

Access to Public Information A Step Forward in Consolidating Mexico's Democracy

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One of the major legislative achievements of Mexico's burgeoning democracy has been the unanimous approval of the Law of Transparency and Access to Public Information.

While the right to information was already guaranteed in the Constitution, there was no regulatory legislation stipulating what information could be accessed and how to access it. It was left to the authorities to decide what information would be made public and what would remain classified.

Therefore, for decades, information was used as a political weapon in the power struggle among different cliques of the hegemonic party. Only in very few cases, almost always as a result of public pressure, the citizenry was informed about specific issues, like, for example, when the files

on the 1968 Tlatelolco massacre were opened. The new law establishes a series of areas and issues about which it is mandatory to report information publicly, transparently and clearly: for example, government salaries and how our tax monies are spent. It also establishes criteria and procedures for declaring certain information classified, at the same time that it stipulates time-limits for declassifying it. The law also creates the Federal Institute of Access to Public Information (IFAI), which is autonomous and has a collegial directorate. The IFAI's main functions will be to monitor the application of the new law and act as judge in cases of controversy. The law is undoubtedly a step forward in the consolidation of Mexico's young democracy.

Usually, the first step toward transparency is the most difficult. Global experience has given us clear examples. With the exception of a few countries in northern Europe, the right to access to public information has been a recent achievement of the world's political systems.

The difficulty of legislating about access to information generally has two origins closely linked to the degree of development of the political system: on the one hand, in liberal or industrialized democracies, the reticence is based mainly on what the law dictates is public and private information and the mechanisms for implementing the right to it, which may be controversial. On the other hand, in emerging democracies, the reticence is derived from the obscurity in which public power has traditionally operated and the weakness of civil society in exercising this right. In both cases, the evident problem is the novelty of the circumstances. Legislatures have tended to deal with the dilemma of having to apply a right without having the previous reference points of the most efficient ways of implementing it. Transparency is obviously a luxury that no autocrat is willing to stand in their authoritarian governments.

This is why the most recent cases of implementing legislation about access to information have been sustained both by international experience and by the innovation allowed within the framework of the legal system. The result is that, in most cases, a kind of pilot legislation is passed. That is, implemen-

tation is implicitly guided by a process of trial and error.

But it has been precisely these processes that have created the most important contributions to the application of norms of transparency. One of the clearest examples is the United States. Before the Watergate scandal, which implicated President Nixon in attempts to maintain secret information that should have been public, the Freedom of Information Act already existed, but was used very little. This suggests that, as long as people had complete confidence in their government as a result of the system of checks and balances, attempts to maintain a balance between what was public and/or private were not necessary. However, when that trust waned, citizens began to perceive the need to look into government activities to detect actions that could negatively affect their lives.

This demonstrates that a Law of Access to Public Information that is not applied, or is unviable, is as useful as no law at all. But even more importantly, this example uncovers a more complex reality because a series of political, cultural, administrative and economic factors converge in the efficient execution of the law.

At bottom, the problem is not producing a law, but ensuring that the law passed be the best one possible, and viable. Therein lies the success of legislation on access to information.

PROPERTY IS A RIGHT

James Madison said, quite rightly, that just as we can say a man has a right to his properties, we can also say that his rights are his property. This condenses an important problem that the coun-

try must deal with and solve: for legislation on access to information to be useful, citizens must know that public information is their property, and the authorities must be able and willing to guarantee the right to that property.

What relevance does this have for us and for the debate about access to information in Mexico? Simply that the viability of legislation on access to public information depends on the way we deal with this problem.

We do not need to point out that in consolidated democratic systems, which embrace a logic of shared power, there should be no difficulties in generating and applying norms that guarantee citizens access to information that is theirs to have.

However, our case, and that of many other emerging democracies, is different. Long experience of authoritarian government can lead to many factors that counter access to public information, which we can summarize in two. The first is linked to the fact that public administration structures are built hierarchically, vertically, based on connivance and complicity to hide the corruption they often house. The creation of democracies commonly brings to light enormous networks of corruption inside states, and even the presence of organized crime incrustated in government apparatuses, like in the Soviet Union and later Russia.

The second obstacle to the correct use of a law about access to public information is the weakness of civil society in countries where power has been concentrated. This generally translates into people having weak values and behavior, precisely in the opposite sense from Madison's statement. Citizens have little confidence in their own rights and the possibility of exercising them.

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But these problems are by no means insurmountable and, in the case of a recent democratic transition like Mexico's, there are allies for creating new institutions. The best ally is the legitimacy of the change itself; that is, the perception that citizens have that it will always be better to advance toward transparency than to remain in subordination, concealment and darkness, even if the task at hand is as huge as making a 180-degree turn with regard to authorities and the governed.

In other words, the legitimacy of these laws is based on them being the best possible way forward in the real, effective consolidation of democratic change. And a crucial part of the current operating definition of our democracy is, precisely, the reestablishment of the balance between authorities and the citizen in favor of the latter. Democracy, then, must serve so that the citizen can easily monitor the actions of his/her government and limit them through clear participation in political decisions. The simplest way to achieve this new balance is through access to public information.

However, failing in the task of creating effective mechanisms for access to public information also implies failing to devise a crucial tool in the consolidation of democracy. It implies creating the risk of having a democracy that does not produce results or that produces partial results in favor of only a few.

When democracy does not produce the expected results, disillusionment and nostalgia for authoritarian regimes burgeon. Permanent dissatisfaction does not necessarily lead to the downfall of democracy or the return of the old regime, but it can lead to the establishment of low-quality democracies,

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governments that are not very representative and apathetic, demobilized citizens; undoubtedly one scenario in which prosperity, social well-being and hope could also disappear. There is too much at stake, then, to not take on board the task with the greatest responsibility.

This point is particularly sensitive in our case. We have just gone from a regime of a hegemonic party to a democracy, and we are in the process of consolidating it. Expectations are myriad, particularly because politicians, analysts and academics spent a great deal of time disseminating the change that democracy would imply. But, without the appropriate institutional changes, it is difficult to expect results.

The implementation of access to public information requires, above all, the clear determination of the authorities to establish a new equilibrium with society. If this new balance of forces, a new co-responsibility, is not established, society's dissatisfaction could end by undermining the legitimacy of change itself or producing a democracy of very low quality. It is not sufficient to create good laws on access to information if their implementation is slowed by administrative sophistry or by trying to control the bodies that must guarantee their application. Naturally, the operation of new institutions will occasion technical problems like the generation, classification and

filing of public information, but, at bottom, this functioning will depend on there really being new forms of authorities' exercising power.

THE IMPORTANCE OF ACCESS TO PUBLIC INFORMATION

From democracy, people expect a better quality of life, greater possibilities for political participation, more freedom and greater legal certainty. When citizens exercise the right to access to public information, it contributes to achieving all of this.

With the transparency derived from access to information, to satisfy the demand, government administrative systems must be modernized. Governments must obtain, classify and efficiently handle information to be able to distribute it, and this also has an impact on informed decision-making by authorities.

With better mechanisms for processing information, transaction costs drop, freeing up resources for carrying out other tasks that have been relegated to the back burner or have not been covered because of inefficient use of resources derived from the lack of systematized information.

When governments function more efficiently, economic actors operate with fewer costs, and this improved performance has a positive effect on productivity. Certainty in government-

tal operations generates confidence and economic actors initiate long-term activities, establishing the basis for future economic development. All these conditions interact with the strategy of fighting corruption to generally improve the public's quality of life.

THE LAST STRETCH

In short, although we still have not seen the palpable results of the laws

on access to information because of the time they take to implement, we have a very clear idea of the results we are expecting. A detailed analysis of the bills makes it possible for us to suggest the institutional reforms that can lead us to them. Certainly, it is necessary to make an additional effort in this last stage to design the best possible institutions, but this does not imply that we should not constantly review and perfect them. To consolidate, democracy requires new institu-

tions as well as a new relationship between government and society. If the will to achieve new balances exists, this will contribute in the medium term to the generation of values and attitudes of a new citizenry that will participate and defend and monitor its rights more. When conditions are not ripe, it is necessary that there be at least the will to reform, to show that politics enjoys real autonomy to seek to create social goods and forms of well-being. **MM**