



Inter-American
Development
Bank

REPORT

ANTICORRUPTION
ACTIVITIES
TRUST FUND

Report on Preparatory
Activities

Institutional Capacity of the State Division
Office of Institutional Integrity
Grants and Co-Financing Management Division

January 2008

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**ANTICORRUPTION
ACTIVITIES
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(AAF)

REPORT ON PREPARATORY ACTIVITIES

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LIST OF ABBREVIATIONS

ADC	Asociación por los Derechos Civiles - Argentina
AAF	Anticorruption Activities Trust Fund
WB	World Bank
CAD	Ciudadanos al Día - Peru
CC	Carter Center
CIDA	Canadian International Development Agency
CIDH	Inter-American Commission for Human Rights - OAS
CIPPEC	Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento - Argentina
CPP	Consejo de la Prensa Peruana - Peru
COCAI	Coalición de Organizaciones Civiles por el Acceso a la Información Pública - Ecuador
CTC	Corporación Transparencia por Colombia
DFID	Department for International Development - UK
DI	Inter-American Dialogue
DPLF	Due Process of Law Foundation
EITI	Extractive Industries Transparency Initiative
FUNDAR	Fundación de Desarrollo Alternativo Responsable - México
FPA	Fundación Pro Acceso - Chile
GOF	Global Opportunities Fund – UK
ICF/ICS	Institutional Capacity of the State Division
ICT	Information and Communication Technologies
IFAI	Instituto Federal de Acceso a la Información Pública - México
LIMAC	Libertad de Información - México A.C.
NORAD	Norwegian Agency for Development Cooperation
NED	National Endowment for Democracy
OECD	Organization for Economic Co-operation and Development
OAS	Organization of American States
UN	United States Organization / United Nations Development Programme
	UNDP / Democratic Governance Group DGG
OSI	Open Society Institute
PGN	Procuraduría General de la Nación - Colombia
PRE/OII	Office of Institutional Integrity
PTF	Partnership for Transparency Fund
SIP	Sociedad Interamericana de Prensa
TAI	The Access Initiative
TI	Transparency International
U4	Anticorruption Resource Centre
USAID	United States Agency for International Development
VPC/GCM	Grants and Co-financing Management Division

INTRODUCTION

Background

Recognizing corruption as a serious threat to economic growth, social equity and good governance, the Inter-American Development Bank (IDB) signed on March 19, 2007 an agreement with the Government of Norway for the establishment of the Bank's first Anticorruption Activities Fund (AAF).

The AAF, a multidonor trust fund, began operations on December, 3 2007 following a phase of technical preparatory activities that served as the basis for defining the scope and strategic approach of the AAF. The preparatory activities phase was divided into three stages: (i) Designing the Strategic Approach; (ii) Practical Validation; and (iii) Launch and Dissemination Activities.

This report summarizes the principal activities, the methodology, and the results obtained by the AAF technical team during the AAF's preparatory activities phase. It is the result of a joint effort between the Institutional Capacity of the State Division (ICF/ICS); the Office of Institutional Integrity (PRE/OII); and the Grants and Co-financing Management Division (VPC/GCM).¹ The opinions expressed throughout this document do not reflect the view of the IDB or that of the public officials and experts interviewed during the preparation of the AAF.²

Objective and Expected Results

The report's main objective is to serve as a source of information and support for experts, public officials, and representatives of civil society organizations responsible for designing and/or implementing access to information mechanisms as tools to prevent or control corruption.

This document is also expected to contribute to expanding knowledge on possible windows for cooperation between the IDB and the organizations with which interaction is needed in order to design and implement access to information mechanisms as tools to prevent or control corruption. These include international, civil society, and public and private sector organizations.

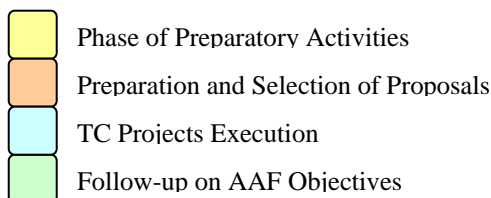
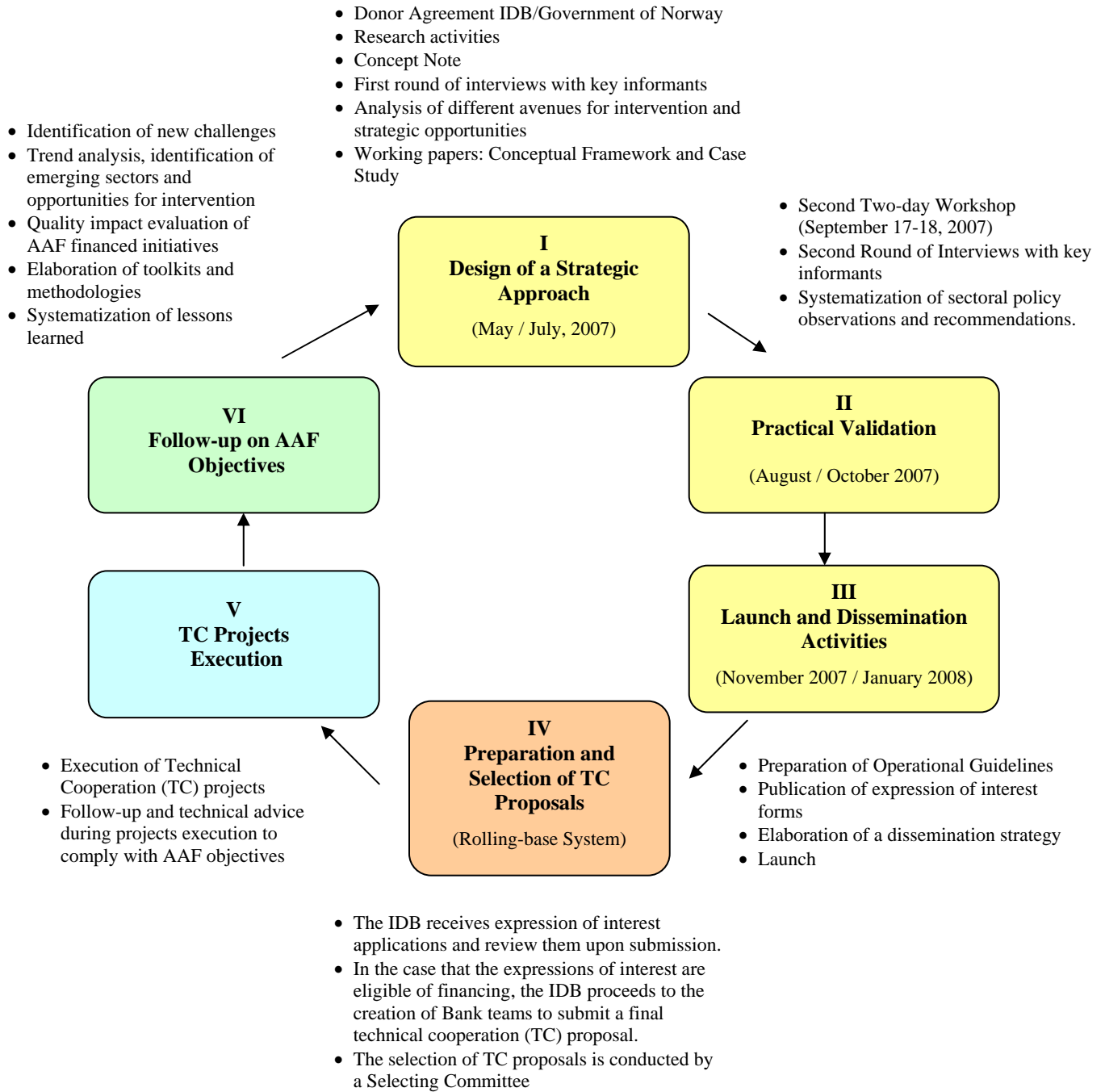
¹ The technical team consisted of Paloma Baena (ICF/ICS); Maria Bouroncle (VPC/GCM); Roberto de Michele (PRE/OII), Arnaldo Posadas (ICF/ICS); Leyda Fajardo (INT/INT); and Juan Cruz Vieyra (ICF/ICS). This document was prepared by Juan Cruz Vieyra under the coordination of Paloma Baena and has benefited from valuable comments of Roberto de Michele.

² The technical team is grateful for the support provided by Xavier Comas (Chief of the Institutional Capacity of the State Division – IDB); Stephen Zimmermann (Chief of the Office of the Institutional Integrity – IDB), and Marguerite S. Berger (Chief of the Grants and Co-Financing Management Unit – IDB), in the different stages and activities undertaken during the preparatory phase of the AAF.

Report Structure

The main structure of the report reflects the three fundamental stages of the AAF's preparatory activities phase, as shown on the Figure I (see next page). The concluding remarks present an overview of the challenges posed by adopting and implementing access to information laws in Latin America; the importance of strengthening access to information mechanisms both in countries that have adopted and implemented these laws and in those that have not; the need to have good diagnostic assessments and to encourage civil society participation in these processes; the main characteristics of the AAF's sectoral approach and the considerations its design addresses; the importance of technological advances and the use of information and communication technologies (ICTs) and of the strengthening of agencies enforcing compliance with access to information policies and obligations.

Figure I: AAF Life Cycle



I

DESIGN OF A STRATEGIC APPROACH

The fundamental idea behind the agreement with the Norwegian government for the establishment of the AAF³ was strengthening institutional capacity and promoting innovative tools to prevent and control corruption in the region. But this general idea needed a more precise approach.

To fulfill this objective, the AAF's technical team proposed the following technical analysis phases: (i) drafting a concept note; (ii) conducting various research activities and a preliminary round of interviews; (iii) drafting working papers on access to information as an anticorruption tool (conceptual framework and case study).

Concept Note⁴

The concept note (Annex II) contains the basic guidelines on the AAF's operational mechanisms and objectives in view of the challenges posed by the fight against corruption in Latin America, most notably:

- 1) Corruption distorts the possibilities of economic growth and produces perverse incentives at all levels of society creating a threat to democratic institutions.
- 2) Empirical evidence suggests that institutional weaknesses in many Latin American countries make it more difficult to implement tools for the fight against corruption. These institutional weaknesses have negative consequences including: (i) poor technical capacity in public entities at national and sub-national levels; and (ii) ineffective mechanisms to build a transparent interaction between the public and private sectors and civil society.
- 3) Multiple strategies coexist to combat corruption.
- 4) There is general agreement in the international community that access to information is an essential component of anticorruption strategies.

This concept note describes four possible areas for intervention: (i) strengthening of the systems and mechanisms of access to information; (ii) strengthening of the participatory mechanisms for the participation of civil society in the fight against corruption; (iii) strengthening of the monitoring mechanisms of NGOs and civil society so they can control the actions of the public administration; and (iv) strengthening of the State's enforcement capacity, based on the political will and institutional capacity to enforce regulations.

³ The memorandum of understanding can be found on the AAF website. See <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1230901>.

⁴ Prepared by Paloma Baena (ICF/ICS), Roberto de Michele (PRE/OII), and Arnaldo Posadas (ICF/ICS). See Annex II "concept note."

The concept note complements the AAF's Operational Guidelines and paved the way for a series of studies and interviews intended to steer the design of the AAF toward a more specific area.

Research Activities and First Round of Interviews

The bibliographic research and the first round of interviews with key informants, including public officials and experts on corruption and access to information from different national and international organizations, were intended to (i) validate the importance of access to information as a tool to fight corruption in the region and (ii) achieve greater understanding of the problems and the specific opportunities for intervention in this area.

The results of the first round of interviews⁵ (May through July 2007) confirmed that strengthening access to information mechanisms and systems represents a strategic opportunity in the fight against corruption in the countries of the region. The reasons put forth by the informants can be summarized as follows:

- (1) Access to information on what governments, international organizations, and private companies do and how they use their funds has a direct impact on the fight against corruption.⁶
- (2) The access to information tools not only serve to bring cases of corruption to light, but may also prevent corruption by drawing attention to shortcomings in public and private sector management.
- (3) The benefits allow governments and citizens as well as private institutions to encourage efficiency in the channels of access to public information. In the public sector, for example, access to information can make the management of public funds transparent, increase the efficiency of bureaucratic structures, and create channels to facilitate accountability. In the private sector, enterprises benefit both directly, from the possibility of quickly and efficiently obtaining the information they want, and indirectly, through enhanced transparency and efficiency in the markets.⁷
- (4) ICTs, specifically the Internet, have opened new avenues to be explored and have made it necessary for public sector officials and business leaders to incorporate tools to allow different stakeholders to access the information at their disposal.⁸

Regarding specific intervention opportunities in this area, the interviews highlighted the need for a detailed examination of the political, economic, and social realities in each

⁵ The list of experts interviewed is given in Annex III "First Round of Interviews."

⁶ See Susan Rose-Ackerman (1999) and Ann Florini (2007), among other sources.

⁷ ADC and the British Embassy in Argentina, "Acceso a la Información Pública: un Beneficio para las Empresas," 2006.

⁸ See: Mary Graham "Democracy by Disclosure: The Rise of Technopopulism," Governance Institute, Brookings Institution Press, 2002; and Alasdair Roberts "Structural Pluralism and the Right to Information," 2001.

country and sector in particular. Nonetheless, certain sectors and areas of intervention were mentioned repeatedly, including:

- (i) Budget formulation, adoption, execution and monitoring
- (ii) Judicial Systems
- (iii) Political Campaign Financing
- (iv) Contracting and Procurement Procedures
- (v) Public Records and Registries
- (vi) Extractive Industries
- (vii) Health Sector
- (viii) Retirement and Pension Systems

This first research and interview stage underscored the need to (i) develop a conceptual framework on access to information as an anticorruption tool that will serve as a theoretical foundation for designing the AAF's strategic approach; and (ii) conduct a case study to convey the challenges, progress, and current situation of programs and initiatives related to the use of access to information mechanisms as tools to prevent or control corruption in Latin America.

Access to Information as a Tool for Fighting Corruption. Conceptual Framework⁹

Regarding the conceptual framework, the first methodological step was to describe the negative correlation between access to information and corruption by reviewing the most recent literature on the topic.¹⁰

Next was discussed a series of topics directly or indirectly related to the nexus between access to information and the fight against corruption. These topics include the conceptual underpinnings for viewing access to information as an instrumental and/or human right; the growing role of the citizenry and the private sector in accountability processes centered on access to information mechanisms; the importance of effective channels of access to information for enhancing the quality of democracy; and the importance of targeted transparency policies.¹¹

Targeted transparency policies were identified as a key element for any effective program of access to information. The fundamental assumption in targeted transparency policies is the need for flexible information access tools that are driven by demand, that is, by what "users of information" identify as their priorities.¹²

In conclusion, the conceptual framework puts forth the discussion and the theoretical elements to examine the potential benefits and costs associated with different models or

⁹ IDB Working Paper: "Access to information as a Tool for Fighting Corruption. Conceptual Framework".

¹⁰ Annex IV contains a list of references consulted on access to information and transparency.

¹¹ For more information on targeted transparency policies, see Fung, Archon, Graham, Mary, and Weil, David, "Full Disclosure: The Perils and Promise of Transparency," New York: Cambridge University Press, 2007.

¹² Ibid.

approaches to access to information—that is, general or comprehensive as well as sectoral approaches.¹³

Access to Information as a Tool for Fighting Corruption. Case Study¹⁴

The objective of the case study was to describe and examine the challenges, progress, and current situation of programs and initiatives related to using information access tools to prevent or control corruption in Latin America. The study was based on a sample of countries of the region and national and international agencies. The sample of organizations was comprised of multilateral development banks, international organizations, bilateral agencies, and various civil society organizations.¹⁵

The sample of countries was selected according to two criteria: (i) ensuring the geographical representation of different subregions in Latin America (Central America, the Andean subregion, and South America), and (ii) including the varying degrees of development of the legal framework for access to public information.

The criterion for the existence and/or effectiveness of access to information laws is especially important with regard to the characteristics of the sectoral approach, since the baseline of the case study is that the existence of such laws is not a prerequisite for promoting or supporting access to information activities and programs to prevent or control corruption.

Hence, the sample includes countries whose access to information laws, in comparison with the rest of the region, function efficiently (such as Mexico); countries that have made progress and had setbacks over the last five to ten years (for example, Peru and Colombia); countries in which access to information laws have been given legal force but their implementation is far from effective (Ecuador); and, lastly, countries that do not yet have access to information laws (Argentina and Chile).

Main Findings of the Case Study

Both access to information policies and anticorruption strategies are on the agendas of a wide range of organizations and governments; however, the specific study of the characteristics, challenges, and opportunities offered by information access tools for preventing and fighting corruption is an avenue that is just beginning to be explored. Most access to information efforts in the region are focused on designing and implementing access to information laws.

The majority of the organizations studied have programs that stress the role of access to information tools as a factor that generically helps or enables governance. In addition, most organizations studied in the region address access to information from a legal

¹³ A comparative chart of the characteristics of both approaches is given in Annex V, “Access to Information: Different Approaches.”

¹⁴ IDB Working Paper: “*Access to Information as a Tool for Fighting Corruption. Case Study*”.

¹⁵ Annex VI contains a list of organizations examined for the Case Study.

standpoint—that is, by promoting the right to free access to information; however, a growing number of organizations, principally local nongovernment organizations (NGOs), are carrying out specific projects and studies based on a sectoral approach, i.e., targeting specific sectors and areas, such as justice, public records, extractive industries, budget management, etc.

The diagnostic assessment activities to identify the intervention level at which the design or implementation of access to information mechanisms will be most effective were indicated in the case study as key to program success. In this regard, the areas of local or subnational management are pointing to new frontiers in the search for the political will needed to promote access to information as a tool to prevent or control corruption.

Lastly, the case study indicated that regulatory frameworks and tools that are not flexible and the public (or “users of information”) tend to lose their effectiveness over time. To avoid such a loss of effectiveness, eliminating unnecessary bureaucratic obstacles and improving coordination of efforts among various civil society and public and private sector groups should be supported.

II

PRACTICAL VALIDATION

The principal objective of the second phase of the AAF's preparatory activities was to present the results of the design stage of the strategic approach to the consideration of public officials, university professors, and representatives of NGOs, as well as to take into account the implications of these results at the specific sector or country level. The principal results of the design stage of the strategic approach can be summarized in the following core areas:

- (1) Sectoral approach: there is a strategic opportunity to implement access to information mechanisms in specific sectors or areas of intervention in which access to information can have a strong impact on controlling or preventing corruption.
- (2) Targeted transparency policies: information access tools need to be flexible and driven by demand, that is, by what users of information identify as their priorities (the implementation of access to information mechanisms must go hand in hand with targeted transparency policies).
- (3) Decentralization: designing and implementing access to information policies at subnational levels of government is increasingly important for the effectiveness of the programs in the region.
- (4) Technological progress: for the implementation of access to information mechanisms or tools, emphasis should be placed on ICTs (especially the Internet), as a factor that promotes the efficiency and transparency of those mechanisms or tools.

To fulfill the objective for this phase of practical validation, mainly two consultation and discussion activities were used: a second round of interviews and a workshop.

Second Round of Interviews

The objective of the second round of interviews¹⁶ (July and August 2007) was to discuss with sectoral experts and experts on access to information, scholars, and public officials the four core areas into which the main results of the design stage of the strategic approach were grouped.

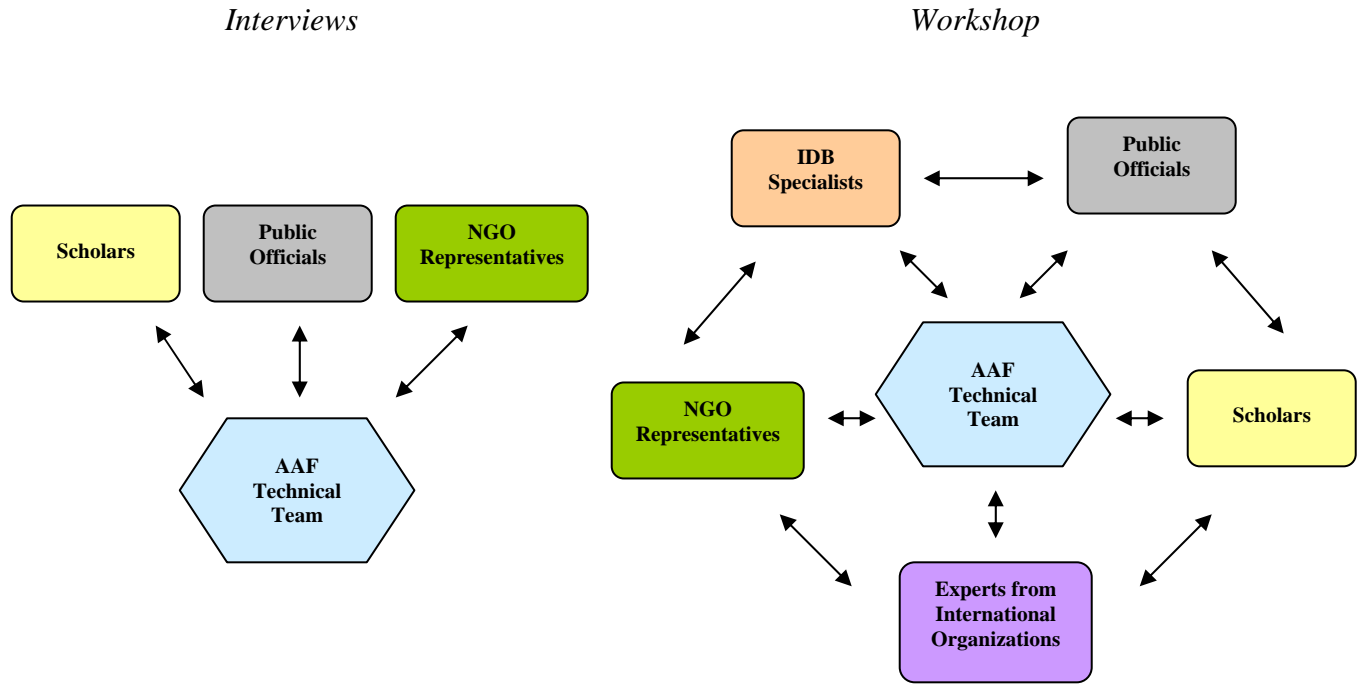
The informants had varied reactions to each core area. In most cases, they agreed on the importance of each described core area for implementing access to information mechanisms as tools to prevent or control corruption. However, the informants made several comments on the results of the design phase of the strategic approach. These comments can be summarized as follows:

¹⁶ The list of experts interviewed is given in Annex VII, "Second Round of Interviews."

- (1) Sectoral approach: Although this approach may offer benefits, such as not requiring broad coalitions of interests for implementing access to information mechanisms, this depends on political-economic circumstances and the context of the country in question. In most cases, it would be ideal to complement the progress in implementing access to information mechanisms in specific sectors of intervention with national access to information laws—which require a long-term effort to protect the right of access to information in general, without limiting the exercise of access to a specific sector or area.
- (2) Targeted transparency policies: Although the importance of civil society’s participation is undeniable, promoting systems of incentives to encourage participation requires taking into account the educational, economic, and social contexts of each specific country or society. In some countries, sectors, or regions in Latin America, educational levels are so low and distrust of the civil service is so prevalent that civil society does not normally concern itself with access to information. This makes it very difficult to motivate civil society, because citizens have other, more pressing issues (health, safety, hunger).
- (3) Decentralization: In some intervention sectors and areas, decentralization strategies should provide for implementing various tools for cooperation or agreements with central governments to ensure the effectiveness of the strategies. Strategies to implement access to information mechanisms are not the exception; when supporting the implementation of mechanisms at the subnational level of government, this must be taken into account.
- (4) Technological progress: Although implementing technology, such as the Internet, is a key element of modernization and effective management, in all areas and sectors and at all levels of government, poorly implemented technological innovation programs can be doubly detrimental, by giving a false impression of transparency, which in fact does not exist.

The second round of interviews primarily had two results. It generated a knowledge base and an exchange of opinions between sectoral experts, scholars, public officials, and the AAF’s technical staff; and, in addition, it underscored the need for these experiences and observations to be discussed among experts from different areas or sectors, public officials from various countries of the region, and representatives of civil society organizations and scholars. The forum for this discussion was a workshop named “Access to information as a Tool for fighting Corruption” [“El Acceso a la Información como Herramienta para la Lucha contra la Corrupción”] (September 17-18, 2007).

Figure II: Levels of Debate during Practical Validation Activities



Workshop

The objective of the workshop was to bring about a high-level discussion among scholars, NGO representatives, experts from international organizations, including the IDB, public officials, and the AAF's technical team.¹⁷ The workshop's premise was to share experiences in using access to information as a tool to control or prevent corruption and to generate an organized debate based on the four core areas of results obtained in the design phase of the strategic approach: sectoral approach; targeted transparency policies; decentralization; and technological progress.

To attain this objective, workshop speakers were selected based on the following criteria: (i) the geographic representation of the different subregions of Latin America; (ii) the different levels of development of the legal framework for access to public information; (iii) the representation of various sectors of intervention particularly vulnerable to corruption and in which access to public information plays an essential role in preventing or controlling it¹⁸; and (iv) the representation of the opinions of academic experts, NGO representatives, and public officials.¹⁹

¹⁷ The agenda of the workshop is provided in Annex VIII.

¹⁸ Participants included experts and public officials involved in public budget management, the judicial sector, extractive industries, and campaign financing, among other issues.

¹⁹ Annex IX contains a detailed chart with the contact information of the workshop speakers and their areas of specialization. Annex X contains biographies of all the speakers.

Each speaker at the workshop was asked to submit a *technical note*²⁰ on a potential area for AAF intervention and to take part in question and answer sessions with the other speakers, participants to the event, and Bank officials.

Based on debates occurred during the workshop, it was completed a policy analysis matrix used to systematize the opinions expressed by the workshop participants on each of the core areas that surfaced in the design phase of the strategic approach regarding each specific sector and area of intervention.²¹

The analysis of the matrixes and the debates held in the workshop, along with the results of the second round of interviews, made it possible to draft a series of sectoral policy observations and recommendations (Annex XII).

Once these observations had been systematized, the technical team brought the validation activities to an end. The broad base of both theoretical and practical knowledge obtained throughout the phases of designing the strategic approach and conducting the practical validation provided the needed assurances for undertaking required actions for launching or implementing the AAF.

²⁰ Annex XIII contains the technical notes sent by the participants. The first page of the annex contains an index of the notes organized by country.

²¹ Annex XI contains, for example, the policy analysis matrix completed on the political campaign financing sector in Argentina

III

LAUNCH AND DISSEMINATION ACTIVITIES

During the month of October, 2007, the technical team worked in the systematization of results obtained throughout the preparatory activities. The objective was to prepare and publish the necessary documents for launching the AAF.

The main document produced during the launch and dissemination phase was the AAF Operational Guidelines. This document is consistent with the strategic approach designed and validated. The Operational Guidelines explain the main criteria for eligibility and selection and gives some examples of possible initiatives to those entities interested in soliciting funding from the AAF.²²

One of the fundamental criteria that guided this phase was the publication of all relevant documents and information prepared by the technical team during the preparatory activities. In order to fulfill this objective, the AAF webpage was created as a resource through which interested entities could find, in an effective and quick manner, reports, information on events, forms, and links of interest to other organizations. The objective of disseminating all these documents is to serve as a source of support for the preparation of proposals clearly and precisely aligned to the AAF strategic approach to prevent and control corruption.²³

The first step for interested parties is to complete the information presented in the expression of interest form.²⁴ These requests are reviewed in terms of their eligibility for receiving financing as they come. Those entities whose projects are considered eligible are contacted in order to work jointly with a Bank team in the preparation of a final proposal for technical cooperation. Final proposals are evaluated by a Bank Selecting Committee.

²² The AAF Operational Guidelines can be found at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1189482>

²³ To know more about the AAF's webpage, click on the following link: <http://condc05.iadb.org/iadbtrustfunds/funds/FundDetails.aspx?FundId=179&DonorId=NO&FundName=Anticorruption%20Activities%20Fund>

²⁴ The expression of interest form can be found at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1230140>

CONCLUDING REMARKS

Although the last 10 years have witnessed an explosion in access to information laws²⁵ those laws, have yet to be implemented and enforced, principally in such regions as Latin America and Africa.²⁶

The countries of Latin America and the Caribbean that have adopted access to information laws include Ecuador, Jamaica, Colombia, Mexico, Panama, the Dominican Republic, Peru, Antigua and Barbuda, and Trinidad and Tobago. Argentina and Brazil do not have access to information laws, nor do Uruguay, Chile, Bolivia, or Paraguay. In some of these countries, laws or decrees have been passed allowing the public to access certain information, or draft laws are close to being enacted, such as in Chile. However, the large deficit in Latin America will not only be corrected by creating rules to regulate the right of access to information but also by introducing mechanisms to ensure compliance with the obligations that these rules imply in sectors and areas that are critical for transparency.

Among others, the factors that explain the ineffectiveness regarding the implementation and enforcement of these laws include populism and political patronage; the educational gap among the different population groups in most countries; the culture of secrecy rooted in the public administration of many countries of the region; and the existence of situations defined as “State capture.”²⁷

The increase in access to information laws in Latin America has been accompanied by political and economic crises, many of which were the product of corruption scandals at the highest levels of power in central governments and legislative and judicial branches. Although these events have led to rising levels of poverty and indignation and sparked social mobilizations, they have also ushered in a crucial debate on the need to implement new tools to promote transparency in the management of public resources through increased civil society participation.

One of the main tools for achieving the objective of greater and more informed civil society participation is access to information. Taking advantage of the opportunity created by this debate in the region is a fundamental task and will require the participation of international agencies, development banks, NGOs, governments, and the private sector.

²⁵ John M. Ackerman, “*The Global Explosion of Freedom of Information Laws*,” 58 Admin. L. Rev. 85, 88 (2006).

²⁶ According to an investigation carried out by the Open Society Institute, based on a sampling of 14 countries that represent the regions of the world, the requests for information in European countries received an estimated compliance rate of 42%, whereas in Latin America the figure was 28% and in Africa it was 13%. Open Society – Justice Initiative “*Transparency & Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries*”; 2006, Pg. 69.

²⁷ Hellman, Joel y Kaufmann, Daniel, “*Confronting the Challenge of State Capture in Transition Economies*,” Finance and Development, Sept. 2001, Vol. 38 No. 3.

In the framework of this debate, the AAF's main objective can be defined as strengthening the institutional capacity of IDB member countries to promote the use of access to information mechanisms as a way to prevent and control corruption.

As is demonstrated by the results of the preparatory activities, the first step for designing any sustainable public policy is to have high-quality diagnostic assessments. With respect to access to information and anticorruption policies, this implies determining what type of public information public and private entities have within their reach, the manner this information is disseminated; its frequency; the type of controls needed to ensure the effective dissemination of this information, and the sectors in which access to information has a critical role as a tool to prevent and control corruption. But the diagnostic assessment does not stop there. It is also necessary to know whether political will exists on the part of governments; the extent of public knowledge regarding the existing channels for access to public information; and the technical capacity of civil society organizations to support the implementation of these policies, among other factors.

The objective of using diagnostic assessments is to contribute the greatest consistency possible to the action programs or policies implemented to address the realities of each country or society, both in the legal system and in the socioeconomic conditions, traditions, and political culture. The degree of political decentralization, the area of specific intervention, and the opportunities of political will determine, for example, the necessity to move forward with the design and implementation of policies or mechanisms of access to information on a national, regional, or local level.

Having good diagnostic assessments, developing an incentive system to gain the support of governments, and constructing programs based on local realities are three fundamental factors that determine the effectiveness of information access systems or tools. The basis of any set of incentives for governments is a simple and concrete demonstration that access to information is not only a central element for improving the quality of the citizenry, and making citizens more aware, participatory and responsible, but also that it is a key tool for having better control over public administration.

It is essential that the new political elites have effective mechanisms of access to information to prevent and control corruption, especially in critical areas where corruption has taken root, such as the public budget, contracting and procurement procedures, extractive industries, pension and benefits systems, among others. It is important that governments of the region recognize the concrete benefits of access to information policies, and not see them as threats. In order to achieve this, governments and civil society organizations should add access to information as an item on the public agenda and gradually curb the culture of silence that has taken root in bureaucracies in Latin America.

The AAF sectoral approach was designed for responding to the various dynamics of corruption in public or private institutions. The policies of transparency designed and implemented from a sectoral approach can have great advantages in our region. In the

health sector, for example, using standard price lists for procurement of medications may not only curtail corrupt practices but may also help reduce the prices of medicines by promoting transparency in the terms of competition.

From a sectoral approach, the focus is on the mechanisms, systems, or procedures that will allow access to information in specific sectors or areas (rather than on the design and implementation of national access to information laws). This entails flexibility to create various management tools in accordance with the freedom given by any existing laws. Moreover, operationally, this flexibility is complemented by the fact that it is not necessary to generate large coalitions of interests in order to implement these access to information mechanisms or systems.²⁸

Targeted transparency policies should take into account technological advances, especially the utilization of the Internet to disseminate information. Information and Communication Technology (ICT) has brought new scenarios in access to information matters. Nowadays, public policies on access to information should regulate obligatory dissemination of public information via the Internet, guaranteeing effective accessibility in terms of simplicity, design and speed of search engines.

Latin America has much to experience with respect to the nexus government-ICTs, especially at the sub-national level of government, where the advantages of technological advances like the Internet remain largely unknown. However is not worth having access to information systems if the public is not interested in soliciting information. Users may be afraid of using the system or unaware of its benefits. Focusing on creating a demand for access to information also helps to prevent corruption by fostering an environment of accountability.

Targeted transparency policies help generate these concrete benefits for the public or for users of information, since their fundamental characteristic consists of providing users with facts or items of information in the manner, at the moment, and in the places that they can use them to decide on actions. Achieving these benefits requires flexible systems or mechanisms of access to information that are driven by demand, that is, by what users of information identify as benefits or priorities (in the example of the health sector, the concrete benefit is the reduction in the prices of medicines).²⁹

Lastly, it is necessary to address the importance of responsive and effective agencies to monitor the enforcement of access to information public policies. The internal operational logic of these agencies should be conducive to facilitating access to information and conducting accountability audits. Four factors are vitally important in this regard: (i) the legal establishment of the agencies; (ii) their independence from political power; (iii) their technical capability; and (iv) the existence of suitable infrastructure for effective compliance with control functions.

²⁸ For more information on the differences between the general or comprehensive approach on access to information and the sectoral approach, see Annex V “Approaches on Access to Information.”

²⁹ For more information on focused transparency policies, see Fung, Archon, Graham, Mary, and Weil, David, *op. cit.*

ANNEXES

Annex I

Acknowledgments

First, thank you to the authorities of the Government of Norway and the Norwegian Agency for Development Cooperation (NORAD) for the support provided to launch the preparatory activities of the AAF—in particular, to Harald Tolland of the Ministry of Foreign Affairs and Eva Bratholm of NORAD.

Special thanks also to the following individuals, who were interviewed during the preparatory stage of the AAF:

Alberto Dalla Via, Cámara Nacional Electoral, Argentina
Andrea Figari –Transparency International, Germany
Delia Ferreira Rubio – CEPPA, Argentina
Eduardo Bertoni y Katya Salazar – Due Process of Law Foundation
Ernesto Villanueva – Libertad de Información México, Mexico
Flora Adelaida Bolivar Arteaga – Public Ministry, Peru;
Helen Darbishire –Access Info, Spain;
Ignacio Álvarez – Office of the Special Rapporteur for Freedom of Expression, OAS
Joan Caivano –Inter-American Dialogue, United States of America
Jorge Romero León – FUNDAR, México
Juan Dumas – Fundación Futuro Latinoamericano, Ecuador
Juan Pablo Guerrero Amparán – Instituto Federal para el Acceso a la Información Pública, México
Laura Neuman – Carter Center, United States of America
Manuel Riesco – CENDA, Chile
Marcos Mendiburu y Eleodoro Mayorga –World Bank
Margareth Flórez – Transparencia Internacional, Colombia
Maria Jose Jarquin – United Kingdom Department for International Development
Mariela Belski y Maria Julia Georgelli – Asociación por los Derechos Civiles, Argentina
Martha Lucía Rivera – Procuraduría General de Colombia, Colombia
Néstor Baragli – Oficina Anticorrupción, Argentina
Orazio Belletini – Grupo Faro, Ecuador
Rafael Di Tella – Harvard University, United States of America
Roberto Godoy – Ministerio de Trabajo, Chile
Sandra Coliver – Open Society Institute, United States of America
Stuart Gilmar y Siri Bjune – United Nations

The opinions and collaboration on various activities of the following IDB experts consulted are appreciated:

Andre Medici, SCL/SPH

Diego Arisi, ICS/CCO

Francisco Mejía, OMJ/OMJ

Gonzalo Afcha, ICF/ICS

Juan Carlos Cortazar, ICS/CCH

Marcelo Cabrol, SCL/EDU

Orlando Reos, VPS/VPS

Pablo Alonso, ICF/ICS

Peter Sollis, VPC/GCM

Rafael Anta, SCL/SCT

Ramón Espinasa, INE/ENE

Also appreciated is the support given by Irene Munster, Trygve Benbdiksby, Daniel Deandreis, Maria Elena Pazmino, Inés Plaza, Stratos Pahis, Arjun Ponnambalam, Sara Danish and Hernán Charosky.

Annex II

Concept Note

1. Introduction

- 1.1. The Norwegian Ministry of Foreign Affairs, recognizing the demand in Latin American and Caribbean countries for better governance, has decided to support the Inter-American Development Bank (IDB) in its initiatives aimed at improving governance and reducing corruption in the Region. For these purposes, a planned contribution of NOK 30,000,000 to a multi-donor trust fund (the Anticorruption Activities Fund, hereinafter the Fund) will be established in order to provide a flexible source of financing for innovative activities in line with the goals of the IDB's Systemic Framework against Corruption.
- 1.2. This concept note outlines a proposal to establish the Fund, including background information, goals and objectives, expected outcome and the relevant management arrangements governing its constitution and execution.

2. Background

- 2.1. Corruption distorts economic realities and creates perverse incentives that impact all levels of society. It is a threat to democratic institutions, serves as a detriment to the economic and social development of national economies and can seriously undermine the credibility of the State. Thus, the withering effects of corruption on governance have been an ongoing concern for the Bank and other multilateral institutions (see, for example, "Democracies in Development," IDB, 2000). The problem is especially worrisome in countries that face significant challenges in developing and maintaining their democratic institutions with limited social consensus. In such a political climate, strong institutions of all kinds—public, private, and civil society organizations— are needed to neutralize corruption's threats.
- 2.2. Empirical evidence suggests that a weak institutional environment in the countries of the Region is a major obstacle to more effective anticorruption efforts through increased accountability. These institutional weaknesses are the consequences of several factors, including: (i) technical capacity shortcomings of public entities charged with policy and accountability duties at both the national and sub-national level; (ii) absence of mechanisms to provide civil society with the access to information to engage constructively in participatory democracy and public sector oversight; and (iii) insufficient information mechanisms to construct a transparent interaction between private and public sectors.
- 2.3. There are multiple strategies to combat corruption and tackle these institutional weaknesses, ranging from preventive measures to strategies to improve enforcement capabilities and from enhancing the role of the public sector to emphasizing the need to nurture civil society to demand greater accountability in governments.
- 2.4. Across these different approaches, there is a growing agreement on the importance of access of information as a critical component of an anticorruption strategy. Academics and practitioners alike tend to concur that access to

information is a necessary condition for facilitating the prevention and deterrence of corrupt activities, enhancing public accountability, mitigating discretionary use of public authority (including misuse of public funds) and promoting good governance.

- 2.5. As indicated in recent research, institutions that matter for development are those that make rulers accountable, while facilitating at the same time citizen's ability to sanction bad behavior in the public sector and their participation in public life.
- 2.6. The Inter-American Development Bank has taken into consideration these different approaches and the importance of enhancing access to information, as evidenced in its Modernization of the State strategy, where it is stated that: "the objective should be to ensure transparency and honesty in the activities of government officials and in state transactions and management. In this context, oversight and corruption fighting institutions have acquired great importance. The Bank could provide support to: [...] (iii) incorporate into national legislation international conventions and commitments that support the fight against corruption and review legal and administrative legislation with the objective of [...] promoting greater transparency and information on the activities and transactions of the state [...]".
- 2.7. The approach of this proposal combines several of the above-mentioned perspectives. Access to information is considered a necessary condition for enhancing accountability, reducing the possibility of discretionary use of public authority, and facilitating the participation of civil society, not only in monitoring the public sector but also in constructively using information to engage in the public decision making process. Therefore, this proposal is focused on strengthening public institutions tasked with providing access to information and, in doing so, it seeks to contribute with an indispensable element to promote accountability in the public sector. It also seeks to enhance the capacity of civil society to utilize access to information as a tool to exercise advocacy and accountability practices.
- 2.8. Additionally, this proposal is aligned with the commitment of the Bank' borrowing countries to enhance accountability mechanisms by signing international treaties against corruption. The signature in 1996 of the Inter-American Convention Against Corruption (IACC) and the subsequent establishment in 2001 of a Follow-up Mechanism evidence this commitment. More recently, the adoption of the United Nations Convention against Corruption consolidated the trend. These treaties are relevant not only as providing a legal and political basis to support national efforts in the fight against corruption but also provide specific recommendations related to the necessity of promoting access to information to prevent corruption and the need of signatory countries to implement legal and institutional arrangements to achieve this goal.
- 2.9. The Bank, by supporting programs that strengthen institutions, enforce the rule of law and combat corruption through improvements to transparency and access to information, constantly seeks more effective ways to address limitations to development in its member countries. The proposed Fund seeks to strengthen current efforts and facilitate the generation of new initiatives by strengthening public institutions responsible for providing access to information, thus helping

the Bank to effectively support its member countries in their quest to tackle corruption.

3. Purpose of the Fund

- 3.1. In the light of the above, the purpose of the Fund will be to strengthen member countries' ongoing anticorruption efforts in order to enhance overall governance in the region. To achieve its purpose, and taking into account its characteristics, the Fund will strategically focus on operations striving for societies that are more transparent by strengthening access to information in the Bank's member countries.
- 3.2. The Fund will also contribute to the harmonization of multi-lateral donor's interventions at both the national and sub-national levels and support compliance of IDB's member countries with relevant anti-corruption conventions, in particular with the IACAC and the United Nations Convention against Corruption.

4. Strategy and Scope of the Fund

- 4.1. The Bank has ample experience supporting public sector institutions responsible for fighting corruption. Traditionally, this has been achieved through either sizable loans for institutional strengthening or through smaller technical assistance operations focused on specific activities that serve as preparatory work for such loans (by, for example, funding studies or consensus-building events). Although this traditional approach has yielded substantial results, lessons learned seem to indicate that borrowing countries could benefit from additional sources of funding that would: (i) focus on initiatives with a demonstrative effect, (ii) be more readily available (abbreviated periods for approval), (iii) improve independent evaluation mechanisms and (iv) support actors outside the public sector that provide a significant contribution towards more transparent societies and more responsive public institutions.
- 4.2. Accordingly, it is proposed that the Fund adopts an innovative approach according to which a selected number of projects (two or three during each year of operation) are pre-selected and supported. To be eligible, these operations would be required to seek objectives consistent with the scope of the areas of intervention outlined in this section and to comply with the criteria outlined in section 6 below.
- 4.3. This approach should result in projects that contribute to strengthening public sector institutions responsible for promoting accountability, including the development of formal public information and disclosures policies, while increasing knowledge on corruption and integrity issues in the Region and promoting awareness and participation of civil society in overseeing public institutions.
- 4.4. The Fund will seek to improve transparency in the region by supporting activities aimed at enhancing access to information in the Bank's member countries and which fall within the following areas of intervention:

Enhanced Access to Information: Access to information is indispensable to deterring or detecting corrupt activities, fostering democratic debate and to leverage civil society's capacity to demand an effective, efficient and transparent public administration. Facilitating access to information on fiscal management, public procurement and political funding will have a significant impact in enhancing overall transparency. The Fund will thus support activities such as:

- Strengthening and expanding systems that facilitate access to information.
- Reviewing of mechanisms that regulate access to information and evaluating their adequacy.
- Strengthening technical capacity of public officials to facilitate access to information.

Enhanced Participatory Mechanisms: Civil society's ability to participate in the fight against corruption must be strengthened, particularly in those countries with weak public institutions. Moreover, civil society's participation in public matters is a key element to strengthening political transparency and ensuring greater accountability of public institutions to relevant stakeholders. Accordingly, the Fund will seek to encourage a more informed and active society by supporting activities such as:

- Increase civil society demand and capacity to exercise the right to access information in the formulation of public policy.
- Development of consultative mechanisms that foster a dialogue between civil society, non-governmental organizations and public institutions.
- Designing mechanisms that allow for civil society's participation in public policy and decision making.

Enhanced Monitoring Mechanisms: The establishment of mechanisms that review, analyze and use relevant information allow civil society and non-governmental organizations to oversee public administration for the purposes of preventing, detecting and denouncing corruption. The Fund will thus seek to support activities such as:

- Increase civil society demand to access information as a tool to monitor public performance and enhance accountability.
- Establishing and/or supporting monitoring mechanisms in the follow up of public administration, which permit control of public service delivery.
- Enhancing monitoring and evaluation of public performance.
- Strengthening civil society organizations that aim to monitor public administration, including anti-corruption agencies and prosecutorial and judicial activities.

Enhanced Enforcement Capacity: Fighting corruption requires the existence of sound law enforcement capacity as legal sanctions are the most effective form of deterring corrupt behavior on the part of public and private actors. Therefore, the Fund will seek to support activities aiming at:

- Improving the capacity of investigative agencies to comply with legal instruments, including conventions and international treaties for the fight against corruption.
- Facilitating exchanges among investigative agencies to enhance their capacity to conduct effective investigations and prosecutions in cases of transnational and national corruption.

- 4.5. Across all areas of intervention the Fund will seek to encourage demand for transparency from relevant stakeholders by (i) providing resources to support capacity building in all aspects of organizational and systems design, skills development, reform implementation, and impact monitoring and assessment; (ii) strengthening civil society organizations that aim to monitor the public administration and (iii) supporting strategies to increase the level of awareness and capacity to exercise the right to information.
- 4.6. The Fund's activities will facilitate compliance with international legal instruments (including those arising from international agreements³⁰ ratified by the country and/or the rulings of regional and international tribunals) and generally accepted international standards.
- 4.7. In addition, the Fund will seek to support activities aimed at preparing, perfecting and sharing diagnostic studies³¹ which create knowledge on where, what and how corruption affects relevant stakeholders and on the state of implementation of the right to access information.

5. Demand for the Fund's activities

- 5.1. With the objective to target effective institutional reforms through the Fund, the Bank devoted a substantial amount of time in reaching out to public institutions and civil society organizations, seeking information on which areas of intervention would be most relevant both for the Bank and its member countries.
- 5.2. These efforts were supported and continued through the Bank's significant presence in the XII International Anti-corruption Conference, held in Guatemala on November 15-18. The Conference provided a unique opportunity to test out the demand from our member countries for support in transparency enhancing activities and also consider the relevance of the proposed scope of the Fund³².

³⁰ The points above are consistent with supporting the implementation of the relevant recommendations arising from the first round of the Follow Up Mechanism of the IACAC.

³¹ In order to achieve an adequate balance among the Fund's activities these studies will not exceed 20% of the Fund's annual total resources, except when specifically linked to a relevant program where additional information is necessary.

³² Additionally, it is worth noting the following: (i) during this conference, the presidents of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Belize and Dominican Republic committed themselves to improving freedom of information laws, boosting transparency and adopting tighter rules on political party financing; (ii) the Bank held an informal meeting with civil society organizations, in which the importance of enhancing transparency through better access to information was confirmed as a key priority in the country's ongoing efforts to curb corruption and (iii) a consistent theme of this year's IACC's plenary sessions and workshops was the need to enhance the role of civil society as a partner with the public sector given its key role in achieving a stronger institutional environment through the demand for change and the monitoring of the implementation of programs to reduce corruption.

- 5.3. At both the consultation rounds and the Conference, transparency was consistently highlighted as a powerful tool in preventing corruption and promoting accountability and placed as a top priority for enhanced institutional performance, particularly in what concerns the implementation of the right to access information.
- 5.4. In addition, it is worth noting that as a result of it's the first round of the Follow-Up Mechanism of the IACAC, significant recommendations have been made to the countries to enhance, promote and implement the right to access information³³.
- 5.5. In the light of the above, the Bank has confirmed that there is a strong demand for support in enhancing transparency in the region, and that the priority areas identified within the scope of the Fund are relevant to achieve greater transparency through improved access to information.

6. Eligibility criteria and Fund Priorities

6.1. Based on consultations with the Norwegian authorities, discussions within the Bank and a review of existing funds, it is proposed that the Fund will prioritize projects susceptible of strengthening the Bank and its member countries diagnostic capacity and the operationalization of anticorruption efforts. Accordingly, it is proposed that the Fund concentrates in a selected number of projects, falling within the scope of the eligible areas outlined in section 4 above in order to achieve some or all of the following criteria:

- Potential for replicability.
- Innovativeness (yielding lessons learned).
- Likelihood of permanent increased capacity of target audience.
- Relevance to the interactions among the public sector, private sector, and civil society organizations (not necessarily partnerships).
- Likelihood that activities will foster significant regional discussion.
- Focus on areas and/or countries where relatively modest sums can have greatest effect.
- Synergy with other Bank activities in the area of fight against corruption as laid out in country programs.
- Coordination with other IFIs' relevant initiatives.³⁴

6.2. The resources of the Fund are susceptible of financing activities at both the national and sub national level, whether of a general or sector-specific nature. In

³³ For example, in the case of Argentina the recommendation was to strengthen the mechanisms that can guarantee access to information, particularly through the approval of the proposal of Law of Access to Public Information; in the case of Colombia it was recommended to extent the access to information mechanisms to the local level and strengthen capacity of the public employees to provide information; in Bolivia it was recommended to develop an adequate access to information regulatory framework and strengthen capacity in the public institutions, etc. For further reference, please see www.oas.org/juridico/englihs/mec_ron1_rep.htm

³⁴ The coordination of these activities will be incorporated into the ongoing efforts with the World Bank to explore harmonization and sharing of practices on matters of governance and anticorruption and in coordinating programmatic activities.

view of the characteristics of the Fund and the prioritization criteria and with the objective of facilitating the evaluation of impact at the conclusion of the multiyear agreement, the Fund could consider more specific interventions, by limiting its scope to activities aimed at the sub national level and/or by supporting a coherent set of sector specific interventions, in accordance with the Bank's member countries priorities.

- 6.3. The resources of the Fund are susceptible of financing activities within the defined strategic areas in any IDB borrowing country. Nevertheless, IDB's member countries from South America will be given priority.

7. Expected impact of the Fund

- 7.1. The activities undertaken with the Fund's support will follow a comprehensive methodological approach that will cover (i) diagnostics; (ii) activity proposal; (iii) design of performance and monitoring indicators, and (iv) evaluation of the project accomplishments and its replicability in the region.
- 7.2. Given the eligibility criteria and the Fund priorities, it is expected that the activities supported will achieve specific goals and targets in the short to medium term.
- 7.3. Additionally, through the implementation of the methodological approach outlined above it is expected that the activities supported by the Fund will strengthen the Bank's capacity to support the member countries ongoing efforts in improving overall governance through:

Better diagnostics: the activities undertaken with the Fund's support will provide the Bank with updated information on transparency levels in the region as well as with methodological tools to monitor changes and implementation of reforms.

Operationalization: the activities undertaken with the Fund's support will offer the Bank concrete examples of best practices to build upon. Additionally, reforms aimed at enhancing transparency can serve as entry points to further institutional change.

Innovation: through the activities supported by the Fund, the Bank will engage in a learning process from which innovative approaches can be developed. The learning lessons arising from the implementation of the activities can offer valuable information on the alteration of incentives and the strengthening the demand for better governance on the part of civil society, the private sector and possibly public institutions themselves, which in turn may inform future work at both a horizontal and vertical level.

Monitoring and Evaluation: the limited timeframe imposed by the Fund's characteristics offers a good opportunity to measure impact of the interventions through (i) the evaluation of individual operations and (ii) the overall achievements of the Fund at its conclusion, helping identify to what extent results have been achieved in diagnosing, preventing and reducing corruption and, more importantly, how they have been achieved.

8. Management of the Fund

- 8.1. The Bank will be responsible for the administration of cooperation resources, and projects will be executed by member country agencies. Such an arrangement should ensure that beneficiaries retain a sense of ownership.
- 8.2. The details governing the establishment, execution and monitoring of the Fund will be outlined in the corresponding Donor Agreement for the Establishment of the Anti-Corruption Activities Fund.
- 8.3. Notwithstanding this, it should be noted that the Fund will be managed by the Financial Services Sub-department (RE2/FSS), which will be the responsible unit for the administration of the IDB's obligations under the Donor Agreement. Projects will be identified and approved in cooperation with the relevant operational departments, as well as the Office of Institutional Integrity.
- 8.4. The Fund will not be used for regular IDB projects or for regular IDB salaries. Travel costs of IDB staff involved in the preparation and supervision of the Fund's activities will be susceptible of coverage under the Fund.

Annex III

First Round of Interviews

Date	Interviewed Experts
3/15/2007	Marcos Mendiburu – World Bank, USA
4/6/2007	Sandra Coliver - Open Society Institute, USA
5/6/2007	Mariela Belski, Maria Julia Georgelli - Asociación por los Derechos Civiles, Argentina
12/6/2007	Ignacio Álvarez - Relatoría Especial para la Libertad de Expresión – Comisión Interamericana de Derechos Humanos (CIDH), OAS, USA
22/6/2007	Helen Darbishire –Access Info, Spain
25/6/2007	Andrea Figari – Transparency International, Germany
26/6/2007	Rafael Di Tella – Harvard University, USA
28/6/2007	Eduardo Bertoni, Due Process of Law Foundation, USA
28/6/2007	Peter Sollis, IDB
29/6/2007	Nestor Baragli – Anticorruption Office, Argentina
2/7/2007	Juan Pablo Guerrero Amparán - Instituto Federal para el Acceso a la Información Pública (IFAI), Mexico
3/7/2007	Joan Caivano – Inter-American Dialogue, USA

Annex IV

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Annex V

Access to Information: Different Approaches

General or Comprehensive Approach	Sectoral Approach
<ul style="list-style-type: none">• Exclusive focus on designing, implementing, and enforcing national access to information laws• Long-term results, cultural change• Based on creating new national laws• Requires existing body of laws to be effectively implemented• Requires a coalition of several interested groups in order to generate sufficient political will• Users do not perceive the objectives of these laws as immediate or concrete benefits• Results are more diffuse (cultural change) and long-term	<ul style="list-style-type: none">• Focus on the mechanisms, systems, or procedures that allow access to information in different areas and sectors of the government• Results in the short- or medium-term and specific impact on critical sectors• Constructed in accordance with existing laws• Easier to identify and take advantage of opportunities requiring political will• Large coalitions of interests are not needed to implement access mechanisms or systems• Easier for users to interpret the concrete benefits of implementing policies or mechanisms• Greater flexibility for measuring results

Annex VI

List of Studied Organizations

Acronyms	Organizations' names and Countries
ADC	Asociación por los Derechos Civiles - Argentina
WB	World Bank
CAD	Ciudadanos al Día - Peru
CC	Carter Center
CIDA	Canadian International Development Agency
CIDH	Inter-American Commission for Human Rights - OAS
CIPPEC	Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento - Argentina
CPP	Consejo de la Prensa Peruana - Peru
COCAI	Coalición de Organizaciones Civiles por el Acceso a la Información Pública - Ecuador
CTC	Corporación Transparencia por Colombia
DFID	Department for International Development - UK
DI	Inter-American Dialogue
DPLF	Due Process of Law Foundation
EITI	Extractive Industries Transparency Initiative
FUNDAR	Fundación de Desarrollo Alternativo Responsable - México
FPA	Fundación Pro Acceso - Chile
GOF	Global Opportunities Fund – UK
IFAI	Instituto Federal de Acceso a la Información Pública - México
LIMAC	Libertad de Información - México A.C.
NORAD	Norwegian Agency for Development Cooperation
NED	National Endowment for Democracy
OECD	Organization for Economic Co-operation and Development
OAS	Organization of American States
UN	United States Organization / United Nations Development Programme UNDP / Democratic Governance Group DGG
OSI	Open Society Institute
PGN	Procuraduría General de la Nación - Colombia
PTF	Partnership for Transparency Fund
SIP	Sociedad Interamericana de Prensa
TAI	The Access Initiative
TI	Transparency International
U4	Anticorruption Resource Centre
USAID	United States Agency for International Development

Annex VII

Second Round of Interviews

Date	Interviewed Expert
17/7/2007	Maria Jose Jarquin – UK Department for International Development; Nicaragua
17/7/2007	Jorge Romero León –FUNDAR, Mexico
18/7/2007	Laura Neuman -Carter Center, USA
19/7/2007	Ernesto Villanueva - Libertad de Información México (LIMAC), Mexico
20/7/2007	Bruno Speck – Transparency International / Crinis Project, Germany
23/7/2007	Francisco Mejía – IDB
25/7/2007	Ramón Espinasa - IDB
26/7/2007	Stuart Gilmar, Siri Bjune – UNODC, Vienna
27/7/2007	Andre Medici - IDB
27/7/2007	Juan Dumas - Fundación Futuro Latinoamericano, Ecuador
7/27/2007	Marcelo Cabrol - IDB
30/7/2007	Diego Arisi- IDB Colombia
31/7/2007	Eleodoro Mayorga- World Bank
1/8/2007	Roberto Godoy – Ministry of Labor, Chile
3/8/2007	Orazio Belletini – Grupo Faro, Ecuador
8/8/2007	Manuel Riesco - CENDA, Chile

Annex VIII

Workshop Agenda

Day 1: Panels

9:00 – 9:15 AM

Introduction

Xavier Comas (Chief, Institutional Capacity of the State Division – IDB)

Stephen Zimmermann (Chief, Office of Institutional Integrity – IDB)

Marguerite S. Berger (Chief, Grants and Co-Financing Management Unit – IDB)

9:15AM – 10:15 PM

Public Sector: A. Budget (Mexico)

Moderator: Gonzalo Afcha (Specialist, IDB)

9:15 – 9:30 AM Jorge Romero León (FUNDAR, NGO, Mexico)

9:30 – 9:45 AM Juan Pablo Guerrero Amparán (Commissioner, IFAI, Mexico)

9:45 – 10:15 AM Discussion

10:15 – 10:30 AM

Coffee Break

10:30 – 11:30 PM

Private Sector: Extractive Industries (Ecuador)

Moderator: Eleodoro Mayorga (Extractive Industries Specialist – World Bank)

10:30 – 10:45 AM Orazio J. Bellettini (Executive Director - Grupo Faro, Ecuador)

10:45 – 11:00 AM Jorge Albán (Former Minister of Oil and Mining, Ecuador)

- 11:30 AM – 12:30 PM** 11:00 – 11:30 PM Discussion
Public Sector: B. Judicial Systems I: Investigation and Prosecution of Corruption Cases (Peru)
- Moderator: Pablo Alonso (Specialist, Institutional Capacity of the State Division - IDB)
- 11:30 – 11:45 AM Katya Salazar (Program Director, DPLF)
- 11:45 – 12:00 PM Flora Adelaida Bolívar Arteaga (General Prosecutor, Peru)
- 12:00 – 12:30 PM Discussion
- 12:30 – 2:00 PM** **Lunch**
- 2:00– 3:00 PM** **Public Sector: C. Judicial Systems II: Transparency in the Administration of Justice (Colombia)**
- Moderator: Arnaldo Posadas (Specialist, , Institutional Capacity of the State Division – IDB)
- 2:00 – 2:15 PM Margareth Flórez (Executive Director, Transparency International – Colombia)
- 2:15 – 2:30 PM Martha Lucía Rivera (Program Manager, PGN-IDB)
- 2:30 – 3:00 PM Discussion
- 3:00 – 4:00 PM** **Political Parties: Campaign Finance (Argentina)**
- Moderator: Leyda Fajardo (Technical Cooperation Specialist, Integration and Trade Sector - IDB)
- 3:00 – 3:15 PM Delia Ferreira Rubio (Researcher, CEPPA, Argentina)
- 3:15 – 3:30 PM Alberto Dalla Via (Vice-President, National Electoral Court, Argentina)

	3:30 – 4:00 PM	Discussion
4:00 – 4:15 PM	Coffee Break	
4:15 - 5:15 PM	<u>Services: Pension Systems (Chile)</u>	
	Moderator: Orlando Reos (Advisor, Vice-Presidency of Sectors and Knowledge - IDB)	
	4:15	Rafael Anta (Senior ICT Specialist – Program for Strengthening the Pension System – Team member, IDB)
	4:30 – 4:45 PM	Roberto Godoy (Chief. Program for Strengthening the Pension System Management and information – Ministry of Labor and Social Security, Chile)
	4:45 – 5:15 PM	Discussion
5:15 - 5:45 PM	Wrap-Up Day 1: Introduction of Day 2; Comments from Participants	
	Moderator: Paloma Baena (Specialist, Institutional Capacity of the State Division - IDB)	
7:30 - 10:00 PM	Dinner.	

Day 2: General Debate

9:30 – 10:00 AM	The Benefits and Challenges of a Sectoral Approach to Fighting Corruption through Access to Information	
	Presenter: Laura Neuman (Assistant Director, The Carter Center)	
	Moderator: Roberto de Michele (Senior Policy Advisor, Office of Institutional Integrity)	

10:00 – 10:15 AM	Coffee Break
10:15 – 10:45 AM	Access to Information and the Nordic Model of Transparency. The Role of the Press Presenter: Eva Bratholm (Director of Information – Norwegian Agency for Development Cooperation, NORAD) Moderator: Peter Sollis (Senior Social Sector Specialist – IDB)
10:45AM – 11:30 PM	Distribution of the Policy Matrix to Participants Moderator: Juan Cruz Vieyra (Office of Institutional Integrity)
11:30AM – 1:00 PM	General Debate on Key Issues and Follow-Up Questions Moderators: Technical Team Members
1:00 – 1:15 PM	Closing Remarks Roberto de Michele (Senior Policy Advisor, Office of Institutional Integrity)
1:15 PM	Lunch

Annex IX

Workshop Participants Chart

Panels	Name	Position	Area of Specialization	Telephone and Email
Mexico (Public Sector)	Jorge Romero León	Executive Director - FUNDAR, (NGO representative)	Budget	+ (52) 55 5681 0855 + (52) 55 5595 2643 jorge@fundar.org.mx
	Juan Pablo Guerrero Amparán	Commissioner, IFAI, (Public Official)	Budget and Access to Information	+ (5255) 50 04 24 09 juanpablo.guerrero@ifai.org.mx
Ecuador (Private Sector)	Orazio J. Bellettini	Executive Director - Grupo Faro (NGO representative)	Extractive Industries	+ (593 2) 2456 367 Telefax: (593 2) 2264 719 obellettini@grupofaro.org
	Jorge Albán	Former Minister of Oil and Mining, (Public Official)	Extractive Industries	+ (593 9) 9730266 jorgealbangomez@hotmail.com jalban@interactive.net.ec
Peru (Public Sector)	Katya Salazar	Program Director DPLF (NGO representative)	Judicial Systems	+ 1-202-462-7701 ksalazar@dplf.org
	Flora Bolívar Arteaga	General Prosecutor (Public Official)	Judicial Systems	+ (051) 315-5555 Extension 5003 abolivar@mpfn.gob.pe
Argentina (Political Parties)	Delia Ferreira Rubio	Researcher, CEPPA (NGO representative)	Campaign Finance	+ (54-11) 4328 9964 deliaferreira@arnet.com.ar
	Alberto Dalla Via	Vice-President, National Electoral Court (Public Official)	Campaign Finance	+ 54-11-4343-7587 Alberto.Dalla-Via@c6.pjn.gov.ar
Chile (Services)	Rafael Anta	Senior ICT Specialist – IDB (OI representative)	Pension Systems	+ (202) 623-3056 Rafaela@iadb.org
	Roberto Godoy	Chief of Program Ministry of Labor and Social Security (Public Official)	Pension Systems	+ 56-2-7530527 rgodoy@mintrab.gob.cl
Colombia (Public Sector)	Margareth Flórez	Executive Director, TI – Colombia (NGO representative)	Judicial Systems	+ 57-1-6226562 mflorez@transparenciacolombia.org.co
	Martha Lucía Rivera	Program Manager, PGN-IDB (Public Official)	Judicial Systems	+ 2816078 / 3360011 mrivera@procuraduria.gov.co
Special Panels	Laura Neuman	Assistant Director, The Carter Center	Access to Information	+ 404-420-5146 lneuman@emory.edu
	Eva Bratholm	Director of Information – NORAD	Access to Information	+ 22 24 23 57 Eva.Bratholm@norad.no

Annex X

Participants Biographies

Mexico

1. Juan Pablo Guerrero Amparán / juanpablo.guerrero@ifai.org.mx

Mr. Guerrero is one of the five commissioners of the Federal Bureau for Access to Public Information (Instituto Federal de Acceso a la Información Pública – IFAI), appointed by the President of the Republic and unanimously confirmed by the Senate Chamber of the Congress of the Union in September 2002 for the term 2002-2009. Previously, he was a tenured professor and full-time researcher at the Center for Economic Research and Teaching (Centro de Investigación y Docencia Económicas – CIDE) (October 1994 - January 2003). At CIDE, he held several posts: Director of the Office of Liaison and Development (Oficina de Vinculación y Desarrollo) (marzo 2001-enero 2003); Director of Budget and Public Spending Programs (Programa Presupuesto y Gasto Público) (1998-2002); Director of the Budgetary Transparency Index Program (Programa Índice de Transparencia Presupuestaria) in five Latin American countries (2001-2002); Director of the Municipal Reform Agenda Program (Programa Agenda de la Reforma Municipal) (1998-2002) and Director of the Public Administration Division (División de Administración Pública) (1997-1998).

He completed his doctoral studies in Political Science and Public Policy at the Political Studies Institute in Paris (Institut d'Études Politiques de Paris – IEP-Paris). He holds a Master's degree in Public Policy from IEP-Paris and a Master's Degree in Economics and International Policy from the School of Advanced International Studies (SAIS) at Johns Hopkins University. His principle lines of work and research, including several publications, deal mainly with the following topics: 1) public budget and finance; 2) public administration reform (transparency, access to information, accountability, the civil service and professional development); and 3) fiscal decentralization and municipal finances in Mexico. In 2004, he published Results for 2001 in Budgetary Transparency in Five Latin American Countries (with H. Hofbauer) and Taxes and Public Spending in Mexico: A Multidisciplinary Perspective.

2. Jorge Romero León / jorge@fundar.org.mx

Jorge Romero León, Executive Director of the Foundation for Alternative Responsible Development (Fundación de Desarrollo Alternativo Responsable – Fundar), studied Political Science at the Autonomous Technological Institute of Mexico (Instituto Tecnológico Autónomo de México – ITAM), holds a Master's degree in Political Science from the New School for Social Research, in New York and is a doctoral candidate at the same school, with a specialization in political philosophy. His areas of specialty are democratic theory, separation of powers, accountability, sovereignty and

migration. He was worked at Fundar since 2000, in a variety of projects related to budget analysis and legislative monitoring. He has developed training workshops for legislators and civil society organizations in Latin America and throughout the world. Before working with Fundar, he was employed as an advisor and information coordinator with the National Action Party (Partido Nacional de Acción – PAN) in the Senate. He worked as an advisor and project coordinator in the Department of Internal Affairs and the Mexican Social Security Institute (Instituto Mexicano de Seguro Social). Since becoming the Executive Director of Fundar in January 2007, he has published more than a dozen studies and articles related to the commission system, budget negotiation, and transparency and accountability for the budget and for the Mexican Congress.

Argentina

1. Delia Ferreira Rubio / deliaferreira@arnet.com.ar

Dr. Ferreira holds a Doctor of Laws degree from the Complutense University of Madrid School of Law. She is a consultant on institutional topics, working with OAS, PNUD, IFES, IDEA, Transparency International (Transparencia Internacional) and other international bodies and NGOs. She works as a researcher at the Center for Applied Public Policy Research Foundation of Buenos Aires (Fundación del Centro de Estudios para Políticas Públicas Aplicadas – CEPPA). She is a Board Member of the NGO Poder Ciudadano and the PensAR Foundation. She is the author of various books and numerous publications on democratic culture and political institutions, government systems, government by decree, public ethics and parliamentary ethics, political party finance and electoral systems, among other topics.

2. Alberto Dalla Vía / Alberto.Dallla-Via@c6.pjn.gov.ar

Dr. Dalla is an attorney and holds a doctoral degree from the University of Buenos Aires, as well as a diplome from the Center for Constitutional Studies in Madrid. He possesses postgraduate degrees with concentrations in Human Rights and International Studies from Complutense University and the Partnership for International Studies. He is the Vice President of the National Electoral Commission. He is a regular, tenured professor in Constitutional law at the Schools of Law at Buenos Aires University and the University of Belgrano, and teaches a postgraduate course at the University of San Andres. He is the director of the Magistrate Master's degree program at the University of Buenos Aires. He is the President of the Comparative Law Association of Argentina.

He is a Professor Emeritus at the National Academy of Moral and Political Sciences. He is a full member of the Board of Directors of the National University of Buenos Aires School of Law. He is an Honorary Director of the Political and Constitutional Science Institute at the Scientific Society of Argentina. He is a full member of the Argentine Council on International Relations (Consejero Titular del Consejo Argentino de

Relaciones Internacionales – CARI). He is a member on Jurist Commission for the Juridical Digest of Argentina. He is a member of the Constitutional Law Institute at the National Academy of Law and Social Sciences of Buenos Aires. He has authored 21 books and has had over 100 articles published on Constitutional law topics.

Colombia

1. Martha Lucía Rivera / mrivera@procuraduria.gov.co

Ms. Rivera is an attorney, holds a Master's degree Digital Documentation and is a Specialist in Financial and Computer Law. She is an expert in the design of computer systems to find unconventional IT solutions. She has developed multiple research projects for implementation of documentary and management databases, for organizations in the private and public sectors. She holds a university chair in "Research Methodology" and "Information Technology in the Law." Currently she is working as the Modernization Program Manager for the Office of the Solicitor General for the Nation, Republic of Colombia, which is financed with funds provided by the IDB.

2. Margareth Flórez / mflorez@transparenciacolombia.org.co

Ms. Florez was graduated with a degree in Architecture and Urban Development from the Federal University of Brasil in 1984. She was awarded a Master's degree and a specialist certificate in Planning and Development from the University of the Andes – Interdisciplinary Center for Regional Studies (Centro Interdisciplinario de Estudios Regionales – CIDER) at Bogota in 1986. She has experience in forming public policy, management, coordination, and consulting on forming, developing and following through on plans, programs and projects with public, private and civil organizations. She has coordinated and been involved in publications on issues concerning social development. She has served on several Boards of Directors for civil, non-profit institutions and networks at the national and international levels. Since February 2006, she has served as the Director of Corporación Transparencia por Colombia, the national chapter of Transparency International.

Peru

1. Katya Salazar / ksalazar@dplf.org

Katya Salazar has been a Programs Director at the Due Process of Law Foundation (Fundación para el DeIADBo Proceso Legal) since 2004, after working as a Deputy Coordinator in the Special Investigations Unit of the Truth and Reconciliation

Commission of Peru, where she was in charge of investigating cases of major violations of human rights that occurred during the internal armed conflict. Previously, she was part of the legal team of the Coalition Against Impunity (Nuremberg, Germany), an investigator in the Office of the Deputy Ombudsman for Human Rights in the Office of the Ombudsman of Peru, and an attorney at the Legal Defense Institute (Lima, Peru). Katya is a Peruvian attorney and completed her law degree at the Catholic University of Peru, and her Master's degree in International Public Law at the University of Heidelberg (Germany). En 1997, she was named a Legal Fellow at the International Human Rights Law Group (now called Global Rights), a non-governmental organization headquartered in Washington, DC. Katya has written a number of articles on international criminal law, judicial reform, and access to justice, and she has been a speaker at conferences on these subjects in several countries.

2. Flora Adelaida Bolívar Arteaga / abolivar@mpfn.gob.pe

Dr. Flora Adelaida Bolívar Arteaga is a licensed attorney with a Master's degree in Civil Law and a Doctorate in Law and Political Science at the Universidad Nacional Mayor de San Marcos. Since 1985, she has worked as the lead professor at the School of Law and Political Science at said academic institution. She has taken courses at the University of Alicante, Ramón Llul University and at the Judicial School of Barcelona, Spain, as well as at higher learning centers in Argentina, Chile, Costa Rica and Japan. Likewise she has written the resolutions and decisions for a number of academic activities undertaken by national and international bodies, sharing experiences with important authorities on the world stage.

After Alberto Fujimori suspended the Peruvian Constitution and dissolved Congress on April 5, 1992, Dr. Bolívar resigned irrevocably her position as Senior Civil Prosecutor of Lima. In September 1995, following a public and merit-based competition, she was appointed a Supreme Prosecutor by the National Judicial Council, and she assumed the leadership of the Office of the Supreme Prosecutor for Internal Control and the Office of the Supreme Prosecutor for Civil Matters.

Since November 7th, 2005 she is the General Prosecutor of Peru.

Ecuador

1. Orazio Belletini / obellettini@grupofaro.org

Orazio Belletini is a graduate of the Pan American School of Agriculture, Honduras, with a Bachelor of Science degree in Agriculture, with a concentration in Agricultural Economy, as well as degrees from the Pontifical Catholic University of Ecuador (Pontífica Universidad Católica del Ecuador – PUCE): a Master's degree in Political Science and one in Business Administration. He has worked with private companies, NGOs and international organizations that promote alliances between the public and

private sectors to provide public services and infrastructure. Orazio has trained master's degree students, mayors, and public servants in the areas of finance and public administration at PUCE, the Diplomatic Academy of Ecuador and the Latin American School of Social Sciences (Facultad Latinoamericana de Ciencias Sociales – FLACSO). He has been a consultant for the IDB, WB, UNDP and UNICEF on subjects such as state reforms, education and access to information. After he was graduated from the Public Administration and Policy Program at the John F. Kennedy School of Government, Harvard University, Orazio founded and is the Executive Director of the FARO Group (Foundation for the Advance of Reform and Opportunity), a “think-and-do tank” that encourages civil society and the private sector to participate in the design, budget and implementation of reforms and public policy in Ecuador.

2. Jorge Albán / jalban@interactive.net.ec

Mr. Alban was trained in Anthropology and Philosophy and has given short courses on Economic, Social and Environmental topics. Undersecretary of Hydrocarbons, Deputy Minister of Energy and Acting Minister of Energy (2007); Deputy Minister of the Environment (1998-2000); Undersecretary of Environmental Protection (1997); Director of the Environment and Society Foundation (Fundación Ambiente y Sociedad) (2001-2006); and the Center for Planning and Social Studies (1994-1996); Occasional Consultant for the World Bank, the Inter-American Development Bank, and the United Nations on topics related to Environmental Problems, Institutional Environmental Protection, Management of Natural Resources in general, with emphasis on oil, mining, water and forests. He has conducted research and published a variety of works on the above-mentioned subjects and, in his earlier years, on rural economies, social policies and social conflict.

Chile

1. Roberto Godoy Fuentes / rgodoy@mintrab.gob.cl

Roberto Godoy Fuentes is a Chilean national, an attorney, and holds a Master's degree in Public Administration and Policy. He is an advisor to the Minister of Labor and Social Services, and is the Director of the Program to Strengthen the Management and Information of the Pension System, which he uses to implement his visionary reforms.

2. Rafael Anta / RafaelA@iadb.org

Rafael Anta was awarded a Bachelor's of Science in Information Technology from the Ramón Llull University of Barcelona, Spain, in 1996. He founded the Anta Software company (1996-1998), specializing in developing software for Apple Macintosh computers. He has a long history in the world of technological and business consulting

services at an international level, where he has worked for firms such as KPMG (now called Bearing Point) and Accenture, principally in telecommunications, media, government, and banking. Since 2005, he has worked at the Inter-American Development Bank as a Senior Specialist in Information Technology and Communications, in the preparation of loans and technical cooperation when ITC is essential for meeting the development goals.

Special Panel

1. Laura Neuman / lneuman@emory.edu

Laura Neuman is the Assistant Director for the Americas Program at The Carter Center. She is the Access to Information Project Manager and directs and implements Carter Center transparency projects, including projects in Jamaica, Bolivia, Nicaragua, and Mali. Ms. Neuman edited six widely distributed guidebooks on fostering transparency and preventing corruption and has presented at a number of international seminars relating to access to information legislation and implementation. Book and article publications include *Access to Information: A Key to Democracy, Using Freedom of Information Laws to Enforce Welfare Benefits Rights in the United States*, and co-authored *Making the Law Work: the Challenges of Implementation* and *Compelling Disclosure of Campaign Contributions through Access to Information Laws: The South African Experience and Relevance for the Americas*.

Ms. Neuman is a member of the Initiative for Policy Dialogue task force on transparency, a board member of the Center for Transparency and Access to Information Studies, Mexico, and an International Associate to the Open Democracy Advice Center, South Africa. As part of her transparency work, she served as Executive Secretary for the Carter Center's Council for Ethical Business Practices. Ms. Neuman also has led and participated in international election monitoring missions throughout the Western hemisphere. Prior to joining The Carter Center in August 1999, Ms. Neuman was senior staff attorney for Senior Law at Legal Action of Wisconsin. She is a 1993 graduate of the University of Wisconsin law school.

2. Eva Bratholm / Eva.Bratholm@norad.no

Eva Bratholm is the Director of Information at The Norwegian Agency for Development Cooperation, NORAD. She is an experienced journalist and editor in the Norwegian Press. Mrs. Bratholm has been a reporter and anchorwoman in Norwegian television. She has been based as a US-correspondent in Washington DC and in New York City. From 1999 to 2003 Eva Bratholm was the Editor of Arts and Culture in the Norwegian daily newspaper Dagbladet. Mrs. Bratholm has also been Head of Information for Norway Post. She has academic background from The University of Science and Technology in Trondheim, Norway.

Annex XI

Policy Analysis Matrix³⁵ (Campaign Financing in Argentina - Example)

<u>Country:</u> Argentina		Main Findings – Areas and Sectors for Potential Intervention (Round-Table, Day 2)
		<u>Area:</u> Political Activities
Cross- Sectoral Topics	Challenges / Questions	<i><u>Sector:</u> Political Parties / Campaign Finance</i>
(A) Supply	<ul style="list-style-type: none"> • What are the greatest challenges to providing access to this information to those who could use it to prevent/control corruption? • How these programs obtain and present the information? • What explains the changes on the demand of information? 	<p>Regarding the supply of information, the following actions were suggested:</p> <ol style="list-style-type: none"> 1. Centralize the information via the creation of web portals. 2. Create user-friendly systems for disclosing information. 3. Modify the national decree 1172 regarding access to information within the Executive Branch, especially as it relates to information about subsidies from the Ministry of the Interior to political parties, the use of state resources and money for political campaigns, and the fundraising activities of political parties. 4. Improve the online information disclosed by the Ministry of Interior. 5. Legal modifications related to: <ol style="list-style-type: none"> a) Subjecting other bodies to disclosures of relevant political information (mass media companies in relation to political propaganda, etc.). b) Enforcing penalties when the information is not disseminated, partially disseminated, or not properly disseminated. c) Enhancing access to financial information and documents such as budgets and annual reports.

³⁵ The Policy Analysis Matrix was prepared and completed by Juan Cruz Vieyra.

<p><u>Country:</u> Argentina</p>		<p>Main Findings – Areas and Sectors for Potential Intervention (Round-Table, Day 2)</p>
		<p><u>Area:</u> Political Activities</p>
<p>Cross- Sectoral Topics</p>	<p>Challenges / Questions</p>	<p><i><u>Sector:</u> Political Parties / Campaign Finance</i></p>
<p>(B) Demand</p>	<ul style="list-style-type: none"> • Who, if anyone, is demanding this information? • Can/should demand be stimulated? If so, how? 	<p>The demand for information can be stimulated, and this is critical for improving standards of transparency and civil society participation.</p> <p>In order to stimulate the demand for information, the following actions were suggested:</p> <ol style="list-style-type: none"> 1. Design and establish programs in collaboration universities located within the country, especially those schools related to law, economics, journalism, and political science, so that students are aware of the importance of these tools for accessing information. 2. Design and put into practice programs aimed at the utilization of the information gathered from research studies, comparative analysis, etc.

<u>Country: Argentina</u>		Main Findings – Areas and Sectors for Potential Intervention (Round-Table, Day 2)
		<u>Area: Political Activities</u>
Cross- Sectoral Topics	Challenges / Questions	<i>Sector: Political Parties / Campaign Finance</i>
(C) Enforcement	<ul style="list-style-type: none"> • What mechanisms or incentives are (should be) in place to ensure that access to information policies are enforced? • What mechanisms are (should be) available for using information to control corruption? (It might be helpful to distinguish between vertical and horizontal enforcement) 	<p>Regarding the enforcement mechanisms for accessing information , it was suggested that in the case of information regarding political campaigns it must be taken into account that the Electoral Justice is not the “producer” of information, but an intermediary between those who produce the information (political parties) and those who demand the information (NGOs, citizens, press).</p> <p>There are two kinds of incentives that can be implemented in Argentina:</p> <ol style="list-style-type: none"> a) “Negative incentives”: enforcement mechanisms in the form of sanctions to be applied to those who do not allow proper access to information. b) “Positive incentives”: There are two basic ways for creating mechanisms for these positive incentives, one is the creating of systems for comparing different distributors of information in order to highlight the best practices for supplying information; another one is creating norms for preserving the quality of the distribution of information. In Argentina it would be interesting to implement a mechanism for comparing the 24 Electoral Secretaries along the country.

<u>Country: Argentina</u>		Main Findings – Areas and Sectors for Potential Intervention (Round-Table, Day 2)
		<u>Area: Political Activities</u>
Cross- Sectoral Topics	Challenges / Questions	<i>Sector: Political Parties / Campaign Finance</i>
(D) Sustainability	<ul style="list-style-type: none"> • Are the access to information and anti-corruption policies in place sustainable financially and over changes in government? • How can they be designed to be so? • How susceptible are these programs to be changed or limited when new parties take control of the government? 	<p>Regarding the sustainability of programs and initiatives, it was suggested that the government should make these tools for the access of information sustainable.</p> <p>On the demand side, NGOs and other civil society organizations must be financed in order to maintain the demand of information active. Financing was highlighted as a key factor to sustainability.</p> <p>The role of the press was also highlighted. It was suggested that training journalists about matters and tools related to the access of information is a key ingredient for the sustainability of these programs.</p>

	<p><u>Country:</u> Argentina</p>	<p>Main Findings – Areas and Sectors for Potential Intervention (Round-Table, Day 2)</p> <p><u>Area:</u> Political Activities</p>
<p>Cross- Sectoral Topics</p>	<p>Challenges / Questions</p>	<p><i><u>Sector:</u> Political Parties / Campaign Finance</i></p>
<p>(E)</p> <p>Level of Intervention</p>	<ul style="list-style-type: none"> • At what level of government do/would access of information policies have the greatest impact on fighting corruption in your area? 	<p>Argentina offers a very interesting case regarding the level of intervention. Regarding political campaigns for national elections, the main level of intervention is the central government. However, the Electoral Secretaries in Provinces should be also taken into account.</p> <p>Regarding elections at subnational levels, such as provinces and municipalities, each province will be a different case, because not all provinces have the same electoral rules.</p>

Annex XII

Sectoral Policy Observations and Recommendations³⁶

Public Budget

Effective pro-active disclosure requires consistent standards of record keeping and presentation to be effective. Incomplete information is common (e.g. the listing of government officials' salaries but not their asset holdings provides limited capacity to determine conflict of interests or bribes), and is most likely due to a combination of factors: the complexity of budget allocations; lack of political will, deficient record keeping practices. One of the biggest obstacles to using pro-active disclosure of budget data is that it is limited to the federal level.

The budget provide information on what expenditures the federal government made, but one must go elsewhere to determine how state and local authorities made use of that money. In the case of federal funds directed to private enterprises, it is difficult to know how the money was used, creating enormous pockets of discretion and opportunities for corruption. ICT could perhaps ensure a more effective proactive disclosure system by allowing citizens to track expenditures through the different levels of government. However, until that can be realized, ensuring that individuals can request supplemental information from the government is necessary.

Maintaining the anonymity of the requester (the internet has helped in this regard) and requiring no justification for the request is critical to making this an effective tool. When denying requests, however, government officials should be required to provide an explanation, and when the answer to the requests is that the information does not exist, it should be asked for its creation or generation.

Publicizing a list of these denials and the reasons can help raise public awareness and build political pressure. Otherwise, information requests should be fulfilled within a short mandated period of time. Allowing government officials to deny requests because of the non-existence of information can lead to excessive refusals and a perverse incentive to maintain poor records.

Information requestors should have recourse in the case of denials. An independent arbitration board can be a cost-effective way of reviewing these denials, but it is of great importance that citizens also have access to the courts. The fact that the Mexican NGO FUNDAR obtains 60% of its information requests on appeal underlines the importance of creating strong independent oversight. Changing the culture of secrecy and of poor

³⁶ The following ideas are based on the rounds of questions/debates occurred during the two-day workshop on September 2007. As such, they do not necessarily the participants opinions, and no endorsement by the Inter-American Development Bank, it's Board of Executive Directors, or the countries they represent is expressed or implied. The systematization of this observations and recommendations was prepared by Juan Cruz Vieyra and Stratos Pahis.

record keeping is important. Fines for non-compliance with disclosure policies could be considered and/or requirement to produce non-existent information might be useful in this respect. Training government officials on how to comply can also be helpful.

Nevertheless, providing information to the public won't be very helpful in the fight against corruption if people are not accessing it, analyzing it, and using it to mobilize the public and the government to push for change. Well-trained and funded 3rd parties (such as independent auditors or civil society organizations) are necessary for analyzing often complex and large volumes of information. A free and independent media is also critical for turning information into public pressure. To reap the greatest returns, the general public must also be empowered to request information. Publicity campaigns on people's right to access information, how it is relevant to their lives, and on how to fulfill that right, might go a ways toward achieving that end.

Examples of potential avenues for intervention in this sector are: (i) the creation of an online database of access to information denials and their reasons; (ii) funding an awareness campaign of access to information rights and the potential it has for fighting corruption; (iii) sponsoring a program to improve and foster electronic record-keeping

Extractive Industries

Both the investments in, and the profits from the oil and mining industry have great chances of being opaque, disorganized and ripe for corruption. Developing a viable access to information strategy to combat corruption requires answers to the following questions, among others: How much is invested and what are the expected returns in terms of quantity produced and profits made? What are the social and environmental effects of the investments? How much, to whom, and at what price, is exported? How are additional profits which come from a higher than expected price of oil distributed?

While the centralized nature of the oil industry requires strengthening the institutional capacity of the central authority, the mining industry, whose operations are approved on a local level require a more decentralized approach to gathering and organizing information. The requirements should extend to private as well as public corporations.

Providing information is not sufficient, however. The public must be able and motivated to view this information. In the oil and mining sector, where the information is highly technical and complex, it is important to have civil society organizations that can process it in a manner that appeals to and can be understood by the general public. In this regard, it might be useful to focus on the local effects of the extractive industries to build public interest. Building the capacity of local governments to track revenues coming from the extractive industries is also an alternative. Moreover, the public should not be charged with the costs related to their information requests.

It is important for civil society organizations to push the debate on the need for transparency into the public arena. Given the cultural resistance to transparency, it is

equally important is to involve mid-level career bureaucrats, who are not subject to the frequent changes in government, and convince them of the need for transparency. A successful strategy will require strengthening the record-keeping capacity public and private institutions, requiring the periodic publication of the most important information and contracts related to production (it takes 1.5-2 years to obtain the production volume of the previous year) and tracking the flow of profits throughout the various government and non-government entities.

Given how complex this flow is, success might depend on creating a more organized distribution process. Since the EITI only works on transparency in the flows from the extractive industries to the federal government, there is a need to foster transparency on these flows from the federal to the state and local levels.

Examples of potential avenues for intervention are: (i) engaging local communities directly on costs and benefits of Extractive Industries; (ii) creating systems of access to information for monitoring revenues and information about contracts of public and private institutions in an effective and quick manner.

Political Campaign Finance

Information on campaign finance should be comprehensive and include not just the financing and expenses of political parties but of individual candidates as well. It is important that information provided on a regular basis, not just during election season, and that it be provided in a timely manner before elections occur.

Campaign finance transparency is a long-term project that requires not only legal changes but cultural ones as well. A successful policy requires a legal obligation to present campaign accounts for parties and candidates and the parties' selection of candidates, public access to such data in user-friendly way by making use of the internet and having uniform accounting and presentation standards enabling comparisons to be drawn, an independent control body that audits the accounts, and a judiciary willing to enforce the law.

In the absence of enforced laws, approaching candidates and parties to sign disclosure agreements can be a good start. For the information to be of maximum use, the general public (not just political parties who have incentives not to point out the anomalies of their opponents financing, lest their own be discovered) must make use of the information. The media can play a large role with this but so can academics and civil society organizations. To this end, utilizing university classes to train students and journalists to access and analyze the relevant information is useful not only as a way to process large amounts of data, but as a pedagogical exercise.

Examples of potential avenues for intervention are: (i) to sponsor public information campaign on importance of transparency in campaign finance; (ii) to train journalists and

students on how to access and analyze information; (iii) establish electronic filing system for campaign contributions

Judicial Administration

Transparency programs should allow citizenry to access a broad information on the court systems, including the number of cases and decisions, by and against whom they were brought, and the motive and final decisions. The selection of judges and prosecutors be made open to the public.

In Colombia, for example, the Systems Registry of Sanctions and Inefficiencies (SIRI - Sistema de Información de Registro de Sanciones y Causas de Inhabilidad) program allows anyone with Internet access to conduct a search for the criminal records of anyone else. While this raises a number of privacy concerns, it has proved helpful to both private businesses and government in their hiring process as well as to the public in their decision on who to vote for.

Use of SIRI has risen noticeably among private entities in general, while background checks on political candidates rises during election season. The Information and Monitoring System on Cases of Human Rights Violations and Infractions of International Humanitarian Law (SEPREDEH - Sistema Integral de Información y Seguimiento a Casos de Violación de los Derechos Humanos e Infracciones al Derecho Internacional Humanitario) program uses Internet to track reports of human rights abuses by centrally managing complaints and generating relevant statistics and indices. While requiring a large initial investment (\$500k and \$600k, respectively) its proponents claim it to be sustainable as it was created with a user-base in mind, it is supported by internal resolutions of support, and its operation costs are included in the judiciary's budget.

The Chapter of Transparency International in Colombia creates their own indices specific to the judicial branch from a number of government as well as third party sources. The value of the index is that it interprets large volumes of sometime complex information in a way that can be easily used by the press and general public. It is not clear how sustainable this is, as producing the index requires a constant stream of financing.

In general the participants to the workshop emphasized the importance of using technology as a way to manage and present information, although they also pointed out the need to design strategies to reach rural communities without access to the the Internet or newspapers. They also signaled the importance of long-term efforts to create culture of transparency, and suggested working with law schools and law students as a good place to start.

Examples of potential avenues for intervention are: (i) the creation of an online database of cases and sentences; (ii) the creation of an online corruption database of all convicted of corruption

Judicial Investigation and Prosecution of Corruption

Judges have virtually unlimited access to information that exists; allowing citizens to use the Access to Information law to make requests from the judges themselves, is a valuable tool for creating public pressure for prosecution. The importance of the press and civil society was stressed repeatedly as necessary for creating the public pressure that leads to many prosecutions, underlined by the fact that the majority of corruption cases are initiated with investigations in the press.

In Peru, for example the Public Ministry in Peru has developed through which television news broadcasts are constantly recorded to capture potentially useful information. Programs to train journalists and government in accessing information and detecting cases of corruption are also recommended. University professors and students, whose voice is respected, can be signaled out as potential valuable allies in investigating specific corruption cases. The Criminal Observatory of the Public Ministry is charged with developing a system of useful information on criminal acts for studying criminal trends.

Examples of potential avenues for intervention are: (i) the creation of online information sharing database for local, state, national law enforcement; (ii) training activities to journalists on how to access information and its importance

Pension Systems

Strengthening information administration within the state is both a useful tool for reducing corruption as well as for leading to more informed and better decisions within government. The information provided must be overseen either by an active civil society or an independent auditing group within the government, or both.

The Chilean private account system, for example, has the advantage of giving citizens a direct stake in the efficient management of their funds. Still, however, the general public's lack of knowledge of how the system is run creates an unhealthy distance between the operation and its beneficiaries. It is recommended the establishment of a network to provide information to users and the creation of a commission that includes workers, pensioners, government officials, and academics to oversee every private pension manager, and standardizing regulations across private and public managers.

In Chile, technology was able to increase the efficiency and accuracy of pension disbursements through automating much of the process and taking away the need for manual calculations and opportunities for corruption. The efforts in Chile have been complicated by the decentralized nature and multiple actors of the current system. It is under consideration the creation of a central information manager related to pensions but face challenges in getting the involved public institutions to cooperate and share information in a systematic way. This is a reminder that even technological solutions must be approached with caution.

Like any successful transparency initiative, those programs based on technology require political will, the development of a culture of transparency, and both demand and supply of information. Implementing a technologically based transparency system while ignoring these requirements has the potential to facilitate more corruption, as manipulation of information can provide a false sense of transparency as well as possibly create new opportunities for embezzlement.

For the best results, information should be available through multiple means (i.e. through both internet and telephone), should be comprehensive and presented in a uniform manner, and should be flexible to adopt to changing needs. Some other areas where technology, especially the internet, could play a significant role in increasing transparency to fight corruption within the pension system include publicizing the criteria and calculations for determining pension funds and disbursements. This same idea can be applied to tariff and tax collection by allowing citizens and companies to view on the internet the equation that determines their tax liability.

Examples of potential avenues for intervention are: (i) the creation of local independent information and oversight commissions; (ii) the creation of central information systems for processing pension funds; (iii) the integration of information from various government entities into one comprehensible platform.

Annex XIII

Workshop Technical Notes

Mexico

Transparency in the Formation and Implementation of Public Budgets

Participants:

- 1. Juan Pablo Guerrero Amparán**
- 2. Jorge Romero León**

Access to Budgetary Information and the Fight against Corruption: The Experience of the Federal Government of Mexico

Juan Pablo Guerrero Amparán

This note explains how the Federal Bureau for Access to Public Information (Instituto Federal de Acceso a la Información Pública - IFAI) has promoted access to information regarding the government budget. This note also discusses some of the possible efforts to prevent or control corruption through the use of examples. It is worth noting that the move towards access to information in budgetary matters flows from a legal obligation to be transparent in the management of public affairs and to guarantee access to government information. The goal of IFAI is to comply with these same obligations, beyond the intent to limit corruption by these means. In fact, the relationship between access to information and the fight against corruption extends beyond the authority of IFAI. However, based on experience, it might be suggested that the current status of access to budgetary information held by the federal government of Mexico is not sufficient to put an end to corruption. Some of the main limitations of the right to information in Mexico to guarantee accountability are discussed at the end of these notes.

Access to Information held by the Federal Government in Mexico

IFAI is the administrative authority in matters of transparency and access to public information, protection of personal data, and archival organization (this last responsibility is carried out in conjunction with the National Archives) for the entire body of Federal Government Agencies (APF), which is made up of close to 240 government offices and which represents 95 percent of the Federal budget, employing more than 2.8 million public servants. IFAI is a decentralized public office, and it enjoys operational, budgetary and decision-making autonomy. It was created by the Federal Law on Transparency and Access to Public Government Information (LFT), and it began operations in June of 2003. In order to handle requests for information, IFAI instituted the Information Request System (www.sisi.org.mx) which allows anyone from anywhere in the world to request information over the Internet, and the only requirements are that the requestor provide a name, an address for notification (an e-mail address, for example) and that he or she write the request. In the event that the government's response is unsatisfactory, the requestor may file an appeal online with IFAI. After analyzing the case in a non-extendable time frame, IFAI issues a final decision that is not appealable through any government office. However, users may file suit in court through injunctive relief proceedings if they dispute the Bureau's decision.

The Supply of Budgetary Information by the Federal Government

The LFT provides two mechanisms for disclosing budget information: the information published to comply with the law (transparency obligations) and information that may be turned over by means of a request.

The transparency obligations published on government agencies websites include extensive lists that enumerate agency officials together with their salaries and benefits, information on their allocated budget, and fiscal year reports, the results of audits, information on allocated funds, and criteria for access to subsidized programs, as well as patterns on the beneficiaries of social programs. They also include information on contracts that specify the related public works project, assets acquired or rented and services contracted, and the amount of the contract, the name of the vendor or contractor, and the time frame for performance of the contract. This information must be updated every three months. In order to publish this vast amount of information, IFAI has been evaluating and publishing the results regularly, which has created an incentive to comply with this requirement among the 236 APF offices required to comply.

A common problem with the transparency obligations is that each office submits the information in its own format, which makes it difficult to consult the reports: learning one official's salary could take 15 seconds for one office and 15 minutes for another. In light of this, IFAI has recently developed a consultation tool that requires offices to submit this information in the same format, which allows for cross-checking data and a lateral review of information between agencies. The Transparency Portal (www.portransparencia.org.mx) provides information not only on how many contracts PEMEX holds with IBM, for example, but how many all APF offices hold with that company. In the six months that the Portal has been in operation, from February 15 to August 17, there were around 1.9 million search hits, of which 17% were for salary and benefits, 15% were for contract information, and only 2% were for the allocated budget. Likewise, 6% fell under the heading of franchises, permits and licenses, and the most often consulted portion was the directory of government employees, with a quarter of all searches.

That having been said, it must be kept in mind that control mechanisms to ensure that the lists published online are totally accurate, have not been created yet. The means at the disposal of IFAI to evaluate the information currently include verifying that the information is on the list, but not checking whether there is any supporting documentation.

The second way to obtain access to budget information is to make a request. Since June 2003, 237,000 requests have been made to all APF offices concerning all types of matters. Several of these questions have been for results of substantive activities conducted by federal agencies (8.7% of all requests in 2006); information about contracts (7.8%), information on proceedings (5.7%) and official's salaries (4.3%) (See annex 2).

Given the information that is published to comply with the law, requests for information provide an advantage in that the requestor is allowed to review original documents and can proceed to analyze the information that way. The information request mechanism also allows one to request IFAI to intervene if the response is unsatisfactory, the information requested is denied, or the information is incomplete, inconsistent, implausible, etc. Additionally, the electronic request and response management system allows anyone to access the responses from government agencies, IFAI's resolutions, and

the final information turned over, and it allows anyone to locate this data using a search engine that can search for terms throughout the entire history of recorded access to information provided by the federal government. (buscador.ifai.org.mx).

Resistances to Openness and Advances Against the Impenetrability of Budgetary Information

Several reasons have been put forward for resistance to releasing budget information. In addition to denial of requests because the information requested was classified, a variety of government demands at certain points in time led to legislative initiatives that, for example, formalized the existence of the President's discretion not to disclose information, without revealing the denial, or created laws that excluded from the right to information access entire sectors of the federal government (National Security Act, Naval Forces Act). There was also a much-touted initiative to eliminate the binding nature of IFAI resolutions. Fortunately, those attempts have so far failed. But among the many mechanisms used to refuse to provide this information, the requested agencies and their employees also attempt to employ injunctive relief proceedings, frequent claims that the requested information does not exist, in spite of a legal obligation to keep the records, and the refusal to turn over documents on public spending due to bank and fiduciary secrecy, business secrets in contracts, or the protection of service providers or public servants.

To overcome these oppositions, IFAI has played an important role through its binding resolutions. In critical situations, IFAI has gained the firm support of social organizations that are subject-matter experts and are able to rally public opinion, and gain coverage and the sympathy of the media in favor of the right to have access to information.

IFAI's ability to issue resolutions in an atmosphere of considerable autonomy has allowed us to make advances in the realm of information access on the federal government's expenses, some examples of which follow:

- In spite of the Treasury Department's claims of fiduciary secrecy, we can now learn the use and destination of funds of public trusts, which involve amounts equivalent to half the annual federal budget;
- Access has been given to full files on competitive contract IADBs, with all exhibits on the businesses involved;
- Detailed access was allowed to information on expenses incurred during the transition of administrations from Vicente Fox to Felipe Calderón, which was a departure from previous experiences which had been characterized by secrecy;
- IFAI has guaranteed access to original expense documents (invoices, fiscal receipts) which have revealed budgetary excesses or misdirection of funds, such as the purchase of sumptuous clothes for the First Lady, unjustified donations to social organizations – the Provida case, in which a group of organizations united under the umbrella “Collective for Transparency” conducted the investigation, filed a complaint, and mobilized efforts to correct the problem – and unions – the Pemexgate case – as well as patterns of habitual and unjustifiable expenses, as happens in the automatic renewal

without competition of telephony contracts for the federal government with Teléfonos de Mexico (owned by well-known Carlos Slim Helú);

- Access has been permitted to information on military purchases, in spite of the fact that the Department of National Defense and the Navy are exempt from the Acquisitions Act, but conversely are subject to the LFT;
- IFAI has guaranteed access to information on transfers made to large public sector unions, such as electricians, teachers and oil workers;
- Lastly, a significant level of transparency has been achieved concerning information on the territorial distribution of subsidies, as in the case of the Opportunities Program, in which IFAI compelled the disclosure of geographical information on funds allocated at the community level.

Because IFAI's sessions for issuing resolutions are public, and because requestors are frequently specialists, journalists, and representatives of independent organizations and subject-matter experts, several cases have captured the attention of the media, which in some instances has created a following and pressure from public opinion. This has forced the government to correct or cancel some programs in the face of revelations of stonewalling, excesses or corruption. We can list in this sense the purchases by the Office of the President of clothes for the First Lady, which was stopped; information related to expenses for the transition from one president to the next, which is possible to discover today; the greater degree of legislative control over donations to social organizations or special attention from the legislative branch, and the instances of internal control (Department of Public Duties – SFP) and external control (Superior Office of the Auditor for the Federation), which on occasion has given rise to proceedings to verify and control public spending through files disclosed under the LFT. Having said that, it is difficult to determine affirmatively whether there is a consistent correlation between publicity in cases, attention gained from enforcement, and effective reduction of corruption. In any case, the social pressure generated by the public revelation of case files is a new factor in the equation of the fight against impunity. In this sense, it is imperative to increase the demand for information by strategic social groups, such as those members of the media willing to promote investigative journalism, social organizations that can improve their performance by using access as a tool, or businessmen that provide items and services to the government.

Requestor Profiles and Limits on the Demand:

The fact that the requests are all but anonymous gives the requestor confidence, but it impedes our ability to identify the requestors with any accuracy. Therefore, the information available to IFAI comes from the profiles, which is filled out voluntarily and cannot be checked. Profiles are completed by the requestors themselves (65% of users have voluntarily provided this information). With this caveat in mind, the requestor profiles indicate that the average requestor is a young, urban man, with levels of income and education that are above the national average. Specifically, 64% are male, 55% live in urban areas, 54% are between 20 and 34 years old, 32% are employed in academia, 18% are in private business, 12% work in the public sector, and 9% in the media (see attachments).

But in practice, the demand for information is highly concentrated. In August 2007, there were 88,000 users of the SISI system and only 8,000 had made 58% of the requests. Three hundred users made about a quarter of the requests, and a mere 80 made 20% of the total requests. That means that less than 10,000 users have made two thirds of all the requests (see attachments).

It is clear that such a concentrated demand inhibits the positive effects of the right to information. There is evidence that the right to information changes how authorities behave, since they feel they are being watched. If many more citizens made requests for information, the societal pressure on the authorities would be greater; this is difficult to achieve with 65,000 users in a country of more than 105 million. Among others, this is one of the toughest challenges facing IFAI.

Limitations on accountability in Mexico

The LFT currently has loopholes that make it difficult to effectively link access to information and accountability. Among the most significant loopholes is that the statute allows an office to declare that the requested documents do not exist, even when the request involves information covered by legal recordkeeping requirements on that administrative unit. In an environment of poor file management and a bureaucratic culture, it is easy for an office not to document actions and omissions that could be compromising. Claims of non-existence – as a legal excuse for not providing the requested information– have increased in government offices' replies and as grounds for complaints filed with IFAI (see attachments).

Secondly, the law is toothless regarding those who receive public funds from the federal government: the law requires that the offices say how, why and to whom the funds were provided, but those who receive the funds are hidden behind a veil of secrecy. For example, this allows local governments, political parties, unions, private organizations or trusts to receive millions of pesos in federal money without anyone being obligated to release any information. Thirdly, the law protects privileged persons who receive preferential treatment or subsidies from contributions as distinct from the mandatory transparency that exists for government spending. Fourthly, the law's penalties are not an effective deterrent. Lastly, at the moment, transparency does not affect those who commit corrupt acts: the LFT should make it mandatory to publish income, holdings and interest statements for government officials (the attachments contain an abundance of information on this topic).

ANEXO 1

Algunas limitaciones de la Ley Federal de Transparencia mexicana frente al reto de garantizar la rendición de cuentas

Hay varios problemas de la LFT que requieren atención pues impiden transparentar plenamente la acción del gobierno y sus funcionarios y con ello, dificultan la rendición de cuentas.

1) La ley permite y valida que la autoridad declare la inexistencia de la información solicitada. Es cierto que la corrupción difícilmente queda documentada, pues los corruptos son deshonestos pero no tontos; no obstante, también es cierto que la LFT permite al servidor público hacer lo necesario para declarar la inexistencia de los documentos solicitados, lo cual resulta más fácil dentro del desorden dentro de los archivos administrativos que generalmente impera en organismos federales. Las inexistencias han ido en aumento tanto las respuestas de inexistencia como las quejas ante el IFAI por esa causa (ver anexo 2). Cabe señalar que se tiene evidencia de que estas cifras subestiman la inexistencia de información, pues varias entidades responden positivamente, con un oficio, que al final establece que lo solicitado no existe. Es necesario que para ciertas decisiones gubernamentales relacionadas con facultades sustantivas quede terminantemente prohibido que el gobierno diga: "no hay registro", pues eso va en contra de la rendición de cuentas.

2) La ley es blanda con los receptores de recursos públicos federales: obliga a los sujetos obligados a decir por qué y a quién se da el dinero, pero los receptores quedan cubiertos de opacidad. Esto permite que, por ejemplo, los gobiernos locales, los partidos políticos, los sindicatos, organizaciones o fideicomisos privados reciban millonarias cantidades de dinero federal sin que nadie los obligue a dar información. A no ser que se condicione la entrega del recurso a la entrega informes y comprobantes, o se incluya a partidos políticos, sindicatos y recursos federales transferidos al ámbito local como sujetos obligados, la LFT se quedará corta en perseguir al dinero y arrojar luz sobre su destino, pues actualmente no hay castigo por incumplimiento de las disposiciones que prevén la entrega de informes por parte de los receptores del presupuesto público. Nuevamente, con frecuencia encontramos como respuesta la inexistencia de la información que debería rendir cuentas.

3) La Ley omite echar luz por el lado del ingreso federal, lo cual deja en la opacidad una parte central de la relación entre la autoridad federal y los ciudadanos. La transparencia se verifica únicamente por el lado del gasto federal (con las limitaciones ya aludidas): es público quien recibe el apoyo una beca de estudios pero es secreto quien tiene un tratamiento fiscal privilegiado, pues los apoyos por el lado de las contribuciones están protegidos por el secreto fiscal. En contextos tan desiguales como el mexicano, lo anterior es una consideración de igualdad ante la ley. El concepto de beneficiarios de recursos públicos debería incluir no sólo a los que reciben subsidios, sino también a los que reciben ayudas por el lado de las contribuciones.

4) Fuera del costo político por el señalamiento público de incumplir la LFT, los mecanismos administrativos de sanción por incumplimiento de la ley son poco convincentes. Ante la no entrega de la información determinada como pública por el IFAI, o cualquier presunción de la violación de la ley, el Instituto debe pedir la intervención del órgano interno de control del sujeto obligado. Inicia así un procedimiento largo, de resultados inciertos y que desvincula el castigo (suspensión, despido, inhabilitación del funcionario) del objetivo de la ley, que es la entrega de la información solicitada. Además, la ley convierte en juez y parte a la SFP en el proceso, pues el contralor interno participa en la definición de la clasificación de la información pedida dentro de la propia institución: resulta obviamente incómodo perseguir posteriormente a un colega, a petición del IFAI, cuando el propio contralor contribuyó previamente a declarar la negativa.

5) Finalmente, la transparencia no toca actualmente ni a los actores ni a los mecanismos de la corrupción: es necesario transparentar los intereses personales, familiares o de negocios de los servidores públicos, así como aquellos intereses que afecten el desempeño adecuado e imparcial de su empleo. La LFT no ha inhierto en absoluto el tráfico de influencias que podría atacarse con la revelación efectiva del conflicto de intereses. Por las mismas razones, la LFT debería hacer obligatoria la publicidad de la declaración patrimonial de los funcionarios.

Anexo 2

Tema y subtema* de solicitudes de información

cifras al 31 de diciembre de 2006

(porcentajes)

Año	2003**	2004	2005	2006
Estructura orgánica	12.5	7.9	7.1	6
a) Organigrama	3.4	2.4	2	1.8
b) Directorio	3.6	1.9	1.5	1.3
c) Vacantes	2.6	1.5	1.2	0.9
d) Otros	2.9	2.1	2.4	2
Remuneraciones	6.2	4.4	5.1	4.3
a) Sueldos	3.9	2.8	2.4	2
b) Prestaciones de servidores públicos	1.5	1	1.7	1.7
c) Otros	0.8	0.6	1	0.6
Información generada por las dependencias	25.7	32.1	33.4	35.8
a) Trámites	6.3	8.4	7.8	5.7
b) Concesiones	1.8	1.7	1.9	2.1
c) Estadísticas	7.4	6.8	7.5	7.5
d) Resultados de encuestas	0.4	0.5	0.3	0.2
e) Otros	9.8	14.7	15.9	20.2
Programas de subsidio	5.4	5.7	4.6	4.6
a) Diseño y planeación	0.7	0.8	0.4	0.4
b) Presupuesto o avance financiero	1.8	2.2	1.3	0.9
c) Criterios de acceso y esquema de operación	0.8	0.7	0.8	0.9
d) Padrón de beneficiarios	0.5	0.5	0.9	1.4
e) Resultados, indicadores de impacto, informes, evaluaciones	0.6	0.8	0.9	0.7
f) Otros	1	0.7	0.3	0.3
Actividades de la institución	17	18.8	20.4	20.1
a) Programa de trabajo	2.6	3.6	4	4.9
b) Resultados de actividades sustantivas	6.8	9.6	9	8.7
c) Agenda de servidores públicos	1.5	0.2	0.6	0.4
d) Otros	6.1	5.4	6.7	6.1
Información sobre contratos	7.6	11.3	7.8	7.8
a) Obras públicas	1.2	2.5	1.5	0.9
b) Bienes adquiridos	1.9	1.6	1.3	1.2
c) Servicios contratados	2.9	3.9	2.1	2.5
d) Bienes arrendados	0.2	0.7	0.2	0.4
e) Otros	1.4	2.6	2.8	2.7
Gastos	10.4	3.4	3.3	3.1
a) Gastos operativos	3.4	1.3	1.3	1
b) Gastos administrativos	3.9	1.1	0.9	1
c) Gastos de representación	1.6	0.3	0.4	0.5
d) Otros	1.5	0.7	0.6	0.7
Auditorías	0.7	0.5	0.5	0.2
a) Resultados	0.5	0.4	0.4	0.1
b) Avance de recomendaciones	0.1	0	0.1	0
c) Otros	0.1	0.1	0.1	0
Datos sobre personas	4.3	7.9	10.6	11.3
a) Datos personales	3.8	4.2	8.7	3.1
b) Otros (Información sobre servidores públicos o padrón de beneficiarios)	0.5	3.7	1.8	8.2
Otros	10.2	7.9	7.3	6.9
Total reportado	100	100	100	100

* Información obtenida con el apoyo de las Unidades de Enlace de las Dependencias y Entidades de la APF

** Cifras a partir del 12 de junio de 2003.

Anexo 3

NÚMERO DE SOLICITANTES DE INFORMACIÓN
CIFRAS AL 31 DE AGOSTO DE 2007

Rangos	Número de usuarios	Número de solicitudes	Porcentaje frente al total de solicitudes
Una solicitud	64,855	64,855	27.3
Dos solicitudes	11,153	22,306	9.4
Tres solicitudes	3,986	11,958	5.0
Mas de tres solicitudes	8,261	138,362	58.3
TOTAL	88,255	237,481	100.0

Anexo 4

Inexistencia de la información solicitada a la APF

Al 31 de agosto de 2007

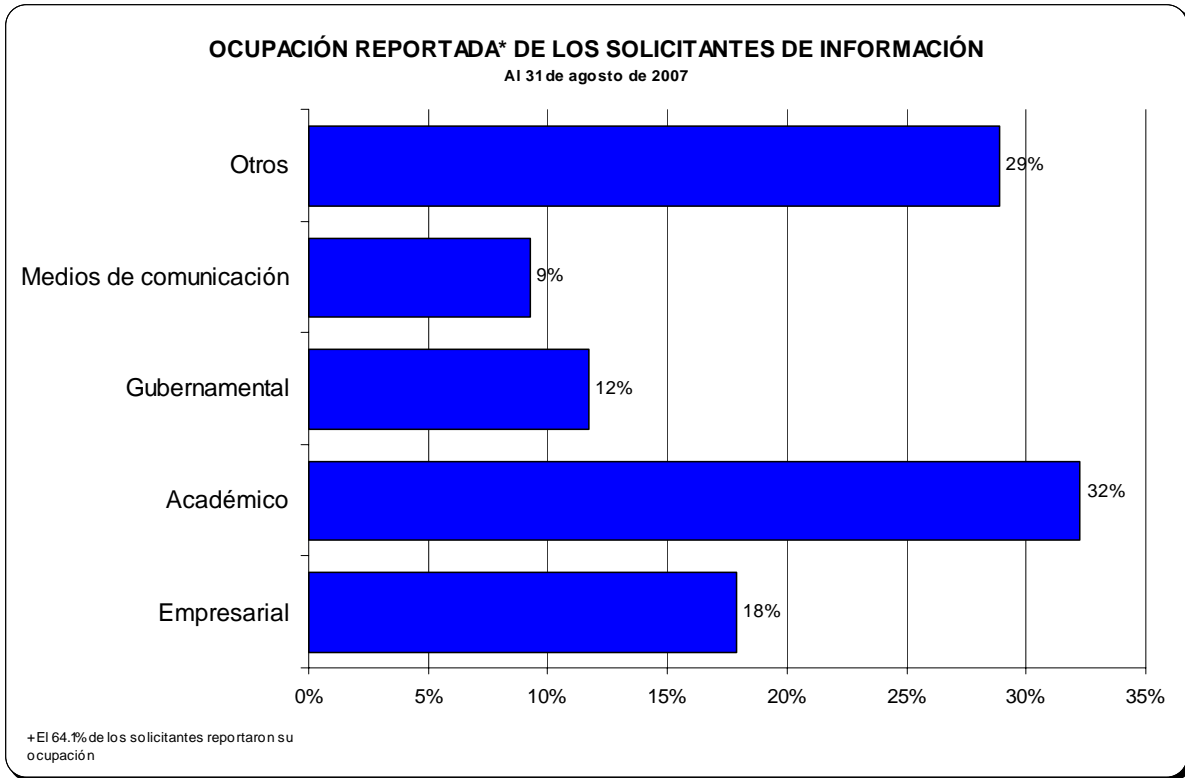
Año	2003	2004	2005	2006	2007	Total
Respuestas de Inexistencia de la información solicitada	551	1,224	2,094	3,151	2,754	9,774
Quejas ante el IFAI por inexistencia	34	117	264	349	396	1,160

Resoluciones del Pleno a recursos de revisión interpuestos por respuesta de inexistencia de la información solicitada

Al 31 de agosto de 2007

Año	2003	2004	2005	2006	2007	Total
Modifica	2	9	48	71	44	174
Revoca	6	29	60	60	39	194
Confirma	15	47	86	152	92	390
Resueltos de forma	11	32	70	63	105	281
Total	34	117	264	346	280	1039

Anexo 5



Anexo 7

NÚMERO DE SOLICITUDES DE INFORMACIÓN POR AÑO SEGÚN EL GÉNERO REPORTADO POR EL SOLICITANTE

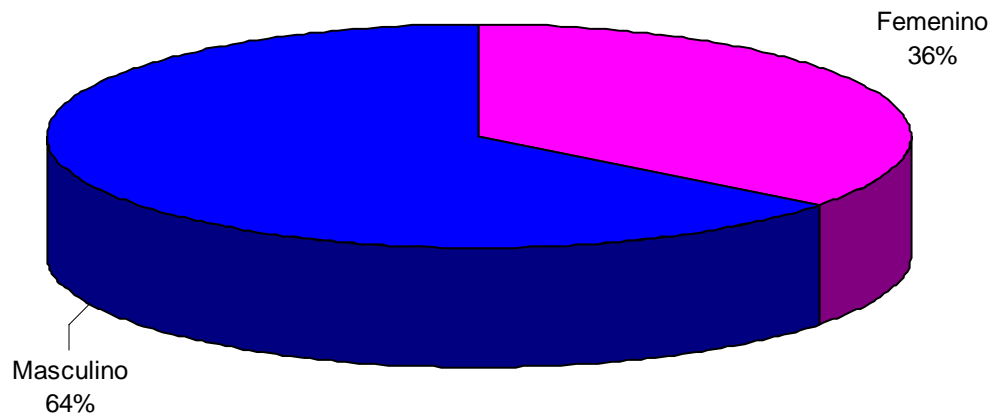
Cifras al 31 de agosto de 2007

Género	APF
Femenino	54,304
Masculino	97,903
No reportado	85,274
Total	237,481

Anexo 8

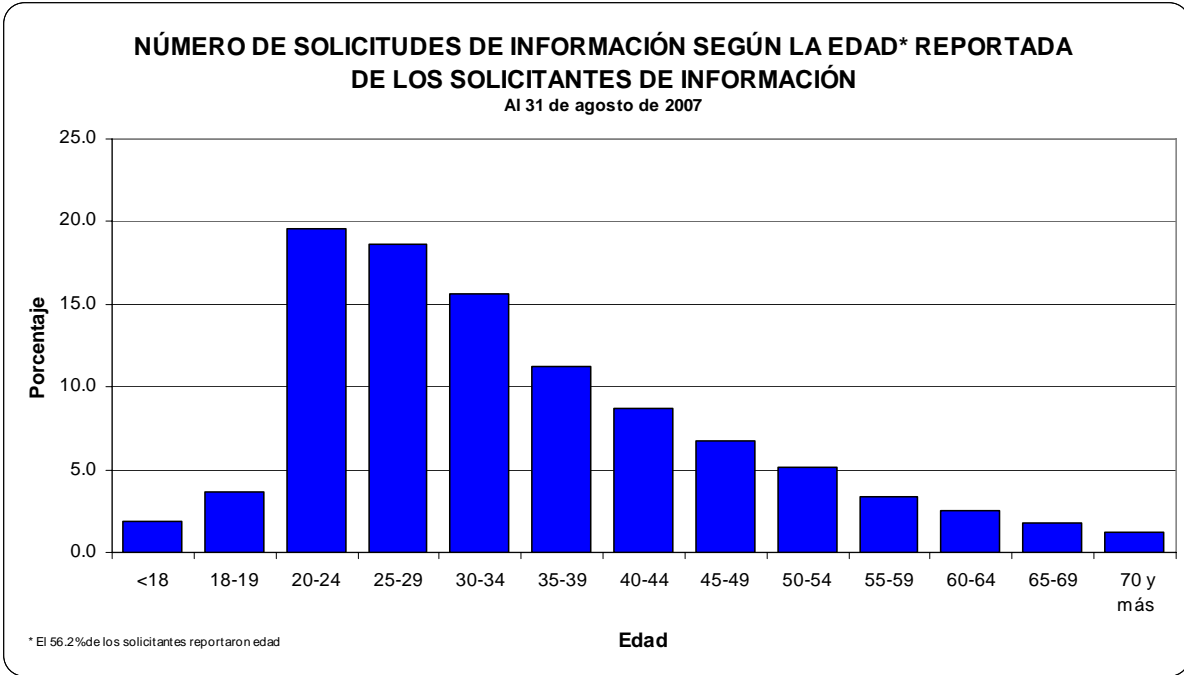
PORCENTAJE DE SOLICITUDES DE INFORMACIÓN SEGÚN EL GÉNERO* REPORTADO DEL SOLICITANTE

Al 31 de agosto de 2007



+El 64.1% de los solicitantes reportaron su género

Anexo 9



Anexo 10

NÚMERO DE SOLICITUDES DE INFORMACIÓN POR AÑO SEGÚN LA EDAD REPORTADA POR EL SOLICITANTE

CIFRAS AL 31 DE AGOSTO DE 2007

Rango de Edad	Número						Porcentaje					
	2003	2004	2005	2006	2007	Total general	2003	2004	2005	2006	2007	Total general
<18	366	449	512	569	595	2,491	2.6	2.2	1.8	1.7	1.6	1.9
18-19	390	756	1,004	1,138	1,609	4,897	2.7	3.7	3.5	3.5	4.3	3.7
20-24	2,331	4,344	5,841	6,759	6,872	26,147	16.3	21.3	20.2	20.8	18.4	19.6
25-29	3,136	3,935	5,351	5,998	6,404	24,824	21.9	19.3	18.5	18.4	17.1	18.6
30-34	2,475	3,020	4,400	5,222	5,785	20,902	17.3	14.8	15.2	16.0	15.5	15.7
35-39	1,548	2,118	2,948	3,785	4,624	15,023	10.8	10.4	10.2	11.6	12.4	11.3
40-44	1,325	1,925	2,792	2,520	3,066	11,628	9.3	9.4	9.7	7.7	8.2	8.7
45-49	1,085	1,415	1,945	2,056	2,474	8,975	7.6	6.9	6.7	6.3	6.6	6.7
50-54	655	919	1,545	1,570	2,153	6,842	4.6	4.5	5.4	4.8	5.8	5.1
55-59	339	494	814	1,329	1,538	4,514	2.4	2.4	2.8	4.1	4.1	3.4
60-64	268	420	692	767	1,187	3,334	1.9	2.1	2.4	2.4	3.2	2.5
65-69	313	422	619	417	581	2,352	2.2	2.1	2.1	1.3	1.6	1.8
70 y más	66	168	400	414	531	1,579	0.5	0.8	1.4	1.3	1.4	1.2
(en blanco)	9,800	17,347	21,264	27,669	27,893	103,973						
Total general	24,097	37,732	50,127	60,213	65,312	237,481	100	100	100	100	100	100

**Accountability by Force?
Access to Budgetary Information as a Tool for Combating Corruption in Mexico –
The Experience of Fundar**

Jorge Romero León

1. Background

The enactment of the Federal Law on Access to Public Government Information in 2002 set the foundation for development of a system for access to information that could make relevant budgetary information available to citizens. The work of the Federal Bureau for Access to Information (Instituto Federal de Acceso a la Información – IFAI), the aforementioned statute and the mechanisms for supply of information created in that statute, have revolutionized the way that agencies turn over information. In light of this, the main achievements are not in the information actively published by the government, but the public's ability to gain access to more detailed information by means of requests for access to information. Broad access to budgetary information is important for identifying trends, significant variations, and possible problems, but the devil is in the details.

To turn budgetary information into a tool against corruption, it is imperative to have access to detailed information on program operations and the application of resources. Without exception, that information is not to be found in the information that is actively published by government offices. It must be requested. And this request can be difficult. Therefore, it is necessary to highlight the role of the IFAI, which has not only created a portal for transparency obligations, but also a system for electronic access to information that makes it simpler to process a request for information and a petition for review. And it is necessary to highlight the experience of civil society organizations in navigating through this process, requesting pertinent information and demanding it through legal channels when it is not provided under the first request. These are the mechanisms that have really permitted access to the budgetary information that matters, the information that allows us to conduct an in-depth analysis of specific expenditures, evaluate their impact, and whether the operations are legal.

Since the Federal Law for Transparency and Access to Governmental Public Information (Ley de Transparencia y Acceso a la Información Pública Gubernamental – LFTAIPG) entered into force, there has been a significant increase in the number of requests for access to information for each year: 24,097 in 2003; 37,732 in 2004; 50,127 in 2005 and 60,213 in 2006. In 2006, 96% of the requests were filed electronically. Less than 20% of the 2006 requests asked for budgetary information, as opposed to 29.6% in 2003. In any case, out of all the requests, no more than a dozen were sufficient for Fundar to undertake a social audit and mobilize enforcement authorities, based on a medium-term strategy that evaluates the articulation of incident networks, consistency and analytical rigor, and the dialogue with government offices and legislators.

2. Fundar's Experience

Fundar, Center for Analysis and Investigation, is an independent, interdisciplinary and plural institution for applied investigation. In its nine-year history it has specialized in the analysis of budgets and public policies, in monitoring the legislature, and in making access to information a reality. In addition to the experience Fundar has gained over the years, two recent experiences exemplify the potential of access to budgetary information as a tool in combating corruption: the social audit conducted of PROVIDA by six organizations in 2004, and tracking the gifts and donations from the parastate firm Petróleos Mexicanos (PEMEX) in 2006 and 2007.

Due to time and space limitations, it is not possible to recount in detail the experience of tracking the resources linked to PROVIDA. We will showcase some parts of it as they relate to the needs of this workshop. In brief, the events were the following:

At the end of 2002, the chairman of the budget commission unilaterally reassigned to PROVIDA 30 million pesos that were originally allocated for women's health and HIV/AIDS programs. The Department of Health turned over those funds, even though they were not legally required to do so. PROVIDA took possession of the funds, committing serious infractions. Six civil society organizations documented the allocation process, and once the funds were distributed (and once LFTAIPG had entered into force), they requested the complete financial file for the 30 million pesos spent, and they performed a citizen audit – the first of its kind in Mexico. The findings were presented to the national media in July 2004 and it gave rise to a series of actions on the part of the government to address the irregularities and corruption they had documented. As a result, the Department of Health suspended additional donations, it confirmed the irregularities that had been identified by the citizen audit, and it compelled the return of the funds in question. The Department of Public Responsibility confirmed the irregularities, imposed a fine of 13 million pesos and prohibited its legal representative from holding a public post or receiving public funds for 15 years. This decision was upheld by the National Supreme Court of Justice, setting a fundamental precedent. The Superior Office of the Auditor for the Federation (Auditoría Superior de la Federación – ASF), for its part, conducted its own audit as an outside control body, and corroborated the irregularities once again. The ASF filed a criminal complaint which was declared unsubstantiated by the court of first instance. The case is currently on appeal.

A more recent experience validates the experience with PROVIDA. In the last two years, Fundar has monitored the use and destination of the proceeds of the oil business that are earmarked for the states in the form of gifts and donations. We work with a local organization in the State of Tabasco to carry out the monitoring and analysis tasks jointly. During the monitoring phase, the organizations requested information under the federal law on information access. The Santo Tomas Ecological Association (Asociación Ecológica Santo Tomás), for its part, requested information in spite of the fact that there was no law for access to local information, and became decisively involved in the discussions towards creating a law, which was published on February 2, 2007. In the

process, staff from Fundar and Santo Tomas met on several occasions with staff from PEMEX and local authorities to specifically identify the information requested. After a year of requesting, processing and systematizing information (including at least a dozen petitions for review), two documents were developed to present the findings in the State of Tabasco and in the Federal District, from the point of view of creating a joint incident strategy. From that time to now, in barely six weeks, a number of events have validated the importance of the exercise and have made its results plain for everyone to see. A point of agreement was presented in the House of Deputies to ask the Department of Public Responsibility for a formal audit of the funds used, and PEMEX, for its part, announced that it would implement new guidelines and mechanisms to make the use of funds more transparent and to encourage accountability. Again, these mechanisms, although at the moment they are not being used to navigate a media scandal, represent the objective of the actions that were undertaken. In order to combat corruption it is essential to mobilize enforcement and control offices.

To summarize, in both cases we sought, in the first place, to gain access to useful information in order to identify problems and misallocations. LFTAIPG and IFAI played essential roles, since this concerned detailed information on the final destination of funds. In both cases access to information was followed by a careful analysis of the information and drafting an incident and broadcast strategy. This strategy was based largely on the creation of a network with our counterparts in civil society, in liaising with the legislature and involved offices, and in clearly discerning the usefulness of the media as an instrument to mobilize enforcement offices (horizontal accountability).

3. Factors for effectiveness

As pointed out above, the information that is important in promoting the battle against corruption is detailed information about operating budgets. Who supplies and who demands this information?

It is supplied indirectly by government offices through the mechanisms put in place by IFAI for access to information and dispute resolution. Information is demanded by specialized organizations that are interested in timely and consistently monitoring the activities and public policy of the government agencies involved. Such organizations include Fundar and its counterparts at the federal and local levels, which know the programs and have the human and financial resources necessary to conduct detailed analyses (the PROVIDA file, for example, had more than 6,500 pages, and a team of auditors was specifically hired for this audit; without these resources, the effort of obtaining the information would have been pointless. It took four months to analyze the information on PEMEX).

Two mechanisms affect the supply of information.

1. The first is the judgment in interpretation and application of the LFTAIPG, which is IFAI's responsibility. As the mechanisms for access are perfected, a similar situation should be created at the local level and clear criteria must be established to process

appeals, improve the public's ability to gain access to detailed information, and consequently to document and discover evidence of cases of corruption.

2. The second is the ability or willingness (or requirement) of the liaison units at each of the government offices. As better and better information is generated, the information is maintained in a more organized manner (in archives), a rule of maximum publicity is applied, and it becomes easier to gain access to the detailed information that is indispensable for monitoring corrupt acts.

There is a mechanism that affects demand, principally: the skills and abilities of the requesting parties. As the experience and abilities of the organizations increase and are shared with others, it becomes easier to file appeals and dispute the lack of files and/or willingness of public sector agencies.

These groups, taken together, directly influence the implementation mechanisms for the policies on access to information, while experience and institutional consolidation facilitate access. From the perspective of civil society, this translates into a prevailing need to strengthen our capacity for analysis and management.

Analytical abilities are important for evaluating what information is required, how access to it can be gained, and how to proceed legally or administratively if access is not immediately granted. Additionally, analytical abilities allow for an evaluation of what to do with the information once it has been provided. If there is no solid analysis, convincing evidence and clear messages of communication and incidence, it is impossible to mobilize the enforcement authorities.

Management ability is essential for navigating the terms of access to information, to articulate incident patterns, and to establish contact with the government branches and agencies that are able to prevent corruption. Such management is indispensable for formally mobilizing those who can prevent or punish corruption.

IFAI has created important and desirable means to strengthen organizations' capabilities in analysis and management through formal and informal instances of guidance and skill development. Several civil society organizations have taken advantage of this, established ties for feedback and practice communities that facilitate and enable not only access to information but also mobilization of enforcement bodies.

However, in spite of these advances, in order to use transparency as a tool in the fight against corruption, it is imperative to mobilize the enforcement agencies. Without them, the value of the evidence generated is simply anecdotal. Therein lies the most significant difficulty because it is difficult to "activate" the means for horizontal accountability.

In Fundar's experience, there are three factors that are indispensable for that(enforcement?):

- 1) Articulate incident networks; this multiplies the management (and pressure) capabilities from the bottom up.
- 2) Design a media strategy that clearly identifies the objectives. A media scandal is instrumental in activating accountability. However, it is not an end in and of itself.
- 3) Establish formal contact with legislators and government agencies. It is easier to be heard in a legislative committee than interdepartmental meetings. Eventually, the noise generated in the legislature will cause the internal and external enforcement authorities to mobilize.

To be viable, the mechanisms that enable access to budgetary information require continuity and considerable but not exorbitant resources. IFAI's budget for 2006 came to 239 million pesos. However, the need for financial resources does not only apply to IFAI but also to government offices which must assume the cost of generating accurate information and maintain adequate files; and to civil society, which depends for its financing on donations and projects. Providing for sustained analytical capabilities requires medium and long-term planning and a continuous influx of sufficient funds.

Lastly, it is worth highlighting the importance of bringing uniformity to legislation and the mechanisms for access to information, in order to gain access to budgetary information, since a significant amount of Money is spent on the local level, whether that be the municipal level or the States of the Federation.

In Mexico, we have just begun to move with difficulty towards uniformity. Meanwhile, there are some States where there are better practices, and still others where there are not. Analytic and management capabilities, together with proper application of legal tools, have allowed us to gain access to detailed information.

4. **Lessons learned from Fundar's experience**

To evaluate the relevance of access to information in the fight against corruption, it is worth noting three points.

In the first place, detailed information on the use of resources by PROVIDA and PEMEX was the catalyst for the organizations' incident strategy. To gain access to this detailed information, it was essential to be able to track in a timely matter the process of allocating the funds in Congress and the budgetary information. Also very important were the statutory provisions of LFTAIPG and the appropriate activities undertaken by IFAI, as well as the detailed analysis of the entire file.

Secondly, it was necessary to have an incident strategy designed *ex professo* in order to pressure legislators and government agencies to take action. This strategy was based on the effective use of networks and the selection of the best media outlets to broadcast the information. We sought media attention, but more than that, we sought to mobilize the enforcement authorities.

Thirdly, only the involvement of the enforcement authorities could have led to barring those responsible for the irregularities from government service, and to establishing a legal precedent. Nonetheless, in spite of having achieved the goal of mobilizing the offices responsible for horizontal accountability, the legal system continues to exact a very low price from those who are guilty of corruption. Neither transparency nor timely access to detailed information is sufficient to guarantee victory in the battle against corruption.

Argentina

Transparency in Political Campaign Financing

Participants:

- 1. Alberto Dalla Via**
- 2. Delia Ferreira Rubio**

Transparency on the Financing of Political Parties and Election Campaigns in the Republic of Argentina

Alberto Ricardo Dalla Via

With the restoration of democracy in 1983, we began to see up close the workings of political parties and the competition for power. As institutional normalization improved, there arose an increasing demand by these groups for greater funding, in addition to demands by citizens for transparency concerning the funds' source and destination.

As far as the financing of political parties is concerned, the National Constitution of Argentina provides in Article 28 a specific requirement for access to information, by requiring recognized political groups to "make information publicly available concerning the source and destination of their funds and assets."

Based on this provision, in 2002 Law 25.600 was enacted, which constituted one of the most important legislative reforms on the system for financing political groups that operate on a national level, that is, those that compete in races for national elected offices (president and vice president of the nation, national senators, national deputies and, eventually, constitutional conventions). The system established by this law incorporated the majority of the instruments mentioned in comparative law to control the flow of funds in institutional and campaign activities run by political parties.

Prior to the enactment of this legislation, the National Electoral Commission had made pronouncements about the importance of this question for the democratic system and good government, stressing that the enforcement provisions needed to be expanded beyond what was already included in the organic law on political parties.

At that time, the Court highlighted a few relevant issues, such as: the need for a reasonable degree of parity in the assets of the distinct political parties that compete in elections; supervision over funds from the public purse; control against possible illicit practices in fundraising and contributions; the existence of secret publicity under the appearance of a "campaign that has learned about certain government actions"; or more generally, the risk that money represents as a source of influence to benefit special interests over the general welfare.

At the end of 2006, this law was replaced by Law 26.215, which is the law currently in force. In effect, this new law on political finances, which is more effective and better written, was enacted without a lot of public discussion, but it involved a good deal of work by the relevant committees.

As already stated, the policy on access to political parties' financial information in Argentina is based on statutes and regulations stemming from a constitutional requirement that expressly mandates that such parties make public information on the origin and destination of their funds and assets. Therefore, the role of the National

Electoral Commission in this area technically does not consist of developing a program or project, but in enforcing the laws of the land, as a court that is part of the Judicial Branch.

As far as the public release of accounting information is concerned for political groups, the current statutes contain rules on transparency that require those organizations to provide a periodic accounting of their income and expenditures to the federal electoral courts, both in ordinary years as well as during election campaigns. Therefore, on the one hand, all political parties must submit annual account statements – within 90 days of the end of the fiscal year (Article 23) – and, on the other hand, groups that participate in the election process – parties, confederations, alliances – are required to submit financial reports on the election campaigns. One of the reports must be filed before the election – 10 days before (Article 54) – which is intended to provide citizens with the necessary facts to be able to make an informed decision. Another report is due 90 days after the elections take place (Article 58), which is intended to allow for public scrutiny of the accounts and judicial control over the funds raised and the expenses incurred as part of the campaign.

On the other hand, figures are also released on the funds made available by the government to the parties as public contributions (Article 8). Likewise, each year the National Electoral Commission publishes on its website the maximum amount that the parties are allowed to receive from the government (Article 16), as well as the maximum amount of campaign expenses that the parties are allowed to incur because of the election process (Article 46).

Likewise, the law provides that parties' financial information is in the public domain, that it can be consulted freely by any citizen (Articles 25 and 56); orders that it be published online as soon as the reports have been submitted (Articles 24 and 59), and places the responsibility on the parties to publicize the address of the website where that information can be accessed (see aforementioned articles).

Based on analogous provisions of Law 25.600, the National Electoral Commission issued a decision that political parties to submit supporting accounting documentation, in hard and electronic copy, and that this documentation must be published was published subsequently on the commission's website. Later, it made available to political groups software that had been designed to simplify the creation and publication of these reports, in addition to making it easier to understand the reports by creating a uniform format for all groups.

At first this situation was problematic because the documentation was submitted using different accounting methodologies, and this created confusion for the auditors and delayed their review preventing it from being completed in the timeframe required by law. Therefore, in light of these circumstances, the Court established parameters for creating a system to be used uniformly so that all political parties would submit their documentation in the same format. To this end, regional training seminars were conducted for the political parties. It must be highlighted that Argentina has 34 national parties and 647 district parties, and this rule provided a framework for a system that not

only could meet the needs of the political parties, the auditor and the commission judges, but also created transparency, which is needed to gain the acceptance of the population at large.

For its first application, for the 2005 legislature elections, all of the submitted reports were made public in a timely manner: preliminary reports were published for 75% of the parties participating in the elections, and final reports for 63%. This was a considerable increase over the quantity and quality of information available prior to implementing the program (2003 elections) when information was available for about 30% of the political parties competing in the elections, while on the other hand reading those materials was made all the more difficult by the absence of a consistent format.

Furthermore, non-governmental organizations that so request are authorized to include a link on their websites to the site for the National Electoral Commission, which greatly increases the availability of the information.

With regard to the demand for this type of information, it varies considerably from election periods to non-election periods. The years when there are elections have an especially high demand for political parties' financial information, basically from some sectors of civil society, in particular, from organizations that focus on electoral issues and from the media. To a lesser extent, political parties themselves request information on the other parties.

The media's coverage of political and election issues, as well as activism from some sectors of civil society, assume the accounting information requirements of political groups. During non-election years, interest in this subject decreases and the demand for information is notably reduced.

Nonetheless, the demand is always greater than it was before Law 25.600 was enacted, when political groups were only required to submit annual balance statements and the public availability of the information under the law was merely a formality and was insufficient.

As for the authority to enforce the law, it is worth mentioning that the Judicial Branch is the entity responsible for releasing the political parties' financial information, and this is the greatest guarantee of impartiality and neutrality that a republican form of government can offer. Similarly, in order to deal with the possibility that an electoral magistrate might not fulfill the duties of his or her office, or does so inadequately, there are in place, as there are for all activities performed by a jurisdictional body, procedural remedies that allow a higher court to supervise such decisions, in this case, the National Election Commission. There are also legal channels to submit the matter, in extreme cases, to the constitutional bodies with jurisdiction to evaluate judges' performance.

It should be mentioned the citizen oversight of the information presented by the political parties is not only exercised by ballot during the elections, but the National Electoral Commission has also opened jurisdictional proceedings for financial oversight on the

personal participation of any individual who may have an interest in filing a complaint or reviewing the matter, in the terms subsequently embodied in Law 26.215 (Article 25). In this way, the Court established that from the date the reports are filed until the magistrates issue a ruling approving or rejecting the parties' account statements, any person may come forward and submit whatever evidence he or she considers pertinent to resolve whether the information submitted by the parties complies with the law. Such individual filings are disclosed to the appropriate political group, so that it may exercise its right to a defense, and the filings are sent for consideration to the account auditors assigned to the Commission, who are responsible for conducting the audit and issuing a technical opinion on the respective documents.

This specialized group of auditors does not form its opinion based solely on the documents submitted in the file, but they also utilize outside information. For example, it is worth mentioning that in each election process, many companies that provide public relations services (agencies, printers, television, radio and print media, etc.) are asked to submit reports on contracts for election advertisements, which are later compared to the information claimed by the political groups.

This year, moreover, the media will be monitored, which will provide information on election campaign publicity in the media, as an additional technical tool in the course of conducting the audit.

Although, as stated above, at the beginning the political parties mounted resistance to these rules and to implementing this system, in the long run we expect to achieve good results. In the event a particular party does not comply with its obligations, a monetary fine will be imposed.

Lastly, it is worth highlighting that Law 26.215 has incorporated criteria set forth in the rulings issued by the National Electoral Commission in its application of Law 25.600, as well as the guidelines issued by the accounting experts in the various reports drafted with the representatives of the political parties.

Access to Information and Financing of Political Campaigns

Delia M. Ferreira Rubio

The very quality of democracy is diminished when the influence that money has on political life makes us doubt whether our elected officials are really representing the people; when public policy decisions are made to repay campaign favors and are not based on rationality and the common good; when corrupt practices stop being seen as pathological and are transformed into the normal way of doing things in the public sector. The perception of corruption, as it affects political activities in general and political parties specifically, has earned the question a place in the public's agenda in the countries of this region, above all in light of the discovery of corrupt actions that have garnered a lot of media attention, and in many cases the corruption is related to campaign finances.

The programs that implement the mechanisms and tools that facilitate access to information on political finances, and particularly campaigns, are a central part of the fight against political corruption and contribute to the betterment of the quality of the democratic process, whereas:

- Increase the amount of information available to the citizen-voter
- Facilitate the identification of links between politicians and special interest sectors.
- Create incentives to avoid corrupt behavior or, at least, increase the risk
- Permit verification of compliance with financing regulations
- Put obstacles in place to the misallocation of funds in favor of the party in power
- Create incentives for reciprocal control by the political parties
- Provide the materials and parameters for evaluation of decisions issued by government officials.

As for the subject of transparency in political finances, the emphasis has traditionally been placed on working on the information supply, that is, to broaden accountability requirements and improve the quality of the information available. In this regard, there have been five historical stages: 1) total deregulation; 2) mandatory accountability; 3) regulation of the standards of accountability; 4) the obligation to disclose information; and 5) in-depth development of auditing mechanisms.

Data collection on political campaign financing is usually the responsibility of electoral officials, as long as regulations require mandatory accountability. Faced with the absence or insufficiency of laws and regulations, Transparency Pacts have been effective; these are signed by political parties or candidates who voluntarily agree to disclose information, generally to NGOs. These pacts, as well as Expense Oversight have served to make citizens aware of (or: increase citizens' awareness regarding) the importance of this subject.

The demand for information related to who finances a campaign and how much money was given is a point of public interest, in which primary players are the media, NGOs, and academics working on this subject. In most countries, citizens are interested in this topic at election campaign times, and when some scandal or another occurs that is played out in the theater of public opinion.

In order for this subject to register on the media's agenda, it is essential to supply "attractive", simple and timely information. In Argentina's experience, for example, we have seen a gradual increase in the coverage of this issue during each election, particularly since the legal reform of 2002¹.

Improving transparency standards in politics depends directly on creating a demand for information. As long as society does not require or value transparency, politicians will not be transparent. This demand requires a cultural change that cannot be achieved only through changes in legal regulations. Instead, it requires continuous work and the creation or reconstruction of a certain consensus on values. Along these lines, the programs for sensitization and awareness are important. As with all cultural change, this is a prolonged process the results of which will be seen in the medium and long term.

What mechanisms are useful for facilitating access to information on campaign finance?

- ✓ The obligation of political parties and candidates to submit accounts and audits. This is the information to which we try to gain access. In those cases where there is no legal obligation to supply accounts and balances, the Integrity and Transparency Pacts, which are signed voluntarily by parties and candidates, can fill in for the absence of a requirement to turn over the information.
- ✓ The public nature of the information supplied by parties and candidates, broadly and without administrative or procedural restrictions. In Latin America, there are still 8 countries that do not make provision to broadcast the information registered by the parties or candidates. The right to access to information is not protected if the law restricts the legitimate right to have access to the information or directly classifies the information. In some countries there are quasi-legal barriers to gaining access to information: we are referring, for example, to the application of steps of a judicial procedure to deal with requests for access to information.
- ✓ The timeliness of the information, that is, the guarantee that the information will be available to citizens within a useful timeframe, meaning before the vote occurs and that it remains available permanently thereafter. Accessing information only after the election makes this an ineffective tool for transparency, in that it does not allow for an informed decision. The information is then not effective as a measure

¹ For Law 25.600 of 2002, see FERREIRA RUBIO, D.: *The new law of Argentina on political party financing: more hot air than ever*, in CAETANO, G et al: **Money and Politics**, Goethe Institute-UPD/OAS, Montevideo, 2002. This law was amended in December 2006, by Law 26.215 for which the reader may refer to: FERREIRA RUBIO, D.: "*Financing Political Parties in Argentina*", presented at the International Seminar: "Money and Politics: The Debate", Paraguay, July 30, 2007, organized by the **Group for the Regulation of Political Financing**, www.financiamientopolitico.org.py

of management control, if it only becomes available three or four years after an election.

- ✓ The use of the Internet to publicize information. This technological development has changed the order of priority for tools and regulations concerning the right to access to information. Public policy on access to information must now focus on regulating the requirement to use the internet to publicize as much information as possible, and to guarantee a situation where there is authentic access in terms of simplicity, design, speed of search engines, etc. The juridical approach that highlights the procedural regulation of the right to have access to information (guarantees, timeframes, procedures, resources, etc.) consequently takes second place where public policy is concerned.
- ✓ The elimination of regulations that create incentives to hide relevant information. Among the mechanisms that create perverse incentives that could be mentioned are: the anonymity of donations; the absolute prohibition against contributions by corporations; unreasonable limits on the amounts of contributions; the limits on the time period for the obligation to submit accounts and audits; a system of ineffective penalties, either due to excess or to absence.
- ✓ The use of uniform balance sheets which would allow for a comparison of the information supplied by the parties and candidates. The uniformity of the data simplifies reading and understanding it, making the access to information more effective.
- ✓ The obligation of all parties concerning the process for reporting information on campaign finance. In many countries, it has been established that political parties are the ones that have to provide the information, but the candidates are the ones who really manage the campaigns and the finances through parallel channels (“associations of friends” and foundations linked to the candidate, etc.), through which the candidate evades oversight by the electoral authority and the information that is recorded and disclosed does not reflect the truth of the situation.
- ✓ The obligation to be accountable and publicize information should be referred to in all relevant political occasions during the electoral process, which includes the phase for selection of candidates. For example, a counterproductive mechanism for transparency in the management of funds is shortening campaign times: this fixes an artificial time period and funds are certainly controlled during that period, but the real campaigns begin long before, as do their fundraising efforts.
- ✓ The existence of flexible and effective enforcement authorities, which demands: Independence from political power, legal jurisdiction, and technical capabilities, to include an adequate infrastructure. The internal working structure of these offices should tend to facilitate access to information and performance of audits about the account reports filed. The judicial structure of administrative

proceedings is not favorable towards the effectiveness of the right to information, the performance of audits, or verification of accounts. In this sense, although the enforcement authorities are judicial in nature, it would be appropriate for them to have a different work process, duly recognized and regulated.

- ✓ Granting to enforcement offices the authority not only to conduct a search but also to audit the information provided to verify its accuracy, truthfulness and completeness. Together with a grant of legal jurisdiction, it is essential to budget funds for the office and to provide an adequate infrastructure so that it can perform these tasks and supply information efficiently and in a timely manner.

The public policies and programs of action that are undertaken should be adjusted to the circumstances of each country, both with respect to the judicial system in general and with respect to the socio-economic situation, traditions and political culture. The level of political decentralization, as well as the location of the real power, will determine the need and effectiveness of working at the national, provincial and municipal levels. The electoral system and the party system must also be kept in mind when implementing effective mechanisms for supplying access to information about campaign finances.

The following charts illustrate the status of Latin American countries on the issues of accountability and availability of information on the financing of political campaigns.

Anexos

Rendición de cuentas²

País	Contenido de rendición		Sujeto obligado a rendir cuentas		Cuándo se rinde cuentas	
	Aportes	Gastos	Partidos	Candidatos	Antes elección	Después elección
Argentina	X	X	X	-----	X	X
Bolivia	X	X	X	-----	-----	X
Brasil	X	X	X	X	X	X
Chile	X	X	X	X	-----	X
Colombia	X	X	X	X	-----	X
Costa Rica	X	X	X	-----	X	X
Ecuador	X	X	X	-----	-----	X
El Salvador	-----	-----	-----	-----	-----	-----
Guatemala	-----	X	X	-----	-----	X
Honduras	X	X	X	-----	-----	X
Mexico	X	X	X	-----	-----	X
Nicaragua	X	X	X	-----	X	X
Panamá	X	X	X	X	-----	X
Paraguay	X	X	X	X	-----	X
Peru	X	X	X	-----	-----	X
República Dominicana	X	X	X	-----	-----	X
Uruguay	X	X	-----	X	X	-----
Venezuela	X	-----	X	X	-----	X

² Las tablas reflejan información general actualizada. Para detalles y variaciones por país, ver FERREIRA RUBIO, D.: “Financiamiento político: rendición de cuentas y divulgación”, en GRINER, S. y ZOVATTO, D.: *De las Normas a las Buenas Prácticas. El desafío del financiamiento político en América Latina*, OAS-IDEA, San José de Costa Rica, 2004, Primera Parte, Capítulo 3, pp. 77-106.

Colombia

Transparency in the Administration of Judicial Systems

Participants:

- 1. Martha Lucía Rivera**
- 2. Margareth Flórez**

Transparency in the Administration of Judicial Systems – the case of the Procuraduría General de la Nación (PGN)

Martha Lucía Rivera

Overseeing the proper functioning of government actions in order to safeguard the rights and interests of citizens is one of the principle objectives of the Office of the Solicitor General for the Nation (Procuraduría General de la Nación – PGN). Because this Office has learned that only through the existence of a true and active civil society can it meet this goal and fulfill its essential functions to protect human rights and fight against corruption, the implementation of integral processes for accountability and of mechanisms for access to and supply of information have become the Office's top priorities.

Likewise, the PGN's Modernization Program has undertaken important efforts focused on creating a culture that puts a continual supply of information to citizens first, with the understanding that without citizens' trust and vital assistance, this Office would be much less effective and functional. The Solicitor's Office cannot maintain, broaden or, were it lost, recover the public's trust in the Office's actions without publicizing its management and without establishing effective means of accountability, not only to control government offices but also to control itself.

1. Accountability

In Colombia, monitoring agencies in general and the PGN in particular are the entities to execute horizontal accountability by nature. When we talk about accountability, we are referring to the tools, mechanisms, agencies and capabilities that the community should have at its disposal in order to make government officials provide justifications and explanations about their management activities and so that they can if necessary be punished by the community. Accountability involved the right of citizens to receive information and the obligation of government officials to disclose it in its entirety and in a timely fashion. Thus, we can demonstrate a direct relationship between the terms accountability and public access to information. From there, we can state that improving "citizens' access to information" must be one of PGN's goals in developing the Modernization Program financed by the IDB.

For the PGN to work efficiently, there are some important conditions: the coordination of efforts with other monitoring agencies; its autonomy from the Judicial System; and the independence and transparency of the Judiciary. Horizontal accountability starts at monitoring agencies and ends at the Judicial System.

Although access to information is not the only condition required to have an efficient process for accountability and institutional modernization, it is a reliable indicator in evaluating not only the efficiency of the control mechanisms, but also of the relationship between the Office and citizens, the trust that citizens have in the institution, and the success or failure of the Office in fulfilling its duties. Aunque el acceso a la información no es la única condición requerida para llevar a cabo un eficiente proceso de rendición de cuentas y de modernización institucional, sí es un indicador confiable al momento de evaluar tanto la eficiencia de los mecanismos de control, como el tipo de relación existente entre Entidad y ciudadanía, la confianza que ésta última tiene en la institución y el éxito o fracaso de la entidad en el cumplimiento de sus funciones.

The Solicitor's Office has been improving its accountability process. Every year, the Office makes public a document that contains the activities undertaken based on the Office's strategic plan. The report's publication is done in a public act (a teleconference), open to all citizens, applying mechanisms for vertical accountability, that is, employing a control agent from outside the government, who is given a large degree of involvement. The document is also published on the website and is included in the reports that the Solicitor General submits to the Congress of the Republic and to the Office of Auditor General. In this way, the PGN also uses horizontal accountability (institutional mechanisms and government agencies with oversight for government actions).

In Colombia, the PGN has made efforts to address this problem. These efforts are the promotion of cultural values to sustain accountability, the collaboration with the National Congress in the follow-up of negotiations related to the Free Trade Agreement; social audits; Transparency and Social Monitoring Programs; etc.

PGN's modernization has entailed systematic work to strengthen the accountability mechanisms, integrating the development of information systems, the provision of an adequate technology platform, the implementation of methodologies to refine the work of the mission and to build up support areas, and making adequate spaces for citizens. The foregoing must be accompanied by plans and strategies for disclosure to the community, drafted based on technical instruments (surveys) that allowed us to establish the real need of the populace in terms of information.

Although the PGN has made significant strides towards its goal of broadening officials' accountability and their ability to supply accurate and reliable information, the Office is aware that the activities and programs must be accompanied by institutional efforts towards providing external users the necessary tools for them to be able to utilize and interpret that information.

2. PGN's Main Information Systems

a. Description

The PGN has two basic programs: the System for Information from the Penalties and Disqualification Registry (Sistema de Información de Registro de Sanciones y Causas de

Inhabilidad – SIRI) and the Integrated System for Information and Tracking of Human Rights Violations and International Humanitarian Rights Infractions (Sistema Integral de Información y Seguimiento a Casos de Violación de los Derechos Humanos e Infracciones al Derecho Internacional Humanitario – SEPREDH).

SIRI is intended to record and control criminal and disciplinary penalties, disqualifications based on fiscal responsibility proceedings, and statements of no confidence and contractual relations with the government. SIRI is used to issue “background check certificates” to citizens. SIRI is a fundamental tool in the fight against corruption, because it impedes access to persons who have been barred from public service or from winning government contracts, it allows for oversight of the effective completion of disciplinary penalties, it ensures compliance with outstanding disqualification terms, and contributes effectively, with preventive policies, to the moralization of government administration. The information provided by the system comes from the Office itself, from the internal control offices of other institutions, from judicial bodies, from the Office of the Auditor, and from private businesses with regard to expiration or termination of contracts. The information on SIRI is used by all government offices and a large number of private companies, keeping in mind that the “background check certificate” has become an indispensable requirement for most jobs.

For its part, the basic objective of SEPREDH is to achieve a high degree of effectiveness in action, planning, management, oversight, tracking and control of cases that deal with violations of human rights and International Humanitarian Rights infractions. It controls the information management, and allows for evaluation of human rights cases at all stages of the proceedings. It also generates statistical information and indicators. SEPREDH obtains information from administrative complaints, complaints filed by citizens or government officials, by NGOs or by international bodies, and information derived from the PGN’s mission areas (disciplinary investigations, judicial intervention, and preventive actions). SEPREDH is a tool in the fight against corruption because it attacks phenomena such as impunity, it allows for strict and effective tracking of the use of resources allocated by international organizations for displaced persons, and supports the creating of prevention policies. The information processed by SEPREDH is requested from government offices and private companies in general.

As far as concerns modification to the demand for the information supplied by these systems, it is important to note that social phenomena and political events in our country (drug trafficking, guerrilla warfare, forced displacement) give rise to changes in the demand for the information generated by SEPREDH. In fact, the entrance into force of Law 975 of 2005, which codifies the judicial framework for facilitating the peace process and the reincorporation into civilian life of the outlawed armed groups, in addition to guaranteeing the victims’ right to the truth, to justice and to full reparations, has greatly increased the number of complaints and searches on this subject. On the other hand, as the Solicitor’s Office is able to mitigate problem situations, this decreases the number of such cases on SEPREDH, as happened with the complaints for fraud in the penitentiary system, after agreements that were reached with the National Penitentiary Bureau.

With regard to SIRI, the principle modification of the demand for information has manifested, over the last few years, as a notable increase in the number of requests for background checks by private companies. SIRI is also affected during the course of the election process, and at certain stages, there is a large increase in the number of requests for information on candidates for public office.

Although the codification of the disqualifications procedure and of human rights as superior to our judicial system is due to constitutional, legal and regulatory postulates, only the existence of systems like SIRI and SEPREDH can guarantee the implementation of those precepts.

The information on penalties and disqualifications that are recorded on SIRI comes in daily through two channels: a) from officials of the PGN (Offices of Assistant Solicitors or Offices of Regional Solicitors); or b) from other officials (judges, oversight offices, Chamber of Commerce). With the first channel, PGN officials have identification tokens to input information into SIRI, under secure circumstances. With the second channel, the employees of other offices submit information in a certain format and SIRI Group officials enter it. This is because there are government offices that lack sufficient computer technology to connect to the system. SIRI performs automatic validations to confirm whether the data are complete. It also detects inconsistencies and errors. When conducting a search, using identification numbers (Citizen ID Cards, Alien ID Cards, business identification numbers), SIRI finds matches according to the search terms in its database and pulls up the corresponding records, with which information reports are made that are printed on security paper and are published on the website (www.procuraduria.gov.co - See example of report from SIRI in Annex 1)

For its part, information is input into SEPREDH that is provided by the offices of assistant, regional, provincial and court solicitors. With SEPREDH, each PGN official registered in the system directly enters the information on complaints, requests or official letters concerning Human Rights and International Humanitarian Rights. These users authenticate the entry using a password. SEPREDH also has fields for validation and filters to guarantee data quality. SEPREDH has five modes: prevention, discipline, judicial intervention, justice and peace, and the National System for Integrated Services to Displaced Persons (Sistema Nacional de Atención Integral a la Población Desplazada – SNAIPD). It also has 3 processes: case docketing, analysis and decision. A search offers several fields for entries: complainant, defendant, city of event, and conduct, among others.

b. Implementation Challenges

SIRI and SEPREDH were had to face considerable challenges before they were put into operation, specifically:

Financial challenges. The office did not have sufficient resources to move forward with development (US\$500,000 for SIRI and US\$600,000 for SEPREDH). Support came from

the IDB Modernization Program (technological infrastructure), from AID for SIRI and from USAID-MSD for SEPREDH.

Political challenges. The mainly affected SIRI. Given the implications of the information the system was intended to manage, it was necessary to establish a legal requirement for government offices to report that data, which was achieved with the enactment of Law 734 of 2002 (Sole Disciplinary Code).

Legal challenges. It was necessary to create uniform standards for recording and issuing background data and reports. This challenge was also met with the enactment of the Sole Disciplinary Code and the corresponding regulations. With SEPREDH, there was already a basic compilation of standards concerning Human Rights, to which was added international rules and case law. Currently, this documentation is part of the system.

Cultural challenges. Both SIRI and SEPREDH required drastic changes in the way in which officials dealt with information management. In the course of three years, an operator's manual was issued on data automation, in an office that was characterized by a culture with a low level of computer knowledge. This barrier was overcome through the execution of a national training project in office computer use, and through the investment in technological infrastructure, all under the auspices of the Modernization Program: logistic and data networks, servers, computers, printers, software licensing and information systems development.

c. Systems Sustainability

SIRI and SEPREDH are sustainable for the following reasons: a) they were designed with the needs of the user in mind; b) their development is complete; c) they are supported by domestic rules (resolutions) that provide for assignment of specialized officials to manage and administer the systems; d) the financial resources involved are provided for in the Offices's operational expenses; e) SIRI and SEPREDH are going to be integrated with the Mission Information System (Sistema de Información Misional – SIM) (currently in progress), which will completely absorb the functionality of the preventive, disciplinary and judicial intervention areas.

Sustainability due to its basis in the needs of the user means that both systems were in response to real needs in the community. The PGN understood that without a tool that would allow for the creation of a system to handle administrative and criminal complaints concerning Human Rights, the Office would not be able to manage the citizen requests that were threatening to overwhelm its client services capabilities. SEPREDH guarantees quality and timeliness in response to citizens, one of the greatest failures of control offices in our subject area. In a short time, SEPREDH allowed us to strengthen the preventive public policies from the perspective of a control agency, in order to design mechanisms that were sufficient to guarantee access to information throughout the country. With SIRI, the manual procedures that were used previously in issuing penalty rulings suffered from serious problems (absence of controls in the penalty records, high percentage of errors, information filed without supporting documentation), which,

together with the need of hiring managers to know the background of job candidates, the need for citizens to be able to verify the backgrounds of candidates for government posts, and the needs of the State to establish those businesses and persons with which it can enter into contracts, explain the social legitimization of this tool, whose usage increased by 200% from 2002 to 2006.

The foregoing, together with the fact that these systems are currently the backbone of the most important mission functions of the PGN, support the opinion that there is a little chance that it will not survive in coming administrations.

3. PGN's website

In Colombia the massive use of information and communication technologies requires long term investments aimed at improving inefficiencies. There are three types of online services: transversal programs which require the participation of different entities in the design and implementation processes, for example online contracting and procurement procedures; sectoral programs, related to the automation of official errands such as social protection registries; and the portals for access, aimed at guaranteeing citizens reliable and fast access to public information.

Lastly, we must stress the importance of the website: www.procuraduria.gov.co. The PGN did not have a tool of this sort until 2003. With the advent of the Modernization Program, the website became the primary means of communicating with citizens, because it continuously supplies decisions, regulations, concepts, and publications in electronic formation as well as all the information on the contracting process. Through the website, citizens can file administrative or criminal complaints, and can write directly to the Solicitor General. The number of searches on this site has increased by 266%, between 2005-II and 2007-I. According to a ranking done by the School of Business Administration of the University of the Andes in 2006, the Solicitor's Office's website came in second place among the highly developed websites in Colombia.

Annex 1

SIRI CONSULTA CIUDADANA: Powered by Cyberaccount WorkFlow - Microsoft Internet Explorer

Archivo Edición Ver Favoritos Herramientas Ayuda

Atrás Búsqueda Favoritos

Dirección <https://siri.procuraduria.gov.co/webciddno/> Ir Vínculos >>

PROCURADURIA GENERAL DE LA NACION >>> **SIRI** GENERAL DE LA NACION

Permite consultar los antecedentes disciplinarios, penales, contractuales, fiscales y de pérdida de investidura con solo digitar el numero de identificación de la persona natural o jurídica.

CONSULTA DE ANTECEDENTES

Tipo de Identificación: Cédula de Ciudadanía Numero Identificación: *****

Aceptar

Listo Internet

SIRI CONSULTA CIUDADANA: Powered by Cyberaccount WorkFlow - Microsoft Internet Explorer

Archivo Edición Ver Favoritos Herramientas Ayuda

Atrás Búsqueda Favoritos

Dirección <https://siri.procuraduria.gov.co/webciddno/consulta.aspx> Ir Vínculos >>

SANCIONES PENALES

Siri	Sancion	Término	Fecha Fin Inhabilidad	Cod. Clase	Clase Sanción	Suspendida	Cod. Formulario
200090225	PRISION	10 Meses		1	Principal	Si	7
200090225	INHABILIDAD PARA EL EJERCICIO DE DERECHOS Y FUNCIO	10 Meses	27/05/2004	2	Accesoria	Si	7

Cod. Delito	Delito
10232	FABRICACION, TRAFICO Y PORTE DE ARMAS DE FUEGO O M (Ley 599 de 2000)

Cod. Instancia	Instancia	Autoridad	Fecha Providencia	Fecha Efectos Jurídicos
1	PRIMERA	JUZGADO 42 PENAL DEL CIRCUITO DE BOGOTA D.C.	14/07/2003	28/07/2003

Eventos

Siri	Causa	Entidad	Tipo Acto	Fecha Acto
200090225	PRESCRIPCION DE LA SANCION O PENA	JUZGADO 5 PENAL CIRCUITO DESCONGESTION BOGOTA BOGOTA DISTRITO CAPITAL(BOGOTA)	AUTO	16/02/2007

INHABILIDADES

Cod. Módulo	Módulo	Inhabilidad	Fecha Inicio	Fecha Fin	Siri
2	PENAL	INHABILIDAD PARA CONTRATAR CON EL ESTADO LEY 80 ART 8 LIT. D	28/07/2003	27/07/2008	200090225

Listo Internet

Transparency in the Administration of Judicial Systems The Experience of Transparency International - Colombia

Margareth Flórez

Access to information in Colombia

Transparency for Colombia (Transparencia por Colombia), in furtherance of its mission to care for public affairs and prevent corruption, has demonstrated that citizens encounter difficulties in gaining access to government information. In its study of guardianship due to violations of the right to request information (2004), we concluded that from 1995 to 2005, this was the most invoked right, with an average of 27%. The Political Constitution of Colombia established in Article 74 that “all persons have the right to have access to government documents, except as otherwise provided by law”; however, there is a lack of clarity about the exceptions, as mentioned in “Civil Society’s Tracking of the Implementation of the Quebec Plan of Action, 2005 Report on the Hemisphere”. This report states that Colombia’s rating is negative because: (i) those cases where the State is prevented from providing information are not explained clearly and precisely; (ii) the exceptions are not expressed as simply as possible; and (iii) the courts do not possess the authority to exercise control over the exceptions to access to information.

The lack of clarity on what is classified when the information is first made public is due, in part, to the multiplicity and scattered nature of regulations in this country. Colombia, which at the beginning of the 90’s made significant advancements in regulating access to information, has been left behind with regard to the legislative developments that have occurred in the region.

Access to public information and transparency are fundamental aspects for democracy in this region, and for the fight against corruption. Several documents on the Inter-American system address that issue.

Access to information in the Judicial System

The index on access to judicial information on the internet (2006) measures the accessibility of information on the actions of the judicial branch (courts of justice), and accessibility to information on prosecutor’s offices in the 34 Member States of the OAS. In 2006, Colombia was ranked 13th on Access to Information from Courts of Justice over the Internet, with a score of 39.4. Regarding Access to Prosecutorial Information, Colombia was ranked fifth with a score of 50 points. On the global index, Colombia was ranked ninth with a score of 43.6.

Between 2004 and 2006, the country’s score decreased (by 1.7 points) in its global score, which is explained by the lack of information about the case load and court activities.

Although in the 2006 report the Judicial Studies Center of the Americas (Centro de Estudios de Justicia de las Americas – CEJA) indicates there was a slight improvement in the information available in Colombia concerning funds for the prosecutor's offices, the report concludes that in Colombia the information that is available continues to be insufficient.

Some advances are also reflected in the index on Government Office Transparency, sponsored by Transparency for Colombia, but it still is not enough. This index measures and evaluates the institutional conditions that improve or reduce the risk of corruption in 170 offices at the national level, among which there are six offices in the judiciary. Furthermore, the index shows how transparent the entity is in fulfilling its mission, supplying information, performing its tasks, its budget, and controlling its own management. This Index is structured along lines of visibility, institutions, and penalties that include several indicators.

The results on the judicial sector point to a tendency towards moderate risk of corruption over the last two years (2004 and 2005), compared with the score for 2003, when the risk was half (see Table 1).

Although the judicial sector was ranked fifth in 2005, on the visibility factor, which evaluates the publicity of government acts, and the availability of government authorities to provide information to citizens, the results are less encouraging. Only two of the six offices earned scores over 70 points (see Table 2). The principle weaknesses are:

1. The information on the web is not sufficient, both in terms of the documents published on-line, and in terms of the data on the offices' actions, especially the Supreme Court and the Constitutional Court.
2. The information on contracting is insufficient. The State Council, the Supreme Court, the Constitutional Court and the Superior Council for the Judiciary did not achieve more than 50 points (medium risk level).
3. The State Council and the Superior Council for the Judiciary do not have high quality telephone lines to handle complaints and claims.
4. With regard to the offices' willingness to provide information to the Index, only the Office of the Prosecutor General for the Nation and the Bureau of Forensic Medicine supplied all the requested information.

It is worth noting that the average score was 77.1 for accountability to citizens. The Office of the Prosecutor General for the Nation, the Supreme Court of Justice and the Constitutional Court scored lower than average.

Transparency and Trust

The judicial branch is charged with guaranteeing and safeguarding respect for rights and compliance with societal obligations. Acts of corruption that can arise in the judicial branch create uncertainty about its function as guarantor of rights, and affect the life of

society, politics and the economy. Therefore, promoting transparency and preventing corruption in the Judicial Branch is a high priority.

Four circumstances are necessary for transparency: i) a decision on the part of the Judicial System to open itself to citizen scrutiny and to take necessary actions to bring that about; ii) interest on the part of citizens to scrutinize conduct and to get involved in the analysis and evaluation of public matters; iii) the existence of adequate information to learn about events and to have a dialogue between the parties; iv) the creation of public spaces where System agents and society can meet. Transparency contributes to an increase in citizens' trust in the system, to stimulating institutional self-policing, to legitimization of offices' actions and to a reduction in the risk of corruption.

The Colombia justice system, according to the 2006 LAPOP-USAID 2006 study, was ranked second in citizen confidence in the region, second only to Costa Rica. The Supreme Court of Justice and the Constitutional Court enjoy comparatively high levels of trust. Likewise, the results show the advantageous position of the state agencies responsible for supervising the protection of the rights of citizens.

Without a doubt, the Colombian justice system is more trusted by citizens and has made advances in raising the level of transparency and decrease the risk of corruption. However, it is important to keep in mind that the greatest threats to the Judicial System probably come from the context, marred by drug trafficking and the workings of illegal armed groups that erect barriers to courts' effectiveness, and expose the judicial system to risk of corruption and capture. In this case, greater transparency, greater control over the risk of corruption and greater legitimacy of its actions are indispensable for protecting the judicial system from these threats.

The Index: a tool for access to information to prevent corruption

The Transparency Index is based on information obtained directly from the offices being monitored, from secondary sources in the executive branch, and from control offices. This information is consolidated in a database and is processed. Subsequently, validation filters are applied to the information. The calculations performed and revised inside Transparency are sent to the offices for their input prior to publication. At this stage, any doubts about the process and the calculations are clarified, and observations are made about misinterpretations of any information so that appropriate changes may be made. It is then published and distributed.

The index is a tool that has grown a great deal. Through the years, the indicators have been fine tuned to provide a more complete understanding of each office and this has allowed us to set new goals for improvement.

Currently, the information generated by the Index manages to incorporate what little, disparate information there is on this subject into a set of data that provides offices with an accurate statement of their risk of corruption so that they can draft improvement plans to correct the problem.

The last survey year (2005) demonstrated an improvement by the majority of the entities monitored, reflected in aspects related to visibility – one of the factors that contributes most to decreasing the risk of corruption – and these indicators identify minimum standards for citizens' access to information. Although these processes are defined in current statutes, the offices confirm that the results of the Index have promoted this tendency towards improvement.

Regarding public policy, the Index constitutes a point of reference for analyzing the impact of public policies about the fight against corruption in the management of government offices, and for generating recommendations for drafting policies aimed at improving institutional management, transparency, and risk management.

The Office of the Vice President of the Republic, the National Planning Department (Departamento Nacional de Planeación – DNP) and the National Administrative Department of Statistics (Departamento Administrativo Nacional de Estadística – DANE) have shown an interest in facilitating and reinforcing the availability of public information, so that it can build up the Index and make it a usable tool for defining public policy. On the other hand, the government has defined measures for offices located in the high to very high risk groups for corruption.

Regarding public opinion, the Index has intended to supply information about the evolution of public institutions. The results have been provided to the mass media, thereby gaining visibility and raising public pressure on government offices to participate in the surveys.

In brief, the Index has become an effective tool for controlling or preventing corruption, given that: it has managed to create a rigorous and credible instrument that makes information publicly available that is useful for government bureaus, public policy decision makers, the media, academia, and civil and commercial organizations; it has managed to build an independent and respectful relationship with government offices, based on horizontal and meaningful dialogue; it has had the support, in most cases, of the highest levels of leadership at government offices, who have promoted improvement activities.

The financial sustainability of the Index is a question that has yet to be resolved. The Index has managed to gain financial and technical support from co-financiers; it has sought to build alliances with social organizations and research centers to channel our various resources to have a stronger impact, but also to win new allies.

From another angle, substantial strides have been made towards creating the necessary conditions for sustainability, in that the Index has sought to be and has become an objective and useful tool and source of information not only for government officials from the different branches of government, but also for the media, the private sector, academia, and social organizations.

It is possible that a change in the upper levels of government administration would see a change in their receptivity and commitment to implementing the Index. However, as long as there are resources to do so, the Index will track the government, generate pressure to prevent the risk of corruption, and will be a source of information for those interested in improvement.

Continuity in the application of the Index represents an important goal for Transparency and for the country, due to its independence and its ability to launch institutional changes.

Anexos

Cuadro 1
Entidades Sector Justicia y Niveles de Riesgo de Corrupción

Entidades Evaluadas	ITN 2005	ITN 2004	ITN 2003
Medicina Legal y Ciencias Forenses	<u>Bajo</u>	Moderado	Medio
Corte Suprema de Justicia	Moderado	Moderado	Medio
Consejo de Estado	Moderado	Moderado	Medio
Corte Constitucional	Moderado	Moderado	Medio
Fiscalía General de la Nación	Moderado	Moderado	Medio
Consejo Superior de la Judicatura	Moderado	Moderado	Medio
Promedio General	Moderado	Moderado	Medio

Fuente: Índice de Transparencia Nacional 2003, 2004 y 2005. Corporación Transparencia por Colombia.

Cuadro 2
Entidades Sector Justicia – Factor Visibilidad
Mediciones 2003, 2004 y 2005

Entidades	Vigencia evaluada		
	2003	2004	2005
FACTOR VISIBILIDAD			
Consejo de Estado	53,86	67,52	67,52
Consejo Superior de la Judicatura	57,96	71,02	68,64
Corte Constitucional	50,28	61,92	61,92
Corte Suprema de Justicia	54,44	61,92	61,92
Fiscalía General de la Nación	57,13	74,42	83,95
Instituto Nacional de Medicina Legal y Ciencias Forenses	62,59	76,62	91,71
Promedio	56,04	68,90	72,61

Fuente: Índice de Transparencia Nacional 2003, 2004 y 2005. Corporación Transparencia por Colombia.

Peru

Judicial Systems as a Tool to Investigate and Prosecute Corruption

Participants:

- 1. Flora Adelaida Bolivar Arteaga**
- 2. Katya Salazar**

Tools for the Fight against Corruption at Peruvian Prosecutor's Offices

Adelaida Bolívar Arteaga

The Prosecutor's Office of Peru is a constitutionally autonomous body at the service of society and the administration of justice that defends the law, public interests, the independence of jurisdictional agencies, and the proper administration of justice, thus strengthening the democratic, social State and the rule of law.

Its principal duties are:

- To file criminal cases and conduct investigations of crimes.
- To promote ex-officio, or at the request of a party, a suit in defense of the law and the public interests covered by Law.
- To safeguard the independence of jurisdictional agencies and the administration of Justice.
- To represent society in criminal proceedings.
- To prosecute criminal cases either ex-officio or at the petition of a party
- To take the initiative in the drafting of laws or to testify before Congress or President of the Republic concerning loopholes or deficiencies in legislation.

The Prosecutor's Office in Peru has incorporated several tools into the fight and control efforts against corruption, such as:

1. Crime Observatory (Observatorio de Criminalidad)

States develop a variety of efforts in order to identify and categorize conduct that violates the peace of society, in order to prevent and punish such conduct. For this reason, several means are developed to deal with the conduct, the most frequent being punishment. These means are intended to be proportionate to the conduct, to the severity of the damage caused, and the legal interest being protected. But when these criminal actions are interconnected with a single purpose, which is the basis of the organizational structure of the criminal court, we face a different power, which could establish criminal behavior at the individual level. This articulation of penalized conduct contains a series of expressions that have joined into a transnational phenomenon, which today has become the target of investigations that go beyond its juridical or criminological aspects.

Common and organized crime are affecting institutions, lifestyles, and the political, economic and social structures of countries. Addressing it becomes a priority for States and their agencies. This requires an in-depth analysis of means to control, prevent, treat and prosecute the crimes, and it therefore becomes necessary to have an information

system generated by several sectors responsible for the development of law enforcement policy.

In this sense, one of the keys to success in developing law enforcement policies is an integral understanding of all the variables and processes that facilitate, delay, accelerate or impede the expression of said socio-criminal phenomenon. Based on this premise, the Crime Observatory constitutes a center of knowledge and information that allows for a better understanding of different aspects and, at the same time, it will contribute to strengthening law enforcement policies in Peru.

The mission of the Crime Observatory is to promote the development of an information system that is objective, reliable, timely and comparable, in order to contribute to an understanding of socio-criminal phenomena that affect Peru. This permits a clear identification of modalities, tendencies and characteristics of the many faces of crime. Likewise, it allows for monitoring and researching criminal acts from intervention to final ruling, in order to implement better policies and prosecutions against crime.

The Crime Observatory of the Prosecutor's Office is still being developed and it is intended to be an interconnected system, with input from State agencies themselves. Once interconnected with the National Registry on Arrestees and Incarcerated Persons (Registro Nacional de Detenidos y Sentenciados a Pena Privativa de Libertad Efectiva – RENADESPPLE), the Prosecutorial Support and Work System (Sistema de Apoyo al Trabajo Fiscal – SIATF), the School of the Prosecutor's Office, (Escuela del Ministerio Público) y and the Forensic Medicine Institute (Instituto de Medicina Legal), this information system, through agreements with regional and international organizations, and public and private institutions, will form an interconnected structure for knowledge management and the generation of public policies on the fight against corruption and crime.

2. Office of Special Prosecutors for Corrupt Officials Violations

The corruption of government officials is a scourge that has afflicted Peru and its institutions since the days of earlier administrations; it is one of the main policies of the Prosecutor's Office to fight against this type of crime.

The case load managed by offices of Special Prosecutors is complex, not only due to the type of crimes, but also due to the number of complaints and/or defendants in each case, and because the transcendence of the events merits an especially careful review of each document of evidence, in order to determine the degree of involvement for each defendant. This is different from a regular prosecution that deals with one or two crimes committed by various people.

This Prosecutor's Office initiates a case against crimes of corruption by means of a *noticia crimini*, which, in 90% of the cases, comes from the press media (print, radio and television). When an investigation is opened, a request is made through the office of the

General Prosecutor of Peru for the involvement of the Office of the Comptroller General of the Republic, in order for that office to intervene at the scene of the crime and preserve information.

Simultaneously, the prosecutors that are developing their interrogatories prepare their questions based on the original *noticia crimini*, the information gathered by the Crime Observatory and the information that exists in the media. Therefore, it is quite important that the Central Management for Institutional Imaging of the Prosecutor's Offices has sophisticated equipment to record that main news broadcasts in the country, as well as an information bank for written press, which prosecutors can consult when looking for information.

After questioning the parties involved, prosecutors again refer to the Crime Observatory and journalistic sources in order to compare the information they received first-hand with the information that may have been given to some member of the media or statements made to the press by the parties involved.

3. Office of Special Prosecutors against Organized Crime

In the last decade, there has been an obvious and substantive increase in criminal activity in Peru, much of which is related to organized crime. These criminal gangs do not conduct their activities in isolation but, using sophisticated methods in terms of computers, logistics and budget, they have built themselves up and, in many cases, they cross national borders in order to commit their crimes.

The crimes principally associated with organized crime are: drug trafficking, trafficking in persons, alien smuggling (including adulteration and forgery of documents), money laundering, weapons trafficking, kidnapping and extortion, among others. All these crimes have the common denominator of use and availability of large sums of money. Criminal organizations do not only use these funds to acquire the latest generation of computer technology, sophisticated media and to develop a highly structured logistical support system. They also use the funds to corrupt officials in the public and private sectors, so that they can carry out their criminal activities.

This is why the Prosecutor's Office, in the face of this direct relationship between corruption and organized crime, has assigned certain Prosecutor's offices as Offices of Special Prosecutors against Organized Crime, with the intention of having them be fundamental elements in the prevention and fight against this sort of crime, which in many cases is sustained by the corruption of the authorities.

4. International Legal Cooperation and Extraditions Unit

With the entrance into force of the New Code of Criminal Procedure in 2006, the Prosecutor's Office was assigned the responsibility for directing, coordinating and

transmitting the requests for assistance submitted by foreign authorities, for the requests to be executed by the appropriate judicial and prosecutorial authorities of our country. For this reason, the government created the International Legal Cooperation and Extraditions Unit, so that office would be responsible for executing the investigations related to the international cooperation acts provided for in the New Code of Criminal Procedure.

This Unit fills a very important role by acting as a liaison between the Prosecutor's Office and the countries with which Peru maintains legal cooperation relationships, especially in cases concerning the fight against organized crime and corruption. It is the work of this Unit that is poised to open a quick and efficient channel to punish the defendants in these crimes.

5. Public Hearings

When Dr. Flora Adelaida Bolívar Arteaga assumed the post of Prosecutor for the Nation in 2005, she instituted the practice of holding public hearings on every occasion in which the General Prosecutor traveled for work outside the city of Lima. So far, there have been public hearings in the cities of Ayacucho, Piura, Huancayo, Cerro de Pasco, Cuzco, Madre de Dios and Huanuco.

These public hearings are intended to provide the populace with a place to voice their claims and complaints before the highest authority in the Prosecutor's Offices and, insofar as possible, look for a quick solution to their differences.

6. Expanding the Institute of Forensic Medicine into an Institute of Forensic Sciences

In the course of conducting their activities, prosecutors may require technical assistance to be able to find scientific evidence in the investigation. Part of this support is currently provided by the Institute of Forensic Medicine; however, the complexity of the modus operandi in the crimes requires them to take more and more active measures to provide the support for the prosecution's actions.

Because of this, the Prosecutor's Office has been working to expand the Institute of Forensic Medicine in order to turn it into an Institute of Forensic Sciences, which will serve as scientific reinforcement when required by the prosecution as they investigate crimes.

The Prosecutor's Office of Peru reaffirms its commitment to the frontal fight against corruption and other, related crimes, and to this end it will continue to develop tools and policies to allow prosecutors to address these crimes.

How Do Information Systems help the Judicial System in Peru play an Important Role in the Investigation and Prosecution of Corruption Cases

Katya Salazar

The Particularities of the Peruvian Situation

The first “Vladi-Video” broadcast on television where Vladimiro Montesinos is seen delivering several thousands of dollars to a congressman of the Republic for him to change political parties, his subsequent flight from the country, the resignation of President Alberto Fujimori by fax from Japan, and finally the exposure of a network of corruption run from the highest levels of the government, dealt a blow – one before and one after – to the fight against official corruption in Peru.

Aware that these events were unprecedented and that the State did not have legal mechanisms that were sufficient to address the problem of organized crime run by the government and of this magnitude, the Transition Government of Valentín Paniagua, first, and that of Alejandro Toledo, afterwards, established a package of anticorruption measures and created a specialized subsystem within the judicial system to take charge of investigating and prosecuting these crimes.¹

Likewise, the massive publicity about these events had an impact on citizens’ attitude towards acts of corruption committed by government officials: apathy and even a certain tolerance for government corruption suddenly became almost a national crusade against corruption, where citizens as well as public and private institutions began actively to support the work of the judges and prosecutors who made up the anticorruption subsystem.

From that moment on, the battle against corruption in Peru has been fought on different flanks: principally in the justice system, but also in the press, civil society and, to a certain extent, in academia (especially some universities). Therefore, to answer to the question, we will evaluate how these four, key participants have been using the separate information systems in existence in Peru to carry out their work.

First, I will analyze the work performed by the Judicial Branch in prosecuting the corruption cases concerning Fujimori and Montesinos. Secondly, I will briefly touch on the work of the Judicial Branch in the fight against corrupt acts committed by government officials, but not necessarily tied to the network led by Fujimori and Montesinos, and finally I will discuss the work of the Judicial Branch in investigating and prosecuting cases of corruption from among their own ranks, that is, its role in combating

¹ For more information, see: Status of the Anti-Corruption Subsystem, Six Years After Its Creation (2000-2006), Consorcio Justicia Viva (Consortium for Living Justice), July 2007.
At: http://www.justiciaviva.org.pe/publica/balance_subsistema.pdf

judicial corruption. Obviously, a common thread through all these points will be the role played by information access systems in the performance of the judiciary's work.

The Judicial System and the Fight against Corruption Concerning Fujimori and Montesinos

On the whole, the work performed by the so-called Anti-Corruption Subsystem² is positive and there are several factors that have contributed to its success, the most important being the prevailing climate in the country after Alberto Fujimori fled to Japan. During conversations with anti-corruption judges and solicitors, they did not mention having difficulty in obtaining the information they needed for their investigation, either from government agencies or private entities.

Although judges and solicitors have the legal authority to request and obtain this information, it would not have been unusual for them to have encountered obstacles – if they had been working on a different case. But in this case, conditions were favorable to prosecuting those responsible for the corruption offenses, so the potential obstacles disappeared and the authorities received the full cooperation of both the public and the private sector.

According to the same sources, the use of information posted on websites on the part of judges, prosecutors and solicitors was minimal. In some instances, it was useful as a lead, but of course if they found relevant information they preferred to have it in writing, in addition to signed and certified by the appropriate office.

Obviously, judges do not have to employ the Law on Transparency and Access to Information, since that is a tool for citizens. However, it is possible for average citizens to invoke that law in order to ask courts for information considered confidential. This happened with the “Procuraduría Ad-Hoc”³, who was asked to release information that they considered to be confidential and a key part of their strategy for requesting the extradition of Fujimori.

Although the anti-corruption judges claim not to have received such requests, what they stated about that possibility was that they would not disclose such information under any circumstances, based on the principle of “judicial investigation secrecy” provided in criminal procedural laws. This point should be discussed in depth, keeping in mind a few authoritative opinions – such as that of the Office of the Ombudsman – which touch on this principle.

² Consisting of judges, prosecutors and solicitors responsible for corruption cases concerning Fujimori and Montesinos.

³ An special unit within the Secretary of Justice conformed by attorneys dedicated to represent the Peruvian State in the corruption trials.

Finally, an important resource for anticorruption judges and prosecutors has been Law 27379⁴, which allows judges to adopt, at the request of prosecutors, exceptional means to limit rights even though there is no pending criminal proceeding. As we know, imposing measures to limit rights – including lifting bank secrecy, confidentiality of tax information, and the display and delivery of information held by government offices – is a power judges have within the framework of a judicial proceeding. Thanks to this law, a prosecutor can ask a judge to impose some of these measures before a judicial proceeding begins. This law – enacted a couple of years before the Law on Transparency and Access to Information – has been very useful in preventing the flight from this country of persons who participated in corrupt activities.

The Investigation and Prosecution of Corruption Cases Concerning Officials Not Linked to Fujimori and Montesinos

As mentioned by Dr. Bolívar – Prosecutor General for Peru – in the document she composed for the meeting organized by the IDB, there are special prosecutors responsible for investigating corrupt officials. According to that same document, in 90% of these cases, these prosecutor’s offices initiate their investigation after learning of the crime through the print, radio or television press. Therefore, the Prosecutor’s Offices have the necessary teams to record and process the information broadcast by the press.

It is worth asking whether the investments made in time and personnel to conduct these investigations actually bear fruit, keeping in mind that not all Peruvian journalists – and therefore not all of their allegations – are serious. On the other hand, allegations against government officials once they have left office have become somewhat commonplace in Peru, and a sort of political revenge. For these reasons, it is possible that the number of prosecutorial investigations does not necessarily reflect the efficacy of the Prosecutor’s Offices in investigating corruption cases.

The Judicial Branch in the Prosecution of Corruption Cases from Within Their Own Ranks

Through the work of DPLF in this region, we have been able to show that the progress of the fight against corruption is usually focused on the actions of the Executive Branch or the Legislative Branch, omitting acts of corruption that occur within the judicial system itself. In order to spotlight this subject, DPLF has recently published a Guide to Rapid Assessment and Policy-Making for the Control of Corruption in Latin America Justice Systems⁵ Guide for Flexible Diagnosis and for Drafting Policies to Control Corruption within Judicial Systems, and DPLF will soon publish the results of a study on Judicial Corruption and the mechanisms for combating it in Central America and Panama.

⁴ Published December 20, 2000.

⁵ Due Process of Law Foundation, Washington, D.C., June 2007

One of the main conclusions that we came to in this latest study is that for the majority of the citizens of Central America, judicial corruption is not merely the traditional sort of corruption, where there is an exchange of money for a particular ruling. For them, judicial corruption principally occurs when there is an affect on or interference with the judge's impartiality. In those countries, that usually happens through the systems for selecting magistrates, which are dominated by whether or not one belongs to a particular political party, and the excessive power wielded by the Supreme Court, which in almost all of that region's countries nominates, evaluates, punishes and removes judges.

In this sense, our principle recommendations to combat judicial corruption are, in fact, preventive measures. Although they do not directly attack the problem, they do drastically reduce the risk of corruption. Among other initiatives, our report recommends:

- i) Greater transparency in the process for selecting judges, which requires greater access to information about the professional and personal background of the candidates.
- ii) Full publication of judicial decisions
- iii) Greater access to systems on evaluation and discipline of judges, including information on disciplined judges.
- iv) Access to information about budgets and purchasing systems for good and services within the Judicial Branch.

It is worth mentioning that in the context stated at the beginning of this document, that is, a situation that was favorable to prosecuting and trying officials for corruption offenses, there are even now tens of judges and even former members of the Supreme Court who have been prosecuted for corruption, and many of them are currently incarcerated. In fact, the Prosecutor General for the Nation during the administration of Alberto Fujimori has been in prison for several years.

For its part, the Office of Enforcement in the Judiciary (Oficina de Control de la Magistratura – OCMA), the disciplinary office for the Judicial Branch, is playing a good role in the investigation of judges and court assistants. According to statistics published on its website, last year that office issued 15,380 resolutions and reports, of which 82 were proposals to suspend judges, 7 proposals for separation, and 174 proposals for dismissal (the proposals are address to another entity within the judicial branch).

I would like to mention that the OCMA website is very user-friendly, and it allows you to file a complaint by email and telephone, and it also allows you to evaluate the status of complaints over the Internet. However, as we all know, being able to file complaints by email or telephone and being able to follow up on the complaints is a step forward but it does not attack the problem. Therefore, I will highlight some initiatives that have been undertaken by members of civil society in collaboration with the state, and which are having an impact on the fight against judicial corruption.

The Role of the Press

But the fight against corruption also has another ally: the press. Through its investigations in cases of corruption and persons linked to such events, the press supports and provides leads to the Judiciary and the Prosecutor's Offices. In conversations with Peruvian journalists, they all agree that the Law on Transparency and Access to Public Information has been used infrequently, and when it is used, the information is not always timely and/or effective. Effectively, the law is little known and little used, but the reason seems to be not the law itself, but the context in which the law must be applied, characterized by a "culture of secrecy" and a misunderstood "esprit de corps" within institutions.

According to some of the journalists that were interviewed for this document, the information posted on websites is frequently used, and it can provide certain leads or relevant information, although it would not definitively explain a particular case. When more specific information is requested from government offices, this is when things get complicated, because – as these journalists stated – they normally need the information immediately and the process established by law requires that they first pay a fee to the National Bank, then make the request, then wait at least seven days. For a lot of journalists, this can mean losing the race to publish a scoop.

An interesting point that was mentioned by some of the journalists is that requesting information from government offices using official channels can sometimes be "counterproductive". They cited examples of persons with a great deal of economic and/or political power who were being investigated by the press, and when the press requested information on them through official channels, the information that was supplied turned out to be false, because that person's internal contacts in the institution (that is, bribery of officials) had blocked the correct information from being released. For this reason – claim the journalists – many of them prefer to rely on information obtained through a "contact" or "friend" in the office, not only because it's quicker to obtain the information that way, but also because the information is then more reliable.

Obviously, this does not fall within the scope of responsibility of the law, but it does have to do with the cultural question. If we want to eventually change the culture of secrecy that exists in Peru, we must use the law and, when appropriate, wait the amount of time provided by the law. If there is an unjustified delay or if we can prove that the information the government official supplied is false, that must be reported. If the request for information is denied, we must bring the matter to court and challenge the government office in court. This is the only way that old customs can be changed.

But besides this type of urgent and often sensitive information, there is still a lack of efficiency in the dynamic of demand and supply for public information: unjustified delays in responses or simply the lack of a response, a refusal to supply the information requested or supplying the wrong information, among others. Here the responsibility is divided among the government offices, which do not cease in regulating well the functioning of their offices or officials responsible for supplying information, and civil society, which does not use and challenge this law sufficiently.

Faced with the failure of government offices to comply with the law, one can always litigate the matter (an administrative or habeas data proceeding) or one can present his case to the Office of the Ombudsman. As for the first option, court rulings in Peru – especially in the Constitutional Court – have been playing a key role in the proper interpretation of the scope of the right to information and the exceptions thereto.

For its part, the Office of the Ombudsman has also been playing an important role, since the complaints that it receives for violations of the right to information enable it to identify the main problems under its purview, and then, through its ombudsman rulings, it establishes doctrine on this issue, which is later used by the courts.

Civil Society Organizations

Another important flank for combating corruption in Peru are non-governmental organizations (NGOs), which have also become an ally in the fight against corruption, whether it be through their research or analyses on subjects related to this subject – such as those conducted by the Legal Defense Institute (Instituto de Defensa Legal) through Living Justice (Justicia Viva)⁶ – or evaluations and tracking of information contained on websites for several government offices – such as those done by the NGO Informed Citizens (Ciudadanos al Día)⁷ – or litigation before local courts for rejections of requests for information made under the Law on Transparency and Access to Information – such as the suit filed by the Press and Society Institute (Instituto Prensa y Sociedad – IPYS)⁸.

To undertake these activities, the NGOs use information posted on the websites of government offices, many of which have proved useful but not always user-friendly for the common citizen. However, it is in the requests for information that the law enforcement problems can be more clearly identified, which are related above all to the “thorny” issues for government offices. These issues are questioned through litigation.

It is interesting that – according to claims by several colleagues – in addition to reticence to supply information because of the nature of that information, there is also reticence on the part of the office that requests the information. If the organization seems a little “uncomfortable” to the office being asked to provide the information – because it is monitoring or investigating it – it is likely that the office will never respond to the organization’s request.

There is still a long way to go in publicizing this law and its scope. But aside from the good and bad points of this law, what is important is using it and through this use push government agencies to adapt to this new reality of transparency and accountability for government officials that is spreading throughout the world.

⁶ See: www.justiciaviva.org.pe

⁷ See: www.ciudadanosaldia.org

⁸ See: www.ipys.org.pe

Universities

Universities, through the academic authority of their members and the work carried out at their legal clinics and other social programs and initiatives, also play an important role in the fight against corruption, and this fight could use additional resources.

The opinions of authorities and professors on subjects of national import (including subjects related to corruption) have a significant impact on the formation of public opinion. Based on conversations with some of them, they agree that it is necessary to use the Law on Access to Public Information fine tune it, publicize it, and make it more effective. Although at this time this has not been a line of research, they are aware of its importance and the potential it could have in Peru. One idea that came up during the conversations was to select topics or landmark cases (whether or not they were related to Fujimori) where information held by the State and made available to citizens (at least in theory) was essential for investigating the matter.

For example, a few days ago, the Peruvian Congress disciplined a congressman for hiring a fictitious advisor. There have been similar cases, where the press discovered that domestic servants had been hired as advisors, with the salary the employee was supposed to receive eventually wending its way back to the congressman. An interesting initiative would be to follow up – using the Law on Access to Public Information – on all the officials who work for Members of Congress identifying them and evaluating their professional qualifications for the jobs for which they were hired, in order to prevent frauds like the above-mentioned cases.

But corruption cases do not only occur in the hiring of officials but also in the awarding of competitive contracts and the purchase of goods and real estate. Using the Law on Access to Public Information, some examples of cases presented by the press could be selected, and relevant information could be obtained that might be useful for the Prosecutor's Offices or the Judicial Branch.

Such initiatives (which could be undertaken by universities as well as civil society organizations) would be very useful for publicizing and promoting the use of the Law on Access to Public Information in Peru.

The work of the Due Process of Law Foundation

The Due Process of Law Foundation (DPFL – Fundación para el DeIADBo Proceso Legal in Spanish), through its Judicial Accountability and Transparency Area, has been conducting research and studies on a variety of subjects related to judicial corruption, judicial transparency, and access to judicial information. Likewise, four times a year it publishes the journal *AportesDPLF*, with current articles on the above-mentioned subjects. Among its most recent publications is the “Evaluation of Judicial Corruption in Central America and Panama and the Mechanisms to Combat it”, and “Disclosing Justice: A study on access to judicial information in Latin America” (in print). Likewise, DPLF has been acting as an advisor to judicial authorities in the region and promoting the

establishment of alliances with civil society organizations and academic institutions in order to implement the recommendations included in their research and reports.

Ecuador

Transparency in the Extraction Industries

Participants:

- 1. Jorge Albán**
- 2. Orazio Belletini**

Transparency of Information: The Hydrocarbons Sector Ecuador

Jorge Albán

Based on my experience as an authority for the Ministry of Energy and Mining for a period of seven months of this year, I would like to propose these points for reflection which I hope will contribute to the aims of this Workshop on Access to Information as a Tool to Control Corruption.

The Status of Information on the Petroleum Industry

The Law on Transparency in Information was enacted in 2006 and was a milestone in policies to make public information more transparent in Ecuador. However, there is a lack of specific instruments to apply this law and it has not been internalized yet by government offices.

In the oil industry some advances have been made over the past few years regarding information systems on the oil industry in general, and the publication of basic statistics both by the Ministry of Energy and Mining as well as by Petroecuador, which include general indicators on the economy of petroleum as a whole. These statistics do not include specific information about how these companies operate – be they government or private companies.

These initial efforts are not yet complete, and the information has not yet been posted on-line due to a lack of investment. This has been made all the worse by a cultural component that is very typical of government agencies, that is, resistance by government officials to open and public management of information.

The economic, political and social importance of the petroleum products industry in Ecuador has made it a high-risk industry that is susceptible to having corrupt processes interfere in its management, involving both the public and private sectors. The production of the industry represents about 20% of the GNP; Petroecuador's (state-owned company) earnings represent close to 50% of the government's budget; the annual budget of Petroecuador represents 60% of the government's general budget and the investments made by private petroleum companies represent about 25% of the general budget. This state-owned company manages the entire production chain (exploration, production, transportation, refining, export, importation or petroleum derivatives, and domestic sales and marketing). Income from the petroleum industry, apart from being a significant source of income for the State, distributes funds to a number of public and local government institutions, without any specific system for accountability, particularly on the part of local governments.

Citizen Involvement for Access to Information on the Petroleum Industry

Citizens see the petroleum industry as a special case, to which they do not have access, and this can cause distrust and severe conflicts from an economic, environmental and social point of view. Petroleum industry projects are generally located in remote, marginal areas with a low level of official infrastructure and little attention from the central government, and so these projects exacerbate community demands. This has given rise to a political machine type system on the part of the government institutions and private companies to deal with the demands of these communities, without there being a system for accountability neither over the projects nor over the funds that are distributed among local governments and communities.

On this risky foundation, in a country that has experienced a severe process of deinstitutionalization, the public sector has lost authority, and there has been an increase in citizens' distrust about public and private institutions in general. Specifically, there is a great deal of citizen distrust of the central government and its management of the petroleum industry and the benefits of private production and services companies in that industry.

This distrust is made worse by the fact that information on the petroleum industry is generally insufficient, but it is particularly poor regarding economic data on specific petroleum projects: investments, costs of production, production itself, system for negotiating oil transactions in domestic and foreign markets, profitability, tax returns, purchases of raw materials and services, distribution of petroleum proceeds, use of these funds by the various institutions that receive them, and investments in society and the environment, among other points. Additionally, petroleum contracts have been managed almost as if they were a State secret, and they are inaccessible to the average citizen.

In sum, together with the weakness of the information systems with regard to the petroleum industry in general, the area of economic information is even more deficient, and Ecuador does not have a system in place for citizens to have direct access to this information. By the same token, there has not been a public policy of publicizing information and making it transparent, or bringing about a broad meeting with citizens concerning these subjects, which exacerbates the distrust and increases the risk of corruption.

Advances and challenges

In these circumstances, it is imperative to develop appropriate systems for information that are transparent and easy for citizens to access, and a policy of involvement in monitoring and debate on petroleum policies in general, with an emphasis on the destination of investments made with petroleum proceeds. In this respect, the main challenges are in:

- Developing systematic processes for submitting information on petroleum policies in general and petroleum industry activities in particular, which show

the distinct public and private parties in a single system that is accessible to all citizens.

- Establishing agreements among the various parties with respect to a policy on information management.
- Identify and enter into agreements with socially active parties on processes for training and organization that can give rise to a system for access to information and the ability to analyze the information.
- Establishing a system for accountability on the part of the offices that benefit from petroleum earnings.
- Review systems of evaluation and establishment of production costs for petroleum industry activities.
- Speed up the systems for certification and standardization of petroleum production that are run by the authorities (Ministry of Mining and Petroleum).
- Establishing public, transparent systems that decrease, as much as possible, the level of discretion available to the authorities in the purchase of raw materials and services.
- Development of a process to generate information on the costs to the environment and society of petroleum industry activities; and report to the communities on the costs of repairing the environment and compensating society.
- Undertaking an effort to sensitize and train officials to build a culture of transparency in the generation, construction, and publication of information among all the public and private parties involved. This effort must involve civil society to focus the demand for information and its management by organized groups from civil society.
- Undertaking certain legal reforms to increase the visibility of these processes, particularly with respect to the systems for setting costs and accurately establishing the areas where confidentiality should be maintained over information in certain technological fields.

In the framework of the policies defined by the current administration and the Minister of Energy and Mining, the first efforts will be aimed at:

- Open a public competition for modernizing and updating the information systems and establish a phone line for communications, at least initially, between the Ministry and the energy sector, particularly with the State oil company. The preparation of the terms of reference and the process for the public competition did not allow for awarding the contract for this system until my term has ended.
- Along the same lines, an agreement was executed with the Revenue Watch Institute, a private international organization aimed at establishing systems on transparent information for key sectors of the economy. The organization, together with the World Bank, has created these processes in other countries. The first step in the agreement is to conduct an analysis of the situation to design a model aimed at making the information transparent, to establishing an agreement that involves the private company, and to develop a process that

encourages involvement on the part of civil society in monitoring the information.

- Along the same lines, a new set of regulations was prepared and presented to the President of the Republic for the definition of production costs.
- Petroecuador established the supplies purchasing system on-line.
- The Ministry of Mining and Petroleum awarded a contract for services to update the webpage.
- Officials who favorably deal with all requests for information related to contracts were provided with annual investment plans for all petroleum companies.
- In the framework of Energy Sovereignty – aimed at controlling the diversion of subsidized fuel for unauthorized uses – there have been advancements in the establishment of information in real time between the Ministry of Energy and Mining through its control mechanism at the National Directorate of Hydrocarbons (Dirección Nacional de Hidrocarburos – DNH), the fuel distribution company Petrocomercial, the Internal Revenue Service (Servicio de Rentas Internas – SRI), and the Public Forces (Fuerza Pública) which cooperates in control. The system should be extended to businesses that market and sell fuel to the public.

Effectively, the entire processes for change in the information systems require time and the first steps have barely been taken in this regard, together with specific measures that constituted nothing more than an indication of the ministry's policy regarding this system. The process is, therefore, also yet to be developed entirely. In any case, the country has a Law on Transparency of Information that makes up a good, legal support to advance this line of work and there are various proposals from civil society, among which is one drafted in 2005 by the Foundation for the Environment and Society (Fundación Ambiente y Sociedad) that I chaired at the time. The proposal was for the development of a social monitoring system over the activities of the petroleum industry articulated at foundations, academic centers, government and local communities and professional associations, which received the proposal with interest. This reflects the social feasibility of developing mechanisms in this area.

In this regard, mechanisms such as those that were suggested should be worked on systematically, not only to improve the drafting of policy but also to fight corruption. This preoccupation has been implicit among the various participants but it should be worked on in a deliberate fashion.

Sustainability

To ensure the sustainability of the process, the following points must be kept in mind:

- The consolidation of the will of government policy to make advances in the process, beginning with the public sector and involving private sector parties. A central part of this line is the development of a new culture in favor of the transparency of information.
- The creation of an organized and active demand by society would allow the willingness expressed by this government to be maintained in the future, in the face of eventual political changes. This task is yet to be completed.
- Regarding the subject of financing, we should keep in mind that the initial start-up phase and the completion of the system lack sufficient funding, about where it concerns citizen participation. Work is needed on cooperation project, some of which were included in the agreement with the Revenue Watch Institute. Discussions were also held with the World Bank and there is interest on this point.
- To finance the maintenance of the system, the Law on Transparency establishes that those who request the information are to pay the corresponding costs. This situation faces two problems: for the purchase of information to be necessary, there should be some type of confidential information; and, there are local parties that do not have the resources to make such a purchase. In this regard, the ideal mechanism would be for the projects to cover internally the costs related with the production and distribution of information and encouraging citizens to participate.
- The Ministry should make an effort to design protocols and proceedings to bring about the production and distribution of information; and to guarantee that citizens turn their use of said information into an appropriate instrument to fight corruption and to participate in the drafting of policies, and also establishing levels of responsibility on the part of citizens, in order to prevent irresponsible use of said information.

I believe that the system could be more efficient at the local level. However, the effort that needs to be made to start up the system is significantly greater due to institutional weaknesses, both in the public and the private sectors. Finally, there is a very firm resistance in the part of local governments to making information about the use of resources transparent.

Increasing Access to Information and Transparency in the Extraction Industry in Ecuador¹

Orazio Belletini

I. Transparency and Access to Information in Ecuador

In spite of having a law on Transparency and Access to Public Information (LOTAIP), Ecuador is one of countries with the least transparency and the poorest quality of information in the region. The Latin American Index on Budgetary Transparency of 2003 ranked Ecuador in last place among ten Latin American countries.² The study showed that Ecuador suffers from serious deficits in such points as budget fiscalization, reliability of internal auditory systems, accountability systems and the quality and timeliness of information and statistics that are made public.

Information on the extraction industries in Ecuador is not exempt from this rule. In spite of the significant income earned by the extraction, oil and mining industries, the authorities responsible for generating information only comply 34% of the time with the Law on Transparency and Access to Public Information. This impedes accountability as well as horizontal and vertical control of key resources for the development of the country (annex 1)³.

II. The extraction industries in Ecuador

The oil industry represents 12% of Ecuador's GNP⁴. Petroecuador, the oil company owned by the State, owns 85% of the petroleum reserves while the private sector owns 15%. Although the rest of the economy will grow by 3.4%, estimates for 2007 are that the petroleum GNP will decrease by 9.8%, due in part to the reduced production of some oil fields. (Central Bank, 2007).

The Life Style Survey (2005-2006) estimates that 0.23% of the Economically Active Population (EAP) works in the petroleum sector (extracting and refining petroleum) and another 0.23% works in the mining and quarrying sector. In the mining sector, as opposed to the oil sector, most of the productive units are small to medium-sized, and therefore have a greater impact on a local economy. According to the Internal Revenue

¹ The author would like to express his thanks for the comments of Carla Bass, Carlos Chango, Rafael Donoso, Christian Gruenberg, Rebecca Nichols, Fernando Ponce and Sigrid Vásquez. A special thanks goes to Andrea Ordoñez, without whose ideas and arduous investigations it would have been impossible to include a large part of the information and analyses contained in this document.

² Although there is a version of the Index updated to 2005, Ecuador did not participate in that survey, and it is therefore impossible to know whether we have improved or worsened since 2003.

³ This evaluation follows the methodology developed by the FARO Group, which evaluates compliance with each of the items that Article 7 of the LOTAIP requires to be publicized on webpages for government agencies.

⁴ Information from the Central Bank of Ecuador (2006)

Service of Ecuador (2007), in 2005 companies and corporations related to the petroleum sector contributed 42% (US\$364 million) of the income taxes paid by all companies.

III. Where to Scrutinize Ecuador's Extraction Industry

Proceeds from the exploitation of petroleum resources are distributed in a disorganized and scattered way with little transparency. This generates opportunities for discretionary use, inefficiency, and politicization (World Bank, 2004). This is clear from the more than US\$2 billion that is annually allocated to subsidies for petroleum derivatives, which benefits the most privileged members of society (FARO Group, 2007)⁵. Additionally, petroleum income is directly distributed to more than 30 institutes or funds, which in turn distribute the income internally or to other institutions, without any tracking of how said funds are used (annex 2).

Furthermore, there are deficiencies in the information on the processes for adjudicating the exploitation of oil fields and mining licenses, or information on environmental impact reports and remediation. Although the Directorate General for Hydrocarbons (Dirección General de Hidrocarburos – DNH) is the agency responsible for ensuring compliance with existing regulations and monitoring the activities of private companies, there is no evaluation to determine the level of its regulatory capabilities.

Regulation of the government company, Petroecuador, is the responsibility of the Ministry of Petroleum and Mines, whereby the State is, at the same time, the production company and the regulator (Nichols, 2007). The relationship between the business, the State and the communities is also not well articulated, and no detailed record is kept on who submits, orders and approves a contract or report, which gives a great deal of discretion to the decision makers (annex 3).

Annex 4 provides a list of information on the most relevant aspects of the industry, in which only 40% have adequate levels of accessibility⁶. Therefore, below is an explanation of the information necessary to make it more accessible and transparent.

- Information prior to IADBing and award of contracts for petroleum exploitation.
 - What investment is being made and what is the potential income from the exploitation?
 - What are the social and environmental impacts, and what are the possible mechanisms to resolve them?
 - Who provides independent information to the two parties that could be involved in collusion (Petroecuador and private business)?
- Information during the exploitation, transportation and refining process.
 - What are the clear production and income goals? Will the goals be met or not?

⁵ Given that the national refineries are old and require investment, they generate effective losses during processing. 45% of what is refined in Ecuador is waste product that is not consumed in the country. Consequently, lighter and more refined derivatives are imported. The oil derivatives sold in Ecuador are subsidized by the State using petroleum proceeds.

⁶ To evaluate the level of accessibility, we determined its existence, level of availability and usability.

- How is the petroleum exported, at what price, and what international business mechanisms and financial tools will be used?
- Distribution of resources, both within and beyond the budget.
 - Where do the funds go that are obtained from the increased price in dollars for petroleum?
 - How are funds allocated and transferred that will be used to finance social, production and energy subsidies?
- Relationship with communities and with society.
 - What funding do oil and mining companies give to the communities? How much is this in relation to investment from municipalities and State social programs?
 - What mechanisms exist to make this information transparent?
 - How are the subsidies that are financed by petroleum proceeds distributed among the different segments of the population?

IV. How to make this information transparent

Making this information transparent requires work both on the supply side (State institutions linked to the extraction industries, government finances and private companies) as well as the demand for said information on the part of civil society organizations, the media and enforcement offices.

Given that the petroleum sector is highly centralized, it is necessary to increase the transparency of the government agencies responsible for designing and implementing petroleum policies at the national level. Therefore, it is crucial to build up the capabilities of the National Directorate for Hydrocarbons (Dirección Nacional de Hidrocarburos – DNH) in order to organize and publicize information about petroleum production and the income generated by that sector. On the other hand, in the mining sector where mining grants are approved and monitored at the local level, it is essential to incorporate a more decentralized management over this information.

Now then, the mere existence of information does not automatically guarantee a reduction in corruption. The experience of the FARO Group with its initiatives Focus on Finances (Lupa Fiscal) and monitoring compliance with the LOTAIP has shown that demand and utilization of information has not been encouraged to reduce officials' discretion in making decisions that affect the sector and society (Gruenberg, 2007).

It is therefore essential to “citizenize” the format and the channels by which information comes to citizens. This is especially important in the extraction sector, which is characterized by highly technical information and few parties that make decisions. Therefore it is necessary to publicize understandable information that is close to citizens' real world.

V. The Sustainability of the Strategy for Access to Information and Transparency

So far, the focus has been on the importance and challenges of designing and applying rules for transparency and access to public information for the extraction industries in Ecuador. However, the low level of compliance with the law by the main players in government has demonstrated that punishment and law enforcement are not sufficient to guarantee access to information and the fight against corruption.

The experience of the FARO Group in working with the Ministry of Economy (Ministerio de Economía – MEF) promoting financial transparency shows us the fundamental role that civil society organizations play in promoting an informed debate on transparency and the fight against corruption. In a country with so much institutional volatility, the role of civil society is essential for providing continuity in the application of strict rules on transparency and access to information⁷. Furthermore, career officials from agencies tied to the industry must be involved and supported so that they can become official defenders of the transparency initiatives.

Therefore it is imperative to have public policies that include standards on transparency and access to information that have been constructed by government officials and outside parties and that are binding for agencies in the public sector and that promote their incorporation into private petroleum and mining companies (Save the Children, 2005).

VI. Recommendations

Based on the experience of the FARO Group in promoting financial transparency, as well as with the peculiarities of the extraction industry, the following recommendations are proposed:

- 1) Promote and support the implementation of the LOTAIP in government offices with ties to the extraction industries. To do this requires supporting the development of capabilities so that government offices can publicize the information required by LOTAIP in a periodic, timely and usable way. Furthermore, government offices should also develop capabilities to respond to citizen demands for public information.
- 2) Publicize periodically the contracts executed between extraction companies and the government, as well as reports on gross income, expenses, sales volume, prices and taxes paid. Likewise, this requires greater transparency regarding all petroleum funds transferred to the State so their expenditure may be tracked, both within and outside the PGE. They must publicize what they receive, pay and spend.
- 3) Given the enormous amount of money allocated to financial subsidies, for the most part with petroleum proceeds and little transparency concerning their management, it is necessary to establish rules on transparency for State subsidies in order to reduce the risk of corruption and machine politics. Therefore, we propose the creation of a database for State subsidies that would make the criteria transparent regarding allocation of resources and transfers, in order to determine who gets what from petroleum proceeds

⁷ In Ecuador, over the last seven years, the average term of a Minister of the Economy is 100 days.

allocated for production and social subsidies, among others. From here, recommendations can be made on regulations to protect the values of transparency, equity and efficiency in the management of State resources.

- 4) Create incentives for development and adoption of transparency standards to be adopted by private companies and monitored by independent bodies from civil society. The level of compliance should be publicized and publicly recognized in order to increase the incentive for application of these standards.
- 5) Monitor the social and environmental costs of the extraction companies. It is essential to generate indicators of the levels of contamination and social conflicts that arise in the various territories where the extraction industry is active.
- 6) Given that it is impossible to face in isolation that challenge of promoting greater transparency in a sector with ties that go beyond the national borders, it is very important to document international best practices which might be applicable to the reality of our situation, and to promote the building of international alliances with initiatives that have similar objectives, such as “Publish What You Pay” (“Publica lo que pagas”); Revenue Watch of the Open Society Institute, and Global Witness, among others.
- 7) It is not enough to publicize information; it is equally or more important that this information be intelligible to the average citizen so that it can become an instrument of better management, greater transparency and higher quality of use of the income generated by extractions industries. Therefore, it is important to incorporate the use of Information and Communication Technologies (ICTs), community access radio and other broadcast methods to get the information to the majority of citizens and to thereby promote their involvement in the allocation, execution and monitoring of the petroleum and mining industries’ resources and activities⁸.

The challenge, then, is to implement a strategy that encourages access to and transparency of information as an end in itself (accessible information as a public good) and as a means to promote better management, better horizontal and vertical control, and a better impact on the well being of the population through the proceeds of the extraction industries.

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⁸ By way of example, the FARO Group has developed a blog that allows for an Exchange of information and experiences among over 60 organizations that work throughout Ecuador with the goal of improving transparency and the impact of social investment. See: www.inversionsocial.ec.

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VIII. Glossary

PGE – Presupuesto General del Estado

FODESEC – Fondo de Desarrollo Seccional

CEREPS – Cuenta Especial de Reactivación Económica, Productiva y Social

FONASA – Fondo Nacional de Saneamiento

FEP – Fondo de Estabilización Petrolera FAC – Fondo de Ahorro y Contingencia

FERUM – Fondo de Electrificación Rural y Urbano Marginal

FOVIAGRO – Fondo de Viabilidad Agropecuaria

FEISEH – Fondo Ecuatoriano de Inversión en los Sectores Energéticos e Hidrocarbúricos

FONAFOR – Fondo Nacional de Forestación

ISSFA – Instituto de Seguridad Social de las Fuerzas Armadas

INNFA – Instituto Nacional del Niño y la Familia

PGE – Presupuesto General del Estado

FODESEC – Fondo de Desarrollo Seccional

CEREPS – Cuenta Especial de Reactivación Económica, Productiva y Social

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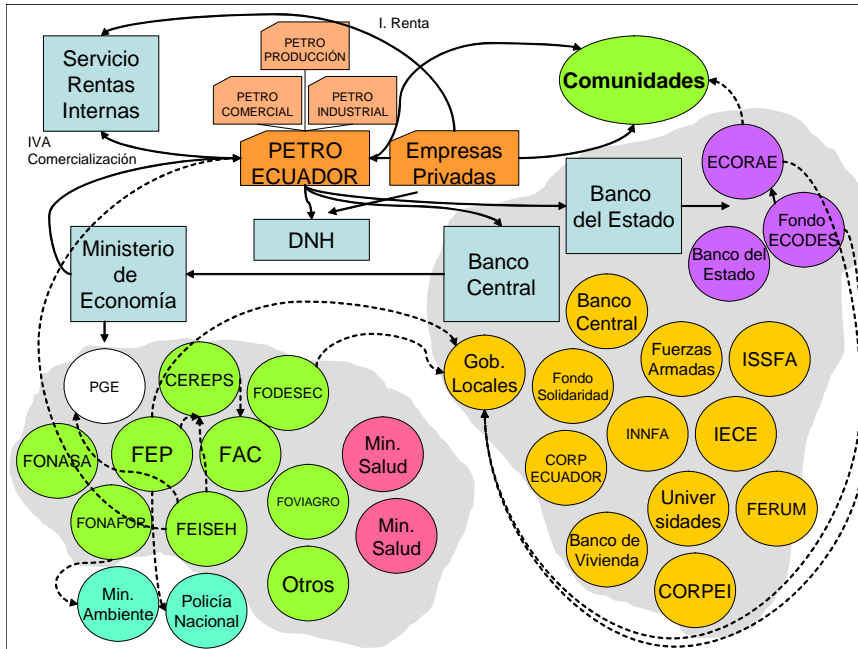
IX. Anexos

Anexo 1. Cumplimiento de la LOTAIP de las instituciones vinculadas con las industrias extractivas

Entidad monitoreada	Porcentaje de cumplimiento
Petroecuador	58,33
Petroproducción	51,04
Ministerio de Minas y Petróleos	42,71
Petroindustrial	38,02
Dirección Nacional de Hidrocarburos	32,81
Petrocomercial	21,88
Ministerio de Electricidad y Energía Renovable	0
Promedio	34,97

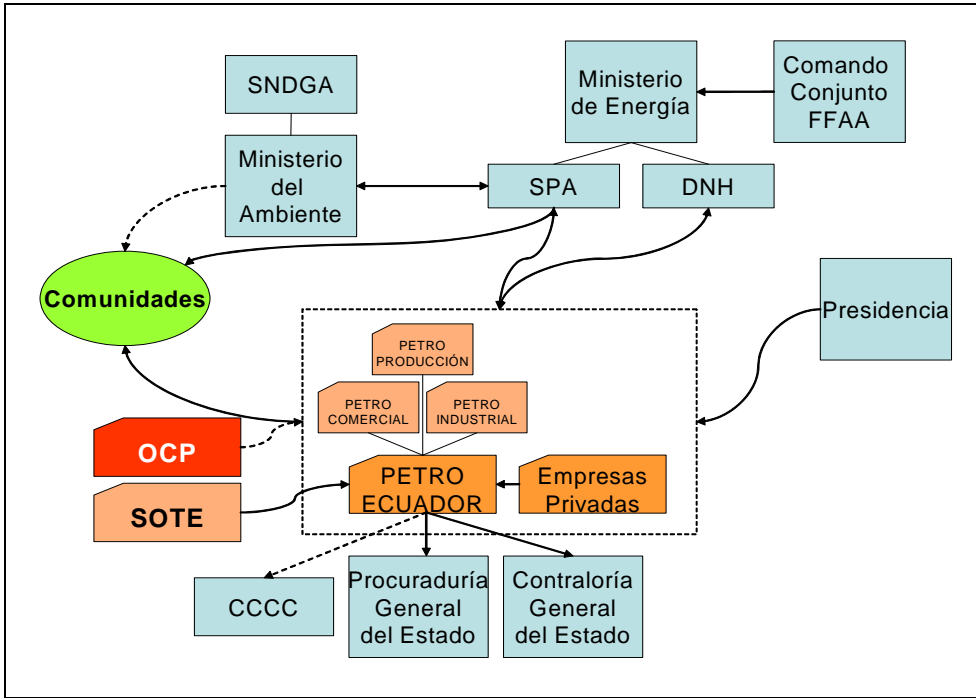
Fuente: Grupo FARO, 2007

Anexo 2: Flujos de transferencias de los recursos provenientes del petróleo



Fuente: Grupo FARO, 2007

Anexo 3: Flujos de información entre las organizaciones de la industria extractiva en Ecuador



Fuente: Grupo FARO, 2007

Anexo 4: Niveles de transparencia y accesibilidad de la información existente en las industrias extractivas

Tipo de Información	Nivel de Transparencia	Comentario
Información Financiera		
Dentro del Presupuesto General del Estado	Aceptable	El MEF tiene niveles altos de transparencia en presupuestación pero menor transparencia en la ejecución.
Fondos de Ahorro de Rentas Petroleras	Medio	Poco seguimiento a los rendimientos de los fondos, el precio con el que se calculan sus ingresos o su utilización. Existe seguimiento a CEREPS/FEISEH.
Fuera del Presupuesto General del Estado	Bajo	MEF tiene poco o ningún control sobre estos presupuestos. Alta discrecionalidad de cada una de las instituciones.
Metas, Resultados	Bajo	MEF e instituciones públicas en general, tienen poca información sobre lo que se realiza en específico con

Objetivos de Inversión		los recursos asignados.
Información de Gobiernos Seccionales	Bajo	Los gobiernos seccionales proveen información superficial al MEF, se conoce poco sobre sus inversiones.
Impuestos	Medio	El SRI entrega información pública bajo solicitud.
Autogestión DNH	Bajo	Poca información disponible sobre la autogestión de recursos. Muchas veces esta no se registra en el presupuesto.
Producción Petrolera	Media	Estadísticas de la DNH; Boletín del BCE (falta información completa: se necesita información de producción, precios, regalías por tipo de contrato, etc.)
Exportaciones	Bajo	Poca información sobre los mecanismos de exportación, herramientas financieras utilizadas en el mercado externo.
Ingresos Petroleros	Bajo	Se conocen datos aislados sobre producción, exportaciones, importaciones y asignaciones a diferentes actores, pero esta información no está centralizada, actualizada o detallada.
Recursos a comunidades		No existe un seguimiento sobre el tipo de recursos entregamos a la comunidad (bienes de consumo, infraestructura, educación) o su valor monetario.
Otro tipo de Información		
Contratos Vigentes	Aceptable	Los contratos de explotación vigentes de Petroecuador están disponibles en la página Web.
Proceso de Licitación	Bajo	No se tiene un acceso público/oportuno y transparente sobre las ofertas obtenidas para las licitaciones.
Decisiones Discrecionales	Bajo	No se lleva un registro de las decisiones discrecionales que la legislación permite (Ej. FFAA y Presidencia).
Estadísticas de producción (Pozos, torres, estimaciones de reservas, transportación)	Medio	Las estadísticas existen en la DNH pero no están actualizadas en la Web.
Autorizaciones	Bajo	No existe exigibilidad sobre las personas responsables que autorizan informes, trámites o contratos.
Conflictos Socioambientales	Medio	La información sobre los problemas con las comunidades está disponible pero no está sistematizada

Informes Ambientales	Medio	Estos pueden ser accedidos pero no están disponibles Web.
PrUNnciamientos Oficiales del Ministerio de Ambiente	Bajo	No existe un registro sistematizado.

Fuente: Grupo FARO, 2007

Chile

Transparency in Pension Systems

Participants:

- 3. Roberto Godoy**
- 4. Rafael Anta (PowerPoint Presentation)**

The Reform of the Pensions System in Chile and Mechanisms for Accessing to Information

Roberto Godoy Fuentes

The Government of Chile is currently in the midst of a legislative debate on a bill on the most substantial reforms of the pension system since the system allowing for individual investment was begun in the 80's. This new retirement system combines a strong pillar of solidarity with the pillar of mandatory contributions, and it is expected to be paying benefits in July 2008.

This reform to the pension system is designed based on a number of principles for a civilized society and management principles that have been incorporated regularly in drafts of public policies that could be called "second generation." These principles include, among others, the recognition and codification of social rights for men and women; the creation of a benefits system that incorporates explicit social guarantees, especially through the Basic Solidarity Pension (Pensión Básica Solidaria – PBS)¹; intergenerational equity; and relieving the State of its role in distributing public funds, drafting policy and regulatory control over the system. This finds expression in new government institutions, the creation of information systems and the incorporation of instruments to promote and provide incentives for price competition, and to improve management, coordination and public-private sector integration in the distribution and administration of pension payments.

Now then, from the analytical point of view proposed for this workshop – that is, how access to information contributes to control of corruption – it is possible to highlight a few concepts included in the design of this reform, and certain lessons that were learned during the implementation process, as follows:

1. Institutional mechanisms to supply information to users:

One of the biggest weaknesses in the current pension system is how very little citizens know about it. This affects their trust in the people operating the system, and leaves the operators with less support and legitimacy. This lack of knowledge is explained in part by the technical complexity of the subject, the fact that participation in the plan is mandatory, the users' lack of sensitivity to the system's price, and by the intangible nature of the product (a pension).

The reform deals with this matter by incorporating the following measures:

¹ PBS will be approved for men and women who meet age requirements (65 years old or older), residency requirements and belong to the 60% of the country's population with the least income, who have not contributed during their working lives to the mandatory retirement investment system, and therefore cannot receive benefits from a regular pension. This concerns a transfer of money, paid by the State, which allows recipients to cover the most basic personal needs during their senior years.

1. The creation of a territorial network of client service centers that will offer a full range of services on benefits information and plan orientation to all system users. This network is intended to make information more accessible to citizens and to reduce conflicts of interest among system operators.
2. The creation of user committees for each private provider, which will be made up of representatives from citizens currently paying into the system, pensioners, employers, and an independent academic. At this level, the committees will evaluate the general functionality of the pension system. There will also be a user committee at the national level that will submit general recommendations to improve the system.
3. The creation of an educational fund of annuitized benefits intended to finance incentives dealing with the promotion, education and culture.

2. Mechanisms to promote more information and transparency on the part of operators:

The high level of concentration of the pension fund administration industry, the significant asymmetry caused by the technical complexity of the system, the lack of available information on the costs of the account management, together with the low levels of interest on the part of the plan participants in being informed about the management of their funds and how the system works, have contributed to a negative perception by citizens of the industry's transparency.

In order to overcome these weak points, a few instruments and courses of action have been planned:

- a. Instruments² intended to promote the incorporation of new entrants into the pension fund administrator industry, in order to increase the competitiveness of the prices.
- b. Increase in flexibility of fund administrator companies' investment policies, giving rise to a situation that guarantees sufficient balance between profitability and risk.
- c. Increase in the strength of the role of regulation and investigation of fund administrator companies through the creation of an Office of the Superintendent for Pensions.

3. Mechanisms for information and control of the government offices involved in the system:

An important, recent development included in the reform that will contribute to improvement in the information and control over the pension system, especially with regard to the government offices involved in the system, is the organization of the

² Among the new tools, it is worth mentioning the request for contract proposals on the portfolio of new plan participants, the authorization of bank partners with exclusive transaction rights, the authorization of subcontracting functions and a separate request for proposals for disability and survivors' insurance.

institutional architecture, which will differentiate with a great deal of specificity between the role of public management, the role of regulations and investigations, and the role of benefits administration, assigning each one to a different government office.

In this regard, under the new institutional design, the regulatory body for the general contributory system, that is, the Office of the Superintendent for Pensions, will also be responsible for investigating cases under the new system of solidarity pensions. That system will be managed by a government office called the Social Benefits Bureau (Instituto de Previsión Social – IPS). This requires applying the same standards of investigation to private administrators and government operators, thereby reducing the risk of a future discretionary action on the part of a government operator.

On the other hand, there are two critical points to be made in this area, from the point of view of achieving a successful implementation of the reform and the guarantee of the system's information and transparency. One of these points is the relationship with the determination of business rules or eligibility requirements for future beneficiaries of the solidarity pension system. It involves designing, implementing and validating an information system that ensures that the proper focus is put on benefits, to the exclusion of any exercise of discretion in allocating the benefits. To a large extent, the success of the implementation will be due not only to the identification of and payment to beneficiaries, but also objectivity, accuracy and trustworthiness that come from paying benefits, the selection criteria, and the information protocols that are used.

The other critical factor for success is the design and implementation of a benefits information system to be administered by IPS that will constitute the central information repository of the model for approving solidarity pension benefits. This will require creating a large information transaction machine that will provide intercommunication to a group of government offices that now manage their information under structures with little cooperation or integration. The challenge in this area is not only technological interconnectivity, but rather eliminating the resistance that arises in significant parts of society to having the State, and more particularly the government, manage such a large amount of personal data that could be used for purposes other than for strictly governmental reasons. The preeminence of technical criteria in the configuration of the system will help reduce this resistance and will make it possible to obtain a reliable, available and auditable information system.

Special Panel

Presenters:

1) Laura Neuman: Pros and Cons of a Sectoral Approach to the Fight against Corruption

2) Eva Bratholm: Access to Information and the Scandinavian Transparency Model (PowerPoint Presentation)

Sectoral Approach to Transparency: Pros and Cons

Laura Neuman

As the Inter-American Development Bank develops its methodology for supporting transparency to fight corruption, based on my personal experiences in the field, I would like to provide some reflections on the advantages and disadvantages of various approaches.

Broadly, I contend that there are three distinct strategies for promoting transparency emerging, including comprehensive; targeted; and sectoral. The comprehensive approach may be described as more holistic with the primary objective of establishing an access to information law that is fully implemented, enforced and used. Some examples would include the civil society campaigns in Nicaragua and Honduras or the Government of Mexico's passage of the law and creation of the Federal Institute for Access to Information. The targeted approach, on the other hand, is an interventionist response to an identified problem. Targeted transparency requires "disclosure of specific factual information" with specific aims such as "to reduce needless economic losses to investors from corporate deception, to prevent deaths and injuries, to improve the quality of public services, or to fight corruption."¹ Instances of targeted transparency in the United States may include nutritional labels on food, vehicle emissions, and the toxic waste registries. Finally, the sectoral approach could be defined as the attempt to highlight ongoing transparency efforts or to advance a greater flow of information in one area of public administration, without engaging all of government or seeking specific all-encompassing legislation. Sectoral transparency initiatives include the Extractive Industry Transparency Initiative, the Global Transparency Initiative focused on the international financial institutions, and the various budget transparency projects. Both the targeted and sectoral approaches may be characterized by their reliance on disclosure (whether voluntary or mandatory) rather than compulsory responses to solicited information.

This paper focuses most directly on the pros and cons of a sectoral transparency strategy, particularly vis-à-vis the comprehensive approach. Briefly, I argue that a sectoral transparency policy allows for a more immediate and deeper penetration into the designated subject area whereas a comprehensive approach provides for a delayed and diffuse but potentially more sustainable transformation. I conclude with a number of suggestions for advancement.

Benefits of a Sectoral Transparency Strategy

The sectoral approach allows government, civil society stakeholders and the donor community to focus transparency efforts in one specific field or subject matter. This concentrated engagement may translate into more immediate results and impact, thus

¹ Fung, A., Graham, M., and Weil, D., Full Disclosure: The Perils and Promises of Transparency, xiii, Cambridge University Press, 2007.

providing greater profile to the benefits of increased transparency and access to information.

A sectoral strategy takes advantage of the existing legislative framework and policies, and better integrates these with the policy reform notion of greater access to information as a tool to fight corruption. For example, in the area of procurement, there already may exist a public procurement law, policies related to procurement oversight by independent bodies, or public contracting statutes. By engaging at the sectoral level, these extant laws more effectively can be incorporated into the transparency efforts where appropriate or highlighted as in need of reform.

Moreover, in sectoral initiatives, it is often easier to identify and engage interested stakeholders. These groups already are invested in the theme, and often understand the issue more fully and are more amenable to utilizing new advocacy tools, such as access to information policies. The interested parties are more specialist and capable of adapting the new transparency mechanisms in their ongoing efforts. For example, the recently formed medicines transparency alliance draws upon entities such as the health ministry, the pharmaceutical companies, and NGO's interested in public health to foster support for the need for greater access to information. It does not create parallel structures, but rather provides an additional tool for already dedicated advocates. This allows the more effective and efficient creation of constituencies prepared to promote efforts toward greater transparency and the fight against corruption, and perhaps build a critical mass of persons dedicated to transparency.

Developing and refining governmental steps, such as implementation plans and training, and civil society campaign strategies may be more easily accomplished in the sectoral arena. Narrowly defined projects are more amenable to change, allowing the application of lessons learned.

In summary the key advantages to a sectoral transparency approach are:

- ✓ More immediate results and impact
- ✓ Builds on extant legislative framework
- ✓ More easily identifies and engages existing constituencies
- ✓ Develops and refines methods

Disadvantages to a Sectoral Transparency Strategy

Although there are clearly benefits, an exclusively sectoral approach to transparency has concomitant disadvantages. Perhaps the most critical risk is that a purely sectoral strategy will create the illusion of transparency rather than lead to the establishment of a full and enduring access to information regime. In other words, could sectoral transparency become a panacea for genuine reform? Applying transparency to one slice of government may not effectuate a transformation in overall behavior nor imply the change of culture necessary to decrease traditions of secrecy. If all efforts and resources are placed in one sectoral area, this may not translate into the necessary broad and long-

lasting public administration reforms. In Uganda, there is the much touted budget transparency in education initiative that has driven real change in the education system, but has not had an impact on Uganda's general establishment or application of transparency policies and arguably there is no greater overall transparency in the state.

Without a comprehensive legislative framework, it may be more difficult to enforce the new schematic. A key component of the holistic approach entails the passage of an enforceable right to information; this is rarely present in a sectoral or targeted approach. Lacking mechanisms to enforce access to sectoral information, the immediate gains may not be sustainable as resources are moved to other areas and government priorities shift.

The sectoral approach often leads to duplication of efforts and uncoordinated disparate initiatives, thus diffusing efforts. For example, in Peru there have been efforts at increasing transparency in the extractive industries, in budgeting and in judicial reform which have not sufficiently engaged with each other or with the activities to more fully entrench the access to information law.

Furthermore, it may not engage those civil society groups that have a long-term commitment to increasing access to public information. Depending on the sector chosen, one could imagine that the more generalist organizations dedicated to the promotion of democracy, good governance and human rights may be side-lined as resources are targeted to more specialist NGO's such as those that focus on health or environment issues. In Jamaica, the leading voice for access to information was Jamaicans for Justice, a more generalist civil society organization. Had the sectoral approach been utilized to promote access to information in public registries, for example, JFJ's incredible labors would have been ignored, and worse they could have been undermined.

Finally, in practice the sectoral approach may not be feasible. There are few, if any sectors within the public administration, that are independent. In developing a thematic approach, all entities concerned must be drawn in. For instance, one may suggest a focus on increasing transparency and access to information in the area of water. However, this could conceivably involve the ministries of finance, environment, health, sanitation, agriculture, public administration, public works and infrastructure and offices of contracting and procurement, as well as local government. Identifying all of the links may be timely, and properly engaging the various elements may undermine the values of the more limited strategy.

In summary the key disadvantages to a sectoral approach are:

- ✓ May not lead to overall greater transparency
- ✓ May not effectuate the necessary change in public administration
- ✓ Without enforceability, may not be sustainable
- ✓ Duplication of efforts and diminished coordination
- ✓ Marginalizes groups already engaged in the promotion of access to information
- ✓ In practice, it may not be feasible

A combined approach

I would urge governments, civil society advocates and the donor community to consider a combined approach to access to information, with efforts aimed at both a sectoral and comprehensive methodology. Simultaneously supporting the two different types of initiatives will allow the advantages of the sectoral approach to flourish and negate some of the potential disadvantages. As indicated, the sectoral approach can provide for immediate change and this impact may be used by the generalists in their quest for a comprehensive access to information law. The lessons learned from the more targeted sectoral focus can be applied to all of government as the comprehensive strategy generates an access to information law. Moreover, donor support of both strategies will engage all interested stakeholders and encourage greater coordination and promote the links between relevant constituencies. Finally, if successful, a dual-pronged strategy will secure the more immediate results of a sectoral approach while assuring the transformation and sustainability of an enforceable comprehensive transparency regime.

