

Alonso Lujambio / Transparency, What's Next?

Reforma, Enfoque Supplement - July 13, 2008

The author is president and commissioner of Mexico's Institute for Federal Access to Public Information - *Instituto Federal de Acceso a la Información Pública* (IFAI)

At the end of 2006 something unprecedented took place in Mexican politics: the governors of Aguascalientes, Chihuahua and Zacatecas, each belonging to one of the country's three major political parties, publicly declared a joint initiative to amend Article 6 of the Constitution on the issue of transparency. The initiative was supported by the eight party leaders in Congress and immediately sent to specialized commissions for analysis. On March 6, 2007, the Chamber of Deputies unanimously approved the constitutional reform. The Senate followed one month and 18 days later, on April the 24th. Four days after that, the first state congress declared itself rapidly and unanimously in favor of the reform: the state of Tamaulipas. During May, June and July another 20 local congresses unanimously approved the amendment. On July 20, 2007, the Executive branch published the reform in the *Diario Oficial de la Federación* – The Federal Official Gazette. Thus, in just a few weeks, a great transformation in the Mexican constitutional order took place, with extraordinary consequences for the issue of government transparency.

Only 45 constitutions in the world place the right to public information as a requirement of the highest order. They vary widely, however, in their approach, according to a recent study conducted by Pedro Salazar Ugarte [Investigator at the *Instituto de Investigaciones Jurídicas* of the National University]. Upon review of constitutional designs from a comparative perspective, it is clear that Mexico's framework is more demanding. The new Article 6 not only eliminates asymmetries and sets basic principles for the right to access information – principles that the 33 local legislatures must adopt– but it also sets forth solid institutional foundations for the protection of the right to know and of such principles. Moreover, the new constitutional landmark also prescribes the way in which, through technological means, citizens can exercise their right to access information at the federal, state and municipal level. Here, we will briefly take a look at the progress of the implementation of the complex measures laid out in the new amendment, focusing on institutional and technological infrastructure.

Technological Infrastructure

Since June 2003, when the Federal Transparency Law was put into effect, Mexican citizens have filed 317,000 information requests with the federal government –specifically, in the Executive Branch- (up to June 30, 2008). The first year of the current administration, 2007, was the year that people most exercised their right to know in a single year: 94,723 requests were filed. Altogether, 96.4 percent of all requests filed since 2003 were made through the electronic information system called “SISI” (Sistema de Solicitudes de Información, www.sisi.org.mx). This tool, more than anything else, has brought the attention of the world to the Mexican experience: the existence of an electronic system that, through the Internet, allows citizens to file requests easily, receive responses and, if they are not satisfied, challenge decisions before the

oversight commission, the IFAI, an institution designed to rule definitively on appeals (IFAI has received 16,000 appeals since 2003). The electronic system “SISI” allows any person to view every information request and response: it is an authentic electronic crystal box that makes transparent – if the redundancy can be forgiven – the policies of transparency. And so: building on the successful experience at the federal level and in a handful of states, the reformed Article 6 constitutionally obliges all federal government branches (not just the Executive Power), all state agencies and municipalities with more than 70,000 inhabitants to install electronic systems to facilitate the maximum use of the right to know. The Constitution establishes that within two years of the publication of the reform (which was July 20, 2007), these electronic information systems must be in effect.

Let’s take a closer look: in order to avoid a proliferation of different electronic systems that would require citizens all over the country to learn how to use dozens of different mechanisms, the IFAI – with support from the World Bank – was given the task of constructing a common technological platform called Infomex (Information Mexico). Infomex is a system of independent systems that is respectful of state and local autonomy, but that presents itself to all citizens in the same format and with the same guidelines and functioning sequences. It is a further effort, then, to facilitate and empower citizens in the use of the right to information, within the framework of the new constitutional requirement. Not even half of the time granted for the implementation of the reform has elapsed, and already 21 states have signed on to the Infomex project. Infomex is already operating in eight states around the country. Today, there is an Infomex-Chihuahua, Infomex-Distrito Federal, Infomex-Nuevo León, Infomex-Jalisco, Infomex-Coahuila, Infomex-Veracruz, Infomex-Morelos and Infomex-Hidalgo. Just like that, a citizen that knows how to file a request using the Internet with the government of Chihuahua, automatically knows how to file a request with the government of the Federal District, Nuevo León and the rest of the aforementioned states, for the simple reason that identical systems exist in all these cases. Soon Infomex will be implemented in Aguascalientes, Tabasco, Baja California, Colima, Guerrero, Sinaloa, Tamaulipas, Tlaxcala, Zacatecas, Chiapas, Estado de México, Oaxaca and San Luis Potosí. Almost 73 percent of the population of the country lives in these states. The governors of these 21 states have played a vital role in driving the success of Infomex. These are 21 governors who represent the plurality of the country and the will to participate in a common, constructive and productive effort. Even the five states that had already created their own electronic systems were willing to make the necessary adjustments in order to join the national Infomex platform (Aguascalientes, Baja California, Mexico, Tamaulipas and Nuevo León). This reflects a national vision that has set aside personal or political agenda for a higher goal, and prevails upon Mexico’s political environment to strive for greater transparency in public life.

The same will has been expressed at the federal level: the Supreme Court of Justice, the Federal Judicial Council, and the magistrates on the Electoral Tribunal have already signed agreements to adopt the Infomex technology. The same was done by the magistrates of the Federal Tribunal of Fiscal and Administrative Justice. The public federal administration will integrate “SISI” with Infomex in the last trimester of 2008. Finally, IFAI is getting ready to sign the Infomex agreement with Durango and Yucatán, and is discussing the issue with authorities in Baja California Sur, Guanajuato, Michoacán, Sonora, Puebla, Nayarit and Querétaro.

Infomex helps people gain access to public information and increases public scrutiny over government. It bypasses entirely the need for mass amounts of paper, large lines, and loss of time. Infomex does not require the requester to reveal his or her identity; rather, it honors the international standard establishing that it is not important who solicits the information or for what purpose: the only thing that matters is whether the information requested should be made public or not. Just a few examples prove the point: with the adoption of Infomex in Veracruz and Morelos, information requests doubled; in Coahuila they tripled; and in Mexico City they increased fourfold.

The main reason for these advances, however, does not lie solely in the creation of Infomex. It lies within the constitutional norm that requires all governments, in the pluralist mosaic of Mexican politics, to submit to the maximum degree of public scrutiny through electronic information systems. We now have a constitutional requirement, the only one in the world, of maximum disclosure and government transparency. Such is the significance of Mexico's constitutional amendment regarding public scrutiny. We are on the right track.

Institutional Infrastructure

Additionally, the new constitutional amendment obliges federal and state governments to create “specialized and impartial bodies, with operative autonomy in procedures and decision making” where citizens can present their appeals when, in their opinion, their information requests have not been satisfied. This is the other fundamental aspect of the constitutional reform. What problem did this new requirement address? At the state level, the three governors that originally promoted the reform observed that in certain cases specialized entities that would guarantee the protection of the right to information were not created. Looking at a few examples: in Veracruz, citizens had to litigate access to information cases before the Fiscal Courts – *el Tribunal Fiscal*; in Baja California and Tamaulipas, the Administrative Courts – *el Tribunal de lo Contencioso Administrativo*; in Baja California Sur, the Supreme Court of Justice – *el Tribunal Superior de Justicia*. Poor results: these non-specialized entities deal with a multiplicity of diverse issues and require an extensive amount of time to conclude their proceedings. For that reason, the newly reformed Article 6 obliges the creation of institutions dedicated exclusively to resolving litigation disputes on access to information cases by way of what is referred to as “access to information mechanisms and expedite procedures of review” through specialized bodies or entities.

In other words: today the Constitution places a special emphasis on this individual guarantee, and on this fundamental right. As a privileged mechanism to consolidate our democracy, the Constitution emphasizes the centrality of the citizen's right to access public government information. Today, finally, we have the IVAI (the Veracruz Institute of Access to Information – *el Instituto Veracruzano de Acceso a la Información*) and the ITAIT (the Institute for Transparency and Access to Information in Tamaulipas – *el Instituto de Transparencia y Acceso a la Información de Tamaulipas*). In Baja California Sur a specialized body has already been created, and Baja California is about to create one (the governor has already presented the corresponding initiative to the local congress).

The entire country, in sum, is finally taking the necessary steps in the right direction. For this reason the decision of the Querétaro Congress to eliminate the State Governmental Information Commission (*Comisión Estatal de Información Gubernamental*) and fold it into the State Human Rights Commission (*Comisión Estatal de Derechos Humanos*) was extremely surprising. Fortunately, the Supreme Court of Justice is going to render a judgment on the constitutionality of the Querétaro reform. Our ultimate interpreter of the Constitution will have the final word on this issue.

On the federal level, the agency that already exists is IFAI, but IFAI can only make judgments on appeal cases from citizens requesting information from federal agencies that are part of the Executive Branch. The playing field must be leveled by creating similar entities for the Legislative Branch, the Judicial Branch and for the autonomous constitutional bodies. The obligation to create these bodies falls, naturally, to Congress. The IFAI, to advance this issue, drafted a bill that was sent to the Chamber of Deputies (*Cámara de Diputados*). The main idea behind the proposal is that only one oversight agency should operate for the Judicial Branch as a whole. Equally, a proposal has been made so that one institution is in charge of overseeing the Legislative Branch, although there is the possibility that separate institutions would operate for the Senate and the House of Representatives, and even for the Congressional Auditing Office (*Auditoría Superior de la Federación*).

Constitutionally autonomous entities must also, by law and according to the Constitution, have oversight bodies that guarantee access to information. The same can be said for other autonomous bodies such as universities and higher-learning institutions, as well as the federal administrative courts. The creation and conformation of these oversight bodies cannot be subject to the rules and general norms issued by the federal agencies, since this would breach the clear intent of legislators, that the principles contained in Article 6 are to be exercised within the legal framework of the Mexican federation, the states and the Federal District. On that point it is essential, according to the constitutional mandate, to reform the Federal Transparency Law

Two Engines

There is an elegant design behind the constitutional reform of Article 6 that creates two engines to promote transparency in the public sector: one engine is institutional, with the specialized oversight bodies prioritizing the protection of this fundamental right for the consolidation of democracy; the other engine is technological, because requiring the creation of electronic access systems boosts enormously – I would say spectacularly – the citizen's ability to exercise the right to know. The year 2007 will be seen, in the history of government transparency, as a constitutional turning point, but also as a starting point in its complex implementation. The implementation of the new Article 6 is on the right path, even if – as has been discussed – there is still a long way to go. At the end of this process, in several months, a new infrastructure, the only one of its kind in the world, will be created with the sole aim of strengthening the right to access public information within the complex context of Mexico's democracy (federal, state and municipal).

The issue of transparency is becoming an established part of Mexico's political landscape thanks to an impressive constitutional reform, the extraordinary pluralism that led to it and the results

the reform is designed to produce. Transparency is not going to put an end to all abuse, embezzlement, fraud, political whim, favoritism, or Mexico's unfortunate habit of turning its own laws into useless paper. It would be naïve to claim that transparency will be a panacea that will solve all the endemic problems in our public lives. No one can deny, however, that transparency can and should be converted into a citizen's tool to influence our governments to acknowledge that access to information is a must and to push them in the right direction. If both engines work to their full extent, Mexico will have taken an important step towards constructing a democracy where citizens have control over power.