CHAPTER IV

REPORT ON ACCESS TO INFORMATION IN THE HEMISPHERE: ACCESS TO INFORMATION AND ECONOMIC DEVELOPMENT[1]

A. Introduction

1. The Office published in its 2003 Annual Report a chapter entitled "Report on Access to Information in the Hemisphere."[2] In that report, the Special Rapporteur aimed at setting a theoretical background of the right of access to information and stated that "guaranteeing public access to state-held information is not only a pragmatic tool that strengthens democratic and human rights norms and promotes socioeconomic justice; it is also a human right protected under international law."[3] Also, that report proposed to summarize the "situation of the Member States in relation to the right to freedom of information, in an effort to record the development of the States in this area."[4]

2. In June 2004 the General Assembly of the OAS adopted Resolution 2057, entitled "Access to Public Information: Strengthening Democracy." This Resolution extends the efforts affirmed by the former Resolution on the subject, and encourages OAS Member States to implement legislation or other provisions providing citizens with broad access to public information. The General Assembly instructed the Special Rapporteur for Freedom of Expression to "continue to report on the situation regarding access to public information in the region in the annual report of the IACHR."[5]

3. The Office of the Special Rapporteur for Freedom of Expression has prepared this report in compliance with its mandate as established by the General Assembly and to continue contributing to the discussion on the issue. As in previous reports, first there is a theoretical approach to the theme and then an update on the situation of access to information in the region.

4. Although the previous reports have focused on the relevance of access to information laws for the strengthening of democratic regimes, because of their provision of a framework that contributes to the establishment of policies of transparency, this report will argue in favor of access to information laws as a relevant tool for economic development.

5. This report is based on the works of international institutions, private firms, and authors that are recognized worldwide. Having in mind the arguments that are mentioned below, the Office of the Special Rapporteur for Freedom of Expression thinks that it is time to

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[1] This chapter was made possible through the research and first drafting of María Rosario Soraide Durán, a recent graduate in political science with a specialization in international relations from *Universidad Católica Argentina*. She was an intern at the Office of the Special Rapporteur for Freedom of Expression during 2003. The Office thanks her for her contributions. The Office would also like to thank Alberto Blanco, MS in Urban Studies & Planning, Massachusetts Institute of Technology (MIT); and Marie Cavanaugh, Managing Director, Sovereign Ratings, Standard & Poor's, for their insights on some of the topics addressed in this Report.

[2] Inter-American Commission on Human Rights, Annual Report 2003, Vol. III, Report of the Special Rapporteur for Freedom of Expression, Chapter IV: *Report on Access to Information in the Hemisphere*, pages 135-154.

[3] *Id*., para. 8.

[4] *Ibid*., para. 5.

[5] OAS, AG/RES. 2057 (XXXIV-O/04), *Access to Information: Strengthening Democracy*, para. 7. Available at http://www.oas.org/main/main.asp?sLang=E&sLink=../../documents/eng/documents.asp.

reinvigorate the efforts to strengthen freedom of expression in general, and the right of access to information in particular, seeing it not only as an essential right on the political field, but also as a crucial element for economic development.

B. Access to information and economic development

6. Do access to information laws and their implementation have any impact on a country's economic development? The Office of the Special Rapporteur for Freedom of Expression finds that the answer is an affirmative one, as will be proven in this report from three different perspectives. First, the report will focus on information as an essential element for markets to function efficiently. Second, the impact of access to information on an economy will be analyzed within the framework of the governance approach to economics. Finally, this study will examine if access to information laws could influence economic outcomes in a more indirect way, by acting on the perceptions of firms that provide country risk assessments and sovereign ratings – given that these agencies consider issues related to governance and access to information when assigning a grade to a country.

1. Information and markets

7. For a market to be well-functioning and efficient, information flows are crucial. Inadequate information increases transaction costs that limit market opportunities[6] and, as noted by Roumeen Islam:

> More information allows better analysis, and better monitoring and evaluation of events which are significant for people's economic and social well-being. It allows economic and political decision-makers to evaluate opportunities and manage risks better. It allows for the possibility that decisions in economic and political markets will enhance social welfare.[7]

8. Continuing with Islam's argument, the information that is available to decision-makers and how they use it is critical for the shaping of their expectations, which give rise to particular actions in the economic arena that will in turn affect subsequent outcomes. Several studies have shown that information has decisive effects on stock markets, bank loans, interest rates, and even crisis prevention or prediction. There is a correlation between economic data availability and well-functioning markets, since the former gives rise to better decisions on the part of investors, consumers, and producers, as it enables them to better evaluate market conditions for their products.[8]

9. Information that is economically relevant could include data regarding prices, publication of firms' accounts, etc. However, agents also need information relative to laws and regulations, governmental processes, public agencies, public procurement contracts, policy implementation and its consequences, etc. in order to make appropriate economic decisions. In this sense, governments are central actors when it comes to the availability of significant information.

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[6] See The World Bank, "World Development Report 2002. Building Institutions for Markets," published by Oxford University Press for The World Bank, New York, *Overview*.

[7] See Islam, Roumeen, "Do More Transparent Governments Govern Better?" Policy Research Working Paper No. 3077, The World Bank, Washington D.C., June 2003, page 2.

[8] *Id*.

10. In this same line, Joseph Stiglitz, who views information as a public good and recognizes that, like with other public goods, "…government has an important role in the provision of information,"[9] explains that in complex modern economies, prices do not communicate all relevant information. Governments generally collect meaningful data about economic growth, the unemployment rate, the inflation rate, etc., but this information influences people's opinion about the government. For example, if the data show increasing inequality, citizens may question the government's distribution policies. Therefore, Stiglitz warns that governments could be induced to distort or restrict disclosure of such information.[10] This is a situation in which "asymmetries of information" exist, meaning that all interested parties do not have access to the same amount of information.

11. Joseph Stiglitz, George Akerlof, and Michael Spence were awarded the 2001 Nobel Prize for their studies on the economic implications of asymmetries of information, and for developing a fundamental change of paradigm in economic studies: Information Economics.[11]

12. Stiglitz uses the Information Economics paradigm to make an analogous description of the asymmetries of information which appear in relation to political processes. He makes reference to an asymmetry of information existing between those who govern and those who these are supposed to serve, finding it similar to the one between company managers and shareholders. He explains that just as information asymmetries allow company managers to follow policies that are convenient for their own interest rather than for the interest of shareholders, such asymmetries give government officials the possibility of choosing to pursue policies guided by their own interests rather than by the interests of citizens. Finally, Stiglitz concludes that "[i]mprovements in information and the rules governing its dissemination can reduce the scope for these abuses in both markets and in political processes"[12] and that "better and timelier information results in better, more efficient resource allocations."[13]

13. The World Bank's 2002 Development Report, entitled "Building Institutions for Markets," arrives at the same conclusion.[14] Moreover, this report also addresses the theory that access to information could represent a stabilizing force in financial markets, since these information flows "…may be able to mitigate global financial volatility and crises…."[15]

14. Similarly, a chapter of the International Monetary Fund's April 2003 "World Economic Outlook," entitled "Growth and Institutions," notes that countries with more transparent government operations find it easier to attract foreign direct investment. And thanks to this relatively stable inflow, they may be less vulnerable to sudden withdrawals of capital

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[9] See Stiglitz, Joseph, "Transparency in Government" in *The Right to Tell: The Role of Mass Media in Economic Development*, The World Bank Institute, Washington D.C., November 2002, page 28.

[10] *Id*.

[11] For further insight on this model see: Stiglitz, Joseph, "Information and Change in the Paradigm in Economics;" Akerlof, George, "Behavioral Macroeconomics and Macroeconomic Behavior;" and Spence, Michael, "Signaling in Retrospect and the Structure of Markets," all in *The American Economic Review,* Vol. 92, No. 3, June 2002.

[12] *Id*., page 28.

[13] *Id*., page 35.

[14] See The World Bank, "World Development Report 2002. Building Institutions for Markets," published by Oxford University Press for The World Bank, New York, page 189:

"…better information flows can improve resource allocation…"

[15] *Id*.

flows, to capital account crises, and to the destabilizing effects of international investors' "herding behavior."[16] In a 2001 publication, the IMF stated that "lack of transparency was a feature of the buildup to the Mexican crisis of 1994-95 and of the emerging market crises of 1997-98" due to the fact that "inadequate economic data, hidden weaknesses in financial systems, and a lack of clarity about government policies and policy formulation contributed to a loss of confidence that ultimately threatened to undermine global stability."[17]

15. In fact, many point to a lack of transparency as being one of the causes of the Asian and the Russian financial crises of 1997 and 1998 that had major spill-over effects onto Western economies.

16. Gaston Gelos and Shang-Jin Wei, for example, present statistical proof that, in general, international funds prefer to hold more assets in markets which are more transparent and that herding behavior is less prevalent in countries with a higher transparency in comparison to those that are more opaque.[18] They find evidence to support the view that during the Russian crisis and—to a lesser extent—during the Asian crisis, international investors tended to withdraw more strongly from countries that showed a higher degree of opacity.[19]

17. Don Tapscott and David Ticoll also address the Asian and Russian crises, explaining that "Western politicians, economists, and media identified emerging economy corruption, nepotism, and favoritism—along with poor corporate governance—as drivers of the meltdown. Lack of disclosure by companies, commercial banks, and even central banks had fanned the crisis,"[20] adding that this caused the IMF to proclaim transparency as the "golden rule for a globalized economy"[21] and to start monitoring the financial and banking systems of the developing world.

18. Recognizing how a transparent and stable economic and regulatory environment leads also to efficiency in the private sector, the IMF now promotes transparency in financial transactions involving government budgets, central banks, and the public sector in general. The IMF also lends its assistance regarding improvements in accounting, auditing and statistical systems.[22] In this sense, access to information laws can contribute to the IMF's aim of increasing transparency in public sector activities and in the environment in which these occur, as well as to an improvement in the effectiveness of public resources management.[23]

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[16] See International Monetary Fund, "World Economic Outlook. April 2003. Growth and Institutions," Washington D.C., *Chapter 3: Growth and Institutions*; pages 104-105.

[17] International Monetary Fund, "IMF Survey Supplement," Vol. 30, Washington D.C, September 2001, pages 7-8.

[18] See Gelos, R. Gaston and Wei, Shang-Jin, "Transparency and International Behavior," IMF Working Paper 02/174, IMF, Washington D.C., 2002, page 7: "Herding is typically defined as investors taking decisions which they would not take if they did not observe other market participants taking them."

[19] *Id*.

[20] See Tapscott, Don and Ticoll, David, "The Naked Corporation. How the Age of Transparency will Revolutionize Business," Chapter 2: *Transparency versus opacity: the battle*, Free Press, New York, 2003.

[21] Transparency is, in fact, one of the principles on which the IMF bases its policy advice, these being: transparency, simplicity, accountability and fairness (according to the Guidance Note on The Role of the IMF in Governance Issues approved by its Executive Board on July 25, 1997).

[22] See International Monetary Fund, "Good Governance. The IMF's Role," Washington D.C., January 1997.

[23] See IMF, *supra*, note 16, page 116.

19. Furthermore, Tapscott and Ticoll list what they call "lessons" learnt by the international policy community from the Asian crisis regarding the costs of opacity:

> First, opacity combined with corruption and self-dealing can cause deep and sustained economic crisis. Second, opacity hurts businesses and raises their transaction costs. Investors loose trust, withdraw from capital markets, and increase the price they exact from companies for loans and investments. Third, opacity costs taxpayers—businesses and consumers—as governments are forced to intervene with bailouts and social safety nets, while their cost of borrowing increases due to the opacity risk premium.[24]

2. Institutions and governance

20. The hypothesis of access to information laws having a positive influence on economic outcomes is also verified through the abundant literature explaining the relevance of institutional factors on economic performance.

21. Rodrik and Subramanian explain that there are three lines of thought for addressing the cause of the great difference in the average incomes between the world's richest and poorest countries.[25] First, there is the theoretical line that views geography as the key determinant.[26] A second view emphasizes international trade as the motor of productivity and income growth. Lastly, a third line of thought focuses on institutions.[27] After analyzing the three hypotheses, Rodrik and Subramanian conclude that "the quality of institutions overrides everything else."[28]

22. What is meant by "institutions"? This term has been subject to different definitions.

23. For example, 1993 Nobel Prize Winner Douglass C. North gives a broad definition, describing them as the formal and informal rules governing human interactions, or, in his own words: "Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction. In consequence, they structure incentives in human exchange, whether political, social or economic."[29]

24. On the other hand, narrow definitions, which are centered on specific organizational entities, procedural devices and regulatory frameworks, also exist.[30]

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[24] See Tapscott and Ticoll, *supra*, note 20, page 51.

[25] See Rodrik, Dani and Subramanian, Arvind, "The Primacy of Institutions (and what this does and does not mean)" in *Finance and Development*, IMF, Washington D.C., June 2003, pages 31-34.

[26] Recent writings by Jared Diamond and Jeffrey Sachs represent this hypothesis.

[27] This approach is strongly associated with Douglass C. North, and has been recently used in econometric studies by authors like Daron Acemoglu, Simon Johnson, and James Robinson.

[28] Rodrik, Dani and Subramanian, Arvind, *supra*, note 25, page 31.

[29] North, Douglass C., "Institutions, Institutional Change and Economic Performance," Cambridge University Press, Cambridge, 1990, page 3.

[30] See IMF, *supra*, note 16, page 97.

25. At an intermediate level, there is a line of thought which focuses on perceptions and assessments of public institutions, "especially about how well they function and what their impact is on private sector behavior."[31] According to this view, "institutions are defined in terms of the degree of property rights protection, the degree to which laws and regulations are fairly applied, and the extent of corruption."[32] This approach has been adopted by many of the recent works on the determinants of economic development.

26. There is an important line of research that evidences the strong correlation between good institutions and economic development and growth.

27. Namely, the IMF in its World Economic Outlook of April 2003 finds that a high correlation exists between institutional quality and the level of income (GDP per capita); economic growth (GDP growth); and a lower volatility of growth (measured as the average standard deviation of the annual growth rate of GDP per capita).[33] And, as Edison concludes, "These results suggest that economic outcomes could be substantially improved if developing countries strengthened the quality of institutions."[34]

28. Having recognized the significance of good governance and having discussed what its role should be regarding this issue,[35] the IMF now devotes efforts to the promotion of good governance in its member countries. The IMF limits its involvement to the economic aspects of governance and contributes to its consolidation through policy advise, technical assistance, and the promotion of transparency in financial transactions involving the government budget, central bank, and public sector in general.[36] Thus, acknowledging that weak institutions obstruct growth and the implementation of effective macroeconomic policies, most of the programs presently supported by the IMF include conditions intended to confront institutional weaknesses, to fight corruption and reduce other forms of rent-seeking, and to promote governance.[37]

29. In the same line as the IMF, Kaufman and Kraay conclude that there is a strong positive correlation between governance quality and per capita income across countries.[38] But they warn that while this causal effect runs from better governance to higher per capita income, there is no effect as such in the opposite direction. This highlights the relevance of governance

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[31] *Id*.

[32] See Edison, Hali, "Testing the links. How strong are the links between institutional quality and economic performance?" in *Finance and Development*. IMF, Washington D.C., June 2003, pages 35- 37 (This Article draws on Chapter 3 of the "IMF's World Economic Oultook. April 2003. Growth and Institutions", *supra*, note 16).

[33] See IMF, *supra*, note 16.

[34] See Edison, *supra*, note 32, page 35.

[35] On July 25, 1997, the IMF Executive Board approved a document entitled "The Role of the IMF in Governance Issues: Guidance Note."

[36] See IMF, *supra*, note 22.

[37] See IMF, *supra*, note 16, page 116.

[38] See Kaufmann, Daniel and Kray, Aart, "Growth Without Governance," Policy Research Working Paper WPS 2928, The World Bank, Washington D.C., November 2002.

for economic development, but denies the usual assumption that higher incomes *per se* lead to further advances in terms of governance, creating a kind of “virtuous circle.”[39]

- The quality of governance: including level of corruption, political rights, public sector efficiency, and regulatory burdens.
- The degree of legal protection of private property and the enforcement of these laws.
- The limits (institutional and others) placed on political leaders.[40]

30. How are access to information laws related to the institutional perspective on economic performance determinants? The answer can be better understood by analyzing the way in which institutional quality is measured. According to the IMF, recent works have generally considered three relatively broad measures of institutions:

31. These are not objective measures; rather, they result from subjective perceptions and assessments of country experts or are based on assessments coming from surveys carried out by international organizations or NGO's and responded to by residents of a given country.[41]

32. The measure that refers to the quality of governance is known as the *aggregate governance index*, and it was presented in studies by Kaufmann, Kraay, and Zoido-Lobatón.[42] This approach is based on a broad definition of governance “as the traditions and institutions by which authority is exercised in a country,” including “1) the process by which governments are selected, monitored, and replaced, 2) the capacity of the government to effectively formulate and implement sound policies, and 3) the respect of citizens and the state for the institutions that govern economic and social interactions among them.”[43] Data is drawn from indicators constructed by different international organizations, political and country risk agencies, think tanks, and NGO’s[44] and is organized into six clusters, corresponding to six aspects of governance. The components of each cluster are then combined, resulting in 6 aggregate governance indicators:

1) Voice and accountability. This includes indicators measuring the extent to which citizens can participate in the choice of their government and have political rights and civil liberties. It also takes into account measures of independence of the media, which “serves an important role in monitoring those in authority and holding them accountable for their actions.”[45]

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[39] *Id*., page 25 “…improvements in institutional quality or governance are unlikely to occur merely as a consequence of economic development…”; “…as long as the established elites within a country reap private benefits from the *status quo* of low-quality institutions, there is little reason to expect that higher incomes will lead to demands for better governance....”

[40] *Id*.

[41] *Id*.

[42] See Kaufmann, Daniel, Kraay, Art, and Zoido-Lobatón, Pablo, “Aggregating Governance Indicators,” Policy Research Working Paper, WPS 2195, The World Bank, Washington D.C., October 1999 and “Governance Matters,” Policy Research Working Paper, WPS 2196, The World Bank, Washington D.C., October 1999.

[43] See Kaufmann, Kraay and Zoido Lobatón, *supra*, note 38, page 1.

[44] These sources include, for instance: Political Risk Services (PRS Group), Standard & Poor's, Economist Intelligence Unit, Business Environment Risk Intelligence (BERI), Freedom House, Heritage Foundation, etc. For a complete list of these sources and details about the variables they measure, see Kaufmann, Kray, and Zoido-Lobatón, *supra*, note 42, pages 28-60; and Kaufmann, Daniel and Kray, Aart, *supra*, note 38, page 8.

[45] See Kaufmann, Daniel and Kray, Aart, *supra*, note 38, page 6.

2) Political stability and absence of violence. This refers to the likelihood that the government will not be destabilized or overthrown by violent or unconstitutional means.

3) Government effectiveness. This includes perceptions of the quality of the delivery of public services and of how competent and politically independent civil service is, of the quality of the bureaucracy, and of the credibility of the government's commitment to policies.

4) Regulatory quality: This contains measures of the incidence of market-unfriendly policies (price controls, inadequate bank supervision, burdens caused by excessive regulation on foreign trade, business development, etc.).[46]

5) Rule of law. This includes indicators measuring the extent to which agents have confidence in and abide by the rules of society, including perceptions of the incidence of violent and non-violent crime, the effectiveness of the judiciary and its predictability, and contract enforcement.

6) Control of corruption[47]. This measures perceptions of corruption, conventionally understood as "the exercise of public power for private gain."[48] Corruption is seen as a fault in governance because it "is often a manifestation of a lack of respect on the part of both the corrupter (typically a private citizen or firm) and the corrupted (typically a public official) for the rules that govern their interactions."[49]

33. In a chapter of the World Economic Forum's 2003-2004 Global Competitiveness Report, Daniel Kaufmann uses these indicators to show the extent to which governance matters, concluding that a country that significantly improves key governance aspects could expect, in the long-run, a dramatic increase in per capita income and in other social dimensions.[50]

34. The relationship between access to information laws and the quality of governance can be better understood when taking into account some of the specific perceptions that enter the analysis based on the aggregate governance index. The voice and accountability cluster, for instance, includes measures to which access to information laws are closely related, such as democratic accountability, whether business is kept informed of important development in rules and policies, transparency of the business environment, and transparency in terms of the government communicating its intentions successfully.[51]

35. Furthermore, the relevance of access to information laws considered from the governance approach can also be addressed from a different angle. Studies which relate governance factors to economic outcomes usually emphasize their view of corruption as a failure in institutional quality and as having an adverse effect in the economic field.

36. In fact, the aggregate governance index contains measures regarding corruption, such as: corruption among public officials; effectiveness of anticorruption initiatives; corruption

[46] This category is also named "Regulatory burden" in some papers by Kaufmann, Kraay, and Zoido-Lobatón.

[47] This category is also named "Graft" in some papers by Kaufmann, Kraay, and Zoido-Lobatón.

[48] Kauffman, D. and Kray, A., *supra*, note 38, page 6.

[49] *Id*., page 7.

[50] Kaufmann, Daniel, "Governance Redux: The Empirical Challenge" in *The Global Competitiveness Report 2003-2004,* World Economic Forum, Geneva.

[51] For a complete and detailed list of the sources and the specific indicators taken into account to construct the aggregate governance index, see Kauffman, Aart, and Zoido-Lobatón, "Governance Matters," *supra*, note 42, pages 28-60.

in the political system as a “threat to foreign investment;” frequency of “additional payments” to “get things done;” irregular, additional payments connected with import and export permits, business licenses, exchange controls, tax assessments, police protection or loan applications; effects of corruption on “attractiveness of country as a place to do business;” etc. Therefore, access to information laws could reduce or prevent corruption, diminishing its adverse economic effects and also improving a country's performance regarding the control of corruption cluster of the aggregate governance index.

37. It is time to examine what Mauro expresses when he asks, “Why worry about corruption?”[52] In other words, why should corruption be seen as negative from an economic perspective? Mauro, when examining corrupt public conduct, states that it “discourages investment, limits economic growth, and alters the composition of government spending, often to the detriment of future economic growth.”[53] It is important to understand how the concept of rent-seeking enters his explanation.[54] Although some rent-seeking activities are neither illegal nor immoral, but perfectly legal competition for rents (such as lobbying and advertising), others are clearly illegal (bribery, corruption, black markets, smuggling, etc.).[55] Rent-seeking activities are carried out, for example, by firms that spend a lot of money trying to convince legislators to grant them monopolies or to restrict competition in another way that will generate rents. On the other hand, bureaucrats and authorities try to position themselves in a restricted monopoly where they can be bribed for issuing an import license, giving a subsidy, approving an expenditure, etc.[56]

38. Mauro synthetically lists the consequences of corruption that cause economic growth to slow:[57]

- Corruption as a tax. If businessmen interpret corruption as a kind of tax, this will discourage investment, consequently slowing down economic growth.[58] This occurs because, if a bribe is a prerequisite to start an enterprise in the country, it could be expected that corrupt public officials will claim part of the gains resulting from the investment. Further, even if a businessman is still willing to invest in such an economy, the private marginal product of capital will decrease because of the bribes that have to be paid (acting as a tax on the proceeds of the investment), lowering the investment rate in this way also. Mauro presents quite shocking evidence from regression

[52] See Mauro, Paolo, “Why Worry about Corruption?,” in *Economic Issues* No.6, International Monetary Fund, Washington D.C., February 1997.

[53] *Id*., page 3.

[54] *Id*., page 2: Rent is understood here as economic rent, which is “the extra amount paid (over what would be paid for the best alternative use) to somebody or for something useful whose supply is limited by nature or through human ingenuity.”

[55] Coolidge, Jacqueline and Rose-Ackerman, Susan "High-level rent-seeking and corruption in African Regimes: Theory and Cases", Policy Research Working Paper, WPS 1780, The World Bank, Washington D.C., 1999; and Krueger, Anne, “The Political Economy of the Rent-Seeking Society” in *The American Economic Review*, Vol. 64, No. 3, June 1974, page 291.

[56] See Mauro, *supra*, note 52.

[57] *Id.* and Mauro, Paolo, “Corruption and Growth” in *The Quaterly Journal of Economics*, Vol. 110, No.3, August 1995, p. 681-712.

[58] See also Shleifer, Andrei and Vishny, Robert W., “Corruption” in *The Quaterly Journal of Economics*, Vol. 108, No 3, August 1993, p.599-617. These authors add that corruption is even more distortionary and costly than taxation, due to its illegality and the need to be kept secret. “The demands of secrecy can shift a country's investments away from the highest value projects, such as health and education, into potentially useless projects, such as defense and infrastructure, if the latter offer better opportunities for secret corruption”; and “can also cause leaders of a country to maintain monopolies, to prevent entry, and to discourage innovation by outsiders if expanding the ranks of the elite can expose existing corruption practices,” page 616.

analyses, stating that if a country were to improve its corruption index by two points, investment would increase by four points, therefore improving employment and economic growth.[59]

- Misallocation of talent. The more talented and educated may choose to carry out rent-seeking activities rather than productive ones.

- Reduced effectiveness of aid flows. Aid could be oriented to unproductive government expenditures.

- Loss of tax revenue. This occurs when corruption is exercised through tax evasion or tax exemptions. This could also have negative consequences regarding budgetary issues.

- Decrease in the quality of infrastructure and public services because of the corruption related to public procurement contracts.

- Distortion in the composition of government expenditures. Officials may choose expenditures according to the potential for receiving bribes rather than based on public welfare motives.

39. Kaufmann and Kraay disaggregate four different dimensions of corruption: bribery in obtaining services; in public procurement; in the budget process; and in shaping the policy, legal, and regulatory framework.[60] They call this last type of corruption "state capture," which they define as "the undue and illicit influence of the elite in shaping the laws, policies, and regulations of the state."[61] State capture differs from the typical view of corruption as an attempt to influence the implementation of laws and regulations through bribery. Kaufmann and Kray consider state capture a major challenge to governance, because if an elite benefits from misgovernment, then "any possible impact of income growth on governance could be offset by the effect of the elite's negative influence."[62]

40. In order to understand the relevance of access to information laws for economic development while regarding corruption as a negative element, what has already been thoroughly addressed in the Chapters dedicated to Access to Information in previous Reports of the Office of the Special Rapporteur for Freedom of Expression must be remembered at this point: access to information laws contribute to prevent and fight corrupt practices.[63] This statement has been supported not only by the Office of the Special Rapporteur for Freedom of Expression. The World Bank's 2002 World Development Report highlights the importance of access to information when it notes that:

> To understand and anticipate market movements, investors require timely and accurate information on company financial indicators and macroeconomic data. Similarly, information on asset ownership, government contracts, and public agency expenditures helps the public monitor government officials. Information on price and product standards helps consumers select products.

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[59] See Mauro, Paolo, *supra*, note 52.

[60] See Kaufmann and Kraay, *supra*, note 38.

[61] *Id*., page 26. A recommended reading for further analysis of state capture and a categorization of the different forms of corruption is Hellman, Joel S., Jones, Geraint, and Kaufmann, Daniel, "Seize the State, Seize the Day. State Capture, Corruption and Influence in Transition" Policy Research Working Paper, WPS 2444, The World Bank, Washington D.C., September 2000.

[62] *Id*., page 27.

[63] Inter-American Commission on Human Rights, Annual Report 2001, Volume II, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter III: *Report on Action with Respect to Habeas Data and the Right to Access to Information in the Hemisphere*; and Annual Report 2003, Vol. III, Report of the Special Rapporteur for Freedom of Expression, Chapter IV: *Report on Access to Information in the Hemisphere*.

> Records of health inspections, school performance, and environmental data help citizens make informed social choices.[64]

41. Moreover, this report establishes that "open information sharing can improve governance and reduce corruption"[65] and that corruption undermines market functioning in three ways: (1) by acting as a tax—distorting the choice between activities, and decreasing the benefits resulting from investment (both private and public); (2) by eroding competition—since competition depends on a continuous entry of new firms, and when these must pay bribes to begin operating in the market, many may decide not to enter; and (3) by damaging the legitimacy of the state and lowering its capacity to provide institutions that support markets.

42. Finally the report states that "lack of information breeds corruption," since:

> [W]ithout information on the prices that are supposed to be charged for public services…individuals cannot determine if they are being overcharged. Without information about the details of regulations, individuals are vulnerable to bureaucratic harassment and demands for bribes. Without widespread information on the extent of public wrongdoing, the public disgust with corruption that is essential to implementing reforms is slow to form.[66]

43. Roumeen Islam analyzes the effects of availability of information on governance through two different aspects of this topic: the way in which governance is affected by the availability of basic economic data; and the way governance is affected by a country's legal framework regarding access to information.[67]

44. First, she explains that the more data are available, the better governance could be expected: better data enables the citizenry to judge government policies, affecting the support given to the government and determining for how long it stays in power. This makes governments more accountable. In other words, "People are most likely to demand governments that govern better and governments have more of an incentive to do well."[68] Islam lists further reasons in support of her claim that data availability affects governance by stating, for example, that it improves coordination between members of government, policy design, the formulation of objectives, and evaluation of policy alternatives. Regarding access to information laws, the author highlights their importance for increasing information flows and, consequently, citizen monitoring of government performance.

45. The results at which Roumeen Islam arrives after a number of statistical regressions are certainly useful for the purpose of the present study. For instance, she finds that more transparent governments[69] perform better on a broad number of indicators of the aggregate governance index which was described previously in this paper: voice and

[64] See The World Bank, *supra*, note 6, page 189.

[65] *Id*., page 101.

[66] *Id*., page 109.

[67] See Islam, Roumeen, *supra*, note 7.

[68] *Id*., page 5.

[69] Measured according to the degree and frequency of the availability of data, by means of an index constructed on the base of representative variables (such as GDP, unemployment, foreign direct investment, etc.) considered important for the judgment and monitoring of economic policy outcomes. This index represents how much economic information governments are willing to disclose.

accountability; government effectiveness; regulatory quality; control of corruption; and rule of law. Moreover, Islam constructs an access to information index (based on a country's adoption of a freedom of information law), because she believes that even if governments publish economic data, this information could not be sufficient for people to judge and monitor them, while a freedom of information law provides access to further data other than the simply economic. Islam finds that the presence of this type of law shows a correlation with the aggregate governance index. The correlation is not only with the "voice and accountability" and "control of corruption" clusters, but also with "regulatory quality" and "government effectiveness," presenting the highest correlation with the voice and accountability indicator.[70] Therefore, she concludes that a freedom of information law positively affects governance quality and that "countries that have freedom of information laws are much more likely to be well governed."[71]

46. Hence, according to Roumeen Islam, as a higher degree of transparency and freedom of information laws contribute to governance, and as it has been empirically evidenced that governance is correlated to growth, "extrapolating, there is a close relationship between better information flows and how fast economies grow."[72]

3. Impact of governance factors on risk assessments

47. Factors related to governance are also taken into account by agencies that provide country risk assessments and sovereign ratings. In fact, the aggregate governance index that was described previously draws many institutional indicators from some of these agencies.

48. These firms have clearly positioned themselves as crucial actors in the international economic arena—where foreign direct investment flows and capital movements play an essential role—and their assessments highly influence the level of foreign investment that a country is able to attract and retain and the cost of borrowing money in international financial markets.

49. A number of the institutional variables that enter these firms' country risk analyses and sovereign ratings are related to access to information laws. Some representative examples will be described next.

50. Political Risk Services (PRS Group), one of the main providers of country risk assessments, produces the International Country Risk Guide (ICRG). The ICRG rates 22 variables, grouping them in three subcategories: the Political Risk Index, the Financial Risk Index, and the Economic Risk Index. These three indexes are also combined to create a Composite Political, Financial, and Economic Risk Rating. The Political Risk Index consists of 12 variables, including democratic accountability and corruption. According to the ICRG methodology, the higher the number of points a country is assigned, the lower is the risk that exists. The Political Risk rating contributes 50% of the composite rating, and the Financial and Economic indexes each contribute 25%.[73]

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[70] See Islam, Roumeen, *supra*, note 7, page 33.

[71] Id., page 32.

[72] *Id*., page 36.

[73] See www.icrgonline.com and Kaufmann, Aart, and Zoido-Lobatón, *supra*, note 42, pages 48 and 49.

51. Business Environment Risk Intelligence (BERI) constructs a rating related to the business environment called the Business Risk Service. It is separated into three indexes, one of which, the Political Risk Index, includes a category which corresponds to "mentality," including xenophobia, nationalism, corruption, nepotism, willingness to compromise, etc.[74]

52. The Economist Intelligence Unit (EIU), which produces analyses and forecasts of the political, economic, and business environments of different countries, provides its Country Risk Service and its Country Forecasts, which among their measurements include: transparency/fairness (named "legal system" in Country Forecasts) and corruption.[75]

53. DRI/McGraw-Hill (DRI), is a unit of Standard & Poor's that offers economic consulting and information services for business, financial, and government decision makers worldwide. In 1996, DRI launched the Country Risk Review (CRR), a quarterly publication on country risk assessments. Among the different sources of risk that it lists, the category "losses and costs of corruption" is included.[76]

54. In today's globalized economy, country risk assessments have achieved an outstanding relevance regarding decision-making related to investment choices. Actors such as institutional investors, multinational firms, banks, importers and exporters, etc. consult these assessments in order to calculate how different sources of risk might affect their business and investments now and in the future.[77]

55. Firms like Standard & Poor's, Moody's, and Fitch also construct sovereign credit ratings. These are assessments of a government's ability and willingness to service its debt in full and on time and are a forward-looking estimate of default probability.[78]

56. The grade given to a country in these ratings is not a minor issue, since it has an impact on the costs a government must face to borrow money in the international financial markets. The greater the degree of risk, the higher interest rate the sovereign has to pay for its borrowings, given the increase in the probability of nonpayment.[79] This contributes not only to an increase in the payment of the interest of public debt, but also to an increase in the minimum cost of borrowing money in the local financial market. Moreover, given the high cost or the impossibility of borrowing money in international markets, the state has the need to borrow

[74] See Kaufmann, Aart, and Zoido-Lobatón, *supra*, note 42, pages 29 and 30.

[75] *Id*., pages 38 and 39.

[76] *Id*., page 33.

[77] See www.icrgonline.com

[78] See Beers, David T., Cavanaugh, Marie, and Ogawa, Takahira, "Sovereign Credit Ratings: A Primer," Standard & Poor's, Sovereigns; April 3, 2002.

[79] For a study on the influence of sovereign ratings on borrowing costs, see Cantor, Richard and Packer, Frank, "Determinants and Impact of Sovereign Credit Ratings" in *Economic Policy Review*. Federal Reserve Bank of New York, October 1996, Vol.2, Iss. 2. The authors state that sovereign credit ratings influence sovereign bond spreads: "Sovereign yields tend to rise as ratings decline," page 4. They find that the effect of rating announcements isn't diluted by market anticipation, because these announcements independently affect market spreads: when changes in ratings take place, they are followed by statistically significant bond spread movements in the expected direction. They also find that the impact of rating announcements is highly significant on speculative-grade sovereigns, but statistically insignificant on investment grade sovereigns; and that a greater effect is seen if an agency's announcement confirms one that came from another agency, or a previous rating announcement.

money locally, resulting in a "crowding out" effect: the government reaps resources that would otherwise be available for the private sector, also causing the local interest rates to rise. All of this has negative effects on investment, on the level of economic activity, and on the economic growth rate.

57. A decrease in a country's grade given by ratings from firms such as Standard & Poor's, Fitch, and Moody's also causes a reduction in capital flows. This is the case because most of the major international investors—such as hedge funds or pension funds—operate within regulations that limit their investments to obligations from sovereign governments or private issuers that have been assigned an "investment grade."

58. Furthermore, sovereign ratings affect the ratings of borrowers of the same nationality, and, therefore, their access to international capital markets. Agencies rarely rate a provincial government, municipality, or private company with a better grade than the one assigned to its country.[80] According to Fitch, "The sovereign rating forms a ceiling above which it is not possible for other borrowers resident in that country to rise;" thus, it is important because "even if the government itself does not want access to the world financial markets: it sets the parameters within which the private sector can operate."[81] Standard & Poor's explains that the ratings that entities in a country are assigned are most frequently the same as the sovereign's rating or lower, even though there are some specific cases in which an entity's grade may be higher than the one assigned to the sovereign.[82]

59. Standard & Poor's includes in its sovereign rating methodology perceptions related to governance issues and access to information. For example, transparency in economic policy decisions and objectives is one of the variables that Standard & Poor's takes into account in its political risk assessments, acknowledging that "the stability, predictability, and transparency of a country's political institutions are important considerations in analyzing the parameters for economic policymaking."[83] The methodology also addresses factors such as the fiscal sector's timeliness and transparency in reporting. This last aspect is included in another category of the sovereign rating analysis, referred to as "fiscal flexibility" and, as explained by S&P, lower scores correspond to countries where government money is not spent effectively "because of constitutional rigidities, political pressures, or corruption."[84]

60. In fact, a Standard & Poor's publication specifically addresses the impact of governance issues on a government's creditworthiness.[85] It explains that governance factors that are related to the capacity and willingness to service debt are taken into account when analyzing the probability of a government's default. The Article presents examples in which improved governance resulted in a rise in creditworthiness, and vice versa. Disclosure of

[80] *Id*.

[81] See Fitch, "Sovereign Ratings. Rating Methodology," 2002, page 2.

[82] See Beers, David T., Cavanaugh, Marie, and Ogawa, Takahira, *supra*, note 78, page 1.

[83] *Id*., page 4. Political Risk is one of the 10 analytical categories in Standard & Poor's sovereign ratings methodology profile.

[84] *Id*., page 6.

[85] See Chambers, John and Richter, Monica, "Public Sector's Governance's Impact on Sovereigns' and Local Governments' Creditworthiness," Standard & Poor's, 23 June 2003, page 1: "Creditworthiness is defined as the capacity and willingness to service debt in full and on time, without recourse to involuntary exchanges or other forms of debt relief."

information and transparency on fiscal matters, on monetary policy, and on the external sector of the economy are listed among the governance aspects that have consequences in a country's creditworthiness.

61. To sum up: a wide number of variables enter the different analyses on country risk and sovereign ratings, with each given a specific weight according to the relative importance of their contribution to risk. Some of the factors that are taken into account are related to access to information. They are not generally considered among the most critical indicators shaping the assessments about a given country, and it definitely cannot be concluded that improvements in access to information alone will result in a better risk grade. However, if a country is willing to achieve an upgrade in its qualification or to prevent a decrease in it, when designing its overall strategy it could certainly take into account governance variables such as the ones previously listed—which could be improved by implementing access to information laws.

C. Conclusions

62. The potential impact of access to information laws on an economy has been illustrated in this report by taking different approaches.

63. First, the economic relevance of access to information laws has been shown by considering the importance of information flows for the efficient functioning of markets. Better information lowers transaction costs and gives rise to better decision-making and resource allocation. Transparency has also been highlighted as an element which helps to mitigate financial market volatility. As governments are in control of data that is economically meaningful (ranging from measures such as economic growth or inflation rate to information regarding laws, regulations, policies, objectives, etc.), disclosure of such information is crucial for economic outcomes.

64. Second, the economic impact that access to information laws can have has also been verified by addressing this issue through the governance approach. First, it has been explained that the aggregate governance index includes variables within the “voice and accountability” cluster to which access to information laws clearly contribute in a positive manner. Furthermore, it has also been highlighted that access to information laws can be seen as a tool to fight corrupt practices, reducing the opportunities for these kinds of activities—that have adverse economic effects—and improving a country's performance in the “control of corruption” governance indicator. In addition, evidence has been presented regarding some correlation between freedom of information laws and the “regulatory quality” and the “government effectiveness” indicators. To conclude, if an advance in governance results in better economic outcomes, and if access to information laws give rise to improvements in different governance dimensions, it follows that these laws represent a positive contribution to economic development.

65. Finally, this study has also addressed the fact that firms which provide country risk assessments and sovereign ratings also consider governance aspects when assigning a grade to a given country. Taking this into account, access to information laws could be seen as influencing economic outcomes in a more indirect way, also. These laws can act on agencies’ perceptions of governance and influence their assessments, which in turn have crucial

economic implications. These assessments affect the level of investment that an economy attracts and retains and the cost of borrowing money for both state and private actors.

D. Access to information in the Member States: an update of the 2003 Annual Report

66. The General Assembly of the OAS resolved, in Paragraph 7 of Resolution 2057, entitled "Access to Public Information: Strengthening Democracy," to instruct the Special Rapporteur for Freedom of Expression to "continue to report on the situation regarding access to public information in the region in the annual report of the IACHR."[86] Pursuant to this mandate, in an effort to record the developments of the States in this area during 2004, this section of this report will summarize an update of the situation of the Member States in relation to the right of access to information.

67. To this end, on September 7, 2004, and following the procedure adopted for the 2001 and 2003 Annual Report, an official letter was issued to the permanent missions of the OAS Member States, requesting them to provide an update of the information previously received at the Office regarding legislation, jurisprudence, and existing practices related to access to information in their countries within 30 days. The information received from the States has been integrated with research done by media sources and non-governmental organizations in order to provide an overview of the situation in each Member State.

68. The Special Rapporteur includes in this annual report only the laws that the Member States of the Organization of American States passed during 2004 with respect to the right of access to information. In this account, Ecuador[87] and the Dominican Republic[88] have passed laws related to this right, which demonstrates that the topic of access to information has continued receiving attention during 2004.

69. The Office has received information that other States such as Argentina,[89] Bolivia,[90] Guatemala,[91] Honduras,[92] Nicaragua,[93]

[86] OAS, AG/RES. 2057 (XXXIV-O/04), para. 6 and 7.

[87] The "*Ley Orgánica de Transparencia y Acceso a la Información Pública*" was promulgated by the president of Ecuador on May 10, 2004 and was brought into effect through its publication in the Official Registry on May 18, 2004. The Special Rapporteur issued a press release on May 21, 2004 recognizing the promulgation of laws on access to information as an important step to contribute to the transparency of governmental actions. Moreover, the Special Rapporteur stressed that these laws must also be accompanied by regulations and interpretations that are adequate to implementing the law. See: http://www.cidh.oas.org/relatoria/showArticle.asp?artID=129&lID=1. Also, we received information that on October 25, 2004 the final draft of the regulation ("*reglamento*") of the law was finished and sent to a number of institutions in Ecuador for their opinion. See: http://www.presidencia.gov.ec/noticias. asp?noid=3825 (in Spanish).

[88] On July 15, 2004, the General Act for Free Access to Public Information ("*Ley General de Libre Acceso a la Información Pública*"), Act No. 200-04 was passed. The Office of the Special Rapporteur has been reviewing the Act and, although it recognizes the importance of laws on access to information, it is concerned about the requirement to express the motivation in order to request information as established in Article 7(d) of the Act. The Office is aware of a draft regulation for the implementation of the Act and expects that this new legislation adequate the Act to guarantee respect for principles on access to information.

[89] A bill on access to information was approved by the House of Representatives of the Argentinean Congress in May 2003 and sent to the Senate for review. On December 1, 2004 the Senate passed the bill with a few modifications and resent to the House of Representatives for a review of the changes. The House can veto the changes by a special majority of two thirds of the representatives' votes. The Office of the Special Rapporteur has been reviewing the bill and is deeply concerned about the changes approved by the Senate. Particularly, the Office notes with concern that bill fails to establish publicity as a principle of information by incorporating new exceptions to publicizing information. It also observes that by requiring the applicant to express the reason to requesting the information and by giving the application form the character of sworn declaration, there is a danger of restricting the access to the information. The Office is also concerned about the establishment of fees, which might vary according to the reasons

continued…

Paraguay,[94] and Uruguay[95] are currently considering similar legislation, and civil society has been vigilant in observing the States' progress.

70. Moreover, on September 1, 2004, the State of Panama issued the Executive Decree 335, which repealed Executive Decree 124 of May 21, 2002. The Office of the Special Rapporteur had expressed its concern regarding certain regulatory Articles of Executive Decree 124 in its 2003 Annual Report.[96] The Office also received information that on January 4, 2004 the Jamaican Access to Information Act was brought into effect and is being implemented on a phased basis, its full implementation is expected to be accomplished in July 2005. Currently it is in effect in 20 Ministries and Agencies.

71. As of the deadline given for the Member States to provide the information requested in the official letter issued on September 7, 2004, the Office of the Special Rapporteur for Freedom of Expression has only received information from the States of Colombia, El Salvador, Panama and Peru, out of all the member countries of the Organization of American States. The Special Rapporteur greatly appreciates the efforts of these States in gathering the requested information, and encourages all Member States of the OAS to collaborate in the preparation of future studies by this Office in order to comply with their mandate and to better take advantage of the conclusions derived from them. The Special Rapporteur would also like to notice that all information received after the deadline will be taken into consideration and examined by the Office in due time.

72. As the Office of the Special Rapporteur expressed in previous reports, since 2001 the issue of access to information has created greater debate amongst the civil societies of Member States, and several states have adopted positive measures towards the implementation of this right. However, it is important to insist that Member States need to display greater political willingness to work toward amending their laws and ensuring that their

…continuation
given to access the information and could also restrict the access to information. Finally the Office notices that ambiguity of the concept of public information in the bill, allowing the citizen to request information to any institution that "pursues a public interest, a general utility, a common good or that serve a public function or have public information" (own translation). Accordingly, the ambiguity of the concept could make the law inapplicable or undermine the meaning of a law of access to public information. Also see 2003 Annual Report, *Supra 2*. para. 62-67.

[90] The Supreme Decree of Transparency and Governmental Access to Information ("*Decreto Supremo de Transparencia y Acceso a la Información Gubernamental*"), approved in January 2004 is being fully re-discussed due to the criticisms of its lack of amplitude. Moreover, the draft of a bill on access to information, elaborated by the Presidential Anticorruption Delegation ("Delegación Presidencial Anticorrupción") is in process of consultation and review. See: http://www.redinter.org/inforid/en-foco/1.htm

[91] See 2003 annual Report, *supra 2*, para. 128-134.

[92] On October 26, 2004, the Legislative Chamber of Honduras, acknowledged the bill on Access of State-held Information elaborated by C-Libre. See: http://probidad.org/index.php?seccion=comunicados_/2004/011.html. Also see 2003 Annual Report, *Supra 2*, para. 135-139.

[93] The bill is currently being studied by the Justice Commission of the National Assembly of Nicaragua. See 2003 Annual Report, *supra 2*, para. 149-156. Also see: http://probidad.org/regional/index. php?seccion=legislacion/2001/042.html

[94] Inter-American Press Association, Press Release: *IAPA keeps watch on regulation and use of laws on effective access to public information*, November 5, 2004.

[95] See 2003 Annual Report, *supra 2*, para. 189-195. Also see: http://probidad.org/regional/index.php?seccion=legislacion/2002/041.html

[96] See 2003 Annual Report, *supra* 2, para. 163-164.

societies fully enjoy freedom of expression and information. Democracy requires broad freedom of expression, and that cannot be pursued if mechanisms that prevent its generalized enjoyment remain in force in our countries.