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. VM

NOTES

[1] Semarnat, *Cuarto informe de labores* (Mexico City: Semarnat, 2010), p. 207.

Reflections on the Right Of Access to Information And Political Parties in Mexico[1]

José Reynoso Núñez*
Adriana Bracho Alegría**

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.[2] 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

* Head of the Research Unit at the Federal Judiciary's Electoral Tribunal Center for Electoral Legal Training.
** Director of External Training at the Federal Judiciary's Electoral Tribunal Center for Electoral Legal Training.

elections for their leaderships or to register their candidates to run for public office; the amount of public funding they receive monthly; their annual or partial reports on income and spending; the state of their holdings; an inventory of any real estate they may own; a list of donors and the amounts they donate; the resolutions passed by their disciplinary boards on any level, once the process is finalized; the names of their representatives before the institute's bodies; and the list of the foundations, centers, or research or training institutes they may give on-going economic support to, among other items.

However, political parties are not directly obliged to provide indicators of their activities or of their exercise of public funds, since they are not bound under Article 6, Subsection 1 of the Constitution, which refers to federal, state, or municipal authorities, states, bodies, or organisms. The circumstances of political parties are different from those of public bodies, since the former are only accountable through indirect procedures.

Is there really a regulatory problem in this sphere? Can the probable deficiencies in political parties' behavior regarding their handling of public resources be attributed to existing regulations? To respond to these questions, it is necessary to distinguish between the right to access to information as the citizens' right to obtain information from political parties and the mechanism for accountability that could exist. We also have to think in terms of cause and effect, and evaluate if access to information is the cause of political parties' more or less proper performance. Three central themes guide the argumentation presented here: first, the feasibility of approving institutional reforms; second, the ability of legal norms to explain the situation; and third, the role of political parties *vis-à-vis* the citizenry.

It is necessary to distinguish between the right to access to information as the citizens' right to obtain information from political parties and the mechanism for accountability that could exist.

Ivan Stephens/Cuartoscuro

Transparency strengthens democracy and the party system.

The Feasibility of Passing Institutional Reforms

Why do the political parties not amend Article 6 of the Constitution and include themselves among those bound by it? The obvious answer would be that the parties are not about to do anything against their own interests. The answer seems so convincing that it does not seem worth looking for another. However, it is appropriate to point out the following.

It is not sufficient to develop an accepted normative solution or the appropriate technical proposal for there to be a decision to approve and apply it institutionally: it is not enough to have the will to reform. In the debate about institutional reforms, emphasis is often placed on the direction and content that each reform *should have*. The starting point is the premise of what should be, and based on that, proponents argue in favor or against the proposal. The reform would be approved, they say, once decision-makers decide to do so. This reasoning seems to refer to an individual will personified by the legislators. It should then be enough that the legislators want to take into account the best proposal for it to be put into practice. So, their refusal to approve it would be a defect attributable to that individual will.

However, the will required to approve reforms is not individual; it is collective. Since it is collective, it includes diverse perspectives that constitute the proposal to be approved. Reality indicates that when proposals are discussed, they get watered down; they become minimized; they end up looking different because, in order to be approved, they have to include or exclude the points of view of those who participated

in the decision. In the negotiation process, the technically correct or normatively accepted proposal becomes blurred, and one that can be approved develops.

The solution is not to be found in a mere effort of will. Commonly, many proposed solutions for overcoming what are considered the causes of the problems have already been presented in the discussion. However, they have not generated the majority needed for approval. Neither the parties that have proposed them nor those that have rejected them recognize that they have to negotiate, tolerate, concede, and come to consensuses.

The Explanatory Ability Of Legal Norms

What is the role of legal norms in the behavior of political parties in managing their public resources? Can the virtues or deficiencies of party behavior in this sphere be attributed to current regulations? It is true, as Dieter Nohlen has pointed out, that institutions —in this case legal norms— are important but relative.[3] We could have the most exhaustive, advanced regulations about the right of access to information from political parties, but if political actors and we citizens do not have a deep-rooted culture of fulfilling these norms, the situation will not be very different from the one we are criticizing.

Let us look at it from the perspective of the rule of law. It can be said that the essence of the rule of law is the rationality of the exercise of power. This rationality, concretized in the law's limitations on the state, is ruled over by a few principles that indicate the characteristics of this subjection: among others, the principle of the supremacy of the Constitution, that of legality, and that of lawfulness.

The rule of law, however, cannot refer only to the rationality emanating from legal norms. It is necessary to differentiate three dimensions of the rule of law: as an aspiration expressed conceptually or in theory; as a demand expressed in normative law; or as a situation that indicates the distance between reality, the aspiration, and the legal norm. Thus, in realizing the aspiration put forward by the concept of the rule of law, the legal-normative manifestation of the theoretical aspiration is insufficient, which, in our country can even be considered technically very sophisticated in the case of the regulation of political parties. It is not sufficient because, among other reasons, as Efraín González Morfín has pointed out, law is not only the legal norm that determines and establishes what is objectively just, with the corresponding rights and obligations.[4] It also means the faculty the other has *vis-à-vis* what is objectively just that is due him/her; but, above all, what is objectively just means the conduct and the thing that is owed to another. The rule of law is not only a set of norms; it also requires behavior that is in line with those norms. Then, three levels of discussion exist in applying the concept: as an aspiration expressed in concepts or in theory, as a demand expressed in normative law; or as a situation that indicates the distance between the reality, the aspiration, and the legal norm.

We could have the best regulations about the right of access to information from political parties, but if political actors and we citizens do not have a deep-rooted culture of fulfilling these norms, the situation will not be very different from the one we are criticizing.

The Role of Political Parties *vis-à-vis* the Citizenry

Can the responsibility for the absence of appropriate regulation be attributed to the political parties? It is important to not imbue the defense of rights with an anti-party discourse that does not take into account how important parties are for democracy. What do we mean by this? We are referring to the principle we mentioned at the beginning of this essay: that the regulation of political parties in this matter is still far from fulfilling the normative idea in which institutions in the public interest that receive large amounts of public funds should be subject to effective requests for information from the citizens they represent. This conclusion sparks the critique of the existence of a distancing between representatives and constituency, in which the latter seem to be right because their argument is based on an *a priori* positive position, while the representatives' argument is based on an *a priori* negative position.

Could we say that if the citizenry were directly responsible for passing legislation, the legislation would be different? The answer is no. The restrictions that the decision-makers are subject to and the vested interests involved in creating public policies cannot be solved by replacing the political

class with citizens. The political class is the product of Mexican society, and its behavior cannot be alien to it. The problem of the parties and the elite in Mexico is intimately linked to Mexican society, its mentality, its perception of life, of the other, and of politics. The critique of the parties and the elites seems to be saying that they have no relation to the society they spring from or in which they operate, as though it were possible for political parties and elites from a culture different from that of their own country to exist; as if politicians were not Mexican citizens and did not share with them their virtues and defects; as though the virtues were concentrated in the citizenry and the defects in the politicians.

Recapitulating

At the beginning of this essay, we asked ourselves why the regulation of access to information about political parties was still far from a normative ideal. We can conclude that what seems clear at first glance, that is, the normative ideal, is not so clear when transferred to the examination of feasibility. It turns out that decision-makers are subject to multiple restrictions and must take into account different points of view to get reforms passed. In the negotiation process, the technically correct or normatively accepted proposal is deconfigured, and the proposal that can be passed is pieced together. In addition, we must consider that the ideal we aspire to regarding the right to access to information about the political parties depends not only on legal norms, but also on the legal and political culture of both the political elites and the citizens. VM

Notes

[1] We would like to thank Antonio Márquez Aguilar for his support in developing this essay.

[2] See http://www.ife.org.mx/portal/site/ifev2/Fiscalizacion_y_rendicion_de_cuentas/.

[3] Dieter Nohlen, *El contexto hace la diferencia: reformas institucionales y el enfoque histórico empírico* (Mexico City: IIJ-UNAM, 2005).

[4] Efraín González Morfín, *Temas de filosofía del derecho* (Mexico City: Universidad Iberoamericana/Oxford University Press, 1999), p. 85.

The Right to Information in Mexico *Quo vadis?*

Fausto Kubli-García*

Frequently, structural reforms of states originate in transcendent social movements: revolutions, civil wars, and even coups d'état often conclude with a legal and political restructuring centered on fundamental rights. In the case of the right to information in Mexico, a struggle —unarmed, of course— has arisen, spearheaded by civil society organizations and also by different public officials working for change in their country.

* Researcher at CISAN.

In this same vein, we can say that in the last 15 years, discussion about certain fundamental rights has steadily increased in Mexico's national legal system. The most recent constitutional reform changed the name of Title One, previously called "De las garantías individuales" (On Individual Guarantees), to "De los derechos humanos y sus garantías" (On Human Rights and Their Guarantees).[1] The much celebrated reform on indigenous rights was also affected, seeking to broaden constitutional protection for Mexico's first peoples whose rights were highly vulnerable because of marginali-