option=com_content&view=article&id=79&Itemid=16 and <http://www.lanacion.com.ar/1184662-denuncias-de-corrupcion-en-la-oncca>.

⁴ For more information, see http://www.clarin.com/politica/Avance-investigacion-judicial-ONCCA_0_444555624.html.

System (Sistema de Infraestructura del Transporte, or SIT) as the primary beneficiaries.⁵ Subsidies to transport companies also came under scrutiny. The former Transportation Secretary, Ricardo Jaime, was investigated in connection to more than 20 cases of corruption involving embezzlement and receiving gifts from businessmen, who benefitted from subsidies and tenders that he granted and controlled. Jaime was charged in connection to some of these investigations.⁶ Jaime resigned in July 2009, and was succeeded by Juan Pablo Schiavi. Schiavi was also implicated in allegations of corruption, and was charged with irregularities in awarding the control of operations of the Single Electronic Ticket System (Sistema Único de Boleto Electrónico, or SUBE).⁷ Finally, in February 2011, Schiavi also had to resign after the tragedy involving a train at Estación Once in Buenos Aires, where 51 people died and 700 were injured.⁸ This event brought into question the granting of subsidies to transport companies once again, due to irregularities in its management and lack of government oversight.

Subsidies to the gas industry were assigned through three trust funds. The first, established in 2002, granted compensation by applying differential rates for residential consumption and the marketing of cylinders and carafes of liquefied petroleum gas in the Patagonia region, the Department of Malargüe (Province of Mendoza), and the Puna region (northwestern Argentina). The second was created in 2008, with the aim of providing bottled liquefied petroleum gas (LPG) to low-income users and expanding gas networks to areas not covered by the natural gas networks. Finally, the third one, also created in 2008, was intended to subsidize the payment of imported gas.

Gas subsidies have been the least questioned although, as discussed below, there is not sufficient information available to fully assess the quality of their management. Although there were allegations of overpricing in the sale of subsidized carafes by the state, the main problem was not a lack of transparency in the management of subsidy, but abuse by traders who sold them, together with the ineffectiveness of government oversight of retail outlets.⁹ Some demands were made to target assistance to the most vulnerable sectors of the population, since it was easier for subsidies to reach middle- and high-income populations in urban residential areas with access to the gas network, while low-income areas were not connected to the network and had to access gas carafes, the price of which was not subsidized. The demand was prompted by the regressive nature of the allocation, which has also been called “subsidy filtration” (Gadano, 2011).

⁵ The SIT includes the Integrated Road System (Sistema Vial Integrado, or Sisval) and the Integrated Land Transport System (Sistema Integrado de Transporte Terrestre, or Sitrans). The latter comprises the Integrated Rail System (Sistema Ferroviario Integrado, or Sifer), the Integrated Automotive Transportation System (Sistema Integrado de Transporte Automotor, or Sistau), the Supplementary Compensation Scheme (Régimen de Compensaciones Complementarias, or RCC), the Compensation Scheme for Transportation (Sistema de Compensaciones al Transporte, or Siscota), and the System to Promote the Professionalization of Freight Transportation (Régimen de Fomento de la Profesionalización del Transporte de Cargas, or Refop).

⁶ See two notes at <http://acij.org.ar/sincorrupcion/2012/08/27/causa-contra-jaime-se-elevo-a-juicio-oral-y-publico> and <http://www.lanacion.com.ar/1411675-jaime-las-huellas-de-la-corrupcion>.

⁷ See, for example:

http://www.ieco.clarin.com/economia/Imputan-Schiavi-irregularidades-control-SUBE_0_746325564.html.

⁸ For more details see <http://acij.org.ar/sincorrupcion/2012/03/07/renuncio-schiavi-por-la-tragedia-de-once/>.

⁹ For an analysis, see <http://elrecado.net/sociedad/5514-garrafas-sociales-se-detectaron-sobrepuestos-en-1-de-cada-3-comercios> and http://www.clarin.com/politica/Gobierno-admite-faltan-garrafas-sobrepuestos_0_305969455.html.

Economic Context

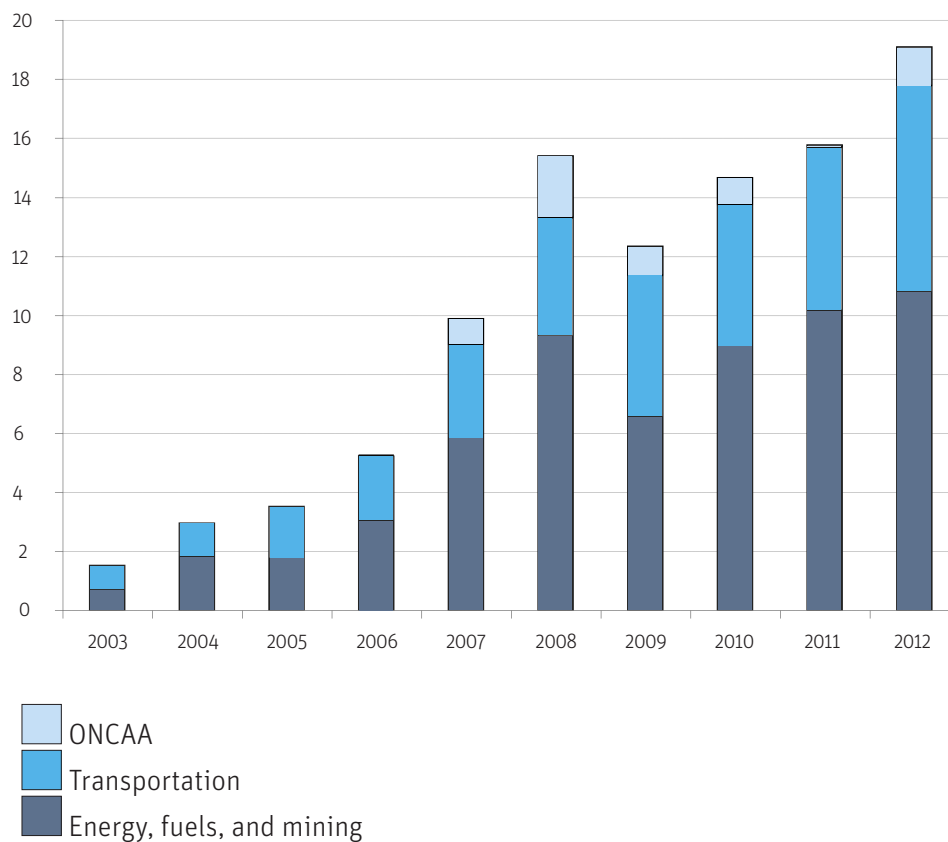
This context of suspicion around public information has coexisted with a specific economic context. After the 2002 financial crisis, an economic recovery began, with actual GDP growth rates approaching 9 percent between 2003 and 2008. This process came about partly because of a sustained strong growth in government spending. If the size of the state is measured in terms of consolidated public expenditure as a percentage of GDP, in the 1990s it averaged 30 percent, while in 2011 it exceeded 40 percent. Within this expenditure, the importance of debt services decreased, and central government spending was sustained. Instead, two spending functions became more important: social spending, primarily because of the nationalization of the social security system, and spending on economic services.

Public investment and subsidies to certain key sectors became more important as a percentage of government expenditures. Subsidies were intended to moderate the impact of inflation, especially due to the increase in international prices for certain commodities. Several measures were specifically implemented to avoid an increase in domestic prices. For example, barriers were imposed on exports through deductions, quotas, and other restrictions. This generated a growing demand for higher compensation to those sectors most affected, such as the agricultural sector. The international price of energy also increased during this period. The Argentine government tried to curb the rise in domestic prices, mainly by freezing prices. Subsidies began to increase in order to compensate companies for losses due to price freezes.

Figure 3.1 shows the growth of these subsidies as a percentage of increasing government expenditure. Before the crisis, only about 1 percent of the national budget was used to pay subsidies for agricultural products; transportation; and energy, fuels, and mining. These increased exponentially until 2008, exceeding 15 percent of the national budget. The international crisis of 2009 led to some adjustments in public finances, particularly in this discretionary expenditure. As the country resumed growth with inflation, subsidies regained importance. In August 2012, almost 19 percent of the national budget was allocated to subsidies for these three key sectors of the Argentine economy. Given their growing importance in the national budget, along with the information opacity, allegations of corruption, and regressive distribution, these subsidies became more important.

Figure 3.1

Subsidies for Agricultural Products, Transportation, and Energy as a Percentage of Total Public Expenditure, 2003–2011



Source: Prepared by CIPPEC based on the Citizenship Site, National Treasury Secretariat (Ministerio de Economía y Finanzas Públicas, MECON).

Notes: Data for 2012 includes January through July. ONCCA was disbanded in 2011, but the new Coordination and Evaluation Unit for Internal Consumption Subsidies (Unidad de Coordinación y Evaluación de Subsidios al Consumo Interno), a MECON-dependent Unit, was created in its place.

The “Transparent Transfers” Project

As part of the progress and setbacks in public management transparency, and in view of the strong growth of subsidies in 2009 and 2010, the CIPPEC conducted a project on the transparency of government subsidies and compensation to domestic private companies in the transportation, food production, and gas sectors. The overall objective was to promote increased transparency and accountability on subsidies, and thus reduce opportunities for corrupt dealings in their allocation. Specifically, efforts focused on promoting the availability of information on subsidies and encouraging capacity building within civil society to monitor the allocation of subsidies, and encourage a debate on the need to strengthen oversight and sanction mechanisms.

Project implementation was done in three stages. The first stage, *assessment and mapping*, was the most extensive, and included the collection of all available information on the allocation of subsidies.¹⁰ In addition to the assessment, this step included an analysis of the *impact on the economic cost* of lack of transparency, as well as a simulation to estimate the economic benefits that could accrue from an improvement in the transparency of subsidies allocation. The second stage consisted of the *provision of inputs for the institutional design of a database on subsidies*. It included the creation of a website with all the information collected and organized to facilitate its use over time. The third stage included *capacity building*, and led to the development of a toolkit for the evaluation and promotion of transparency in the allocation of public transfers, along with a series of workshops and publications aimed at key stakeholders, including civil society and the media.¹¹

First-Stage Results

Once all available information was compiled, an assessment was made of its scope, accessibility, updates, and availability for use over time in five areas:

- 1. Legislation and regulation.** The regulatory framework that gives rise to subsidies and its foundations was analyzed.
- 2. Procedures and requirements.** An inquiry was made as to the availability of documents on administrative procedures, forms, and conditions for access to subsidies.
- 3. Criteria used by the entity.** Information was sought regarding decisions on the allocation of subsidies.
- 4. Final allocation.** Data were gathered on the beneficiaries and amounts allocated.
- 5. Oversight.** The reports that assess and oversee the allocation of subsidies were analyzed.

With regard to the transportation sector, data were collected through the official websites of the Infrastructure Trust Funds Coordination Unit (Unidad de Coordinación de Fideicomisos de Infraestructura) and the Transportation Secretariat (Secretaría de Transporte). In general, much of the regulatory information is available, although it is neither well organized nor easily accessible. However, information as to the key procedural aspects and how allocations are determined have not been published. As for the publication of the names of the beneficiaries and the final amounts awarded, information on subsidies and compensations to the transportation sector has been disclosed, but it is not presented on one site, nor is it presented in its entirety in reusable formats, which affects its relevance and usefulness. The complexity of the available information and the lack of explanations on what to do with the information are obstacles to ascertaining the origins of and basis for subsidies. There are no publications of quantitative data on the allocation of the System to Promote the Professionalization of Freight Transportation (Régimen de Fomento de la Profesionalización del Transporte de Cargas, or Refop), although some regulations were found.

With respect to information on subsidies in the energy sector, particularly gas, the results were even more disappointing. The three subsidy systems studied for this case were residential consumption, imports, and liquefied gas consumption. The primary sources used to identify the regulatory framework were publications from the official website of the Energy Secretariat.¹² The rules that govern each system were found,

¹⁰ For more details on the analysis of the regulatory framework, see Dequino (2011).

¹¹ The toolkit is available at <http://www.cippecc.org/Main.php?do=documentsDoDownload&id=524>.

¹² Available at <http://energia3.mecon.gov.ar/home/>.

but the rules on transactions, through which compensation payments are authorized and which might have given details about the beneficiaries and transfer payments, were not found. Furthermore, it was discovered that no quantitative data are reported on the recipients of subsidies or the amounts received from the agencies responsible for allocating subsidies. The only source that provided the global amounts awarded from the budget's current transfers account were the reports published by the National Budget Office (Oficina Nacional del Presupuesto) on its website.

Subsidies for the energy and transportation sectors are administered by extra-budgetary “trust funds” or “trusts,” which are under the direct control of the Comptroller General's Office (Sindicatura General de la Nación) and the Auditor General's Office (Auditoría General de la Nación). Oversight by these two entities is insufficient. The Comptroller General's Office has stopped publishing its full audit reports on its website, and has denied access to over 300 reports requested by the Auditor General's Office, forcing the latter to take legal action. The Auditor General's Office often highlights weaknesses in the trust funds, but it lacks enough information to perform an audit. The absence of effective sanctions must also be taken into consideration, as trust funds are created with little transparency.

Agricultural subsidies are funded directly by the National Treasury (Tesorería Nacional de la Nación), which makes oversight easier. By 2011, these funds were distributed by the ONCCA; in February of that year, and following concerns about transparency in the management of the institution, the ONCCA was dissolved by Decree No. 192/11,¹³ and a new unit—the Coordination and Evaluation Unit for Internal Consumption Subsidies (Unidad de Coordinación y Evaluación de Subsidios al Consumo Interno)—was created (by Decree No. 193/11)¹⁴, and assumed the responsibilities of ONCCA.

Although the regulatory, administrative, and quantitative information was available at ONCCA, except in specific cases, it was not organized to make it accessible, which made it difficult to identify the beneficiaries and the final amounts awarded. In addition, there was insufficient information on analyses and oversight. Another finding was that the rules were not numbered consecutively; that is, some resolutions issued on a specific date have a lower reference number than others published on earlier dates. This is a problem when attempting to create a timeline to monitor changes in regulations.

The primary source of information for the study was the official website.¹⁵ However, the large quantity of information on the website made it difficult to retrieve information quickly and easily. With regard to the regulatory framework, the complete list of rules governing the allocation of subsidies could not be easily found. This was recently improved with the publication of lists of rules regulating each activity subject to compensation. The data on the beneficiaries and final amounts awarded were not organized, and the format itself was not reusable (it was often published in PDF format). The high cost of obtaining information on the amounts transferred and data on beneficiaries was one of the major flaws. For a long time, files were posted following a temporary order without classifying them by type of subsidy or compensation, so they were of little relevance for decision makers.¹⁶

In summary, the main obstacles to accessing information that could have enabled effective decision making were the inaccessible location of documents, the lack of organization, and inappropriate formats, all of which hindered their transfer to databases that would permit analysis, except after considerable compilation. This situation complicates their use for users as well as the governments. Each sector presents both weak and more developed aspects (which still have the potential for improvement) (see Table 3.2).

¹³ Available at <http://www.infoleg.gov.ar/infolegInternet/anexos/175000-179999/179596/norma.htm>.

¹⁴ Available at <http://www.infoleg.gov.ar/infolegInternet/anexos/175000-179999/179598/norma.htm>.

¹⁵ The search for information took place during the first half of 2010 on the following link: <http://www.oncca.gov.ar/>.

¹⁶ There had been a change in the ONCCA website at the moment this chapter was developed, and payment resolutions could be filtered in a search engine by three groups: meat, dairy, and grains.

Table 3.2
Transparency of Subsidies by Sector and Stage

	Transportation	Food	Gas
Legislation and regulation	Provides incomplete texts.	Rules are published out of order, and earlier regulations contradict later regulations.	Provides scarce and scattered information on various websites.
Procedures and requirements	Regulations on conditions for access to subsidies and documents to be filled out are published.	Information on the administrative process and the requirements for obtaining a subsidy is published on the website.	Low accessibility to information on procedures and requirements.
Criteria used by the entity	No information about the criteria, stages of decision, determination, or control and allocation of subsidies.	No information on internal procedures, reception of documents, level of progress, or allocation criteria.	Low accessibility to information on the objectives and the final destination of subsidies.
Final allocation	The publication of beneficiaries and amounts allocated is not found in a single document. The content is not unified, and its format makes it difficult to read. 733 files: price differentiation in fuel oil, SISFER and SISTALI.	Beneficiaries and amount awarded are difficult to identify. 3,293 files: 1,814 payment orders plus 1,479 annexes.	The list of beneficiaries is not published.
	Refop: the list of beneficiaries is not published.	Published in chronological order, without any classification and in a difficult-to-read format.	
Oversight	The amount of reports from external auditors has decreased in the last three years.	There is a grievance window, but no published information on grievances admitted or their follow-up process.	No information available.
	No published results, orders or audits.	No information on audits.	

Source: Elaborated by CIPPEC.

Note: The darkest shading in the figure represents the largest lack of transparency; and the lightest, the possibility of finding the most accurate information

An exercise was carried out at the end of this stage to estimate the economic cost of the lack of transparency. Due to the (limited) availability of information, the analysis was conducted on subsidies to the transportation sector and, to a lesser extent, the agricultural sector. The main hypothesis of the exercise was that the lack of transparency in the management and allocation of subsidies could accomplish the following:

- Reduce the potential for a positive impact of the subsidy policy
- Create uncertainty, which decreases opportunities for private investment
- Promote the misuse of resources and create opportunities for corruption, which can lead to less public investment
- Imply that the government itself could be encouraging unwarranted subsidies in order to extract revenue.

The main economic rationale behind public transportation subsidies is to make it cheaper for the passenger and to improve such public service. This leads to more use, with the overall aim of reducing pollution, congestion, and traffic accidents by decreasing the use of private modes of transportation. If the allocation of subsidies distributed by trust funds lacks transparency, the opportunities for corruption increase, and their potential positive impact decrease. The project verified the transparency with which subsidies were handled in the two sectors, and assessed their impact in cases where there was lack of transparency in the administration of the subsidies.

The implementation of the Integrated Automotive Transportation System (Sistema Integrado de Transporte Automotor, or SISTAU) enabled a significant reduction in the real cost of tickets in urban automotive transportation, which contributed to an increase in use of the service. Unfortunately, however, it did not improve service quality. Based on the data analyzed to corroborate these results, it was found that the average length of service of the fleet during the years SISTAU was in effect increased by 2.7 years over the average in the years before this system (4.9 years), which implies an increase of 56.5 percent in the length of service of the automotive fleet. This deterioration in the quality of urban transport decreases efficiency and oversight of subsidy execution.

The reduction in cost also contributes to an increase in the number of passengers being transported. The number of passengers using urban automotive transportation in the metropolitan area of Buenos Aires has reached 124 million per year, since the introduction of the SISTAU. However, the level of overcrowding (defined as the ratio of the number of passengers and the number of vehicles by the number of seats per vehicle) has increased by 17.6 percent. This increase is due to an increase in the number of passengers (9.2 percent) and a reduction in the number of vehicles (4.9 percent) and the number of seats per vehicle (2 percent).

The level of savings/investment in Argentina is approximately 20 percent of GDP, and subsidies to the transportation and the agricultural product sectors accounted for 3.1 percentage points of savings/investment in 2009. The simulation exercise conducted included an analysis of the allocation of subsidies with low, medium, and high degrees of transparency and their impact on GDP per capita. The assumption is that when there is greater transparency, resources are used more efficiently, and the savings would translate into more investment. The main result would be that a more transparent allocation of subsidies in transport and commodity products would increase GDP per capita between 0.3 percent and 2.8 percent.¹⁷

¹⁷ Available at <http://modelosubsidios.com.ar/>

Second-Stage Results

The second stage of the project involved the development of materials for the institutional design of a database on subsidies. Its main result was the creation of a website, which includes all the documents published since the implementation of the project, as well as an online database created to provide relevant information on subsidies allocated within the three sectors.¹⁸

The screenshot shows the CIPPEC website interface. At the top, there is a navigation menu with links for Home, Quiénes somos, Glosario, FAQ, Ayuda, and Contacto. The main heading reads "Promoviendo transparencia en la asignación de subsidios" with a subtext explaining the website's purpose. Below this, there is a search bar labeled "Buscador" with a search input field containing "CUIT o razón social". To the right of the search bar, there is a text block describing the project's focus on transparency in subsidy allocation, mentioning the Programa de Transparencia de CIPPEC and its study of subsidies for public services and mass consumption. Below the text, there is a line graph showing the evolution of current transfers to the private sector from 2005 to 2010. The graph shows a steady increase from approximately 40,000 million pesos in 2005 to over 60,000 million pesos in 2010. To the left of the graph, there is a table with the following data:

Estadísticas	
PROMEDIO	0.0
SUMA	0.0
MIN	0.0
MAX	0.0

The online database on subsidies is designed to filter the information by agency, tax identification number (clave única de identificación tributaria, or CUIT), or name of the beneficiary. For each subsidy, the database provides the normative framework and quantitative information about its management. In the case of quantitative data, once selected by the user according to the different search criteria available, the results are presented in various formats: tables (exportable to Excel, which can be ordered as needed), statistics, and time-series graphs. In addition to the amounts received per beneficiary, other information is also shown, such as the resolution that determines the subsidy payment, payment year and quarter, application file, name of beneficiary (name, CUIT, and banking CBU), and the date when the activity subject to compensation was performed. The website was developed as a transparent model of subsidies granted by the government, both to enable analysis of subsidies and to serve as an example of how information on these allocations could be presented.

¹⁸ Available at www.modelosubsidios.com.ar.

Third-Stage Results

The third stage of the project also had productive results. Numerous press releases were published, leading to the publication of 12 articles in the national newspapers with the largest circulation (with editorial and front page notes), 10 articles in local newspapers, 10 radio and television appearances, 10 articles in Web portals, and 2 articles in the international press.



A combination of factors unrelated to the project, particularly the strong growth of subsidies, along with the various civil society demands for greater transparency, helped put these topics on the agenda of the media and then on to the political agenda. Training, aimed at civil society, also helped revitalize the issue. Journalists were the most interested in attending the workshops, and later published their own research in their respective media outlets.

Several events that came out of the project can be highlighted. First, the closing of ONCCA, and its replacement with the new Coordination and Evaluation Unit for Internal Consumption, emerged amid questions about the entity's lack of transparency in the allocation of subsidies, quotas, and other administrative restrictions. In its last days, ONCCA began to publish some of the information with filters that allowed for the classification of allocated subsidies in three categories. This was an improvement over the simple publication of resolutions in the past. The degree of transparency in the new evaluation unit is yet to be seen.

Also, some facts related to the project and others completely exogenous to it, such as the tragedy of the Estación Once, helped the Transportation Secretariat focus on the executive branch. Finally, this entity changed venue as it passed from the Ministry of Planning (Ministerio de Planificación) to the Ministry of the Interior and Transport (Ministerio del Interior y Transporte). This step helped promote the creation of the new website.¹⁹ In a recent conversation with the people responsible for submitting this information, CIPPEC was asked to prepare concrete recommendations to improve this new information portal. With regard to gas subsidies, no recent changes in access to information have been detected. Surely, direct responsibility for these changes cannot be attributed solely to this project. But, it is fair to say that the project brought the issue to the public agenda, and helped disclosing relevant public information at the right time, triggering discussions on the increasingly large subsidies in a context of growing government spending.

¹⁹ Available at <http://www.transporte.gov.ar/content/subsidios/>.

Conclusions and Lessons Learned

Through the “Transparent Transfers” Project, it was found that the agencies responsible for administering national government subsidies publish much of the regulatory and administrative information, but only limited information on beneficiaries. Nonetheless, the mere publication of the information does not promote transparency, as it must be presented in a way for it to be accessible and relevant to citizens. This does not appear to be the guiding principle of the agencies studied.

Overall, there is a lack of information on the regulations, procedures, requirements, and criteria used by each agency for allocating subsidies, as well as a lack of information on transferred amounts and data on beneficiaries. Moreover, there is no oversight process for each subsidy. There is also a lack of integration, consistency, and organization in the presentation of the available information, which creates difficulties in the processing and editing of information, as it was often in formats that prevent further use (such as PDF format).

Argentina’s political and institutional context led the project to rely more on civil society and the media as monitors of transparency in public accounts. Thus, the CIPPEC project included the issue of transparency in the publication of information regarding the allocation of subsidies. This enabled certain areas within the government, which were more committed to transparency, to seize the opportunity to issue relevant public information clearly. An example is the publication of data tabulated by ONCCA shortly before its dissolution. Another example is the emergence of a new channel within the website of the Ministry of Interior and Transport, which led to an improvement in the availability and transparency of information on subsidies to private transport companies. Thus, it can be stated that the CIPPEC project had an impact on the inclusion of transparency on the agenda of allocation of subsidies to certain sectors.

Challenges and Pending Agenda in Argentina on Transparency and Access to Information

Progress on transparency and access to public information in Argentina has developed very unevenly. The country is one of the few in the region that lacks a national law on access to public information. In 2010, following an extensive debate among key stakeholders and some political forces, the senate gave preliminary approval of a bill of this nature. However, the necessary consensus for it to pass in the Chamber of Deputies was not achieved. Each of the state branches is currently governed by separate regulations. The executive branch, governed by Decree No. 1.172 of 2003, has made progress on the matter, but the Decree has proved to be inadequate and has allowed setbacks.

Access to public information has deteriorated nationwide. Public offices have stopped updating information on their websites that was previously published in a timely manner, or such information no longer appears at all. At the provincial level, progress is also unequal, according to the type of legislation adopted in each jurisdiction and its implementation. Provinces such as Santiago del Estero, Jujuy, Catamarca, Mendoza, Córdoba, La Pampa, Tierra del Fuego, Chubut, Río Negro, and Buenos Aires, as well as the Autonomous City of Buenos Aires, have laws on access to information, while provinces such as Entre Ríos, Misiones, Santa Fe, and Salta have ordinances regulating access to public information. However, the sanction of standards does not guarantee the full exercise of the right. Real political will and consensus building will be required to ensure that standards are implemented effectively, as will the involvement of active and informed citizens. Increased demand for information from the public will eventually have an impact, even in adverse contexts, such as those observed during the development of the project.

Both the judiciary, through the Supreme Court, and the legislative branch have shown interest—at least at a discursive level—to expand the amount of information made available. However, this expansion is still insufficient and does not pertain to the inclusion of regional standards. The Argentine government has shown no interest in participating in international movements, such as the Open Government Partnership, to expand access to public data, promote participation, and encourage the cooperation of the public. In some cases, participation in such initiatives could favor the protection of the right of access to information and transparency in public administration.

This project is another example of the fact that civil society plays a very important role in promoting access to information and transparency of government actions. A group of organizations in Argentina, the Promoter Group for Access to Public Information (Grupo Promotor por el Acceso a la Información Pública), has been working on access and transparency issues for over a decade. This group has had a prominent role in advocating congress to pass the law on access to information in 2010, but its efforts were frustrated due to the lack of endorsement from deputies. However, the group has continued to play an active role through the promotion of activities and advocacy in favor of access to information.²⁰

In this context of progress and setbacks in transparency, subsidies to the private sector have gained renewed attention. In spite of that, there is still a long way to go. The approval of legislation related to access to information and its effective implementation would be a step forward in improving transparency in the granting of subsidies by the Argentine government. The adoption of open data policies, mandatory for all government agencies, would involve the disaggregated publication of standards, amounts, and beneficiaries in terms of subsidies. This public and accessible information would favor control by auditing bodies, such as the Auditor General's Office and the Comptroller General's Office, as well as by civil society organizations and the media.

²⁰ For more information on the group of organizations, which comprise the Promoter Group for Access to Public Information, see: <http://www.saberesunderecho.org/qsomos.html>.

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The **Public Expenditure Observatory** has shown to be an effective tool, not only because of its ability to identify indications of potential improprieties, but also because **it has a favorable influence on the adoption of new practices by public officials with regard to the allocation of public funds.**

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Chapter 4

Transparency and Control of Government Spending in Brazil: The Role of the Public Expenditure Observatory

Amon Narciso de Barros and Thiago Alvim Camargo

Introduction

Because of the size of the country and the way that responsibilities are distributed among federal government entities, monitoring public sector expenditures in Brazil is rather cumbersome. Brazil has been steadily improving oversight mechanisms and achieving greater transparency, thanks to a number of initiatives undertaken by various government agencies. The increasing complexity of government programs and the rising volume of expenditures will require further advances and continue to pose new challenges for those who are monitoring the integrity and quality of public spending.

This chapter discusses one initiative that is helping to expand government transparency and public spending monitoring. This initiative, led by the Office of the Comptroller-General (Controladoria Geral da União, or CGU), is known as the Public Expenditure Observatory (Observatório da Despesa Pública, or ODP). One of the ODP's main objectives is to identify risks of fraud in the use of public funds. Established as part of a CGU effort to increase the effectiveness of existing controls on the use of public funds, the ODP has helped to increase the transparency of the state. Through information technology and skilled personnel, the ODP has gradually increased the number of analyses performed. Currently, it is conducting a project known as *ODP.nano*, which is designed to transfer the lessons learned from the implementation of the ODP to the subnational level, for example, in the states of Santa Catarina and Bahia.

Transparency in the Public Sector

Historically, Brazil has been characterized more by secrecy than transparency when it comes to the actions of government officials and the governments themselves (Oliveira Júnior, Jordão, and Castro Júnior, 2012; Jardim, 1999). Oliveira Júnior, Jordão, and Castro Júnior (2012) point out that the “neoliberal wave” was an important factor leading to greater openness on the part of the state with respect to external controls, inasmuch as it was sustained, in part, on the idea that that government officials are inefficient and need to be

more closely supervised.¹ From this standpoint, the purpose of transparency can be summed up as primarily curbing and combating corruption. Expanding the influence of civil society and enhancing democracy were not mentioned in the publication as key objectives. However, the fact that social control is a tool that contributes a great deal to the enhancement of democracy, and that it tends to constrain those who would engage in corruption, should not be ignored.

Jardim (1999) observes that with the return of re-democratization in Brazil, the demand for a more “open” government coincided with the opening up of the state to civil society that occurred at the end of the military dictatorship. This new configuration, according to Jardim, even helped shape the administrative reforms that occurred during the 1990s. Such interaction reinforces the idea that, even though control systems are thought of as having a solely administrative bias and are aimed at combating deviant behavior, broadening access to information in various levels of government benefits democracy and is positively correlated with civil society participation.

Pires, Tibali, and Souza (2010) point out several reasons why transparency has increased in the Brazilian public sector. Besides the aforementioned political “opening” that occurred during the post-dictatorship years, the authors cite the need to resolve fiscal imbalances and to improve the quality of public spending, sometimes in order to satisfy demands made by international organizations within the framework of assistance programs.

In order for governments to more closely satisfy demands from civil society, it is extremely important that they make an effort to increase transparency in all aspects that involve the state, thereby bringing citizens closer to public officials. These actions encompass a number of initiatives, from holding public hearings when new laws and regulations are being drafted, to making personnel available for consultation on information pertaining to public sector management. Akustsu and Pinho (2002) find that the difficulties of establishing a transparent relationship between the government and civil society are even greater in a society marked by a patrimonial tradition, such as Brazil.

According to Pires, Tibali, and Souza (2010), there are several possible meanings of the term “transparency” about which there is not much theoretical discussion. This chapter defines transparency as the broadening of government porosity at the time when decisions are being made, enabling participation by civil society. This porosity makes data pertaining to government actions available to citizens, which makes oversight of the acts of government officials possible.

As Pinho and Sacramento (2007) observe, transparency is frequently mentioned as the main component of accountability, a basic requirement for broadening the relationship between the rulers and the governed and making the relationship between the state and civil society more democratic. To Akustsu and Pinho (2002: 731), there are two facets to the concept of accountability: “the first delegates responsibility so that the second can proceed to manage the resources; at the same time, it generates an obligation for the one who administers the resources to give an accounting of his management and to demonstrate good use of those resources.” In other words, society gives the state resources and the power to allocate them, but is entitled to receive reports on their application.

However, transparency in public administration goes beyond the mere dissemination or publication of information. It must follow certain standards that enable society to judge the actions of public officials (Pinho and Sacramento, 2007: 49). Oliveira Júnior, Jordão, and Castro Júnior (2012: 3) point out that:

¹ There has been a great deal of debate, both concerning the nature of neoliberalism and whether or not the reforms of the state that began to be carried out starting in the 1970s were beneficial to the public interest and citizen participation. This issue is, however, beyond the scope of this study.

Access to public information is, as a rule, not only biased toward enabling citizens to satisfy their needs with respect to the state, but rather to provide the citizens and society in general a means of directly verifying the actions of the government even when oriented toward guaranteeing collective and diffuse rights, inasmuch as the legal framework is not, by itself, a guarantee of rectitude in administering the public trust.

However, due to the large amount of data generated by the public sector, it would be impossible for the ordinary citizen to monitor each of the actions being carried out. This means that the activities of audit and control agencies, such as the CGU, which has its own specialized structure for monitoring the activities of government, become even more important. Furthermore, greater familiarity with the actions of government may help public officials improve the effectiveness of the actions taken and the quality of public expenditures. Rezende, Cunha, and Bevilaqua (2010) and Jardim (1999) believe that the state leans towards opacity, and thus the monitoring and oversight systems are important tools in increasing transparency and accountability.

At the same time, advances in information technology increase the potential for interaction between governments and civil society, as well as for the processing of data and disclosure of information. Whether through organizations that are not part of the government or by government entities, making tools available that enable organized civil society to oversee and more capably demand performance from their governing authorities contributes to transparency.

Abrucio (2007) points out that one of the most successful actions in public sector reform observed in Brazilian public management may have been the incorporation of new technologies as a tool for keeping track of, grouping, and managing data. To the author, “information technology has led to a reduction in costs, as well as an increase in the transparency of government purchasing, thereby reducing the potential for corruption.” (Abrucio, 2007: 77). However, he pointed out that “the area in which the least progress has been made in e-Government is precisely that of achieving greater interactivity with citizens for the sake of greater accountability” (Abrucio, 2007: 77). Prado and Loureiro (2007) point out that e-Government prospers in a context that features the emergence of accountability and transparency, allied with the accelerated advance of information technologies.

On the other hand, Zurra and Carvalho (2008) argue that differences in the way the public and private sectors are organized slow the adoption of new technologies by the state. Difficulties in introducing innovations range from formal legal aspects to disputes over the control of information flows, along with complications in incorporating new arrangements, including public sector limitations regarding staffing. Pinho, Iglesias, and Souza (2005: 1) suggest that:

E-government should not be seen only in terms of the introduction of information and communications technologies (ICT) that are ever more refined and sophisticated, but also in terms of the vast gamut of possibilities for interaction and participation between government and society and the commitment to transparency on the part of governments. In other words, ICT have an enormous democratic potential, but only provided that a political decision has been made in favor of popular participation and transparency.

However, as Pinho, Iglesias, and Souza (2005) and Pinho (2008) observe, transparency does not depend solely on the government, but also on the vitality of civil society and the degree to which it is able to handle the information made available and to use the channels for dialogue that have been opened. According to Pinho (2008), the Brazilian civil society has a shorter tradition and a more limited ability to make demands of the accountability of their governing officials. There is no widespread demand for greater transparency, and the state is historically isolated from social demands.

Pinho (2008) points out, however, that the demand for greater accountability is a process that is still under construction in Brazil, and it must be understood within the historical context of a relatively recent democracy. For more than 20 years, Brazilians lived under a government that was closed to civil society. It is interesting to note that the demand for transparency has been growing at the same time as new tools and technologies that enable that demand to be satisfied are appearing and being adopted (Prado and Loureiro, 2007). This makes the initiatives that prepare citizens to process information and use it to analyze government actions even more significant (Correa and Capanema, 2009).

The actions of oversight entities, although no substitute for an empowered citizenry, are becoming even more important in the effort to ensure that government actions are carefully reviewed and improved. J6ia and Cavalcante Neto (2004) point out the importance of the adoption of new technologies by government. The authors mention that in government-to-government (G2G) processes, there is a greater agility in transactions made possible by information and communication technologies. By adopting electronic tools that enhance collaboration among agencies, governments can speed up transactions which, in turn, increases their transparency.

As Prado and Loureiro (2007) observe, the adoption of tools and technologies is not sufficient to permit an automatic increase in transparency and accountability. Both depend “much more on a consistent policy of making public information available, associated with the presence of institutional mechanisms that foster accountability [...]” (Prado and Loureiro, 2007: 358).

These mechanisms are being developed at each level of government, driven by both the efforts on the part of civil society and specific laws that create an institutional framework for the organization of data and release of information. As Akustsu and Pinho (2002) see it, total accountability, in the form of published reports and balance sheets audited by both external and internal auditors, is needed so that citizens can truly participate in government decisions. Furthermore, the authors warn that without a strong civil society, it is less likely that public officials will, on their own, promote accountability. This gives even more relevance to the actions being taken by civil society representatives vis à vis the government.

Increased opportunities for citizen participation and interaction with the government allows for more effective monitoring of public sector agencies and policies, and can also lead to citizen’s greater influence on the decisions made by the state. However, much progress remains to be made to increase the porosity of the Brazilian state and guarantee the existence of appropriate channels for citizen participation. In this regard, Pinho and Sacramento (2007: 51) declare, “resistance to the opening of such channels that make participatory management possible constitutes the biggest obstacle to achieving transparency in Brazil’s public sector.”

The Internet has considerably expanded the range of possibilities for interaction between the rulers and the governed (Akustsu and Pinho, 2002), and within the governments themselves. Furthermore, the web enhances not only the capacity of the governments to make their activities transparent, but also the citizens’ ability to pressure their governments through nontraditional channels that did not exist in the previous century, such as social networks.

In addition to a long history of dictatorial governments that have been closed to public participation, Brazil also has a tradition of under-participation by civil society. It has not yet overcome what O’Donnell (1994: 1999) called “delegative, but not representative, democracy,” a condition that is partially the result of many years of dictatorship. Brazil still has a strong patrimonial tradition when it comes to politics (Pinho and Sacramento, 2009). However, although they foresee a long road ahead before the Brazilian state becomes accountable, Pinho and Sacramento (2009) look favorably on the initiatives that have been taken since the re-democratization of the country and the adoption of the 1988 Constitution.

In this regard, the institutional structures that have been built and are making it possible to consolidate progress play an important role. Pinho and Sacramento (2009) note that, in addition to initiatives, such as the Participatory Budget and the decentralization of federal power as a result of the 1988 Constitution, there are other areas of progress in the direction of establishing a more accountable government. Among these, the authors mention the Fiscal Responsibility Act and the CGU:²

Having administrative functions of control, prevention, and auditing, the CGU makes available, via the Internet, information on the volumes of federal funds passed along to subnational levels of government. [...] It is appropriate to remember that the CGU spurs the action by important entities aimed at enforcing accountability, which are vital to the punishment of those who violate the rules of public trust, such as the audit offices and the public prosecutors (Pinho and Sacramento, 2009: 1359).

The Public Expenditure Observatory

In order to improve the mechanisms to monitor and combat corruption and to extend the transparency of the state to both the officials of the public administration and society in general, in 2008, the CGU established the ODP (CGU, 2012a). Described by the CGU as a project that has significant potential for using information technology to monitor and analyze government spending, “the ODP simulates a ‘fine-tooth comb,’ designed to identify situations that may constitute improprieties or irregularities (CGU, 2009a: 11).

The ODP emerged as an instrument to meet the challenges of overseeing the execution of public spending at the federal level, and to deal with the ever-increasing mass of information distributed through various databases. Although the transactions that result in the application of public funds are carried out increasingly via computers, they take place in an environment that is still highly fragmented, composed of a large number of systems managed by different organizations, developed on a wide variety of technological platforms, and lacking standards of development that would facilitate communication among them. By cross referencing and analyzing those databases, the ODP attempts to expeditiously generate reliable information to support the auditing functions and activities that lead to the improvement of government management practices. In this context, building the capability to analyze processes, within the shortest possible time, perhaps even simultaneously, would make overseeing the application of public funds more effective.

The ODP makes two principal contributions to the management of the Brazilian government.³ First, it establishes a system for the continuous audit of public funds, defining parameters for internal controls and focusing on the operations that are most sensitive to the risk of diversion. The second important contribution is the production and distribution of information that can support the decision-making process at the public management level, in order to increase efficiency in spending by establishing parameters for comparison among government agencies.

² The CGU, established in 2001 and reorganized and newly empowered starting in 2003, has powers associated with “the defense of public property, internal control, public auditing; the redress, prevention, and combating of corruption; ombudsmanship; and the increase in transparency of management in the realm of the federal administration” (President of the Republic, 2006).

³ Interview with public officials in charge of the ODP.

The search for solutions supported by the latest technology and sophisticated information management methods becomes even more important when considering the “impossibility for the control bodies to be systematically and permanently present”⁴ on all fronts where the federal government is active, throughout the territory of a country that is the size of a continent. In this context, “maximizing the control exercised by these bodies is vital,”⁵ and the intensive use of information technology is indispensable.

After a period of about two years since it was conceived, and during the year following its installation in December 2008, the Ministerial Directive No. 1219 of 2009 was published, linking the ODP to the Office of the Minister of the CGU, and formalizing the following objectives (CGU, 2009b):

- Anticipate critical situations so that preventive actions can be taken
- Construct scenarios in the strategic support of daily activities of control and management
- Furnish information that helps identify sporadic incidents to be addressed by the control process
- Facilitate the immediate production of knowledge to meet specific demands of control and management
- Increase timeliness and accuracy in strategic decision making.

The aforementioned rule also defines the way in which the ODP is organized. Its format comprises three levels of jurisdiction: the Analysis Council (Conselho de Análise), Liaison Groups (Grupos de Ligação), and Production and Memory Unit (Unidade de Produção e Memória). The Analysis Council is the strategic unit of the ODP, and is composed of members of senior management of the CGU, including the Office of the Federal Secretary for Control, the Office of the Secretary for Strategic Information and Prevention of Corruption, and Office of Internal Affairs. The Analysis Council is responsible for prioritizing the topics to be addressed; determining which offices are to provide the human resources for the Liaison Groups; and, after presentation of the results identified for the topic, determining how the results should be disseminated and what steps should be taken with respect to the improprieties, or appearance of improprieties, that were detected. The Liaison Groups are established for each topic that has been identified as a priority for investigation by the ODP. Their term varies according to the work to be performed. They are composed of technical personnel drawn from various administrative units that specialize in the subject matters to be addressed, and their purpose is to ensure that specialized data will be provided and exchanged. Finally, the Production and Memory Unit (UPM), the third level of the ODP, collects, classifies, and analyzes data. Institutionalized as a unit of the CGU’s Bureau of Strategic Information, the UPM disseminates and maintains the knowledge produced, and develops new information technology solutions to support the work of the ODP.

Participation by the units responsible for auditing and correcting errors, which are the end users of the strategic information generated by the ODP, is vital to the incorporation of the ODP’s production into the work of the various areas of government. By helping determine the priorities to be analyzed, as well as the strategy for disseminating the information generated, the auditing and correction units become partners and co-authors of the ODP project. This is a key strategy for the implementation of the ODP, and is indispensable for its development within the CGU.

⁴ Ibid.

⁵ Ibid.

Three major groups can be identified direct beneficiaries of the ODP:

- **Senior management of the CGU.** Management has strategic information, and can require the auditors of that agency to use the work of the ODP as a tool to facilitate and improve their performance.
- **Other managers.** As consumers within the executive branch, but not of the CGU, any manager responsible for expenditures may benefit from the work of the ODP by using the reports that present and compare information on public expenditures gathered from the various cabinet ministries.
- **Civil society.** The information generated can be made public, thereby making the government more transparent and permeable to oversight by society, especially by the print media.

The work of the ODP is guided, in general, by medium-term planning, based on an analysis of the threats to the proper application of public funds. The team's operating plan indicates that, by the end of 2012, newly established priorities will guide the work of the ODP until 2017. However, these priorities are not isolated from the external environment, and so they may be influenced not only by changes in the priorities of the executive branch, but also by specific demands from civil society, including situations that receive prominent coverage in the media.

The topics already studied by the ODP range from projects that handle significant volumes of funds and involve millions of beneficiaries, such as the *Bolsa Família* program, to actions directed toward activities of lesser scope that involve only federal public officials, such as the execution of expenditures processed via corporate credit cards. In this regard, the decision whether to address a given topic is guided not only by the potential financial impact of an effective audit, but also by the need to ensure integrity in public spending in its diverse methods of application. Positive experiences reinforce the importance of the ODP for the refinement of the internal controls over Brazilian public administration (CGU, 2011b: 24):

Among the tasks performed by the ODP, special mention should be made of the analyses of: (i) atypical uses of the Federal Government Payment Card; (ii) the Comprasnet database, for verification of specific types of fraud and the production of statistics and managerial reports on Federal government procurement; (iii) federal government outsourcing contracts; (iv) beneficiaries of the Family Allowance Program (*Bolsa Família*); (v) purchase of travel tickets and payment of per diem; and (vi) NGOs.

The analysis of the *Bolsa Família* program involved verification of the personal data of its beneficiaries, their satisfaction with the conditions for receiving the stipend, and the social progress made by the families served. Furthermore, an inquiry was made into potential improprieties, such as the presence of public officials among beneficiaries, the incompatibility between beneficiary income and program requirements, and the retention of deceased beneficiaries on the cadastre. As an example of the results obtained from crosschecking the database on program beneficiaries against information from the National Department of Traffic (Denatram), it was possible to identify, out of a population of two million people, thousands of beneficiaries, who had registered vehicles with an assessed value greater than R\$50,000 (approximately US\$ 24,000).

An initiative that was prominently covered in the media was the analysis of expenditures made using corporate credit cards, known as "Federal Government Payment Cards" (CGU, n/d). A total of R\$80 million in funds was analyzed in 2010, using 15 audit tracks. In addition, the following aspects were considered in greater detail because they have the potential of demonstrating atypical movements of funds: transactions related to vehicle rental; breakdowns of projects into separate expenditures; expenses for fuel and lodging; purchases at supermarkets, delicatessens and restaurants; spending at atypical establishments; purchases

by public officials who were on vacation; transactions on weekends or holidays in excess of R\$1,500.00, etc. In 2010 alone, out of a total of 267,244 transactions reviewed, 28,978, or approximately 11 percent, were flagged for further investigation.

Other experiences that produced favorable results with respect to the performance of the ODP were the analyses made during the “Second Half” program, sponsored by the Ministry of Sports, as well as the pass-through of funds relating to the various agreements signed by the federal government and the National Program for Strengthening Family Agriculture.⁶ With respect to the latter, the measures taken, based on analyses by the ODP, ranged from the blocking of pass-throughs in contracts that were under suspicion, to the drafting of new rules and guidelines to regulate the program (CGU, 2012). In the past two years alone (2010 and 2011), the ODP has monitored about R\$128 billion in public funds, and has issued thousands of alerts regarding situations that are either atypical or outside the standards that apply to the execution of public expenditures (CGU, 2012b).

By availing itself of the ability to mine data, the ODP permits more effective analyses of simulations of bidding competitions, in which entities created only for the purpose of capturing funds through formal agreements can be identified. Analyses can also be made of possible shareholding conflicts in contracts signed between governments and companies, or connections among bidders in terms of equity holdings (CGU, n/d). Another sensitive issue that the ODP deals with is the breakdown of expenditures in order to avoid having to go through a competitive bidding process or, alternatively, imposing certain complex or specific conditions to facilitate steering the results to a certain bidder. In addition to these situations, the ODP looks into auctions in which the best proposal did not win the award, or investigates the presence of microenterprises or small businesses whose sales exceed the limit established by law for them to be considered as such. A recent example would be the examinations of outsourcing procedures. The ODP looks for signs of nepotism, the presence of the same employee on several different payrolls, civil servants working as independent contractors, deviations from job descriptions, and comparisons between costs and wages and salaries.

It is interesting to note that this “fine-tooth comb” approach, established as part of the refinements introduced by the ODP, produces a great deal of data, in the vicinity of hundreds of thousands of alerts every year, warnings that are subsequently analyzed in order to determine whether or not illegal activity or deviations from the norm are present. The structuring of a complicated solution for overseeing and improving government management practices requires a combination of conditions and spheres of authority that make it possible to build a set of capabilities in an organization—in the case of the ODP, its methodology.

The human capital dimension is supported by the very good career ladder available to the CGU that enables the institution to fill its ranks with personnel who are skilled in various fields of knowledge and have a comprehensive view of the problems to be faced. On this subject, the strategy of the CGU to reserve open positions for information technology professionals, who went through a competitive process before the ODP was conceived, was a determining factor in filling the gaps in the supply of skilled professionals that have been observed in other parts of the Brazilian public sector.

The technology pillar is strengthened by elements of business intelligence. An important factor is the online integration of data processing systems and the use of tools capable of performing statistical processing tasks that permit the use of data and text-mining algorithms. “A set of investigative analysis solutions is also part of the project: diagramming the relationship networks; identifying standard procedures, making visual analyses of information, and using software for modeling and storing information” (CGU, n/d).

⁶ Information obtained in an interview.

The methodological pillar is founded on the development of working procedures that are able to combine technical knowledge and information technology to generate highly reliable strategic information. To that end, elements of scientific methodology are employed to determine the best ways to resolve the questions posed to the working team.

There is yet another attribute that helps explain the results achieved. This is leadership, represented by the unrestricted support by the top management of the CGU for the implementation of the project. This has ensured the flow of financing and helped define the vision of the future of the ODP. Among improvements anticipated in the near future, the reformulation of the ODP's electronic portal is taking shape, to be used by CGU managers and auditors. The new portal will feature, in addition to tools designed to support public sector managers, an application that enables auditors to submit specific demands for the ODP to process and develop certain analyses. This means that the ODP is growing as a strategy that is being transformed from a center that makes available strategic information as defined by an executive committee to a tool that can interact with and assist auditors with their day-to-day workload.

In addition, a pilot procedure is now under way, which has already been adopted by four ministries of the Federal Government. Its purpose is to perfect the interactions between the ODP and the public officials. The aim is to install an information technology tool that enables auditors and public sector managers to communicate more easily, both concerning the alerts issued and the steps taken to resolve the potential problems identified. An internal discussion is under way to identify the best tool for making this closer relationship a reality. It may be consolidated in an arena in which each ministry would have its own username and password to log in and access information that falls within its purview.

This new system will replace the current one, in which follow-up on actions taken by public officials is done only sporadically. Alerts are forwarded to the Office of the Federal Secretary for Control (Secretaria Federal de Controle), which contacts the public officials. Then, time limits are negotiated for the verification and correction of the issues indicated by the ODP, which inserts these new deadlines into its plans. During this process, reviews are conducted for each item that the ODP believes is susceptible to objection, and a new report is prepared by the public officials to describe the sequence of actions taken to solve the problems. In this regard, the development of new procedures that make use of information technology and business intelligence could expedite the interactions between the managers and the ODP. Other tools, already being adopted, would permit the use of filters and online searches for information using the very data generated by the ODP. These tools are designed to facilitate and expedite analyses of procedures, as well as to function as a database that permits ready access to information pertaining to the various processes that the ODP is analyzing.

Another major expansion in the scope of the work done by the ODP came about with its active role in transferring technology to subnational entities. A pilot project is underway, financed by the IDB, known as *ODP.nano*. It calls for CGU support to the installation of units of the ODP in the states of Bahia and Santa Catarina. The selection of these two Brazilian states located in distinct and distant regions (the Northeast and South, respectively) will enable the CGU to develop a new strategy for disseminating the initiative to other Brazilian states and even to municipalities. So far, the difficulties encountered at the state level are similar to the challenges faced by the CGU during its internal structuring. These are related to the shortage of skilled information technology personnel, the difficulty of establishing priorities in the allocation of human resources to the detriment of other government initiatives, and the purchase of the latest-generation equipment and systems, while adhering to all the different competitive bidding procedures in place in Brazil. Replication of the ODP may also occur within the realm of the federal government itself. An independent unit could be set up in an agency or entity of the executive branch, so that analyses can be performed internally for purposes of internal control or improvement of management practices.

Final Remarks

The ODP has shown to be an effective tool, not only because of its ability to identify indications of potential improprieties, but also because it has a favorable influence on the adoption of new practices by public officials with regard to the allocation of public funds. Intensive use of technology has made auditable what was previously invisible to the eyes of auditors. This changes the perception of public officials as to what can be monitored and what possibilities there are to circumvent the system. Furthermore, by making available information on the quality of expenditures from the standpoint of comparison between public sector ministries, a healthy competition is fostered as public sector managers seek to earn a good reputation among their peers. In general, the ODP encourages appropriate behavior and enables the identification of shortcomings that might open the way to poor use of public funds.

The concrete results that have been achieved in such a short time and the recognition received in the form of awards from outside observers, both Brazilian and international, highlight the merits of the initiative and contribute tremendously to the process of institutionalizing the ODP as a permanent unit of the CGU.⁷ Although it has already produced significant results, the initiative still has a great deal of potential that can be exploited, whether internally as a working tool for auditors or among external clients, such as public sector managers. In both cases, the internalization of the tool as a working routine is occurring gradually, thus enabling the ODP to expand its response capability at a moderate pace. The improvements in the interaction with public sector managers and auditors made available, because of the redesign of the electronic portal of the ODP, has tremendous potential to expand the use of the information and, consequently, to improve the application of federal government funds.

Efforts are still being made to enhance the institutional legitimacy of the ODP as an integral part of the agencies of the state. This is important, owing not only to the need to add to the activities of the ODP by extending its coverage to ministries and subnational entities, but also to ensure its consolidation and continued refinement regarding the methodologies employed. As tools for increasing the transparency of the state, these refinements bring a variety of benefits to Brazilian society.

Finally, it is interesting to recall that the state sometimes finds it difficult to institutionalize transparency. By bringing to light new mechanisms for control and monitoring of public expenditures, coupled with information that can serve as input for managerial improvements, the ODP is helping Brazil to overcome deeply routed deficiencies and to move forward toward becoming an increasingly open state.

⁷ The ODP received four awards for good government practices: United Nations Public Service Awards – 2011; the Prêmio Excelência em Governo Eletrônico (e-Gov) 2010; the Prêmio Conip de Excelência em Inovação na Gestão Pública 2009; and the Prêmio TI & Governo 2009.

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This chapter analyzes the experience of **Ecuador’s Extracting Transparency Initiative, which was designed to improve transparency in the oil sector, based on a set of standards agreed** to by the government, the private sector, and civil society organizations.

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Chapter 5

Civil Society and Transparency in the Resources of Ecuador's Extractive Industries: The Experience of the Project “Extracting Transparency”

Orazio J. Bellettini Cedeño

Introduction

Transparency is a means (and a powerful one) for promoting democratization and efficiency in management and in public policymaking—democracy, because it enables the citizenry, or its representatives, to contribute to the formation of public opinion on past and future decisions, and efficiency, because publicizing acts and results stimulates competition for public ownership, as well as competition between ideas.

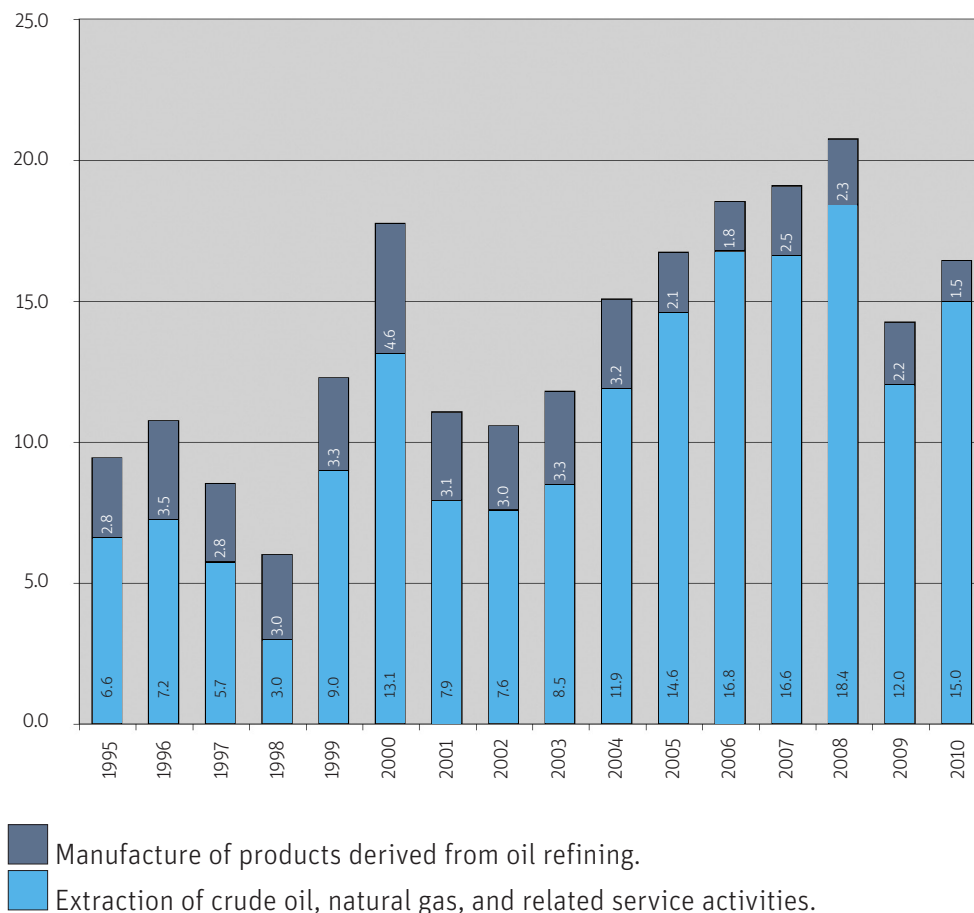
Nuria Cunill Grau (Isunza Vera and Rivera, 2006)

According to the Banco Central del Ecuador (BCE), in the period 2000 to 2010, the hydrocarbon industry accounted for, on average, 16.2 percent of the country's total gross domestic product (GDP) (see Figure 5.1). Exports of crude oil and its derivatives made up 55 percent of total exports. Twenty-eight percent of the total nonfinancial public sector revenues originated in the oil-producing sector (BCE, 2012).

In spite of its importance to both the Ecuadorian government and society, information about the oil sector has long been characterized by its inaccessibility, wide dispersion, and high technical complexity, which have hampered governance in the hydrocarbon industry. If information and the capacity to analyze it are asymmetrically distributed, then the ability to make decisions that take into account the multidimensionality of a sector of such technical, environmental, economic, and socioeconomic complexity is reduced. On the other hand, inadequate transparency increases mistrust between public and private actors, and exacerbates polarization in a society already characterized by conflict (Collier and Venables, 2011).

Figure 5.1

The Hydrocarbon Industry's Contribution to GDP, 1995–2010 (percentage)



Source: BCE (2012).

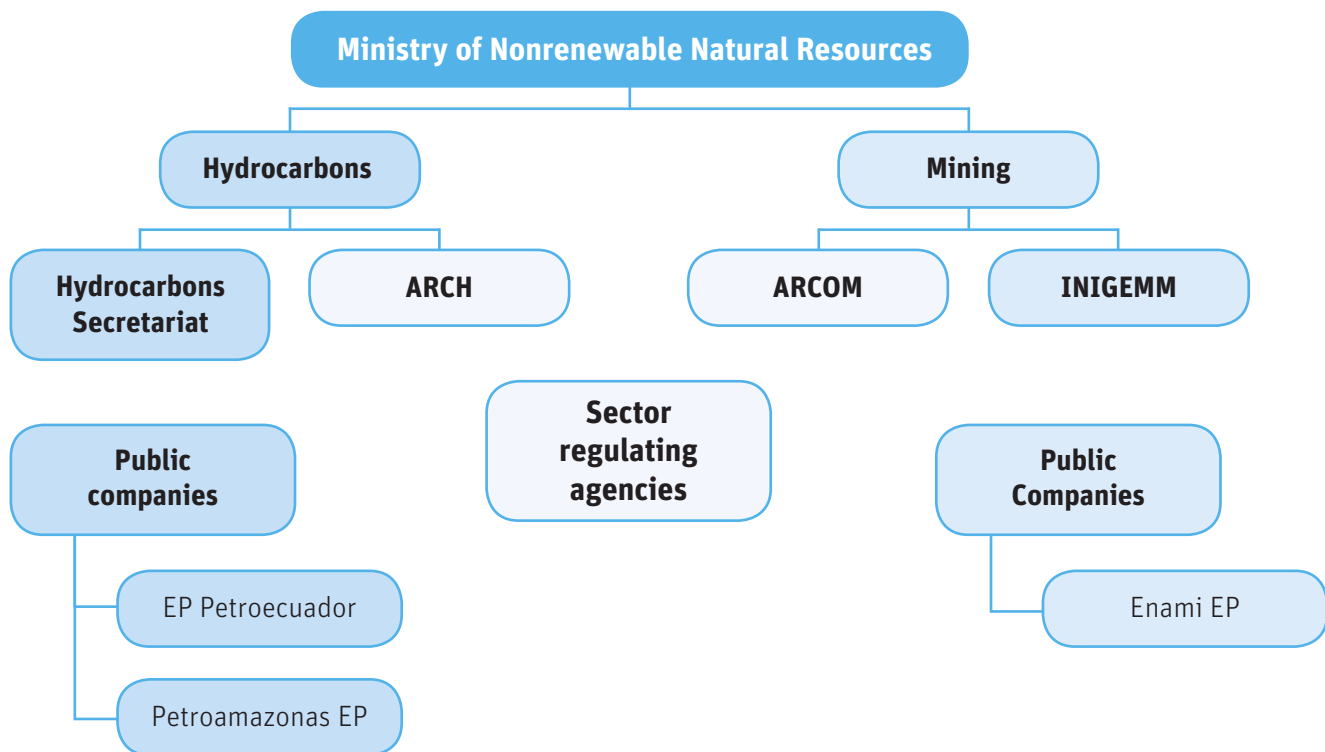
This chapter analyzes the experience of Ecuador's Extracting Transparency Initiative, which was designed to improve transparency in the oil sector based on a set of standards agreed to by the government, the private sector, and civil society organizations. To this end, the first part examines the current legal and institutional framework that exists in Ecuadorian extractive industries. The second part contains a brief description of the levels of transparency and the economic consequences of the limited access to information found in Ecuador's oil sector. The third part describes the process of standard setting for transparency, and presents a public policy proposal that would make such standards obligatory for both public and private actors in the sector. Finally, the factors that affect the dynamics of this initiative are analyzed, and some reflections are offered on the strategies that would maximize the potential use of the standards to achieve better governance, higher quality sector policies, and greater citizen participation in the sector's key processes.

The Institutional Framework of the Ecuadorian Oil Sector¹

The reforms to the Hydrocarbons Law (Ley de Hidrocarburos) carried out in 2010 envisaged a series of changes to the responsibilities of the sector's public institutions. As Figure 5.2 shows, two institutions were created that were attached to the Ministry of Nonrenewable Natural Resources (Ministerio de Recursos Naturales no Renovables, or MRNNR), the Hydrocarbons Secretariat (Secretaría de Hidrocarburos) and the Agency for Hydrocarbon Regulation and Control (Agencia de Regulación y Control Hidrocarburífero, or ARCH), each enjoying administrative, technical, economic, financial, and fiscal autonomy.

Figure 5.2

The Institutional Design of the Extractive Industries



ARCH: Agency for Hydrocarbon Regulation and Control (Agencia de Regulación y Control Hidrocarburífero).

ARCOM: Mining Regulation and Control Agency (Agencia de Regulación y Control Minero)

ENAMI: National Mining Company (Empresa Nacional Minera)

INIGEMM: (Ecuadorian Institute for Geological, Mining and Metallurgical Research (Instituto Nacional de Investigación Geológica Metalúrgica Minera).

ARCH was set up as the new technical-administrative organization, attached to MRNNR, in the role formerly undertaken by the National Hydrocarbons Directorate (Dirección Nacional de Hidrocarburos). ARCH, therefore, is the organization responsible for regulating, monitoring, and overseeing technical and opera-

¹ This section is based on Grupo FARO (2011).

tional activities in the diverse areas of the hydrocarbon industry, both for private and public sector enterprises, whether foreign or national. Furthermore, the Hydrocarbons Secretariat was created to manage the activities of subscription, administration, and modification of the oil areas and contracts. Petroecuador, the publicly owned company concerned with oil production and commercialization, had previously conducted these activities.

Table 5.1

Some of the Responsibilities Assumed by the New Institutions Following Reform of the Hydrocarbons Law

Responsibility	Previous organization	New organization	Article of the Act
Development of sector policy and its execution	Line Ministry, via the National Hydrocarbons Directorate and Petroecuador	Line Ministry, via the Hydrocarbons Secretariat and the Agency for Hydrocarbon Regulation and Control	Art. 6 of the Hydrocarbons Law and Art. 3 of the Reform Law (Ley Reformatoria)
Administration of contracts for service provision and the other contractual arrangements, currently included in the Hydrocarbons Law	Petroecuador, via the Contract Administration Unit (Unidad de Administración de Contratos)	The Hydrocarbons Secretariat	Art. 2 and Art. 16 of the Hydrocarbons Law and Art. 1 and the Second Transitional Provision (Segunda Disposición Transitoria) of the Reform Law
Technical-administrative agency in charge of regulating and controlling technical activities and operations in all areas of the industry	National Hydrocarbons Directorate	Agency for Hydrocarbon Regulation and Control	Art. 11 of the Hydrocarbons Law and Art. 5 of the Reform Law
Conducting or commissioning audits of both public and private sector enterprises	National Hydrocarbons Directorate	Agency for Hydrocarbon Regulation and Control	Art. 56 of the Hydrocarbons Law and Art. 17 of the Reform Law

Sources: The Hydrocarbons Law and the Hydrocarbons Reform Law.

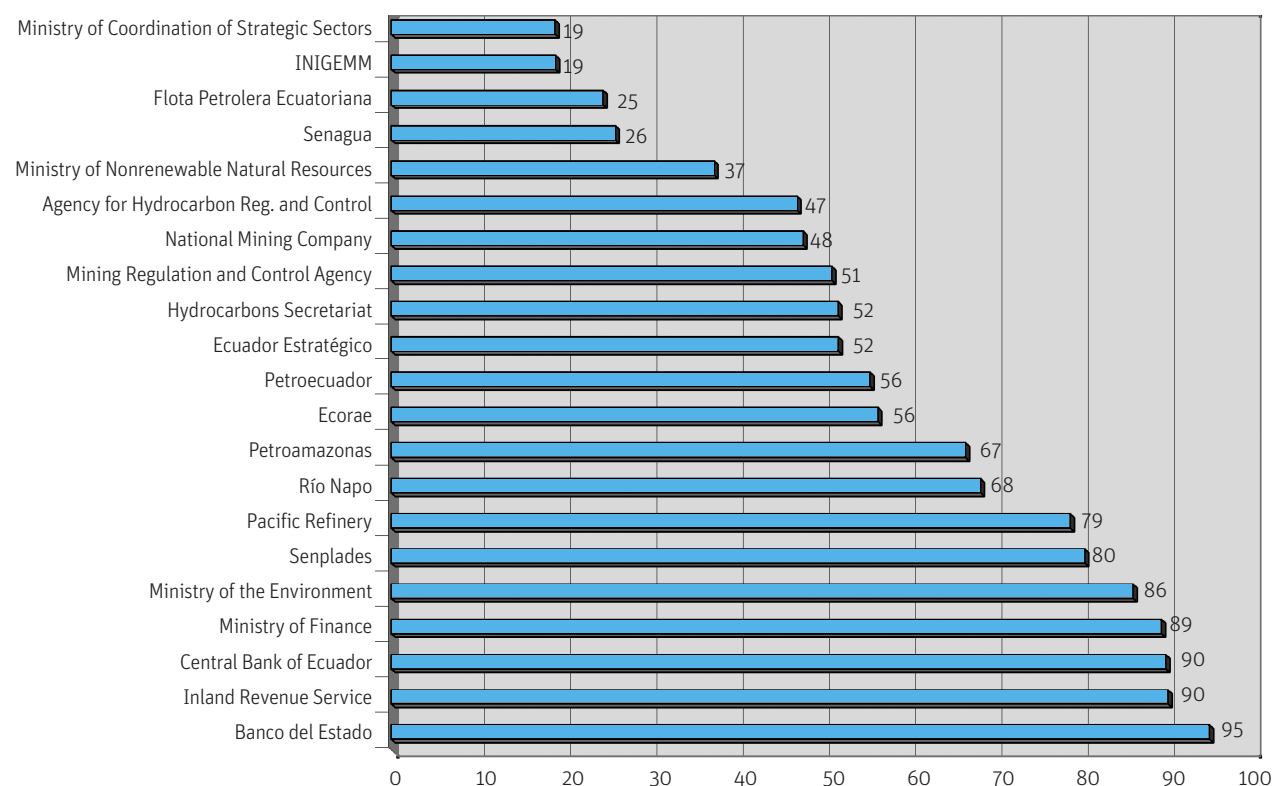
Note: The full extent of specific competences that each new institution assumes will be seen with greater clarity once the working regulations for each one have been drafted, and their responsibilities have been modified and implemented under MRNNR's Organic-Functional Statute.

These reforms are designed to establish the separation of functions in policymaking, regulation, and monitoring, as well as in the operational aspects (production and marketing). However, MRNRR will, for the time being, retain the responsibilities of monitoring and oversight (currently undertaken by ARCH), as will the public companies in which the aforesaid ministry maintains a boardroom presence. This clearly demonstrates that institutional roles must be even more precisely defined before genuine independence from the functions of production and regulation can be attained. In conclusion, if these changes are to improve governance in the oil industry, they require greater levels of transparency so that regulators can comply, and enforce compliance, with the new institutional design currently in effect in the Ecuadorian oil sector.

Transparency in the Oil Sector

Since 2008, Grupo FARO has carried out regular monitoring of compliance with the Organic Law on Transparency and Access to Public Information (Ley Orgánica de Transparencia y Acceso a la Información Pública, or LOTAIP) by the various public institutions associated with the oil industry. The monitoring analyzes the presence of each of the 27 items of information set out in Article 7 of LOTAIP, such as institutional budget, planning, contracts, and the like. The latest review of the institutions within the extractive industries sector, issued in August 2012, rated compliance at an average of 53 percent. As seen in Figure 5.3, the institutions that achieved the highest rating within this review are the Ministry of Finance, the Ministry of the Environment, the Planning and Development Secretariat (Senplades), and the Pacific Refinery.

Figure 5.3
Results of the Review of Compliance with the LOTAIP,
Extractive Industry Sector, August 2012 (percentage)



Source: Grupo FARO (2012).

The institutions that focus directly on hydrocarbon management—Petroecuador, the Hydrocarbons Secretariat, and the Institute for Regional Eco-Development in the Amazon (Instituto para el Ecodesarrollo de la Región Amazónica, or Ecorae)—display compliance levels that are similar to the average mentioned above. This oversight shows that only half of the information that should be disseminated, according to the law, is actually available on the electronic portals of the key institutions in the oil sector. Moreover, there are instruments that measure transparency in the extractive industries on a worldwide scale. One is the Revenue Watch Index,² which determines levels of transparency according to the revenues arising from these industries in 41 natural resource-rich countries. In 2010, this index put Ecuador in tenth place among those countries that reported information on revenues. However, when the evaluation categories are examined in detail, Ecuador scores low on the variables that have to do with access to, and availability of, information, as well as with legal and normative mechanisms governing that access.

The challenges, however, do not stop there. The issue is not quantity of information, but rather its quality. Table 5.2 shows the discrepancies in information on production for 2008 reported by MRNNR, Petroecuador and BCE. BCE and MRNNR coincide in their production figures, but BCE returns figures in thousands of barrels and MRNNR in barrels. Furthermore, with the exception of the information provided by Petroecuador, the rest of the data does not distinguish between audited and non-audited crude oil.

Table 5.2

Discrepancies in Information Reported by Public Institutions in Ecuador, 2008

Information / Institution	Banco Central del Ecuador	Ministry of Nonrenewable Natural Resources	Petroecuador
Oil production	184,727 thousands of barrels	184,780,446 barrels	180,597,906 barrels

Source: Grupo FARO (2009).

This lack of transparency not only hinders the possibility of establishing informed dialogues, better governance, and a lower level of conflict: it also generates specific economic costs. In order to fully gauge these costs, in 2009 Grupo FARO carried out a study that identified and analyzed three information problems affecting the oil sector: (i) discrimination in monitoring and regulation, (ii) pressure exerted by interest groups, and (iii) ignorance of the costs and benefits arising from oil exploitation (Donoso, 2010a). Grupo FARO studied each of these problems by first following the industry's value chain, and then making referential estimates on the economic costs of the lack of transparency as a proportion of GDP. These costs were estimated at between 2.87 and 18.17 percent of GDP per year (Donoso, 2010a). Moreover, the following conclusions were drawn:

² For more information, consult the website of the initiative developed by the Revenue Watch Institute: <http://www.revenuewatch.org/rwindex2010/index.html>.

- **Discrimination in monitoring and regulation.** In an ideal scenario, the government would set identical standards of regulation and oversight for all actors involved in the oil industry. But, in the absence of information, however, the different actors participating in the oil market might be treated differently. If there is no transparency regarding the contracts signed with different operators, contract conditions might vary from one to the other. This means that some actors may be working under more favorable conditions than others, from the technical, social, or environmental perspective, which would therefore affect the industry as a whole.
- **Pressure from interest groups.** In a democratic system, the state manages oil wealth to maximize the welfare of its citizens (the owners of that wealth). But, in practice, there are circumstances that interfere with the fulfillment of this duty, such as political interference in the industry's administration. Such circumstances might lead to the arbitrary distribution of oil revenues to those interest groups with the greatest capacity to exert political pressure. These lobbies hold different interests from the common citizen, and this distribution might therefore negatively impact public welfare.
- **Ignorance of the costs and benefits of oil exploitation.** Given the complexity of oil sector management, Ecuadorian society should be made aware of the optimum level of oil exploitation. Lack of awareness makes it difficult for fundamental decisions to be made regarding the level of oil production that most benefits society. It would be extremely useful to have information available regarding probable and proven reserves so that, as a society, it would be possible to determine whether to extract more at the present time or whether to incorporate a criterion of intergenerational fairness. On the other hand, it is important for the social and environmental costs of the industry to be made transparent, in order to effectively prevent negative impacts on ecosystems and to be able to draw conclusions as to the net benefits that the industry bestows on society.

The Process of Setting Standards for Transparency and a Public Policy Proposal to Ensure their Implementation³

Given the efforts made in recent years to improve transparency in the oil sector, the next step is to establish policies and mechanisms that enable improvements to be made in the quantity and quality of available information. This task calls for a wide-ranging dialogue that must involve the government, the private sector, and civil society, to provide the starting point for stakeholders to discuss, according to their own realities and perceptions, information that would enable each actor to play its part most effectively. With this objective in mind, on July 2, 2008, the MRNNR, signed a commitment to a transparency agreement with 13 civil society organizations. The agreement commissioned Grupo FARO to carry out periodic monitoring of information related to the extractive industries. For its part, the ministry promised to provide access to information and to present up-to-date statistics via the Internet about the transport of crude oil and the industrialization, production, and commercialization of crude derivatives.

During the implementation of the agreement, Grupo FARO found that the available information was dispersed among various institutions and was generated using heterogeneous calculation methodologies. This was the point of departure for the Extracting Transparency Initiative, aimed at designing standards of

³ This section is based on Jervis and Gómez de la Torre (2012).

information via a participatory process that reduces discrepancies in the information presented by the sector, and at promoting dialogues that are based more strictly on evidence.

In 2009, the Inter-American Development Bank (IDB) and Grupo FARO signed an agreement to implement this initiative, which aimed at promoting the active participation of public and private sector stakeholders involved in the extractive industries. Specifically, the covenant sought to sponsor intersectoral dialogues to agree on, and to implement, minimum standards that would enable transparent information management throughout the sector and, in turn, satisfy the growing demand for information, and put forward a proposal for a viable and well-informed public policy.

As examined in more detail below, the transparency standards provide a reference point for the minimum information that must be reported by the sector's various actors. Their objectives are to ensure well-informed dialogue, to increase the tools available to civil society to take part in analysis, and to provide the government with information in support of management and decision making. The following describes the process that produced the proposed standards of transparency and, at the same time, served as the basis for the design of a public policy proposal aimed at enhancing transparency in Ecuador's oil sector.

Setting the Standards for Transparency

The Extracting Transparency Initiative proposed the establishment of standards of information approved by both public and private sector actors that would constitute the basis of a policy proposal for transparency in the Ecuadorian oil sector. The outlined standards arose from an analysis of the information already existing in public institutions actively involved in the oil sector, Ecuadorian legislation, international best practices, and dialogue between diverse sectors.

Following three years of work and a consultative process that involved both public and private sector stakeholders and civil society, a set of standards was designed that was implemented in a pilot project by a public revenue-collecting agency and a private sector oil company. The experience served to evaluate the information available in the public and private sectors, the capacities needed to generate said information, and the elements that must be included in public policy to make the oil industry, as a whole, more transparent. The objectives of applying standards of transparency are the following:

- Ensure a better-informed and more objective dialogue
- Increase the tools available to civil society in order to foster its participation
- Provide information to the government to enhance management and decision making
- Consolidate comprehensive and comparable information about the sector.

Standards of transparency are defined as the minimum conditions that the indicators must satisfy in order for them to be useful, important, interesting, and instructive to civil society. In terms of their principal characteristics, they must be:

- **integral** - in other words, they must include social, economic, technical, and environmental dimensions, as well as every step of the value chain;
- **consensual** - in other words, arising from the intersectoral dialogue; and
- **minimal** - meaning that they must be easily complied with, and irrespective of, the institutional capacities and resources of the diverse actors obliged to publish them.

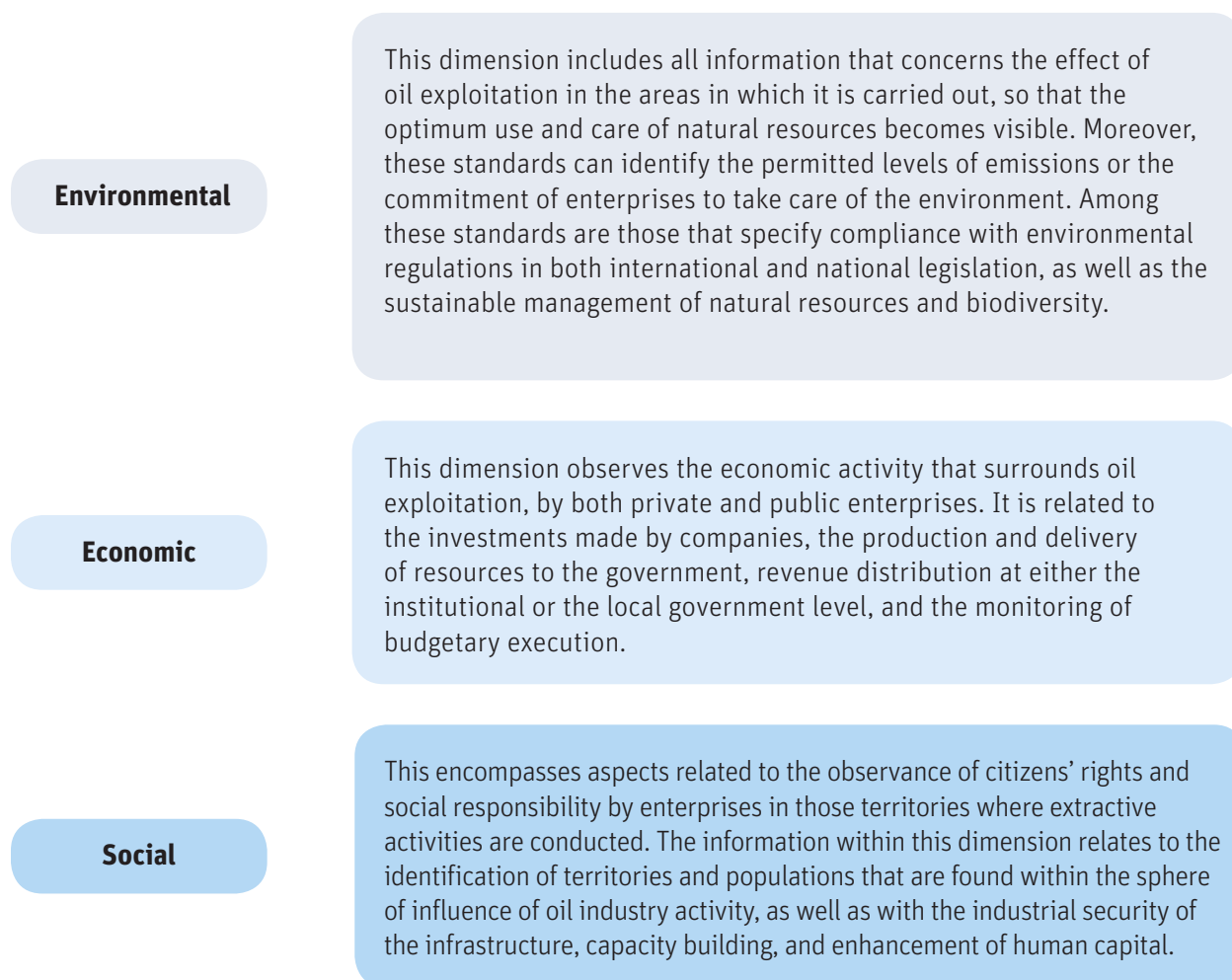
For the purpose of this study, the first step was to define the characteristics of the standards of transparency that all the indicators should comply with, regardless of the dimension (social, economic, technical, and environmental) or the informational category to which they belong. These characteristics are:

- **technical** - that is, characteristics related to conceptual validity and the methodology employed in designing the indicators;
- **style** - that is, related to the presentation format of the indicators and complementary information;
- **content** - in other words, referring to the information expressed or communicated, based on the observed phenomenon; and
- **source of information** - that is, related to the validity, availability, and trustworthiness of the information source.

The next step was to define the dimensions of oil sector management (Figure 5.4).

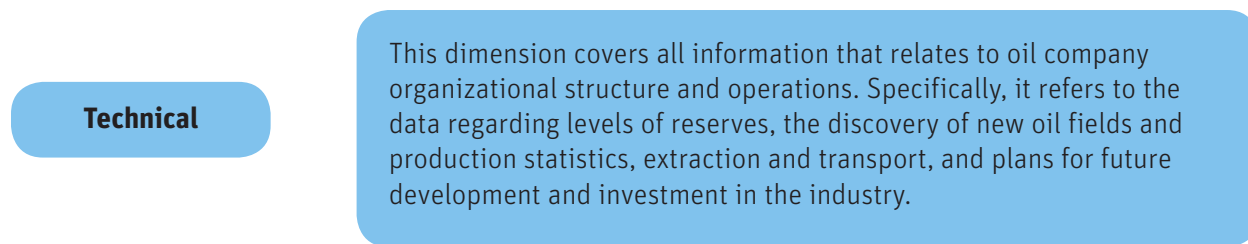
Figure 5.4

Dimensions of Oil Sector Management



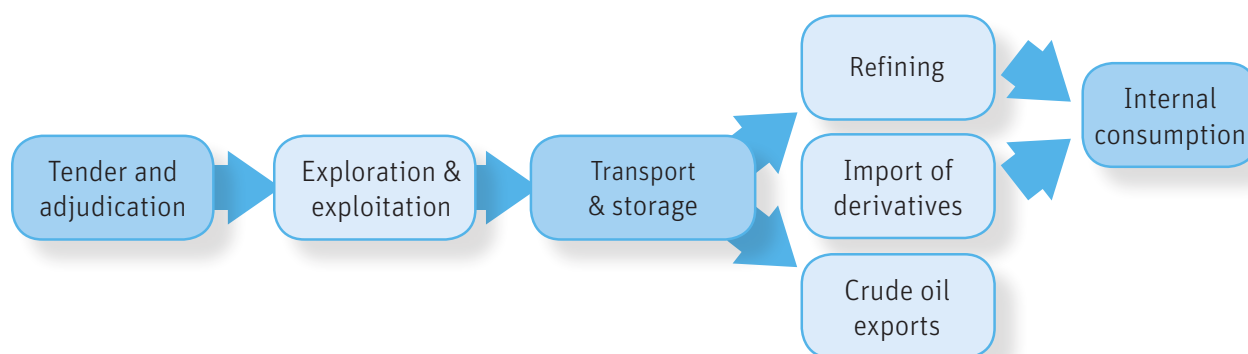
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Figure 5.4
Dimensions of Oil Sector Management (*continued*)



Finally, the standards were proposed in each of these four dimensions for each of step of the oil production value chain (Figure 5.5).

Figure 5.5
Oil Sector Value Chain



Source: Grupo FARO (2010).

The different steps of the oil sector value chain can be defined as follows:

- Calls for tender and adjudication.** This process provides licenses for the exploitation of oil fields, based on a public call for tender. For this purpose, the Special Committee for Tenders (Comité Especial de Licitaciones)⁴ was established, attached to the Office of the Attorney General (Procuraduría General del Estado). This committee creates the contractual bases and the general documentation. Once the call for tender has been made, the companies make their offers, and then the Qualification and Evaluation Committee (Comisión de Calificación y Evaluación), which is made up of technical experts, analyzes the offers. Once an offer has been accepted, specific negotiations with the chosen firm take place, and Petroecuador then approves the contract. Finally, the approved contract is signed and registered with the National Hydrocarbons Directorate.

⁴ The Special Committee for Tenders is formed by the relevant line ministry, the Ministry of National Defense, the Ministry of Finance, the State Comptroller General, and the Executive President of Petroecuador (Hydrocarbons Law, in effect since April 2010).

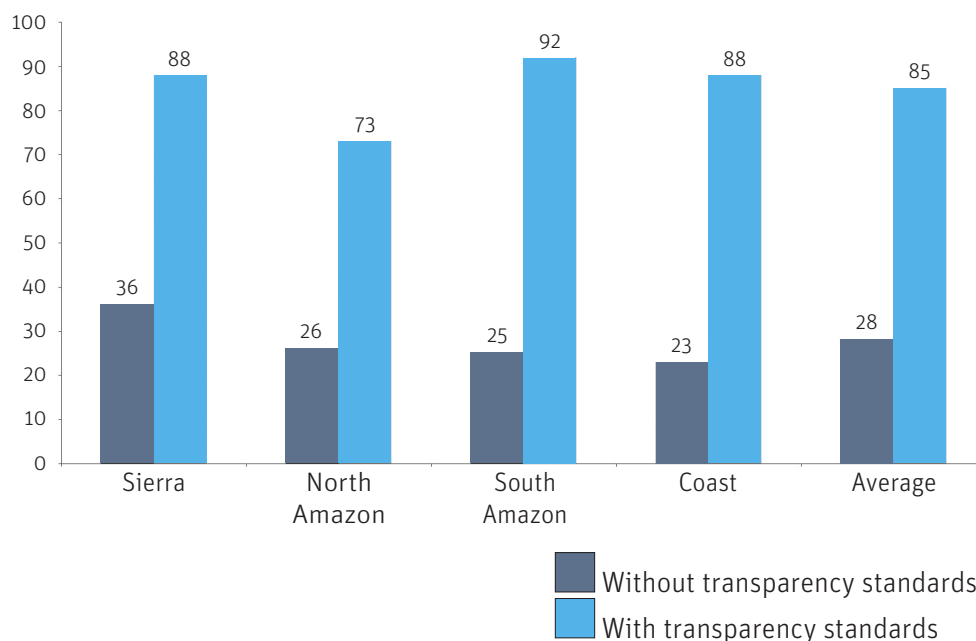
- **Exploration and exploitation.** The public and private sector enterprises provide the line ministry with the technical and economic information concerning the development of the adjudicated oil fields. Once the corresponding authorizations have been obtained, the oil company carries out the seismic prospecting study and establishes whether or not there are any commercially viable hydrocarbons. In their absence, the oil field is returned to the government. If the opposite is true, the company must provide guarantees and specific information. Once the reserves have been verified, the company extracts the hydrocarbons.
- **Transport and storage.** The crude oil is transported from the oil fields, whether via the Trans-Ecuadorian Oil Pipeline System (Sistema de Oleoducto Transecuatoriano, or SOTE), which belongs to Petroecuador, or the Heavy Crude Pipeline (Oleoductos Crudos Pesados, or OCP), either to the points of embarkation for export or to the refineries for its respective processing.
- **Internal consumption.** To satisfy Ecuador's internal consumption, supply comes from the derivatives produced at the country's refineries, which belong to Petroecuador, as well as from derivatives from abroad.

To verify the usefulness and relevance of the standards of transparency that arose from this initiative, the standards were presented to focus groups in the Sierra, coastal, and Amazon regions. In these groups, the citizens' level of comprehension of information regarding the oil industry, as presently reported, was also evaluated. Two kinds of actors made up the focus groups: those who were not identified with oil-based activity or familiar with the terminology employed by the industry, and those who were (although they were not considered experts in the matter). The focus groups were conducted in La Libertad (coastal region), Quito (Sierra region), and Coca (Amazon region). The evaluation methodology employed was participatory in the focus groups themselves, and technical via the use of surveys. The evaluation criteria used were based on comprehension of the information, access to it, its importance, and its degree of usefulness and interest. The evaluation was applied in two separate moments: Moment 0, in which the information was presented without applying the transparency standards, and Moment 1, in which the latter were applied. The results, which are displayed in Figure 5.6, show that:

- in the Sierra region, 36 percent of those surveyed understood the information without the transparency standards, whereas 88 percent understood the same information after the standards had been applied;
- in the coastal region, 23 percent of those surveyed understood the information without the transparency standards, whereas 88 percent understood the same information after the standards had been applied; and
- in the Amazon region, 26 percent of those surveyed understood the information without the transparency standards, whereas 83 percent understood the same information after the standards had been applied.

Figure 5.6

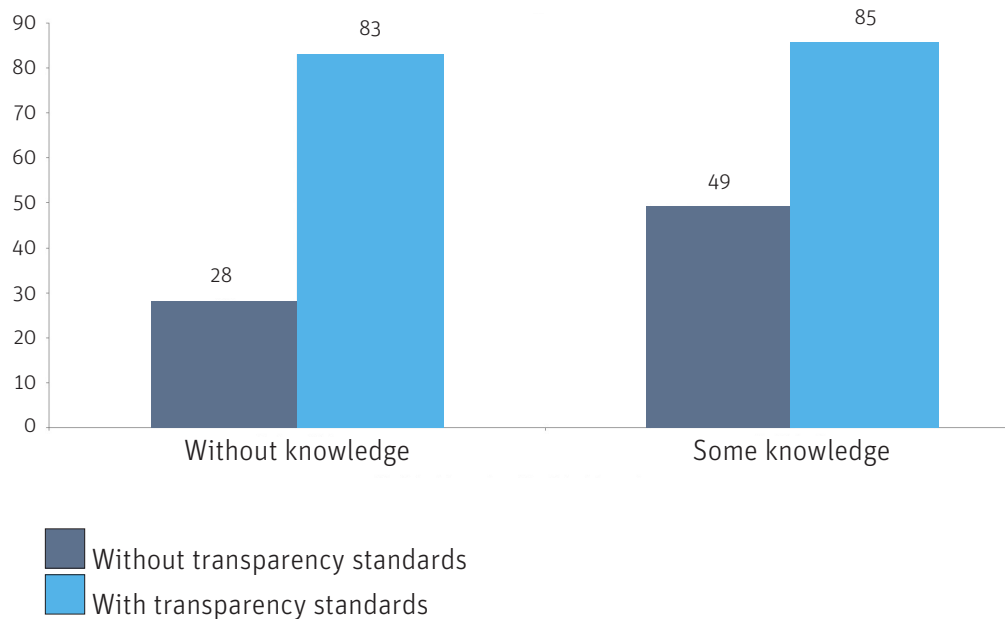
Evaluation of the Understanding of Oil-Related Information by Region (percentage)



Source: Elaborated by, and based on, Paredes (2011).

On average, an improvement was achieved from 28 percent comprehension in Moment 0 (without standards of transparency) to 85 percent comprehension (with standards of transparency) in Moment 1, as shown by Figure 5.7. The results obtained from the focus groups, after allowing for their composition, indicate that among the actors with no prior knowledge of oil exploitation, the percentage of those who understood increased from 28 percent to 83 percent with regard to comprehension of the information, whereas in the group of actors with some prior knowledge of the oil industry, the percentage of those who now understood the information increased from 49 percent to 85 percent. This represents a substantial improvement in the way that the information is presented once the standards of transparency have been applied, but also demonstrates the need to ensure that the standards continue to be implemented, so that the information becomes even more comprehensible.

Figure 5.7
Evaluation of the Understanding of Oil Sector Information According to Level of Awareness (percentage)



Source: Elaborated by, and based on, Paredes (2011).

The conclusions drawn from the focus groups are that the language used to transmit information is complex; there are difficulties in standardizing units of measurement; the technology is complicated; and the way the information is presented does not fully transmit its intended meaning. Later, the standards of transparency employed in the focus groups were presented to groups of experts in environmental, technical, social, and economic issues for a fresh appraisal. On the basis of their criteria, the way that some of the proposed standards were presented was redesigned with regard to information, units of measurement and terminology. Representatives of various ministries and central government institutions took part in this process, along with private sector enterprises, such as Repsol Ecuador, as well as entities that receive oil revenues, such as the Municipality of Coca.

Building the Public Policy Proposal

Once the standards of information were agreed to, it became necessary to put them into practice. Designing public policy that promotes transparency in the hydrocarbon sector is a complex task. First, all public policy has to be consistent with current valid legislation, which, in Ecuador's case, is wide-ranging and rather disperse. Second, the hydrocarbon sector is fundamentally technical and requires specialized knowledge to understand its peculiarities.

The first stage of the process consisted of revising the existing legislation, after which it was found that—taking the dispersed nature of the legislation into consideration—one of the main challenges was consolidating those regulations that directly or indirectly related to transparency or the hydrocarbon sector. LOTAIP, enacted in 2004, was analyzed first. This law represents an achievement and a first important step toward guaranteeing the transparency of public information. It does not, however, contemplate specific aspects of the information generated in the hydrocarbon industry. Thus, an organized and codified set of norms is needed to regulate the sector's particular characteristics. The Hydrocarbons Law and its respective regulations, which were reformed in 2011, as well as other regulatory bodies that deal with taxation law and public procurement, and the founding statutes of the sector monitoring agencies, were analyzed next. Finally, the international provisions that Ecuador adopted were also examined, along with the following principal national regulatory bodies that guarantee the right of access to accurate and timely information about the oil industry:

- Constitution of the Republic of Ecuador, 2008
- The Inter-American Convention on Human Rights
- The United Nations Convention Against Corruption (UNCAC)
- Statute on the Legal-Administrative Regime of the Executive (Estatuto Jurídico Administrativo de la Función Ejecutiva)
- Organic Law on Transparency and Access to Public Information (LOTAIP)
- Statute for Processes (Estatuto por Procesos) of the Agency for Hydrocarbon Regulation and Control
- Organic Law on Public Companies (Ley Orgánica de Empresas Públicas).

None of these laws or agreements specify what, how, or how frequently information concerning the oil industry should be made public, nor do they determine which institutions should manage this information. This situation reveals the need for a specific public policy that underlines the obligation to comply with the standards of transparency in the hydrocarbon sector, which demonstrates general compliance for both the public and private sectors, and, in turn, centralizes the dissemination of information throughout specific entities in order to avoid dispersion.

Before the public policy proposal was designed, an exhaustive review of best practices in public policy was carried out. This approach made it clear that initiatives generated by diverse stakeholders have been responsible for public policies oriented towards increasing data transparency in the extractive industry sector.

Table 5.3
Examples of Successful Cases in Other Countries and Institutions

Country/Institution	Act	Objective
Argentina	Act 24.076 of Regulation for Natural Gas Transportation and Distribution (Regulación del Transporte y Distribución de Gas Natural) Decree 180/2004, which creates the Electronic Gas Market (Mercado Electrónico de Gas, or MEG)	Create an electronic gas market that is transparent and provides access to up-to-date public information of interest to both the users of the public gas service and the economic operators in this market.
Chile	Mining Code (Código de Minería)	Establish the regulatory framework for extractive mining activity and create the institutions that make the regulatory system viable.
Indonesia	Presidential Regulation (Regulación Presidencial) No. 26; transparency of local and national income arising from the extractive industries.	Make the extractive industries transparent at the national level, as well as the national and local revenues arising from the same.
Mongolia	Mining Act	Regulate everything to do with mineral exploration and extraction, but not commercialization of the same.
Norway	Regulation regarding the presentation of reports and reconciliation of money flows that arise from oil-based activities.	Increase transparency of the flow of money throughout the Norwegian extractive industries.
United States	Dodd-Frank Wall Street Reform and Consumer Protection Act	Increase transparency of the payments made by extractive industry operators whose activities might affect the value of shares and stocks in the market.
Venezuela	Decree No. 5.219 on Hydrocarbons Metrology (Metrología de Hidrocarburos)	Establish monitoring to measure the quality and volume of hydrocarbons and their derivatives that are transported and commercialized, in order to establish royalties and tax levels.

Continued

Table 5.3Examples of Successful Cases in Other Countries and Institutions (*continued*)

Country/Institution	Act	Objective
International Monetary Fund (IMF)	Guide concerning the transparency of revenues arising from natural resources.	Enhance transparency in further aspects of the extractive industries than those set out in the initiative, Publish What You Pay (PWYP), or the Extractive Industries Transparency Initiative (EITI); raise public awareness of the standards demanded from the industry.
Joint Oil Data Initiative (JODI)	Joint Oil Data Initiative (JODI)	Provide information to support stability in the hydrocarbons market.

Source: Ocampo (n.d.).

Some of these experiences contain specific laws for the extractive sector, aimed at enhancing transparency in markets and in trade relations. In spite of the importance of this objective, however, the majority of these regulations do not cover all of the steps in the value chain; nor do they emphasize the importance of improving the transparency of information, which would enable both citizens and decision makers to become fully aware of the conditions under which extraction is conducted and its impact on society.

The majority of these regulations strengthen the participation or initiative of the branch identified as the governing body for oil policy. Venezuela incorporates the added element of the quality of the hydrocarbons extracted, but this is still insufficient in comparison to the vision set out by the Extracting Transparency Initiative. The case of the United States is important. The Dodd-Frank initiative puts forward an innovative method of enhancing the transparency of payments made in the extractive industry. This is an important step forward, but it still does not cover the entire value chain or all of the dimensions of extractive activity.

Finally, there are best practices adopted by organizations that sign international agreements, such as the Joint Oil Data Initiative (JODI) and the International Monetary Fund (IMF), which are limited in the extent to which they can demand compliance. If regulations are designed in consultation with the actors that participate in the national oil industry, and are thereafter promulgated by that country's government, there are greater chances that the regulations will be adhered to.

This discussion, and the resulting analysis concerning transparency and its international best practices, highlights the fact that, although there have been some agreements, there have still not been as many advances in terms of legislation as proposed in the initiative. On the basis of these inputs, a public policy proposal was put forward stipulating that *the Ecuadorian government must establish mandatory compliance with the standards of information that have been created through a participatory process by all the actors involved, directly or indirectly, in every phase of the oil sector value chain.*

To establish the public policy proposal within the Ecuadorian legal framework, a ministerial pact was proposed, enabling the development of a simpler creative process. This process would depend on the political will of the ministries in question, and could be aligned with the management of each of the government's portfolios.

According to the new structure of the Ecuadorian government, there are eight coordinated ministries, whose hierarchies are subordinated to the line ministry and other government institutions. In light of this, it was decided to incorporate at least four ministries from that hierarchy: the Ministry of Coordination of Strategic Sectors (Ministerio Coordinador de los Sectores Estratégicos), the Ministry of Coordination of Politics (Ministerio Coordinador de la Política), the Ministry of Coordination for Cultural and Natural Heritage (Ministerio Coordinador de Patrimonio), and the Ministry of Coordination of Political Economy (Ministerio Coordinador de la Política Económica). Furthermore, management of the oil industry incorporates environmental, social, economic, and technical dimensions. Due to the wide range of institutions responsible for information gathering and publication, a proposal had to be designed that included them all at the same time, and that promoted coordination among them.

Conclusions and Final Thoughts

- In spite of the progress made in recent years, information about the Ecuadorian oil sector is still largely inaccessible, highly technical, and sparse. These characteristics hamper governance and decision making in an area as complex as the oil sector.
- An initial assessment carried out on transparency in the sector made it clear that the problem arises not only because there is a scarcity of information, but also because the quality of the information available is poor in terms of opportunity, utility, and accessibility.
- For this purpose, Grupo FARO, in alliance with the Ecuadorian government and civil society organizations, and with the support of the IDB, promoted the Extracting Transparency Initiative. The initiative is aimed at defining integrated, participatory, and minimal standards of transparency in order to enhance transparency at every step of the value chain and facilitate dialogue, decision making, and governance in the country's oil sector.
- The process of establishing the transparency standards was not without challenges. Although transparency is associated with some benefits, it also implies various costs, namely the perception of the authorities and civil servants—in both public and private sector institutions—that it will lead to more controls, administrative burdens, and political risk. The Extracting Transparency Initiative tackled these challenges and made it clear to the participating actors that, for example, transparency regarding environmental management plans can, in fact, reduce the levels of conflict with the surrounding communities.
- The Extracting Transparency Initiative contributed by changing the participants' perceptions about the process of creating standards of transparency for the oil sector, and made it clear that increasing the amount of information available can reduce, rather than increase, conflict, an ever-present factor in Ecuador's oil industry.
- The decision by various public and private sector actors, such as the Municipality of Francisco de Orellana and the oil company, Repsol Ecuador, to implement the aforesaid standards via a pilot project was indispensable in demonstrating that implementation would not significantly raise costs, and that the benefits would far outweigh the risks.
- If the standards of transparency that were voluntarily implemented by these two organizations are to improve governance in the oil sector, they must become mandatory for all participating actors. To this end, Grupo FARO, together with experts from the oil sector, drafted a public policy

proposal. This policy would enable the Ecuadorian government to establish mandatory compliance with the standards of information that were created through a participatory process that includes the actors involved, either directly or indirectly, at every stage of the oil sector value chain.

- It was decided that the public policy proposal should be expressed as an inter-ministerial agreement, which could best capture the oil industry's complexity and promote greater coordination between public and private sector actors in order to apply the standards of transparency to the information generated by Ecuador's extractive industries, with the ultimate aim of improving governance.
- This public policy proposal is based on three fundamental principles: (i) transparency is understood to be a mechanism for strengthening democracy, (ii) the achievement of better governance and decision making in the oil sector is an objective, and (iii) access to public information is a fundamental human right, especially in the case of an area as complex, and with such social, environmental, and economic importance, as the oil sector.
- The current challenge is to gain approval of and implement this public policy proposal. For this purpose, a public advocacy strategy must be designed that enables those responsible for decision making (authorities at the ministerial level, who are responsible for policy promulgation) to fully appreciate the social, institutional, economic, and political benefits of a regulation that, as a product of a participative process, enjoys the necessary legitimacy and technical quality to promote better governance in the Ecuadorian oil industry.
- Furthermore, it is necessary to work with the civil servants responsible for the subsequent implementation of the public policy in order to reduce, from the outset, the gap that often arises between institutional policies and practices. This is especially important in the case of this public policy, given that it seeks to improve transparency in areas such as the generation and distribution of oil revenues, where it is vital to have high-quality information gathered by actors situated in the territories where the extractive activities are carried out.
- Finally, the public policy proposal for implementing standards of transparency will not fulfill its promise to improve governance and decision making in the oil sector, unless it can rely on the active participation and demands of civil society. Only a well-informed citizenry can ensure that greater transparency is translated into more informed and objective dialogues, which will enable the industry's profits to be distributed more fairly and sustainably.

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The knowledge that financial institutions hold about their clients, specifically the origin of the resources they deposit in the banks, allows different actors in the system, in principle, **to prevent and eventually investigate possible money laundering maneuvers.** In this framework, targeted transparency policies can play a vital role.

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Chapter 6

Use of Information and Financial Sector Integrity: Reflections Arising from an Anti-Money Laundering Project in Guatemala

Roberto de Michele

The purpose of this chapter is to present some ideas about how the use of information can become an efficient tool for preventing and penalizing asset laundering. More specifically, it attempts to describe the relationship between financial institutions, the system's depositors, and the regulator in terms of the information that flows between them when reporting suspicious activities. The relationship between the regulator and other agencies, such as the authorities responsible for investigating possible money laundering maneuvers, is also examined. Throughout these pages, several warnings are sounded about the challenges arising from the implementation of an access to information policy and, more specifically, from a targeted transparency policy in this sector.

With regard to asset laundering, this complex relationship creates a tension between the values of transparency and privacy. This chapter argues that some of the principles relating to access to information and targeted transparency can reasonably coexist with demands for privacy and data protection, depending on the degree to which the regulatory and technological requirements are adequately administered.

The first part of the chapter presents the conceptual notions pertinent to this analysis. In particular, it refers to the idea of targeted transparency, and the way in which it can be applied to the subject of money laundering prevention. This section follows, to a large degree, the lines of investigation proposed by Fung, Graham, and Weil (2007). The second part describes the most common forms of money laundering through the financial sector, how the reporting mechanisms on these activities function, and the attempts to capture this information through regulation to transform it into preventive measures, or to instigate a course of investigation and possible penalization. This is followed by some lessons learned from the design of an anti-asset laundering initiative in Guatemala, guided by these principles. The third part sets out the role of the Inter-American Development Bank (IDB) with regard to countries' efforts to prevent asset laundering, and describes some case histories of countries that receive technical assistance from the Bank, through its Anticorruption Activities Fund (AAF).

Conceptual Framework

James Madison, in *The Federalist Number 51* (1788: 10), sustains that, “If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.” A similar attitude could be taken toward access to information. If the democratic process and markets functioned in optimum fashion, legislation governing access to information would be unnecessary. Citizens and consumers would enjoy adequate access to information and could make fundamental decisions, both in the marketplace and in matters involving the public interest.

This expectation, however, is without basis. Apart from being improbable, it does not correctly describe the complexity of the existing relationship among the state, citizens, and the market with regard to the production, delivery, and use of public information. On top of the traditional criticisms that can be leveled against it, this position, on one hand, seems to presuppose a unilateral direction: the supply of information flows in one way only, from the companies or the state, and the demand always comes from the consumer or the citizen. This description also ignores the fact that the state has a “right” to information, to place it at the public’s disposal, for example. Without this information—sometimes provided by corporations, sometimes by individuals—the state cannot effectively exercise its regulatory function or implement public policies that require multidirectional information flows. These and other difficulties related to the production and availability of information are not spontaneously solved neither by citizen intervention nor by the operation of the market.

As Fung, Graham, and Weil (2007: xii) point out, “when there are hidden risks or problems in service quality, serious problems are generated for the general public, and the government can help to mitigate these risks or improve those services by demanding that information is produced.” This effort, of which the government is the main actor, is not satisfied by policies based on the “right to know.” Other, more sophisticated kinds of interventions are needed which, in the words of the above-mentioned authors (2007: xii), “... require the availability of specific factual information, generally from the corporations or other organizations. The objectives (of this information availability) are also specific. Reduce losses for investors in cases of corporate deception, prevent injuries and deaths, improve public services, and control corruption.” This form of access to information is known as “targeted transparency.” According to these authors, the principal elements of targeted transparency include that: (i) it is a mandatory requirement by the state; (ii) it is the obligation of both public and private corporations and organizations to disclose information; (iii) information is standardized, comparable, and disaggregated; (iv) that it relates to specific products or processes; and (v) it is linked to a public policy objective.¹

When the policies and targeted transparency function correctly, a so-called “action cycle” is produced, in which greater knowledge is generated by both those who are required to provide information and those who use it, which results in better decision making and, therefore, reduces risks (Fung, Graham, and Weil, 2007). Both the principal elements of targeted transparency and the sequence of its application are present in the relationship between financial institutions, depositors, and the system’s regulator, when it comes to reporting suspicious money laundering activities.

Targeted transparency policies are not exempt from the risks of failure. In fact, Fung, Graham, and Weil’s research, as well as that of other authors,² warns that these policies are subject to setbacks, difficulties, and, in some cases, can even cause problems as serious as the ones they seek to solve. This sometimes happens

¹ For a more detailed description of these authors’ ideas on targeted transparency, see Chapter 1.

² See, for example, Stiglitz (2001) and Roberts (2006). Likewise, in the series of targeted transparency policies analyzed by Fung, Graham, and Weil (2007), the paradigmatic case is that of Enron and the “failures” of corporate regulation and information disclosure.

for political reasons, such as resistance by interest groups, or bureaucratic inertia; in other cases the design of the targeted transparency policy, itself, is the main culprit. As Graham (2002: 5) affirms, “flaws matter because disclosure can increase as well as decrease risks. If revelations are distorted, incomplete or misunderstood, they can misinform, mislead, or cause unwarranted panic. [...] To be effective as an instrument of public policy, transparency requires careful design and continuing oversight.”

Among the various factors that determine the success of a targeted transparency policy, two are particularly worth highlighting, because they can exert decisive influence on the effective operation of targeted transparency policies that aim to prevent asset laundering. First, the targeted transparency policies must be “user-centered,” in accordance with the term coined by Fung, Graham, and Weil. This means that users’ interests and needs must be considered, but also their capacities to comprehend information and use it for their own ends. At this point, it is worth remembering—and this is something that the authors might perhaps have examined in more detail—that in the case of mandatory reporting of suspicious transactions, the interests of the actors do not necessarily converge.³ Moreover, in certain situations they may have no defined interest, or may even have an interest contrary to disclosing sufficient, comprehensive, and accurate information, unless there is a clear legal requirement to do so.

Second, targeted transparency policies are successful only to the degree that they are sustainable. Sustainability depends on the capacity to adapt these policies to changes in the sector in order to carry out adjustments in the way they are applied insofar as the policy takes effect and its outcomes become better known, especially with regard to the behavior of those obliged to disclose information, and of those who use it for clearly defined purposes. Or, as Fung, Graham, and Weil (2007: 40) affirm, “because the markets and their priorities change and because policymakers must constantly close the policy gaps revealed by those reluctant to disclose information.”

An additional element to consider concerns the use of information and communications technologies (ICTs). This is an important subject in the debate around the sustainability of targeted transparency policies in general and also, in particular, for regulations concerning money laundering, which require suspicious activities to be reported. It must be remembered that policies regarding access to information and targeted transparency have their costs. These costs must be considered comprehensively; in other words, not only calculating the costs incurred by the executing authorities, but also especially those that correspond to the subjects obliged to provide information. This is an important debate, especially when the tradeoffs between the different subjects forming part of the relationship are analyzed, at either the policy design stage or the implementation stage.

According to Fung, Graham, and Weil (2007), the debate about the costs that private companies face when complying with reporting requirements (to the public or to the government) about their financial status, food contents, the availability of medicines for treating a certain illness, or whatever a specific regulation demands, is key for the design and implementation of policies that do not generate the inefficiencies that can unquestionably impede subsequent progress towards the policy objectives.⁴ Information technology is an instrument that reduces the costs of targeted transparency policy implementation, by facilitating storage, distribution, and analysis of the required data. Implementation of the policies that require suspicious transactions to be reported would be unthinkable, particularly from the regulatory perspective, without the existence of robust and sophisticated data systems. However, as Graham (2002: 153) observes, “new information technology—no matter how powerful—is not a solution in and of itself. No amount of technology

³ This means, among other things, supervised and unsupervised financial institutions, financial intelligence units (FIU), and judicial investigation agencies.

⁴ See, for example, the discussion of the obligations arising from the Sarbanes-Oxley Act in *The Economist* (2005).

can increase the scope or accuracy of data. Nor can it improve flawed metrics [...] The design and evaluation of disclosure systems should follow a disciplined process. Legislators need to weigh the advantages and disadvantages of disclosure against those alternative means of reducing risks.”

Defining the required information, its degree of aggregation or disaggregation, the opportunity to provide it, and any other requirement, irrespective of the physical or electronic platform, constitutes a determining factor for regulation.⁵ Therefore, if the regulation is imprecise, or if the risks inherent in the sector are underestimated, not only are additional costs generated, but also resistance is created to public policies that are essential for making progress toward the achievement of socially desirable benefits.⁶ Therefore, due carefulness in formulating and applying regulations, the choice of incentives, and precise use of information become key elements for ensuring that the public policy functions.

This complex relationship is precisely that which is proposed for money laundering prevention. In this area, the state (more specifically, the regulatory and monitoring agencies, known as financial intelligence units, or FIU), the banking entities, and the people who carry out transactions with them are linked through rules that define a more complex information scheme. The relationship is determined, to a large extent, by international standards in these matters. But the most important definitions are found in the field of regulation, which ranges from the laws that seek to harmonize with those standards, to special regulations, and even the forms that enable information to be transmitted between actors.⁷

The origin of the regulations applied by the countries are found in the Recommendations of the Financial Action Task Force (FATF), an intergovernmental agency established in 1989 by the ministries and their member jurisdictions. FATF’s mandate is to set standards and promote the effective implementation of legal, regulatory, and operational measures aimed at combating money laundering, the financing of terrorism, and the proliferation of weapons of mass destruction.⁸ It is apparent, however, that regulations do not operate in a vacuum. They form part of specific institutional designs, and in this sense, as Goodin (2003: 50) observes: “the principal unresolved problem lies in an adequate integration of the aspects of information and incentives.”⁹ Therefore the promise of targeted transparency—as the creators of the concept maintain—must be used with caution to avoid its becoming a frustrated proposal.

⁵ Throughout this paper, no distinction is made between the different kinds of regulations: laws, regulations, or decrees. With regard to the ideas put forward, it is possible to use a single term.

⁶ Another example of this kind of situation is found in the requirements of some laws that regulate civil servants’ obligations to file regular statements about their assets and liabilities, investments, and sources of income, commonly known as Sworn Net Worth Statements. Some legislation requires the aforementioned civil servants to provide information that has no effect whatsoever on preventing conflicts of interest or determining whether an increase in net worth is justifiable (illegal enrichment). Such requirements generate costs, are a potential invasion of privacy, and entail no specific benefit for enforcing compliance with the aims of public policy (see World Bank, 2009).

⁷ See, in this volume, further reference made to the GAO study.

⁸ According to the FATF, the 40 Recommendations of 1990 were originally an initiative to combat the unlawful use of the financial systems by persons seeking to launder money arising from the illicit drugs trade. In 1996, the recommendations were revised for the first time in order to handle increasing asset laundering tendencies and techniques, and to cast the net beyond drug-related money laundering. In October 2001, the FATF mandate was extended to include the financing of terrorist acts and organizations, and Eight Special Recommendations (later expanded to nine) were created, dealing with the financing of terrorism. In 2003, the FATF recommendations were revised for a second time and, alongside the Special Recommendations, were endorsed by 180 countries. They are now universally held to be the international standards for combating money laundering and the financing of terrorism (AML/CFT Group).

⁹ For more on this point, see Sparrow (2000).

The knowledge that financial institutions hold about their clients, specifically the origin of the resources they deposit in the banks, allows different actors in the system, in principle, to prevent and eventually investigate possible money laundering maneuvers. In this framework, targeted transparency policies can play a vital role.

Regulating Money Laundering and the Financial Sector¹⁰

Although there is no single definition of money laundering, in general it can be stipulated as any process that attempts to legalize illicitly obtained resources by disguising their origin. A more precise definition states that it is “the process by which criminals attempt to conceal the source and ownership of the proceeds of their illicit activities. When carried out successfully, it enables the criminal to maintain control and access to these funds when and where he chooses, and may, ultimately, provide a legitimate cover for the origin of the income” (Pieth and Aiolfi, 2003: 6).

Masciandaro (2007) defines money laundering as an independent criminal activity whose principal economic function is to transform illicitly gained liquid assets, or their potential purchasing power, into a real purchasing power that can be used for consumption, savings, investment, or reinvestment. Money laundering operations affect private sector development, given that investment decisions are not made on economic grounds. This entails financial risks for banking institutions, since it gives rise to the deposit and withdrawal of massive amounts of money, which can affect institutions’ liquidity and solvency. Since they are not subject to the behavior of macroeconomic variables, these capital flows can destabilize the financial systems of relatively small economies, or even affect their payments systems. As Albrecht (2001: 49) points out, the problem of illegal earnings shifts the center of attention to the “risk that the legal economy might suffer from illicitly obtained money. For this reason, it is necessary that these measures protect the legal economy and legal commerce against the illicit money investments that deform free competition.”

The effects on the economy have been documented by authors such as Arnone and Borlini (2010: 231), who affirm that “first, launderers frequently use front companies, which co-mingle the proceeds of illicit activity with legitimate funds, to conceal their ill-gotten revenues. As these front companies benefit from access to substantial illegal funds, they might be able to cross-subsidize their legitimate productions below market rates, hence obtaining advantages over competitors and distorting the competitive process.” The problem is not just a localized one. Authors such as Masciandaro (2007), Unger (2007), and Chong and López-de-Silanes (2007), among others, argue that, within a context of growing globalization of financial and economic activity, money laundering can increase those risks and distortions. Those jurisdictions with less well-developed financial systems, or with lax policies for supervising capital flows, can suffer negative consequences, and not just related to their financial and economic systems.

Rawlings and Unger (2005) also demonstrate that in relatively small countries, or in those highly dependent on financial flows that have opted to seek growth through their position as an international finance center or as an offshore financial center, and whose economy depends on financial activity, money laundering and the financing of terrorism can lead to significant market distortions. In some cases, in order to make the regulations more flexible, suboptimal situations arise, and the possibility of laundering money is thereby facilitated with all the attendant negative consequences. Experience indicates that those jurisdictions that have slackened their regulatory systems and thereby attracted illicit money have, at one time or another, suffered a loss of reputation that has led to a reduced volume of business and, therefore, important fluctuations in employment levels.

¹⁰ The full text of the recommendations is available at: http://www.imolin.org/pdf/imolin/FATF_New_Standards.pdf

Although there are many ways to launder money (denominated typologies),¹¹ practically all of them can be interpreted as transfers of funds. As Takáts (2007) points out, a transfer is not, in itself, a problem. These transfers are socially damaging because they are related to crime and are carried out to facilitate it. The crime that is most commonly associated with money laundering is drug trafficking,¹² an activity that, at the final point of sale to the consumer, generates a vast quantity of money in small denominations, which must, in turn, be deposited somehow in a financial entity without its origin being detected, in order to initiate the money-laundering process.¹³

The money laundering process has three stages: placement, layering or masking, and integration or investment. In the first, the money launderer introduces the illicitly gained funds into the financial system. In the second, he or she camouflages the origin of these resources by making transfers between different jurisdictions (usually with an offshore destination included along the way), loans to related entities, or fraudulent commercial activities. The final stage enables the money launderer to invest the resources, whose illicit origin is now hard to identify, in the formal economy. Given the characteristics of the laundering process, as each stage advances, it becomes increasingly difficult to determine the illegal provenance of the funds. This would explain the importance, therefore, of having adequate measures in place to intervene in the first phase, and thereby reduce the opportunities for the illicitly gained resources to enter into the financial system in the first place.¹⁴ In effect, this subject is specifically regulated by the FATF Standards through its recommendations, specifically Recommendations 10 and 20.

Box 6.1

FATF Recommendation 10: Customer Due Diligence

Customer
Due Diligence and Record-Keeping^a
10. Customer Due Diligence

Financial institutions should be prohibited from keeping anonymous accounts or accounts in obviously fictitious names.

Financial institutions should be required to undertake customer due diligence (CDD) measures when:

- (i) establishing business relations;
- (ii) carrying out occasional transactions: (i) above the applicable designated threshold (USD/EUR 15,000); or (ii) that are wire transfers in the circumstances covered by the Interpretive Note to Recommendation 16;

a. Available at http://www.imolin.org/pdf/imolin/FATF_New_Standards.pdf.

¹¹ For a list of the typologies commonly accepted by the international community and FATF member countries, see <http://www.gafisud.info/pdf/TipologasRegionales2010final.pdf>.

¹² See, for example, <http://www.fatf-gafi.org/pages/faq/moneylaundering/>.

¹³ For more information about this business, consult Levitt and Dubner (2005).

¹⁴ The FATF recommendations do not just affect financial entities. They also include the responsibility for due diligence and reporting of the so-called designated nonfinancial businesses and professions (DNFBs), to which similar principles are applied. (See Recommendations 22 and 23, among others.)

Box 6.1FATF Recommendation 10: Customer Due Diligence (*continued*)

- (iii) there is a suspicion of money laundering or terrorist financing; or
- (iv) the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

The principle that financial institutions should conduct CDD should be set out in law. Each country may determine how it imposes specific CDD obligations, either through law or enforceable means.

The CDD measures to be taken are as follows:

- (a) Identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information.
- (b) Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner, such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements, this should include financial institutions understanding the ownership and control structure of the customer.
- (c) Understanding and, as appropriate, obtaining information on the purpose and intended nature of the business relationship.
- (d) Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business, and risk profile, including, where necessary, the source of funds.

Financial institutions should be required to apply each of the CDD measures under (a) to (d) above, but should determine the extent of such measures using a risk-based approach (RBA) in accordance with the Interpretive Notes to this Recommendation and to Recommendation 1.

Financial institutions should be required to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers. Countries may permit financial institutions to complete the verification as soon as reasonably practicable following the establishment of the relationship, where the money laundering and terrorist financing risks are effectively managed and where this is essential not to interrupt the normal conduct of business.

Where the financial institution is unable to comply with the applicable requirements under paragraphs (a) to (d) above (subject to appropriate modification of the extent of the measures on a risk-based approach), it should be required not to open the account, commence business relations or perform the transaction; or should be required to terminate the business relationship; and should consider making a suspicious transactions report in relation to the customer.

These requirements should apply to all new customers, although financial institutions should also apply this Recommendation to existing customers on the basis of materiality and risk, and should conduct due diligence on such existing relationships at appropriate times.

Recommendation 20, Reporting of Suspicious Transactions, states that if a financial institution suspects, or has reasonable grounds to suspect, that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, by law, to promptly report its suspicions to the FIU. These are not the only two recommendations that cover matters relating to the purpose of this analysis. Other recommendations place the emphasis on the need for inter-institutional cooperation, so that the information arising from this process can be integrated with that produced or received by other public agencies that also deal with matters linked to money laundering.¹⁵

The AAF financed a mechanism in Chile, whereby the Comptroller and Auditor General (Contraloría General de la República), the Public Prosecutor's Office (Ministerio Público), and the State Defense Council (Consejo de Defensa del Estado) established the processes and systems: (i) to encourage the three agencies responsible for monitoring corruption in Chile's public administration to effectively and opportunely share information about penal or administrative investigations of acts of corruption within public service; (ii) to facilitate citizen access to information regarding the investigation of complaints about administrative crimes and misdemeanors, or the result of investigations into them, within the legal limitations that currently apply in these matters; and (iii) to strengthen the technical capacities of the three agencies involved in the investigation and judgment of administrative crimes and misdemeanors of corruption in the public service.

With regard to the FATF recommendations, the importance of this kind of cooperation is also stressed. The standards highlight the need for the agency with prime responsibility for analyzing information regarding suspicious activities—in other words the FIU—to be linked to the investigative and penal prosecution agencies with regard to the requirements that might arise from the aforementioned information. Likewise, other agencies—for example, the registrars of companies—should be effectively integrated into these processes, so that data about commercial enterprises is efficiently gathered and administered, thereby maximizing the capacity to analyze the corporate structures that might lend themselves to illicit practices.¹⁶

¹⁵ FATF Recommendations 2, 29, 30 and 31 refer to this matter. The following relevant paragraphs are cited:

“2. National cooperation and coordination. Countries should ensure that policy-makers, the financial intelligence unit (FIU), law enforcement authorities, supervisors and other relevant competent authorities, at the policymaking and operational levels, have effective mechanisms in place which enable them to cooperate, and, where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction.”

“29. Financial intelligence units. Countries should establish a financial intelligence unit (FIU) that serves as a national centre for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis.”

“30. Responsibilities of law enforcement and investigative authorities. Countries should ensure that designated law enforcement authorities have responsibility for money laundering and terrorist financing investigations within the framework of national AML/CFT policies.”

“31. Powers of law enforcement and investigative authorities. When conducting investigations of money laundering, associated predicate offences and terrorist financing, competent authorities should be able to obtain access to all necessary documents and information for use in those investigations, and in prosecutions and related actions. This should include powers to use compulsory measures for the production of records held by financial institutions, DNFBPs and other natural or legal persons, for the search of persons and premises, for taking witness statements, and for the seizure and obtaining of evidence.”

¹⁶ See, for example, Recommendation 24:

“24. Transparency and beneficial ownership of legal persons: Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should ensure that there is adequate,

The content of these recommendations is reflected in the regulations that have been endorsed in practically all FATF member countries, with variations in each case. The regulations stipulate, in detail, the data requirements that the financial institutions must solicit from their clients whenever funds are deposited. There are also other rules and processes that define how and in what conditions the financial entities must inform the regulator (the FIU), when they become aware of a suspicious transaction. Masciandaro (2005) has stressed the importance of ensuring that all regulations adopted and implemented respect sufficient quality criteria, in order to avoid the opposite effects (whether deliberate or not) on money laundering prevention policies.

In this process, the financial institution must file a report on the suspicious transaction. In the more complex institutions, various officials might intervene in this process. There is, however, a simplified scheme: the first official to detect irregularities regarding a client's transactions must inform a compliance official, who will use more specific criteria to determine whether it is necessary to report the transaction to the executing authority.¹⁷ In the more modern regulations, the compliance official's decision combines both objective and subjective factors. It is not just a list of verifications based on tradeoffs. The objective elements should be combined with a risk-based approach before the situation is reported to the executing authority, as is literally expressed in the FATF Recommendation 10 (d).

The processes of managing information in suspicious transaction reports are controlled by privacy and confidentiality rules, which acquire different characteristics according to each country. There are at least two reasons for this. The first is that the information gathered by financial institutions and its analysis does not—and must not—constitute an investigation. A financial institution lacks both the capacity and the authority to decide whether a person has committed a crime. Its function is limited to determining, within certain parameters, if there are indications that a financial transaction might become a situation that the law describes as a possible money laundering operation. These indications, once an independent investigation has been conducted, might show that the suspicion was unjustified, and was not therefore connected with a criminal maneuver. From the same perspective, if an independent investigation process demonstrates that the information gathered by the financial institute was indeed indicative of a possible crime, it provides a second argument on behalf of privacy. In the first case, the idea is to protect people's reputation and privacy. In the second case, the idea is to avoid disclosing information that will alert the possible authors of a money laundering scam that their transactions are under scrutiny.

Similar to the argument made by Ezequiel Molina and Juan Cruz Vieyra in Chapter 1 of this publication, using the example of Brazil's Observatory of Public Expenditure,¹⁸ anti-money laundering regulations are not typical examples of what Fung, Graham, and Weil would consider as targeted transparency policies. In part, the obligation to disclose information to the executing authority arises from a standard (the FATF Recommendations and the laws adopted thereafter), but this obligation also contains at least two central targeted transparency policy elements: (i) regulation is based on "activities that arise from weighing up the costs and benefits, and the positive and negative incentives," and (ii) the use of information as one of the critical instruments for defining the best course of action (Fung, Graham, and Weil, 2007: 46–49).

accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBSs undertaking the requirements set out in Recommendations 10 and 22."

¹⁷ A graphic description of this process is found in GAO (2009: 13).

¹⁸ For analysis of this activity, which is financed by the AAF, and of the other projects forming part of this initiative, consult the website: <http://www.iadb.org/en/topics/transparency/support-for-countries/anticorruption-activities-trust-fund-aaf,1194.html>.

An additional element enables the policies that regulate suspicious transaction reports to be considered as part of a targeted transparency policy. These regulations also have a communications component. The “signals”—according to Fung, Graham, and Weil’s terminology—arise from the diverse activities that appear in the process: they begin with the risk analysis that determines what kind of clients, and eventually which transactions, might require intensive monitoring, or at least a report. The “signals” are also verified by applying the FIU’s criteria, which receive information from the financial institutions before deciding whether it is worth upgrading a report to the basis for soliciting a criminal instigation. And, finally, the definitive “signal” is confirmed once the penal process with all its guarantees—including those regarding publicity—establishes that an offense has been committed. This view of regulation should not be separated from cost analysis. A good example of this matter is found in the GAO (2009: 4) report:

In 2000 through 2007, SAR filings by depository institutions increased from about 163,000 to 649,000 per year; representatives from federal regulators, law enforcement, and depository institutions with whom GAO spoke attributed the increase mainly to two factors. First, automated monitoring systems can flag multiple indicators of suspicious activities and identify significantly more unusual activity than manual monitoring. Second, several public enforcement actions against a few depository institutions prompted other institutions to look more closely at client and account activities.

These conclusions coincide with some of the themes presented in this chapter. First, the use of information technology can introduce improvements in prevention capacity, but it can also bring along an increase in subsequent data processing costs. Second, the hypothesis is confirmed that the combination of this greater capacity to transform information into cases, and cases into penalties, increases the “signal” in favor of greater prevention by those situated at the first link in the chain.

The IDB and Support Activities for the Prevention of Money Laundering

The IDB has developed diverse activities to support countries in their efforts to prevent money laundering and the financing of terrorism, and especially to assist them with the application of measures for analyzing and evaluating implementation of the FATF recommendations. The Capital Markets and Financial Institutions Division (CMF) of the Institutions for Development Department (IFD) is responsible for this area within the Bank and, given the complex nature of the subject matter, works closely with other divisions, particularly the Institutional Capacity of the State Division (ICS).¹⁹

The IDB’s first initiatives were pioneered by the Legal Department, and were directed toward generating knowledge and training products. In recent years, the Bank’s work has expanded in response to growing demands by countries to enhance the integrity of their financial systems. The Bank has both prepared lending operations and provided specific technical assistance. In the first case, as part of the lending operations directed towards the financial sector, a specific support component is often included for authorities with regard to implementing measures that are consistent with the requirements of the FATF recommendations.²⁰

¹⁹ Recent studies regarding the characteristics of this problem in the region include La Red and Konrad-Adenauer-Stiftung (2012).

²⁰ For example, 1498/OC-DR, GY-L1016.

On other occasions, important experience has been gained through technical assistance operations focusing on specific aspects of the needs of each country in this area.²¹ Consequently, for example, the requirement might be to strengthen banking supervision, to improve FIU capacity, or to adopt adequate regulatory frameworks, among other interventions. Furthermore, these requirements can come from the financial supervisory institutions or, more specifically, from the units that hold prime responsibility for implementing measures for preventing money laundering and the financing of terrorist activities.²² However, as the Bank's recent experience indicates, they can also originate in agencies responsible for matters that are directly linked with such questions. This is the case, for example, of requirements related to citizen security programs, once the executing authorities recognize that criminality in their sector is also becoming linked to money laundering operations. Another example emerges from the field of taxation, where links with money laundering can also be identified.²³ More recently, the IDB, with the support of the AAF, has organized its assistance program through the following inter-related working areas:

- Evaluations and national strategies
- Strengthening institutional capacity and regulatory reform
- Knowledge generation and dissemination.

The first component includes knowledge activities aimed at helping countries with the design and implementation of a National Coordination Plan (Plan de Coordinación Nacional), in order to apply a risk-based approach, as set out in the FATF recommendations.²⁴ The second centers on building institutional capacity, principally supporting activities relating to strengthening the legal and regulatory framework and improving the state's capacity to detect, prevent, and penalize money laundering activities. The third component supports activities that aim to enhance knowledge generation and dissemination, as well as best practices for detecting, preventing, and punishing money laundering and the financing of terrorism.

Specifically, the first component is based on two separate, but closely linked, areas. One is related to the development and approval of a National Coordination Plan, and the other is associated with the development and application of a risk-based approach, as required by the FATF regulations. Each one of these areas calls for specific evaluation. The second component is designed to assist in the review and updating of the legal and regulatory framework (regulations), according to the FATF directives, and to provide assistance for reviewing laws, statutes, and regulations in order to introduce the necessary modifications and updates to satisfy requirements. This component also centers on implementing data systems, as well as systems to improve state monitoring capacity, in general, and agencies directly responsible for detecting, preventing, and penalizing money laundering activities and the financing of terrorism, in particular. The third component relates to knowledge generation and dissemination as an instrument for enhancing the technical capacities of beneficiaries. This component is particularly important given the changeable context wherein money

²¹ For example, ATN7926-PR, ATN/SF-7597-GY, ATN/SF-10851-GU, ATN/MT-9513-RG, ATN/SF-11444-GY, ATN/AA-12125-RG, ATN/MT-7884-RG, ATN/MT-7968-RG, among others. The Bank puts all information related to its operations at the public's disposal on its website: www.iadb.org.

²² Not all countries follow the same institutional arrangements with regard to the location of these units. In some cases, they form part of the financial superintendencies and, in others, they depend on a ministry or secretariat.

²³ The matter is discussed in *Strengthening a Systemic Framework Against Corruption*: "Finally, within the financial sector, the Bank supports the efforts of banking supervisory and regulatory entities to combat money laundering and financial crimes. The Bank's expanding activities in funding banking supervisory organs, both on a national and sub-regional basis, should include components for supporting training in these areas. The subject is also taken up in the Action Plan to Support Countries' Efforts to Combat Corruption and Foster Transparency (PAACT)."

²⁴ See Recommendation 1 at: http://www.imolin.org/pdf/imolin/FATF_New_Standards.pdf.

laundering has to be addressed, which therefore requires knowledge to be regularly updated. As previously mentioned, in Guatemala's case, an example of this component is provided by the project Information Tools to Improve Capacity for the Prevention of Money Laundering.

The aim of this project is to support the strengthening and sustainability of Guatemala's financial and nonfinancial supervisory system via optimal use of the Special Verification Bureau (Intendencia de Verificación Especial, or IVE).²⁵ The project's specific goals are the following: (i) to strengthen regulatory framework quality and knowledge with regard to oversight of designated nonfinancial businesses and professions (DNFBPs); and (ii) to improve the technological platform in such a way as to enable the IVE to exercise its monitoring functions, which include information gathering, analysis and management, and the generation of reports and statistics at the national level.

This operation is related to one of the Bank's previous experiences, called Support to the Superintendent of Banks in Guatemala. In this earlier version, the IVE underwent an intensive training program so that its staff could be brought up to date with the techniques, knowledge, procedures, and planning of the work needing to be carried out at both national and international level, forensic audits, and asset searches that derive from suspicious and possibly illicit transactions, as well as background checks of the companies and the people linked to these transactions. At the same time, the FATF evaluation, as well as the respective progress report, indicates that there is an opportunity to improve both the information management systems and regulation of the DNFBPs within the terms of Guatemalan legislation, and in light of the FATF principles.

The new project has various innovative features. First, it puts the accent on data administration and management as a tool for improving auditing. Second, this form of information management must be carried out within a strictly controlled context in order to guarantee the privacy necessary in a system of this type, while at the same time, sharing the information that enables both the IVE and other public agencies to maximize their capacity to audit money laundering and the financing of terrorism. Similarly, it seeks to update the regularization of the DNFBPs, a sector that is becoming increasingly important in the fight against money laundering.

In particular, this project manages to balance regulation of nonfinancial entities covered by the law with the implementation of information systems that enable maximum effectiveness in prevention to be achieved, along with the highest standards of data protection. In this sense, the AAF's very characteristics mean that it is the ideal instrument for responding to these challenges. According to Fung, Graham, and Weil (2007), the project attempts to respond to the challenges of adequately targeted transparency policy implementation in the following ways:

- Closing the information gap that might be associated with implicit or explicit risks
- Facilitating information use to generate statistics that enable policy effects to be known, and to eventually introduce improvements
- Providing the means to enable practical use of information
- Improving the officials' decision making and analytical capacities
- Reducing risks and, eventually, improving performance

²⁵ This is the name given to Guatemala's FIU.

Final Considerations

Targeted transparency policies have the potential to offer an effective way of managing risks and mitigating the negative consequences of social problems, such as money laundering. The creation of a money laundering prevention policy is an institutional task. When Schelling (1984: 32) defined institutions as “a system of information, rules for decision and incentives,” he opened up an important part of an increasingly complex and interesting dialogue, in which economic, legal, and political considerations must be combined in order to achieve the best possible institutional design options. This is true, even when bearing in mind the vision of those, like Komesar (1997: 5), who maintain “the choice of institutional design is always a choice between two imperfect alternatives.” Fung, Graham, and Weil’s targeted transparency proposal (2007: 10) correctly captures this point of view: “Our multidisciplinary approach recognizes that transparency policies arise from real-world compromises rather than from pristine public policy analyses, and that the resulting incentive systems are dynamic, evolving under pressure from the shifting economic and political interests of affected parties.”

One of the most important challenges on the future agenda is the evaluation exercise set to begin in 2013, based on the New International Standards on Combating Money Laundering and Financing of Terrorism. These new standards, to be adopted by the FATF member countries, specify the importance of the use of information to support prevention and penalization activities. It also presents more specific and, in some cases, more demanding recommendations. If countries are to be constructively involved in this process, it is essential to draw on their accumulated experiences. At the same time, the innovative approaches that they can offer, such as targeted transparency, should be combined with the opportunities offered by advances in information technology.

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Both the integrity of the **TACS program** and the direct participation of a variety of actors in the development of public housing **policy** make **information a key requirement to reduce uncertainty, raise confidence, and promote transparency.**

”

Chapter 7

Promoting Targeted Transparency in the Management of Access to Housing in Colombia: The TACS Program

Marcela Restrepo Hung

Introduction¹

For more than 30 years, Colombia, like other Latin American and Caribbean (LAC) countries, has been reforming public sector management to modernize processes with the aim of optimizing the impact of institutions on development goals, quality of life, and public welfare. The purpose of this process has been to improve effectiveness and efficiency in public sector management, to modernize processes and procedures, and to increase the rationality of government initiatives. Simultaneously, it has attempted to increase the legitimacy of—and citizens' trust in—public institutions and the governments that lead them. However, it was only about 15 years ago that the region introduced the variables of transparency and integrity into public sector management, having identified corruption as an obstacle to development and peace.

A flurry of regulatory changes and institutional rules were implemented in signatory countries following the passage of anticorruption agreements by the Organization of American States (OAS) (1996) and the United Nations (UN) (2003). Chile has the longest experience with this issue, having undertaken initiatives since the late 1990s, ranging from adopting the Inter-American Convention Against Corruption (IACAC) to creating working groups and designing public policies and institutional arrangements to prevent and penalize instances of

¹ Presentation to the panel: “Opening up Government to the People: Transparency Policies Focused on Better Distribution of Public Services and Accountability in Latin America and the Caribbean (LAC),” at the International Anticorruption Conference (IACC) in Brasilia, Brazil, November 7–10, 2012. This work includes analysis, reflection, and proposals for research and action made by the public sector working and research team of Corporación Transparencia por Colombia, with special participation by Ana Paulina Sabbagh, Sandra Martínez, and Ana María Páez Morales.

corruption.² Chile was followed by Colombia and Bolivia, which initiated similar institutional processes in the early 2000s.³

These necessary, though preliminary, decisions mark the beginning of the institutional and social path that must be followed in the fight against corruption. Only recently have political decisions been equipped with institutional mechanisms to carry them out. The following essential requirements have been in place for less than ten years:

- Balance of powers in government
- Effective limits on power in government
- Self-regulation as a component of performance management
- Meritocracy systems
- Public access to information

Today, these requirements are recognized as having positive effects not only for the anticorruption agenda, but also for the quality of democracy and good governance. The successes achieved in public sector management demonstrate not only effective implementation capacity, but also ethical capacity and integrity in procurement, planning, evaluation and internal control, human resource management, promotion of citizen participation, accountability, and citizens' access to public goods and services.

Colombia is currently in the process of moving from general statements to institutional designs. In 2010, for the first time, the National Development Plan devoted a chapter to good governance, citizen participation, and the fight against corruption, and also included guidelines on public information, transparency, accountability, and e-Government (DNP, 2010). These institutional arrangements include the Anticorruption Statute (Congress of the Republic, 2011), creation of the Transparency Secretariat (Presidency of the Republic, 2011a), establishment of the State Procurement Agency (Presidency of the Republic, 2011b),

² Chile's institutional landmarks in the fight against corruption include: Creation of the National Commission on Public Ethics, 1994; signing and ratifying of the Inter-American Convention Against Corruption (OAS, 1996–1997); Administrative Integrity Act (Ley de Probidad Administrativa), creation of internal auditing, declarations of interest, admissibility criteria for entry into the public service, 1999; making public sector management part of the Mechanism for Monitoring and Implementing the Inter-American Convention Against Corruption (MESICIC), 2001; modernization of public sector management (budget transparency, administrative procedures, new labor agreement, transparent limits on electoral spending, and reform of the procurement system), 2003; constitutional reforms to raise the following issues, among others, to the constitutional level; public access to declarations of assets and property, external auditing and protection of whistleblowers, 2005; active transparency and public access to information, 2006; training program on integrity and transparency, 2008; Ministerial Advisory Committee on integrity and transparency, 2008; and Public Access to Information Act, 2008 (OAS, 2012).

³ Bolivia's institutional achievements include: Signing and ratifying the OAS Anticorruption Convention, 1996–1997; creation of the Secretariat for the Fight against Corruption and Special Policies, 2002; the Institutional Anticorruption Network, 2003; draft bill for public access to information, 2006; public anticorruption policy associated with the National Development Plan, 2007; draft bill on a code of ethics, 2007; creation of the Ministry of Transparency, 2008; draft bill on money laundering, 2008; and the Comprehensive Anticorruption Plan, 2009. In Colombia, the following achievements should be mentioned: Signing and ratification of the OAS Anticorruption Convention, 1996–1997; creation of the Advisory Board to the Presidential Program to Fight Corruption, 1998–2000; Public Sector Management Renewal Program, 2003; Transparency Pacts and the Visible Audits Mechanism, 2003; Public Employees Training Plan; and the training and study program for the Office of the Attorney General, 2005 (OAS, 2012).

design of the national public policy against corruption, and the signing of the Alliance for Open Government (AGA). Other initiatives are in the design process, while all those listed above are in the early stages of implementation.

In this context, since 1998 the Transparency for Colombia Corporation (Corporación Transparencia por Colombia) has been producing position papers and methodologies, aimed at achieving an integrated management process that is harmonized with those of the main stakeholders involved in the fight against corruption and the promotion of transparency. The work done in the corporation's three areas of management (public sector, private sector, and the general public) has shown that many of the questions and answers regarding the fight against corruption are to be found in institutional designs and capacities, and that a lack of transparency, precarious processes, and controls (including internal controls) offer windows of opportunity for corruption.

Based on data offered by the Public Entities Transparency Index (Índice de Transparencia de las Entidades Públicas), it is clearly necessary to develop capacities to foster transparency and integrity in the public sector's daily activities and strategies at the national, departmental, and municipal levels, as well as to change cultural perceptions and values that are contrary to integrity and transparency.⁴ In other words, the transparent management of development involves doing things in innovative ways, as well as undertaking new initiatives within existing processes and bringing in new stakeholders. *Acting transparently* requires the state to function at a different pace—one at which the opportunities for relationships among government and nongovernment stakeholders are rediscovered and the *public sphere* is reinvented in a context of transparency and integrity.

Consistent with the above, in 2011 the Transparency for Colombia Corporation presented a pilot project to the Anticorruption Activities Fund (AAF) of the Inter-American Development Bank (IDB). The project, entitled “Promoting Transparency, Focusing on the Management of Access to Housing in Colombia: Case Study of the National Savings Fund (FNA), Building Society Savings Program (Tasa al Ahorro Construyendo Sociedad, or TACS),” involves the government, the private sector, and citizen stakeholders, and aims to guarantee access to information in the TACS management process, as well as to results obtained under the FNA program, to all stakeholders involved. The beneficiary of this process, led by the Transparency for Colombia Corporation and financed by the IDB, will be the FNA program.⁵ The goal is to bring together the experience and efforts of these three institutions to define and implement institutional designs and tools for innovation in the management of a housing program, providing the government and society with practical tools that express the recognition that access to information is both a right and an essential requirement in the fight against corruption.

Housing construction in Colombia has involved interests ranging from those of developers and landowners to the political and technical considerations of lawmakers and public officials, as well as the citizens' desire and right to own their own homes. Historically, many of the transactions involved in the process have

⁴ The index is a tool to evaluate the institutionality of Colombian public entities. It identifies the risks of administrative corruption and levels of transparency. It is a social monitoring initiative led by the Transparency for Colombia Corporation (Corporación Transparencia por Colombia), which seeks to strengthen institutional capacities in order to guarantee integrity and transparency in public sector management. The initiative has been evaluating national entities since 2002, departmental entities since 2003, and municipal entities since 2004.

⁵ The FNA (Fondo Nacional del Ahorro) is a Colombian public entity created in 1968 to manage unemployment funds for public employees. In 1998 it became a state-owned financial company with a special status that enabled it to increase its private sector coverage. Its aims are directly related to those of the state, especially regarding the rights of all Colombians to have decent housing and access to education.

been characterized by a lack of transparency and high levels of discretionality, which has ended up favoring economic and political interests that have distorted the main purpose of guaranteeing housing.

In Colombia, at each point in the development management process—which has been characterized by clientelism—the lack of information provides a perverse opportunity to raise the levels of exclusion and poverty, while introducing flaws in market regulations and, as a result, in the state’s capacity to respond to its citizens’ needs. For this reason, it is essential that these processes be made transparent by publicizing them as much as possible, especially when it is not only government resources that are made available, but also the resources (savings) of citizens themselves, who seek access to decent housing. It is therefore necessary to ensure that proven, transparent, and effective mechanisms are in place. This chapter further presents the context, considerations, and goals of this project.

More on the Context of Colombian Institutions

Risks of Corruption and Access to Information at Colombian Institutions

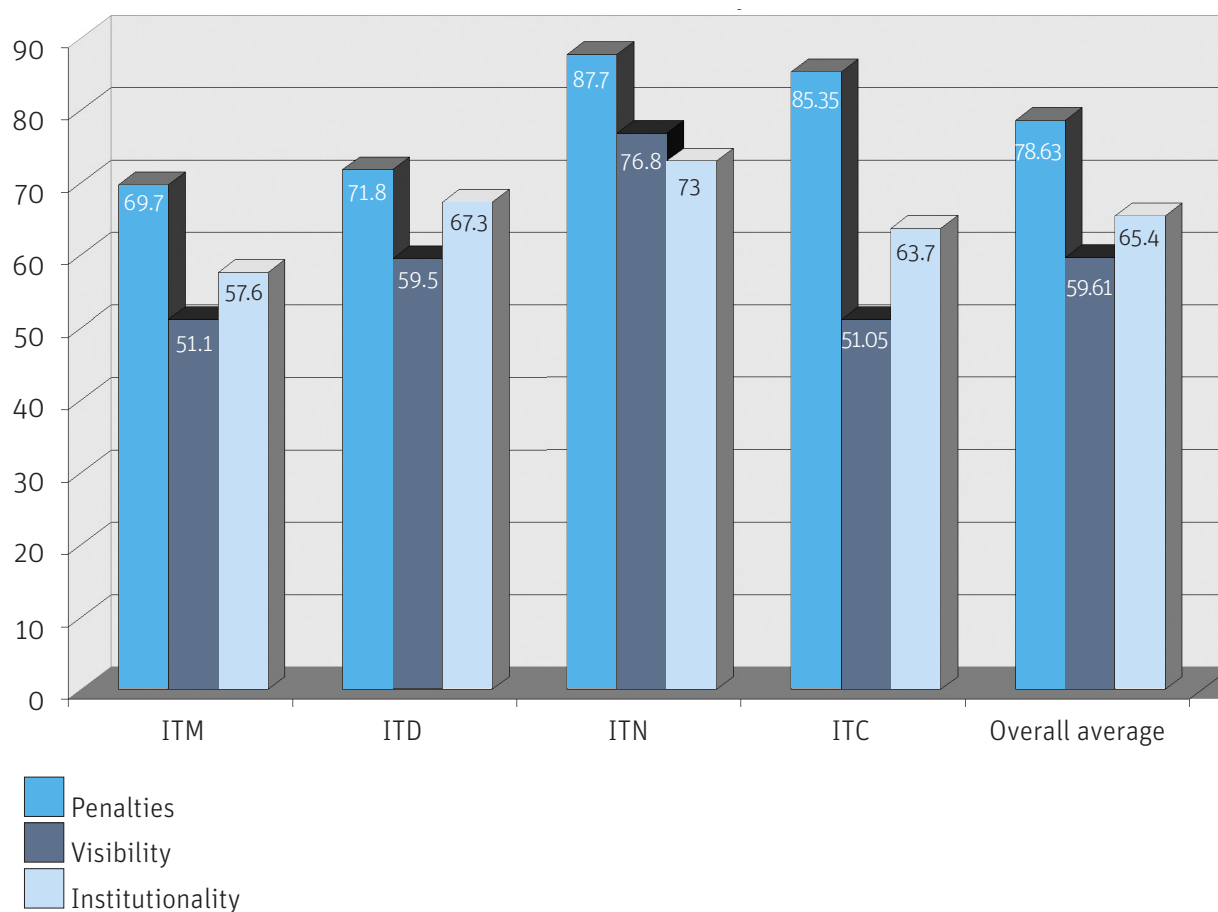
The principle of maximum publicity in public affairs is one of the underpinnings of transparency and the fight against corruption. More and better public information facilitates citizen participation and social and institutional control of public services (prevention and follow-up), while making it possible to identify both the risks and the actual instances of corruption. Information enables institutions and social actors to reduce the degree of uncertainty and discretionality in matters that determine essential aspects of people’s lives, foster efficiency and effective management of public goods and services, and reduce opportunities for corrupt practices.

According to the results obtained by the Public Entities Transparency Index, the supply of public information does not currently meet the needs of citizens or the needs of people and organizations involved in the fight against corruption. An evaluation of national, departmental, and municipal data for 2008–2009 demonstrates this. Three factors or components are considered in the evaluation of the transparency levels of public entities: (i) penalties, (ii) visibility, and (iii) institutionality.⁶ Visibility is the factor that receives the lowest scores, with an aggregate average of 59.6/100⁷; municipalities and regional tax authorities show the poorest averages, while the national score is more encouraging (see Figure 7.1).

⁶ The factors are defined as follows: (i) penalties include the examination of failures and the penalties associated with behavior that our legislation would consider corrupt; (ii) visibility is the ability of the general public or interested persons to access the entity’s information; and (iii) institutionality covers a set of clear rules, controls and procedures that civil servants are familiar with. Also, there is an independent assessment of management efficiency at the Internal Disciplinary Control offices with regard to timely and efficient response to complaints filed by citizens (Transparency for Colombia Corporation, 2010).

⁷ This includes national entities (of the three branches of government), departments, regional tax authorities (*contralorías territoriales*), and municipalities.

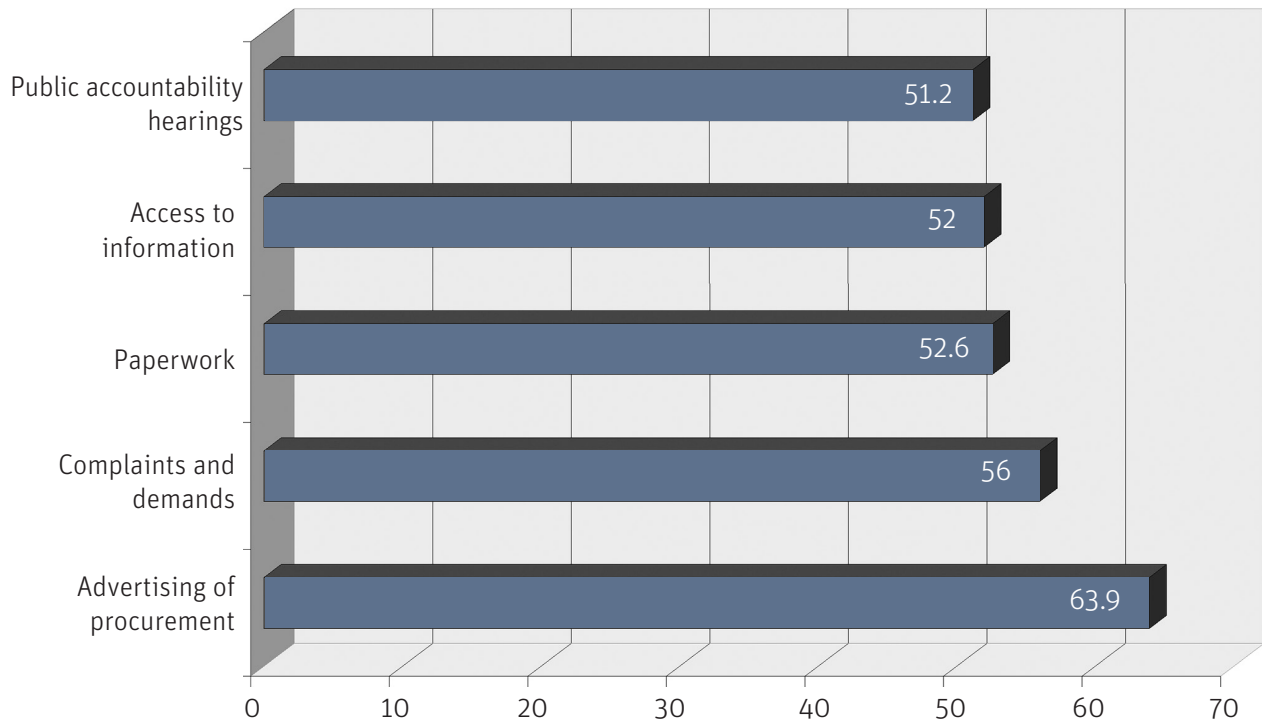
Figure 7.1
Public Entities Transparency Index Average per Factor: 2008–2009



Source: Calculations by the Public Entities Transparency Index research team (Transparency for Colombia Corporation).
 Note: Scores are from 0 to 100 points; 0 is the worst score and 100 is the best.
 ITC = Tax Authority Transparency Index (Índice de Transparencia de Contralorías).
 ITD = Departmental Transparency Index (Índice de Transparencia Departamental).
 ITM = Municipal Transparency Index (Índice de Transparencia Municipal).
 ITN = National Transparency Index (Índice de Transparencia Nacional).

When the scores of all the evaluated entities are averaged for the visibility factor (see Figure 7.2), poor results are observed in access to information, paperwork, complaints and demands, and advertising of procurement. All of the scores indicate poor compliance with the principle of maximum publicity in public management and little initiative in the area of active transparency. Only the accountability indicator shows a certain level of implementation. Similarly, in Figure 7.1, the scores for these indicators are worse at the regional level and better at the national level. In this regard, it is important to point out that the Colombian national government represents over 90 percent of the country's territory. Meanwhile, the lowest score in the entire evaluation (18.1 percent) corresponds to the online information available on goods and services offered by the municipal government, the level closest to the citizens. On the subject of housing subsidies, for example, 77.7 percent of the municipalities evaluated do not publish general information on programs, while 86 percent do not offer information on eligibility criteria and 95.9 percent do not publish lists of beneficiaries (see Table 7.1) (Sabbagh, 2011).

Figure 7.2
Averages for Visibility Indicators, 2008–2009



Source: Calculations by the Public Entities Transparency Index research team (Transparency for Colombia Corporation).

Table 7.1
Publication of Information on Housing Subsidies^a on Municipal Websites, 2008–2009 (percent)

Entities evaluated (total = 148) ^b	General information	Eligibility criteria	List of beneficiaries
Percentage of entities that publish information	22.3	13.5	4.1
Percentage of entities that do not publish information	77.7	86.5	95.9

Source: Municipal Transparency Index (ITM); Transparency for Colombia Corporation; calculations by the Public Entities Transparency Index research team.

^a Subsidies for low-income housing.

^b Of the entities evaluated, 27 are departmental capitals.

What are the explanations for this conduct? To start with, there is a lack of efficient information systems and of document management and archiving processes. Governments have limited capacity to produce public information. The data provided by the Public Entities Transparency Index show that entities have made little headway in the design and operation of information systems in the areas of administrative management, budgets, accounting, archiving, human resources, and procurement. Despite the existence of information systems in certain areas, such as health, education, drinking water, housing, and others, there have been few advances in these systems. It is also clear that certain data and registers are kept in both physical and virtual form by governments, though they may not contain sufficiently processed or organized data. However, much of this information is used exclusively by the government and supervisory bodies, but not by citizens, since it is presented in language that is not useful or accessible to the general public.

Finally, Colombia has developed neither institutionality nor a culture that supports guaranteed access to public information. After five years of demands from citizens⁸, consideration is now being given to draft legislation on access to public information.⁹ This would: (i) update current legislation on public information, raising it from the status of an administrative record to that of a public asset and a right; and (ii) integrate and link disparate and confused regulatory items. Given the above, the following features are apparent:

- A lack of information amid a “graveyard” of data
- Scarce and low-quality data for decision making, both for governments (public policy) and citizens (quality of life)
- Confusion and conflict among different types of information (public, restricted, confidential)
- Asymmetric access to public information
- Abuse of public information for private advantage, by government and/or private stakeholders
- Violation of the right to know.

Housing and the TACS Program

One of the main challenges that governments face permanently in the fight against corruption is how to reduce the risk of corruption and promote transparency in the provision of social services. Many Colombians cannot acquire decent housing. At present, 63 percent of Colombians pay rent; over 40 percent live in low-quality housing; and, in 2011, a deficit of close to 4.3 million dwellings was forecast (Econometría, 2011: 3). This deficit is the result of a set of structural problems in the design of public policies associated with a noninclusive financing system for the purchase of homes, low household incomes, extreme difficulties in obtaining mortgage loans, and rising costs of homes and land (Econometría, 2011: 24–25). Moreover, poor access to public information on housing in Colombia leads to the following risks and instances of corruption:

⁸ Initiative of the “More Information, More Rights” (“Más Información Más Derechos”) alliance of social organizations, made up of the Transparency for Colombia Corporation, De justicia, Ocasá, Foundation for Freedom of the Press (Fundación para la Libertad de Prensa) and the Antonio Nariño Project.

⁹ The “More Information, More Rights” alliance presented a text to congress after several discussions, analyses, and studies (including discussions with the national government). The senate and congress approved the text, and its constitutionality is now under review.

- It is impossible to determine what decision-making criteria are followed in areas involving public management issues. Lack of transparency makes it difficult to identify the influence of private interests in the development of public housing policies, the terms and conditions for bidding on the construction of public housing, and the technical specifications for awarding investment projects.
- There is increased discretionality in the management and awarding of subsidies, making it difficult for citizens to have equal access to benefits; it leads to the use of subsidies for political and electoral ends.
- It is often unclear as to what types of materials are agreed to in construction contracts, which may affect the quality of the dwellings.
- There may be an inappropriate influence of political and economic interests in the projects, as well as illegal actors involved in the allocation of land use and urban planning processes.
- Unjustified cost overruns and added costs in procurement are likely. Neither citizens nor supervisory bodies have timely information allowing them to compare contractual planning processes with the effective performance of contracts, which would enable them to report risks and situations that should be checked. Normally, losses of public resources are determined at the end of the process.
- The government information systems that are made available to citizens do not offer complete, current, and high-quality information to support public monitoring processes and, thus, they cannot act in a timely manner.
- There are often inconsistencies in procurement planning, procurement processes, and the performance of contracts, as well as a lack of advertising of procurement processes. This phenomenon has increased interference by corrupt parties in the different stages of procurement, making social monitoring and quality control impossible.
- There is a perception of a lack of transparency in public management. The lack of information and general uncertainty caused by this phenomenon undermines trust among citizens, the state, and the public sector, which has an impact on the credibility and legitimacy of institutions.

The Goals of the Government and the National Savings Fund

The Housing Sector in Colombia

According to Article 51 of the Political Constitution of Colombia, “all Colombians have the right to decent housing.” As a result, both macroeconomic provisions and financing are required in order to provide quality housing in terms of materials, space, finishes, access to transportation, public space, and public utilities. The Ministry of Housing, City, and Territory is the entity responsible for formulating, adopting, directing, coordinating, and implementing national public policy, plans, and projects in the sphere of territorial development and urban planning, including the financing for housing and the provision of public water services and basic sanitation.¹⁰

¹⁰ The ministry was created via Decree No. 3,571, on September 27, 2011.

In general, the country has adopted institutional measures to develop a supply of low-income housing (*vivienda de interés social*, or VIS) and priority housing (*vivienda de interés prioritario*, or VIP) projects aimed at the poorest sectors of the population. The state plays a role by directly building this kind of housing and/or granting subsidies for it. For other kinds of housing, the state acts as a market regulator. The development and operation of the housing sector involves other associated entities, such as the National Housing Fund (Fonvivienda), the Territorial Development Finance Corporation (Findeter), the FNA, and the Family Benefit Funds (Cajas de Compensación Familiar, or CCF). At the same time, processes in which the private sector and civil society organizations develop housing policies cooperatively significantly strengthen the institutional framework of the sector, thereby lending legitimacy and credibility to the initiatives undertaken by public entities.

Finally, the current government is proposing the construction of one million homes via the National Development Plan, and has called on the Ministry of Housing, City, and Territory and the FNA to design and implement a new plan to make this goal feasible. These entities have proposed various initiatives, the most outstanding of which (for the purposes of this publication) include the FNA's creation of the TACS financing model,¹¹ which is based on scheduled savings for the acquisition of level 1, 2, and 3 homes.¹²

TACS Model

Under the TACS proposal, low-income housing projects led by developers and investors will be made available to citizens who save to acquire a home through the FNA. This is a public-private initiative to guarantee the right to housing, with participation from the financial sector. According to the guidelines of the FNA's Strategic Plan, there are six key players in the chain: savers, investors, developers, owners, financial organizations, and public and private organizations that grant subsidies (FNA, 2011).

For optimum management under this model, the national government recently provided it with a regulatory structure contained in Law No. 1,537 (2012), "which sets forth regulations to facilitate and promote urban development and access to housing, among other provisions." The objective of this legislation is to define the competencies, responsibilities, and functions of national and regional entities, and the role of the private sector in the development of VIS and VIP projects. Its nine chapters and 66 articles provide general and specific provisions based on the guidelines for development of housing policy in Colombia, including the allocation of subsidies and the zoning of new land for housing. Chapter 2 establishes and regulates the instruments necessary for low-income families to gain access to decent housing; Chapter 3 defines the subsidy application and legalization process (Article 24); and Chapter 4 deals with how housing policy is linked to rural VIP resources, including the size of subsidies and provisions for sectors affected by natural disasters (Articles 31 and 32). Chapter 4 also details all stimulus provisions and exemptions related to access to housing and, in Article 37, explains the home leasing scheme, which is the legal basis of TACS.

Both the integrity of the TACS program and the direct participation of a variety of actors in the development of public housing policy make information a key requirement to reduce uncertainty, raise confidence, and promote transparency. To date, the model has only just begun to design information systems to facilitate control and decision making involving various stakeholders. This process will help strengthen and improve these tools, not only in order to generate information to manage the model, but also to make the participation of various stakeholders a reality.

¹¹ The TACS financing model is aimed at providing housing solutions to Colombians who pay rent. The goal of the initiative is to work with the construction sector to offer a supply of new homes to be rented with an option to purchase. As a result, Colombians who now pay rent will be able to acquire a "new" home without having to make an initial down payment; and, after a specified period, they can apply to become owners of their homes.

¹² Colombia's socioeconomic stratification is expressed from 1 to 6; 1 corresponds to the lowest-income sector, while 6 represents those with the greatest purchasing power.

Proposed Action to Guarantee Access to Information in the TACS Program

During the proposed 18 months of action, the entity will be equipped with a mechanism to disseminate public information on the development and results of the program, and to enable active participation by the different stakeholders (private sector, citizens, and public entities at the national, departmental, and municipal levels). This will contribute to the following benefits:

- Transparency in the selection of developers and in the acquisition of land and construction materials
- Promotion of transparency and integrity in a public-private management model
- Dissemination of information to stakeholders to enable them to participate properly and effectively in the process
- Transparency in the selection of people who will buy the homes.

To achieve this, it is necessary to take action to strengthen, first, the capacity of government entities and then the capacity of private stakeholders and citizens, so that public information can be produced and demanded. As was discussed above, *acting transparently* implies learning and implementing *new ways of doing things*, both within the public management process and in the inclusion of new stakeholders. This implies action to provide awareness raising and training for stakeholders; institutional designs to generate and supply information; and practical tools to support the day-to-day administrative management and mission of the government entities.

Figure 7.3
TACS Program: Action Proposal

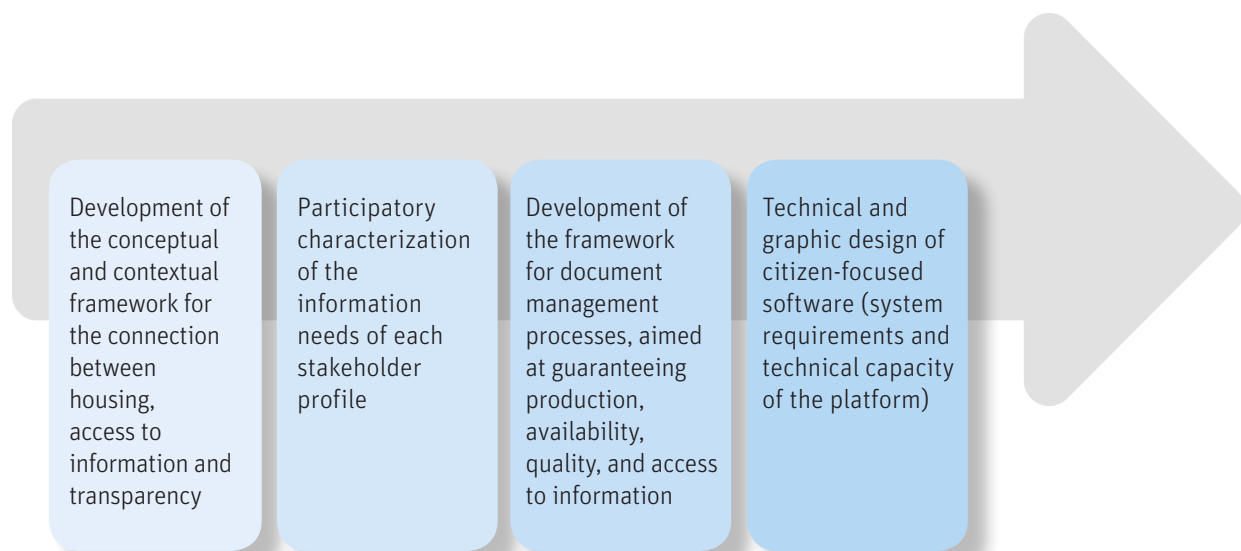


In practical terms, the project has the following components:

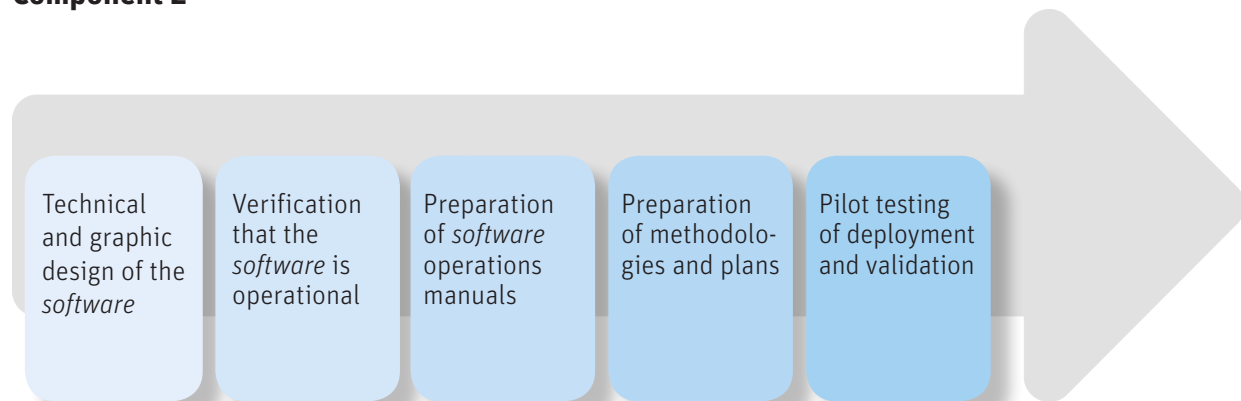
- Software design for a publicly accessible web platform aimed at strengthening the institutional capacities of the different stakeholders in the TACS program through the dissemination of information for transparent, honest decision making.
- Development, implementation, and validation of the web platform software.
- Awareness raising and training of stakeholders in the use of the platform and of the information it contains, as a tool for preventing corruption and ensuring access to information.

These components lead to the following activities:

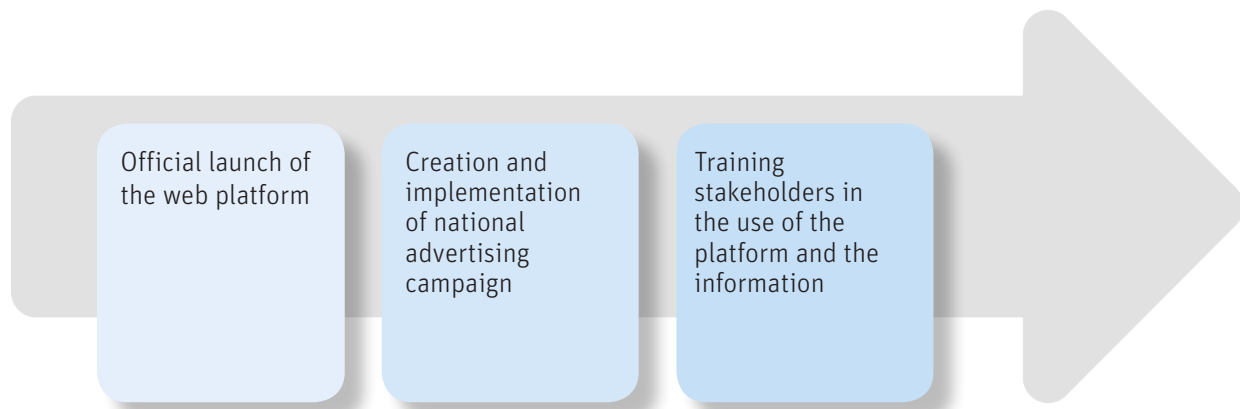
Component 1



Component 2



Component 3



Action Plan: Outlook and Challenges

This strategy is based on the approach that the Transparency for Colombia Corporation and its researchers have been developing over several years of ongoing study and consideration of transparency as one of the ways to fight corruption.¹³

Reporting, publicizing, and disseminating matters that fall under an entity's area of management are actions that bear witness to the existence of institutional principles contained in regulations governing the public, as well as to the existence of the political will of government authorities expressed in the dissemination of information to citizens through a variety of media and forums. These methods include government websites, public hearings on accountability, government participation in discussion forums, citizen participation, and the publication of management processes through local bulletins and posters. Actions aimed at providing information may be driven by a policy to promote transparency or by a demand for transparency. As a result, public entities and authorities must develop the following capacities (IACHR, 2006):

1. Institutional capacity to produce and manage public information, which requires:

- internal rules (resolutions, memos);
- identification of the public, restricted, and confidential information that the entity produces (indicating sources, types of information, and storage policies);
- physical and electronic management systems for documents, archiving, and administrative and mission-related information;
- processes and procedures for producing information (mandatory for all units);
- units, staff, and management bodies specialized in coordinating the production and delivery of information;
- authorities, servers, and interest groups that have received information and training on the right to access information;

¹³ The approach presented here is based on Restrepo Hung (2010) and on the methodology documents and results of the National, Departmental and Municipal Transparency Index (Índice de Transparencia Nacional, Departamental y Municipal) developed by the Transparency for Colombia research team, available at www.transparenciacolombia.org.co.

- institutional initiatives to produce and disseminate information that are linked to monitoring processes and quality control systems; and
- adequate allocation of financial resources to develop access to information.

2. Capacity and ability to provide information to citizens, both proactively and on demand, which involves:

- determining media and channels for the dissemination of public information based on the principle of active transparency;
- determining media and channels for the dissemination of public information when demanded by citizens;
- designing and adopting mechanisms for public accountability; and
- developing the components of e-Government.¹⁴

At the same time, citizens and private stakeholders, such as civil society organizations, must:

- recognize their right to have access to public information;
- know the obligations of public entities and others that have functions associated with guaranteeing the right to information;
- be aware of and interested in monitoring administrative and governmental behavior; and
- become involved in the study and evaluation of public affairs.

Finally, it must be repeated that a dual function is performed when complete, relevant, and timely information on the management of public affairs is made available:

- It forces public authorities to organize both their management processes and their results, given the fact that—from the start—others (in this case, citizens) will be aware of the course of public affairs in municipal and national government.
- It means that information on public affairs is in the hands of citizens and that this is the vehicle for taking part in decisions that affect development and collective welfare.

Effective access to public information is the means by which to democratize the relationship between public authorities and citizens, and it is one of the ingredients for the proper functioning of the system of checks and balances between stakeholders with different resources and degrees of power in society. This helps build transparent management practices and helps rebuild public trust in the political system, while stimulating institutional self-regulation, all of which helps legitimize institutional initiatives and reduce the risks of corruption. In this regard, the initiatives that have begun in 2012 are aimed at helping build this new form of public management, where action by various stakeholders requires information to achieve effective levels of management with a high level of trust.

¹⁴ In Colombia, this is called “online government.” The planned components are: information, interaction, transaction, and democracy.

Box 7.1

Challenges Facing the Initiative

This project must have the capacity to promote the management and dissemination of public information by the various stakeholders in the TACS program, not all of which are government entities. In this scenario, the main challenges are the following:

1. To design and operate a public information management model that goes beyond a reductionist reading (according to which access to public information requires only uncritical publication of data/reports produced in the management process) and that is broadened to a comprehensive approach to document management.
2. To transform the FNA's political will into the technical capacity to produce and supply public information on the TACS process, by developing and implementing processes, procedures, offices, and responsible agents.
3. To generate public information as a key element in making public policy decisions; the challenge is for FNA to understand that public information must also help private sector stakeholders and citizens make better decisions.
4. To shift the paradigm according to which only public authorities are required to provide public information; private-sector stakeholders who perform public functions are also required to provide this kind of information.^a
5. To achieve active participation by private sector representatives (developers, financiers, land-owners, etc.); clearly, these stakeholders do not yet recognize their obligation to private information when they take part in public management processes.
6. To actively link local and departmental governments, as appropriate, in locations where TACS projects are being carried out; as legal representatives of their jurisdictions, these entities must support and promote this initiative.
7. To encourage citizens to use the information as well as the media and channels that will be designated under the project.
8. To design and adopt protocols to provide citizens with access to information without breaking "trade secrets" or infringing on personal information; the former involves the interests of private stakeholders and the latter corresponds to the interests of citizens.
9. To provide comprehensible and timely information to all priority stakeholders; accordingly, at the consultation stage, the goal is to identify and understand the various dynamics and needs of stakeholders.

^a To date, Senate Draft Bill No. 156 (2011) is under review, as is Congressional Draft Bill No. 288 (2012), "by means of which the Law respecting transparency and the right of access to national public information is created, and other provisions are ordered." This proposal, which arose from civil society "More Information, More Rights" alliance includes: "Article 5: Scope of Application (...)
c) Natural and legal persons, both public and private, who exercise a public function, who provide public services involving information directly related to the provision of a public service."

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The availability of **good-quality and timely information** enables more efficient and effective decision making in the processes of planning, design, construction, operation, and monitoring of public works; reduces financial and operational risks in service delivery; **and facilitates accountability to the authorities and the general public regarding the management of the works and service delivery.**

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Chapter 8

Transparency and Monitoring of Public Works Concessions in Chile

Sonia Tschorne Berestesky

Introduction

This chapter presents the experiences in the design and implementation of the Public Infrastructure Monitoring System (Sistema de Fiscalización de las Obras de Infraestructura Pública) within the framework of the Institutional Modernization Program (Programa de Modernización Institucional), which has been underway in Chile's Ministry of Public Works (Ministerio de Obras Públicas, or MOP) since 2006. The monitoring component is a response to the need to achieve greater transparency and better monitoring of management in the public infrastructure sector, with special emphasis on supervising compliance with the terms of public works contracts and incorporating both users and the general public in the evaluation, control, and improvement of the service quality these works offer.

From the final decades of the 20th century onwards, along with the globalization of the world economy and advances in communications, the infrastructure sector assumed a greater role in the development of countries and their economies. Infrastructure provision and management are indispensable, both for stimulating productivity and competitiveness in economic activities and international integration, and for strengthening social development and fairness in economic growth. In this task, the role of the state acquires particular significance for guaranteeing efficiency, transparency, and fairness in public investment decision making, and as a body that regulates, facilitates, and promotes private investment.

Public sector infrastructure works are associated with high levels of investment. They generate considerable social and territorial impact, which may positively or negatively affect the quality of life of the inhabitants of the territories in which they are located. Their capacity to bring about structural changes in the land market and transfers of capital gains, and to bring together multiple public and private sector actors for both decision making and public works management, poses a challenge for the state to design and implement policies, mechanisms, and practices that promote transparency, self-regulation, and access to information in the sector.

The development of transparency initiatives, along with the implementation of modern systems that guarantee broad access to information in the sphere of public works, is an effective tool for tackling the principal challenges posed by the sector in order to guarantee a healthy and competitive industry and improve the quality of public services. These actions help reduce margins of discretionality and corruption in public management and minimize information asymmetries among the diverse agents that intervene in the creation and operation of public infrastructure.

Furthermore, the availability of good-quality and timely information enables more efficient and effective decision making in the processes of planning, design, construction, operation, and monitoring of public works; reduces financial and operational risks in service delivery; and facilitates accountability to the authorities and the general public regarding the management of the works and service delivery.

This chapter is divided into three parts. The first describes the political and institutional context of Chile's infrastructure sector, when the Institutional Strengthening Process (Proceso de Fortalecimiento Institucional) began, and presents an assessment of the most important problems that the infrastructure sector faces at this point in time. In the second part, the main initiatives, developed under the Institutional Modernization Program, are presented within the framework of transparency and the creation of information and monitoring systems. The third part sets out the principal results obtained during implementation of the Monitoring System, the lessons learned, and the future challenges.

Context

Following the restoration of democracy in Chile in 1990, successive *Concertación* governments initiated a process of institutional modernization of the public sector to address the effects of the policies of the previous liberal-authoritarian regime that affected the infrastructure sector, such as the privatization of economic-productive activity, reduction of the size of the state, and cutbacks in public expenditure. Among the main challenges faced by the public administration were to improve internal management and bring citizens closer to government affairs. This profound cultural change was translated into the implementation of transparency and probity initiatives aimed at strengthening public confidence, limiting the margins for discretionality and arbitrariness, reinforcing respect for institutions, and buttressing democratic culture. Furthermore, the return of democracy gave rise to a more active and participatory citizenry with regard to matters of public interest, with growing demands for access to information, transparency, and quality in public management.

Within the sphere of public infrastructure, a significant effort was initiated to expand and improve public infrastructure works, in order to remedy the country's challenges in such matters. During the 1980s, the Chilean government invested less than the amount required to maintain roads, ports, and airports, while the demand for new infrastructure continued to grow. The economic losses in terms of competitiveness owing to these infrastructure deficiencies were high, and mainly affected the most dynamic sectors of the economy (in 1995 it was estimated that the infrastructure deficit amounted to US\$11,080 million, the equivalent of US\$18,996 million in today's prices) (Castro Fernández, et al., 2009).

In 1991, the decision was made to seek financial resources for public works in the *private* sector, via the Public Works Concessions Program (Sistema de Concesiones de Obras Públicas), which incorporates the investment and management capacities of the private sector into the construction and operation of the infrastructure that the country needs. In 1991, the Public Work Concessions Law (Ley de Concesiones) (Law N° 19.068) was enacted. The concession of public works guaranteed the necessary equilibrium in fiscal expenditure as, thanks to private funding and the collection of tolls from users—on a user-pay basis—, investment in public works significantly increased spectacularly, enhancing the country's competitiveness and yielding significant public and private sector savings.

These public-private partnerships were aimed at providing and financing major highways, airports, and public building infrastructure projects, characterized by their large scale and social and territorial impact, a high technical level, and demand for large investments. Through this mechanism, between 1994 and 2009, more than US\$11,500 million was invested and 55 contracts were awarded, enabling the infrastructure deficit to be partially reversed (MOP, 2010).

At the same time, through the implementation of the Concessions Program, between 1995 and 2009, the MOP increased fiscal investment in infrastructure by a factor of 2.5, in an attempt to enhance the country's competitiveness, maximize territorial productive development, maintain regional growth in the export of goods and services, and implement social infrastructure programs aimed at directly improving people's quality of life.

The public-private partnership brings with it a new form of public infrastructure provision, management, and operation. It increases the number of actors that intervene in the planning, production, and operation processes; the user of the public work concession begins to pay to use it; and an important change in the division of responsibilities takes place during the operational stage: the concessionary assumes the responsibility for the public work, while the MOP takes a subsidiary role.

This new way of creating infrastructure using private financing, which forced the MOP to put together a high-quality professional and technical team to act as a counterpart to the private sector in the works and in order to eliminate possible asymmetries in professional and technical capacities, calls for staff with a different profile than that historically found within the public administration. For this purpose, the MOP formed a Concessions Unit (Unidad de Concesiones), which is highly specialized in both the technical construction and the financial and economic management of public works projects. However, given the results within the ministry, this challenge should have been tackled along with the implementation of the necessary institutional and organizational reforms to ensure the unit's efficient operation. Thus, in the 1990s, the infrastructure sector confronted the challenge and the urgent need to generate more and better public works; design and implement ways of interacting with the private sector on the delivery and subsequent operation of the concessions; provide better service to the users of the concessions; and offer more and better quality, information, both to the actors involved in public infrastructure construction and administration and to the public, who have the right to know about the processes, products, and services offered.

Within this framework, once the infrastructure sector was recognized as a vital hub of economic and social development in Chile and the MOP as the entity responsible for its planning, construction, maintenance, and operation, it became urgently necessary to initiate a modernization process. This process enables the new challenges to be adequately dealt with in terms of guaranteeing efficiency in resource use and establishing mechanisms of greater transparency, via the incorporation of accountability processes into public infrastructure management.

Assessment of Chile's Infrastructure Sector

In 2005, an assessment was conducted that revealed the principal organizational and management problems found in the infrastructure sector. These were:

- lack of public policy coordination owing to deficient linkages with other relevant territorial actors in infrastructure matters,
- confusion concerning roles and mechanisms in decision making and in the planning, building, and monitoring processes,
- the existence of a fragmented projects portfolio, arising from the diverse corporate visions found in the MOP,
- work based on "individual contracts" rather than on "projects," with the related problems of coordination, loss of information during the various stages of construction, and management shortcomings,

- lack of specific commitments regarding service levels to users and the public at large, except for isolated definitions that were incorporated into the concession contracts,
- failure to include, within the procurement and regulation system, external auditing based on risk analysis and the creation of incentives for self-regulation by the concessionary companies and the other subcontractors participating in the infrastructure industry, and
- the absence of a culture of accountability, lack of ex-post evaluation, and a lack of risk and control analysis in public works projects.

Furthermore, despite the success of the concessions program with regard to the number of works executed and their high technical quality, important shortcomings were detected in terms of the following:

1. Monitoring of contracts, principally in the operational phase, once the work has been completed and service provision begins, due to the:
 - magnitude and specialization of the new contracts that incorporate operation of the concession,
 - change in the division of responsibilities, given that the concessionary company becomes directly responsible,
 - new infrastructure typology and its territorial impact: from open roads with free access to confined highways with controlled access, and
 - new demands made by the community, given that these are concessions that users must pay for directly.
2. Modification of contracts, due to their:
 - Size, which causes major difficulties with respect to adjudication of entire projects; this reveals the need for a special structure capable of tackling changes in contract terms when deficiencies in the projects arise. (This element may be found either in the construction phase or during subsequent service provision.)
 - Long duration and ever-increasing demand for infrastructure and/or better service, the works must be able to adapt to these demands.
3. Structure able to cope with the new management style:
 - The figure of the traditional Inspector of Public Works (Inspector Fiscal) within the MOP no longer fits. The role of the Inspector of Public Works used to be to supervise construction, which is limited in terms of time and level of investment. In this case, inspection of the concession is carried out over a long term, is concerned with services rather than the project, and the scope of the position is much greater than in the past.
 - The economic resources needed to fund this new style of monitoring were not foreseen. Resources are still allocated as if for a public works inspection of a traditional building project.
4. Data management between public and private agents: In this case, regulatory capture is feared whenever there are information asymmetries.

These diagnostic elements demonstrate the need to improve monitoring of the operational phase of the public concession infrastructure works.

The MOP's Institutional Strengthening Process

In order to tackle the problems the MOP faced in the areas of institutionality, management, and information, an important institutional strengthening program was initiated. It eventually became the Institutional Modernization Program. The program received technical and financial support from the World Bank, as well as contributions from the Inter-American Development Bank (IDB), and aimed to improve the MOP's strategic management in order to establish new practices and develop capacities to enable it to attend to the ever-more demanding requirements of the country's infrastructure and the general public.

The objectives of the program, which focused on changing the management model, moving from one centered on infrastructure construction towards one oriented toward providing services to infrastructure users, were the following:

- Strengthen planning through an integrated territorial approach
- Improve the quality of service provision by defining explicit standards and levels in accordance with the type of work or project
- Establish integrated infrastructure project management
- Strengthen the role of monitoring of works and contracts in order to guarantee compliance with the promised levels of service delivery
- Strengthen organizational capacity and development of the technical and professional competencies needed to respond to this process of institutional transformation

In 2006, in accordance with these objectives, the MOP decided to set up the Public Works Monitoring Coordinating Committee (Coordinación de Fiscalización de Obras Públicas, or CFOP) with two goals in mind. The first goal was to design and establish the Superintendency of Public Works (Superintendencia de Obras Públicas) as an independent agency, responsible for monitoring the quality of public infrastructure services and for protecting citizen rights and responsibilities in this regard. The second goal was to strengthen the supervisory and monitoring mechanisms for projects and contracts, in order to guarantee compliance with the promised standards and levels of services in the public works, and to generate conditions that safeguard the balance of technical and economic interests within the sphere of public works, given the asymmetries in executive units, concession companies and/or subcontractors, and the users and general public.

In response to the commission entrusted to it, at the end of 2007 the draft bill on the creation of the Superintendency of Public Works was presented to congress, and it began to be discussed in parliament. Simultaneously, work was conducted on the design and implementation of the Public Works Monitoring System, for the purpose of tackling the main difficulties faced by the MOP with regard to monitoring. These were identified as follows:

- Supervision was based on monitoring of inputs and processes, rather than on results and verification of the quality of service provided.
- Scrutiny centered mainly on aspects of infrastructure and administrative obligations, without taking into account the indicators and criteria for monitoring compliance on service provision for users.
- Concentration of the monitoring function in the person of the Inspector of Public Works, with the consequent risks in terms of integrity and objective management.
- Lack of common criteria and instruments to undertake monitoring and integral evaluation of the industry.

- Lack of an unified information system for scrutinizing contracts, which would enable works inventories to be identified and updated, as well as provide information to the diverse users in the infrastructure industry and the public at large, as well as to those who monitor compliance with contractual obligations.

Table 8.1 presents the main problems detected in 2006 with regard to the MOP's role in monitoring, as well as the proposals that were put forward and that constitute the pillars of the new public works supervision model.

Table 8.1
Assessment and Proposals with Regard to Public Works Monitoring

	Initial situation	Proposed situation	Key concepts
Object of monitoring	- Monitoring of inputs, processes, and procedures	- Monitoring of results	Service quality
Information management	- Lack of a unique information system. - Use of diverse sources. - Lack of information normalization - Lack of a single inventory and reliable documentary base	- Management of information as the key factor in business equilibrium - Unique database - Interoperative database via electronic documents and specific information protocols for each interest group: MOP, concession operator, Inspector of Public Works, users, etc	Unique database Interoperability
Verification of contractual compliance	- Deficient standards and in some cases a lack of objectivity (Inspector of Public Works criterion) - Difficulty, and in some cases impossibility, of determining compliance levels	- Sufficient quality standards that are always objective - Improvement of the concession contracts to favor monitoring and the application of penalties	Explicit standards Improvement of contracts

Table 8.1
Assessment and Proposals with Regard to Public Works Monitoring (*continued*)

	Initial situation	Proposed situation	Key concepts
Inspection of public works	<ul style="list-style-type: none"> - Deficient standards and, in some cases, a lack of objectivity (Inspector of Public Works criterion) - Difficulty and, in some cases, impossibility, of determining compliance levels 	<ul style="list-style-type: none"> - Information arising from the operator's self-regulatory system in established formats - The Inspector of Public Works focused on selective project inspections, risk analysis, and the use of penalties 	<ul style="list-style-type: none"> Self-regulation Selective inspection Risk analysis
Evaluation of quality of service delivery	<ul style="list-style-type: none"> - Scarce instances of evaluation exercises, apart from the verification of compliance with contractual obligations 	<ul style="list-style-type: none"> - Permanent evaluation platform, with emphasis on an integrated approach to business, beyond specific contracts - Emphasis on analysis of satisfaction and the quality cycle 	<ul style="list-style-type: none"> Ranking Establish points of reference Continuous improvement User satisfaction
Users' role	<ul style="list-style-type: none"> - Lack of a policy regarding the role of users in public works during the concession phase - User demands are not systemized or linked to project management 	<ul style="list-style-type: none"> - The users are part of the business and have the rights and responsibilities. Their opinion is important for evaluating quality and project management 	<ul style="list-style-type: none"> Users as protagonist

Public Works Monitoring Model

The following components were considered during the development of the monitoring model:

Inspector of Public Works. As a counterpart to the MOP in contracts, this component is responsible for verifying fulfillment of contractual obligations in the technical, financial, and administrative areas. For this purpose, it relies on outside consultancy, one of its sources being the statistical, technical, and service-based information that the operator provides, according to the conditions laid out in the concession contract.

The Monitoring System. Developed via an Internet platform, the system provides an interoperable database that envisages the registration and review of all elements of the public works inventory and the services and inspections carried out by the Inspector of Public Works based on the standardized registers.

Moreover, the system measures a combination of previously defined management indicators that provide timely information, through reports on how well the concessions are operating, which are of interest to the Inspector of Public Works, the MOP, the concession operators and users, and the general public.

Implementation of this system began with the highways, airports, and urban public transportation corridor concessions that were already operational. This decision was made in accordance with the volume of resources that had been invested in recent years through the Concessions System (Sistema de Concesiones), the existing need to introduce improvements in service provision in various existing projects, and the proximity of the termination date of many of these concessions, added to the subsequent call for tender process that would then be necessary.

The Monitoring System envisaged the development of information technology tools to support the Inspector of Public Works and the redefinition of the process of information gathering, verification, and analysis. This was necessary for the early detection of problems, so that preventative action could be taken before contractual non-compliance took place, as well as for the establishment of priorities during emergency situations that put the quality of service offered to users at risk.

The information generated by the Monitoring System is translated into internal management indicators that facilitate evaluation of compliance with every contractual obligation, as well as of the performance of the public sector infrastructure industry. A series of reference points or benchmarks are established which, in turn, strengthens the MOP's supervisory and regulatory role.

Application of the Monitoring System resulted in substantial improvements in technical and financial management, as well as in the quality of service provision in the public works concessions, by clarifying and defining the roles of the diverse actors intervening in the sector and by defining the demands for compliance that had been necessarily incorporated into the contracts. This has made higher-quality information available for the application of penalties or fines in the case of non-compliance, for negotiation purposes in the case of contract modifications, and for continuous improvement in the works themselves.

Evaluating User Satisfaction

This component of the Monitoring System envisaged the construction of models to evaluate user satisfaction for each of the following typologies: urban highways, inter-urban highways, airports, and connectivity projects in isolated areas. The development of these quantitative prediction models has made it possible to establish the variables that most determine user satisfaction, according to type of infrastructure, with their respective weights. They were the basis on which the main projects and concessions, currently being exploited, were evaluated. At present, results are available for the evaluation of perceived quality for each variable and for overall satisfaction with each concession.

The implementation of this Monitoring System has made it possible to optimize the tasks of control, monitoring, and evaluation of concessions and, subsequently, to adopt timely decisions whenever there is a possibility of non-compliance, and to apply penalties as needed. Furthermore, the information obtained has enabled improvements in establishing the basis for bidding for new projects, such as including indicators and objective standards of service. This has allowed the procedures for the application of penalties and fines to be perfected. Likewise, the concession operators' obligations with regard to the inventory of goods, works, and services have been defined, as have processes for periodic updating of such inventories, among other issues.

With regard to monitoring, standardized procedures were implemented to define valid and representative samples with the aim of carrying out selective monitoring on the ground. Procedures for registration, analysis, and management of claims and queries, made by the general public, were also standardized, and attempts were made to redefine the role of the Advisors to the Concession Inspectors (Asesorías a la Inspección Fiscal de Explotación), which finally resulted in a new model of concessions.

Based on the results of the user satisfaction surveys, improvement plans were defined that were linked to the operation of the infrastructure and services, in order to correct deficiencies and establish commitments by both the concession operators and the fiscal inspectors of the concessions evaluated. At the government level, the information provided by the system has been incorporated into various performance evaluation and management monitoring instruments, for both the relevant managers and civil servants and their respective ministerial directors. On this basis, the first phase included the construction of the databases and the determination of their level of traceability. The second phase included the establishment of goals and monitoring and evaluation.

The Superintendency of Public Works Project

The legal initiative that began its journey through the National Congress at the end of 2007 is still in its first legislative stage, although it is worth mentioning that, at the beginning of the current government term of office, its “very urgent” rating was downgraded. The Superintendency of Public Works was designed, based on the need for an independent regulatory agency, which is financially autonomous and technically competent, with its own transparency and accountability mechanisms that prevent favoritism in monitoring and regulation. The project is built around the following core concepts:

1. Demand for certain levels of service

The project is based on the concessionary company’s obligation to provide acceptable levels of service during the operational phase. The public works concession projects have incorporated ever higher acceptable service levels during the operational phase, which is evident in the infrastructure administered directly by the MOP. This new demand represents an essential innovation, which arose from the idea of satisfying citizens’ needs for public infrastructure that reliably offers the services for which it was created.

2. Responsive to the needs of users

The existence of certain explicit acceptable standards of service offered by the concessions will enable users to demand high-quality services. In order for the users to exercise this right, however, they must be made fully aware of what they can, and must, demand when they use public works concessions. Therefore, the draft legislation contains mechanisms that enable the necessary information to be made available, as well as for monitoring and supervising compliance with these obligations by both the service provider and the MOP. As a counterpart to the recognition of the users’ right to demand adequate service provision, it is worth highlighting that the care of national heritage is everyone’s responsibility; therefore, it is established that users, and the public at large, must use the infrastructure, according to the established regulations, and avoid behavior that might cause damage to it.

3. Ensures compliance with the standards service

Since public works concessions must provide an adequate quality service, and given the high costs that monitoring imposes on the users, the body responsible for monitoring will be the Superintendency of Public

Works. This new agency will be in charge of ensuring compliance with the service standards that the facilities must maintain during the operational phase. In order to achieve this objective, the Superintendency's main function will be to scrutinize the concession operators and the MOP, in all that concerns fulfilling the expressly-agreed standards. The creation of the Superintendency imposes the separation of two roles: the public works concession operation, for which the MOP remains responsible, and monitoring the explicit quality standards, which becomes the task of the Superintendency. In this sense, monitoring the standards of quality represents a paradigm shift of great importance.

Objectives of the Superintendency

The Superintendency is primarily responsible for ensuring that the service levels delivered to users by the concession operators during the operational phase accord with the levels set out in the contracts and respective instruments. Likewise, it will be the Superintendency's task to promote and respect the rights of both users of public infrastructure and all those affected by them. Finally, the Superintendency will ensure that all relevant information is easily accessible in an accurate, timely, and up-to-date format.

Functions of the Superintendency

1. Monitor service quality

The Superintendency of Public Works will be an autonomous monitoring system, which is an important step toward modernizing the sector. The proposed model separates oversight of the standards of service from oversight of the concession during the operational phase. In this way, it seeks to counterbalance the interests of the executive units, the concession operators, and the subcontractors with those of an autonomous body that oversees compliance with the standards of service, creating a system of checks and balances.

2. Protection of users and affected citizens

With regard to the users, the Superintendency must ensure that their rights, and those of the broader public, are respected. To this end, it will be responsible for resolving the complaints lodged by users about possible breaches in the levels of services guaranteed by the concession operator. Once non-compliance has been demonstrated, the penalties prescribed under the current legislation will be applied. It will also fall to the Superintendency to resolve the complaints made by users of public infrastructure works, or the wider community, whenever they feel that their rights or legitimate interests have been infringed, due to causes or omissions attributable to either the public or private sector entities responsible for a public works concession.

3. Transparency and information generation

The draft legislation establishes the obligation of any organization subject to monitoring to deliver any information demanded from them and by the means determined by the Superintendency, in pursuit of its duties. These provisions arise from the conviction that the best ally of monitoring is an abundant flow of information toward the users, the citizenry, and the marketplace. Therefore, in addition to the service providers' obligations, the Superintendency's own specific functions are also established, which are to produce both general and analytical information, and to publish and disseminate it.

In accordance with the central role of the users in this project, the companies and entities responsible for operating public infrastructure must carry out user satisfaction studies—according to the regulatory regime established by the Superintendency—with regard to the quality of services provided by the works concession, and to publish the results. On this basis, the Superintendency must then draw up a table ranking user satisfaction with respect to the most important public infrastructure works concessions in use.

In terms of information generation, it is also envisaged that the Superintendency will deliver an annual report to the President of the Republic and the Chamber of Deputies, describing the performance of both public and private sector service providers in the areas that it monitors. In this way, the project contributes to enhancing transparency and public accountability with regard to service provision management. It is also foreseen that all of the reports, published by the Superintendency, are to be posted on its website, which will enhance transparency in the sector. A regulation has also been introduced to regulate lobbying activity.

4. Economic regulation of public works, concessions, and other controls

The Superintendency of Public Works will also play a role in the economic regulation of the concessions, as a way of perfecting contract modification procedures, whenever it is impossible to apply the competitive bidding mechanism. It is hoped to thereby improve concession contract modification procedures by incorporating an independent and specialized technical perspective. This will strengthen the concession of public works, which has contributed so much to the country's infrastructural development. To this end, the following functions are proposed.

- The Superintendency should inform the authorities of the impact of contract modification—in the case of public works concessions—on: (i) the standards of service provision that were originally agreed to, (ii) the valuation of investments remaining to be made and, (iii) respect for the proportionality of the agreed mutual economic benefits and of the structures and tariff levels envisaged. Furthermore, it must inform the MOP of any adjustments in tariffs, or of any other nature, that should be made to the conditions established in the concession contracts, especially if they have to do with the mechanisms, procedures, and factors originally agreed on. All the above forms a framework that avoids unjustified modifications to the terms of the winning bid by the private sector firm during the execution of the contract.
- The Superintendency will undertake studies of best practices, thereby establishing benchmarks in terms of formulating the basis for procurement, renegotiation, public works cost-structuring, and user protection mechanisms, among other items. The possibility of making comparisons between the aforesaid questions, and then publishing them, will contribute to providing indispensable information for decision making, which means that the market becomes more transparent and the contract adjudication mechanisms more efficient.
- The Superintendency is responsible to report on the bases of the calls for tender and the regulations governing service provision.
- Finally, the Superintendency must make decisions about the bases governing tenders for public works maintenance and operation contracts and about their modifications, when there are demands associated with fulfillment of agreed levels of service provision, although these are not covered by the concessions legislation itself.

5. Application of penalties

A scale of penalties has been proposed that the Superintendency of Public Works should apply in the pursuit of its duties. To this end, sanctions may be applied by the Superintendency to all natural persons or corporate bodies under its jurisdiction, for non-compliance or infringement of the terms established by law, or its regulations, orders, and instructions, and the other instruments that fall under its authority. It is important to point out that, in conjunction with the design of the draft legislation, work was also carried out on the conceptual, procedural, and organizational bases that would enable rapid implementation, as soon as the project was approved.

The Demand for Information in the Infrastructure Sector

The demand for information in matters of public infrastructure is increasing due to the impact that these works can have on the country's territorial and productive development. There is also the added interest that the subject of public infrastructure arouses in the public at large, and especially among users of public works concessions, given that they are being asked to pay a toll, a situation that has increased considerably in the last 20 years as this system has become more widespread in Chile. Furthermore, there are factors that compel the government to respond to citizens by guaranteeing efficient, effective, high-quality management and providing timely access to information.

In 2008, because of these factors, the MOP developed a policy on citizen relations. This policy enhances community participation at the different stages of the project life cycle through the implementation of a number of strategies and instruments as a key condition in the process of modernizing the state and enhancing democracy. Within this context, the MOP has recognized the relevance of establishing receptive relationships and adequately managing the requirements and commitments it receives and acquires from all interested parties during the life cycle of an investment plan, project, or program. The criterion for determining the user is based on an approach defining the relevant actors:

- **Community-based actors:** This concept takes in the public at large, users, beneficiaries, those affected by the MOP's actions and CSOs, whether functional or territorial, formal or informal.
- **Private sector actors:** This concept refers to the productive sectors and the organizations that represent their interests, such as service providers, companies, multinationals, universities, vocational training centers, and others.
- **Public actors:** These include municipalities and all state bodies, including the MOP's own services, which intervene in the provision of a service or product.
- **Political actors:** These are the citizens' formal representatives within the democratic system, such as members of parliament.
- **International organizations.**

The methodology employed to define and identify these actors can be found in the Ministry's Citizen Participation Manual (Manual de Participación Ciudadana), which explains the guidelines and methods used to establish the processes of citizen consultation and participation during the development of an infrastructure investment plan, program, or project. This methodology determines the way in which participation should be approached, bearing in mind the scale of the works, the types of actors, the degree of uncertainty, and the kind of information available. The higher the decision level (policy, plan, or program), the more aggregate the information, the lower the scale of work, and the greater the uncertainty. At the project level, the scale of work is local, the information is specific, and the uncertainties are fewer.

Moreover, a strategy on the relationship between the MOP and its clients and users was developed, establishing an integrated vision for providing public services. This strategy aims to improve the processes linked with data management in order to become better acquainted with clients and users; analyzes their needs more carefully; strengthens the most needed services; and includes, in a pertinent and timely fashion, the requirements captured through the various channels of communication, based on the plans, programs, projects, and regulations. The strategy envisages that the current system of public service provision will adhere to ISO 9001:2000.

Furthermore, in order to facilitate dissemination of information, an institutional web portal was set up, which complies with Chile's demands and needs for transparency and data reliability, challenges that were established for the entire public sector by the law on Transparency of the Public Service and Access to Information of the State Administration (Transparencia de la Función Pública y de Acceso a la Información de la Administración del Estado) (Law NO 20.285) enacted in 2009. From the moment this law took effect, it became necessary to strengthen citizens' services within the MOP, as well as all processes that enable the demands for active transparency and access to public information to be satisfied.

Principal Results Obtained in Chile during Implementation of the Service-based Approach to Infrastructure and the Public Works Monitoring System

As a consequence of the work carried out by the MOP to orient its management toward service provision that satisfies the needs of users and the public in general, a series of initiatives were undertaken that enabled the implementation of the new approach.

1. Modification of the Concessions Law

This law now includes the concession operator's obligation to comply with all levels of service provision and technical standards during the contract's entire time span. During the draft legislation's passage through congress, various difficulties arose about the amount of institutional effort that centered on the paradigm shift in relation to the concessions, rather than on project execution, which led to a virtual paralysis in the concession process between 2006 and 2008.

To remedy this situation, further improvements were introduced, based on accumulated experiences. They were aimed at enhancing transparency in contracts, safeguarding the conditions for competition and fairness in contract adjudication, and endowing the state—through the MOP—with the necessary tools to guarantee compliance with its functions and duties. The improvements seek to ensure that the concession projects provide users with an adequate service, while having the lowest possible impact on the fiscal budget and charging an effective tariff. In addition, given that the conflict resolution mechanism enshrined in the legislation suffered from certain shortcomings, adjustments were introduced to guarantee the satisfactory and early resolution of legal conflicts that might arise during the concession and to safeguard the normal progress of the works and social welfare.

2. Definition and implementation of standards and levels of service

With regard to the task of identifying the services to be provided according to the type of work, with their respective attributes of quality, indicators, and standards of service, at present there is a proposal for the following nine types of projects: airports, public buildings, urban and inter-urban road works, repair of paved

roads, rainwater runoff, hospitals, artisanal fishery infrastructure, maritime connectivity, lakes and rivers, and rural potable water. The number of proposals has been gradually increasing in the bidding for new projects.

3. Monitoring of concession contracts

A management system for monitoring contracts in public works concessions during the operational phase has been created. It has been implemented gradually in contracts for inter-urban highways, urban roads, public transport corridors and airport terminals. The following results were obtained:

- Of a total of 59 concession contracts, 37 are being monitored via the system (20 inter-urban highways, six urban highways, two public transport corridors, and nine airports). This has generated more than 100 reports for various purposes. The same methodology is being used for the management and inspection of the 1,700 potable water systems in the country's rural areas.
- Timely monitoring of contract management led to the collection of 43 fines for non-compliance in 2009 alone, amounting to a total of US\$770,000, and another 576 fines were imposed, amounting to US\$5,660,000.
- The same platform was used as a data system for the emergency cadaster employed after the earthquake that struck Chile in February 2010, which made it possible to respond to the situation in a more timely and efficient manner.

4. System for evaluating user satisfaction with public works

In 2009 and 2010, evaluations were conducted to measure the perceived levels of service provision and customer satisfaction with the principal concession projects. Some of the main results obtained in the first evaluation of highway concessions were the following:

- Safety is the principal value or condition cited by users: 64 percent for users of concession highways, 40 percent in concession inter-urban highways, and 78 percent in the case of users of non-concession roads.
- Commuting time is most valued by the users of urban highways (44.5 percent).
- Urban highways are, in general, the most appreciated works. In second place are inter-urban highways and finally, lagging a long way behind, are the non-concession inter-urban highways.
- With respect to inter-urban highways, the least valued attributes are related to road safety, such as fences that impede access of people and animals to the road, deficient street lighting, lack of lateral and central safety barriers, and others.

Lessons Learned and Future Challenges

The public policies that are implemented in matters of transparency and monitoring, at both the global and the sectoral level, must be assumed to be policies of the state, and must therefore enjoy the consensus and commitment of society as a whole, as well as the support of all political sectors, so that their application is guaranteed throughout the terms of subsequent governments. In light of the Chilean experience in the design and implementation of the institutional improvement programs that brought profound changes in the way that public service management is conducted, one of the principal risk factors is the possibility of change in the political or technical direction of the institutions or programs, meaning that in those cases there is a risk of modifications in approaches and priorities for tackling the proposed challenges.

One of the success factors of Chile's Institutional Strengthening Program and the incorporation of transparency and monitoring mechanisms into the infrastructure sector has been the creation of a highly specialized, professionally robust, and organizationally committed unit. This unit proved to be a fundamental element in the achievement of important progress and objectives.

Furthermore, the inclusion of specific compliance goals in the government performance evaluation and management monitoring instruments for institutions can help guarantee the program's continuity. Moreover, it is important to establish components that entail achievements by associated stages and periods, with visible early results as advances along the planned roadmap. In terms of human resources, it is vital to incorporate the support of specialists in the process of institutional transformation, committed to a robust strategy of managing change, both to help minimize the natural barriers that always arise inside an organization and to disseminate the advances, achievements and results and make them known to the actors involved, committing them to the process.

Finally, one of the key factors in the Chilean case was the participation and technical support received from the World Bank and the IDB, strategic partners of the MOP's modernization process. The commitments contracted with these organizations guaranteed the sustainability of resource allocations by the Ministry of Finance.

One of the main challenges to consider is that political will of the governmental authorities is necessary if progress is to continue towards consolidating the MOP's Institutional Strengthening Program. This means assigning sufficient technical, financial and human resources, so that the tools created can continue to be applied in order to consolidate the regulatory instruments of the public works contracting and monitoring systems, and to build an integrated system that ensures greater transparency and better monitoring of the sector.

Another major pending challenge is the creation of the Superintendency of Public Works. This will require convincing representatives of the MOP and the Ministry of Finance to commit to the need to tackle the current shortcomings still prevalent in the spheres of regulation, monitoring, and information about public works, mainly with regard to concessions. The current transparency mechanisms are insufficient, given that they do not fully constitute a system. They will become complete once the draft legislation is approved and implemented.

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Final Remarks

Nicolás Dassen, Juanita Riaño, and Juan Cruz Vieyra

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The purpose of this publication has been to present some of the lessons learned from the implementation of **targeted transparency policies** in Latin American and Caribbean countries.

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Final Remarks

Nicolás Dassen, Juanita Riaño, and Juan Cruz Vieyra

Growing citizen empowerment and participation in matters of public interest, impelled to a large extent by advances in information and communications technology (ICT), have opened up important channels for using transparency as a public policy tool to improve the quality and efficiency of public services. The purpose of this publication has been to present some of the lessons learned from the implementation of targeted transparency policies in Latin American and Caribbean (LAC) countries.

The authors of the different chapters have shared the valuable experiences of six countries in the LAC region (Argentina, Brazil, Chile, Colombia, Ecuador, and Guatemala), touching on the allocation of subsidies to the private sector, auditing and monitoring of public expenditure, transparency in the extractive industries, money laundering, the provision of credit for housing, and transparency in infrastructure projects. The aim of these final remarks is to put forward some crosscutting issues that can add value to the transparency and accountability agenda of governments and international or regional organizations working in the region.

The initiatives presented in Part II are only a few of the many pro-transparency activities supported by the Transparency Trust Fund (TTF) throughout the LAC region. Hence, it is possible to reflect on some of the important lessons learned to date. First, it is important to re-identify the users of the information and the institutions that disclose it (the disclosers) within the framework of the targeted transparency initiatives presented in each case (see table below).

Targeted Transparency Initiatives:

Information Users and Targeted Entities, According to Country Analyzed

Country	Users	Disclosers
Argentina	Citizens, civil society organizations, the media, and monitoring agencies	Ministry of Transportation, Ministry of Energy, National Budget Office, Unit of Coordination and Evaluation of Subsidies for Internal Control
Brazil	Federal government officials	Federal government ministries and secretariats
Chile	Citizens, monitoring agencies, and civil society organizations	Ministry of Public Works and private sector enterprises

Continued

Targeted Transparency Initiatives:Information Users and Targeted Entities, According to Country Analyzed (*continued*)

Country	Users	Disclosers
Colombia	Citizens, local governments, private sector, and monitoring agencies	National Savings Fund
Ecuador	Citizens, civil society organizations, and monitoring agencies	Private sector, Ministry of Nonrenewable Natural Resources, Ministry of Mines and Petroleum, public and private sector oil companies, and some municipal governments
Guatemala	Superintendent of Banks, in particular the Special Verification Bureau (Intendencia de Verificación Especial, or IVE)	Financial institutions and Designated Nonfinancial Businesses and Professions (DNFBPs)

Second, taking into account the targeted transparency model described in Chapter 1, it is possible to enumerate some elements that might help to guide present implementation and enrich the design and implementation of future targeted transparency policies in the LAC region.

1. The success of targeted transparency policies begins with an accurate definition of the goal that the policy is aiming to achieve. Targeted transparency aims to create incentives for disclosing information to a group of information users so they can make more informed decisions. Therefore, in order for targeted transparency to add value to public policy making, it must be based on an accurate identification of the risks that need to be reduced or mitigated, as well as an analysis of the information users' capacities. The findings of Brazil's Office of the Comptroller General (Controladoria-Geral da União, or CGU), the agency responsible for monitoring and enforcing compliance with the provisions of the newly adopted access to information law, discussed in Chapter 4, illustrate this point. The CGU concludes that a lack of analysis of federal public expenditure data can lead to risks of corruption and misappropriation of public funds. This assessment has led the CGU to adopt a targeted transparency policy that focuses on developing a specific tool, the Public Expenditure Observatory (Observatório da Despesa Pública, or ODP), to enable the government to strengthen efficiency in auditing activities and, at the same time, to provide public officials with the information they need to avoid vulnerabilities and risks. If the CGU had not correctly identified the policy objective that was sought via the ODP, it might have simply concentrated on demanding more information from the corresponding entities. This improved information flow, rather than reducing the identified risks, might have increased them by hindering the federal government agencies' support for the internal monitoring agency. Despite its supervisory and auditing functions, the agency is increasingly seen as a technical advisor in the search for solutions that help to reduce risks.

2. Communication during the implementation process about the targeted transparency policy is a fundamental element in its success and sustainability. The success or failure of targeted transparency policies is closely related to the users' perceptions about the impact that information about the policies in question might have on decision making, as well as to the perception the disclosers have of the benefits that may accrue from the increased flow of information. Therefore, by openly communicating the information disclosed by the targeted transparency policy, a virtuous circle is created that simplifies coordination between users and favors political sustainability over time.

The case studies of Chile and Ecuador illustrate the importance of communication. In Ecuador, the seminars and socialization and validation workshops, which presented the new extractive industry transparency standards, helped to change the information users' perceptions, until they recognized that greater and better availability of information could directly benefit them by reducing the incidence of contradictory messages. In Chile, the increased amount of information disclosed by the Public Infrastructure Monitoring System (Sistema de Fiscalización de las Obras de Infraestructura Pública) enabled the private sector, one of this initiative's main beneficiaries, to make more informed decisions. This contributed to a more transparent market, and made the public works infrastructure adjudication mechanisms more competitive.

3. Coordination between the actors involved in the process of disclosing and using information is one of the main challenges facing targeted transparency policies. The existence of numerous stakeholders in the action cycle of targeted transparency policies (whether disclosers or users) means that a successful change in behavior, which solves the initial information asymmetry, is closely linked to the existence of coordination mechanisms between the actors involved. In other words, the information placed at the public's disposal, as a result of a targeted transparency policy, can be useful for achieving a public policy goal if the information users decide to collectively change their decision-making process. As a counterpoint, if there is more than one discloser, in order for the information to be satisfactory, all parties should disclose information observing the appropriate formats and standards. The example of money laundering, discussed in Chapter 6, illustrates this point.

Within the regulatory sphere of money laundering, the changes in conduct by both the financial and the nonfinancial sector (the so-called "gatekeepers" of the legal economy) will depend, among other factors, on how well they collaborate. If a group of financial institutions does not cooperate and, therefore, does not gather valuable information about their clients' identity and economic activity, or report suspicious activities to the Special Verification Bureau (Intendencia de Verificación Especial, or IVE), then clients intending to launder money will be attracted to them, creating a negative incentive for those entities that wish to comply with the legal requirements. In effect, the latter might take the risks of avoiding "uncomfortable" questions to their clients, or deciding not to report suspicious operations, because the opportunity cost of doing so—bearing in mind that the money launderers can simply go to the next window—is greater than the benefits. In the case of money laundering, one implicit coordination mechanism that might align the information disclosers' incentives is the fact that there is a financial intelligence unit (the IVE) in place that has supervisory capacity and an efficient monitoring system, as well as the authority to investigate and penalize those who do not comply with information disclosure requirements.

4. In order to effect behavioral changes by information disclosers, it is important to have a solid institutional commitment. Access to information and targeted transparency policies generate tangible and intangible costs, mainly for the entities responsible for providing the information. The former arise from the task of gathering data—or from generating data, in some cases—and from processing, analyzing, and distributing the data in accordance with the parameters and standards that apply to the users. The latter derive from the need to change organizational culture, moving from opacity to openness via access to information. These are

nonrecoverable costs for the information provider. In other words, they are unavoidable and must be written off; however, if the institutional support exists, and it is communicated proactively, it is possible that the entity can identify longer-term benefits that will result in a net benefit. This will contribute to a change in behavior when implementing targeted transparency policies and, over the long run, their sustainability.

The Brazilian case further illustrates this idea. The information generated by the ODP provoked an overwhelming institutional response that was manifested in changes of conduct within the CGU itself, and in various public sector entities that benefited from the disclosed information. As indicated in Chapter 4, one concrete example is the adoption of a regulation controlling the use of corporate credit cards. This regulation was enacted after the ODP identified vulnerabilities in the system that generated risks of inefficiency and corruption, and its adoption by different institutions was, in part, attributable to the institutional support given to the ODP.

5. In the action cycle of targeted transparency policies, active participation by civil society organizations is a key factor. In first-generation access to information policies, the citizen is considered to be the final information user. In contrast, as mentioned in Chapter 1, targeted transparency policies define information users on a broader spectrum, which may include civil society organizations (CSOs), trade unions, public entities, and the media. Situations are common in which citizens, for various reasons—including the perception that their efforts will not be effective—do not demand information, even though they consider certain information to be relevant, perceive a situation of opacity, or believe that the information concerns them directly. It is here that CSOs can act as a catalyst, identifying situations in which the lack of information might imply a risk, promoting targeted transparency as a solution for managing that risk, and acting as coordinating bodies. Likewise, they can contribute to changing the perceptions of both citizens and the entities responsible for data disclosure. This helps to remedy the problems generated by the operation of institutional arrangements, and constitutes a guarantee of targeted transparency policy sustainability. For instance, as discussed in Chapter 7, it was a CSO, Transparency for Colombia, within a context of change marked by the coming to power of the new government, which impelled a targeted transparency policy. This policy was aimed at remedying the lack of information available in the housing sector, a problem identified by Transparency for Colombia as giving rise to risks of corruption, inefficiency, and inequality.

The experience of the Center for the Implementation of Public Policies for the Promotion of Equity and Growth (Centro de Investigación de Políticas Públicas para la Equidad y el Crecimiento, or CIPPEC) in Argentina, examined in Chapter 3, also illustrates the importance of the CSOs throughout the action cycle of targeted transparency policies. In this case, the initiative sought to enhance transparency and accountability regarding the allocation of subsidies to the private sector, specifically in gas, transportation, and food and agricultural production. Despite the fact that the changes associated with the targeted transparency policy might be considered marginal (especially bearing in mind the institutional response from the disclosers) the CIPPEC did manage to interest other users, such as the media, in carrying on with the task of changing perceptions and behaviors in order to achieve greater transparency and improve accountability.

Finally, and without detracting from the lessons learned from each of the cases presented, we would like to reflect on some additional topics—also of a crosscutting nature—that might inform the transparency agenda and help identify the most important challenges ahead for Latin America and the Caribbean.

The Effectiveness of Targeted Transparency Policies and the Importance of Measuring their Impact

To achieve effectiveness in the policies referred to herein as “targeted transparency policies,” the Inter-American Development Bank (IDB) takes into account the willingness and capacity of the numerous strategic actors, including the public and private sectors and civil society, to promote transparency in each country. Each of the cases presented in this publication demonstrates that it is not enough to channel a given policy through one actor or another; rather, it is crucial to identify the incentives and capacities of information users and disclosers, as well as of the administrators and beneficiaries of transparency and access to information policies.

For this reason, the visions, demands, expectations, and capacities possessed by each of the actors must be analyzed and, in turn, capacities must be strengthened, resolve must be built or consolidated, and agreements and compromises, either tacit or explicit, must be reached. Targeted transparency policies must be designed, applied, and monitored on the basis of assessments and entry points that enable impact to be measured.

How is the effectiveness of targeted transparency policies measured? In terms of impact evaluation, in recent years, the governance agenda has moved from the position of considering it unfeasible to create indicators to an explosion of evaluation exercises.¹ Thus, each time a transparency initiative is designed, there is a concomitant risk of another metric being engendered. In this sense, one of the challenges facing organizations and governments that find themselves at the targeted transparency policy design stage is to avoid falling into the trap of generating indicators as if these were the ultimate policy goal, rather than one as a means for achieving a change in the public policy action cycle. To evaluate the effect of these policies, a combination of indicators is needed that can enable an understanding of national institutional arrangements and the strengths and weaknesses of the relevant national public institutions,² and make it possible to evaluate specific aspects related to the policy in question.³

This combination of indicators can be considered a vertical integration of information, given that the data pertinent to the national context are analyzed, based on a given sector or institution. Vertical integration of indicators means that a wide panorama can be drawn to understand the effect of targeted transparency within a particular context. In this sense, it is important to seek a satisfactory equilibrium, with metrics that feed policy design and permit subsequent policy monitoring and evaluation. The task of identifying and designing indicators does not require the same effort in all areas of public policy. For example, it is possible that, as far as transparency in education and health matters is concerned, there is more information than in topics related to climate change, simply because the latter is a more recent item on the agenda. It is hoped that the commitments acquired by many countries within the framework of the Open Government Partnership (OGP) will make the task easier by increasing the information flow.

¹ The quantity of indicators is such that some organizations have begun to construct an inventory of measuring efforts that have been carried out. See, for example, the GAP portal, created by the United Nations Development Program’s Governance Center (<http://www.gaportal.org/>), and the GATEWAY portal, designed and implemented by Transparency International (<http://gateway.transparency.org>).

² Examples of these exercises are The Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (MESICIC) by the Organization of American States (OAS) (http://www.oas.org/juridico/spanish/mesicic_intro_sp.htm), the Global Integrity Report (<http://www.globalintegrity.org/report>), and Public Expenditure and Financial Accountability program (<http://www.pefa.org/dashboard>).

³ One example of this kind of measurement is in Ecuador, discussed in Chapter 5, where monitoring in the extractive industries is conducted in accordance with the Organic Law on Transparency and Access to Public Information (Ley Orgánica de Transparencia y Acceso a la Información Pública).

The analysis of existing initiatives enables some elements to be taken into account that, for measurement purposes, might be considered by both information users and disclosers. First, it is important to begin by clearly establishing what defect in the system needs rectifying, which user-group needs the policy is seeking to satisfy, who the different actors that intervene in the processes are, and what incentives these actors have to disclose or withhold information. Second, once these elements have been identified, it is important to establish—taking the action cycle of targeted transparency policies—what the measurement seeks to determine and how the resulting information will be used to effect the change in behavior sought by the targeted transparency policy. Finally, it is worth asking if the measurement in question adds value, or if there is sufficient information to reach the goals. This brief pause is important for the process, given that more information does not imply greater transparency.

Building on Solid Foundations: Effective Implementation of Access to Information Laws, Modernizing Archives, and Fostering Capacities at the Subnational Government Level

Although this publication has concentrated on second-generation access to information and targeted transparency policies, it is important to remember that the debate about the implementation of first-generation access to information policies, understood to be those that seek the approval and compliance with transparency and access to information laws, is still not over in LAC countries. The region's governments and civil society have shown increasing interest in promoting access to information laws, incorporating this right into legal ordinances and, in some cases, even creating agencies charged with monitoring and ensuring effective compliance with the corresponding obligations. In the past decade, more than 10 countries in LAC have enacted access to information laws, with the understanding that they constitute key components for giving information users protection under the jurisdictions that exist to defend this right.

The effective implementation of these laws, however, continues to pose one of the region's biggest challenges to enhanced transparency and accountability (Baena and Vieyra, 2011). There are areas in which the countries with access to information laws in place still have much work to do, for example defining and applying concepts such as active transparency; ensuring the optimum operation of agencies that oversee compliance with regulations on transparency and access to information; imposing penalties in case of rule infringements; drafting general instructions on compliance with transparency and access to information legislation by the organs of state administration (and requiring the latter to adjust their attention to citizens procedures and systems to the aforesaid legislation); and resolving complaints whenever access to information is denied. Furthermore, there are some necessary conditions for promoting transparency in public service that impact the effective implementation of access to information laws. Although it is not possible to describe all of these conditions in this concluding chapter, it is worth highlighting two that are considered central within the framework of public management modernization: the efficiency of public archives systems and institutional capacity at the subnational government level.

With regard to the *public archive systems*, more countries in the LAC region recognize that backing transparency is merely symbolic, unless accompanied by processes that help to improve the management of public archives. In this sense, one challenge facing LAC countries is to guarantee the life cycle of documents

that enter and leave public administration.⁴ Many LAC countries are currently in transition from physical to digital storage systems, availing themselves of the opportunities offered by the latest ICTs, which are enhanced by the growing ease of extending Internet access and coverage. This is reflected in OGP commitments to promote open data and electronic government, which is described in Chapter 2 of this publication.

With regard to *subnational levels of government*, the challenges of transparency are even greater, and the debate is still fresh, given that decentralization in many LAC countries has implied delegating powers to subnational levels with limited resources—not to mention creating legislative bodies with duplicated roles and functions—which makes the challenge of accountability even more complex. In this sense, Taryn and Rehm (2008) emphasize that fiscal data quality, and public access to it, are crucial for promoting transparency and accountability at the subnational level.

However, it is precisely at this level where the greatest opportunities lie, given the proximity between the citizen and the public sphere, and the fact that both civil society and governments in LAC countries have made efforts to disclose subnational budgetary management and improve its monitoring. Interest in strengthening transparency at subnational government levels has been recognized by both CSOs and governments.⁵ With regard to civil society, examples include Global Integrity's Local Integrity Initiative,⁶ which supports LAC countries, such as Argentina, Ecuador, Guatemala, Mexico, and Peru; and the International Budget Partnership's Open Budget Initiative,⁷ through which various pilot studies were conducted in the region, in countries such as Argentina, Bolivia, Brazil, Ecuador, and Peru. With regard to governments, certain LAC countries, such as Argentina, Bolivia, Brazil, and Colombia, have recognized this concern. In Brazil, for example, the CGU has observed that weak institutional capacity at the subnational level is one of the greatest challenges in implementing this legislation.

Coordinating Initiatives and Standards of Transparency at the Regional Level: Challenges and Opportunities within the OGP Framework

The OGP poses the challenge of how to coordinate and complement the activities defined in OGP action plans with other regional and global peer review initiatives or cooperation frameworks, which arise from other agreements and conventions to which LAC countries are signatories. These initiatives and agreements assess and give recommendations on how best to implement the international commitments, standards, and best practices in OGP-related areas. The following are examples of existing cooperation or peer review mechanisms for each of the OGP's five challenges:

⁴ By way of example, it is useful to draw attention to the effort being made by the Transparency Council (Consejo para la Transparencia) in Chile, to assess and describe the physical state and the management of the public archives in more than 700 public agencies that are subject to the Transparency Law (Ley de Transparencia). For more information, see <http://www.consejotransparencia.cl/se-inicia-diagnostico-a-archivos-publicos/consejo/2012-02-08/113239.html>.

⁵ Mesicic's Committee of Experts has made recommendations to governments so they can implement their international commitments at the subnational level (for example, Argentina, Brazil, El Salvador, Guatemala, Mexico and Venezuela).

⁶ For more information, see <http://www.globalintegrity.org/local>.

⁷ See http://internationalbudget.org/wp-content/uploads/Subnational-Synthesis-Paper_final.pdf.

1. **Improvement of public services.** In response to each country, the Organization for Economic Cooperation and Development (OECD) conducts sector and governance assessments, which include electronic government and innovation for improvement in public services. The assessment methodology includes a peer review process.
2. **Enhancement of public integrity.** The following conventions and other international monitoring mechanisms are worth mentioning:
 - The Inter-American Convention against Corruption (MESICIC)
 - The United Nations Convention against Corruption (UNCAC)
 - The Convention on Combating Bribery of Foreign Public Officials (OECD)
 - The African Union Convention on Preventing and Combating Corruption
 - Recommendations of the Financial Action Task Force (FATF) against money laundering and financing of terrorism
 - The Group of States against Corruption (GRECO), which monitors the Council of Europe's Criminal Law Convention on Corruption
 - Asian Development Bank (ADB) and Organization of Economic Cooperation and Development (OECD): Anticorruption Action Plan for Asia and the Pacific.
3. **More effective and efficient management of public resources.** The Public Expenditure and Financial Accountability (PEFA) program, appraises the state of public expenditure, public procurement systems, and financial monitoring. At the subnational level, a noteworthy methodology is used in the Public Management Rapid Assessment and Action Plans (RAAP), which are applied by the World Bank's Public Sector Management Unit.
4. **Creation of safer communities.** This category encompasses public safety, natural disasters, environmental risks, and civil protection. The United Nations Framework Convention on Climate Change and the Kyoto Protocol entailed the adoption of specific government commitments to reduce the emissions of greenhouse gases to mitigate the effects of global warming. In the area of public safety, the review mechanism of the implementation of the United Nations Convention against Transnational Organized Crime, and its three protocols, stands out. In LAC countries, a significant instrument is the Multilateral Evaluation Mechanism (MEM) of the Inter-American Drug Abuse Control Commission (CICAD-OAS).
5. **Increase corporate responsibility and private sector accountability:** In order to increase private sector accountability, there are initiatives that involve governments and civil society, such as the Extractive Industries Transparency Initiative (EITI) and the Construction Sector Transparency Initiative (CoST). There is a process whereby corporations voluntarily commit to implement the 10 principals of the United Nations Global Compact, in the areas of human rights, labor legislation, environmental protection, and anticorruption.

For each one of these challenges, governments—and, to a lesser extent, the private sector and civil society organizations—mobilize forces to seek and report information about legal and institutional frameworks and statistics that reflect the outcomes obtained. They respond to questionnaires and receive visits by delegations from other governments and organizations or from civil society. As a result of these review processes, country reports are written that are thereafter used for designing action plans to oversee implementation of the recommendations received. This opens an opportunity for the OGP, and the OGP action

plans are developed to coincide, so that the latter include, if not all, at least some of the actions derived from the recommendations of other peer review processes. The quality of action plans will depend on several variables, including the proficiency of the staff conducting the assessments or evaluations, the degree of receptivity of the public officials representing the analyzed country, the volume of work relative to the number of intervening countries, and the quantity of information to be analyzed.⁸ In this scenario, with regard to the reports, each country must organize itself to coordinate what is reported in one mechanism or another to avoid duplicating human and budgetary resources, and to avoid contradictory information. Each country, therefore, should have its own public policy planning office, so that political decisions promote coordination between the different technical agencies, and assist in coherently designing action plans with adequate prioritization and appropriate sequencing over the short, medium, and long term.

Furthermore, civil society has to take advantage of the joint governance between governments and the CSO at the OGP in order to push the themes analyzed in the cooperation mechanisms onto a politically more visible agenda, and to interconnect nongovernmental organizations in order to maximize their influence. This can be accomplished by linking entities dedicated to promoting integrity and institutionality, for example, with those promoting environmental protection or safety policy development. For these reasons, the OGP will face its toughest challenge in the next two or three years: consolidation.

The preceding paragraphs have set out some of the key trends and challenges facing LAC countries with regard to the design and implementation of targeted transparency policies and open government. The capacity of LAC countries to translate these models into concrete public policies will be a determining factor for building more modern, efficient, and integrated public management systems with a pro-citizen approach. The private sector and civil society must take advantage of the growing availability of information to empower themselves as agents of change, pushing the importance of transparency onto the public agenda—especially in those countries where opacity still reigns in certain sectors—and raising citizen awareness about the ways in which the use of public information can be a key factor in day-to-day decision making, especially with regard to public service delivery.

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⁸ These cooperation mechanisms are not always conceived as such, meaning that they act as advocates for the defense of their countries. There are, however, country representatives that do seek to obtain high-quality recommendations, in order to subsequently make progress with the reform agenda of the public policy in question.

“ Increasing transparency and preventing corruption are pillars of the mission of the Inter-American Development Bank. After four years in operation, the Transparency Fund has gained recognition, both inside and outside the Bank, as a source of innovation and best practices in matters of access to information and targeted transparency. ”

Luis Alberto Moreno
President
Inter-American Development Bank



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