**Domestic Isomorphic pressures in the design of FOI oversight institutions in Latin America.**

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## 1. Research question and hypotheses

Chile, Peru and Uruguay represent three different models of how to design FOI oversight institutions. These three cases are very similar in the degree to which they afford the right to information, but they vary significantly in terms of the power of oversight institutions. Chile's FOI law established the Consejo para la Transparencia (Council for Transparency, CPLT), which has a high degree of autonomy and enforcement capacity. Peru and Uruguay created FOI oversight institutions with lower degrees of autonomy and strength. The Peruvian Autoridad Nacional de Transparencia y Acceso a la Información Pública (National Authority of Transparency and Access to Public Information, ANTAIP) has low autonomy and enforcement capacity. However, it also created the Corte de Transparencia y Acceso a la Información Pública (Court of Transparency and Access to Public Information), which is the ultimate administrative body that resolves complaints alleging that a public institution has failed to comply with information requests. The FOI law in Uruguay established an institution that lacks sanction capacity and that is not autonomous because it is housed within an agency—in charge of promoting e-government—subject to control by the Executive.

Our main hypothesis builds upon existing theories to account for these differences.

H: Local isomorphic pressures explain the differences between the de jure strength of FOI oversight institutions (autonomy and capacity to sanction noncompliance) in Chile, Peru, and Uruguay.

Based on available research, we introduce three different alternative explanations and test them against our main hypothesis. The literature identifies diffusion, political competition, and coalitions of promoters as crucial factors that account for the time of enactment of FOI laws and their implementation. However, we claim that these factors do not account for the variation in the institutions' de jure strength. Our alternative explanations are the following:

AH. 1.: The differences between the de jure strength of FOI oversight institutions in Chile, Uruguay and Peru are the result of differences in diffusion processes that operated during the initial adoption the laws. Policy designs were influenced by the diffusion of ideas from outside the country and/or by international conditions.

AH. 2.: The differences between the de jure strength of FOI oversight institutions in Chile, Peru, and Uruguay result from differences in the coalitions that favor or oppose specific design features.

AH. 3: The differences between de jure strength of FOI oversight institutions in Chile, Peru, and Uruguay are the result of different contexts of political competition.

## 2. Process-tracing design

We used process tracing to unveil the causal mechanisms that led Chile, Uruguay, and Peru to adopt different de jure features in their FOI oversight institutions. We used a

process-tracing test to assess the value of our casual process observations (CPOs) .[1] We defined ex-ante the evidence that would allow us to empirically confirm or disconfirm the existence of each mechanism, including the necessity and/or sufficiency of each CPO for supporting the hypotheses. In an effort to avoid bias in our selection of sources of information, we also defined, in advance, the sources where we should be able to find the evidence. By so doing, we attempt to provide a sufficient causal explanation of the de jure design of FOI oversight institutions in each country (see tables A.1 – A.4).

To test each causal explanation, we rely on different sources of information, including press and legislative records, experts' surveys, documents from civil society organizations, media and international organizations, and in-depth interviews with key actors involved in the design of FOI oversight institutions in each country.

To test whether isomorphic pressures are responsible for differences in de jure strength of FOI oversight institutions in the three countries, we looked for evidence of judicial or constitutional opinions based on previous regulations that determine the way FOI laws are designed in each country. We also sought prior laws, norms and regulations influencing the design of the FOI law in each country. This influence can be observed in the similarity with other norms or policymakers' explicit references to prior laws, norms and regulations. Finally, we searched instances of specific references by experts to the importance of considering previous administrative models for the design of the FOI oversight institutions in each country. The detailed evidence we obtained through these procedures and its relevance for our hypothesis is presented in Table A.1.

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[1] Brady, Henry and David Collier, eds. 2010. *Rethinking social inquiry: diverse tools, shared standards*. 2nd ed. Lanham: Rowman & Littlefield Publishers.

To test the diffusion hypothesis, we searched for evidence of explicit references made by policymakers and government officials regarding FOI models and for studies in other contexts that are used as models for the design of the law in Chile, Peru or Uruguay. Other support for the diffusion hypothesis would be evidence of missions from international organizations or cooperation agencies, or reports, as well as seminars organized by international organizations and NGOs about the issue of FOI in these countries. Finally, we looked for evidence of technical cooperation, international experts and international rulings influencing domestic decisions on the issue at the country level. Table A.2 contains the detailed evidence and its relevance for this hypothesis.

To test whether the differences between the de jure strength of FOI oversight institutions in different countries resulted from differences in the domestic coalitions that favor or oppose particular design features, we defined ex-ante evidence of the existence of coalitions either supporting or opposing a particular institutional design, including different aspects of the FOI law in the context of the approval of the law. The detailed evidence and its relevance for this hypothesis is presented in Table A.3.

To test whether political calculation is a relevant factor in explaining the differences in the de jure strength of FOI oversight institutions in the three countries, we looked for evidence of governments passing strong FOI regulations because they perceive they are not likely to be re-elected and want their right to access government information in the future to be guaranteed. We also looked for evidence of governments using FOI laws to either make their espoused commitment to greater transparency more credible and improve their reputation in a context of electoral competition or to send signals of transparency to voters, especially when there are highly visible government scandals. We also looked for evidence of a relationship between the de jure strength of

FOI oversight institutions and the existence of multiparty governments that have majority control of the parliament and want to monitor their allies. Finally, we searched for weak de jure oversight institutions when single-party governments that have minority control of the parliament are in charge. Table A.4 contains the detailed evidence and its relevance for this hypothesis.

## Table A1. H: Isomorphism hypothesis

| Hypothesis | Evidence | Source | Test type |
|---|---|---|---|
| H. 1.: The differences between the de jure strength of FOI oversight institutions in Chile, Peru, and Uruguay are the result of local isomorphic pressures. | Judicial or constitutional opinions based on previous regulations determine the way FOI oversight institutions are designed in each country. | Rulings from the Judicial/Constitutional power regarding the right to information.<br>Reports from supervisory institutions.<br>Reports from judicial experts (attendance to commissions). | Straw in the wind: Judicial or constitutional opinions may be taken into account in the design of FOI oversight institutions, but need not be taken in to account. |
| | The design of FOI oversight institutions resembles other already-established oversight institutions in related fields. | Official documents. | Hoop: The similarity of the design of FOI oversight institutions to the design of previously established oversight institutions indicates isomorphic pressures. |
| | Policymakers (politicians, legislators, government officials) mention previous policies, institutional, or policy antecedents, that were considered in the design of FOI oversight institutions. | Interviews with key officials and experts.<br>Legislative records (in plenary sessions and commissions).<br>Preamble and introductory arguments of the FOI bills or draft bills.<br>Press articles. | Smoking gun: If our hypothesis is true, we should find that policymakers considered institutional or policy legacies when designing the oversight institution. Statements to this effect by policymakers would suffice to validate our hypothesis. |

## Table A2. AH. 1.: Diffusion hypothesis

| Hypothesis | Evidence | Source | Test type |
|---|---|---|---|
| AH. 1.: The differences between the de jure strength of FOI oversight institutions in Chile, Uruguay and Peru are the result of differences in diffusion processes that operated during the initial adoption the laws. Policy designs were influenced by the diffusion of ideas from outside the country and/or by international conditions. | The design of FOI oversight institutions resembles other already-established FOI oversight institutions in countries that are used as models. | Official documents. | Hoop: Similarities in the design of FOI oversight institutions to those of already-established FOI oversight institutions in countries that are used as models. |
| | Policymakers (politicians, legislators, government officials) talk about the existence of other cases that could be used as models for the design of the FOI oversight institution. References to studies or to international conditions that need to be considered within the context of the approval of FOI laws. | Interviews with key officials and experts.<br>Legislative records (in plenary sessions and commissions).<br>Motivations for and introductory arguments to the FOI bills or projects.<br>Press articles. | Smoking gun: If our hypothesis is true, we should find policymakers making explicit references to international experiences that could be used as models for the design of the law and, in particular, the design of the oversight institution. Government officials declaring this would confirm our hypothesis. |
| | Missions/Reports from international organizations and NGOs explicitly refer to institutional features that should be incorporated into the design of FOI oversight institutions. | Interviews with key officials and experts.<br>Reports from organizations such as Fundación Terram, UNDP, IADB, WB, OSF, Centro Carter, OECD, Transparency international, KAS y FES. | Straw in the wind: The existence of missions/reports from international organizations is indicative of some potential influence in the domestic policymaking process. However, its existence is not enough to confirm a diffusion process. |
| | Technical reports produced by instances of technical cooperation (prior to or concurrent with the approval of the law) in the field of FOI, refer to institutional features that should be considered for the FOI oversight institutions | Technical or financial cooperation reports or documents. | Smoking gun: The existence of technical cooperation reports (issued either prior to or concurrent with the approval of the law) referring to institutional features that should be incorporated in the design of FOI oversight institutions would strongly indicate international influence in the domestic policymaking process. However, the absence of such evidence is not evidence of the absence of a diffusion process related to the design of oversight institutions. |
| | International rulings and/or international norms regarding FOI condition domestic decisions concerning the design of FOI oversight institutions at the country level. | Records from international courts such as OAS, special reports on free speech and access to information, and Interamerican court of Human Rights. | Straw in the wind: Presence of evidence does not confirm the hypothesis—because decisions regarding the design of FOI oversight institutions might not necessarily consider these rulings—but it does provide support for the hypothesis. |
| | International experts participate in or are advisors for the design of the FOI law and the FOI oversight institution. | Press articles.<br>Interviews with key officials and experts.<br>Reports from organizations such as Fundación Terram, UNDP, IADB, WB, OSF, Centro Carter, OECD, Transparency international, KAS y FES. | Smoking gun: The participation of international experts in the design of the FOI law and of the FOI oversight institution or as advisors during the process would strongly indicate an influence of international experts in the domestic policymaking process. However, the absence of such evidence is not evidence of the absence |

| | | | |
|---|---|---|---|
| | | | of a diffusion process related to the design of oversight institutions. |
| | Seminars organized by international organizations about FOI and transparency prior to the approval of the law feature discussion of particular designs for FOI oversight institutions. | Reports from organizations such as Fundación Terram, UNDP, IADB, WB, OSF, Centro Carter, OECD, Transparency international, KAS y FES. | Straw in the wind: Seminars organized by international organizations which feature discussion of particular designs for FOI oversight institutions would indicate some influence in the domestic policymaking process. However, the existence of such evidence is not enough to confirm the existence of a diffusion process. |

## Table A3. AH. 2.: Political coalitions

| Hypothesis | Evidence | Source | Test type |
|---|---|---|---|
| AH. 2.: The differences between the de jure strength of FOI oversight institutions in Chile, Peru, and Uruguay result from differences in the coalitions that favor or oppose specific design features. | Coalitions of different actors (political parties, civil society organizations, state actors, journalists) with positions favoring or opposing specific design features influence the design of FOI oversight institutions. | Reports/statements by authorities about the future impact of the law.<br>Proposed FOI law sponsored by social and political actors.<br>Campaigns in favor of the FOI law.<br>Interviews with state actors.<br>Records from parliamentary debates (in plenary and commissions).<br>Preamble of the FOI bills or projects.<br>Press articles.<br>Documents of social organizations and transcripts of individuals' appearances before parliamentary commissions. | Hoop: The existence of coalitions favoring or opposing specific design features is necessary but insufficient to support the claim that coalitions influenced particular design choices. |
| | Members of coalitions of different actors (political parties, civil society organizations, state actors, journalists) attribute the inclusion (or omission) of specific features in the final design to pressure applied by the coalition. | Interviews with different actors.<br>Press articles. | Straw in the wind: The statements made by coalition members would indicate some coalition influence in the design of oversight institutions. |
| | Political actors who are not members of the coalition attribute the inclusion (or omission) of specific features in the final design to pressure applied by the coalition. | Interviews with different actors.<br>Press articles. | Smoking gun: The statements made by politicians who are not members of the coalition would be sufficient evidence of some coalition influence in the design of oversight institutions. |

## Table A4. AH. 3.: Political competition

| Hypothesis | Evidence | Source | Test type |
|---|---|---|---|
| AH. 3.: The differences between the de jure strength of FOI oversight institutions in Chile, Peru, and Uruguay are the result of different contexts of political competition. | Governments adopt strong (de jure) FOI oversight institutions if they perceive they are not likely to be elected and want their right to access government information in the future to be guaranteed. | Interviews with actors.<br>Records from parliamentary debates (in plenary and commissions).<br>Press articles. | Smoking gun: Governments should perceive a threat to their reelection prospects. As a result, they adopt strong (de jure) FOI oversight institutions because they want their right to access government information in the future to be guaranteed. The absence of this condition does not necessarily mean that this mechanism plays no role. |
| | | Public opinion polls. | Hoop: An adverse electoral scenario is necessary for the hypothesis to be true. |
| | Governments use the claim of building strong FOI oversight institutions as a way to make promises of greater transparency more credible and to improve their reputation in a context of electoral competition. | Interviews with actors.<br>Records from parliamentary debates (in plenary and commissions).<br>Press articles. | Smoking gun: Governments should refer to the strength of FOI oversight institutional designs as a way to make promises of greater transparency in a context of electoral competition. The absence of this condition does not necessarily mean that this mechanism plays no role. |
| | Governments adopt strong (de jure) FOI oversight institutions because they need to send signals to voters, especially when there are highly visible government scandals. | Interviews with actors.<br>Records from parliamentary debates (in plenary and commissions).<br>Press articles. | Hoop: Highly visible government scandals should be present immediately before decisions about the design of the FOI oversight institutions are made.<br><br>Smoking gun: Governments using the (de jure) strength of oversight institutions to signal a commitment to greater transparency in contexts of highly visible scandals (or risks of them) would be highly indicative of political calculation influencing FOI legislation. The absence of this condition does not mean that political calculation was not present. |
| | Strong (de jure) FOI oversight institutions are established when multiparty coalition governments with majority control of the parliament want to monitor their allies. | Interviews with actors.<br>Records from parliamentary debates (in plenary and commissions).<br>Press articles. | Hoop: The existence of multiparty coalition governments with majority control of the parliament is necessary. Absence of this evidence would disconfirm this particular mechanism.<br><br>Hoop: The government introduces the bill and forces its approval.<br><br>Smoking gun: Government officials state that they chose a strong de jure design for the FOI oversight institution in order to control their allies. |

| Hypothesis | Evidence | Source | Test type |
|---|---|---|---|
| | Weak (de jure) FOI oversight institutions are established when single-party governments with minority control of the parliament are in charge. | Interviews with actors.<br>Records from parliamentary debates (in plenary and commissions).<br>Press articles. | Hoop: The existence of single-party governments with minority control of the parliament is necessary. Absence of this evidence would disconfirm this particular mechanism.<br><br>Hoop: The government introduces the bill and forces its approval.<br><br>Smoking gun: Government officials state that they chose a weak de jure design for the FOI oversight institution because they want to avoid the political use of FOI requests. |

## 3. Results

Chile

The parliamentary process of the Law officially started in January 2005 when senators Jaime Gazmuri from the Partido Socialista de Chile (Socialist Party of Chile, PSCh) and Hernán Larraín from Unión Demócrata Independiente (Democratic Independent Union, UDI) introduced the bill in the Senate. The bill proposed by Gazmuri and Larraín modified several articles of the Ley de Probidad from 1999 (Probity Law, 19,653). However, it did not propose the creation of a FOI oversight institution.

In March 2006, President Michelle Bachelet took office. In May 2006, she created a Commission of experts [2] to work on a proposal to address probity and efficiency in public administration. The Commission elaborated a report that was published in November 2006.[3] The report recommended the creation of an autonomous FOI institution. In December 2006, the Presidency issued an executive directive to announce that the government would introduce bills to promote access to public

[2] The Commission comprised seven members: Enrique Barros Bourie, Carlos Carmona Santander, Alejandro Ferreiro Yazigi, Davor Harasic Yaksic, María Olivia Recart Herrera, Salvador Valdés Prieto and José Zalaquett Daher.

[3] The report was published on November 26, 2006 in the Supplement of La Nación (p. 5-12) See https://www.cepchile.cl/cep/site/docs/20160304/20160304094138/r105_probidadytransparencia_informe.pdf (Last accessed, September 4, 2020)

information and would order some changes in terms of active transparency.[4] The government sent a new draft bill replacing the original bill promoted by Larraín and Gazmuri. In the project, the government proposed the creation of an Instituto de Promoción de la Transparencia (Institute for the Promotion of Transparency) as an autonomous corporation subjected to public law, with legal status and its own resources. The bill was discussed in Congress and was finally approved in August, 2008 (Law 20,285).

In the following section, we present the CPOs found for each piece of evidence defined ex ante to test each hypothesis.

H: Isomorphic pressures

H. 1. Judicial or constitutional opinions based on previous regulations determine the way FOI oversight institutions are designed in each country

No evidence found.

H. 2. The design of FOI oversight institutions resembles other already-established oversight institutions in related fields.

[4] Executive directive Number 8 on active transparency and publicity of the information of the Administration of the State. See http://www.gobiernotransparente.gob.cl/asistente/oficios/Instructivo_Presidencial_008.pdf (Last accessed, September 4, 2020)

In Chile there are numerous autonomous corporations subjected to public law: The Office of the Attorney General (Ministerio Público) was created in 1997, through the Constitutional Law 19,519. The law created an autonomous institution (article 83).

The General Comptroller of the Republic was created in 1953 (Law 10,336) as an autonomous institution to control the legality of the actions of the Administration.

The Institución Nacional de Derechos Humanos (National Institute of Human Rights, INDH) was created in November 2009 through Law 20,405. The INDH was created as an autonomous corporation subjected to public law, with legal status and its own resources. Law 20,405 was discussed and approved in the same period as was the FOI law. Both have identical institutional formats.[5]

There are also several autonomous oversight institutions that regulate other activities in the private sector. For example:

- Junta Nacional de Auxilio Escolar y Becas, created in 1964, Law 15,720;
- Conicyt, created in 1968, Law 16,746;
- Junta Nacional de Jardines Infantiles, created in 1970, Law 17,301;
- Municipalidades, created in 1988, Law 18,695.

[5] See http://s.bcn.cl/231ka (last accessed on September 4, 2020).

These CPOs are indicative of an institutional foundation that enables autonomous institutions to develop several activities. In this sense, Chile provides a propitious environment for the creation of new autonomous institutions. These CPOs are a necessary condition (a hoop test) for the possibility for creating an autonomous FOI oversight institution.

H. 3. Policymakers (politicians, legislators, government officials) mention previous policies, institutional, or policy antecedents, that were considered in the design of FOI oversight institutions.

> During the parliamentary debate of the bill, different lawyers, experts in constitutional and administrative law and delegates from civil society organizations were invited to give their opinion. They raised no concerns over the possibility of creating an autonomous institution. In fact, some argued in favor of creating an autonomous FOI oversight institution such as the CPLT. In May 2005, shortly after senators Gazmuri and Larraín presented their bill, Pedro Anguita, Law Professor from the Universidad Santo Tomás, claimed the need to create an autonomous FOI oversight institution with sanctioning power (Senate's Commission of Government, Decentralization and Regionalization, Bulletin 3773-06, p. 17). In the same vein, Miguel Ángel Fernández from Fundación ProAcceso, argued that it seemed reasonable to create an autonomous institution with the necessary prerogatives to be able to enforce its function in relation to all the entities of the state (Senate's Commission of Government, Decentralization and Regionalization, Bulletin 3773-06, p. 24). In May 2007, once the new bill project was presented by the Executive, Felipe Solar Agüero from the Universidad Adolfo Ibáñez argued that, in order for

> the changes to be implemented to be sustained and deepened over time, it was necessary to have an institution that would guarantee them (Senate's Commission of Constitution, Legislation and Justice, Bulletin 3773-03 S)

> In a personal interview, Paulina Veloso, Minister Secretary General of the Presidency at the time, referred to the autonomy of the CPLT. She said that "…In Chile there are several institutions that are autonomous (…) people feel they have autonomy to fulfill their responsibility (…) In Chile there is this culture, because it is a public administration culture (…) You find it a lot, a lot in Chile."[6]

These CPOs show that the available institutional setting in Chile not only did not prevent the creation of an autonomous FOI oversight institution but actually favored it. Given the features of the original institutional design that was proposed, isomorphic pressures are collinear with the promoters' preferences.

AH. 1.: Diffusion

AH. 1. 1. The design of FOI oversight institutions resembles other already-established FOI oversight institutions in countries that are used as models.

[6] Personal interview with Paulina Veloso, Former Minister Secretary General of the Presidency (September 10, 2020).

The institutional design of Chile's FOI oversight institution matches that of existing institutions already established in the countries used as models, such as Mexico and the United Kingdom.

AH. 1. 2. Policy makers (politicians, legislators, government officials) talk about the existence of other cases that could be used as models for the design of the FOI oversight institution.

During the discussion of the first draft bill in Congress, two academic experts cited international experiences to inform the design of the FOI oversight institution in Chile. Claudia Lagos (Universidad de Chile) mentioned the Latin American legislation on the Right to Information, the 1994 Chapultepec Declaration of the Hemispheric Conference on Freedom of Expression of Mexico and the Rapporteur for the Freedom of Expression of the OAS. She also mentioned that the IMF, World Bank, International Transparency, UN and the EU promote strengthening of the RTI. In the same vein, Pedro Anguita (Universidad Santo Tomás) cited the importance of considering the experience of the United Kingdom and Mexico. Based on these cases, he recommended, among other things, modifying the bill by creating an administrative body that reduces the barriers to obtaining information (Congress records, Government Commission, May 16, 2005).[7]

[7] See https://www.bcn.cl/historiadelaley/fileadmin/file_ley/6357/HLD_6357_4724757d40d27bd27502b49ccbc72230.pdf (Last accessed, September 4, 2020)

Several government representatives explicitly pointed to international regulations or experiences to be considered in the process of formulating the new law. Minister Paulina Veloso, representing the Executive, introduced the creation of the CPLT by referring to countries that have similar organizations charged with promoting, disseminating and controlling the right to information, such as Mexico, England, New Zealand, France, Ireland and Australia (Congress records, Constitution Commission, May 8, 2007).[8]

Also, in the Constitution Commission of the Congress, the existence of similar organizations in other countries such as England, New Zealand, France, Ireland and Australia was invoked. (Congress records, Constitution Commission, May 8, 2007).[9] In particular, a report elaborated by the Congress' Library provided details on the experience of FOI oversight institutions in these countries.

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[8] See https://www.bcn.cl/historiadelaley/fileadmin/file_ley/6357/HLD_6357_945b0386b5606586f2796c50a8775bc3.pdf (Last accessed, September 4, 2020).

[9] See https://www.bcn.cl/historiadelaley/fileadmin/file_ley/6357/HLD_6357_945b0386b5606586f2796c50a8775bc3.pdf (Last accessed, September 4, 2020).

AH. 1. 3. Missions/Reports from international organizations and NGOs make explicit references to institutional features that should be considered for the FOI oversight institutions.

> In 2004, the OAS committee for the Mecanismo de Seguimiento de la Implementación de la Convención Interamericana contra la Corrupción (Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption, MESISIC) recommended that Chile implement FOI measures: "In relation to the approaches made by the "Transparent Chile Corporation," the Committee refers to the considerations that it has already expressed with respect to the guarantees provided for the exercise of the right to information, and considers, in addition, that given the importance of the understanding of the scope of such right is the knowledge of its regulation, by public officials and citizens, and the availability of new communication technologies to facilitate their exercise, it would be useful for the Republic of Chile to consider the implementation of training and dissemination programs in this regard."[10]

AH. 1. 4. Technical cooperation documents (previous to or concurrent with the approval of the law) in the field of FOI refer to institutional features that should be considered for the FOI oversight institutions.

> No evidence found.

[10] MESISIC. 2004. *Informe final de la República de Chile*, p. 26.

AH. 1. 5. International rulings and/or international norms regarding FOI condition domestic decisions on the design of FOI oversight institutions at the country level.

> During the discussion of the project in the Constitution Committee of the Lower Chamber, civil society representatives (Juan Pablo Olmedo Bustos and Tomás Vial Solar from Fundación ProAcceso) invoked the ruling of the Inter-American Court on Human Rights (IACHR) against the State of Chile (Caso Claude Reyes).[11] They explicitly recommended that the Commission establish access to

[11] In December 1991, the Chilean government made a foreign investment contract with two companies for the development of forestry exploitation (Proyecto Cóndor). This forestry project would have a great environmental impact and it therefore prompted a wide public debate. Between May and August of 1998, Marcel Claude Reyes, Sebastián Cox Urrejola and Arturo Longton Guerrero asked Chile's Foreign Investment Committee for information on the companies and the forestry project in order to evaluate commercial factors, economic and social aspects of the project and its environmental impact. The required information was classified as being of public interest. The Foreign Investment Committee, which was in charge of receiving investment requests and obtaining the information and background on prospective investors, refused to provide the requested information, considering it to be reserved to third parties, without providing the grounds on which this decision was made. Reyes et al. filed an appeal for protection before the Court of Appeals of Santiago, Chile, on the grounds that their right to freedom of expression and access to public information had been violated. The case reached the IACHR, which in 2006 ruled against the State of

public information "as a fundamental right, considering the decision of the IACHR against the State of Chile." They also proposed that Chile "emulate the Mexican and British law and adopt the recommendations from the European Council to decline to provide the information when the request is offensive, seeks information identical to that already given to the same person or is manifestly excessive" (Congress records, Constitution Commission, May 8, 2007).[12]

Edgardo Riveros, representative of the Executive before the Government Commission of the Senate, pointed out the impact that the IACHR ruling against Chile had on the preparation of the bill: "Regarding the foundations of the right

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Chile, urging it to create institutions that guarantee access to information: 'The Court considers it is necessary to remark that, (…) the State must adopt the necessary measures to guarantee the rights protected in the Convention (…). In particular, this implies that the norms that regulate restrictions on access to information under the control of the State must comply with the conventional parameters, and restrictions can only be made for the reasons allowed by the Convention (…)' (IACHR Judgment, September 19, 2006) See https://www.corteidh.or.cr/CF/jurisprudencia2/ficha_tecnica.cfm?nId_Ficha=332 (Last accessed, September 5, 2020).

[12] See https://www.bcn.cl/historiadelaley/fileadmin/file_ley/6357/HLD_6357_945b0386b5606586f2796c50a8775bc3.pdf (Last accessed, September 4, 2020).

of access to public information…" and in "…promoting the responsibility of civil servants for their public management" (Congress records, Government Commission, July 3, 2007). Rafael Blanco, presidential advisor, claimed that some of the changes introduced to the original bill in the Senate "…were based on the comparative analysis of various legal systems dealing with the issue" (Congress records, Government Commission, July 9, 2007).[13]

Senator Larraín recognized the impact of the OAS recommendations on the drafting of the FOI bill: "[...] the Experts of the Mecanismo de Seguimiento de la Implementación de la Convención Interamericana contra la Corrupción (Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption, MESISIC) - an international treaty signed and ratified by our country - recommended to the State of Chile, in February 2004, the modification of the current regulations, which they viewed as hindering the effective operation of the [right to information] principle". In the same vein, he argued that "(...) some studies indicate that Chile, unfortunately, is classified among those countries that have less guaranteed FOI for citizens" (Congress records, Parliamentary Debate, June 8, 2005).[14]

[13] See https://www.bcn.cl/historiadelaley/fileadmin/file_ley/6357/HLD_6357_6c03e16ffaee75195179aa7abee7105f.pdf (Last accessed, September 4, 2020).

[14] See https://www.bcn.cl/historiadelaley/fileadmin/file_ley/6357/HLD_6357_10fa90c41da2c89d4676c115377312c3.pdf (Last accessed, September 4, 2020).

AH. 1. 6. International experts participate in or are advisors on the design of the FOI law and the FOI oversight institution.

No evidence found.

AH. 1. 7. Seminars organized by international organizations about FOI and transparency prior to the approval of the law discuss particular designs for FOI oversight institutions.

No evidence found.

The CPOs presented above indicate that international experiences were present and taken into account when designing the FOI oversight institution in Chile. While there is evidence for the role of diffusion, it is not possible to determine its isolated effect because it is colinear with isomorphic pressures.

AH. 2.: Political Coalitions

AH. 2. 1. Coalitions of different actors (political parties, civil society organizations, state actors, journalists) with positions favoring or opposing specific design features influence the design of FOI oversight institutions.

Civil society actors were invited to present on transparency and FOI to the Senate Commission on the Constitution. Among them, representatives of the University of Chile, Santo Tomás University, the Open Society, the Pro Bono

Foundation, Pro Acceso Foundation, Participa Participa Foundation (Records of the Government Commission, May 16, 2005).[15]

In the debate on the bill, Senator Larraín acknowledged the contribution of civil society to the development of the bill: "The bill was discussed within the Commission with the assistance, not only of Senators, but also of Congressmen; of the Ministry of the Presidency on behalf of the Executive; and of representatives of universities who have worked on this subject and have an interest in the issue, of various public and private corporations and, more importantly, of institutions that have made transparency and access to public information one of their central objectives" (Records of the Senate's debate, June 8, 2005).[16]

The proposal presented by President Michele Bachelet in 2007 contained a specific institutional design. The institution proposed was autonomous. As

[15] See https://www.bcn.cl/historiadelaley/fileadmin/file_ley/6357/HLD_6357_4724757d40d27bd27502b49ccbc72230.pdf (Last accessed, September 4, 2020).

[16] See https://www.bcn.cl/historiadelaley/fileadmin/file_ley/6357/HLD_6357_ef8b4f4735e896556797cdf0308d03a4.pdf (Last accessed, September 4, 2020).

mentioned by Paulina Veloso, Minister Secretary General of the Presidency at the time, "Nobody opposed the bill (…) it was not a difficult bill."[17]

AH. 2. 2. Members of coalitions of different actors (political parties, civil society organizations, state actors, journalists) state that specific design features were included in or omitted from the final institutional design because of pressure from the coalition.

No evidence found.

AH. 2. 3. Political actors who are not members of the coalition state that specific design features were included in or omitted from the final design because of the pressure imposed by the coalition.

No evidence found.

These CPOs show that civil society organizations played an important role in promoting the enactment of the FOI law. However, there is no evidence of these actors promoting or opposing specific features of the institutional design beyond a general support for autonomy. Also, the idea of an autonomous institution proposed by the Executive raised no concerns among legislators.

AH. 3.: Political competition

[17] Personal interview with Paulina Veloso, Former Minister Secretary General of the Presidency (September 10, 2020).

AH. 3. 1. Governments adopt strong (de jure) FOI oversight institutions if they perceive they are not likely to be elected and want their right to access government information in the future to be guaranteed.

> We found no evidence that the government passed a strong FOI oversight institution because it expected to be in the opposition in the following period and wanted its right to access government information in the future to be guaranteed. Although the first attempt to move forward in the approval of a FOI law in Chile was taken by President Ricardo Lagos in 2003, it was not until January 2005 that Gazmuri (Socialist) and Larraín (UDI) presented the bill in Congress. In September 2005, a few months before the national elections, the approval rate of Lagos was 60 percent and, in turn, around 70 percent of the population thought Bachelet was going to be elected President.[18]
>
> In 2007, when the debate over the FOI law was resumed in Congress, Michele Bachelet (now in the Presidency) was in her first year in office. Although she

[18] See Estudio Nacional de Opinión Pública N°50 Agosto-Setiembre 2005, Available at https://www.cepchile.cl/cep/site/docs/20160304/20160304093725/encCEP_ago-sep2005.pdf (Last accessed, September 5, 2020).

experienced a rough first year in office and her popularity diminished, in December 2006 she enjoyed relatively high levels of approval (56 percent).[19]

AH. 3. 2. Governments use the claim of building strong FOI oversight institutions as a way to make their promises of greater transparency more credible and improve their reputation in a context of electoral competition.

The first serious attempt to pass a FOI law in Chile was taken by President Ricardo Lagos in 2003. Although until that moment the issue of FOI was not a top priority for Lagos' government, [20] a series of corruption scandals triggered a change in this approach. In 2000, a highly visible corruption case, the MOP-GATE, became public as a result of the investigation into another corruption case (the *Coimas* –bribery– case). The case involved members of the Ministerio de Obras Públicas (Ministry of Public Works, MOP) and the company Gestión Ambiental y Territorial Sociedad Anónima (GATE SA).

The scandal changed the public's perception of the government regarding corruption. In November/December of 2000, Lagos' government was rated 3.8

[19] Adimark poll, cited in La Tercera, January 8, 2015. Available at https://www.latercera.com/noticia/adimark-como-terminaron-en-su-primer-ano-los-gobiernos-de-bachelet-y-pinera/ (Last accessed, September 5, 2020).

[20] See Olavarría Gambi, Mauricio, Navarrete Yáñez, Bernardo, & Figueroa Huencho, Verónica. (2011). ¿Cómo se formulan las políticas públicas en Chile?: Evidencia desde un estudio de caso. *Política y gobierno*, *18*(1), 109-154.

regarding its anti-corruption efforts (on a scale of 1 to 7 - where 1 was poor and 7 was excellent). Two years later, in December 2002, 57 percent of Chileans believed that many (31 percent) or almost all (26 percent) public officials were involved in bribery and corruption cases. Also, 75 percent of the respondents said that the State should be reformed with important changes.[21] The political situation in the country at that time was very delicate.

In January 16, 2003, Lagos introduced the Presidential Advisory Commission on Probity and Transparency[22] to reform the Civil Service, on the same day that he met with Pablo Longueira (the leader of the opposition party, UDI). In the meeting, both parties agreed to decisively move forward on the issue of modernizing the State.[23] Surprisingly, in January 30, only fourteen days after

[21] See https://www.cepchile.cl/cep/site/docs/20160304/20160304093054/encCEP_dic2002.pdf (Last accessed, September 4, 2020).

[22] Established later in the Presidential Decree 77, See https://www.leychile.cl/Navegar?idNorma=207897 (Last accessed, September 5, 2020)

[23] At the ceremony, Lagos said that all measures had to be taken so that cases like the MOP-Gate would never be repeated again. He said: "If we don't do the right thing, we will hardly have the best (human resources) in the public service. It is necessary to correct now and with energy (...) I understand this important commission as the conviction that when the time comes, all of us, as a country, would be capable of a double task: to demand that the courts of justice do their homework, but also to take the necessary measures to make a great leap and turn this crisis into an opportunity to

introducing the Commission, Lagos announced that an agreement had been sealed to promote forty nine projects on governmental reform, transparency and probity, and a pro-growth agenda. Despite the political importance and public salience of the announcements made after the agreement between Lagos and the opposition, this did not result in the creation of a FOI law. In fact, the daft bill presented by Gazmuri and Larraín was not presented until two years later, in January 2005.

When Bachelet reached the Presidency, she enjoyed approval rates of around 60 percent. However, these rates dropped dramatically during 2006. During that year, several corruption scandals came to light.[24] Among the most salient cases was one related to the use of public funds from employment programs to finance the electoral campaigns of several candidates from Bachelet's coalition, the Concertación (Concertation).[25] Also, in 2006, the Contralor General de la República (General Comptroller of the Republic) denounced an illegal use of the resources of Chiledeportes (a government institution that promotes athletic

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modernize the State (…) according to the demands at the international level" (Lagos in the ceremony to present the Presidential Advisory Commission on Probity and Transparency, January 16, 2003).

[24] For a synthesis, see Mardones, Rodrigo. 2007. "Chile: todas íbamos a ser reinas." *Revista de Ciencia Política*, 27 (Esp), 79-96.

[25] The then Seremi del Trabajo José Manuel Mancilla (PS) and the former secretary of Marco Enríquez-Ominami (who in 2009 would resign from the PSCh to create the Partido Progresista—Progressive Party—) Edgardo Lepe (PSCh) were accused.

excellence in competition sports), including projects that were not carried out and organizations with false identities that were receiving funding.[26]

AH. 3. 3. Governments adopt strong (de jure) FOI oversight institutions because they need to send signals to voters, especially when there are highly visible government scandals.

As mentioned in AH. 3. 2., the first attempt to pass a FOI law was through the draft bill presented in January 2005 by Gazmuri and Larrain, which did not propose the creation of a FOI oversight institution. The new draft bill presented by Bachelet's government in 2007 included the creation of a FOI oversight institution. This bill was introduced after several corruption cases came to light in 2006 and the commission of experts presented its report. The FOI law was one of several other transparency measures that were proposed at the time.

AH. 3. 4. Strong (de jure) FOI oversight institutions are established when multiparty coalition governments with majority control of the parliament want to monitor their allies.

[26] One of these organizations was Publicam. Publicam appeared to have received public money from Chiledeportes for a project that was never carried out and had also been hired by prominent politicians to provide services in their electoral campaigns. According to Mardones (2007), the company had a support network in the Internal Revenue Service, a public body that would have fraudulently certified the company as a legal entity.

The government was formed by a multiparty coalition (Concertación) and had an absolute majority in both chambers of the legislature, which it retained until 2008. However, we did not find evidence that Bachelet wanted to have more tools to monitor her allies.

AH. 3. 5. Weak (de jure) FOI oversight institutions are established when single party governments with minority control of the parliament are in charge.

No evidence found. The resulting design of the FOI oversight institution was strong.

These CPOs indicate that Chile's FOI law was not promoted in a context of high political competition. However, corruption scandals are present and help to explain why the government decided to move forward with the goal of passing a FOI law. This evidence is a necessary condition (hoop test) for AH. 3. 2., AH. 3. 3. and AH. 3. 4.

Peru

The first law that regulated the right to information was passed in 2002 (Law 27,806). After ten years, in 2012, a bill draft was prepared by the Defensoría del Pueblo (Ombudsman) and submitted to the Presidencia del Consejo de Ministros (Presidency of the Council of Ministers, PCM) requesting the creation of an Autoridad Nacional para la Transparencia y el Acceso a la Información Pública (National Authority for Transparency and Access to Public Information) as an Organismo Técnico Especializado (Specialized Technical Body, OTE). In Oficio Nº 1359-2012-DP (November 9, 2012), the Ombudsman proposed to "strengthen the existing institutional mechanisms to guarantee adequate compliance with the regulations on transparency and access to public information" and proposed "the creation of a [OTE] with technical, functional, administrative, regulatory and economic autonomy."[27] However, on April 2013, the Secretaría de Gestión Pública (Secretary of Public Management) at PCM submitted an internal Report to the Prime Minister (Informe N5 05-2013-PCM-SGP/AEPEC) establishing that the office did not find "technical support" to justify the creation of an OTE.[28]

[27] Translation from Spanish by the authors. Its main functions would be those of "…supervising and sanctioning non-compliance with the law, resolving disputes in administrative headquarters, setting binding criteria, promoting and disseminating this right among the population, training public officials, and, finally, providing technical advice to public institutions." (Oficio Nº 1359-2012-DP, November 9, 2012).

[28] Memorandum Nº 402-2013-PCM, April 25, 2013.

Despite this negative answer, former Ombudsman, Eduardo Vega repeated this formal request to create an OTE on a yearly basis afterwards.[29] The Ombudsman also defended the need to create an autonomous national authority in two multi-actor working groups dependent on the PCM with institutionalized participation of civil society organizations: the Comisión de Alto Nivel Anticorrupción (High Level Anti-Corruption Commission, CAN)[30] and the Comisión Multisectorial de Gobierno Abierto (Multisectoral Commission of Open Government).[31] Moreover, insisting on the importance of its proposal concerning the need to create an autonomous national authority, on December 2013, the Ombudsman Office published the Informe Defensorial Nº 165 "Balance a diez años de vigencia de la Ley de Transparencia y Acceso a la Información Pública 2003-2013,"[32] which became a critical input for future debates concerning the right of transparency and access to information in Peru.

[29] Interview with Eduardo Vega, September 18, 2020.

[30] Created in 2010, CAN is an institution formed by representatives of public, private and civil society organizations with the objective of articulating efforts, coordinating actions and proposing mid-term and long-term policies to prevent and combat corruption in Peru.

[31]See press release from August 21, 2013: https://www.defensoria.gob.pe/defensoria-del-pueblo-sustento-la-necesidad-de-crear-una-autoridad-nacional-autonoma-garante-de-la-transparencia-y-el-acceso-a-la-informacion-publica/ (Last accessed, October 6, 2020).

[32] See: https://www.defensoria.gob.pe/informes/informe-defensorial-no-165/ (Last accessed, October 6, 2020).

The creation of an autonomous authority became a central issue defended by a coalition between the Ombudsman, civil society organizations, and experts in the years to come.[33] Between 2015 and 2016, Proética[34] and civil society representatives pushed the CAN to prepare its own bill to create an autonomous national authority.[35] The last

[33] See A. Gamboa, "¿Habemus Autoridad Nacional de Transparencia y Acceso a la Información Pública?", DAR Opina, January 10, 2017. Available at: https://dar.org.pe/daropina_habemos_autoridad/ (Last accessed, October 21, 2020).

[34] The Peruvian chapter of Transparency International.

[35] List of members of the CAN: CAN President and Prosecutor of the Nation, Pablo Sánchez; Ministro de Justicia (Minister of Justice), Aldo Vásquez; Ombudsman, Eduardo Vega; Secretario Ejecutivo del Acuerdo Nacional (Executive Secretary of the National Agreement), Javier Iguiñiz; Executive Director of Proética, Walter Albán; Presidente de la Asamblea Nacional de Gobiernos Regionales (President of the National Assembly of Regional Governments, ANGR), Edwin Licona; Presidente del Congreso de la República (President of Congress of the Republic), Luis Ibérico; Contralor General de la República (General Comptroller of the Republic), Fuad Khoury; President of the PCM, Pedro Cateriano; Representante del Presidente del Poder Judicial (Representative of the President of the Judiciary), José Luis Lecaros; Presidenta del Organismo Supervisor de las Contrataciones del Estado (President of the State Contracting Supervisor Bodies, OSCE), Magali Rojas Delgado; Representante del Consejo de la Prensa Peruana (Representative of Peruvian Press Council, CPP) David Álamo García; Representante de la Sociedad Nacional de Industrias (Representative of National Society of Industries, SNI), Raúl Saldías; Secretario General de la Central Autónoma de Trabajadores del Perú (Secretary General of the Autonomous Central of

discussion on the subject at the CAN, which took place in May 2016, revealed the opposition to the bill from some government and business representatives. Despite this opposition, the CAN approved the bill and decided to present it as a legislative initiative, but it never did so. Walter Albán, former Executive Secretary of Proética, claimed that not having someone more expeditious in charge of the CAN's technical secretary meant that bureaucratic inertia won. As a result, the bill was never presented. The governmental term ended soon after, leading to a change of several representatives serving on the CAN.[36]

In November 21, 2012, the Ombudsman also presented its draft bill to the Grupo de Trabajo de Lucha Permanente y Planteamiento de Politicas de Prevencion contra la Corrupcion del Congreso (Working Group for the Permanent Fight and the Generation

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Peruvian Workers, CAT), Víctor Irala; Representante de la Confederación Nacional de Instituciones Empresariales Privadas (Representative of the National Confederation of Private Business Institutions, CONFIEP), Viveca Amorós; Presidente de la Cámara de Comercio de Lima (President of Lima's Chamber of Commerce, CCL), Mario Mongilardi; Presidente de la Asociación de Universidades del Perú (President of the Association of Universities of Peru) Iván Rodríguez; Representante del Concilio Nacional Evangélico del Perú (Representative of the National Evangelical Council of Peru, CONEP) Víctor Arroyo; Representante de la Unión Nacional de Iglesias Cristianas Evangélicas del Perú (Representative of the National Union of Peruvian Christian Evangelical Churches, UNICEP). The CAN was coordinated by Rosmery Cornejo.

[36] Personal interview with Walter Albán, former Executive Secretary of Proética (October 7, 2020).

of Policy Proposals against Corruption of the Congress).[37] Although this bill was not discussed in Congress, it inspired other bills that would be presented a few years later. Thus, between September 2014 and April 2016, three new bills were presented in Congress. The first bill (number 03819/2014) aimed to create the National System for Transparency and Access to Information. The bill sought to regulate the National System of Transparency and Access to Public Information, understood as the set of standards and procedures that seek to guarantee transparency and the right to public information. It was presented by the Solidaridad Nacional (National Solidarity) parliamentary group, and particularly promoted by Congressman Vicente Antonio Zeballos Salinas.

The second bill (number 05058/2015) declared the public need and priority to create the Instituto Nacional de Transparencia e Información (National Institute of Transparency and Information). The bill proposed the creation of an OTE, the Instituto Nacional de Transparencia e Información (National Transparency and Information Institute), with functional, technical, economic, budgetary and administrative autonomy, attached to the Presidency of the Council of Ministers and with the ability to plan, promote, supervise, oversee and impose sanctions in the field of transparency and access to information. In this sense, the bill clearly follows the Ombudsman's recommendation. It was presented by the parliamentary group comprising the Partido Popular Cristiano (Christian Popular Party, PPC) and Alianza para el Progreso (Alliance

[37] See: https://www.defensoria.gob.pe/actividades/defensor-del-pueblo-presenta-anteproyecto-de-ley-para-la-prevencion-de-la-corrupcion/ (Last accessed, October 6, 2020).

for Progress, APP). The bill was promoted by Congressman Luis Ibérico Núñez, who was also President of the Congress at the time.

The third bill (number 05252/2015) declared a public interest in the creation of a National Authority for Transparency and Access to Public Information, to encourage the Executive to create an OTE. It was presented by the Alianza Parlamentaria (Parliamentary Alliance) parliamentary group and Frente Amplio (Broad Front,) and, in particular, by Congresswoman Verónika Mendoza.

These three Congressional bills were grouped and discussed together in the Congress's Comisión de Descentralización, Regionalización, Gobiernos Locales y Modernización de la Gestión del Estado (Commission on Decentralization, Regionalization, Local Governments and Modernization of the Administration of the State, Decentralization Commission) in May 2016, during the last months of Ollanta Humala's presidential term (Partido Nacionalista, Nationalist Party), while the run-off campaign between Keiko Fujimori (Fuerza Popular, Popular Strength, FP) and Pedro Pablo Kuczynski (Peruanos Por el Kambio, Peruvians for Change, PPK) was taking place. This commission unanimously endorsed a dictum in favor of declaring a public interest in creating an autonomous national authority for Transparency and Access to Public Information. However, as campaign season had already begun and the legislative term was about to end, this dictum never made it onto the congressional agenda to be debated on the floor of Congress.[38] Thus, it did not become law.

In Peru there is a legal obstacle that impedes Congress from creating a state entity without the Executive's express and prior authorization. Law 27,658, Ley Marco

[38] Interview with former Frente Amplio Congresswoman Verónika Mendoza, October 12, 2020.

de Modernización de la Gestión del Estado (Framework Law for the Modernization of State Management), requires the PCM to provide a technical opinion regarding the creation of ministries or any other type of state entity—including autonomous authorities—prior to their establishment. This explains the Decentralization Commission's decision to pass a declarative law in favor of creating an autonomous authority. Despite the existence of a wide consensus in the 2011-2016 legislature in favor of creating an autonomous authority, it simply could not do so.

The current FOI oversight institution was finally created in 2017 through Legislative Decree 1,353, as the result of powers delegated to the Pedro Pablo Kuczynski government. The resulting design of the FOI oversight institution was a diminished version of what the Ombudsman-civil society-experts coalition had demanded since 2012.

In the following section, we present the CPOs found for each piece of evidence defined ex ante to test each hypothesis.

H: Isomorphic pressures

H. 1. Judicial or constitutional opinions based on previous regulations determine the way FOI oversight institutions are designed in each country.

No evidence found

H. 2. The design of FOI oversight institutions resembles other already-established oversight institutions in related fields.

To safeguard rule of law and assure greater efficiency in the execution of some tasks, the Peruvian Constitution establishes some autonomous bodies, which do not depend on any of the powers of the state. However, to acquire the constitutional status of an autonomous body, the maximum level of autonomy possible under the Peruvian administrative law, the entity must be explicitly mentioned in the Constitution.[39] Thus, the creation of any new Órgano Constitucional Autónomo (Constitutional Autonomous Body, OCA) would require amending the Constitution to include mention of the new body.

Also, Law 29,158, Ley Orgánica del Poder Ejecutivo (Organic Law of the Executive Power, LOPE) establishes Organismos Públicos (Public Bodies) that, although administratively dependent on the Executive, can be functionally, financially, and, politically autonomous. According to this law, Public Bodies are deconcentrated entities of the executive branch that have powers of national scope and are attached to a Ministry (ibid., art. 28).40 After OCAs, a Public Body is the most autonomous institutional model possible within Peruvian public administrative law.

There are two types of Public Bodies: Organismos Públicos Ejecutores (Executor Public Organisms) and Specialized Public Organisms (ibid, art. 30). In

[39] See the list of existing constitutionally autonomous bodies at: https://www.gob.pe/estado/organismos-autonomos.

[40] The law stipulates that Specialized Public Organisms are created and dissolved by legal initiative of the Executive Power (Article 28, subsection 2).

turn, there can be two types of Specialized Public Organisms: Organismos Reguladores (Regulatory Organisms)[41] or OTE.[42]

Peru's FOI oversight institution comprises two bodies, the Dirección General de Transparencia, Acceso a la Información Pública y Protección de Datos Personales (General Directorate of Transparency, Access to Public Information, and Protection of Personal Data) and the Tribunal de Transparencia y Acceso a

[41] Law 27,332 establishes the following Regulatory Organisms of private investment in public services: Organismo Supervisor de la Inversión Privada en Telecomunicaciones (Supervisory Body on Telecommunications' Private Investment, OSIPTEL); Organismo Supervisor de la Inversión en Energía (Supervisory Body on Energy Investment, OSINERG); Organismo Supervisor de la Inversión en Infraestructura de Transporte de Uso Público (Supervisory Body of Investment in Public Transportation Infrastructure, OSITRAN); and, Superintendencia Nacional de Servicios de Saneamiento (Superintendent of National Sewage Services, SUNASS).

[42] The OTEs are, for example: Centro Nacional de Planeamiento Estratégico (National Strategic Planning Center, CEPLAN), the Autoridad Nacional del Servicio Civil (National Authority of the Civil Service, SERVIR), the Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (National Institute for the Defense of Competition and the Protection of Intellectual Property, INDECOPI), the Superintendencia Nacional de Registros Públicos (National Superintendent of Public Registries, SUNARP), or the Superintendencia Nacional de Aduanas y Administración Tributaria (National Superintendent of Custom Services and Revenue Administration, SUNAT).

la Información Pública (Tribunal of Transparency and Access to Public Information, TTAIP). None of these bodies achieved the autonomy status granted for OTEs. According to the Legislative Decree, 1,353, article 6, the TTAIP:

> "…is a decision-making body of the Ministry of Justice and Human Rights, that constitutes the last administrative instance in matters of transparency and the right to access public information at the national level. As such, it is competent to resolve disputes that arise in such matters. It depends administratively on the Minister and has autonomy in the exercise of its functions. Its operation is governed by the provisions contained in this Law and its complementary and regulatory standards."

In turn, the General Directorate of Transparency, Access to Public Information, and Protection of Personal Data depends hierarchically on the Despacho Viceministerial de Justicia (Vice-Ministerial Office of Justice).[43] It is the public authority in charge of exercising the national authority for transparency and access to public information, as well as exercising the national authority for the protection of personal data. In other words, Peru's FOI oversight institution adopts a model that separates the institution in charge of the technical/normative

[43] Legislative Decree 1,353 establishes that "The Ministry of Justice and Human Rights, through its National Directorate for Transparency and Access to Public Information, is the National Authority for Transparency and Access to Public Information, hereinafter the Authority." (Article 3).

functions (the ANTAIP) from the one in charge of the adjudication functions (the TTAIP). The separation of the technical/normative function from the adjudication function in administrative law is a criterion commonly applied as a principle for institutional design in Peru—known as "right to double instance"—. Usually, when there is a need to administer justice in the area of specialization, a Board of Directors is accompanied by a separate Court which adjudicates, located at the same hierarchical level as the Board in the organization chart (e.g. INDECOPI, SERVIR, or SUNARP).[44] In contrast, in the Ministry of Justice and Human Rights organizational chart, TTAIP accompanies the Minister as an adjudication body, but ANTAIP is a body dependent on one of the two Vice Minister;, it has a lower rank than the TTAIP.

In summary, ANTAIP and TTAIP follow the principle of separating technical/normative functions from adjudication functions when designing state institutions, present in Peruvian administrative law tradition. Nevertheless, the specific design of these FOI oversight institutions does not resemble the level of

[44] See the organization charts of INDECOPI, SERVIR, and SUNARP at: https://www.indecopi.gob.pe/documents/1902049/3194210/pdf_organigrama.pdf, https://www.sunarp.gob.pe/organigrama.asp, https://www.servir.gob.pe/nosotros/quienes-somos/organigrama/ (Last accessed, October 15, 2020).

autonomy of the OTEs. The CPOs presented above are a Hoop Test (necessary evidence) of the isomorphic pressure hypothesis. They are necessary pieces of evidence for the existence of isomorphic pressures because a previous institutional model is necessary to constrain the design of new institutions. However, this does not suffice to confirm the hypothesis because it does not directly show that decision-makers were constrained by isomorphic pressures. They could have chosen this institutional design for other reasons. These CPOs also allow one to claim that isomorphic pressure did not determine these bodies' level of autonomy.

H. 3. Policymakers (politicians, legislators, government officials) mention previous policy or institutional antecedents that were considered in the design of FOI oversight institutions.

In 2012, officials from the Ombudsman Office initially thought about creating an authority following the Mexican model to deal with non-compliance.[45] However, this would have entailed the creation of an OCA, which was politically unviable, as it would have required a constitutional amendment.[46] Thus, when Ombudsman officials interviewed with several congressmen "…we were told that 'since the Ombudsman is already an OCA, why don't you take care of that too?' We responded that while the nature of Ombudsman work is

[45] Personal interview with former Ombudsman official.

[46] Personal interview with former Ombudsman Eduardo Vega.

based on persuasion [supervisory role], this authority should instead issue sanctions."[47]

The Ombudsman took such concerns into consideration when drafting the bill and proposed "the creation of an [OTE] with technical, functional, administrative, regulatory and economic autonomy."[48] That is, an entity with legal but not constitutional recognition of autonomy, as is the case with INDECOPI,[49] SUNARP, or SERVIR.[50] Such an Authority would be in charge of "supervising and sanctioning non-compliance with the law, resolving disputes in administrative headquarters, setting binding criteria, promoting and disseminating this right among the population, training public officials, and, finally, providing technical advice to public institutions." They believed it was possible to create a sanctioning organism within an OTE, specifying a sanctioning procedure and being respectful of due process.[51]

The Ombudsman proposal to create a new institution meant to have technical, financial, administrative, economic and functional autonomy with sanctioning

[47] Personal interview with former Ombudsman official.

[48] Oficio Nº 1359-2012-DP, November 9, 2012

[49] Personal interview with former Ombudsman official.

[50] Personal interview with former Ombudsman Eduardo Vega.

[51] Personal interview with former Ombudsman Eduardo Vega.

capacity was resumed later at the CAN. Thus, the CAN draft bill also proposed the creation of an OTE with such characteristics, but specifying that it would be attached administratively to PCM (CAN draft bill). In October 2015, this draft bill was first discussed in the CAN. While defending this bill, the Executive Director of Proética, Walter Albán, explained:

> "Regarding the autonomy, we are proposing an autonomous body, but not constitutionally autonomous because that would require us to modify the Constitution. However, a scenario like the one that worries the Supreme Court Judge would not occur, because that limitation is given and the independence of the Judiciary cannot be infringed. Therefore, it is a functional and administrative autonomous institution that will be able to act efficiently in this field, such as SUNAT, INDECOPI and many other institutions with this kind of autonomy. This autonomy is relative, of course, because there cannot be an entity in the administrative realm detached from the Executive branch, that is why it is under the PCM."

More importantly, the Working Group convened by the Minister of Justice in 2016, which wrote the Legislative Decree that was sent to the Executive for discussion and approval, was also conscious that it was impossible to pull off a constitutional amendment to create an OCA. Thus, they also proposed creating an OTE with legal autonomous status, attached to the Ministry of Justice as

SUNARP.[52] In contrast to what the government finally approved, they proposed a strong, autonomous oversight institution with sanctioning power and capacity to impose sanctions, as described in the bill's explanatory statement: [53]

> "Although it is attached to the Ministry of Justice and Human Rights, this does not imply a dependency relationship as in the case of the organic units of the Ministries, precisely because of the technical, administrative, regulatory and financial autonomy that is recognized, which organic units do not enjoy. (…) To guarantee real independence, it is proposed that the Board of Directors be made up of five members elected through a public merit contest, in charge of a multisectoral evaluation commission (…) and expressly prohibits the removal of the members of said Board of Directors for reasons of trust." (Legislative Decree bill)

> "…the Project proposes that the Authority, prior to due process, impose sanctions on those subjects who, being obliged to guarantee the right of access to public information and the protection of personal data, engage in harmful conduct to their detriment. The exercise of the sanctioning power of the Authority is derived from the criterion of specialty to which

[52] Personal interview with former member of the Working Group, Roberto Pereira.

[53] Interview with former member of the Working Group, Roberto Pereira, June 26, 2020.

it obeys the assignment of its functions and powers" (Legislative Decree bill)

The Legislative Decree bill also proposes to create the Court electing their members by public contest. "This Court would be the last administrative instance other than the entity that will resolve the appeals against its decisions (…) therefore it guarantees technical and independent treatment, with the possibility of establishing binding precedents that contribute to predictability in the resolution of disputes in matters within its jurisdiction."

As a former member of the Working Group explains, they proposed the strongest and most autonomous institutional model possible within public administration law (LOPE), but the Council of Ministers changed three crucial attributes of their proposal: the level of autonomy, the capacity to impose sanctions, and the sanctions regime.[54] Thus, instead of having a fully autonomous Authority similar to INDECOPI and the SUNARP (an OTE), the Legislative Decree created the ANTAIP as a line organ hierarchically dependent on the Ministry of Justice (a National Directorate). Or, instead of having the power to impose sanctions, the Tribunal has to "coordinate" with the Civil Service Tribunal, who imposes the sanctions.[55] TTAIP cannot impose fines and cannot directly sanction public officials but must send the proposed sanction to the Civil Service Tribunal.

[54] Interview with Roberto Pereira, June 26, 2020.

[55] Interview with Roberto Pereira, June 26, 2020.

> As mentioned earlier, the proposal to create an autonomous institution was criticized by the PCM. According to the former Secretary of Public Management, Mayén Ugarte, "(...) The proposal did not follow the public sector logic: there are standards for creating a public body. There are or ought to be other solutions to problems before creating a public body."[56]

Overall, these CPOs show that policymakers considered available administrative models to suggest the design of the FOI oversight institution. Proposing to create an institution like the Mexican or the Chilean ones, following international models during decision-making discussions (see next section), would have implied selecting the highest level of autonomy possible under Peruvian administrative law (an OCA model). But Peruvian decision makers and activists were quite aware that pushing for an OCA was not a politically and technically viable strategy. Consequently, in several rounds they proposed creating an OTE instead, following existing institutional models of legal autonomy in Peru such as those of INDECOPI or SERVIR. However, the acknowledgement of pressures set by fiscal and policy constraints reduced the margins for the creation of a new entity following the OTE model. For the institutional design of the FOI oversight institution finally implemented, we do not find this type of evidence for the isomorphic pressure hypothesis.

AH. 1.: Diffusion

[56] Personal interview with former Secretary of Public Management-PCM, Mayén Ugarte, September 28, 2020

AH. 1. 1. The design of FOI oversight institutions resembles other already-established FOI oversight institutions in countries that are used as models.

No evidence found.

AH. 1. 2. Policy makers (politicians, legislators, government officials) talk about the existence of other cases that could be used as models for the design of the FOI oversight institution.

The discussion of the bills presented in 2014, 2015 and 2016 included references to several international experiences with FOI oversight institutional designs. The case of Panama's Law 33 that created the National Authority for Transparency and Access to Information, with functional and administrative autonomy, was mentioned in the preamble of the 3819/2014 bill. Also, Canada's Commission of Information, El Salvador's National Institute of Access to Public Information and Honduras' National Institute of Access to Public Information were mentioned as inspiring cases in the same bill. Two countries were considered in more detail. Chile's CPLT was mentioned in the preamble of the 3819/2014 and the 5058/2015 bills. More specifically, the reference highlighted its budgetary autonomy, granted by the Transparency of Public Function and Access to Information of State Administration law. Moreover, parts of the law that created the CPLT in Chile were transcribed in the preamble of the 5058/2015 bill (33). Mexico was also mentioned in the preamble of the 5058/2015 bill. In particular, the bill mentions the Constitutional Reform it introduced in 2014 to create the

Institute for Access to Information and Data Protection. Parts of the law that created the Mexican Federal Institute of Access to Public Information were also transcribed (33).

In a session of the CAN, Luis Ibérico (President of the Congress) declared "…it seems good to me that through this national authority the transparency to prevent corruption is strengthened, following the experience of Chile, Mexico and other countries" (High Level Anti-Corruption Commission, CAN, 10/05/16, 2).[57] In the same session, Magali Rojas (President of the OSCE) mentioned the following: "Recently, I was part of a meeting where the Mexican initiative was presented. [Mexico] has an autonomous authority, granted in the Constitution, that works very well. Thus, we are not being too innovative. On the contrary, we are behind in this type of initiative that strengthens transparency and access to information" (High Level Anti-Corruption Commission, CAN, 10/05/16, 8). [58]

The Legislative Decree bill (Ministry of Justice and Human Rights - 2016) refers to the Mexican and Chilean cases, emphasizing that the Federal Institute of Access to Information and Protection of Personal Data is an organism with constitutional autonomy, and the CPLT is an autonomous entity governed by public law, with legal personality and its own assets. The technical report

[57] See http://can.pcm.gob.pe/2016/05/sesion-n-24-10-de-mayo-del-2016-2/ (last accessed in September 2, 2020).

[58] See http://can.pcm.gob.pe/2016/05/sesion-n-24-10-de-mayo-del-2016-2/ (last accessed in September 2, 2020).

> "National Authority for Integrity, Transparency, and Protection of Personal Data," developed by the Ministry of Justice and Human Rights (2016) during the decision-making process leading to the approval of Legislative Decree 1,353 that creates ANTAIP and TTAIP, refers to the experiences in Mexico, Panama, Spain, and Chile, but it does not discuss particular characteristics of the institutional design.

International experiences were, in fact, used as models to propose and justify the need to create an autonomous FOI oversight institution in Peru. There were explicit references to this international evidence in bills and discussions of policy makers. However, they were not considered in the final design of the FOI oversight institution, which does not resemble any model or any combination of international experiences.

AH. 1. 3. Missions/Reports from international organizations and NGOs make explicit references to institutional features that should be considered for the FOI oversight institutions.

> The Johannesburgo Principles (1995) recommend the configuration of the right to review a request for information by an independent authority (Ombudsman draft bill 2012, 5). The Ombudsman draft bill and the Legislative Decree bill (Ministry of Justice) mention, in the antecedents section, the Atlanta Declaration and Plan of Action to Advance the Right of Access to Public Information, which states that "Principle 4.k. The applicant's right to appeal any decision, or refusal to disclose information, or any other infringement of the right of access to information should be guaranteed by an independent authority that has the power to make binding

decisions and that can enforce them, preferably an intermediary agency such as a Commissioner (or a Commission) of information, or a Specialized Ombudsman of first instance."[59]

Rosmary Cornejo, the CAN's General Coordinator mentions that "…[the] OECD Public Sector Integrity Study identified [the Authority] as a necessary initiative that needs prompt implementation, in that sense its approval is a priority in the national anti-corruption policy" (High Level Anti-Corruption Commission, CAN, May 10, 2016, 2).[60] Even though this reference indicates that international actors were following the discussion and setting the FOI law as a necessary condition for Peru to become an OECD member, there is no evidence of a more explicit influence in the design of the oversight institution.

PCM Report N°001-2017-PCM/SGP-ACB and the Ministry of Justice Technical Report (Legislative Decree bill) refer to the recommendation made by the OECD to Peru (Study of Public Integrity) to create a National Authority of

[59] See at:
http://www.oas.org/es/sla/ddi/docs/acceso_informacion_doc_declaracion_plan_accion_Atlanta.pdf.

[60] The creation of a National Authority on Transparency and access to information was triggered by the process of negotiation that the Peruvian government started with the OECD in order to be able to join that organization as a member.
See http://can.pcm.gob.pe/2016/05/sesion-n-24-10-de-mayo-del-2016-2/ (last accessed in September 2, 2020).

Transparency and Access to Information to strengthen Peru's system of integrity: "In the context of the country program signed by Peru with the OECD, the Integrity Study developed in the 2014-2015 period provides a set of recommendations to reinforce a coherent and comprehensive integrity system at both the National and Regional levels and, in that line, recommends the formation of a National Authority for Transparency and Access to Information for our country" (PCM Technical Report on the National Authority for Integrity, Transparency, and Protection of Personal Data, 4).[61]

Bill 3819/2014-CR mentioned the commitment made by Peru, in 2012, when it decided to enter the Global Alliance for Open Government. It also mentioned the Atlanta Declaration[62] in which presidents of the Americas committed to move forward on the issue of transparency and access to information. PCM's Technical Report on the legislative decree bill suggesting the creation the National Authority for Integrity, Transparency, and Protection of Personal Data also highlights Peru's adherence to the Alliance for Open Government (Report N° 001-2017-PCM / SGP-ACB, 4-5).

The existence of references to reports from international organizations and NGO's suggesting the importance of creating an autonomous FOI oversight institution is

[61] This is a reference to the OECD's preliminary report "OCDE Study on Integrity in Peru" (2016, 2-4).

[62] See http://misionpresidencial.com/declaracion-de-atlanta/ (Last accessed in September 2, 2020).

indicative of some potential influence of international factors in the domestic policymaking process. However, the final design of Peru's FOI oversight institution did not follow the recommendations from international organizations.

AH. 1. 4. Technical cooperation documents (previous to or concurrent with the approval of the law) in the field of FOI refer to institutional features that should be considered for the FOI oversight institutions.

No evidence found.

AH. 1. 5. International rulings and/or international norms regarding FOI condition domestic decisions on the design of FOI oversight institutions at the country level.

Report N°001-2017-PCM/SGP-ACB (PCM Report on the Legislative Decree that creates the National Authority of Integrity, Transparency, Access to Public Information, and Protection of Personal Data) and the Ministry of Justice Legislative Decree bill mention that the Inter-American Human Rights Court has established that

> "…states must establish the right to review the administrative decision that denies access to information through a remedy that is simple, effective, expeditious and not burdensome, and that allows the decisions of public officials who deny the right of access to certain information—or who simply omit to respond to the request—to be disputed."

> The Ombudsman draft bill and the Ministry of Justice Legislative Decree bill mention the reports of the United Nations and the Inter-American Commission on Human Rights Special Rapporteur that "…recommend an institutional and legal framework that guarantees the exercise of the right to information." Moreover, in its Technical Report, the Ministry of Justice highlights that Mexico and Chile are the two countries identified by the Special Rapporteur for Freedom of Expression (Inter-American Commission on Human Rights) as already having an administrative entity that is autonomous, independent, and specialized to guarantee the right to access information.
>
> The Ministry of Justice Legislative Decree bill also mentions that, on March 2015, the OAS Office of the Special Rapporteur for Freedom of Expression, in its report on "The supervisory bodies of the right of access to public information," has contended that a fundamental aspect of the proper implementation of the regulatory frameworks on access to information lies in the establishment of a specialized administrative body dedicated to supervise and verify compliance with the legislation, and to resolve the controversies that arise between the right of access to public information and the interest of the state in protecting certain information, based on legally established limitations.

These CPOs are evidence of specific international rulings and/or international norms that were considered during the discussion of the FOI law. While some are references to general principles, others explicitly refer to the design of the oversight institution, pointing to the need to assure an autonomous institution capable of enforcing the right

to access information. However, there are no mentions of the specific institutional design adopted for the FOI oversight institution.

AH. 1. 6. International experts participate in or are advisors on the design of the FOI law and the FOI oversight institution

No evidence found.

AH. 1. 7. Seminars organized by international organizations about FOI and transparency prior to the approval of the law discuss particular designs for FOI oversight institutions.

No evidence found.

Overall, the CPOs presented above indicate that international experiences were present and taken into account when designing the FOI oversight institution in Peru. However, the specific features of the institutional design that was finally adopted did not follow the foreign models that diffused to Peru.

AH. 2.: Political Coalitions

AH. 2. 1. Coalitions of different actors (political parties, civil society organizations, state actors, journalists) with positions favoring or opposing specific design features influence the design of FOI oversight institutions.

The information collected shows that a coalition favoring a highly autonomous Authority for Transparency and Access to Information, organized since 2012, fought continuous battles with the Executive power and technocrats to get this project approved. This coalition explicitly pushed for the creation of an available institutional model (OTE) (see isomorphic pressures section above). The coalition favoring a highly autonomous Authority for Transparency and Access to Information comprised Ombudsman's officials, legal experts (many of whom worked previously at the Ombudsman office), journalists (CPP, Instituto Prensa y Sociedad (Press and Society Institute)) and civil society organizations (Proética, Suma Ciudadana (Citizenzry Summation), Ciudadanos Al Día (Up to Date Citizens), Asociación Civil Transparencia (Civil Transparency Association), among others).

In September 2016, the new Minister of Justice, Marisol Pérez Tello, established a Working Group[63] in charge of preparing a technical report with a normative

[63] The former Vice Minister of Justice explains that the Prime Minister and the Secretary of Public Management did not strongly oppose the law; on the contrary, they remained crucial allies who continued pushing for the creation of an Authority within the Executive. In fact, the Secretary of Public Management actually helped the Ministry of Justice craft alternative intermediate formulas to be presented and discussed in the Council of Ministers. The former Minister of Justice agrees with this. In her opinion, PCM was interested in creating an Authority because it was a civil society demand and Fernando Zavala, the Prime Minister, helped them push the proposal in the Council of

proposal for the creation of a National Authority of Transparency, Access to Public Information and Protection of Personal Data (Resolución Ministerial Nº 0268-2016-JUS, September 12, 2016).[64] The Resolution explicitly authorized the group to solicit input from those public or private institutions or experts they considered could help them accomplish their goal. In their final report, the Working Group recognized the active collaboration and input provided by civil society organizations including Proética, Up-to-Date Citizens, Hiperderecho, Centro Líber, Press and Society Institute, Democracia Digital (D&D International), Derecho, Ambiente y Recursos Naturales (Rights, Environment and Natural Resources), Datos Abiertos Perú (Open Data Peru), Propuesta Ciudadana (Citizen Proposal), Agencia de Investigación Ambiental (Environmental Investigation Agency, EIA), the investigative journalism group Ojo Público (Public Eye), as well as the CCL (Informe Técnico Autoridad Nacional para la Integridad, Transparencia y Protección de Datos Personales,

Ministers, probably because of Zavala's experience in Transparency Civil Association (he was a Member of the Assembly of this NGO).

[64] The Ministry assigned the following experts to serve as members of this Working Group: two former Ombudsman officials, Roberto Pereira and Fernando Castañeda; two constitutionalists who worked as jurisdictional advisors to the Tribunal Constitucional (Constitutional Court), Roger Rodríguez and Omar Sar; two civil society activists for the right to public information, Javier Casas (lawyer) and Kela León, journalist and member of CPP and IPYS; and two lawyers specialized in administrative law as well as in regulation and protection of personal data, Erick Iriarte and Diego Zegarra.

Oficio Nº 3304-2016-JUS/OGPP, December 30, 2016).[65] As members interviewees confirmed, the Working Group met independently from the Ministry. The group wrote a technical report and a bill.

The opposing coalition was led by a group of bureaucrats who took advantage of the veto power allowed by the LOPE law and blocked the initiative several times before its final approval in January 2017. They explicitly refused several versions of an autonomous authority on different occasions.

On April 25, 2013, the Internal Report from the Public Management Secretariat (PCM) declared that there was no technical support for the draft bill submitted by the Ombudsman in 2012 (Informe Nº 05-2013-PCM-SGP/AEPEC).[66] The same position was expressed by the PCM in 2014:

> "The bill is not viable, since the creation of the proposed entity would also require the creation of public expenditures, which would contravene the constitutional mandate prescribed in the

[65] As mentioned earlier, on September 17, a few days after constituting this Working Group, the Ministry of Justice included the creation of an autonomous National Authority as part of its request to Congress for legislative powers. Indeed, as Vice Minister Edgar Carpio explains, this was one of the several expert commissions the Ministry assembled to prepare proposals related to this legislative package (Personal Interview with Edgar Carpio, October 10, 2020).

[66] Memorandum Nº 402-2013-PCM, April 25, 2013

> first paragraph of article 79 of the Political Constitution of Peru. (…) PCM conditions its opinion of viability to the content of article 3 of the Statute of the Framework Law for the Modernization of State Management (DS 030-2002-PCM)." (Letter Nº 3584-2015-PCM/SG/OPC submitted by the General Secretary of PCM to Congress in relation to the bill 3819/2014-CR).

The same argument was made in 2015 by the Ministry of Economy and Finance and by the DGPP:

> The creation of such an Authority "constitutes an unforeseen expense not included in the Public Budget for the fiscal year in 2015; That is, its application will demand greater resources for its financing. The Bill [3819/2014-CR] affects the principle of budgetary balance regulated by article 78 of the Peruvian Political Constitution and article 1 of the Preliminary Title of TUO of Law 28411(Report 111-2015-EF/50.04, General Directorate of Public Budget, Ministry of Economy and Finances).
>
> The DGPP [General Directorate of Public Budget] makes an observation about Bill 5058/2015-CR from the budgetary point of view (…) its application in the short, medium or long term, will result in the allocation of public resources necessary for the

> creation, implementation and operation of the Institute of National Information and Transparency (INTI). It should be noted that such financing is not provided for in the public sector budget for the (sic) Fiscal Year 2016, approved by law 30372" (Report 002-2016-EF/50.04 about Bill 5058/2015-CR, General Directorate of Public Budget, Ministry of Economy and Finances).

Regarding the sanctioning power of the FOI oversight institution, during the final lawmaking process that took place in the Executive, bureaucrats opposed the creation of an autonomous and stronger version of the Authority, as drafted by the experts Working Group. As explained by former Vice Minister of Justice Carpio, the problems started at the Coordination Council of Vice Ministers (CCV), the first stage in the lawmaking process within the Executive, which did not approve the proposal.[67] He explains that the Vice Ministers particularly questioned the idea of creating a court with sanctioning powers. They pointed out that the deadlines for answering information requests were too short and it would not be fair to have public officials sanctioned for not complying with those deadlines because they were very busy working; that they would need to

[67] For example, they argued that the creation of this type of institution implied that the administrative court would operate as a prior instance to the constitutional habeas data procedure. From this point of view, the latter would need to be modified by an Organic Law and not a common law, as was being proposed. Interview with Edgar Carpio, October 10, 2020.

appoint someone whose whole job would entail resolving these requests. Some even came up with legal arguments to oppose the measure.[68] In the Vice Minister's words,

> For the former Public Management Secretary (PCM) Mayén Ugarte, what explained the opposition within the CCV and later on in the Council of Ministers was "that the original project was very hard. It mixed the powers that have to do with protection of [personal] data with the powers of transparency. So, there were things that, for example, the famous Authority could enter any public entity, at any time, collect all the information, and intervene in the communications. I mean, it was an absolutely unbelievable thing. They could take all the data because you had not provided any particular information. (...) There was a confusion about the roles."[69]

Overall, these CPOs show the existence of a coalition in favor of an autonomous and strong FOI oversight institution and a coalition of high-level bureaucrats against it. Notwithstanding the party in government, bureaucrats resisted the idea of creating such an authority. These CPOs constitute a Hoop test of the existence of such coalitions. They are necessary but insufficient to claim that coalitions influenced particular design choices.

[68] Interview with Edgar Carpio, October 10, 2020.

[69] Interview with Mayén Ugarte, September 28, 2020.

AH. 2. 2. Members of coalitions of different actors (political parties, civil society organizations, state actors, journalists) state that specific design features were included in or omitted from the final institutional design because of pressure from the coalition.

The negotiation process between the Minister of Justice-PCM's coalition and the other ministers ended up "diminishing" the strength and autonomy of the resulting authority. Part of the negotiation was related to the need to reduce the state apparatus. As a former Minister of Justice explains,

> "The argument that was used, rather than to reject it, was to restrict it almost to the maximum, was the policy of state reduction. (...) There was an ongoing effort to reduce the state apparatus. (...) I think that general logic ended up impacting the National Transparency Authority."[70]

Concessions made through this negotiation process resulted in the creation of a two-headed FOI institution without precedent in the region. On the one hand, ANTAIP, as a General Directorate, is organically subordinate to the Vice Minister of Human Rights and Access to Justice. On the other hand, the TTAIP is administratively subordinate to the Minister of Justice Office but has autonomy in its functions. Thus, the current form of TTAIP was a concession in this negotiation process within the Executive: The Ministry of Justice wanted to have a second instance (Court) not subject to political power, but lost the battle in relation to creating the Authority as an OTE. In Pérez Tello's own words,

[70] Personal interview with Marisol Pérez Tello, October 2, 2020

"So the model ends up coming out like this because the ministers blocked it [the autonomous Authority] because they keep saying the same thing [as in CCV] (…) [The Court] should not be subject to political power, which was what they [Justice Working Group] wanted from the beginning. The Court required [the entity] to have other appointment rules and to have another level of shielding, as happens with collegial bodies in the regulatory institutions. That was the original proposal as well (...) it needed some level of autonomy from the minister, without that hierarchical dependence [as in the Authority] (…) You have other examples. You have the CAN, which is under PCM. Then you have the Notaries Board under the Ministry of Justice, a collegial body that defines who will be notaries and they have a lot of autonomy with respect to the ministry."[71]

"I think we ended up with a two-headed model because it was what could be achieved, the best that could be achieved. (…) The bill left the Ministry of Justice as approved by the experts and then it suffered mutilations and we were doing all the fights that we could until that two-headed model was achieved… That is not ideal but at least it is progress. Weak, fragile. I think there is still a lot to do but at least one door has already opened." [72]

[71] Personal interview with Marisol Pérez Tello, October 2, 2020

[72] Personal interview with Marisol Pérez Tello, October 2, 2020

AH. 2. 3. Political actors who are not members of the coalition state that specific design features were included in or omitted from the final design because of the pressure imposed by the coalition.

> Former Congresswoman Verónika Mendoza, author of one of the bills and President of the Decentralization Commission in 2016 when the issue was discussed in Congress, said that "The main resistance and entrapment to this initiative [creating an autonomous and strong authority] was in the executive branch."[73] This statement made by a politician who was not a member of the coalition is neither necessary nor sufficient evidence that the high-level bureaucrats' coalition influenced the design of oversight institutions.

Overall, these CPOs show that the coalition comprising the Ombudsman Office, civil society organizations and experts played an important role in pushing for the enactment of the strongest and most autonomous model possible under Peruvian administrative law. This coalition was subsequently defeated by its rival, a coalition of high-level bureaucrats. Under a new government, ministers reached a negotiated solution. The negotiation led to a two-headed non-autonomous FOI oversight institution. The de jure strength of the FOI oversight institution in Peru resulted from differences in the power of coalitions that favored and opposed specific design features grounded in isomorphic pressures. While the proposal to create an OTE followed an isomorphic constraint, it faced an opposition that reduced its autonomy. The result was the creation of a two-headed institution also influenced by isomorphic pressures.

[73] Personal interview with Verónika Mendoza, October 12, 2020

AH. 3.: Political competition

AH. 3. 1. Governments adopt strong (de jure) FOI oversight institutions if they perceive they are not likely to be elected and want their right to access government information in the future to be guaranteed.

No evidence found. Indeed, the decision-making process concerning the creation of a National Authority of Transparency, Public Information and Personal Data Protection took place during Pedro Pablo Kuczynski's first year in government. In addition, the design of the oversight institution finally approved was not as strong as his party had proposed in their electoral platform while campaigning earlier that year.[74]

AH. 3. 2. Governments use the claim of building strong FOI oversight institutions as a way to make their promises of greater transparency more credible and improve their reputation in a context of electoral competition.

No evidence found.

[74] Civil society organizations' pronouncement "Autoridad para la Transparencia: Una promesa incumplida", January, 24, 2017. Available at: https://www.proetica.org.pe/noticias/pronunciamiento-autoridad-para-la-transparencia-una-promesa-incumplida/ .

AH. 3. 3. Governments adopt strong (de jure) FOI oversight institutions because they need to send signals to voters, especially when there are highly visible government scandals.

> The resulting design of the FOI oversight institution was not as strong as it could have been, and this was a decision of the Executive. The attempts to reform the FOI law in 2016 were launched in a context in which the public increasingly perceived corruption as a national problem. According to Proetica's National Survey on Corruption, in 2010, the percentage of Peruvians who identified corruption as one of the country's top three problems increased from 37 percent (in 2008) to 51 percent (2010), and it was 46 percent in 2015. Moreover, in the survey conducted at the end of 2015, 78 percent of Peruvians living in main cities considered that corruption had increased in the last five years.[75] This trend is also confirmed by Carrión, Zarate, Boidi and Zechmeister (2020) based on an analysis of the results of the Latin American Public Opinion Project (LAPOP) surveys. The authors point out that citizen concern about corruption as the main problem in Peru had grown dramatically (from 10.1 percent in 2014 to 27 percent in early 2017; and that this perception was the highest in the region in

[75] PROÉTICA. 2015. Novena Encuesta Nacional sobre Percepciones de la Corrupción 2015. Available at: https://www.proetica.org.pe/noticias/novena-encuesta-nacional-sobre-percepciones-de-la-corrupcion-2015/

the 2016-2017 LAPOP round (Carrión, Zarate, Boidi and Zechmeister 2020, 61-62).[76]

The PPK party did include as part of its government plan the "creation of a National Authority for Transparency and Access to Information with supervisory and sanctioning capacity before the end of the first 100 days of government." However, this proposal was not highlighted as an important or crucial issue in Pedro Pablo Kuczynski's campaign.

Once in government, Kuczynski signaled his commitment to fighting corruption while multiple allegations concerning former presidents were receiving media coverage. Under these circumstances, the newly elected government asked the opposition-led Congress to grant legislative powers to fight against corruption.

While the corruption scandal associated with Kuczynski's government did not trigger the decision to launch the proposal to create an autonomous National Authority, the prevalent context of numerous corruption scandals and public concern about it did so. With this measure and others included in the legislative package, the newly-elected government intended to signal to the public its commitment to fight corruption, in order to regain public approval within a context of public concern over corruption.

[76] Carrión, Julio F., Patricia Zárate, Fernanda Boidi, y Elizabeth J. Zechmeister, 2020. *Cultura Política de la Democracia en Perú y en las Américas, 2018/19: Tomándole el Pulso A La Democracia.* Lima: Instituto de Estudios Peruanos.

AH. 3. 4. Strong (de jure) FOI oversight institutions are established when multiparty coalition governments with majority control of the parliament want to monitor their allies.

No evidence found.

AH. 3. 5. Weak (de jure) FOI oversight institutions are established when single party governments with minority control of the parliament are in charge.

No evidence found.

Uruguay

The first proposal for a bill to regulate FOI was presented in 1996 by representative Díaz Maynard of the opposition party Frente Amplio (Broad Front, FA), under the second administration of Julio María Sanguinetti (1995-2000) of the Partido Colorado (Colorado Party, PC). However, the draft bill was presented but never discussed. In 2000, there was a second effort to promote this bill. On this occasion, it was sponsored by several FA representatives. While this second time it was discussed in the plenary, it was not approved in the Senate and the parliamentary process thus remained incomplete. The third effort to pass a FOI law took place in 2005, when civil society organizations gathered in the Grupo Archivos y Acceso a la Información Pública (Archives and Access to Public Information Group, GAIP),[77] promoted a bill sponsored by senator Margarita Percovich (FA),[78] during the first year of Tabaré Vázquez's first administration. The bill proposed the creation of a regulatory institution in the field of FOI. The bill proposed an autonomous institution with one director and an advisory council. The law was finally approved in 2008 by unanimous vote in the House of Representatives and almost unanimous support in the Senate. However, the oversight that was created differed from the original bill. The law created the Unidad de Acceso a

[77] GAIP is a civil organization that convenes several organizations around the issue of access to public information. It was formed by several organizations, among them Asociación Mundial de Radios Comunitarias -la AMARC- la Asociación de la Prensa Uruguaya, Archiveros sin Fronteras-Sección Uruguay, el Archivo General de la Nación, la Asociación Uruguaya de Archivólogos, la Escuela Universitaria de Bibliotecología y Ciencias Afines, IELSUR, SERPAJ y Uruguay Transparente

[78] The bill was formally presented by the FA´s caucus in the Senate.

la Información Pública (Access to Public Information Unit, UAIP), the FOI's oversight institution, with less autonomy than originally promoted, under the Agencia para el Gobierno Electrónico y la Sociedad de la Information (Agency for Electronic Government and the Information and Knowledge Society, AGESIC).

In the following section, we present the CPOs found for each piece of evidence defined ex ante to test each hypothesis.

H: Isomorphic pressures

H. 1. Judicial or constitutional opinions based on previous regulations determine the way FOI oversight institutions are designed.

No evidence found.

H. 2. The design of FOI oversight institutions resembles other already-established oversight institutions in related fields.

Several institutions that perform tasks and functions similar to those that the UAIP performs in the realm of FOI share a similar institutional status, i.e. they enjoy technical autonomy but are under a specific ministry or the presidency. This means that they are subject to administrative control. For example:

Law 16,170 of December 1990 transformed the Office of the Attorney General into a technical-administrative body within the Ministry of Education and Culture.

Law 17,060 created in December 1998 the Advisory Council on Economic and Financial issues (later renamed as the Transparency and Public Ethics Council, JUTEP). Decree n.° 354/999 assigned it to be under the Ministry of Education and Culture.

Law 17,838 of 2004 on the Protection of Personal Data and Habeas Data established a control body under the Ministry of Economy and Finances.[79]

Law 18,331 of August 2008 on Protection of Personal Data created the Regulatory and Control of Personal Data. It was discussed and approved in the same period as the FOI law. Both have identical institutional formats. [80]

Law 18,362 of October 2008 creates the Agencia de Compras y Contataciones del Estado (Regulatory Agency for Public Procurement, ACCE). The Agency was created under the Presidency, with technical but not budgetary independence.

[79] See https://legislativo.parlamento.gub.uy/temporales/leytemp9065366.htm#art20 (last accessed in August 19, 2020).

[80] See https://www.impo.com.uy/bases/leyes/18331-2008 (last accessed in August 19, 2020).

> In 2009, Law 18,600 of Electronic documents and signing creates the Unit of Electronic Certification with the same institutional format that was used in Laws 18,331 and 18,381.[81]

All these institutions that were created before or at the same time that the FOI bill was approved were hierarchically subordinate to different ministries or to the presidency. In particular, Law 18,331 (Personal Data Protection) and Law 18,600 (Electronic Documents and Signatures), approved during the same legislative period, created oversight agencies that adopt the same format under AGESIC. These CPOs are a hoop test of isomorphic pressures. They are necessary pieces of evidence for the existence of isomorphic pressures because a previous institutional model is necessary to constrain the design of new institutions. However, this is not sufficient to confirm the hypothesis because it does not directly show that legislators were constrained by isomorphic pressures. The legislators could have chosen this institutional design for other reasons.

H. 3. Policymakers (politicians, legislators, government officials) mention previous policies, institutional, or policy antecedents, that were considered in the design of FOI oversight institutions.

[81] See https://legislativo.parlamento.gub.uy/temporales/leytemp4934368.htm (last accessed in August 19, 2020).

We found references made by politicians, legislators and government officials to previous policies, institutional or policy antecedents that were considered in the process of institutional design during the discussion of the bill:

The bill initially proposed that the FOI's oversight institution be a non-state public actor. This type of institution enjoys autonomy from the executive. Carlos Delpiazzo, a well-known attorney and administrative law expert, was invited to advice the Education and Culture Commission of the Senate. He argued against the institutional design proposed in the bill for three main reasons. First, a non-state public actor cannot oversee state institutions: "It does not seem coherent, from an institutional standpoint, nor logical from the institutional architecture point of view, for the control of all state public administrative units, that comprises, among others, the Parliament, the Comptroller Tribunal, the Electoral Court (…) to be in the hands of a non-state public actor." (Congress records, Senate, Education and Culture Commission, 11/23/2006).[82]

Second, Delpiazzo mentioned that the FOI oversight institution should not have an institutional status different from the institution that oversees personal data protection, established in 2004 (Law 17,838). Specifically, he said: "In general, it is frequently the case that the same government agency that is in charge of the

[82] See https://parlamento.gub.uy/camarasycomisiones/senadores/documentos/versiones-taquigraficas/46/1372/0/CON?width=800&height=600&hl=en_US1&iframe=true&rel=nofollow (last accessed in August 20, 2020).

protection of personal data is also the guarantor of access to public information and therefore assures a balance between the two rights." (Congress records, Senate, Education and Culture Commission, 11/23/2006).[83]

Finally, Delpiazzo highlighted the fact that the oversight institution created for the protection of personal data is under the Ministry of Economy and Finances and was not yet operating. Therefore, "…there would be a real imbalance if an agency for the protection of access to public information was created when it still does not work and when there does not exist an agency for the protection of personal data." (Congress records, Senate, Education and Culture Commission, 11/23/2006).[84]

Constitutional lawyer Martín Risso, consulted by the Commission on the oversight institution proposed in the bill, expressed the view that "…the experience in the field of non-state comptroller institutions has not been good in Uruguay, they are costly organizations for the State and it would seem that the

[83] See https://parlamento.gub.uy/camarasycomisiones/senadores/documentos/versiones-taquigraficas/46/1372/0/CON?width=800&height=600&hl=en_US1&iframe=true&rel=nofollow (last accessed in August 20, 2020).

[84] See https://parlamento.gub.uy/camarasycomisiones/senadores/documentos/versiones-taquigraficas/46/1372/0/CON?width=800&height=600&hl=en_US1&iframe=true&rel=nofollow (last accessed in August 20, 2020).

creation of a supervisory body within Parliament would be the best." (Congress records, Senate, Education and Culture Commission, 11/16/2006).[85]

In the parliamentary discussion of the bill, in the Senate's Education and Culture Commission, the first alternative was a Parliamentary Commissioner. This was promoted by the GAIP after the original bill received criticism from legal experts (see above). During the discussion, legislators made references to the existing Parliamentary Commissioner for the penitentiary system, created in August, 2003 (Law17,684).

In the following months, the Commission moved forward with the discussion of the bill. At that time, the prevailing institutional design authority for the FOI oversight institution was the Parliamentary Commissioner. However, this initiative never materialized and in September, 2007, Senator Margarita Percovich presented a new bill that dismissed the Parliamentary Commissioner and assigned AGESIC regulatory responsibility in the field of FOI. This new bill was reviewed and re-elaborated by AGESIC with the goal of harmonizing its main features with the bill on protection of personal data.

In that same month, a bill on the protection of personal data entered the Commission. This bill, proposed by the Executive, included an oversight

[85] See https://legislativo.parlamento.gub.uy/temporales/S20061337253550.HTML# (last accessed in August 20, 2020).

institution for personal data protection, under the Presidency of the Republic, more specifically, housed within AGESIC.

This bill was elaborated by the Executive, in consultation with the Instituto de Derecho Informático (Institute of Computer Law, IDI) of the Universidad de la República. The IDI also participated, through its Director, Carlos Delpiazzo, in the discussion of the FOI bill. Delpiazzo mentioned the need to work simultaneously on the FOI and the personal data protection bills. This was also emphasized by the Executive when its representatives appeared at the Commission.

Representatives from the government highlighted the difficulty of creating the personal data protection oversight institution as a non-state body within the Uruguayan legal order. Conrado Ramos, deputy director of the Oficina de Planeamiento y Presupuesto (Planning and Budget Office, OPP) said: "We have participated in several debates on the institutional arrangements (…) whether they should be non-state public actors, but a constitutional reform would be needed to provide autonomy to a comptroller institution of this kind" (Congress records, Senate, Education and Culture Commission, 10/18/2007).[86]

[86] See https://parlamento.gub.uy/documentosyleyes/documentos/versiones-taquigraficas/senadores/46/2048/0/CAR?width=800&height=600&hl=en_US1&iframe=true&rel=nofollow (last accessed in August 21, 2020).

The design of the oversight institution for personal data protection projected in the bill was shaped by isomorphic pressures. Jorge Clastornik, director of the AGESIC, said "Regarding the oversight institution – an issue that was already discussed by Conrado Ramos – in the interest of providing it with independence we could have gone to the extreme of generating a structure of its own and other features that would have simplified its international validation. However, we took the characteristics of the country into account: a small country, with no capacity to build parallel structures. Therefore, we must take advantage of the existing ones" (Congress records, Senate, Education and Culture Commission, 10/18/2007).[87] Regarding the process followed for the design of the oversight institution for personal data protection, José Clastornik said that they used for the FOI oversight institution the same format they had already designed for the Protection of Personal Data bill. When referring to the oversight institution for personal data protection, he said: "…the ideal for certain types of institutions is to have budgetary independence (…) the issue, though, is that for achieving such a degree of independence the institutions must have a minimum size. Otherwise, from the perspective of the state's economic administration, they are not sustainable. Therefore, what normally happens is that new institutions are created with technical independence but without budgetary independence. That

[87] See https://parlamento.gub.uy/documentosyleyes/documentos/versiones-taquigraficas/senadores/46/2048/0/CAR?width=800&height=600&hl=en_US1&iframe=true&rel=nofollow (last accessed in August 21, 2020).

is what is customary….We looked for all the possible formats of independence within this parameter."[88]

Percovich, in a personal interview, stressed that there was no way in Uruguay to grant the autonomy that the GAIP envisioned for the FOI oversight institution. She said:

> "There is a problem that we have in Uruguay with the structure of our state, we do not have the legal settings to create truly independent oversight institutions, which are supposed to guarantee the rights of citizens. We had this problem with many bills. Because, in the end, the type of structure the Uruguayan state has implies that everything is defined by the Executive…"[89]

In May 2008, the government asked the Education and Culture Commission of the Senate to consider the discussion of the Personal Data Protection bill and adapt the institutional design of the FOI oversight institution to it. Percovich said: "Last year we had entered a bill related to access to information (…) In the midst of that process, the Executive informed us that it would send the draft bill on protection of personal data. It took us considerable time to discuss it and we introduced some changes afterwards. That bill was passed and forwarded to the House of Representatives. At the same time, the Executive asked us for more

[88] Personal interview with José Clastornik.

[89] Personal interview with Margarita Percovich.

> time to adapt the FOI bill to the Protection of Personal Data bill" (Congress records, Senate, Education and Culture Commission, 05/28/2008).[90]
>
> Regarding the lack of sanctioning power of the FOI oversight institution, Clastornik mentioned that "…There was a legal discussion (…) the prevailing preference was that the sanctioning power be located in the judiciary (…) if there was agreement from a legal standpoint, even more in a context were you are innovating at the legal level, I thought it was understandable."[91]
>
> Finally, the FOI bill was put to a vote in the Senate commission on Education and Culture on July 10, 2008. The oversight institution referred to in the bill mimics the one proposed by the Executive for the personal data protection bill. In the plenary of the Senate and in the House's commission of Constitution, Codes, General Legislation, and Administration and, then, on the floor of the House, this bill was not modified.

These CPOs are smoking gun evidence of isomorphic pressures. They are sufficient pieces of evidence for the existence of isomorphic pressures because the opinion of legal experts and decisionmakers from the Executive reflect the mainstream legal format for this type of oversight institution in related areas and, thus, it set the limits for the design of the FOI oversight institution. This was especially observed in the

[90] See https://legislativo.parlamento.gub.uy/temporales/S200824875224679.HTML# (last accessed in August 27, 2020).

[91] Personal interview with José Clastornik.

discussion regarding the initial formulation of the bill that considered a public non-state oversight institution, which was explicitly dismissed after the legal experts' critiques.

> Isomorphic pressures were also apparent when legislators rejected the possibility of creating a new institution that would imply public spending. In this regard, Percovich said: "I have remained quite connected with the group that presented this initiative. I always said that it seemed to me that creating a new structure in the state for these purposes was generating more bureaucracy. Therefore, I think it would be interesting to think of some other structure or body that is already within the state and that could assume this role that they give to the Institute. This concerns the control and training of civil servants on issues such as archives, electronics …, etc. Otherwise, I understand that the application of this law would be impossible. In this sense, it occurred to me that the "Anti-corruption Board," which actually is the Economic and Financial Advisory Board of the State … could take on this task. (...)" (Congress records, Senate, Education and Culture Commission, 09/07/2006).[92] Senator Sanguinetti replied that "…the idea of calling the Commission 'Anti-Corruption' doesn't sit well with me, because it seems that it is more linked to financial and economic management, and this topic not only covers this, but it is much broader. For this reason, I think that it should be located, precisely, in the field of the modernization of the state, since it is an essential chapter, and information

[92] See https://legislativo.parlamento.gub.uy/temporales/S200824875224679.HTML# (last accessed in August 27, 2020).

transparency is part of the modernization of the state" (Congress records, Senate, Education and Culture Commission, 09/07/2006).[93]

This CPO is a smoking gun test of the legislators' acknowledgement of pressures set by fiscal constraints that reduced the scope for the creation of new institutions.

Overall, the combination of the evidence presented increases confidence in the validity of the isomorphism hypothesis. The existence of institutional models in related fields that are similar to the design adopted for the FOI oversight institution is a necessary condition for isomorphic pressures to be present. While this does not allow us to confirm the hypothesis, when combined with the explicit references made by policymakers to institutional or policy legacies when defining the design of the FOI oversight institution, we have convincing evidence of isomorphic pressures.

AH. 1.: Diffusion

AH. 1. 1. The design of FOI oversight institutions resembles other already-established FOI oversight institutions in countries that are used as models.

[93] See https://legislativo.parlamento.gub.uy/temporales/S200824875224679.HTML# (last accessed in August 27, 2020).

> The institutional design of Uruguay's FOI oversight institution does not match those of models already established in the countries used as models, such as Mexico, the United Kingdom, Canada and Sweden.

AH. 1. 2. Policy makers (politicians, legislators, government officials) talk about the existence of other cases that could be used as models for the design of the FOI oversight institution.

> When presenting the project bill in June 2006, members of the GAIP argued in favor of the FOI bill citing international trends and recommendations from international organizations. Martin Prats argued that Uruguay needed to adapt its legislation to international trends: "A law on access to information is not only necessary for the Uruguayan State, but it also encompasses the worldwide development of the legislation to protect rights" (Congress records, Senate, Education and Culture Commission, 06/29/2006). Members of the GAIP also referred to international experiences in developing the FOI law. In the same session of the Commission, Edison Lanza said *"*(…) we have not invented anything at all. That is, we adapted to the national legal reality (…) the solutions that countries such as Argentina already legislated, through a decree in 2004, Chile in 1999 and 2003, Ecuador in 2004, and also Mexico (...)" (Congress records, Senate, Education and Culture Commission, 06/29/2006).[94]

[94] Argentina (Decree 1172 from 2003 and Supreme Court of the Nation, Acordada No. 1/2004, February 11, 2004), Chile (Law 19,653 from December 14, 1999, also called "Ley de Probidad" and Law 19, 880 from May 29, 2003, which established the basis for

> During the final process of approval of the FOI bill in the House of Representatives, Representative Diego Cánepa (FA) mentioned different international regulations concerning FOI that inspired the elaboration of the bill: the Universal Declaration of Human Rights (Art. 19), the International Convention on Civil and Political Rights (Art. 19.2), the American Convention on Human Rights (the Pact of San José de Costa Rica, Art. 13.1), (Congress records, House of Representatives, Constitution and Legislation Commission 09/17/2008).[95]

These CPOs show that the actors involved in the discussion of the FOI bill knew that other countries approved these kinds of laws and the international treaties that support

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the administrative procedures of State institutions), Ecuador (Organic Law of Transparency and Access to Information, Law 24 from May 18, 2004) and Mexico (Federal Law on Transparency and Access to Government Public Information, June 11, 2002). See https://parlamento.gub.uy/camarasycomisiones/senadores/documentos/versiones-taquigraficas/46/918/0/CON?width=800&height=600&hl=en_US1&iframe=true&rel=nofollow (last accessed in August 24, 2020).

[95] See https://parlamento.gub.uy/camarasycomisiones/representantes/comisiones/75/versiones-taquigraficas?Lgl_Nro=46&Fecha%5Bmin%5D%5Bdate%5D=15-02-2005&Fecha%5Bmax%5D%5Bdate%5D=14-02-2010&Dtb_Nro=&tipoBusqueda=T&Texto= (last accessed in August 24, 2020).

them. Supporters of the law used these general references to justify the need to approve a FOI bill.

> Beyond general references, international experiences were specifically mentioned in the discussion of the design of the FOI oversight institution: In June 29, 2006, the GAIP presented a revised project that took into account the discussion the Commission had after the first proposal. They proposed the creation of a Parliamentary Commissioner, referring to the ones existing in England, Canada and Sweden. He also argued (…) It is not an idea that we have invented, but there are several experiences worldwide, where there are similar figures with similar tasks to those proposed in this preliminary project" (Congress records, Senate, Education and Culture Commission, 06/29/2006).[96]

> Throughout the discussion of the bill, existing regulations in other countries were referred to as models to take into account. Regarding the regulatory institution, Edison Lanza mentioned: "(…) we believe it is necessary (to establish) a National Institute for Public Information. As we all know - and we can agree there is a whole culture of secrecy that is widespread in the national bureaucracy- in states that are similar to Uruguay - for example, I can mention England, Mexico or countries that may have similar legislation to ours – there is an Institute or a Commissioner to coordinate public policies in the state and

[96] See https://legislativo.parlamento.gub.uy/temporales/S200609186517823.HTML# (last accessed in August 27, 2020).

ensure that the law is implemented" (Congress records, Senate, Education and Culture Commission, 06/29/2006).[97]

Once the idea of creating a non-state oversight institution was discarded, Senator Percovich cited the cases of England and Argentina to illustrate other possible alternatives: "In England there is an ombudsman in charge of the right to information, which has an office that depends directly on the Prime Minister (...) I was in England and one of the things that I found very interesting was an office that reports to the Prime Minister - where lawyers who are all very young work - which has to do with the modernization of the state. There is a person there, appointed by Parliament - with all the special majorities defined for the ombudsmen -, which has an office extremely efficient for this control. I also had the opportunity to learn about this issue in Argentina (...) where an office was created through the state reform, which is specifically in charge of this issue" (Congress records, Senate, Education and Culture Commission, 7/7/2006)[98].

When Delpiazzo argued against the creation of a non-state FOI oversight institution in the Senate's Education and Culture Commission (see CPO under H. 3. above), he emphasized that in the international experience, the agency that

[97] See https://legislativo.parlamento.gub.uy/temporales/S200609186517823.HTML# (last accessed in August 27, 2020).

[98] See https://parlamento.gub.uy/camarasycomisiones/senadores/documentos/versiones-taquigraficas/46/1110/0/CON?width=800&height=600&hl=en_US1&iframe=true&rel=nofollow (last accessed in August 24, 2020).

> regulated the protection of personal data also regulates the right to public information. (Congress records, Senate, Education and Culture Commission, 7/23/2006).[99]

These CPOs show the existence of influence of international experiences in the discussion of the design of the oversight institution. However, there is no observable connection between the final outcome and the references to those international experiences. Therefore, these CPOs cannot be considered a smoking gun test for AH. 1.

AH. 1. 3. Missions/Reports from international organizations and NGOs make explicit references to institutional features that should be considered for the FOI oversight institutions.

> The Senate's Education and Culture Commission received representatives of the Relator Especial para la Libertad de Expresión (Special Rapporteurship for Freedom of Expression, RELE) of the Organization of the American States (OAS), who referred to the experience of other countries in the regulation of issues that were considered in Uruguay's bill. Regarding the oversight institution, they cited the case of Mexico, the United States and Costa Rica, as three different but successful experiences (Congress records, Senate, Education

[99] See https://parlamento.gub.uy/camarasycomisiones/senadores/documentos/versiones-taquigraficas/46/1372/0/CON?width=800&height=600&hl=en_US1&iframe=true&rel=nofollow (last accessed in August 24, 2020).

> and Culture Commission, 12/14/2006). The same delegation offered the possibility of continuing the dialogue if necessary. They also stated they would send the Uruguayan legislators documents from the Inter-American Commission on Human Rights with comparative experiences in different countries (Congress records, Senate, Education and Culture Commission, 12/14/2006).[100]

As in the previous evidence (AH. 1. 1.) regarding international diffusion, there is evidence that international organizations were used as general references to justify the bill. However, there is no evidence to claim that international organizations played a significant role in the definition of the design of the FOI oversight institution. The evidence found is neither necessary nor sufficient for the hypothesis.

AH. 1. 4. Technical cooperation documents (previous to or concurrent with the approval of the law) in the field of FOI refer to institutional features that should be considered for the FOI oversight institutions.

> A group of representatives of civil society and some legislators were invited by the British Embassy in Montevideo to various international meetings in order to familiarize them with the FOI law in the UK. Senator Percovich said that this project "(…) is very driven by the British Embassy (…). This Embassy provided training in this regard and facilitated international meetings with specialists and

[100] See https://legislativo.parlamento.gub.uy/temporales/S2006143984502.HTML# (last accessed in August 24, 2020).

managers in access to information from different parts of the world" (Congress records, Senate, Education and Culture Commission, 06/22/2006).[101]

This CPO is evidence of the existence of a necessary condition for technical cooperation playing a role in the process of preparing and discussing the bill. However, this evidence does not indicate that this cooperation had a direct influence on the institutional design of the FOI oversight body. In this sense, it is not a smoking gun test because we cannot link this evidence with the final outcome.

AH. 1. 5. International rulings and/or international norms regarding FOI condition domestic decisions on the design of FOI oversight institutions at the country level.

No evidence found.

AH. 1. 6. International experts participate in or are advisors on the design of the FOI law and the FOI oversight institution.

No evidence found.

[101] See https://legislativo.parlamento.gub.uy/temporales/S200609478471044.HTML# (last accessed in August 24, 2020).

AH. 1. 7. Seminars organized by international organizations about FOI and transparency prior to the approval of the law discuss particular designs for FOI oversight institutions.

No evidence found.

The evidence related to the diffusion hypothesis (AH. 1.) indicates that international experiences were present and taken into account. However, there is no evidence to support the claim that there was a connection between international experiences and the features of the final design approved in the bill.

AH. 2.: Political Coalitions

AH. 2. 1. Coalitions of different actors (political parties, civil society organizations, state actors, journalists) with positions favoring or opposing specific design features influence the design of FOI oversight institutions.

The only coalition that worked to promote the bill as such, was the one formed by the GAIP and senator Percovich. This coalition was important to move the bill forward. The coalition's first choice was an autonomous non-state FOI oversight institution. Although this institutional format was included in the original and the revised draft bill, it was not the legislators' final choice in the approved law. The coalition did not oppose the final design.

During the discussion of the institutional design in 2008, AGESIC provided several suggestions. The law on personal data protection and the FOI were discussed at the same time within the Senate. AGESIC was interested in guaranteeing that oversight agencies for FOI and personal data protection were linked and under AGESIC. Therefore, it used the design of the oversight institution introduced in the personal data protection law to shape the final design of the UAIP. Despite the role played by AGESIC in the institutional design, it did not form a coalition with other actors. Moreover, José Clastornik mentioned that there was no coalition opposing or promoting a specific institutional design.

AH. 2. 2. Members of coalitions of different actors (political parties, civil society organizations, state actors, journalists) state that specific design features were included in or omitted from the final institutional design because of pressure from the coalition.

No evidence found.

AH. 2. 3. Political actors who are not members of the coalition state that specific design features were included in or omitted from the final design because of the pressure imposed by the coalition.

No evidence found.

There is no evidence that the resulting design of the oversight institution was the product of a prevailing coalition that was able to impose its preference regarding a specific design.

AH. 3.: Political competition

AH. 3. 1. Governments adopt strong (de jure) FOI oversight institutions if they perceive they are not likely to be elected and want their right to access government information in the future to be guaranteed.

No evidence found. The necessary condition for the hypothesis, a context of high political competition, is not present. In 2005, when the draft bill was presented in Congress, President Vázquez was in his first term in the presidency and enjoyed historically high levels of approval (around 50%).[102]

AH. 3. 2. Governments use the claim of building strong FOI oversight institutions as a way to make their promises of greater transparency more credible and improve their reputation in a context of electoral competition.

[102] See Zuasnábar, Ignacio. 2018. *Treinta años de opinión pública en el Uruguay*. Montevideo: Konrad Adenauer Stiftung.

No evidence found. The government was not facing high political competition and there were low perceived levels of corruption.[103]

AH. 3. 3. Governments adopt strong (de jure) FOI oversight institutions because they need to send signals to voters, especially when there are highly visible government scandals.

No evidence found. The were no allegations of corruption or of lack of transparency against the government. It was also Vázquez's first term in office and the government was not facing high political competition.

AH. 3. 4. Strong (de jure) FOI oversight institutions are established when multiparty coalition governments with majority control of the parliament want to monitor their allies.

No evidence found. The resulting design of the FOI oversight institution was weak.

AH. 3. 5. Weak (de jure) FOI oversight institutions are established when single party governments with minority control of the parliament are in charge.

[103] For example, the corruption perception index ranked Uruguay as the second most transparent country in Latin America (with 5.9 points). See https://www.transparency.org/en/cpi/2005 (Last accessed, September 9, 2020)

No evidence found. The government had an absolute majority in both chambers of the legislature.

The is no evidence to substantiate the claim that the government was facing strong political competition in the upcoming elections in Uruguay. Hence, political competition was not a relevant variable to explain the resulting design of the FOI oversight institution.

## 4. Anecdotal Evidence on the de facto operation of FOI oversight institutions

In this brief section, we present anecdotal evidence on the de facto operation of FOI oversight institutions in our three cases. This evidence illustrates an association between FOI institutions' de jure design and the actual resources and capacity available to them to perform their tasks. Table A5 summarizes the budget and personnel of FOI oversight institutions in Chile, Peru, and Uruguay. We also included the budget of the Mexican INAI as a benchmark.

Table A5. Budget of FOI oversight institutions in Chile, Peru, Uruguay, and Mexico.

| | Annual Budget (in USD) | Personnel |
|---|---|---|
| Chile | 9,500,000 (2020) | 140 |
| Peru ANTAIP | 85,789 (2019) | 8 |
| Peru TTAIP | 902,024 (2019) | 26 |
| Peru ANTAIP + TTAIP | 987,813 (2019) | 34 |
| Uruguay | N/A | N/A |
| Mexico | 9,275,000 (2019) | N/A |

In the case of Chile, the budget of the CPLT in 2020 was USD 9,500,000 and it had a staff of 140 persons. Regarding oversight capacity, the CPLT opened 13 cases that resulted in sanctions and, at the time of writing, there were five ongoing administrative procedures (personal interview with Gloria de la Fuente, President of the CPLT). Beyond this sanctioning capacity, the CPLT has developed a system of *fiscalización focalizada* (focused oversight) in sensitive areas of public interest (e.g., related to the management of the COVID pandemic).

In the case of Peru, the 2019 budget of the Ministry of Justice and Human Rights received comprised 3.35 percent of the Peruvian state's total budget. Together, the Dirección de Transparencia y Acceso a la Información Pública (ANTAIP) and the Tribunal de Transparencia y Acceso a la Información Pública a la Información Pública (TTAIP) received USD 987,813, or 0.05% of the Ministry's budget. The budget allocated to the authority and tribunal, respectively, reflect their *de jure* relative power, with TTAIP being strongly favored. Thus, while the ANTAIP received USD 85,789 in 2019, an amount representing 0.0044% of the Ministry's budget, the TTAIP received USD 902,024, an amount ten-fold greater than ANTAIP received and equivalent to 0.046% of the Ministry's budget.[104] This difference in available resources is also reflected in the number of personnel each institution employs. While TTAIP employs 26 people, ANTAIP has only 11 employees, two of whom are administrative personnel and one is the General Director who also coordinates other teams that work in the area of personal data protection. Thus, in practice, ANTAIP has only eight people who carry out substantive/functional work.

In Uruguay, the UAIP does not have a specific allocated budget nor an assigned number of personnel in the national budget. While the UAIP enjoys technical autonomy from the AGESIC, its resources are not defined by law and are, instead, allocated by AGESIC which, in turn, is an agency that depends on the Presidency. It is impossible, therefore, to estimate the specific budget of the UAIP. The President and the other two members of the UAIP's executive council are unpaid positions. The UAIP does not have enough material resources or personnel and it has difficulty performing the

[104] The budgetary information for 2019 was obtained through a public information request to the Ministry of Justice and Human Rights.

functions established by the law. The staff of the UAIP have emphasized that the institution does not have the capacity to administer the release of confidential information and to enforce adherence with the law, especially as it pertains to reporting confidential information (Bene and Tournier 2021).

This anecdotal evidence shows that there exist significant differences among the three countries in the material resources and personnel of FOI oversight institutions and in their de facto operation. Of the various institutions discussed, the Chilean CPLT has the greatest capacity and resources, which is to be expected given both the CPLT's de jure design and the size of Chile relative to the other countries.

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