

Mexico: Transparency and The Constitution

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The president of the Federal Institute for Access to Public Information, Alonso Lujambio, with President Calderón.

July 20, 2007 is a very significant date for the right to information in Mexico. On that day, an incisive addition to Article 6 of the Constitution went into effect, turning transparency and the access to government documents and information into fundamental rights.¹ This contribution to democratization was originally requested in Chihuahua by five state governors, members of Mexico’s three largest political parties. The proposal reached the Chamber of Deputies, where it was reformulated and put to the vote: 425 in favor and 0 against. Then, the Senate deliberated and passed it unanimously. Finally, in record time, 22 state congresses ratified this authentically nationwide consensus. Where does the importance of this constitutional change lie?

First, in its enormous scope. The first paragraph of the reform reads, “All information in the possession of any fed-

eral, state and municipal authority, entity, body and organism is public.”² This means that no government or public institution—from Tijuana to Tapachula and from Mérida to La Paz— can evade its responsibilities with regard to transparency, and that all its documents, in principle, are considered accessible to any individual. We are talking about the federal government’s 243 bodies, 32 entire state governments, and 2,443 municipal governments, plus all other bodies that receive public monies (under the specific stipulations laid out in the laws regulating them).

But there is one more thing: the senators and deputies wrote the words “all information.” That is to say, we are not just referring to documents regarding the origin, use or destination or public monies, but much, much more: we are talking about all the information that is the basis for government decisions, the faculties and functions of public servants, the analyses, diagnoses, deliberations and communications of state bodies. The underlying message is that,

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since state activities cannot be illegal and must be rigorous, well-founded and legitimate, they must be public, published and openly defended.

Second, the only principle contrary to publishing information, the only exception given the same value and weight, is the right to privacy. The bill specifies in this regard, “Information referring to individuals’ private lives and personal data shall be protected as stipulated in and with the exceptions established by the law.” This is a step beyond the notions established in Article 6; that is, it is no longer just a matter of preventing authorities from physically invading a person’s domicile or confiscating his/her goods or arbitrarily depriving him/her of his/her freedom or guaranteeing the private nature of communications among private individuals.

The amendment of Article 6 of the Constitution, I repeat, goes beyond these stipulations. The documents contained in government archives containing private information about Mexican citizens cannot be divulged or circulated without

One of the most spectacular steps forward made by the amendment to Article 6 of the Constitution is that it strengthens the right to privacy. Constitutionally speaking, this is no longer only a matter of Mexicans’ “not being bothered” by government agencies, but rather that the state must protect the information it has about them.

their authorization or a powerful legal reason. It is no longer a matter of merely preventing abuses, but of giving new status to personal data and creating a protective ring around privacy.

Third, the reform will have multiplying effects that go beyond the laws on transparency. Paragraph six states, “Legislation will determine the manner in which those mandated to comply will make the information public about public resources given to individuals or entities.” That is, the country is obliged to undertake a series of reforms not only of transparency laws, but also of other areas and bodies that are not public authorities but do make decisions in the public interest and receive public monies. The senators’ recommendation states, “This constitutional change is particularly important because it opens up a very broad cycle of adjustment of norms in the national state’s legal system: political parties, trusts, civil society organizations and any other body which receives public resources. Each with its own specifi-

city, these bodies must also comply with these constitutional norms.”³ That is to say, transparency will come to more laws, organizations and areas of public life because they cannot contravene constitutional principles. Their specificity is respected, but they are obliged to act transparently under constitutional guidelines.

That is the importance and the impact in all directions of making a new democratic rule universal: whoever exercises any form of power is obliged to explain it.

I do not hesitate to say that this is one of the most important democratic reforms to be implemented in Mexico in the last 10 years, comparable in scope and consequences to the 1996 electoral reform. This opens up both unprecedented obligations and a new opportunity: jumping into another age, a new era of access to information. Based on a minimal, general constitutional stipulation, everything can be reformed. And, if this is the case, what will the coordinates of the new age of transparency in Mexico be? I am betting on these five:

1. Improving the institutional design to guarantee this right. Many of the worst simulations we have witnessed in the last four years (since the law, federal regulations and state laws were instituted) have consisted of the bodies responsible for insuring that information flow to the public not being trained, lacking knowledge, or simply being dependent on or too close to officials (heads of departments, governors, etc.) who denied that information. This is the number one task of the new era: guaranteeing independence and autonomy *vis-à-vis* all authorities to ensure access to information.
2. Definitely, the ability to use the most commonly professed pretext for refusing to provide public information in Mexico in recent years—that the document requested “does not exist”—must be nipped in the bud. Mexican citizens may request information from their governments, but since officials argue that it is not written down, their requests are loftily refused, even if the document must obviously, *a fortiori*, exist because it comes under the jurisdiction of the competent authorities. In this case, current Chihuahua legislation points the way to the future: the authorities will be obliged to “document all actions taken in the exercise of the faculties expressly granted them by applicable legal ordinances.”
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THE AMENDMENT TO ARTICLE 6 OF THE CONSTITUTION

The Permanent Commission of the Honorable Congress, in full use of the power bestowed on it by Article 135 of the Constitution, and after approval by both the Chamber of Deputies and the Senate of Mexico, as well as the majority of state legislatures, decrees:

A second paragraph with seven subsections is hereby added to Article 6 of the Mexican Constitution.

Single Article. A second paragraph with seven subsections is added to Article 6 of the Mexican Constitution, which will now read as follows:

Article 6...

For purposes of the exercise of the right to access to information, the federal government, the states and the Federal District, each in their respective jurisdictions, will comply with the following principles and bases:

- I. All information in the possession of any federal, state and municipal authority, entity, body and organism is public and may only be temporarily withheld in the public interest in accordance with legislation. In interpreting this right, the principle of the maximum public-ness must prevail.
- II. Information referring to individuals' private lives and personal data shall be protected as stipulated in and with the exceptions established by the law.
- III. Without having to show any involvement in the topic or justify its use, all individuals will have access, free of charge, to public information, his/her personal data, or to the rectification of said data.
- IV. Mechanisms for access and expeditious review procedures shall be established. These procedures will be substantiated before specialized, impartial bodies with operational, managerial and decision-making autonomy.
- V. Entities herein mandated shall preserve their documents in updated administrative archives and shall publish in the available electronic media complete, updated information about their management indicators and the exercise of public resources.
- VI. Legislation will determine the manner in which those mandated to comply will make public the information about public resources given to individuals or entities.
- VII. Incompliance with the stipulations regarding access to public information will be sanctioned according to the law.

TRANSITORY ARTICLES

First. The present Decree shall go into effect the day after its publication in the *Official Federal Gazette*.

Second. The federal government, the states and the Federal District, in their respective jurisdictions, shall issue legislation about access to public information and transparency, or make the necessary changes no later than one year after this Decree goes into effect.

Third. The federal government, the states and the Federal District must establish electronic systems so that any person can use from a distance the mechanisms for access to information and the review procedures mentioned in this Decree. Said systems must be functioning no later than two years after the Decree goes into effect. State laws shall establish whatever is needed for municipalities with more than 60,000 inhabitants and the territorial subdivisions of the Federal District to have their own electronic systems within that same period of time.

no longer only a matter of Mexicans' "not being bothered" by government agencies, but rather that the state must protect the information it has about them. For that reason, Mexico must more clearly define the concept of "personal data," dealing with the discussion about a general law

—should it be applicable nationwide?— that would define it, regulate it and protect it.

4. The new generation of laws on access to information will have to deal with the enormous differences among institutions and the branches of government. Circumstances

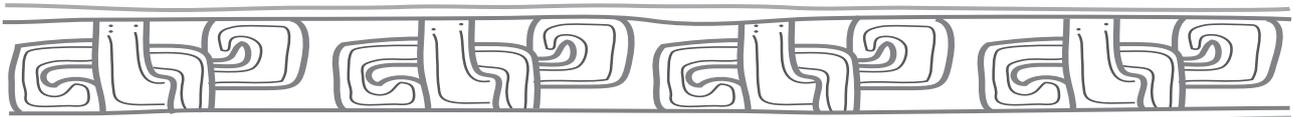
for the legislature, the judiciary and executive bodies are very different. Experience over recent years has taught us that transparency cannot be practiced the same way by bodies that are extraordinarily different, and, therefore, the laws must take into account this specificity and regulate the concrete way that transparency is exercised in different parts of the state.

5. Finally, we will have to redefine the scope of secrecy in all national legislation. Up until Article 6 was amended, all secrets validated in legislation (fiscal, bank or fiduciary secrets, etc.) had the same weight as the right to access to information and transparency: it was a complicated, litigious tie that was only broken with uncertainty. But, with

the change in the Constitution, transparency becomes decisive. Therefore, in all laws regulating organisms of public interest or bodies that receive public monies, there must be a categorical change in favor of access and public-ness, which will end by revealing secrets and opening up public life as never before...to the public. **MM**

NOTES

- ¹ See <http://www.ifai.org.mx/Eventos/articulo6>. [Editor's Note.]
- ² To see the entire law, go to http://www.chihuahua.gob.mx/Principal/Contenido/plantilla5.asp?cve_canal=6404&Portal=Principal. [Editor's Note.]
- ³ Ibid.



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