



Let the Sunshine In: The Making of the Transparency and Access to Information Law in Honduras

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On November 27, 2006, the Honduran Congress approved the Transparency and Access to Information (ATI) Law. As an active participant in the G-16¹ and pro-tempore chair of its Transparency Roundtable during the time the bill was under discussion, the World Bank (WB) contributed in different ways to facilitate an open and quality policy debate. This note recounts this process to illustrate how the WB can act as a catalyst in the context of a domestically driven agenda, as envisioned by the Governance and Anticorruption (GAC) strategy.

The first part explains how the right of access to information emerged into the public agenda initially pushed by a civil society organization (CSO), and gradually turned into a movement supported by a widespread coalition. The second part describes the ups and downs of the policy-making process surrounding the ATI bill, the champions that emerged in the process, and the resistance from vested interests. The third part analyses the role of the international donor community in general, and the WB in particular, which has been praised by civil society, Congress, and government representatives as being supportive and positive. While it is still early to assess its impact, the passing of the law offers an excellent entry point for advancing further public sector reforms and strengthening accountability of public institutions.

A process set in motion from the bottom up

In 2001, a group of journalists founded C-Libre (Freedom of Expression Committee) with the

goal of safeguarding the right to freedom of expression in Honduras under mounting pressure from the public and private sectors against an independent media. During its first two years, with funding from the Ebert Foundation, UNDP, and the Danish cooperation, C-Libre's members visited the Organization of American States (OAS) rapporteur on Freedom of Expression, and learned about other countries experiences in this area. At the end of 2002, C-Libre organized the first National Dialogue on the Right to Information and Freedom of Expression, during which it commissioned Leo Valladares, a well-respected law professor and former human rights commissioner, to elaborate a draft bill on the right of access to information. In 2003, after a visit of the the OAS Freedom of Expression rapporteur,² the draft bill was officially presented at the Second National Dialogue.

A twofold strategy ensued: first, C-Libre initiated a grassroots mobilization through local roundtables throughout the country to raise awareness about the right to information beyond the capital city. Second, C-Libre circulated the proposal among policy makers and members of the donor community, and secured support from a variety of stakeholders, including the National Anticorruption Council (CNA) and continued strengthening its ties with the ATI international movement. Visits to Mexico and Panama were organized as well as visits from international experts to Honduras, with support from the donor transparency roundtable.

Taking the battle to the political arena: confronting vested interests' influence

By 2004, the Honduran ATI movement had been able to build a widespread coalition. The regional consultations, coupled with discussions held with international experts from other countries, contributed to sustaining the issue in the public agenda.

The Maduro administration (January 2002–January 2006) reacted by trying to introduce its own bill in Congress. But civil society's proposal had gained enough legitimacy to force the Executive representatives to concede that “the proposal promoted by the citizenry and social organizations not only had popular and international support, but also had legal and substantive coherence.”³ After several meetings with the president of Congress and with leaders of all the parties, the proposal was turned into a bill backed by the five parties represented in Congress. The bill was then referred to a House legislative committee.

The events that unfolded throughout 2005 highlighted the interests at stake. The legislative committee delayed its discussion and finally, due to pressures from influential sectors, declared that the bill was an “extremely sensitive legal instrument.”⁴ Opposition to the bill came from the Honduran Private Sector Council, the Association of Media Owners, and the Journalists' Association. The joint opposition of business and media groups, which may be attributable to the concentration of media ownership and the nature of business conglomerates, owed mainly to concerns about the disclosure of contracts with the government. While in other countries the media have provided critical support for the adoption of ATI laws, in Honduras mainstream media rallied against its approval in an attempt to preserve its monopoly over public information.

A counter-reaction by civil society followed. In mid-2005, a formal alliance was established under the name of Alianza 72 in reference to the Honduran Constitution's article 72 on freedom of expression. Based on the efforts initiated two years earlier, backed by 22 organizations—with a leadership role played by C-Libre—and with financial support from the OAS Trust of the Americas Foundation, Alianza 72 set out to

mobilize popular support for the approval of the ATI bill and counteract the resistance of vested interests by adding up new supporters, resorting to alternative communication channels,⁵ and keeping the debate afloat. Regional dialogues⁶ and national workshops were organized with assistance of WBI and PREM to gather support from the two main veto groups, i.e., private sector and media groups.⁷

Shaping political incentives: the emergence of champions within the Executive and the Legislative Branches

The timing of the political process offered new opportunities for the movement. The popular mobilization initiated two years earlier was paying off. Public demand for greater transparency was a central issue in the political campaign and candidates from different parties, including presidential candidate Manuel Zelaya Rosales, promised to get the ATI bill passed if they won the elections.

True to his promise, the bill was placed for floor action after Zelaya's victory in November 2005. The new president and his legal advisor, Enrique Flores Lanza, with past ties to the non-profit sector, became champions of the reform from within the Executive branch. However, the process was far from over, and the influence of vested interests found its way to the debate in Congress. At the last minute legislators from Zelaya's Liberal Party as well as from other parties backed off and refused to discuss the bill. After intense lobbying, Alianza 72 managed to convince a small party, Unificación Democrática, to table the bill for discussion.⁸ During the 11 months that ensued until approval of the bill at the end of 2006, the process underwent various advances and setbacks, in a difficult battle between pro-reform and status-quo groups. Four versions of the bill were circulated, and the original legislative committee was replaced by a new one, made up of 17 legislators, the largest number of committee members ever in the history of the Honduran Congress.

Illustrating the resistance that the law encountered from different groups, below are some of the restrictions to the right to information that surfaced in some of the earlier versions:

- Definition of “public official”: earlier versions of the law included only low-ranking public officials, leaving top officials and management out.
- Examples of classified information: “advertising contracts of public institutions,” “subsidies received by congressmen,” “salaries and wages,” “international negotiations,” “information provided by citizens to the State under confidentiality.”
- Obligated compliance from only public sector institutions. Private sector organizations were excluded even in cases in which they administer public funds. Congress was only obliged to publish draft and enacted legislation. Municipalities were only obliged to publish pending legal actions against them and resolutions.
- Media groups had the power to classify information.
- Only citizens with no outstanding tax obligations could submit information requests.
- In earlier versions, the law was not retroactive.

Two factors were key at that stage for bringing the policy-making process to a satisfactory conclusion, i.e., the passing of a law that met international standards:⁹

- i) A new champion emerged within Congress: Mary Elizabeth Flores Flake, the first vice president, became an undisputed ally of the ATI movement. Daughter of former President Flores, a journalist herself and educated in the U.S., Vice President Flores embodied the new generation of Honduran politicians. Her personal charisma coupled with her access to the senior generation of lawmakers was central in gathering support from pro-status quo actors.¹⁰
- ii) The influence of the international community at a time when various donor initiatives were being discussed:¹¹ organized around the G-16, the donor community issued various statements and met with Congress and the Executive branch at critical stages of the policy-making process to emphasize the importance of passing a law that accorded with international standards. While this influence was undoubtedly important by itself, pressure from the donor community

had not been successful in enabling the implementation of other reforms in the past, such as the civil service reform.

Still, even after the draft tabled for discussion had gained the backing of key actors, the law was approved with major flaws. The final version published in the official gazette on December 30, 2006 (Decree number 170-2006) contained critical deviations from the draft that was approved on the floor. The law was finally amended on July 17th 2007 (Decree 64-2007) after intense lobbying from Alianza 72 with support from the G-16.

G-16 and the role of the World Bank: Lessons learned

By 2006, several donors had agreed that the law was a priority in the reform agenda and the Transparency Roundtable was established as the main donor coordination mechanism in this area. The international cooperation played different roles throughout the process by:

- providing seed money for jumpstarting the awareness-raising process on the ground, and facilitating the exchange of information between Honduran and international actors;
- using its convening power to facilitate a dialogue among Congress, the Executive branch, and civil society around technical issues and international best practices;
- encouraging CSOs to act collectively and overcome the distrust among the different organizations that had limited their ability to work together in the past;
- conveying a unified message on the importance of governance and transparency for the international community (G-16, IFIs, and bilateral agencies), using different instruments (budget support conditionality, program requirements, project components); and
- sustaining the support during the law’s implementation phase.

As an active participant in the G-16 and pro-tempore chair of its Transparency Roundtable during the time the bill was under discussion, the WB contributed in different ways to

facilitate an open and quality policy debate. This was the result of a combination of several factors:

1. *Envisioning access to information as an operationally relevant issue in Honduras.* The Governance Strategy Note¹² identifies transparency and accountability as crosscutting issues across the portfolio. It was understood that if approved, the law could serve as an entry point for enhancing the accountability of public institutions, and advancing other PSM reforms; and it was placed at the top of the country dialogue agenda.
2. *Assistance to stakeholder and policy dialogue.* The WB provided assistance to civil society actors as well as to lawmakers on technical issues and international best practices, facilitating access to international networks and unblocking dialogue with veto players at critical stages of the process.
3. *Sustained support during the pre-approval and implementation phases through a combination of instruments:* Regional dialogues and national workshops; policy dialogue around the proposed Poverty Reduction Support Credit II; IDf grant for the IAIP; study tours to IFAI Mexico; social monitoring;¹³ and design of transparency indicators funded through various grants.¹⁴
4. *Close collaboration among field-based staff, PREM, and WBI.* While technical missions from PREM and WBI defined the agenda and the WB's position on the legislation, dialogue with stakeholders was sustained by staff in the field mission, who led many of the discussions with Congress and the Executive branch.

The road ahead: seizing the momentum and building a pro-transparency coalition

As this case illustrates, the policy-making process is a dynamic process that involves multiple actors at different stages. The interaction and political negotiation between the actors during policy discussion, approval, and implementation shapes the outcomes at each stage of the process. More than a clear champion that sustained the momentum throughout the process, in the case of the ATI law in Honduras, there

were different actors that emerged at particular points and were driven by different incentives. The bottom-up process was key in placing the issue at the top of the political agenda and shaping the incentives of politicians competing for popular support. Recognition from the international ATI movement and support from the international community were also instrumental in providing personal incentives for champions seeking to leave a legacy behind. The positive incentives offered by different donor instruments helped increase the rewards for reform vis-a-vis the political risk of confronting powerful vested interests. Strategic interventions at different moments in the process were also key to unblocking policy discussions, overcoming resistance from veto players, and generating a positive dynamic among actors.

This need for negotiation has not disappeared during the implementation phase. The regulatory body, the Access to Public Information Institute (IAIP), was established in September 2007 (through Decree 81-2007) and the law entered into force in January 2008. Congress' appointment of the ATI Commissioners was also polemic and the result of a political compromise.

A major challenge, as in other countries, has been drafting the implementing regulations, a process that lasted for most of 2007 and was seen as the real test to assess government and IAIP's commitment to its implementation. By then, a new landscape had emerged. The worsening of corruption indicators, the publication of reports about the quality of poverty spending, and the cancellation of budget support operations by some donors, including the WB, put pressure on government to show some progress in the governance arena at the time when negotiations of external assistance programs were taking place. The president, facing the end of his term and without possibility of reelection, sees the law as one of his main accomplishments. Meanwhile, IAIP commissioners are growing in their role and civil society has redefined its new role around the effective implementation of the law, paving the ground for the emergence of an IAIP-CNA-civil society coalition. As a result of this new dynamic, ATI-implementing regulations, published on March 6, 2008, have been considered as in line with

international standards, and progress regarding implementation also seems satisfactory.¹⁵ The main challenge ahead is to seize the momentum and consolidate the reform process before the 2009 election reshapes the political context.

For the WB, the challenge ahead is to keep using every possible instrument to support ATI implementation and leverage on it to strengthen the accountability of public institutions and advance other public sector reforms.¹⁶ It is encouraging to see that the two investment operations prepared after the approval of the law¹⁷ include institutional components to support its implementation in the respective Line Ministry and improve public management systems as a result.

About the Note

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List of acronyms

ATI	Access to Information
BNPP	The Bank Netherlands Partnership Program
C-Libre	<i>Comité por la Libre Expresión</i> (Freedom of Expression Committee)
CNA	<i>Consejo Nacional Anticorrupción</i> (National Anticorruption Council)
CSO	Civil society organization
DFID	Department for International Development
IAIP	<i>Instituto de Acceso a la Información Pública</i> (Access to Public Information Institute)
IDF	Institutional Development Fund
IFAI	<i>Instituto Federal de Acceso a la Información</i> (Federal Instituto of Access to Information)
IFI	International Financial Institutions
MCC	Millennium Challenge Corporation
OAS	Organization of American States
PSM	Public Sector Management
UNDP	United Nations Development Programme
WBI	World Bank Institute

Endnotes

1. Honduras international cooperation working group includes the major multilateral (WB, IMF, UNDP, IDB, CABEI) and bilateral agencies (Germany, Canada, U.S., Spain, France, Netherlands, Italy, Japan, Sweden, Switzerland, and European Commission) active in the country.

2. Press releases provided by the former special rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Organization of American States (OAS) interview, December 2007.

3. Mejía (2007).

4. Ibid.

5. More than 100 alerts, as well as interviews, articles, and editorials with updates on the process were published using the Internet, national newspapers, radio programs, and e-mail.

6. I Regional Dialogue on Access to Information, Transparency, and Good Governance in Bolivia, Honduras, and Nicaragua, February–May 2005. II Regional Dialogue ATI, Transparency, and Good Governance in Dominican Republic, Honduras, Nicaragua, Bolivia, and Guatemala, March 2006–April 2006.

7. Workshop on Access to Information Legislation as a Key Tool for Good Governance and Economic Development (“Ley de Transparencia y Acceso a la Información. Una herramienta clave para la gobernabilidad y desarrollo económico”), Tegucigalpa, May 31–June 1, 2006).

8. This interpretation of the events that ended up in the avoidance of the discussion by legislators one day before Zelaya took office was gathered through interviews and was also documented in the media.

9. PREM Note, Legislation on freedom of information: trends and standards, No. 93, October 2004.

10. Her reasons for betting so high on the cause were both personal (her experience as a journalism student in the U.S. and as a former journalist who had suffered first-hand from the lack of information influenced her views on the issue) and political, deemed by many as undoubtedly in line for a presidential career. Interview with vice president of Congress, Honduras, November 30, 2007.

11. Budget support program of the WB and other donors, the MCC program, and the IMF PRGF program.

12. Prepared as part of the Honduras CAS 2006–10.

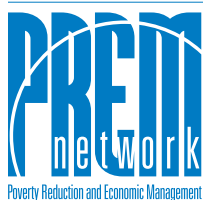
13. A small technical group under the name of RETHO (Network for Transparency in Honduras) emerged within Alianza 72 and CNA.

14. Norwegian, DFID, and BNPP Trust Funds.

15. Sixty-five percent of the institutions under the Executive branch have established ATI offices and 85 percent of them have appointed ATI officials. RETHO and CNA (2008).

16. Among other information, the law requires public institutions to publish procurement documents, financial statements, budget liquidations, and audit reports. Together with the results-based management system, the law is contributing to create a culture of accountability in the country and is putting pressure on institutions to use the procurement country system (Honducopras), update their financial documents using the financial information management system (SIAFI), clarify their organic structure and responsibility lines, improve their management information systems, etc.

17. Honduras Education Quality, Governance and Institutional Strengthening loan (approved on Jan 24, 2008), and Honduras Roads Reconstruction and Improvement II Project (under preparation).



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