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# The Right to Environmental Information in Mexico The Key to a False Door

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Today's governments are at work creating the mechanisms for guaranteeing a social, democratic state with the rule of law, in which transparency about the activities of public entities has become the rule, and secrets the exception. There is therefore an attempt to make the way of controlling and handling public information that left citizens defenseless in favor of supposed "confidentiality" a thing of the past.

This is linked to the trend in international instruments to foster public participation in decision-making, which began to be introduced into national spheres by movements for democracy. Through that process, participation has expanded, fostering the involvement of non-state actors in the construction, design, implementation, and evaluation of public policies, including environmental policies. This has particularly been the case since the 1970s, when the human right to live in a suitable environment began to be recognized.

This governmental effort to make rights effective (like the right to access to public information as a tool for concretizing the other fundamental rights: the right to consultation, to participate in decision-making, and to a suitable environment) poses new challenges for the law and tremendously significant responsibilities for the state. It is the latter that must create appropriate instruments for this task. In this context, many countries' legal systems, like Mexico's, have been revolutionized. Access to government information has been made into an individual guarantee, which makes possible people's

access to the information that any federal, state, or municipal authority or body may have. In Mexico, this led to the passage of the Federal Law on Transparency and Access to Public Governmental Information (LFTAIPG), which aims to guarantee all individuals' access to federal public information, including that pertaining to the environment, with the exception of classified information. One point in the law that should be underlined is that it does not demand the individual argue cause or involvement for his/her request for information; in addition, it establishes different ways of accessing it: the internet, the mail, or a direct, personal application at the federal administration's Community Outreach Units. If access to the information is denied, the law stipulates a process whereby the applicant can appeal to the Federal Institute for Access to Information and Data Protection.

In theory, the bases for changing the relationship between society and the state have been established, since government actions can be legitimized by ensuring that every public action or omission is subject to the scrutiny of an individual whenever he/she requests it. If we look at environmental issues, we will see that their complexity requires involving all the actors in society to deal with them. At the same time, this requires guaranteeing access to the available environmental information as a prerequisite for participating in making decisions that are appropriate and supported by society, and which would make it possible to move ahead toward sustainable development.

Parallel to guaranteeing the right to access to public information, the rights to access to participation and justice have

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also been consolidated. These three rights are the pillars needed to concretize the right to a suitable environment. These rights of access began gaining strength by being recognized in diverse international instruments, among them, the Declaration of Rio, adopted in 1992 at the United Nations Summit on the Environment and Development. The Rio Declaration's tenth principle stipulates that the best way of dealing with environmental issues is with the participation of all interested citizens. But, to participate in decision-making, a fundamental premise is guaranteeing access to information. Based on this, individuals can reflect and make judgments about the actions, measures, or decisions that could affect them, and take appropriate action.

In addition, access to environmental information is also an essential instrument for public management, the creation of awareness, education, and co-responsible social participation. The latter can be carried out when society is fully informed about the environment, its deterioration, fragility, and the interrelationship between the environment and society, as well as of the impact that our actions have, including the negative effects on our health and well-being. Clearly, the guarantee of access to information also makes it possible to further conscious actions oriented to identifying risks and, based on that, making decisions that will tend to reduce or eliminate them; plan for sustainable development; and create incentives for all sectors of society to participate in improving the environment. At the same time, all this contributes to making the right to a suitable environment a reality.

It should be pointed out that two subjects are involved in this right: in the first place, public authorities, the main people responsible for gathering, managing, and updating environmental information. In the second place, citizens are validated to exercise this right directly. For this reason, the guarantee to access to information is a *sine qua non* condition for exercising the right to a suitable environment, in which individuals and public bodies must participate co-responsibly.

In order to guarantee the full exercise of this right, the Federal Law of Ecological Equilibrium and Environmental Protection (LGEEPA) was reformed in 1996 to incorporate two categories of the right to environmental information. The first involves the obligation of transparency on the part of the environmental authorities, the Ministry of the Environment and Natural Resources (Semarnat) and its different technically semi-autonomous bodies, like the National Commission for Water, the National Ecology Institute, the Federal Environmental Protection Agency, and the National Commission for Protected Natural Areas. This requires the establishment of a National System of Environmental Information and Natural Resources based on the data on emissions, dumping, trade in biodiversity, cross-border movement of dangerous waste, etc., provided by those the law itself stipulates must do so. The second category is the right of all persons to access to existing environmental information.

Under the LGEEPA, environmental information is considered any written, visual, or database information environmental authorities have about water, air, soil, flora, fauna,

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The right to information has expanded, among other reasons, due to demands for environmental protection after the 1992 Rio Summit.

and natural resources in general, as well as the activities or measures that affect or could affect people. The law also includes the possibility that environmental information requested may be denied if it is legally considered confidential or when, by its very nature, its dissemination could affect national security; when it is linked to the legal process or ongoing inspections or surveillance; when it has been provided by third parties who are not legally mandated to provide it; and when it involves inventories, inputs, and technologies for processes, including their description.

It should be underlined that, according to Semarnat figures, from September 2009 to August 2010, 3 315 requests for information were made, placing this ministry among the top four that information was requested from. Nevertheless, this does not mean that these requests were satisfactorily dealt with; in many cases, the application has been received, but the information has not yet been provided.<sup>1</sup> The only thing this demonstrates is that, despite legislative progress, the adoption of international instruments, and the mechanisms for environmental management, the authorities are not really committed to fulfilling the mandate of generating, processing, updating, and disseminating environmental information. This, in turn, makes it difficult for people to exercise their environmental rights in practice based on the use of the existing mechanisms.

To that end, it is indispensable to improve and update environmental information systems; adopt indicators to monitor the processes fostering environmental democracy; create networks and alliances to bolster efforts in evaluating environmental management; and create inter-sectoral cooperation programs that would make it possible to improve the current information access systems. It is also necessary to establish uniform criteria for fulfilling environmental information obligations, such as in the Registries of Emissions and Transfers of Contaminants, so that it is really possible to evaluate and measure the data they contain. Lastly, public participation in formulating and evaluating policies, plans, and programs must be promoted.

In the imaginary of a country in which everyone becomes involved in the effort to concretize the right to a suitable environment, diverse legal instruments make public participation possible. Among them are the evaluation of environmental impacts, environmental audits, and declaring certain natural areas protected. All these mechanisms include participation through consultation mechanisms. However, it is not enough to have institutional means if we lack the fun-

The Rio Declaration in 1994 stipulates that the best way of dealing with environmental issues is with the participation of all interested citizens and a fundamental premise is guaranteeing access to information.

damental element for maintaining our demands, that is, if we do not have guaranteed access to truthful, timely, impartial information. This makes it materially impossible for society to participate co-responsibly in planning, executing, evaluating, and monitoring environmental policy, as well as to demand its right to a suitable environment.

In addition to this, we find that, with these omissions, the Mexican state infringes on certain human rights guaranteed in the international instruments it is a party to. This is the case of Covenant 169 of the International Labor Organization on Indigenous and Tribal Peoples in Independent Countries, which includes among its objectives the guarantee of the right to information and consultation through an open, frank, meaningful, timely discussion among governments, communities, and first peoples about the measures that could affect the natural resources on their lands and territories, in order to allow them to participate effectively in the decision-making process.

Based on this premise, in the current context of globalization, the clash between economic and sustainable development policies is unquestionable. Although in political discourse, they seem to be in harmony, practice shows us that what is happening is that large foreign development projects are being encouraged, with no regard for the fact that they create environmental and social strife as a result of violating the right of access to information, consultation, and participation in making the decisions that may affect those involved. Obviously, the legal systems in and of themselves do not ensure public access to environmental information.

Undoubtedly, the recognition of the right to access to public information is an important achievement. However, real access to information is a challenge that remains to be realized. In Mexico, people need government information about environmental impact, contaminating emissions, dangerous waste, environmental liabilities, endangered species, etc., to be able to contribute to strengthening environmental co-responsibility, the rule of law, and respect for human rights.

It is important to be clear that it is not enough to include ineffective stipulations in the environmental legislative catalogue; their deficiencies limit the full exercise of rights, in this case, the right to access to environmental information. Instead, they open a false door to expectations that fall apart together with other rights, like the expectation of being able to be part of the deliberative process that all governmental decisions go through —or should go through— as well as

their implementation and follow-up. This means that in our country, we have a long way to go before we achieve the full guarantee of the rights to access to environmental information, participation, and justice. ■■

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<sup>1</sup> Semarnat, *Cuarto informe de labores* (Mexico City: Semarnat, 2010), p. 207.

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# Reflections on the Right Of Access to Information And Political Parties in Mexico<sup>1</sup>

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There is a deeply rooted idea that in a representative democracy, representatives should share with their constituencies the conviction of approving measures to favor the citizenry. This idea is even more firmly entrenched in matters with an intrinsically positive connotation or a generally accepted positive judgment. This is the case of the right to access to information. However, as it happens, this generally accepted positive judgment and that conviction shared by representatives and their constituencies does not exist. It is often the case that what the legislators approve does not coincide with an idea that it was thought they should share with the citizenry. For example, there is an idea that political parties should be bound by Article 6 of the Constitution; but this is not the case. Regulation of political parties in this matter is still far from a normative ideal, which would bind institutions in

the public interest, the recipients of copious amounts of public funding, to effectively be obliged to respond to requests for information from the citizens they represent, both from the perspective of those citizens' rights, and also as a mechanism for accountability. Why is this not the case? In this essay, we will try to pose an answer.

It is true that the Federal Code of Electoral Institutions and Procedures (Cofipe) has several ways of accessing information about political parties. We can mention the System of Supervision and Accountability of Political Parties.<sup>2</sup> This system establishes parties' obligation to report on the utilization of the resources assigned to them and as well as publish their basic documents; to provide information about the powers of their leadership bodies; and to report all the general decisions made by their leadership bodies. It also requires they make available a directory of their internal bodies; the wages of their paid employees; electoral platforms and government programs they register with the Federal Electoral Institute (IFE); any agreements to create a front, a coalition, a merger, or to participate in elections; the calls they put out to convene

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