

The Social Focus On Public Information

Issa Luna Pla*



Courtesy of Zócalo newspaper

The Oaxaca Group, made up of academics and members of organized civil society, was the main driving force behind Mexico's current Federal Law on Transparency and Access to Public Governmental Information.

In the 1980s, a group of citizens in India concerned about local government spending created a model known as “social audits.” In their first efforts, they realized what the model’s main problem was: it did not get results because they did not have access to public information. So, their strategy changed. They decided to wage a campaign to demand a law that would guarantee their right to know. In public plazas they chanted, “We don’t want Pepsi-Cola. We don’t want expensive cars. We want information!” India’s law guaranteeing access to public information was passed in 2005.

Eastern Europeans threw out the Communist governments in the 1980s and 1990s, joining the huge Western wave of democratization, ready to change the rules of the game. New governments took office with conditions: they had to

The language of civil society demanding the “right to know” gained greater impetus, assigning it a supreme value, almost to the point of religious fervor. It managed to take the step from a policy of openness to the guarantee of a right.

take a first step toward democracy guaranteeing access to public information for all citizens. Never again would truth be hidden behind power, populism, and an opaque government: thus, the law guaranteeing access to public information in Latvia was passed in 1998, in Bulgaria in 2000, in Hungary in 2005, and in Macedonia in 2006.

In 2000, for the first time since the 1910 Revolution, Mexicans achieved alternation in office. The rules of hegemonic

* Researcher in the area of the right to information, UNAM Institute for Legal Research, ilunapla@unam.mx

What globalized civil society has provided are standards adapted to political and social changes, to the needs of creating counterweights to the exercise of public power, empowering society itself with the guarantee of the right to access to public information.

power had to be replaced with democratic ones. The society that voted for a change in administration would no longer tolerate lies, irresponsibility, the truth being hidden, and simulation. It demanded a law guaranteeing access to public information to empower citizens and safeguard itself against arbitrariness and authoritarianism. Thus, legislation guaranteeing transparency and access to public information was passed in 2002, and within four years, all the states had followed suit with local laws. The Mexican law was an example for other countries in the region: Ecuador and the Dominican Republic each approved their law in 2004, Chile in 2009, and El Salvador in 2011.

Today, according to the organization Privacy International, 90 countries have laws on access to information, all with similarities in procedures, the actors identified as mandated to report, and the design of how to monitor compliance. How were civil society groups involved in this in Asia, Eastern Europe, and Latin America?

For many centuries, Western democratic governments had rules about transparency that played the role of norms to ensure the integrity of government actions, a moral standard for those who exercise government, and a kind of exchange with the society that had ceded them power. Open mechanisms for government decisions, the exercise of their finances, their plans and their effectiveness were considered an issue of democracy and efficient government. At the beginning of this century, there was a 180-degree turn: the rules of transparency would be defined by society and no longer as a gracious, top-down, populist concession from the state. These clauses in the social contract had to be determined by civil society, with strict rules for monitoring compliance.

Access to information was not originally formulated as a fundamental right. Until the recent turn of the century, universal and regional international law had not been interpreted to state that individuals have freedom to access information and that that freedom creates specific obligations on the part of states to guarantee access to that information. How-

ever, some voices pointed out the importance that the issue was taking on in certain countries and the growing enthusiasm about it in civil society. These voices took a few years to formulate their discourse.

The language of civil society demanding the “right to know” gained greater impetus, assigning it a supreme value, almost to the point of religious fervor. It managed to take the step from a policy of openness to the guarantee of a right. As never before, world civil society crystallized the idea of exporting experiences, transforming states in the same way, moving social groups, and arming itself with the same tools for advocating a fundamental right. In short, it demonstrated that from one continent, the decisions a state would make on the other side of the globe could be influenced.

Civil society organizations created networks with quite complex modes of operation and sufficient public and private funding to hold many meetings of their members. At these conferences, they heard stories about the state of the written and unwritten rules about government openness; debated advocacy strategies to get legislatures to pass access-to-information laws; designed publicity campaigns for audiences completely unfamiliar with the issue; and in some cases, people opted to enter into litigation to get an initial broad, cutting-edge interpretation from constitutional courts about freedom of information in their countries.

Globalized civil society has created know-how of its own to get legislatures and governments to jointly commit to adopting and implementing laws on access to information. In some countries, these strategies have had an impact after 10 years, like in Guatemala. But sooner or later, states realize that the society that is asking for it is in line with the major political transformations and the trends in international funding. This is because the states are no longer alone; they are also globalized and concerned about international affairs and their demands.

What globalized civil society has provided are standards adapted to political and social changes, to the needs of creating counterweights to the exercise of public power, empowering society itself with the guarantee of the right to access to public information. At the beginning of this century, these standards were adopted extensively, particularly in the Inter-American System of Human Rights, which was undoubtedly also important in the interpretation of the right to access to information for the European Union, the African Union, and the League of Arab States.

At the end of the 1990s, the Human Rights Commission’s Office of the Special Rapporteur for Freedom of Expression

already included in its annual reports a specific section on access to information in the region. This office took the pulse of the social movements that most dealt with issues of access to information, who reported the obstacles and abuses defenders encountered in the course of their activism.

Civil society groups understood that international legal institutions could be allies in promoting standards and applying the right to access to information by states. Groups like the civic organization Article 19 promoted a Joint Declaration of the Rapporteurs for Freedom of Expression of the Inter-American and Universal Systems of Human Rights. Others lobbied and convinced the Organization of American States (OAS) Juridical Committee to emit a set of principles about the right of access to information. Civil society and renowned activists in Chile litigated for an individual's right of access to information, bringing a case before the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights. In 2006, they achieved an internationally cutting-edge exemplary sentence from that court in the case of *Claude Reyes v. Chile*, which had been supported by expert opinions and the introduction of *amicus curiae* briefs, all on the initiative of civil society organizations.

The social movements became so widespread in the regional system that in 2010, the OAS General Assembly ordered its Juridical Committee to write a Model Law on Access to Public Information. In an unprecedented move, the Juridical Committee brought together a group of experts and members of civil society to write it. This standard, approved by the General Assembly in 2011, includes and systematizes the regional standards civil society has studied, plus its experiences over the last decade.

A product of civil society's activities in the region, countries with laws on access to information prior to the social upsurge, like the United States (1966) and Canada (1983), have amended their legislation to incorporate recent standards. The scope of these reforms and of the regional standards are now used by civil society organizations to demand advances in this area toward guaranteeing the right to access to information in other regional systems, like Europe's.

Examined under the magnifying glass of analysis, the laws on access to information are the only legal norms that regulate the power of citizens and not among public institutions. They transfer part of that power to the citizenry in the form of information, but, to be honest, these laws do not radically change forms of government; they do not directly combat corruption; they do not improve the efficiency of public spend-

The social movements became so widespread in the Americas that in 2010, the OAS General Assembly ordered its Juridical Committee to write a Model Law on Access to Public Information, systematizing the regional standards civil society has studied.

ing *per se*. They do not guarantee that public servants will act in accordance with the public interest and stop pursuing their own private interests. Nevertheless, they do create the possibility that society participate in those changes and that the public become aware of the issue, but they can bring citizens closer to or move them away from their governments; they make governments more popular in some ways, and in other ways, they play against that.

Civil society must now look back at the road traveled and its achievements to understand its present and the challenges it must take up in the future. In the origins of each of the laws passed are the primary problems that led groups to defend them; however, after applying and implementing these laws, different aspects of the ambivalent nature of these rules have come to light. A certain philosopher would say that we could count on the truth of the idea that the laws on access to information contain elements that have repercussions on governance and the public administration; they are not only human guarantees. It is imperative that civil society recognize these attributes and fine distinctions that make transparency and the right to access to information less religious and more secular.

After promoting the passage of access to information legislation, civil society organizations are concerned about the real, good-faith implementation of the norms. However, this must not be the only task of a vibrant society that has shown its muscle throughout this experience. The causes of civil society can be reoriented toward broader ends, such as demanding useful public information about diverse kinds of human needs; defending the right of the poor to access to public information at the level of their capabilities; and using public information to promote common causes. There can be no doubt about its capacity to continue to search out explanations and demand a moral commitment from those in government. The only thing that would be unpardonable would be for civil society to lower its guard on putting checks on those in power and on its own quest to reduce arbitrariness. ■■