

# Introduction

## Practices of Transparency: Implementation and challenges

Transparency was an omnipresent issue in US president Obama's first election campaign. Throughout his first legislative period he emphasised the necessity for increased transparency within political institutions. However, recent media revelations such as the NSA scandal have suggested that the focus of his administration was more on creating a transparent citizen than on realizing transparent government. Transparency measures appear to have been transformed into surveillance and control mechanisms. Hence, there is a thin line between desirable intentions of transparency policies and their potential misuse. Briefly, transparency has many faces. While rhetorics in the Western hemisphere praise it as the cure for democratic and economic backlashes, others fear that for example increased transparency of the personal life published on the internet may lead to an era of surveillance and monitoring.

The term 'transparency' seems to be omnipresent in today's debate on governments' organization and practice of the relation with its citizens. There are several definitions available provided by various sources. For instance, the Encyclopaedia of Democratic Thought states that transparency "denotes government according to fixed and published rules, on the basis of information and procedures that are accessible to the public, and [...] within clearly demarcated fields of activity" (in Hood & Heald, 2006, p. 4). However, the availability of different strains of definition gives a blurry impression of the concept of transparency. In response to this problematic, this volume sheds light on the term of transparency as it follows in the subsequent paragraphs.

There are three general perceptions, or visions linked to the idea of transparency from a political point of view. First, governments shall not act unpredictably but engage according to rules that are knowable to everyone. Second, information should be available and accessible to all citizens (Hood & Heald, 2006, p. 14). Third, governments are demanded to clearly state -by setting up regimes- who pays and who benefits, and showing up sources of financial and other actions of potential costs within the administration (p. 15). Moreover, corporate governance attempts for limitation and specification of information between the principal actors and puts pressure on enterprises to publish their financial matters for potential creditors (p. 16, 17).

Linked to the perceptions mentioned above, we notice the existence of different

directions of transparency, corresponding either to a vertical or horizontal relationship, depending who and what becomes visible to whom. Consequently, the vertical axis describes the idea of upward transparency, which is characterized by someone superior who is able to observe his or her subordinates. In turn, downward transparency enables the 'ruled' to observe their 'rulers' – that is, politicians. This is often related to the concept of accountability from the rulers towards the ruled ones (p. 27). These two directions of transparency have to coincide with each other in order to produce symmetric vertical transparency. If this is not the case, the latter may not be present or unbalanced (*ibid*).

Horizontal transparency, which constitutes itself through outwards and inwards transparency, contrasts vertical transparency. The former allows the agent to contemplate happenings outside the dominant framework, whereas the latter facilitates the ability to comprehend the internal sphere of an organization. Again, these two directions have to be balanced to reach symmetric horizontal transparency. Only if all four conceptualized directions namely upward, downward, outward and inward are present, complete and pure transparency can exist (p. 28).

Over the last decades, the pressure to implement transparency policies in governments has intensified. Transparency is perceived to pave the way for better corporate governance and to reduce asymmetry in information dissemination (Bessire, 2005, p. 425). Additionally, 'open government' - associated with corruption reduction, efficiency and an increase of legitimacy – has gained increasing importance. Open government is often described by its characteristics of publishing official documents online, meaning that new technologies facilitate the communication between government and its citizens (Meijer et al., 2012, p. 11). In contrast, openness can refer to the degree to which governments are open and responsive to their citizenry, as will be demonstrated.

According to Meijer et al. (2012) there are two dimensions of openness. First, 'vision' in form of transparency - the accessibility and usability of information – deals with the question of "what is being made visible?". Second, 'voice', or "whose voice is heard?", concerns participation through access to decision-making arenas. For instance "interactive policy making", a continuous dialogue and involvement of all actors (*ibid*). The author defines openness as the "extent to which citizens can monitor and influence government processes through access to government information and access to decision-making areas" (p. 13). Between the constitutive dimensions of openness, vision and voice, three different relationships may arise. The synergistic relationship upholds that transparency assures the citizen to have unconditional access to the requested government related information, while participation stands for the citizens' accessibility to government, which is concerned. Thus, whilst the former might constitute a precondition for the latter,

the same may account for the other way around (p. 14). A complementary relationship between vision and voice exists when citizens become active either through transparency or participation depending on the particular circumstances (ibid). The third and last relationship has rather negative and undermining effects; vision and voice in this case could impact each other negatively. Transparency within this context may hamper the accuracy and quantity of exchanged information in regard to consultation procedures (p. 15).

The notion of open government is often perceived as a precondition for a well-functioning economic market, for political active citizens and for warranting the legitimacy of governments (p. 20, 21). Moreover, concepts such as integrity and trust seem to gain ground within the framework of an open government (p. 21, 22). However, even though advantages of open government are mentioned more frequently, there are also negative arguments on the same topic. Instead of increasing trust, open government may as well decrease the trust of citizens. Openness may hamper rational behaviour and public policy making or can pose a risk to citizens' legal status through distortion of legally forced and disclosed information that actually should have remained secret (p. 22, 23). In addition, there is a danger of not finding the right balance between vision and voice – transparency and participation – having too much vision and voice, for instance. This in turn could have delegitimizing effects of governments since information on failure and corruption might take overhand (p. 24). Therefore, open government has diverse effects on 'rulers' and 'ruled'. It could directly affect officials' behavior when openness is institutionally introduced or indirectly when effects come about only, if the public uses its instruments (p. 18, 19).

The argument that "open government needs to be based on a communication strategy to the field of (potential) users" (p. 18) seems to connect this section to the second theoretical framework of this paper. The aim of this communication strategy should be to build up a synergistic or complementary relationship (ibid). Governments are able to form this relationship according to their objectives – either focusing on interaction of citizens and stakeholders or on direct effects, meaning on government itself (p. 19).

To sum up, while establishing a system of open government, five points have to be taken into consideration. First, vision and voice should be organized in such a manner to create synergistic or complementary relationships. Second, heterogeneity of a population should be respected. Third, the possible direct or indirect effect of transparency and participation should be planned and accounted for. Not only being prepared for variations in priorities, but also continuous evaluation of open governments effects is of importance if transparency and participation should be efficient and effective (p. 25). Consequently, communication theory should provide transparency with an appropriate, accurate and precise framework in order to translate the concept into reality.

As another aspect of open government, increased transparency is assumed to address several problems and shortcomings in governance, such as corruption. Wiig and Kolstad (2009) argue that increased transparency and openness of government makes corruption more risky and therefore less attractive (p. 522); transparent governments make public officials act according to the set norms and rules, and prevents public officials from seeking rent and take advantage of public resources (ibid.). Assuming that a more transparent and open government in itself decreases the possibilities of conducting corruption, investigation and exposing of corruption conducted by anti-corruption agencies can be seen as an act of transparency as well.

Within this particular context, this book focuses on the difficulties revolving around the realization of transparency. Each chapter approaches implementation techniques from diverse angles and various practical contexts. In this, the volume adds to the current debate by identifying key challenges with regard to the design of transparency related policies. It is important to note that due to the theoretical complexity of transparency, the concept in itself contains key challenges which shall be briefly illustrated.

Although ultimately transparency is considered to improve efficiency, the process of building transparency can take significant time and resources. Very often, the more effective forms of transparency can require more work to implement, creating the need for a balance. Types of transparency which increase public participation in decision-making can create particular efficiency losses, due to the necessity of long consultation processes and compromise.

An inevitable challenge is choosing the adequate form or combination of forms of transparency, such as process or event, or real-time and retrospective transparency. While taking these transparency directions into account, three divisions of transparency varieties can be identified. First, event transparency, comprised of inputs, outputs, or outcomes is opposed by process transparency. Process transparency consists of procedural and operational aspects which are hard to evaluate. Instead, descriptions of available information pose the only possible form of measurement (Heald et al., 2006, p. 29). Furthermore, unpredictable variables and disruptive components seem to be more apparent in transformation processes which in turn are more comprehensive than linkage processes (p. 30). Transparency is expected to harm efficiency and effectiveness of these processes and thus does not add a positive component to this kind of procedure (p. 31). Particularly looking at the two distinct strains of processes namely the ones of procedural and operational, the limitations of transparency become apparent. The former - placing rules and regulations on the public - would be confronted with pervert representations

by third actors and the potential risk coming from these third actors to disclose important operational details. Within the operational component transparency may not find ground since confidentiality of the application of regulations and information upholds (p. 32). Moreover, the functioning of transparency depends on its organization in real time or in retrospective, on the presence or absence of a transparency illusion and on the timeliness of the introduction (may have an effect on the allocation of benefits and costs and could be rather damaging) which are described in the following paragraph – being part of the next two varieties of transparency (p. 30).

Second, transparency in retrospect or in real time differs in its effect. Whereas the former can be established in periodicals and is organized through a reporting cycle, the latter makes activities “continuously liable to disclosure” (p. 32). The reporting cycle in retrospect is grouped into an ‘operating period’ followed by a ‘reporting lag’ and an ‘accountability window’. While the reporting lag allows for explanation by the organization, the accountability window gives the opportunity to deliver this version to stakeholders. After interaction with the stakeholders, the organization can solely focus on production. Continuous surveillance in real time disclosure on the other hand leaves the accountability window open to allow observation of entire processes which may have reverse effects (p. 33).

A ‘transparency illusion’ occurs if there is a gap between nominal and effective transparency. For instance, transparency could be evaluated by some official measure instrument as having increased, despite this result would not reflect reality (p. 34). Therefore, effective transparency should be based and focus on an audience that is capable of “processing, digesting, and using the information” (p. 35). Consequently, the environment may have a crucial impact on whether or not transparency is being introduced.

Heald (2006) here hints to two key challenges transparency initiators face: making the initiative effective in increasing transparency and reaching the intended recipient. Indiscriminately publishing information en masse could meet policy objectives, but is unlikely to actively increase the citizen’s understanding of relevant issues. Bodies publishing information are always faced with the challenge of doing so in a constructive method ensuring accessibility, understandability, timeliness, accuracy and relevance. This will include good selection of information for publication, and appropriate background information; as well as ensuring that information is accessible even to those who do not use the internet extensively, to overcome the digital divide. In order to move from disclosure to transfer of information the volume and language of information should be carefully managed.

Following our problem statement, this volume is structured as outlined. The first chapter, by Simon Neuland, critically examines the definition of openness of government provided by Meijer et al (2012). Both in the theoretical and the practical realm, the vision dimension of openness seems to be easily associated with the capacity of citizens to monitor the pursuit of government and administration. A much smaller emphasis appears to be on the idea of citizen visibility - that is, the possibility of politicians to grasp a picture of public opinion. The utility and importance of such channels however is not to be underestimated. An adequate degree of responsiveness on the side of politicians for instance is not feasible without the ability to follow the deliberations of the citizenry. In addition, citizens constitute a valuable source of input, providing expertise and stipulations from their individual backgrounds. In order to grasp the practical realization of channels for citizen visibility, the essay conducts a case study on Liquid Friesland, a pilot online platform for citizens in northern Germany. Being based partly upon interactive features of social networks such as commenting and 'liking', the initiative bears the potential to draw a vivid picture of public concerns, ideas and deliberations. It is to be seen in how far the platform eventually constitutes an efficient and sustainable approach for citizen visibility. More specifically, the case study will investigate whether or not Liquid Friesland is a feasible approach for the establishment of openness as re-defined by the author.

The idea of e-government has increasingly gained attention not only in academia but also among policy makers and politicians. Julia Sachseder examines democratic participation and transparency through the case study of the EU Interactive Policy-making Initiative. The European Union, often being accused of its democratic deficit and the gap between Brussels and its citizens, aims at both enhancing dialogue with its population and increasing transparency. Against this background, she intends to study whether or not the Interactive Policy Making initiative increases transparency by rapidly and openly disseminating information and enhances democratic participation through direct access to policy making. ICTs might not be a panacea but they may be tools for disseminating more relevant information, enriching democracy, simplifying voting in elections and therefore increasing democratic participation. As a case study, the Interactive Policy Making initiative, launched by the EU Commission in 2001, will be evaluated on behalf of three theoretical models, i.e. the definition of citizen-as-stakeholder, the typology of citizen coproduction and the concept of open government. Special light will be shed on two consultations to elucidate whether or not the Commission takes the participants' contributions into account when formulating new policies or reshaping existing ones. However, traditional patterns of participation appear to prevail. Despite the chance of equal access, the IPM seems far away from equal representation and inclusiveness.

Also concerned with participation and e-governance, the third chapter by Max Menkenhagen investigates whether or not online petitioning is successful in shedding light on topics that are not covered by mainstream media. It discusses the effect of online-petitioning on the effectiveness of transparency of governmental information. It analyzes in how far ICT constitutes an alternative to mainstream media in spreading information regarding governmental policies that is 'hidden' by newspaper, television and other mainstream media. Hence, it analyzes the possibilities of online-petitioning for informing the public, focussing not only on the direct impact on the individual that engages with them, but also on the influence on the public debate due to the attention petitions might get from mainstream media, hereby inserting alternative points of view, scientific methods, or simply independent opinions into the traditional public sphere. The research compares the use of the latter in three different forms: first, e-petitioning as used by several governmental institutions, such as the German Bundestag and the European Parliament; second, e-petitioning of non-governmental institutions, such as Greenpeace and the World Wide Fund for Nature (WWF); and third, e-petitioning by private organizations websites such as [avaaz.org](http://avaaz.org) and [Change2.net](http://Change2.net). My paper analyses the different impacts of these three utilizations of the same technology and their different shortcomings and advantages by introducing notable exemplary cases of success, and evaluates whether these three usages complement or detract each other with regard to the aim of achieving effective transparency of governmental institutions and policy processes.

Next, the limitations of information sharing in creating transparency is examined in the fourth chapter of this volume by Laura Förste and Isabelle De Coninck. They state that in order to move beyond nominal transparency and towards the actual fulfilment of the end goals of transparency, a well-considered and tailor-made communication framework is essential. This consists of more than mere publication of information. Indeed, it seems that different audiences and different information demand different approaches. The paper conducts two case-studies on local government information disclosure to its citizens. The transparency initiatives and corresponding communication approaches of the cities of Hamburg, Germany, and Antwerp, Belgium, are analysed. Hence, Antwerp's and Hamburg's attempts of realizing transparency is elaborated on and evaluated.

The fifth chapter by Emma Carpenter subsequently introduces an approach to transparency from the legal point of view. Although law is a central element of governance, it has traditionally been criticised as being very untransparent. Accessibility of law is thus a hot

topic, especially as persons are increasingly subject to more legal instruments from more sources, and it is safe to say that most people have no idea of the majority of rights and rules applicable to them.

It's often argued that legal information should be more accessible, and one of the primary targets in these debates is legal language, which is usually characterised as being too complex and, sometimes, archaic. Although legal language can be improved, there are serious problems with truncating or simplifying legal information through merely simplifying the language, because the contents often need to be detailed, and the 'jargon' terms function as very specific shorthand labels for quite complex concepts.

In the context of legal information, one of the most prominent examples of a model which appears to successfully express information in a clear, concise and consistent way, without sacrificing precision or thoroughness is the "triple-layer" license documents of Creative Commons intellectual property scheme. Through analysing the advantages and disadvantages of the Creative Commons model, and the conditions which have contributed to its success and widespread voluntary adoption, a partial model for other areas of law will be constructed: what structural changes can be implemented to bring legal instruments closer to the ideal of "immediate comprehensibility"; and which areas of law may possess the same conditions as the creative works environment, making them receptive to a similar scheme.

Subsequently, this volume deals with the interaction between transparency and corruption. The sixth chapter by Rannveig van Iterson and Lene Tolksdorf analyses exposure of corruption as an side effect of transparency in governance. The paper looks at the role of Anti Corruption Agencies in general and in particular analyses the role of the European Anti-Fraud Office. Despite the massive increase of establishment of anti-corruption agencies around the world, until now there is no concrete evidence that they have made an impact on exposing and preventing fraud. With the increasing concern about the protection of the financial interests of the EU, the European Anti-Fraud Office (OLAF) was established in 1999 to counter fraud and corruption. The act of exposing fraud and OLAF as watchdog agency ensure that political processes are legitimate and accountable, and thus transparent. The paper aims to investigate the mandate OLAF has to expose and prevent fraud in the EU. Drawn on academic principles that are assumed to often be present in anti-corruption agencies, the chapter looks at whether these principles are inherent in the framework of OLAF in order to illustrate the ability to counter fraud in an effective manner.

The seventh and last chapter, by Elena Matthiolius, establishes a model how to enhance transparency and how to measure corruption as a lack of transparency. It presents the different approaches and indicators that are used to measure corruption. It addresses one of key challenges in corruption research: the consent of one all-embracing definition of the phenomenon. Corruption is a constructed concept in the 'social constructivist' sense – something that differs in each region of the world. The chapter examines that hitherto, social and cultural components have been disregarded. Social constructivism serves as the basis for the creation of a new model in corruption research. The new model is based on five pillars which themselves build upon existing research, yet they place the universal phenomenon in a more cultural and socio-political perspective. In all, this paper argues that the intrinsic aim of corruption research should be to find solutions and improvements. Current practices such as ranking and comparing countries do not lead to any progress in anti-corruption efforts. In order to combat corruption, research on it has to generate results for recommendations and genuine reform. Corruption research has to be continued in order to meet the challenges posed by implementing more transparency in policy-making.