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**Right** of **access**  
to information in **Mexico:**  
a diagnosis by society

**Mexico**

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# Right of access

to information in Mexico:  
a diagnosis by society

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### **Note:**

The opinions included in these works are under the exclusive responsibility of their authors.

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## INTRODUCTION

### ACCESS TO PUBLIC INFORMATION: A USEFUL INSTRUMENT FOR AN ORGANIZED SOCIETY

By: María Marván Laborde  
President Commissioner  
Federal Institute of Access to Public Information

Since its origins, the Federal Institute of Access to Public Information responded to a rightful claim from Mexican society, who demanded to guarantee a transparent office from the government, subject to social supervision, open to accountability and allowing public issues to be publicly available.

In this sense, the more than 40 thousand information petitions processed in only one year can prove that the creation of mechanisms and institutions intended to protect the right of access to government public information has been an accomplishment, a positive response to an authentic social need.

This is a double need: on one hand, it is intended that the information flows “downstream” so that the citizens can know, evaluate, and supervise all actions taken by officers and rulers so that some sort of social control is daily exercised “upstream” towards every single location of the Federal Public Administration. But in the other hand, it is intended that the information provided by the government is also useful and meaningful for society itself; that all data, figures, and accessible documents result in an increased capacity of action and proposal by individuals and social organizations.

More information means more capacity, more consistency in arguments and better instruments for criticism and proposals. Those social actors who had been able to translate their demands into legal amendments, public policies, and paths for citizen participation are those who have had enough capacity and knowledge to access the information in possession of the government.

As a result of their actions, we have been able to witness multiple changes and a significant invigoration of social demands: defense of human rights, social development and assistance programs, support to handicapped people, promotion of environmental care and regeneration, activities in favor of equity of genders, autonomy of electoral organizations, just to mention a few of the topics in which the usefulness of the right of access to information can be seen with more clarity, thereby showing the influence of an organized society.

In the origin of the Federal Law of Transparency and Access to Public Government Information (LFTAIPG, acronym in Spanish) it is possible to witness the convergence of citizen and government initiatives. Almost simultaneously with the Law initiative that the Executive Power sent to the Congress of the Union, an active group of scholars, journalists and members of civil organizations, presented their own proposals and from that venturous convergence, the Law was born, a powerful civil action instrument that we recognize today.

Therefore, social organizations are the natural and compelled users of the LFTAIPG. Academic, civil, entrepreneurial, political, environmental and gender-oriented organizations are the entities with the best capability to read the pulse of the way in which agencies and departments have responded to the information requirements. This is due to the fact that the use of this information is not bureaucratic or academic, because they question the government over concrete topics and needs, which are directly linked to the action.

This volume deals precisely with this issue: to know about the first practical experiences of Mexican society in the exercise of its right of access to information. How was it? Which were the outcomes? How did they deal with complex matters?

Which obstacles did they face? In brief, has it been worthwhile to implement mechanisms for access to information in our country?

This volume is the product rendered by the day-to-day work with civil organizations. Herein, six well-known organizations with a lengthy tradition in Mexico – Alianza Cívica; Fundar; Equidad de Género, Ciudadanía, Trabajo y Familia; Centro de Servicios Municipales “Heriberto Jara”; Iniciativa de Acceso-México and Red Ciudadana – tell us the story of their experience with access to information. Their texts refer to local processes in which the citizens have given an impulse to transparency laws; to civil initiatives to create or improve citizen participation and accountability mechanisms; to the exercise of a detailed and timely supervision of the performance of government bodies.

Participant organizations offer their opinion regarding critical zones in the exercise of this right as, for example, the usefulness level of the information served by the agencies; how quickly is the response served, which benefits are provided by the access to information to the activities of those organizations; how do the mechanisms and systems operate when requesting information; what is the difference in quality between the responses provided by Federal Public Administration agencies and departments and from other subjects that are compelled by the Law; and how government accountability and transparency have changed by the enactment of the Law. These features make out of this publication an extraordinarily interesting and extremely useful material to understand the status of the exercise of the right of access to information in Mexico.

IFAI General Directorate of Attention to Society and Institutional Relations was in charge of calling on these organizations, proposing a systematic discussion of their own experience as well as from the rest of the organizations, and to present their results in a public event intended for evaluation, criticism and proposal, with no restriction whatsoever, other than properly documented information and a constructive attitude.



Consequently, these materials were publicly disclosed for the first time during the National Week of Transparency, within a session with a meaningful name: “The right of access to information: A diagnosis by society”.

We hope that this joint initiative between civil organizations and the Federal Institute of Access to Public Information, results in the integration of new civil organizations to this effort of turning this right into an effective reality and an appropriate instrument used by thousands; in summary, a substantial tool for the construction of a more democratic and efficient government, more attentive to social demands.

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## THE CONTROVERSY AROUND RIGHT TO INFORMATION: THE CASE OF “ALIANZA CÍVICA” AND THE PRESIDENCY OF ERNESTO ZEDILLO<sup>1</sup>

Alianza Cívica is a non-partisan, plural citizen organization that seeks to contribute to the Mexican democratic transition by encouraging citizen participation in public matters, particularly in government office and electoral processes transparency, and also developing civic education strategies.

Since its creation in April, 1994, Alianza Cívica has concentrated its efforts in the creation of spaces to promote citizen participation in national life. It was created as a response to a general social claim to have reliable electoral processes, ruled by universal justness impartiality and transparency principles.

With the conviction of the fact that democratic transition in Mexico was not just a matter of elections, several years ago Alianza Cívica initiated a new stage in its activity, from which new ways of citizen participation and education were created with the purpose of contributing to the construction of a new relationship between civil society and the State.

Currently, Alianza Cívica is working in three different action lines, each one of them with a distinctive project:

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<sup>1</sup> Text based on: Las violaciones al derecho a la información de los mexicanos. Alianza Cívica, Mexico, D.F., 1996.

- I. Electoral Policy;
- II. Transparency and Access to Public Information,
- III. Construction of Citizenship and Civil Society.

As of the citizen movement for an integral observation of 1994 electoral process, our belief that aside from striving for clean and reliable elections we have to continue working in the construction of a democratic culture was confirmed. This is why, with the intention of moving forward promoting citizen participation in public matters, in 1995 an initiative to establish a surveillance system by civil society over the performance of government institutions and the officers that held the responsibility of execution of government activities, was promoted.

This initiative, called “Adopt an Officer” is a citizen initiative oriented to the observation and documentation of the performance of public officers in Mexico from a non -government and non – partisan stand point. The program intends that the citizens become interested in public matters and that officers inform civil society about their activities on a regular basis.

The starting point was the premise that by “adopting an officer” and by supervising government plans and programs fulfillment, in other words, to observe and document both the officer performance and the way in which public policies are exercised, could significantly contribute to stop impunity and corruption in the exercise of power in Mexico.

### **CITIZEN PROJECT “ADOPT AN OFFICER”**

By this program of civil participation in public affairs we intended:

- To broadly promote civic education by fostering citizen participation;
- To force public officers to perform in an honest and effective manner;
- To create the foundation for an officer – citizen relationship in the benefit of the community;
- To document and disclose to the public opinion the result of the follow up of those officers and their performance regarding public policies;
- To create a database available for consultation by citizens about the background and performance of the “adopted officers”;
- To denounce, with the proper groundings and before the appropriate instances, every fault / offense committed by any monitored public servants,

- To create the foundation to promote a fair and precise legislation to stop impunity and corruption.

Because of its importance and symbolism, the first officer to be elected by Alianza Cívica to launch the program was the then in office President Ernesto Zedillo Ponce de Leon. As the supervision and surveillance tasks that we wanted to implement required certain information, we had to refer to the only legal instruments available in those days to guarantee the rights of requesting and obtaining information for citizens, Constitutional Articles 6 and 8.

Constitutional Article 6, now as it was before, states that:

«... the right to information shall be guaranteed by the State»

While Constitutional Article 8 states:

“Public officers and employees shall respect the exercise of the right of information request, provided that such is presented in written form, in a peaceful and respectful manner; though in political matters such right can only be exercised by the Mexican citizens. Every petition must be replied in written form by the questioned authority, who has the obligation of releasing the document to the requester within a brief term”.

For the fulfillment of our endeavor, we invoked the right that any natural or juridical person has regarding the information generated or gathered by the Public Function.

By virtue that the Law states that the requests must be elaborated in a specific manner and signed by a citizen, they must be responded in a reasonable expedite manner by every recipient officer. If such officer ignores the citizen request, even if it is the President himself, he can be summoned by a judge to respond. This was the procedure with a certain degree of success that was followed by Alianza Cívica.

The project had two tracks:

1. The recovery of information over the way in which public budgets were managed and
2. The use of the necessary legal tools to force officers, including the President of the Republic, to submit information about the way in which the public resources or income were spent.

When our program was launched, an important antecedent was still fresh in our memory: President Ernesto Zedillo Ponce de Leon had repeatedly expressed his willingness to respect citizen participation and his commitment with transparency.

During his campaign as candidate, Ernesto Zedillo had claimed that, if he became President, he would promote an «intense citizen participation in the mechanisms of evaluation, follow up and performance control of public servants». He also committed himself to «go deeper in the deregulation process, especially in those aspects where the legal frame allows public servants to be discretionary», and he also claimed that we was «determined to lead an accountable government, compelled to provide citizens with broad, truthful and opportune information»<sup>2</sup>.

The President gathered these ideas in his First State of the Nation Report, when he promised that we would promote «social participation in the tasks of public office surveillance and control and committed himself to foster a more efficient public function and to strengthen the public officers behavior principles to increase the attention and services quality in the benefit of citizenship, as well as to support all actions intended to prevent abnormalities and combat corruption and impunity»<sup>3</sup>.

In 1994 we had performed an investigation that revealed many serious concerns regarding access to information:

- It was extremely difficult to obtain information on any aspect related to the Presidency of the Republic and the President;
- The President's real income was unknown because there was no report on the excessive and secret budgetary appropriations that were received by high officers by the end of each year;
- The President managed an enormous budget in an extremely discretionary manner that allowed possible abuse, and
- The President had a readily available secret budgetary appropriation of a millionaire amount.

Upon the results of this research, at beginning of 1995 we concluded that our First Servant was in contradiction of his own statements, keeping privileges and

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<sup>2</sup> Reyes Heróles, Federico (Coord.). Cincuenta preguntas a los candidatos, México, FCE, 1994. pp.40 y 55.

<sup>3</sup> Federal Executive Power, First State of the Nation Report, Ernesto Zedillo, September 1st., 1995. México, Presidencia de la República, Tomo 1, p.142.

prerogatives in the use of public resources and such lack of transparency has prevailed to these days during his office. This is why we decided to exercise our right of request and sent two letters to the Presidency of the Republic requesting the President to disclose information that was only available to him.

#### **EXERCISE OF THE RIGHT OF REQUEST:**

The first request was made on March 19, 1995. On that date, the National Coordination of Alianza Cívica submitted a letter addressed to the President, by which in a peaceful and respectful manner the following information was requested:

- The complete organization chart and functions of all Presidential Offices and Advisors;
- The way in which he had managed the amount allotted to him by law for the discharge of his presidential duties;
- The amount of the President's monthly income, charged against the treasury, including the salary approved by the Congress of the Union, allowance and compensation system, as well as any other amount of money received against the treasury,
- The conditions under which the President would disclose his patrimonial statement.

By a second document, dated April 18, 1995, Citizen Ernesto Zedillo was requested to submit information about the "details and characteristics of the support given by the Presidency of the Republic, in pecuniary or any other fashion or type to the International Press Center and the Association of Foreign Correspondents in Mexico (ACEM, acronym in Spanish)".

#### **EXPECTANCY OF A LARGELY POSTPONED RESPONSE**

Despite his previous statements and commitments with the citizens, the Federal Executive did not respond for one year. As this was in breach of the individual guarantees provided by Constitutional Articles 6 and 8, we decided to select one of the two requests to initiate a protection trial that in compliance with Constitutional Articles 103 and 107, was the proper legal instrument. Due to its relevance, we selected the first one.

On March 27, 1996, we filed a lawsuit before the Fifth District Court on Administrative Matters in the Federal District. The complaint progressed; the authority received the lawsuit (File No. 196/96), notified the Presidency about its existence and summoned the parties for a constitutional hearing. After analyzing the case, a sentence in our favor was resolved: The President was then forced to respond to our petition, fact with no precedents in the history of our country.

Alianza Cívica National Coordination received from the Citizen Attention Unit, dependent from the Presidency Office and under the responsibility of lawyer Leonor Ortiz Monasterio, a response to the petition dated March 28, 1995. By this document, we were notified that “each one of the questions therein contained was being replied in the same order of the original request”. (Doc. No: AC/96/170).

### **THE RUGGED PATH OF A RIGHT: ACCESS TO INFORMATION**

By the above-mentioned response, our right of information request was restored. However, to fulfill our endeavor, we had to wait for a year, obtain legal counseling, and file a lawsuit against the Presidency. It is true that we obtained a reply from the Federal Executive office, but it was not enough to restore our right to information, as the submitted data were insufficient to fill the existing information gaps. The information that we needed continued to be undisclosed and absolutely inaccessible to the citizen.

Regarding the information petition dated April 18, 1995 related to payments made to foreign journalistic organizations, the Presidency of the Republic remained silent.

### **THE UNQUESTIONABLE PRESIDENTIAL “SECRET BUDGETARY APPROPRIATION”**

One of the most notorious discretionary spaces in the Mexican Government Expense Budget was the so-called Presidential “Secret Budgetary Appropriation”, agreed upon as a privilege at a constitutional level. This appropriation was allotted for “contingency expenses” on a yearly basis, under the impenetrable veil of discretion, without forcing the Federal Executive to submit account of its use.

Sergio Aguayo considers that the “secret budgetary appropriation” is the most highly refined symbol of excessive presidential power. The Constitution authorized Presidents to have a “secret budgetary appropriation”, without imposing the obligation of submitting accounts. If such appropriations were to be used with

the purpose of comparing presidents, the winner would be Carlos Salinas de Gortari. During his six years in office, he spent 858 million dollars (390 thousand dollars per day), without us being aware of how that money was spent.”<sup>5</sup>

Some analysts recognize that it is during Zedillo’s office where the first constitutional and budgetary changes related to the “secret budgetary appropriation” occurred; during his administration, significant modifications to the exercise of the Federal Expense Budget were made. During such six-year term, the amendment to Constitutional Article 74, Paragraph IV was passed, thereby forbidding the allotment of such kind of appropriations in the public budget.<sup>6</sup> (See Chart 1)

### **IMPORTANCE AND DIFFICULTIES IN THE EXERCISE OF THE RIGHT TO INFORMATION**

As already stated, our monitoring tasks started in November, 1994 and covered three aspects: the extent of presidential powers, organization of presidential offices, and the available budgets. Each topic line was selected for covering aspects of general interest:

- To be informed in order to understand the way in which the presidential staff works and the manner in which functions were distributed;
- To be aware of the amounts received by the President and his offices, like budgets or salaries for the execution of the presidential office,
- To follow up the administration of such resources and, if necessary, demand their use in compliance with the interests of the citizens.

In order to obtain the information required by the investigation carried out by Alianza Cívica, and before the sentence was resolved in our favor, we referred to several government offices, particularly the Presidency of the Republic, the documentation centers of the parliamentary sectors of the opposing political parties, Partido Acción Nacional (PAN, acronym in Spanish), and Partido Partido de la Revolución Democrática (PRD, acronym in Spanish) at the Congress of the Union, and several libraries and printed material editors.

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<sup>4</sup> Hofbauer Helena, “*El análisis de presupuestos públicos: Una herramienta para la transparencia y la rendición de cuentas*”. At <http://www.revistaprobidad.info/009/art04.html>.

<sup>5</sup> Aguayo Quezada, Sergio, “*Revolución en el presupuesto*”, in Revista Memoria No. 119, January, 1999.

<sup>6</sup> Ugalde, Luis Carlos. “*El debate sobre la corrupción en México*”. Paper presented at the CLAD VII International Conference on State Reforms and Public Administration, Lisbon, Portugal, Oct. 8-11, 2002.



The first thing that we identified were the enormous difficulties to obtain information related to the Presidency of the Republic. There was no document equivalent or comparable to the Federal Public Administration Organization Manual (published for the last time 14 years ago, in 1982), detailing the organization and functions of each Federal Government Agency.

According to some versions provided by informed individuals, during the six-year term of Carlos Salinas de Gortari, a brochure was published, explaining the Presidency of the Republic organization and functions, but such publication was not supplied by the Presidency staff in charge of attention to the public. Over and over again, we verified that the personnel dedicated to provide information to the citizens was not doing so and even appeared to feel offended when they were requested for precise details.

During our investigations, we referred to the Citizen Attention Unit, the Presidency Information Department, the Private Secretariat Documentation Unit, the Social Communication General Directorate, the Graphic Service Unit, the Presidential Chronicle Unit, the Press Office at the Official Residence "Los Pinos", and the Publications Division of the Social Communication General Directorate.

Except for the latter instance, where we received a Presidency organization chart (which had already been published in Section 111 of the Biographic Dictionary of Mexican Government in 1992), every referral rendered no other fruit than the recommendation of calling on other agencies.

The existence of an unacceptable secrecy halo became increasingly evident around the Presidency organizational structure and the budgetary exercise. When the Press Room staff in "Los Pinos" was requested to produce a presidency organization chart, they replied that such document did not exist, but for internal use.

Something similar happened during the visit paid to the Expense Undersecretariat Documentation Unit of the Treasury Secretariat, with the purpose of inspecting documents related to the presidential budget and the Federal Executive's salary.

Upon the request of a document indicating the presidential remuneration in compliance with the Federal Expense Budget, the staff in charge of the Unit replied that none was available, as it was confidentially handled information. When they were asked if it was public information, the answer was a laconic: "Theoretically".

In brief, it is important to highlight this confidential characterization of information that was public, despite there was no official disposition whatsoever prohibiting the disclosure of the organization chart and the presidential budgets, or the salary of high level public officers.

If our information search was fruitless in the mentioned government agencies, we did obtain information from the PAN and PRD documentation centers and from the press. In fact, a significant part of the figures presented in the Alianza Cívica Report, published later on, were sourced from official documents that, despite their public character, could not be obtained, but through the intervention of the independent federal congressman, Tonatiuh Bravo, whose help was invaluable for the elaboration of the said report.

Regarding the information related to the way in which the presidential offices were organized, it was outstanding that such did not appear gathered in any official document that could be obtained through publicly accessible channels. With the request to the Presidency, we aimed to complement the information we could not access. In his response, the presidential office referred us to regulations incapable of updating the internal structure, organization and functions of Ernesto Zedillo's Presidential Office. This kept us from having a clear idea of the President's functions and offices. For example, no one was willing to inform about the number of individuals that worked there, or about the hierarchy system or regarding offices with apparently duplicated functions. Thus, it was impossible for us to verify if the very scarce data that we had matched with reality

Synthesizing, in spite of utilizing the legal instruments intended to guarantee our rights to information and request, we were unable to know the way in which the Presidency of the Republic was organized during the office of citizen Ernesto Zedillo Ponce de Leon, all in breach of the right to information of the Mexican people.

After exhausting the national instances, in 1997 Alianza Cívica, through his President, Dr. Sergio Aguayo Quezada presented a lawsuit against the Mexican Government for violating its right to information before the Inter-American Commission of Human Rights (CIDH, acronym in Spanish).

One year later, the CIDH claimed incompetence to hear and resolve the case. So, an important chapter of our country's history of human rights was closed, because the absence of resources, the distress, and the temporary extension of the process forced Alianza Cívica to address other priorities.

If it was indeed that the protection proceedings forced the authorities to respond, it is also a fact that such responses were limited, in the case of budgetary administration, to submitting data from incomplete official sources that we had previously analyzed; or, by the same token and regarding the issue of salaries and patrimonial statements, to the management of scarcely credible figures or the authoritarian declaration that the citizens did not have access to the said information.

It is important to remember that in those days, in the Mexican political system, the Executive was still the central figure and was more important, from the political standpoint, than the Legislative and Judicial Powers. Additionally, the legislative bodies were primarily integrated by members of the party in power. Not even the congressmen and senators of the opposing parties had access to most of this information.

Unfortunately, even today, the management of people's economic resources continues to be a non-accessible topic for the citizens. Both the Federal Executive Power and the State Executives are in the obligation to report to the Legislative Power, though this is not translated into clear and concise information for general society.

## **ATTAINED IMPACT**

This innovative process, based on the simple enforcement of constitutional rights, had important impacts on two key matters:

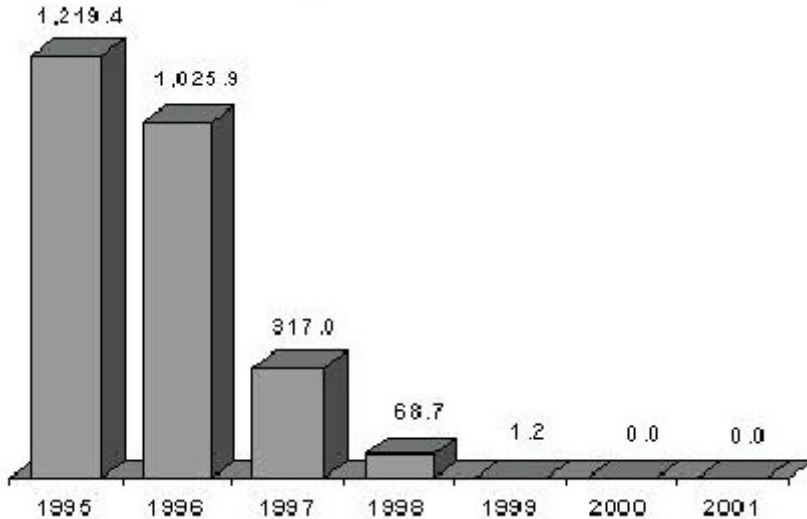
In the case of the President "adoption":

- In subsequent years, the amounts assigned to the "secret budgetary appropriation" were considerably reduced, to the extent that for year 2000, President Zedillo notified that he would not request more money from the Congress for the secret fund for the corresponding budget.
- We contributed to take the first step in the opening of debates regarding the citizen right to free access to information, which –practically – was very far from being public. Further steps were possible thanks to the impact of these initial actions, to the arrival of opposing representatives in key positions within the different commissions of the House of Representatives, to the interest on such issues promoted by the communication media, and to the determination of different social and political actors that undertook the task of achieving a transparent public information.

Chart 1

**AUTHORIZED RESOURCES FOR THE SECRET BUDGETARY  
APPROPRIATION 1995-2000<sup>7</sup>**

Constant Millions of Pesos of 2001 <sup>1/</sup>



<sup>1/</sup> Calculated with the implicit GIP price index

On year 2001, President Vicente Fox Office submitted to the consideration of the Honorable Congress of the Union an initiative for a Constitutional Amendment, with the purpose of eliminating those expense appropriations that could not be fiscally supervised. The President proposed to eliminate the “secret appropriation” and to create the “confidential expenses” category, which would be exclusively used for public national security matters. These expenses would be subject to the transparency principles, and to audits by the higher federal competent agency. The most important benefit rendered by these citizen actions, still incipient in our country, is the impact this had on public opinion. As long as our society does not demand the exercise of such a basic right, like knowing how their

<sup>7</sup> Technical Coordination and Spokes Unit / Social Communication Unit. Treasury Secretariat (SHCP). Report of June 18-22, 2001.

representatives are handling public issues, it shall be difficult to even think about the consolidation of a democratic regime.

Regarding institutional performance, the results obtained by this demand confirmed the relevance of continuing to design and spread all strategies to promote citizen participation in public matters, particularly the supervision of government office, demanding accountability from the officers. We think that this is how we contribute to avoid discretionary application of public resources and decision-making, as well as to fight corruption and impunity.

It is clear that the right of request is a support, though it does not substitute the rest of information mechanisms, and that by passing and enforcing the Federal Law of Transparency and Access to Public Government Information we are significantly progressing into a real citizen right to relevant information on public performance.

We hope that, pursuant the Federal Law of Transparency and Access to Public Government Information, accountability over government actions and decisions becomes a reality and is used to fight corruption, impunity, and the administrative inefficiencies that still prevail in some government sectors, in such a way that it motivates citizens to participate by actions, criticism and proposals over public interest matters, thereby strengthening our country's democratic institutionalism.

All this must be supported by broad and joint educational and broadcasting strategies, both from IFAI and civil organizations, aimed to sensitize and inform citizens and public officers about the importance of knowing, respecting and using this legal instrument, so that any interested individual can access public government information.

Alianza Cívica  
México, D.F., April, 2004.

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**DIAGNOSIS ON ACCESS TO ENVIRONMENTAL  
INFORMATION IN MEXICO  
INITIATIVE EXPERIENCE BY  
“ACCESO MÉXICO” – [“MEXICO ACCESS”]  
(IA-MEX), ACRONYM IN SPANISH**

By: Isabel Bustillos y Tomás Severino

## INTRODUCTION

Access to information is a highly valuable right that undoubtedly drives the construction of more fair, equitable and co-responsible societies in the discharge of public affairs, and contributes to the country's strengthening of social patrimony and democratic life. Public information is the social participation catalyst: those with more and better information are more likely to participate and intervene in decision-making related to public policies, and both public and private programs and projects. Furthermore, information availability is an invaluable resource for the current demand for an expedite justice enforcement.

In México, access to environmental information is contemplated since 1996 in the General Law of Ecological Balance and Environmental Protection (LGEEPA, acronym in Spanish), emerging as one of the pioneer legislations incorporating the right of access to public information in a detailed fashion, and setting mechanisms and terms to request information. During last year, México has experienced the accomplishment of a significant openness in its legislation, by

the enactment of the Federal Law of Transparency and Access to Public Government Information (LFTAIPG), on June, 2003, thereby providing the foundations for a more transparent, fair and involved México. This law is the hallmark of a new kind of relationship between government and civil society, where access to information, participation and justice must change for the benefit of society as a whole.

Today, better legal tools and access to information practices are available to citizens, allowing them to play a surveillance role over government office and to foster compliance with the Law. It must be stressed, however, that the core issue of access to information does not essentially rely in legal and political recognition, but in its public use.

Civil society now has enormous challenges: To use and apply legislations, and to properly follow the procedures; to systemize their experience, to create local participation and knowledge processes that improve community actions in the benefit of a healthy environment and a better quality of life.

In this context, we believe that it is important to recover and broadcast the experienced rendered by the Acceso Mexico Initiative (IA-MEX) during these last few years regarding the promotion of the right of access to information, social participation, and justice in environmental matters.

IA-MEX is the conjunction of four civil society organizations: Centro Mexicano de Derecho Ambiental, A.C.; Comunicación y Educación Ambiental, S.C.; Cultura Ecológica, A.C. and Presencia Ciudadana Mexicana, A.C. that started collaborating, driven by the concern of creating evaluation instruments for environmental public office, as well as elements to facilitate the instrumentation of laws and mechanisms capable of allowing better practices of access to public information, social participation and justice in environmental matters.

In this document, we shall start describing IA-MEX projects and experiences in terms of interventions in public policies, focused on their better understanding and application, and in the promotion of access to environmental information. We shall start with a description of the study "Status of Access to Information, Social Participation and Environmental Justice in Mexico", performed during 2001, highlighting some of the main conclusions rendered by such exercise. Furthermore, we shall discuss works and actions derived from this study: training workshops, agreements, and regional projects, amongst others.

In the second part of this document we shall concentrate in accounting for the three monitoring exercises that we performed in years 1999, 2002, and 2003, by which we obtained a general diagnosis on the overall behavior of the Federal Government regarding access to public information, in two key moments for the environmental sector: after LGEEPA access to information modifications and after the enactment of LFTAIPG. More than on the methodological processes of these three exercises, we shall focus on the task of publicizing the responses obtained from the information requests and then we shall present the analysis over access to environmental information evolution during said years.

Finally, we grouped some of the main conclusions achieved by the members of IA-MEX as a result of our experiences, studies and monitoring activities targeted to the access to information debate in our country.

## I. WORK AND EXPERIENCE OF ACCESO MEXICO INITIATIVE

The first job performed by IA-MEX member organizations was to jointly study the “Situation of Access to Information, Social Participation and Environmental Justice in Mexico”, consisting in the evaluation of the operation, mechanisms, procedures and law enforcement, and federal agencies in charge of enforcing the right to information, participation and environmental justice <sup>1</sup>. This study was performed by the application of a methodology that included more than 120 indicators and 15 case studies. We thereby covered matters related to the legal framework, environmental information systems and access to public participation in environmental matters, as well as the efforts made to strengthen civil society’s capacities. Specifically, we evaluated the Principle number 10 of the Rio de la Cumbre de la Tierra Statement of 1992 <sup>2</sup> implementation process in Mexico.

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<sup>1</sup> By the time of this study the LFTAIPG was not yet in force.

<sup>2</sup> The Principle states that: “The best way to deal with environmental issues is by the participation of all interested citizens, at the corresponding level. In the national scope, every individual must have proper access to information related to the environment in possession of public authorities, including information on materials and activities that represent a hazard in their communities, as well as the opportunity to participate in the decision making process. The states must facilitate and foster people’s sensitization and participation making the information available to everybody. Effective access to legal and administrative proceedings, among these, must be provided, as well as damage compensation and pertinent resources”.



After this evaluation, we obtained a broad and detailed view over access to information in environmental matters, from which it is worth to point out that:

Mexico had almost thirty years of development in solid, legal and institutional frameworks regarding environmental matters, which turned to be particularly dynamic for the last 20 years. In this aspect, the 1996 regulation on the procedures (times and access paths) to access information, allowing clear civil participation and intervention tools in the decision making process must be pointed out.

Despite the existence of legal and regulatory instruments to rule access to information principles, the development and execution of application and sanction procedures were not optimal.

Particularly, regarding principles of access to civil participation in environmental matters decision making and justice, the instruments that detailed their scope and application were still unclear, sometimes absent and others just ignored. Nevertheless, efforts were been made from the juridical, institutional, and civil perspective to solve these deficiencies.

Regarding the right of access to information, progress was significant and, we can claim, that Mexico had information systems of a good quality and in consistent improvement and development. Nevertheless, the magnitude of the topical and geographical scope of the country imposed actual restrictions in this sense, and, thus, every improvement and adaptation became necessary and inevitable.

There was an enormous delay in the communication media promotion as a fundamental tool to broadcast environmental topics to society as a whole and allow the participation of all social actors in the solution of the most urgent problems. Undoubtedly, this is one of the main still pending tasks.

Finally, this research confirms our conviction that it was imperative to duplicate efforts to consolidate a participative society capable of acting in a co-responsible manner.

After this study, IA-MEX was subject to another interesting experience, hardly imagined only a few years ago, consisting of the collaboration of organized civil society and the Government through the Environment and Natural Resources Secretariat (SEMARNAT, acronym in Spanish). Such collaboration was materialized by the signature of a "Covenant Frame Agreement Covenant" which covers a common work agenda on topics related to right of access to information, with concrete products and results in improvement susceptible areas, identified by both parties.

The most important action at the collaboration level between government agencies and civil organizations performed by IA-MEX, jointly with SEMARNAT, was the implementation of regional workshops to promote access principles and to train civil society organizations and government officers, so that they can exercise their information rights, as set forth by the LFTAIPG. Workshops were held during 2003 in Mexico City, gathering civil society participants from the States of Aguascalientes, Distrito Federal, Estado de Mexico, Guanajuato, Guerrero, Hidalgo, Morelos, Tlaxcala and Veracruz; government officers of Federal Agency of Environment Protection (PROFEPA, acronym in Spanish), SEMARNAT, Forest National Commission (CONAFOR, acronym in Spanish), and communication media representatives, receiving support from the Federal Institute of Access to Public Information (IFAI, acronym in Spanish) through informative lectures about LFTAIPG and Information Request System (SISI, acronym in Spanish).

Nevertheless, in this workshop we observed a general ignorance of civil society regarding LFTAIPG and its scope. Also, distrust from citizens and organizations members was evident towards government agencies and there was a reluctance to establish collaboration links with them, based on mutual responsibilities. After this experience, it is evident that the relationship between civil society and Government must be intensively improved, so that society become the owner of the Law and it can be useful in its daily chores.

Different didactic and diffusion materials, as informative clips for television over the 2002 World Summit in Sustainable Development (CMDS, acronym in Spanish) in Johannesburg, South Africa; Citizens Guide for Access to Environmental Information and Social Participation; another Guide for Public Officers over Access to Information, a video named "Access to Environmental Information, a right that we must exercise", among others, were created by us as support of all works and training workshops thereby held.

In the international scenario, IA-MEX process is developed within the Access Initiative TAI3 frame, integrated by a coalition of Civil Society Organizations from Chile, United States, Hungary, Indonesia, Mexico, South Africa, Thailand and Uganda. From such coalition, the implementation of common evaluation parameters to assess the degree of progress in the implementation of Principle 10 of the Rio Declaration was derived, with the purpose of presenting a global diagnosis before the World Summit for Sustainable Development, 2002 CMDS. From this Summit, Alliance for Principle 10 emerged, integrated by governments, civil society, and international bodies and agencies, with the purpose of accelerating the full implementation of access to environmental information, participation and justice worldwide.

In this alliance, Mexico is positioned as a role model of society – government joint work, and we are committed to perform agreed and combined actions for the best instrumentation of the laws, and to search for elements to support access principles. Currently, we are working on an ambitious project named: Evaluation of Principle 10 Implementation in Latin America, which has as purpose of knowing, through a common methodological frame, which is the current status of access to information, social participation and justice over environmental issues, revising the legal and institutional frameworks and office mechanisms in 7 countries of Latin America (Chile, Peru, Bolivia, Ecuador, Costa Rica, El Salvador and Mexico) and three states of Mexico (California, Jalisco and Chiapas), to obtain independent diagnosis over the progress level in the implementation of the Rio Declaration Principle 10.

To close this section, it is worth mentioning that the above mentioned experiences by IA-MEX tell us that we now have a broader picture over access to information regarding environmental matters and federal government performance, from a joint perspective over the evolution of access to information in Mexico, its regulations, mechanisms and scopes.

## II. LEGAL FRAMES OF ACCESS TO INFORMATION: STUDY CASES

Before fully covering this section, it is necessary to provide a context over the environmental legislation topic as pioneering access to information regulations development. In 1996, the General Law of Ecological Equilibrium and Environment Protection (LGEEPA, acronym in Spanish) was substantially modified to include within its Fifth Title, two chapters containing aspects related to Social Participation and the right to environmental information<sup>4</sup>.

This meant a qualitative transformation in the legislation, given that it was set forth that environmental authority was compelled to respond in written form to information petitions within a term not exceeding from 20 days, counted as of their reception date.

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<sup>3</sup> The Access Initiative, TAI, acronym in English. Alliance integrated by governments, CSO, and international bodies that intend to implement Principle 10 of the Rio Declaration, Earth Summit, 1002.

<sup>4</sup> Articles, 159 BIS to 159 BIS 6, on the right of access to environmental information were added to the original document.

Environmental Law included several causes to deny information:

- That the requested information is legally classified;
- That its disclosure could affect national security;
- That the requested information is related to unresolved judicial proceedings;
- That the information has been provided by non-compelled third parties; or
- That the information is related to inventories, consumables or process technologies.

It is worth to point out that for the specific case of the Environmental Impact Evaluation, it would be necessary to demonstrate a juridical interest in order to access to corresponding files and studies.

Environmental legislation also stated that in case of a negative reply from the authority over the requested information, such response must indicate the reasons for such decision, and that in case of failing to respond within the term set forth by Law would mean that the request had been resolved in a negative sense (*negativa ficta*). In compliance with LGEEPA, environmental authority was compelled to notify the interested party about the request reception within a term of 10 days after receiving the same.

In 1999, Presencia Ciudadana Mexicana performed 14 case studies over the same number of requests for environmental information, filed before the Environment and Natural Resources and Fishing Secretariat (SEMARNAP, acronym in Spanish) with the purpose of verifying the way in which citizen's right to know was operating; in other words, the mechanisms and procedures incorporated into LGEEPA in 1996. In 2002, IA-MEX member organizations determined to update the diagnosis made in 1999 by Presencia Ciudadana Mexicana and to obtain information about the progress of the right of access to environmental information in Mexico; thus, we performed 27 case studies based on environmental information requests filed before SEMARNAT.

Both in 1999, and 2002, we privileged the idea that information should be a good of public use, so information requested from the authority was closely linked with environmental organizations specific projects. Once the Federal Law of Transparency and Access to Government Public Information (LFTAIPG, acronym in Spanish) was passed, we performed a new monitoring exercise with the purpose of testing the new access to information mechanisms and procedures, as set forth by Law. With such purpose, we performed case studies over 30 information requests. In this case, requests were addressed not only to the Secretary of

State, in charge of environmental protection, but to other Federal Government agencies, maintaining the relevance and usefulness criteria of any ecologist group in its field work.

A total of 71 case studies were made from the same number of requests of environmental information to monitor the Federal Government behavior and responsiveness.

### **DETAILS OF EACH ONE OF THESE EXPERIENCES:**

#### **ACCESS TO ENVIRONMENTAL INFORMATION IN 1999**

Out of the fourteen filed information requests, 9 were not responded (64%). Out of the remaining 5 cases, only 2 requests were responded satisfactorily (14.3% of total) and 3 cases were partially responded (21% of total); which rendered a negative balance of 86% of either not responded or requests responded in an unsatisfactory manner.

Along the studies of 1999, it was shown that 3 years after the General Law of Ecological Equilibrium and Environment Protection (LGEEPA) modification, there was no important impact on access to environmental information in possession of Government. We conclude that the public servants were not sufficiently informed about procedures to access environmental information; that the requesting social groups were used to not receiving responses and that, therefore, there was no daily exercise of information request under the new regulations.

We consider that it is extremely serious that in the process of requesting information, we informed the involved officers that the purpose of such exercise was to verify the effectiveness of the right to environmental information legislation and that, in spite of everything, in most cases our requests were not served or were deficiently served. We observed that some of the responses included excuses: not requested information and/or referred the petitioner to a different authority.

A legal notification was received only in three cases, indicating that the authority had received our information request, and only in one case a partial response was received before the legal term elapsed. It was at that moment when we identified that it was necessary for environmental authorities to become knowledgeable about their obligation to fulfill procedures and terms set forth by LGEEPA. On the other hand, it was essential for the organizations referred to this mechanism to obtain information and to promote a law enforcement culture,

requesting information, properly grounded on the new legal frame. We also detected the need to systematize information and to create and integrate a modern information database, available to citizens.

## **ACCESS TO INFORMATION IN 2002**

In this monitoring exercise, 27 information requests were filed, out of which, 22 were responded (81.4%) and 5 of them remained without response (18.6%). From these 22 responses, 8 were responded on time (36.4%) and 14 did not comply with the terms set forth by the Law (63%).

Out of the 22 obtained responses, we found that in 6 cases (22.2% of total requests), officers responded leading petitioner to another agency to obtain the requested information, and in 16 cases (59.2%) they served the requested information. As we can observe, in these two monitoring exercises, there was a substantial change in the way in which Federal Government response to the citizens. However, we observed that in most of cases, officers did not respond within the time frame set forth by Law, which undermined the petitioner's opportunities of access to information.

The 27 studies made in 2002 demonstrated that public officers were more aware than in 1999 regarding the fact that society needs information, and that it is not only a legal obligation to serve such requests, but also a transparency signal that provides more credibility to institutions before public opinion.

We believe that this change in environmental public servants behavior patterns is a result of a new culture of Federal Public Administration. However, we were able to notice that officers, although they understood that it was important to respond, not all of them were knowledgeable about their obligation to do so within a legal term of 20 days, even if the requested information was not available to them.

We also observed confusion in responsibilities and powers, as many officers responded to the petitions stating that a different agency had the information. However, information petitions were based on the SEMARNAT Internal Regulations analysis, which describes the administrative units' powers and thus the information under the custody of each one of them.

In year 2002, it was important to reverse two tendencies: the first one was responses beyond legal terms and with no legal groundings; the second one, replying that other officers had the requested information.

An additional need was identified regarding the development of an Internal Information System within Government agencies in such a way that the most frequently requested information remains constantly available to the public.

### **2003: EVALUATION OF LFTAIPG**

By the enactment of the Federal Law of Transparency and Access to Government Public Information, IA-MEX performed 30 case studies of information petitions, though not to continue monitoring LFEEPA enforcement, but to assess the functionality and enforcement of the new Law.

For this task, we made a total of 30 information requests, from which 24 (80%) were responded. In 4 cases (13.3%) the agency requested more information from the petitioner in order to deliver the requested response and in 2 cases (6.6%) the government agencies considered that such request was not under the competence of the Link Unit.

Out of the 24 obtained responses, 19 (63.3% of the total) were received within the first 20 work days and 5 (16.6% of the total) were replied after 30 work days, with an intermediate notification that the said agency was requesting additional time, thus it can be stated that every request was served within the legal terms set forth by the LFTAIPG.

Out of the 24 obtained responses, we found that in 6 cases (20% of the total) the officers responded leading the petitioner to a different agency to obtain the requested information and in 14 cases (46.6%) did fulfill the petition. In 4 cases (13.3%) the agencies stated that the requested information was nonexistent.

During the evaluation of the LFTAIPG, by means of the 30 mentioned study cases, we were able to witness a significant progress in the execution of the right of access information, as the Law states specific terms and procedures and every government agency is aware of the same, allowing the requesters to be served within legal terms <sup>5</sup>.

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<sup>5</sup> It is worth clarifying that in the case of year 2003 monitoring, some information petitions were submitted within the workshops frameworks of the mentioned civil organizations and citizens in the first part of this essay, which prevented that the information was requested to the proper agency. Therefore, the responses issued by the Link Units stating that the requested information was beyond their competence were correct, as opposed to the happenings during year 2002 monitoring activities.

It is a very positive fact that the information requests do not have to be addressed to any specific individual anymore, and that in this day and age, they can be submitted to the agency, where the same must be clearly and internally processed.

Although not every response contained the correct information, a receipt acknowledgement was always issued by the agency Link Unit for all cases. Such notification always bearded folio number to guarantee petition follow up.

It is a very positive fact that the agencies did request additional information to some petitioners in order to serve the requested information because this reflects that each petition has a proper and specific follow up and creates a teaching – learning process that can be very useful to the citizens to become familiar with every mechanism and pathway to exercise their right to information.

It became evident that evasive responses or non-requested information services are not a common practice any more.

The Information Request System (SISI), as an extremely useful tool to file information requests via Internet from any location around the world, must be highlighted, as well as the capability of simultaneous tracking of several information requests, significantly reducing costs of access to public government information.

Although SISI is an extremely valuable tool, different effective mechanisms must be designed to fulfill the information needs of the population with no access to Internet.

Furthermore, it is necessary that the citizens identify their right of access to information as a useful tool to work within their communities or states. Civil organizations are herein called to undertake a fundamental task, consisting in the development of the sense of ownership of the Law by society.

### III. CONCLUSIONS AND PROPOSALS

The following reflections intend to integrate in an organized fashion all those ideas, concerns and experiences that we have obtained along our work as environmentalists, with the purpose of promoting the improvement of the operation and application of the right of access to government public information.



It is necessary to recognize the drive provided by the current federal administration and Legislative Power political to the access to information topic and the impact it has had on the different Government agencies. However, it is necessary to work constantly so that this right is known and executed in all social scopes.

We were able to observe that a cultural change emerging around access to information, now that it is supported by a federal disposition as the LFTAIPG. Undoubtedly, by its enforcement, the access to information topic has been radically changed and turned into a valuable tool that fosters accountability, transparency, corruption fighting, as well as an increase in the levels of co-responsibility and trust between Government and citizens.

### **ABOUT LEGAL FRAMEWORK**

It is necessary to continue to develop and consolidate legislation processes in transparency and access to government public information matters at a federal level, so that even the three Powers of the Union and autonomous constitutional bodies (IFE, National Commission of Human Rights, Bank of Mexico, UNAM, etc.) can be supervised by an autonomous institution to provide effectiveness of any individual's right of access to information.

Although it is true that several states of the Republic already have legislation over this matter, it is necessary that all federative entities and municipalities of the country have legal instruments to guarantee citizens full access to information in hands of agencies at all government levels.

It is also essential to deeply develop guidelines and criteria for the organization, maintenance and proper operation of Government agencies files, as well as the classification, declassification and custody of reserved and confidential information.

It is worth to highlight that by the issuance of LFTAIPG, a very important first step has been taken; however, there are still pending issues. For example, legislation regarding electronic and massive media activity, and regarding the information rendered by the private sector, just to mention some examples.

### **ABOUT ACCESS TO INFORMATION MECHANISMS**

In terms of government accountability and transparency, the implementation of the so called transparency obligations to be fulfilled by all government agencies

represent a significant progress, because this makes a minimum of fixed and homogenized information to be available to citizens for all government institutions. However, it is necessary to enhance and detail such obligations and to broadcast them to foster continuous use.

Additionally, it is necessary to develop new quality information systems, as well as to update the existing ones, in order to obtain a larger topical scope to over-cross the existing information and to create new information for the public.

The availability of a Link Unit within each government agency is important, and that this instance is capable of providing follow up for all information requests, aside from acting as a citizen service module for petition filing technical support and orientation.

Undoubtedly, SISI is an extremely useful tool, though efforts must be made to facilitate access to information among the population that does not have any Internet knowledge and/or resources.

## **ACCESS PRACTICES**

Along these projects of access to information, it became evident for us that there was a need to strengthen information processes and programs as well as public servants' training so that they are aware of their obligations regarding access to information and LFTAIPG. As this is a legal disposition –and because of the potential sanctions for those who violate such dispositions–, it is possible to visualize a better disposition from public officers to serve information. Nevertheless, we must move on with public officers training so that they can prioritize the information quality while responding to information requests and that their tasks are not limited to their submittal within legal terms.

There are several factors that have an impact over the social use of the tools for access to government public information that are not less important than the access practices. One of the most important one is mass communication media. Regarding this, it is worth to highlight the importance of fostering their operation as pathways to publicize and promote the right of access to information, so that all social groups can incorporate such right within their daily activities and to involve themselves with its execution and defense. Undoubtedly, this will create higher levels of social participation and, consequently, better government exercise.

Furthermore, it is fundamental that civil organizations and citizens in general participate in the design and teaching of training programs to increase the frequency and quality of the execution of this right, which is the subject of this essay. Of course, if it is desired to promote a transparency culture, such must have an impact over all social actors, among them, the organizations themselves.

This is a co-responsibility variable that must be readily developed to grant full legitimacy to the social claim for transparency. Civil society is still extremely weak when requesting information: petitioners have trouble to accurately identify what kind of information they need and which one will actually be useful for their work. Also, there is a significant ignorance over institutional structures and operations, which creates a significant confusion over the competence of each government agency. This causes that information requests are not clearly filed and, thus, not properly served by the corresponding administrative units.

As it can be observed, the path towards a transparent society, with high credibility and institutional legitimacy indexes, and with an active and participative civil society in the design and execution of public policies, is still lengthy.

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# **CITIZENS CLAIM FOR TRANSPARENCY AND ACCOUNTABILITY: EXPERIENCE IN PUBLIC RESOURCES DEVIATION MONITORING**

By: María Vallarta Vázquez y  
Ma. Concepción Martínez Medina

## **I. GENDER EQUITY: CITIZENSHIP, WORK AND FAMILY, A.C., AND PUBLIC RESOURCES**

Equidad de Género: Ciudadanía, Trabajo y Familia, A.C. is a non-government organization created in 1996 before the necessity to instruct and strengthen women with office, negotiation and leadership skills to analyze and assess public policies in Mexico from a gender perspective.

The purpose of the organization is to contribute to the achievement of greater gender equity, striving for equal opportunities for Mexican women, beginning with the encouragement to participate in the defense and promotion of their sexual and reproductive rights, as well as in the follow-up, analysis, evaluation and creation of public policies and budgets, from a gender perspective.

The organization also works around sensitization, information and training issues to promote and defend sexual and reproductive rights, and the creation of public budgets with a gender perspective in different sectors, which include: organized civil society, governments, healthcare institutions and practitioners, professionals,

academics, scholars, students, communication media, judicial power personnel and people in general.

Regarding public budgets, a top priority task is to create support information and tools for organized civil society groups, in order to strengthen their citizen claims within a frame of transparency and accountability.

Multiple international experiences over public budgets from a gender perspective, have involved the exercise of linking the commitments made by their governments in International Conferences organized by the United Nations<sup>1</sup> to promote equity among genders and the manner in which those governments collect and spend their resources. In order to determine the level of accomplishment in the fulfillment of the gender goals, public budgets represent a specific tool to strengthen social follow-up and evaluation activities, and thus, to demand accountability from their governments.

On the other hand, analysis and production of public budgets based on gender equity, aside from promoting such issue, they drive transparency when claiming for appropriate and opportune budgetary information, in order to be able to assess the impact of public recourses and policies over different population groups.

## II. INTRODUCTION

The Federal Law of Transparency and Access to Government Public Information enactment represents one of the most relevant accomplishments in our country's move towards a full democracy and represents a response to a long history of actions performed by civil society organizations to contribute to the current political change. Within such move, those actions dedicated to citizen education and to the demand for transparency in electoral processes are highlighted. It is not by chance that such actions are focused on these aspects, fundamentally regarding the citizen education topic, since citizenship construction implies that individuals supervise the proper operation of government institutions.

From this standpoint, citizenship concept embraces a strong participation component. This participation can operate directly when people move by

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<sup>1</sup> International Conference of Population and Development, Cairo, Egypt, in 1994; and International Conference of Woman, Beijing, China, 1995.

their own resources and provide a spontaneous response to a material or social need; or indirectly, developed within regulatory and organizational frames as set forth by the State of Law.

One of the responsibilities of a Democratic State is to provide the necessary mechanisms so that society can take control over public chores, through transparency and accountability.

Consequently, in order to have more democratic societies, it is necessary – on one hand - to strengthen regulations and mechanisms that allow citizens to access information as part of a broader accountability system; on the other hand, a more participative, educated, tolerant, propositional and critical society is necessary to consolidate democracy. In other words, society must support such Democratic States.

Transparency and access to public information are basic inputs so that civil society introduces itself into the political and economic debate, regarding public policies. It provides knowledge about bureaucratic operation and it can be used to assess public function and, ultimately, to sanction it.

With access to information, it is possible to create exchange spaces between Government and civil society, providing a forum for project confrontation, debate, ideas, and agreements. This is why it is so important to have a Law that is capable of promoting and fostering the right of access to federal public information.

Equidad de Género: Ciudadanía, Trabajo y Familia, A.C., together with other civil society organizations as: Grupo de Información en Reproducción Elegida, Consorcio para el Diálogo Parlamentario y la Equidad, Salud Integral para la Mujer, Letra S y Fundar Centro de Análisis e Investigación A.C., and based on the Federal Law of Transparency and Access to Government Public Information, started an analysis process with the purpose of clarifying the supposed illegitimate public budget appropriations, by investigating the deviation of public funds made by Congressman Luis Pazos, President of the Budget and Public Account Commission for the LVIII Legislature, during the 2003 budget approval term, in December, 2002.

### III. BUILDING A PATH TOWARDS BUDGETARY TRANSPARENCY

From the beginning of year 2003, evidences of a supposed deviation of 30 million of Mexican pesos from the Federation Expenditures Budget (PEF, acronym in Spanish) to National Pro-Vida Committee were presented; those resources were originally assigned for HIV/AIDS combat and prevention. From this, several civil society organizations decided to work jointly to locate the destination of the mentioned public resources.

Salud Integral para la Mujer (SIPAM), Consorcio para el Diálogo Parlamentario y la Equidad (Consortio), Letra S, Grupo de Información en Reproducción Elegida (GIRE), Fundar Centro de Análisis e Investigación A.C. and Equidad de Género: Ciudadanía, Trabajo y Familia, A.C., (Equidad A.C.) got together with the common purpose of investigating the appropriation and allotment of said funds, supposedly pruned from HIV/AIDS budget.

Organizations undertook the task of searching information to clarify this matter. Given that this issue dealt with a public budget-related topic, it was initially intended to clarify the issue by means of a technical analysis of the 2003 FEB (Federation Expenditures Budget) in its three different classifications; but it was impossible to find a sufficiently clear breakdown to show the deviation. Given the trouble of the budgetary analysis, it was then determined to request information from the House of Representatives and, particularly, to the Equity and Gender Commission. With the documents obtained from that Commission, the following was demonstrated:

1. The House of Representatives of the LVIII Legislature approved on December 16, 2002, an additional amount of six hundred million of Mexican pesos to the appropriated amount contained in the Federation Expenditures Budget project for 2003, targeted to women health and other programs.
2. On December 30, 2002, Federation Expenditures Decree was published in the Federal Official Newspaper, where the additional 600 million of Mexican pesos were included.
3. On January 9, 2003, Congresswoman Josefina Hinojosa Herrera, member of Budget Sub – Commission of the Equity and Gender Commission of the House of Representatives, sent a document (CEG/1061/01-03) addressed to Congressman Luis Pazos de la Torre, President of Budget and Public Account Commission of the LVIII

- Legislature, in which the distribution of the approved 600 million of Mexican pesos was detailed. This distribution included 208 million additional Mexican pesos for HIV/AIDS program.
4. The Health Secretary, Dr. Julio Frenk Mora, received from Congressman Luis Pazos on January 10, 2003, a written document (CPCP/1779/02) dated on December 17, reporting the distribution of 600 million of Mexican pesos *authorized by the House of Representatives*. This distribution is different than the one contained in Congresswoman Hinojosa's document, since the amount allotted for HIV/AIDS appears in the amount of 178 million of Mexican pesos plus the appearance of a new line, not previously approved by the House of Representatives, for the Woman Help Center (Pro-Vida), indicating an amount of 30 million of Mexican pesos.
  5. On January 17, 2003, Representatives María Elena Chapa, Concepcion González Molina, Ma. de las Nieves García Fernández, Flor Añorve Ocampo and Laura Pavón Jaramillo sent a letter to Representative Pazos by which they pointed out that the allotment of public resources emphasized in their document to the Secretary of Health did not correspond to the amount approved by the Equity and Gender Commission. They reminded him that, in compliance with constitutional article 74, no legislator is allowed to reassign a budget without previous consideration of the Congress Plenum. For the above, he is requested to respect assignments and to rectify his document addressed to Dr. Frenk Mora, and in case of failing to do so, such fault would be submitted to the Plenum for its discussion during the following period of sessions.
  6. On the other hand, Representative Olga Haydee Flores Velasquez sent a letter on January 23 to Representative Luis Pazos, by which she undertakes the same position than the above-mentioned Congresspersons.
  7. On February 11, 2003, Representative Pazos sent a letter to Mrs. Carmen Lira Saade, journalist for "La Jornada" newspaper, by which he denies that the budget for HIV/AIDS had been pruned and he further claims that he cannot increase or decrease any Federal Expenditures Budget just under his will.
  8. On the other hand, during a meeting held by the National Counsel for Prevention and Control of HIV/AIDS on March 26, 2003, it was agreed that the Political Coordination Board of the House of Representatives would be called upon for an explanation over the changes made to the budget originally labeled for AIDS, which had been supposedly reduced.



As it can be observed, the information in hands of mentioned organizations was fragmented and incomplete, thus decided to join efforts to work for transparency and accountability over the assignation of public resources.

Equidad, A.C. searched in 2003 Federation Expenditures Budget the specific appropriation in which 30 million of Mexican pesos were allotted to Woman Help Centers, linked to National Pro-Vida Committee, A.C., though such appropriation appeared to be nonexistent.

The next step was to look for direct sources; for example, on July 24, 2003, an official document was sent to the Undersecretary of Expenditures of the Treasury Secretariat (SHCP, acronym in Spanish), requesting an explanation over the allotment of 30 million of Mexican pesos that did not appear in 2003 FEB.

The response to such request was received as late as August 19 of the same year, and it indicated that the competent administrative unit to provide said information was the SHCP Link Unit. On the other hand, the FEB approbation juridical framework was analyzed to determine if it was legal to allot public resources directly from the budget to a civil society organization. It was found that such is acceptable, according to article 8 of the Law of Budget, Accountability and Federal Public Expense.

Furthermore, the legal context of the FEB approbation period in the House of Representatives was studied, and it was found that the Constitution, in its articles 74 paragraph IV and 126, clearly state that only the House of Representatives has the faculty to inspect, discuss and approve the budget. The study of the legal groundings for budget appropriations did not render any resource capable of validating the action of the President of Budget and Public Account Commission of the LVIII Legislature. It was therefore considered that the reallocation of the 30 million was made unlawfully, so it was determined to call on several lawyers, specialized in this matter, to obtain their opinion regarding the actions that civil society could undertake to denounce this abnormality.

A justice specialized in taxation matters, an investigator from the National Autonomous University of Mexico Juridical Research Center, and a lawyer and former congressman were consulted. They recommended filing a claim before the House of Representatives. The three professionals agreed that there was no precedent of civil society formally denouncing abuse of power by a congressman.

The next step was to consult a lawyer from the Economic Research and Education Center (CIDE, acronym in Spanish) and two Administrative Law experts from the

Autonomous Technological Institute of Mexico (ITAM, acronym in Spanish). The latter ones produced a document titled “Public Expense, Accountability and Citizen Participation” in which they conclude that the Superior Federal Auditors were responsible for determining if congressman Pazos ordered the allotment of recourses arbitrarily and, in compliance with constitutional article 79 paragraph IV, the same instance was also responsible for determining the existence of any damages or losses that could affect the Federal Public Treasury or the patrimony of any federal public entity.

### **IFAI: AN IMPORTANT ALLY IN THIS PROCESS**

Based on the Law of Transparency and Access to Government Public Information, and parallel to the above-mentioned investigations, on August 5, 2003, Equidad A.C. started tracing information via *Internet*, using Information Request System (SISI, acronym in Spanish). The Treasury Secretariat was questioned over the allotment of 30 million of Mexican pesos that appeared in the above-mentioned document as assigned to Woman Help Center.

On September 2, 2003, SHCP responded, also through the SISI, confirming that 30 million Mexican pesos had been assigned to the Woman Help Center, through the Responsible Unit, “Public Charity Patrimony Administration”, appropriation 4308 for 4P3 project of the Health Secretariat.

With the information obtained through SISI, there was certainty over the allotment of 30 million of Mexican pesos to Woman Help Center through the Health Secretariat and that such appropriation was made without the consensus of the Congress Plenum. Furthermore, there were still many other questions to be answered:

1. Was there any amount of money cropped from the HIV/AIDS combat budget and then reoriented to Woman Help Centers?
2. Which were the criteria under which public resources were allotted through the Public Welfare Patrimony Administration?
3. Were such appropriations allotted by a bidding process?
4. What were those 30 million Mexican pesos would be used for?
5. Why was such amount allotted under instructions of Luis Pazos, when he was not enabled to do so?
6. Before whom should this apparently abnormal situation could be denounced?

On September 8, Equidad de Género, A.C. requested information once again from SISI over Public Welfare Patrimony Administration resources distribution criteria and amounts. Once the regulatory time elapsed, the response only led to a referral to the Health Secretariat Internet website, where Public Welfare Patrimony Administration was described by an organization chart. In fact, the calls to access resources were described, but there was no mention whatsoever on the accessible amounts or selection criteria.

Equidad A.C. continued to search information through SISI. On October 20, the Public Welfare Board of Patrons 2003 beneficiary list was requested. On November 25 a response was received.

On January 21, 2004, complete data related to each Woman Help Center, beneficiaries of 30 million Mexican pesos, was requested. On February 2, 2004 the requested information was served, though simply consisting of a directory related to the 12 Centers.

On February 9, 2004, a new request was filed through SISI to obtain information on the specific amounts assigned to each of the Woman Help Centers. The response was obtained on March 10, indicating that it was necessary to further precise the requested information, as according to the agreement dated March 14, 2003 between Public Welfare Patrimony Administration and National Pro-Vida Committee, the latter one was committed to report in detail over the destination and use of the total granted amount.

With the advice from IFAI regarding the suitability of a request of direct access to the files and not through specific questions and with the information over the existence of the mentioned agreement, it was then determined to request a copy of said agreement and the reports rendered by Pro-Vida. On March 25, a response was received stating that the cooperation agreement and the reports were integrated by 6,525 leaves, thus the interested person could make an appointment through the Health Secretariat Link Unit to consult the information at the Public Welfare Patrimony Administration headquarters.

After reviewing the documents, copies of the agreement, the financial report and the social impact reported by National Pro-Vida Committee were requested, for their analysis. As there were still many unanswered questions, on April 20, 2004, the Health Secretary was requested, through SISI, to submit a breakdown of the Public Welfare Patrimony Administration appropriation, as a part of the follow-up of this Health Secretariat non-concentrated body, where the discretionary handling

of resources was detected upon the assignation of 30 million Mexican pesos to the National Pro-Vida Committee.

#### IV. PUBLIC ACCUSATION

On November 6, 2003, representatives of Equidad de Género, A.C., Letra S, Sipam, GIRE, Fundar and Consorcio presented before the LIX Legislature Congressmen and before the mass communication media, the results rendered by the analysis of the information available up to that moment, regarding the supposed deviation perpetrated in the previous legislature. Civil society organizations considered that the House of Representatives was the competent instance to investigate the implications of the supposed deviation as well as to promote accountability to citizens.

This presentation was attended by eight representatives of the three main parliamentary fractions<sup>2</sup>, as well as by 13 mass communication media representatives. In this meeting, a copy of the results was submitted and, at the same time, legislators committed themselves to respond to the following questions under a maximum term of 30 days:

1. Is the President of the Budget and Public Account Commission empowered to personally assign public resources to private organizations?
2. If not, to which sanction is he entitled to, due to such behavior?
3. Which is the House of Representatives' procedure to breakdown the approved additional resources?
4. Which are the mechanisms that legislative power includes to fulfill the Law of Transparency regarding accountability, face to face with the society?

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<sup>2</sup> From PRD (Democratic Revolution Party): Minerva Hernández, Budget Commission Secretary; Marcela Lagarde, social equity area coordinator of PRD and member of the Equity and Gender Commission; Inti Martínez, member of Public Education and Educational Service Commission; Ana Lilia Guillén, member of Population, Borders and Migratory Matters Commission; Angélica Díaz del Campo, member of Budget Commission, and Martha Lucía Micher Camarena, Equity and Gender Commission Secretary.

Despite this commitment, on April 2004 no response had been received yet from the legislators. Three written communications were sent: two of them, dated on November 2004 and April 1, 2004 addressed to the legislators who attended the presentation and the third one addressed to the coordinators of the Parliamentary Groups (dated December 1, 2003).

After more than one year of gathering information about the supposed deviation, access is available to the documents that demonstrate that the resources were appropriated by instructions issued by Representative Luis Pazos through a cooperation agreement and it can be certified that the money was expended in Pro-Vida Committee organizations.

Given the relevance of the case, we shall continue to consult experts in Parliamentary Law and Public International Law in order to support the juridical aspects of the gaps contained in the law, which allow the deviation of public resources in an arbitrary manner and with no sanction whatsoever.

The final purpose of this investigation is to prevent this type of abnormalities from happening again and that every approval, execution and accountability process of public budgets are performed in a transparent manner and facing the citizens.

## V. FINAL REFLECTIONS

Through its activities, civil society has developed a series of strategies, both to support its demands, and to force transparency over government office. In both cases, the lack of access to public information has been a significant limitation for the performance evaluation over government responsibilities.

The Federal Law of Transparency and Access to Government Public Information opens the possibility of exercising citizen right to public information. Within this framework, the Information Request System represents a tool to facilitate access to the data from any location in Mexico and even the world.

This experience allowed to question if any person can individually use his/her election position to favor any group of his/her choice using the people's money, even if such groups are against the guidelines of the National Development Plan and even carry out activities against constitutional dispositions.

Furthermore, it also claimed before public opinion and by a specific demand the actual possibility that a properly informed citizenship could use the necessary elements to demand transparency and accountability by the Government.

Regarding the mechanisms to request public information through the SISI, this undoubtedly represents a significant progress in transparency and accountability, by providing an easy user-friendly system to obtain the requested information. Nevertheless, the fact is that most of this population does not have the necessary mechanisms or the resources to exercise this right; among them, Internet is an obstacle for universal access to public information.

In order to move forward in accountability, it is also necessary that the State provides all material and symbolic resources to strengthen a more participant citizenship, not only as an effect, but as an objective per se.

If it is true that the information obtained through SISI has been very valuable, the manner in which it has been served has been extremely slow. For the term of twenty workdays that the agency's Link Units have to respond to the citizen's requests, it took more than six months to obtain the information that is now available to this date and it is still incomplete.

Considering the way in which an information request must be filed through SISI, it is worth to point out that the system forces the requester to state very precise questions; thus, if no precise reference information is available for a specific document, a satisfactory service to the questions filed will be hardly obtained.

It would be convenient to clarify, within the SISI web page, that it is possible to request complete files from the government records. Had this been so, the organizations would have requested, upon reception of the first response through SISI, access to the file of the Patrimony Management for Public Beneficence with the National Pro-Vida Committee instead of filing five separate requests.

On the other hand, it would be significantly important to improve the mechanisms for access to information of the Legislative and Judiciary Powers because, as observed in this case, sometimes the intended information involves the Executive Power together with any of the other two federal powers. In case of Legislative Power, the lack of transparency and access to information has represented a grave obstacle for accountability, as provided by the Federal Law of Transparency and Access to Government Public Information.

It is indispensable for the Government to continue efforts to disseminate the outreach of the instruments that SISI has made available to the people. IFAI works as a bridge to facilitate the citizen exercise of control and surveillance over Government performance.

Finally, it only remains to say that this experience is a clear example of Civil Society surveillance before the non-compliance and power abuse from public officers and the representatives elected by popular vote. Although it has been possible to move on in the clarification of the facts related to the deviation of public funds in the benefit of Pro-Vida, there is still a long journey towards transparency and accountability by the Government.

**Note:** The documents to support this investigation are readily available to the public in Equidad de Género, Ciudadanía, Trabajo y Familia, A.C. -<http://www.equidad.org.mx>-

#### **BIBLIOGRAPHY:**

Constitución Política de los Estados Unidos Mexicanos (1917), Editorial PAC, México 1993.

Ley de Presupuesto, Contabilidad y Gasto Público Federal (1976), Editorial Porrúa, México, 2002.

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental (2002).

Plataforma de Acción de la Conferencia Internacional sobre la Mujer, Beijing, 1995.

Programa de Acción de la Conferencia Internacional sobre Población y Desarrollo, El Cairo, 1994.

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# **TWO CITIZEN EXPERIENCES FROM THE LOCAL ENVIRONMENT IN GOVERNMENT TRANSPARENCY MATTERS**

By: Francisco Domínguez Canseco y Alfonso Osegueda Cruz  
(Veracruz experience) and  
Ricardo Jiménez González  
(CIMTRA experience)

## **I INTRODUCTION**

This document presents two citizen experiences over the right of access to information and transparency matters. The first one, promoted by the “Heriberto Jara” Municipal Service Center, A.C. (CESEM Veracruz, acronym in Spanish), is related to a pedagogic, organizational and legal process through mobilizations and forums performed by different civil, academic and political bodies to debate the initiative of the Access to Information Law presented to the Congress of Veracruz by the State Executive to create alternatives that are closer to citizen’s interests in this matter.

The second experience deals with the application of a government transparency program named “Citizens for Transparent Municipalities” (CIMTRA, acronym in Spanish), where CESEM together with other civil organizations (Internacional City County Management Association, Alianza Cívica, Locallis and Vertebra) aims to create processes to help citizens and local governments in the promotion and institutionalization of a transparency culture and access to information.



## INITIATIVE BY CIVIL SOCIETY IN VERACRUZ FOR GOVERNMENT TRANSPARENCY

### **CITIZEN ACTION BACKGROUND**

Out of the three government levels that currently exist in our country, it is the municipal the one that requires the deepest modifications and the one that has the most direct impact over the ways and quality of life of citizenship. The way in which the budget is executed and investigated, in which salaries are assigned to officers and in which municipal development priorities are determined are not only far from being transparent, but it also blocks citizens' participation in fundamental areas and processes for their lives.

In some municipalities of our country, both in Veracruz as in other entities, successful civil experiences have been generated, in which citizens have succeeded to participate with city councils in decision-making processes. Municipal parliaments, as well as Councils chambers and government councils, have demonstrated to be co-responsibility spaces between governments and people for the implementation of long reach policies in benefit of the population.

Given that the Veracruz juridical framework does not guarantee full recognition or permanence of these government institutions, it is essential for many Veracruz civil organizations to promote spaces and paths for citizen participation in those environments, where important decisions for municipal life are made.

Furthermore, it is necessary to transform municipal regulations to create mechanisms that allow citizens to participate and supervise budgetary matters.

The indispensable legal instruments for the control of the budgetary appropriation to cover the salaries of popular representatives and public servants do not exist in Veracruz. They enjoy exorbitant salaries, considering the economic reality of the country. It is clear that it is necessary to establish transparent and fair tabulators, capable of setting public servants salaries at all government levels, to allow a balanced percentage between payroll expense and City Hall social and operational expense.

Municipal life is not limited to the budgetary topic. The civil organization members that present this work witnessed that in many cases popular representatives and public servants are not properly trained to execute their positions correctly,

resulting in a very low quality in municipal public service. Therefore, it becomes necessary to establish an obligation for those individuals that run for election offices at a municipal level so that they have enough education and training for such office and to create a permanent professional program that considers the application of sanctions in case of non compliance. It is evident that the current situation makes it also necessary to establish the mandatory career civil service, including the official registration of municipal public servants in order to ensure permanence and promotion of personnel, which will eventually allow a higher professional level and public administration consistency.

### **CITIZEN RESPONSE: THE MUNICIPALITY PLATFORM**

Before the necessity to generate substantial changes in the municipal government organization, in the CESEM we started in May 13, 2003, the construction of a local citizen platform and made a call by which we gathered a group of citizens from the municipality of Veracruz, with different social tendencies and from several civil organizations, with the idea of creating a document which would include a series of items for a municipal change, given that we had the idea that the political reality of our municipalities can change and come closer to a more democratic reality.

The final document was named Municipality Platform. Initially, the intention was to publish this document and strive so that it would be considered and discussed by the candidates to Congress before the Congress of the Union and by the legislators of the State Congress. Numerous mayors, syndics, councilmen, and municipal deputies, ex mayors, members of social organizations endorsed the Municipal Platform: indigenous, partisans, men and women.

### **THE BASIC PROPOSALS OF SUCH PLATFORM ARE:**

1. Juridical recognition of citizen participation bodies in decision-making processes;
2. Stringency and transparency in municipal finances;
3. Municipal public service training and professionalism;
4. Recognition to the inherent government execution of Indigenous People;
5. Incorporation of a perspective of equity and gender in municipal life, and
6. Guarantee a municipal autonomy.

Ten days after the publication of the Municipality Platform (June 2, 2003), the Federal Law of Transparency and Access to Government Public Information (LFTAIPG) came into force, a Law that allows to reduce corruption, to improve government efficiency and the accountability systems from officers to citizens. While becoming familiar with the Law, we found important coincidences with its contents and became aware that the state and local approval and application of legislation with such features would result in a drive for democratic transformation in Veracruz.

### **CIVIL ACTIONS BEFORE THE “LEY ALEMAN” INITIATIVE**

Political situation in Veracruz is complex, as the force correlation within government bodies is inclined towards a unique party. Governor Miguel Aleman comes from the Institutional Revolution Party (PRI), which has an absolute majority (29 of 45 benches) in the state Congress.

Accountability and transparency in the management of public resources is absent in the entity. Information in the hands of the state, and local Governments, and general public bodies, and is systematically denied to the requesters and, whenever published, the disclosure is partial or limited.

One example shall suffice: by disposition of Congress of the Union, state governments are compelled to provide information regarding the destination of Cluster 033 resources under local management. During the office of Patricio Chirinos (1992-1998), the local Executive detailed in his annual state report about the use of such amount, applied by the local governments. Therefore, any abnormality or deviation of such resources by the mayors could be detected, as the information regarding budgets, works, communities, and number of beneficiaries as well as the progress level in the construction of public works, became transparent.

This practice did not continue during the office of Miguel Aleman: now, such data does not appear in the annual reports. The Government opacity is such that the state Executive has refused to publish his patrimonial statement, claiming that he does not want to show off his assets.

There is a public resources higher supervision body in Veracruz, which does not have recognition by opposing political forces as a result of a lack of trust due to the way in which such resources supervision over different government bodies is performed. Its activity has been characterized as costly and applied under political and group criteria.

It was within this context that Governor Miguel Aleman submitted a law initiative on transparency and access to information to the state Congress; separately, PAN, PRD and PT parliamentary fractions submitted their own initiatives over the same topic.

Most certainly several members of Municipal organizations felt in need of knowing about these proposals and to submit our opinion. On August 7, members of the CESEM met in Xalapa; the sixth councilman of Xalapa; the syndics from Puente Nacional and Naolinco, the Radio Teocelo Director, members of the municipality school, representatives of the Frente Regional Popular del Sureste del Estado de Veracruz – MAIZ, and the Organización Campesina Independiente de la Sierra Zongolica, amongst other peers.

During this event, we analyzed the Law of Access to Information initiative that the Executive had submitted to the state Congress, as such initiative would be the topic to be discussed by the parliamentary fractions with the purposes of, eventually, passing a Law.

From our first analysis, some concerns emerged, as we identified severe limitations, among which we can stress the following:

- It does not include public office transparency, the promotion of accountability and the contribution for the democratization of Veracruz society as specific objectives, and only proposes, in its 4 article:
  - I. To guarantee the right to public information by simple and expedite procedures;
  - II. To allow citizens to analyze State performance;
  - III. To promote awareness of public office to allow the promotion of an appreciation culture of Public Bodies, and
  - IV. To optimize the characterization, organization, handling and filing of public documents.
- It restrains the right to information when considering “any information that could disturb or endanger social order or compromises the State patrimony” as reserved information, thereby opening clearly discretionary margins for its application (Article 8).
- It does not envision that government and city hall bodies disclose - in a detailed and precise manner - public servants salaries, including compensations; assigned and applied budgets for each agency; audits

results; design, execution, allotted amounts and access criteria to subsidy programs; social programs beneficiary listings; or government agencies grants and contracts.

- It does not propose the creation of a citizen body with operational, budgetary and decision autonomy in charge of promoting and broadcasting the right of access to information exercise. This task is delegated to information committees within each public agency or city hall, which weakens the right of access to government public information exercise.

## **REGIONAL ENCOUNTERS**

Considering the above, we agreed to call for four regional Encounters in different cities within the state with the purpose of holding a State Encounter to influence the legislators' decision regarding this law initiative.

205 individuals attended the Encounters<sup>1</sup>, 30% were women. The participants are members of 44 social, government, political, communication media, and academic institutions. Particularly, mayors Hugo Bernal Fernández and Darío Aburto Perdomo, from Cordoba and Cosoleacaque respectively, were the hosts, as well as Eduardo Pérez Roque, sixth councilman of Xalapa and the journalist Victor Cantu, conductor of a well-known radio news program from Poza Rica. Blanca Cobos, Syndic from Puente Nacional, Veracruz, and Lina Valadez, representative of the municipal platform of the Cordoba, Veracruz, region, played a major role in promoting and supporting such activities.

With the purpose of informing citizens about the projected process, we decided to build a web site where we included a description of the organizational and pedagogical process that we were initiating<sup>2</sup>.

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<sup>1</sup> September 25, 2003, in Cordoba, October 4 in Xalapa, October 11 in Poza Rica and October 25 in Cosoleacaque.

<sup>2</sup> [www.encuentropublico.net](http://www.encuentropublico.net), virtual forum for the debate around the right of access to information in Veracruz.

During the encounters, we had the cooperation of the Federal Institute of Access to Public Information (IFAI, acronym in Spanish), who sponsored a training process regarding the right of access to information; same that was useful for the participating bodies to guide the contents of their requests and to file information requests<sup>3</sup>.

As a result of this regional Encounters, we were able to go deeper in the comparative study and analysis of the different proposals for the state law of access to information. Based on the resolutions of the mentioned encounters, we created a citizen proposal stating the basic elements that the Law of access to information for Veracruz must have, according to our judgment:

1. To specifically include the objectives of transparency, efficiency and democratization of Veracruz society;
2. To establish the obligation for state and local governments and for other type of public bodies (Electoral Institute of Veracruz, Human Rights Commission of the State of Veracruz, Environmental Protection State Council, etc.) to permanently inform about their organic structure and operation, about the execution of their programs and the management of material and economic resources.
3. To create the Veracruz Institute of Access to Information to guarantee this right, with autonomy, that does not impact public finances, and capable of issuing mandatory recommendations and imposing sanctions, to be under the responsibility of non-partisan citizens.
4. To characterize reserved or confidential information so that only the one that endangers the state security and the individual right to privacy and dignity can be classified.
5. To include a sanction chapter for the non – compliant public servants.
6. To disclose the information in hands of city halls, namely: a) ordinary and extraordinary city hall session minutes; b) government yearly report; c) arbitration plans; d) expenses budget and municipal public account monthly reports, and
7. To establish information request and information delivery modules where citizens receive orientation regarding right of access to government public information.

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<sup>3</sup> During the Xalapa encounter, the Chiltoyac community representatives requested from SEMARNAT the Environmental Impact Study for the installation of the sanitary filling in their region.

From our decision to drive these Encounters, the state Legislature called for Public Hearings to discuss the Law initiatives at a state level. In fact, the commissions in charge of creating the Congress resolution, called for 5 hearings in Tuxpan, Huatusco, Veracruz, Minatitlán and Xalapa. These were held after our own encounters and decided to participate with lectures, which reflected the resolutions thereby made. In all hearings a dissent was expressed against the “Governor’s Law” and several stand points that agreed on the need of having a local Law of access to information with essential features comparable to those of LFTAIPG were publicized.

## **THE STATE ENCOUNTER**

On November 14, 2003, in “Los Lagos” Cultural Center in the city of Xalapa, and after holding the Regional Encounters and gathering the several citizens’ proposals and opinions regarding the minimum contents of the Law of access to information for Veracruz, the State Encounter was held.

Its main objectives were:

- a) To recognize information as a public good;
- b) To declare the importance of the right of access to information in order to guarantee transparency in public office execution and to make accountability from officers to citizens, a reality.
- c) To recognize the progress made in legislation matters in our country and in other states and municipalities.
- d) To compile concerns from the attendance to the regional and state encounters regarding the enormous work necessary so that the citizens really do exercise the right of access to information, and
- e) To compile the proposals received during all the Encounters to present an initiative or a citizen legislative platform before the State Congress.

The History Research Institute of the University of Veracruz, the Center for Social Anthropology Research and Higher Studies and Knowledge Management of the Gulf, A.C. joined to the organization of this state Encounter; and local communication media workers also attended. Olivia Dominguez, Director of the State General Archives, Representatives Jazmin Copete and Claudia Serapio of PRD and PT respectively, and the President of the Government and Constitutional Points Commission, Miguel Angel Diaz Pedroza, from PRI, were also present in this event.

The speakers were: Dario Aburto Perdomo, Cosoleacaque mayor, Doctor Maria Marván Laborde, IFAI President Commissioner and Horacio Aguilar Alvarez, Counselor Commissioner of the same Institute.

Amongst the very numerous opinions and standpoints discussed during the encounter works, the following considerations were outstanding:

- The appraisal of accountability as a fundamental principle of the government office is a social need;
- Social organizations play a critical role in the publicizing of the right of access to information, transparency and accountability, as well as the relationship of this right with other laws, for example, the Law of Indigenous Rights, and
- It is indispensable to foster accountability at municipal level through the execution and defense of the right of access to public information.

The participants of this encounter established several commitments:

- To create a committee to present the Encounter resolutions before the state legislature;
- To broadcast in our municipalities the Federal Law of Access to Government Public Information and to promote the right of access to public information by means of a permanent campaign;
- To agree upon the mechanisms to broadcast and work for the right of information from organizations and communities;
- To publicize the right of access to information through television, radio, and printed media, as well as by the publication of brochures with an accessible language, highlighting the usefulness of access to information; in other words, its relationship with the different demands made by the people;
- To establish a social coordination mechanism for the defense of the right to information, inviting multiple social sectors;
- To drive communication campaign oriented to children and young students;
- To promote, together with the IFAI, a training program on the right of access to information, and
- To create a participant address book with the purpose to establishing links that could be useful for common actions and projects.



Within the Encounter framework, the need to translate the Law language and the real meaning of access to information into easily understandable terms for rural communities and particularly for indigenous communities was also mentioned: What kind of information? For which matters? For what kind of needs? Those are issues to be solved, so that civil organizations can act as beam-leds for others to become familiar with the base organizations and community needs.

Regarding organizations and municipalities, the need to respond to the following questions was outlined: How to link this right with the community communication paths and organization? How to use the Internet to solve communication problems between the people and the organizations, and between government and people? In this same sense: How to use community and commercial radio, television, newspaper and other media? What mechanisms and forms must be used to turn municipalities into actual transparency role models? How does this struggle for transparency relate to the necessary municipal reform? The conclusions derived from this exercise is that a culture that favors the right to know and to gather information demand permanent education, training and communication efforts in all the sectors of social and daily life, as well as the necessary knowledge to use similar laws. Finally, after a long civil organization and participation process, the law initiatives presented before the State Congress were submitted to public consultation, allowing us to refine our proposals over the contents of the Law of Transparency for Veracruz, same that were officially presented to the representatives in charge of resolving the initiatives related to transparency for their discussion during the Legislature Plenum.

Today, we can affirm that we have created a public opinion stream that favors transparency; nevertheless, the task of creating the large strategic lines to make a reality out of this right in Veracruz is still ahead.

## **“CITIZENS FOR TRANSPARENT MUNICIPALITIES - CIMTRA” PROGRAM. A TOOL FOR CIVIL SOCIETY**

### **GOVERNMENT TRANSPARENCY IN CITIZEN AND LOCAL SPHERES**

The right of access to public government information and transparency are two basic factors to secure the country’s democratization process and to strengthen Institutions and the State of Right. For this, it is necessary to have responsible citizens and authorities in the public affairs sphere. One thing that is clear for the citizens is that political alternation is not enough to obtain government

transparency: it is indispensable to have innovative processes that support the linkage between citizens and local authorities over this matter

Access to information is a double pathway: it is a citizen right that must be exercised and a government obligation that must be supervised. This means that mechanisms and strategies must be designed to allow that access to government information is applied, promoted, and invigorated from the civil sphere. We citizens must clearly be aware that government transparency processes do not exist only through the legal framework; this means that we citizens have to realize that the laws and challenges that were created to foster transparency are not enough, but rather that such culture must be promoted among society. This is why it is necessary to implement pedagogical processes that allow the construction of a democratic management, a citizen exercise to recognize and enforce their right to be informed and to access government information; and, on the other hand, that local governments learn to perform transparently by means of the exploration of the institutionalized pathways and the creation of new ways for citizen interaction.

Local government is the main actor in the country's democratic life. It is closer to the people and, thus, is where social aims can be realized; among them, the service of efficient and democratic governments.

Government transparency is closely related to public servants and authorities' ethics, responsibility, and efficiency so their existence cannot be visualized as a mere *charity* from them towards the citizens, or as an electoral banner. Transparency and access to information are keys to a face-to-face relationship between officers and citizens that include and create spaces and mechanisms designed for civil participation (for instance, citizen comptrollerships). This means to move from the yearly state report culture, to one in which the government submits information to citizens as a basic gesture of responsibility. We are within a historical process in which government transparency must turn into a bridge of interactivity between society and authorities.

### **“CITIZENS FOR TRANSPARENT MUNICIPALITIES” (CIMTRA) PROGRAM**

Confrontation and distancing between government and citizen spheres has unfortunately turned into something natural in our political – social system. It is necessary to work for a State of Right that allows opening possibilities for social interests and to access justice, through the defense and enforcement of citizen rights.

The lack of a transparency culture in local governments is a complex circumstance that makes it necessary to stimulate the construction of an aware society, together with sensitive governments committed with the improvement of people's quality of life. In this country, we are undergoing an interesting period in transparency matters, as it is necessary to foster the right of access to information through the creation of tools that are capable of providing support and viability from the constructive and pedagogical view points.

In order to offer a constructive tool from the citizens' perspective regarding municipal and district governments' transparency and accountability, the CESEM has undertaken, together with Vertebra, ICMA, Alianza Civica and Locallis, a Program called "Citizens for Transparent Municipalities, CIMTRA". The Program was born by mid 2002 with two objectives: identification of local governments' transparency levels and the construction of citizen mechanisms that allow their transparency and accountability. The idea is that such methodological tools are retaken and applied by other civil and citizen bodies interested in the ethical and responsible performance of their local governments.

The substantial elements of this program are:

1. The elaboration and application of questionnaires by civil bodies or groups to their local governments in order to identify:
  - a) The transparency mechanisms available to local governments in their operation, and
  - b) Their transparency level in multiple political and administrative fields.
2. Training of civil and citizen bodies through enforcements and rating manuals so that they know about the contents and scope of the right of access to information and the way to use and apply said questionnaire.

Citizens for Transparent Municipalities (CIMTRA) does not aim to detect corruption, to endorse or prosecute governments, but rather to identify those aspects that are significant enough to be recognized as transparency actions and mechanisms and to turn the local environment into a proper space for a democratic life. It aims to a positive experience exchange through the promoting group, gathering experience academic, entrepreneurial and civil bodies.

The Program envisions the citizen as co-responsible of Government actions, with the purpose of invigorating interaction and participation mechanisms between society and local government. The idea is to create processes both for citizens

and local governments that participate in the questionnaire application and to provide follow up to such processes and actions from the surveyed governments.

Citizens for Transparent Municipalities is not aiming to the mere accomplishment of a rating, but to the possibility that the numerous elements contained in such questionnaire (as indicators) are undertaken by local authorities and officers as practices within the political – bureaucratic apparatus. The intention is to activate positive processes to institutionalize government actions in transparency and accountability matters, as opposed to pointing out non compliances and obstacles present in these local government environments.

The way in which the CIMTRA survey was applied was agreed upon both by authorities and civil organizations, in such a way that it allows to foster communication and transformation in the government sphere.

## **CIMTRA PROGRAM METHODOLOGICAL ELEMENTS**

The CIMTRA questionnaire presents 31 questions around three specific fields <sup>4</sup> :

1. **Citizen information:** Aspects like information availability over suppliers, municipal income and expense, public debt, city hall members and officers' salaries are included in this area. In other words, what is it that the local Government is reporting to the citizens?
2. **Citizen Service;** Municipal services user's manuals and mechanisms, as well as the available tools for user's services are evaluated in this field. In other words: How is municipal / district government addressing citizens?
3. **Government-Society Communication Spaces:** Municipality – Delegation Councils / Committees democratization, operation and regulations, as well as City Hall's openness to society are evaluated. They indicate the citizen participation form and mechanisms with the local government.

The questions have several ratings according to their relevance (2, 3 and 5 points), adding up to 100 points. For this year, after application experiences, the program and the teaching material have been adjusted. The group and organizations that promote the CIMTRA program are in charge of validating the applications according to predetermined methodological mechanisms.

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<sup>4</sup> The information is available in Internet (<http://www.cesemheribertojara.org.mx>) for whoever desires to implement the Program.

Given this is a citizen instrument, CIMTRA Program does not respond to any political party, local government or entrepreneurial group interests. It has been created and applied by social organizations (or by a group of citizens). This means that CIMTRA is not a tool by which governments can obtain a self evaluation. It does not score based on “subjective” appreciations, but rather does it based on specific government actions and practices.

### **CIMTRA ACHIEVEMENTS**

The CIMTRA Program questionnaire was applied in 24 Municipalities of seven states:

Chihuahua, Veracruz, Nuevo León, Zacatecas, Morelos, Estado de México and Jalisco, plus two districts in the Federal District (see Table)<sup>5</sup>. This mainly deals with local governments that are characterized as urban. Local governments are within a population spectrum that rates from one million inhabitants to municipalities of 20,000 to 30,000 inhabitants.

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<sup>5</sup> En el Cuadro se incluyen los resultados de la primera y segunda aplicación del cuestionario para el caso de Chihuahua.

**TABLE**

CIMTRA RATINGS (To April, 2004)				
Municipality/Delegation*	State	Round	Application Date	Score
Chihuahua	Chihuahua	2 <sup>nd</sup>	August 2003	85.53
San Nicolás de los Garza	Nuevo León	1 <sup>st</sup>	October 2002	68.46
Guadalajara	Jalisco	1 <sup>st</sup>	December 2003	65.30
Delicias	Chihuahua	1 <sup>st</sup>	January 2004	65.18
Tlalpan	Federal District	1 <sup>st</sup>	March 2003	65.06
San Pedro Garza García	Nuevo León	1 <sup>st</sup>	October 2002	60.68
Linares	Nuevo León	1 <sup>st</sup>	November 2002	48.23
Montemorelos	Nuevo León	1 <sup>st</sup>	November 2002	45.96
Ciudad Juárez	Chihuahua	1 <sup>st</sup>	January 2004	43.80
Monterrey	Nuevo León	1 <sup>st</sup>	October 2002	43.36
Cuernavaca	Morelos	1 <sup>st</sup>	April 2002	41.90
Magdalena Contreras	Federal District	1 <sup>st</sup>	April 2003	39.00
Cuatla	Morelos	1 <sup>st</sup>	April 2003	37.80
Chihuahua	Chihuahua	1 <sup>st</sup>	November 2002	37.13
Escobedo	Nuevo León	1 <sup>st</sup>	October 2002	34.55
Santa Catarina	Nuevo León	1 <sup>st</sup>	October 2002	33.88
Tepoztlán	Morelos	1 <sup>st</sup>	April 2003	32.10
Guadalupe	Zacatecas	1 <sup>st</sup>	March 2003	30.50
Apodaca	Nuevo León	1 <sup>st</sup>	October 2002	29.64
Amacueca	Jalisco	1 <sup>st</sup>	October 2003	28.57
Guadalupe	Nuevo León	1 <sup>st</sup>	October 2002	24.63
Allende	Nuevo León	1 <sup>st</sup>	November 2002	23.88
Xalapa	Veracruz	1 <sup>st</sup>	April 2002	21.80
Tlalnepantla de Baz	State of Mexico	1 <sup>st</sup>	November 2003	21.50
García	Nuevo León	1 <sup>st</sup>	October 2002	19.06
Sayula	Jalisco	1 <sup>st</sup>	November 2003	7.66
Juárez	Nuevo León	1 <sup>st</sup>	October 2002	4.83
Scale runs from 0 to 100 * Districts ratings are obtained by simple rule of three.				<b>GENERAL AVERAGE:</b> 39.26

There are five surveyed state capital cities: Chihuahua, Monterrey, Guadalajara Xalapa and Cuernavaca. Additionally, there are metropolitan municipalities: Guadalupe, in Zacatecas; San Pedro and San Nicolás, in Nuevo León, Tlalnepantla de Baz in the State of Mexico. Some of those municipalities have show low marginalization levels and stand out because of their high level of life.

Of the 24 surveyed local governments, only 6 obtained a passing score (Chihuahua; San Nicolás de los Garza; Tlalpan; Delicias; Guadalajara and San Pedro Garza García) and only two of the five surveyed capital cities got a positive score (Chihuahua and Guadalajara).

It is worth to point out that from the stand point of those who applied this instrument, there are many aspects that can be improved from simple actions and with no significant financial cost. Many times, the authorities are not responsive only because of their lack of knowledge. CIMTRA collaborators submit a series of

suggestions and proposals to the authorities in order to improve their weaknesses and strengthen their most positive aspects.

The possibilities for governments to improve their transparency mechanisms are broad if we consider that many of the elements contained in the questionnaire need, for their implementation, only political will as they can perfectly adhere to the legal framework. Thus, it has been observed that there are always two opposing forces within local administrations: those actors that consider that government transparency is a key element and those actors that are not unwilling to embrace government and social changes.

Undoubtedly, as a general average, the surveyed local governments show that there is a significant amount of work to do. It has been important for the participating governments to know about other local governments positive actions regarding this matter, with the purpose of exchanging experiences and information to motivate creative initiatives.

The Program has also been undertaken by several civil, academic and entrepreneurial organizations like ITESO, Coparmex Chihuahua, Poder Ciudadano or Comparmex Jalisco, thus allowing an expansion of efforts towards other regions of the country, where the surveillance of the results has been incorporated with the purpose of identifying the changes shown by the entities.

To the closure of this edition, the questionnaire application in the municipalities of Nuevo León has been initiated. It is worth to mention that in the case of Chihuahua, where the questionnaire has been applied twice, significant effects are shown by the score improvement, which passed from 37.1 to 85.5 points.

## **CONCLUSIONS**

To this moment, after the first application of the questionnaire, we have a general average of 39.26 points (over 100), which suggests that there is still a long journey towards local government transparency improvement. This is a figure that clearly describes the magnitude of the work ahead of the Program collaborating organizations.

If each one of the indicators is examined in detail, it is possible to identify where the most repeated actions in transparency matters are, where the omissions and where those aspects that can represent opportunities are.

In this sense, just to mention some examples, we can say that one of the weaknesses is the fact that 80% of the surveyed local governments do not publicize or disclose the names of their service suppliers; in the same proportion, they do not publicize or disclose their social communication expenses.

As opposed to it, there are more transparent aspects, as 80% do publicize and disclose the works of the current year and of the two previous years; 70% do disclose and publicize self generated income and contribution and participation income.

One of the most critical aspects is the one related to the articulation mechanisms between citizens and Government, as 80% of the committees or counsels that belong to the municipalities or delegations do not make a public call for their integration.

One of the opportunity areas is the disclosure and broadcasting of salaries and benefits for the mayor, the delegation deputy, counselors, and first level work staff, as only 60% of them disclose and broadcast salary information, but only 15% show a breakdown of salaries and benefits. The same happens with the disclosure and broadcasting of representation expenses, item covered by 45% of the local governments.

The resulting data does not indicate that co-responsibility necessarily exists between the size and relevance of the local government with their transparency level and rating. Transparency and accountability are not related to political parties; as opposed to it, those are issues that have not been sufficiently promoted by such instances.

Government transparency promotion mechanisms do not have to be costly; many of them only need political will, imagination and a systematic and permanent effort.

Laws are transparency instruments, though not an objective per se; the purpose is that people is timely and precisely informed about the execution of financial resources and about the decisions made by the government to enable them to take the pertinent measures.

Transparency and access to information is a processes for which citizen participation represent the foundation to create local governments vis-à-vis with society. The role of society, as entitled to receive information, is part of the current local government challenges.



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Transparency mechanisms must be institutionalized as permanent government activities so that they become a part of the daily chores of public servants. The good will of authorities and officers is not enough. Local governments must promote a *transparency teaching process* to make the information supplied to the citizens available and understandable.

It is clear for the CIMTRA Program participant organizations that we must outreach towards more municipalities and delegations in the country and to promote the participation of more citizen and civil bodies in this effort, in such a way that the effort for government transparency attains a national sense.

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## **FEDERAL LAW OF TRANSPARENCY AND ACCESS TO GOVERNMENT PUBLIC INFORMATION COMPELLED SUBJECTS, AFTER ONE YEAR OF OPERATION**

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April, 2004

Fundar is a plural, independent, non partisan and horizontal institution, that strives to progress to a substantial democracy. Its ruling principles are:

- to increase citizen participation;
- to demand transparency and accountability;
- to progress towards a state of right;
- to promote substantial equality, and
- to guarantee human rights enforcement.

Fundar activities and projects are closely linked to accountability, government office transparency and right of access to public information matters. The promotion of these values and practices, essentially democratic, covers two paths: it intends to consolidate democracy in Mexico, far beyond the electoral process; second, it intends that every investigation and project can use the information that the government can and must provide.

Fundar started to get involved with these topics from the very beginning, from its creation in 1998, particularly regarding public expense monitoring. Public expense constant analysis allows the organization to answer questions related to the

actual government priorities and to show, from a budgetary study, the scheduling reality underlying political speech. Either focusing on budget with a gender view point or on the budgetary analysis applied to reproduction health or HIV/AIDS, public entities accountability and transparency have been the actual target for Fundar.

As part of our work on transparency during year 2001, and working together with Equidad de Género and the Centro de Investigación y Docencia Económica, we produced the first Latin American Index of Budgetary Transparency, exercise that was replicated in year 2003 with CIDE and with Berumen y Asociados. In both cases, a perception survey for federal government budgetary information experts and users was designed and applied in order to have a transparency indicator that reflected the information openness of public administration. Simultaneously, a theoretical – practical study on this matter topicality was performed. For the first Index, the survey was applied in five countries, and increasing the scope in 2003 to ten.

During the last year, Fundar has extended its investigation lines and created a Government and Human Rights Area, which has a series of projects, related to transparency and accountability promotion in several government agencies. Among these, it is worth to highlight two monitoring projects; one of them, performed over three legislative commissions of the House of Representatives and another one to human rights public bodies in Mexico, both at federal and state levels. Such surveillance tasks had the purpose of publicizing among civil society the operation of such institutions and to foster transparency in their performance. For such purpose, two documents were produced, where the most opaque spaces are shown, as detected during the budget negotiation process in the House of Representatives and in the presentation format of such budget. This analysis has proposed some modifications to the institutional framework to improve transparency and accountability mechanisms.

Currently, both the Citizen Follow Up to Legislative Power in Mexico, and Budgets with a Social Sense projects, are participating in the Transparency, Supervision and Accountability Table of the First National Treasury Convention.

## **TRANSPARENCY AND ACCOUNTABILITY**

In the last few years, the use of the word “accountability” within the Mexican political speech has notoriously increased, together with the birth of other democratic ideas and practices of national agenda and public discussion about

transition in our country. It is true that ever since the 1917 Constitution, the debate around this concept already existed in parliamentary discussions, though in a very limited fashion<sup>1</sup>. The debate among politicians and intellectuals over accountability was restricted because in the real practice, government obligation to inform about actions and decisions was neither a post – revolutionary policy priority, nor a social demand.

The current democratic consolidation process in Mexico requires a more intensive exchange of ideas, which is currently happening, and the execution of accountability concepts and mechanisms. Furthermore, it is necessary that discussions over this matter are broadcasted and multiplied not only among interested politicians and intellectuals, but among the population as a whole.

One of the most discussed topics in the last few years – and where our political system has experienced significant progress – has been the need to drive a broader transparency and better accountability mechanisms for public federal office.

In this matter, relevant structural reforms have occurred, starting with the enactment of the Federal Law of Transparency and Access to Government Public Information (LFTAIPG). This Law was published in the Federal Official Newspaper (DOF, acronym in Spanish) on June 11, 2002 and came into force on June 12, 2003, setting the legal framework so that individuals can request access to the information created by or in possession of Federal Government bodies; indicating the Three Powers of the Union as compelled subjects; Public Federal Administration; Republic General Attorney, Federal Judicature Council; federal administrative courts and autonomous constitutional bodies (like IFE or CNDH, amongst others), aside from any other federal entity. To enforce this Law in Federal Executive agencies and departments, the Federal Institute of Access to Public Information (IFAI) was created. Regarding the rest of the compelled subjects (Art. 61), those must create internal regulations or agreements, to define bodies, characterization criteria and procedures to guarantee access to information under their care, always in compliance with the Law.

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<sup>1</sup> So is referred by Luis Carlos Ugalde: "For the decade of 1917 to 1927, for example, only 23 mentions emerged in different debates. The same can be said about the decade of 1947 to 1957, where the amount of mentions added up only to 39". See: Luis Carlos Ugalde, *Rendición de cuentas y democracia: el caso mexicano, Cuadernos de Divulgación de la Cultura Democrática 21*, México, Instituto Federal Electoral, 2002.

Within this transparency and accountability promotion framework, public budget is a key topic, due to the fact that it shows those priorities defined by the Government regarding the areas and sectors that they intend to impact. The way in which public resources are assigned and spent is of key importance to understand the logic behind public policies and the responsibilities of State workers.

This exercise, by which the LFTAIPG compelled subjects were tested, was performed with the purpose of observing the way in which the Government informs citizens about public resources management.

As opposed to years before, when there was no law that could force government bodies to disclose information – and therefore the access depended only upon their will to do so -, now the incentives to be transparent are theoretically larger. And that is what we wanted to evaluate: to what extent had the compelled subjects fulfilled the transparency demand after one year of the LFTAIPG enactment?

It is not necessary to dwell over our interest in the budget topic and its relationship with transparency because this has been meant a drawback for the political system because of the manner in which the information over the allotment and exercise of public resources has been whisked away. The information requests filed for the completion of this document are related to data that before the appearance of the LFTAIPG were extremely difficult to obtain.

### **TO TEST SUBJECTS COMPELLED BY THE FEDERAL LAW OF TRANSPARENCY AND ACCESS TO GOVERNMENT PUBLIC INFORMATION.**

The general objective of this document was to perform an investigation to evaluate the effect of the Federal Law of Transparency and Access to Government Public Information (LFTAIPG) over the compelled subjects after one year of its enactment. The work is limited to information related to budgets.

Evaluated particular objectives:

1. The information supplied by the subjects compelled by Law, in terms of their quality; in other words, if the information was complete and delivered in accordance with stipulated requirements.
2. The quality of the access to information mechanisms in the request process, and

3. The difference, in terms of quality, form and content of the information delivered by the agencies under IFAI's jurisdiction and other compelled subjects, with the purpose of producing a comparative analysis between both groups of public bodies.

To achieve such purposes, the mechanisms to request information from a set of three questions asked to different compelled subjects were put under examination.

## **METHODOLOGY**

To achieve our objectives, 78 information requests were filed simultaneously in 26 institutions of the three Powers of the Union (a set of three questions, same for each selected subject)<sup>2</sup>. The requested information is of the budgetary type and was requested on January 30, 2004, as by such date all agencies were fully obliged to comply with the transparency responsibilities set forth by LFTAIPG. The Treasury Secretariat (SHCP) was asked a series of different questions, same which will be detailed later on.

The only request mechanism that was evaluated was the Internet. Our analysis did not consider other mechanisms, like telephone, mail, fax, etc.

The information that was requested to the selected agencies and bodies was:

- 1) The resources administration schedule set by the Treasury Secretariat for such agency for fiscal year 2004;
- 2) The resources administration schedule set by the General Directorate of Schedules and Budgets (DGPOP, acronym in Spanish) for each one of its departments and schedules for fiscal year 2004, and

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<sup>2</sup> The selected Executive Power compelled subjects for this research were: Agriculture, Livestock, Rural Development, Fishing and Alimentation Secretariat (SAGARPA), Communication and Transportation Secretariat (SCT), Social Development Secretariat (SEDESOL), Economy Secretariat (SE), Public Education Secretariat (SEP), Energy Secretariat (SENER), Department of State (SEGOB), National Defense Secretariat (SEDENA), Public Function Secretariat (SFP), Agrarian Reformation Secretariat (SRA), Health Secretariat (SSA), Navy Secretariat (SEMAR), Environment and Natural Resources Secretariat (SEMARNAT), Republic General Attorney (PGR), Foreign Affairs Secretariat (SRE), Public Security Secretariat (SSP), Tourism Secretariat (SECTUR), Employment and Social Provision Secretariat (STPS) and Federal Preventive Police (PPF). The selected compelled subjects as defined by article 61 of the LFTAIPG were: Federal Superior Auditors (ASF), House of Representatives, Republic Senate, Federal Judicature Council, Supreme Court of Justice of the Nation (SCJN), National Commission of Human Rights (CNDH) and Federal Electoral Institute (IFE).

- 3) The amount budgeted for Concept 3800 (official services), during fiscal year 2004, itemized by entries.<sup>3</sup>

Furthermore, three specific questions were asked to the SHCP:

- 1) The resources administration schedule for fiscal year 2004, covering all State Secretariats, the Congress, the Federal Electoral Institute, and the National Commission of Human Rights;
- 2) Analytical breakdown of the Federal Expense Budget for 2004, in the way it was usually presented until year 2003 in PEF4 Volume III, and
- 3) Agreements, circulars and dispositions that establish the expense adjustment criteria over cases of budgetary modifications (reductions and extensions) of the Health, Social Development, Education, Dept. of State, Treasury Secretariats, as well as the Presidency of the Republic.

During this investigation, both the request process and the quality of the delivered information were assessed. A data base was created with data capable of systematizing the variables that could enlighten the analysis of both aspects.

Regarding the information request process, we were interested in comparing the different subjects compelled by law against each other, over:

- The possibility of filing the request via Internet;
- The existence or absence of receipt acknowledgement;

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<sup>3</sup> **Entries** (budgetary entries) are the budgetary elements in which the concepts are itemized and that classify expenditures according to the expense specific object. They represent concrete and detailed expressions over the purchased good or service, allowing their monetary or accounting classification. Furthermore, the **expenditure chapters** are classification elements by expense object, integrating the set of goods and services purchased by the Federal Government and semi-state agencies in pursuit of their objectives and goals. The basic registration unit, part of a *budgetary chapter* is the **entry**; a set of entries create a **concept**, and a group of concepts form a **chapter**. Concept 3800, Official Services, include entries for expenditures related to conferences, conventions, travel expenses, air fares, meals for public servants in command. To consult the complete glossary of terms related to the Federal Expense Budget, where the previous terms are included, see: Helena Hofbauer and Jorge Romero, *El ABC del Presupuesto de Egresos de la Federación: retos y espacios de acción*, Fundar, México, 2002.

<sup>4</sup> The significance of the presentation of the Federal Expense Budget, Volume III rests in the fact that it is an analytical volume that itemizes the budget according to the expense object; in other words, it provides an idea of the expense final destination. This is the most important volume, from the independent and citizen analysis perspective, as it provides more detailed information over budgetary appropriations. This Volume was not included in the 2004 PEF, as opposed to the previous years.

- The time taken to submit the receipt acknowledgement;
- The time taken to serve the information;
- Information presentation.

Regarding information quality, as supplied by the agencies, the evaluated variables were:

- Complete information;
- Time disintegration level (for questions 1 and 2);
- Program and/or unit disintegration level (for question 2);
- Entry and/or concept disintegration level (for question 3);
- Information presentation (whether if it is delivered or referred to an Internet link)

An additional data base was created including those features that the Internet web site from a compelled subject must fulfill to allow individuals to file an information request easily. We were interested in knowing if the web site had a window exclusively intended to transparency, and if the corresponding regulations were thereby included (LFTAIPG, agreements and/or regulations about the Link Unit performance and inspection mechanisms for Law enforcement), the link to the Link Unit (where telephone number, domicile and e-mail address appears), and about the possibility to access a request format that included the corresponding receipt acknowledgement; finally, we wanted to know if it was possible to file a request via Internet. In this analysis, we would show only the results obtained from the compelled subjects, as set forth in article 61 of LFTAIPG, as those agencies under the surveillance of IFAI comply with the required forms and procedures.

## **INFORMATION REQUESTS**

After filing the information requests and following their complete process, the results rendered can be analyzed. The first variable in the system is the one related to the response itself. This was divided in three different kinds:

- a) Delivered response;
- b) Undelivered response, and
- c) Incomplete response <sup>5</sup>.

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<sup>5</sup> Later on, we will show which are the features that make a response considered as incomplete or not delivered.



Furthermore, and with the purpose of rating each compelled subject so that they can be assessed, a value was assigned to each type of response:

- 3 points, if completely delivered;
- 1 point if incompletely delivered, and
- 0 points if it was not delivered.

The results of the process can be observed in Table number 1. The resulting rating includes values between 0 and 9; 9 if all responses were satisfactorily served and 0 in the opposite case.

**TABLE 1**

COMPELLED SUBJECTS BY LAW	ANSWER			Score
	Question 1	Question 2	Question 3	
Subjects under IFAI's supervision				
Economy Secretariat	Delivered	Delivered	Delivered	9
Tourism Secretariat	Delivered	Delivered	Delivered	9
SEDENA	Delivered	Delivered	Delivered	9
SEMAR	Delivered	Delivered	Delivered	9
SEGOB	Delivered	Delivered	Delivered	9
Foreign Affairs Secretariat	Delivered	Delivered	Delivered	9
Public Function Secretariat	Delivered	Incomplete	Delivered	7
Public Education Secretariat	Delivered	Incomplete	Delivered	7
Energy Secretariat	Delivered	Incomplete	Delivered	7
SRA	Delivered	Incomplete	Delivered	7
SCT	Delivered	Incomplete	Delivered	7
SAGARPA	Delivered	Incomplete	Delivered	7
PGR	Delivered	Delivered	Undelivered	6
SEMARAT	Delivered	Incomplete	Incomplete	5
Health Secretariat	Delivered	Incomplete	Incomplete	5
SEDESOL	Delivered	Incomplete	Incomplete	5
PFP	Delivered	Incomplete	Undelivered	4
SSP	Delivered	Undelivered	Undelivered	3
Employee and Social Problems Secretariat	Undelivered	Undelivered	Delivered	3
Subjects that are not under IFAI supervision				
IFE	Delivered	Delivered	Delivered	9
ASF	Delivered	Delivered	Incomplete	7
Federal Judiciary Council	Delivered	Incomplete	Delivered	7
National Commission of Human Rights	Delivered	Delivered	Incomplete	7
Republic Senate	Delivered	Incomplete	Incomplete	5
House of Representatives	Delivered	Undelivered	Undelivered	3
Supreme Court of Justice of the Nation	Undelivered	Undelivered	Undelivered	0

**SOURCE:** Proprietary information based on the data obtained from the filed information requests.

Seven agencies, out of a total of 26, were the only ones that served the information as requested. This means only 27% of the selected subjects. Executive Power agencies, Economy, Tourism, National Defense, Navy, Department of State and Foreign Affairs Secretariats, sent their responses correctly. Regarding the rest of the compelled subjects, only the Federal Electoral Institute submitted complete responses to the three requests. Nevertheless, among the agencies with a highest scores, there are some details that we will analyze later on when we discussed the features of the served information and the request process.

In the other end of the spectrum, only the Supreme Court of Justice failed to serve any kind of response to the request, representing 4% of the total agencies. Aside from that, the Public Security Secretariat and the House of Representatives only responded to one question; the Republic General Attorney and the Federal Preventive Police served two requests. This means that, in this sector, out of the 78 information requests, 10 of them were not processed or even slightly successful (12.8%). Later on, we will show the particular circumstances that lead, in some instances, to omit information (House of Representatives).

The most significant concern is incomplete responses: a total of 18. Given the methodology used to file information requests, it is possible to control the variable that implies the possibility that the question was not properly presented, causing an incorrect response. The fact that there were responses, specially those from the Executive Power, that were correctly served, sets a parameter for us to corroborate that the set of questions had been properly applied <sup>6</sup>.

This incomplete response occurrence, added to the set of ten that were not served (35% of unsatisfactory responses), could have derived in filing the corresponding recourses of revision before the IFAI, so that the agencies fulfilled the filed requests. However, this procedure makes information attainment a costly issue, as it delays its access time. If it is true that the creation of IFAI intends, largely, to protect the right of access to information from petitioners before a possible non satisfactory response by the agencies, the need to file recourses of revision in such a high percentage of requests undermines the information service opportunity and quality. The LFTAIPG was designed for the execution of the right of information and to ensure that the compelled subjects are fully responsible for the information delivery in a prompt, clear and complete manner.

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<sup>6</sup> In those cases related to Legislative Power compelled subjects, the question received two different responses, as its organization differs from the State Secretariats. For further information, please refer to case studies (pages 82-86), where the request process for the House of Representatives, the Republic Senate, and the Federal Superior Auditors Agency are discussed.

The above evidence provides a picture over LFTAIPG effects during its first operational year. Regarding budgetary matters, even though there is more openness and transparency in access to information today, we realize that this is not a general practice in government structure as a whole. There is still discretionary handling of information, though not at the same level than before the Law was enacted, and this might be due to lack of technical capacity in the corresponding Link Units or to other circumstances. Nevertheless, it is evident that the system can discourage citizens to exercise their right of access to information.

For those cases in which the compelled subjects were not under IFAI jurisdiction, the rendered results were not satisfactory. As previously stated, it was only IFE that completely responded to three requests.

For the Legislative Power entities cases, more requests had to be filed in order to obtain the proper responses. In the case of the House of Representatives, as observed in the specific experience section, the process has been interrupted because of reasons that are apparently beyond the Link Unit competence. Regarding the Senate, the filing is still under process.

Additionally, the implemented mechanisms to file information requests before most of these subjects are not efficient, thus causing indifference from the corresponding agencies. It is evident that failures in the delivery of the requested information go against the **timeliness**, which is an essential access feature.

## **INFORMATION QUALITY**

Now we can analyze the quality of the obtained information.

With this purpose, we define the features of the served data according to two criteria.

- The schedule disintegration for the first and second questions. For the specific case of the second request, such disintegration was observed regarding whether or not the agency delivered the administration schedule per responsible unit and per program. In failing to respond the question by the itemization of the schedule per programs and units, it would be considered as an incomplete response.
- The itemization by entries (or its absence) over resources allotted to concept 3800, regarding the third request (see note 3). In case that the agency served the information only with the total amount of the concept, the response was considered as incomplete.

## CUADRO 2

COMPELLED SUBJECTS	INFORMATION DISINTEGRATION			
	Time of disintegration (question 1)	Time of disintegration (question 2)	Disintegration per program and/or entity (question 2)	Disintegration per concept or entity (question 3)
<b>SUBJECTS UNDER FIAI SUPERVISION</b>				
Tourism Secretariat	Monthly	Monthly	Program and Unit	Entity
Environment Secretariat	Monthly	Monthly	Unit	Concept
Health Secretariat	Quarterly	Monthly	Unit	Concept
Employee and Social Protection Secretariat	Undelivered	Undelivered	Undelivered	Entity
SED EOD L	Monthly	Monthly	Unit	Concept
Public Function Secretariat	Quarterly	Monthly	Unit	Entity
Public Education Secretariat	Monthly	Monthly	Unit	Entity
SED ENA	Sends to SHCP	Sends to SHCP	Sends to SHCP	Sends to SHCP
SEMAR	Quarterly	Monthly	Program and Unit	Not approved
PGR	Monthly	Monthly	Unit	Undelivered
SESOB	Monthly	Monthly	Program and Unit	Entity
SSP	Quarterly	Undelivered	Undelivered	Undelivered
PFPP	Quarterly	Undelivered	Unit	Undelivered
Energy Secretariat	Monthly	Monthly	Per program	Entity
Foreign Affairs Secretariat	Monthly	Monthly	Program and Unit	Entity
GRA	Monthly	Monthly	Unit	Entity
Economy Secretariat	Quarterly	Quarterly	Program and Unit	Entity
SCT	Monthly	Monthly	Unit	Entity
SAGARPA	Monthly	Monthly	Per program	Entity
<b>SUBJECTS NOT UNDER FIAI SUPERVISION</b>				
IFE	Quarterly	Monthly	Program and Unit	Entity
SEMIATE	Monthly	Annual	Unit	Concept
HOUSE OF REPRESENTATIVES	Monthly	Undelivered	Undelivered	Undelivered
ACF	Quarterly	Nonexistent	Nonexistent	***
Supreme Court of Justice of the Nation	Undelivered	Undelivered	Undelivered	Undelivered
Federal Judiciary Council	Monthly	Monthly	Unit	Entity
National Commission of Human Rights	Monthly	Monthly	Program and Unit	Concept

**SOURCE:** Proprietary information based on information obtained from the requests filed before different Link Units and SISI.

As observed in Table 2, five agencies in fact served complete information. SEDENA responded correctly, according to LFTAIPG dispositions, stating that it was necessary to request the budgetary information to the SHCP. In other words, they did not serve the requested data. In the case of the Navy Secretariat, request number three was responded in terms that there were no resources for concept 3800, because it have not been approved by the House of Representatives.

There were also questions that could be technically correct, as in the cases of SSP and PFP. Both of them responded that the budgetary information that could be found in the SSP transparency link have been provided by the SHCP and that

the information could be found there. Nevertheless, the requests therein filed were not responded. This is why in both cases the responses were considered as not delivered, regardless of the fact that they transferred to SHCP the responsibility to create and serve such information.

It is worth mentioning that even though SEDENA's response is correct, when compared against the rest of the agencies, this double and ambiguous responsibility of SHCP and other compelled subjects to serve the information herein dealt with (paragraph IX article 7 of LFTAIPG obliges SHCP and the rest of the agencies to serve such information) should not exist. As if this functional duplicity was not enough to generate disinformation in this sector, the Treasury Secretariat Internet web site has limited information and its Link Unit does not serve the requested information in a clear, complete and timely manner.

Regarding the information about time disintegration of the first and second requests, we identified a disagreement, as a significant percentage of the responses served the information per month, while another significant percentage per quarter. In order to be able to compare the information, all agencies should have delivered, aside from a clear and complete information, their monthly itemized schedules. However, the criteria are not clear about how to present the information and this means that the data is delivered in a faulty manner. There were even some agencies that gave us the yearly amount and others that refereed us to the PEF 2004, where there is no schedule.

The last two columns of Table 2, contain the criteria to determine if the information was properly served. Although the information request was made in a clear and precise manner, 23% of the responses were incomplete. Specially, regarding question number two (third column), twelve agencies delivered the disintegrated schedule, either by program or by responsible unit. If we add to these agencies another four that did not serve the information, the result is that more than one half of the compelled subjects responded unsatisfactorily.

Regarding concept 3800, five agencies delivered the information only per concept, though not per entry, as originally requested. Another one, ASF, delivered information over one entry. The rest of them responded satisfactorily.

According to the investigation we performed, we should have filed a total of 18 recourses of revision, aside from three new requests for SHCP, regarding SEDENA. This situation obviously generates a very high cost for gathering the requested information in a satisfactory manner.

It is important to point out that only the Supreme Court of Justice of the Nation did not serve a response. The rest of the agencies submitted some kind of response within the legal time. It is necessary to emphasize that a response does not necessarily mean that the information has been delivered, which leads us to conclude that, as long as this practice prevails, it is impossible to discuss transparency over the subjects under study. The general notion is that there is not right to information, but that the Government is just doing a favor to citizens. In many cases, this is plain simulation.

### **QUALITY OF THE REQUEST MECHANISMS**

Regarding transparency, the ways in which we access information are almost as important as the information service. In the case of the SISI, there is no apparent failure. The process is accessible, complete and transparent. The problems appear when we analyze those compelled subjects that are beyond IFAI jurisdiction.

According to LFTAIPG, subjects defined in article 61 have the responsibility of defining their own Link Unit, the pertinent regulations or agreements and the procedure to file requests. Furthermore, their Internet web sites must provide the information set forth by the Law. In Table 3 we can observe the failures in these aspects.

To February 18, 2004, SCJN or Federal Judicature Council did not have in their transparency web sites the Regulatory Framework related to transparency obligations. It was necessary to establish telephone communication with such agencies to obtain the information. Additionally, CNDH does not have a direct telephone line for its Link Unit.

Regarding the way to file information requests, problems are even more severe. The Federal Judicature Council did not allow us to file a request via Internet. Additionally, they stated that there are only 61 offices in the country capable of addressing these matters. Therefore, the cost of requesting information becomes excessively high. On the other hand, five of the seven analyzed compelled subjects do not have clear formats to file requests. Only the House of Representatives and the Senate have them. These same five agencies or bodies do not provide a receipt acknowledge to the petitioner when filing a request, creating uncertainty. Because of the faults in these mechanisms, agencies can contravene the right of access to information when they fail to respond to information requests, as is the case of the Supreme Court of Justice of the Nation.

**CUADRO 3**

CARACTERÍSTICAS DE LAS PÁGINAS ELECTRÓNICAS DE SUJETOS OBLIGADOS SELECCIONADOS								
Dependencia	Liga a Transparencia	Normatividad	Solicitud via Internet	Liga a Unidad de Enlace			Formato de Solicitud (Internet)	Acuse de recibo (Internet)
				Dirección	Teléfono	Correo		
Instituto Federal Electoral	Si	Si	Si	Si	Si	Si	No	No
Cámara de Diputados	Si	Si	Si	Si	Si	Si	Si	Si
Senado de la República	Si	Si	Si	Si	Si	Si	Si	Si
ASF	Si	Si	Si	Si	Si	Si	No	No
SCJN	Si	No	Si	Si	Si	Si	No	No
Consejo de la Judicatura Federal	Si	No	No	Si	Si	Si	No	No
CNDH	Si	Si	Si	Si	No	Si	No	No

**SOURCE:** Proprietary elaboration based on the compelled subjects web pages. Web sites revision dates were February 18, 2004.

From here on, we should see some specific cases, describing the request process. First, we would take the special case of the Treasury Secretariat, and later on some others that had different procedures, due to the circumstances. These latter ones will enlighten certain aspects of LFTAIPG performance during its first operational year.

**TREASURY SECRETARIAT: A SPECIAL CASE**

The three questions mentioned in the methodological section of this document were made to the Treasury Secretariat. The request was filed through SISI.

It is necessary to point out three special circumstances about this process:

- a) As opposed to the rest of the agencies, the Treasury Secretariat responded out of the period set forth by Law. No recourse of revision was filed, though the questions were presented again and this process is still pending.
- b) Out of the three questions, only the first one was directly and satisfactorily responded, without referring us to an Internet link to find the information.
- c) The other two questions received as response that the information was in the Internet web site. This was not true in the case of the question related to the analytical breakdown of PEF 2004, thus such response was considered incorrect.

As observed from the above, it is evident that there is a lack of transparency regarding budgetary information, mainly created by the mentioned functional duplicity, so it is not only necessary to demand it, but also to create mechanisms and incentives so that SHCP does not incur in simulation or serves incorrect responses.

## LEGISLATIVE POWER

### HOUSE OF REPRESENTATIVES

The same set of questions, presented to the rest of the government agencies and institutions, was presented to the House of Representatives. On January 30, 2004 the requests were filed. A positive response was received only to the first question, by enclosing the information to an e-mail. The information about the resource administration schedule set by SHCP was delivered in itemized monthly format. The response to this question was the following:

“According to the General Directorate of Schedules and Budgets, the Legislative Power is not explicitly considered within the National Development Plan, so an Annual Operational Plan in strict correspondence of the program characterization is not elaborated. Furthermore, this Legislative Body is represented as a unique Responsible Unit, so the total resources are 100% integrated into the said Unit, and there is no administration schedule for the different departments and programs”.

It was therefore decided to make another question to know about the “resource administration schedule, itemized by Parliamentary Groups, Legislative Commissions, research centers and several Chamber administration bodies”. The response to this question was subordinated to approval from the Administration Committee in charge of the final budgetary distribution, due to the fact that the budget had been adjusted during its approval. On February 25, that is 11 work days after requesting this information, the Link Unit explicitly requested an extension as the information was not available. The following was literally responded:

“By virtue that the Administration Committee is a Collegiate Body, the tentative date for the meeting in which the expense re-allotment policies for year 2004 will be defined, is still



unknown; but after these are defined, we shall proceed to set the budgetary ceilings for the Parliamentary Groups, Legislative Commissions, research centers, and administration bodies with the purpose of submitting them again for approval or adjustment, to the corresponding administrative Committee, who, in turn, will submit them for final authorization by the Political Coordination Board”.

**“Once the previously mentioned processes are completed, we shall be in possibility of serving the requested information”.**

In the case of the third question of the proposed set for the selected compelled subjects, related to concept 3800 official services, the procedure was as follows:

1. The information was requested in January 30, 2004, and the reception acknowledgement was delivered by Link Unit on February 2 of the same year.
2. The notification indicating that at the moment it was not possible to serve the requested information was received on February 4, stating the following:

“According to the General Directorate of Schedules and Budgets, this House of Representatives budget, on December 31, 2003, resolved a reduction of 236 million pesos from the original budget of this Institution. In this sense, the Administration Committee, who provides administrative and financial support to the Political Coordination Board, is currently making adjustments in reassignments and schedules of the 2004 Budget entries, in compliance with the expenditure priorities of this Honorable House of Representatives, as well as the above mentioned budgetary reduction”.

3. On February 11, 2004, after receiving a negative response, a second request was filed insisting over the information related to concept 3800 budgetary appropriation, and adding in this opportunity, one question about the date on which the Administration Committee would disclose the adjustments to the Chamber Budget. The reception acknowledgement was delivered on February 13.

4. The response to this new request was served via e-mail on February 25 and it only contained a commitment, without setting any specific date, to deliver the information as soon as it became available:

“The amount for the concept 3800 official services budget will be disclosed after the Administration Committee meets and defines the adjustment policies for year 2004. This response represents a commitment, with no due date, to deliver information as soon as it becomes available”.

5. To the closure date of this investigation, April 23, there has been no further response.

## THE SENATE

In the case of the Republic Senate, none of the three questions was served with the requested information. The Link Unit sent only one e-mail to answer the complete set of questions. The message stated, similarly to the House of Representatives, “By virtue that the budget for 2004 was reduced, the final budgetary appropriation has been submitted for the consideration of the Administration Commission, so that once this government body approves the said document, its disclosure will be possible”.

Finally, we were informed that the “request had been turned to the Treasury Department to prepare a response”.

In this case, we considered that, except for the first one, the responses would be served after the budgetary approval. From comparing the responses from both Chambers, we concluded that their program structure was alike, thus resulting in the same responses issued by the Senate and by the House of Representatives. For the above, another request was filed indicating that the Treasury Secretariat, by that date, should already have sent the schedule.

On February 24, the Senate served the information, though instead of the requested one, they delivered the **budgetary schedule project proposed by SHCP, itemized by month**. The following clarification was also made:

“In compliance with the dispositions of the Organic Law of Federal Public Administration, the Law of Budgets, Accounting and Federal Public Expense and its Regulations, the creation of the resource administration budgetary schedule for the federal government, including the Republic Senate, is

under the responsibility of the Treasury Secretariat; in other words, a Federal Executive Power agency”.

“For the above, and with full respect to the principle of power division, the Treasury Secretariat submits a budgetary schedule project to this Chamber, for the consideration of its Administrative Commission, and after being approved by this government body, regulates the budget of the corresponding year.

The responses to the other two information requests were received on March 1st. and indicated that the information was being served by e-mail attachments. However, only the administration schedule was attached, though unsatisfactorily because it was not broken down. In the case of the third question, the information was not included. For this reason, and through an e-mail sent to the Link Unit, it was requested once more, to send the information that should have been included in the response. The response to this new request arrived in a timely manner but in the incorrect format, as only the total concept was sent, though it was not itemized by entries. Once more, the Link Unit was requested to serve the complete information and by the date this investigation was closed, this was still in process.

## **FEDERAL SUPERIOR AUDITORS**

Regarding the Federal Superior Auditors (ASF), the three responses to our request were received on the same date and through the same mail. Without reception acknowledgement or any other message to prove the arrival of our request, on February 19, they served the requested information; in other words, within the legal term.

In one attached file, they presented the resources administration schedule set by SHCP, a response over the administration schedule, properly itemized by program and responsible unit, indicating also that there was only one unit and one program; finally, regarding concept 3800, the following response was delivered:

“Regarding concept 3800 ‘Official Services’, 83.4% (12,901,174 million pesos) correspond to Travel Expenses Entries, as required by the supporting units to address institutional inspection programs”.

This response showed that information was being handled discretionally in this agency. It is evident that the way in which the data are provided is incomplete with no apparent reason. Furthermore, it is mentioned that there are inspection

programs (plural) and supporting units (also plural) to perform such inspections, which disagrees with the response given to the second question.

From these two cases, including the above, we can conclude two things:

- 1) There is no supervision mechanism to monitor cases like those of the House of Representatives and the Senate, where the existence of information is subordinated to ambiguous terms, thus making it very difficult for the requester to have a proper follow up and allows agencies to disregard the requests.
- 2) In the cases of IFE and ASF, aside from the Supreme Court of Justice of the Nation and CNDH, the mechanism to make requests is not clear and, therefore, complicates access to information.

## **SOCIAL IMPACT AND IMPROVEMENT PROPOSALS**

The results rendered by this investigation to test the LFTAIPG compelled subjects clearly describes a progress towards better transparency levels over those resources allotted to public agencies. However, an information service mechanism that guarantees transparency is still required. To the extent in which this happens, citizens will have more **capacity and interest** to request information.

Regarding the linkage between public information and civil society, we found that mechanisms are sufficiently clear and now allow - as opposed to what happen just a few years ago - to request information in the simplest manner. Nevertheless, this friendly environment in filing requests is not totally reflected over the information service, considering the responses served by the compelled subjects.

The creation of a legislation such as LFTAIPG aims, amongst many other things, to reduce access to information costs. We are not only talking about costs in monetary terms; we also refer to the cost in time, effort, and being forced to follow difficult and tiresome processes. These costs can, in the long term, discourage citizens to obtain information by the means set forth by the Law.

Among the results we obtained from this investigation, we point out that the period of time to obtain complete and quality information are still too long. Despite the fact that the responses given to our requests were served on time and within form, a significant percentage of the subjects sent:

- a) Incomplete information;
- b) Erroneous links to find the information, or
- c) Negatives for lack of competence from the Link Unit.

In many cases, the quality of the information was not the best. This leads us, obviously, to file recourses of revision before IFAI. The process is then extended and becomes tedious.

Regarding those subjects compelled by the Law and that are beyond IFAI jurisdiction, there are problems even in the easiness of filing requests. The mechanisms thereto created in many times are inefficient, causing a lack of link between an individual's right of access and the information served.

The challenge is to substantiate the concepts of transparency and information. To accomplish this, the following discussion lines could be proposed to improve the access to information system:

- a) Información incompleta;
- b) Vínculos erróneos donde encontrar la información o,
- c) Negativas por no ser responsabilidad de la Unidad de Enlace.

En muchos de los casos, la calidad de la información no era la mejor. Esto nos conduce, obviamente, a interponer recursos de revisión frente al IFAI. El proceso se alarga y se vuelve tedioso.

En lo que concierne a los sujetos obligados por la Ley y que escapan a la jurisdicción del IFAI, existen problemas, incluso en la facilidad de realizar solicitudes. Los mecanismos creados para ello son, en muchas ocasiones, ineficientes, lo que provoca que no haya un vínculo entre el acceso a que tiene derecho un ciudadano y la información provista.

El reto es darle sustancia al concepto de transparencia y de información. Para ello, se propondrían como líneas de discusión para mejorar el sistema de acceso a la información las siguientes:

1. To reform the LFTAIPG in order to avoid the existing ambiguity in the responsibilities related to budgetary information of the Executive Power agencies and SHCP. Or, otherwise, to more clearly define the latter's role.
2. To design more clear guidelines as to how to present a minimum of information regarding budget. The Treasury Secretariat must undertake its role with more responsibility in serving this type of information.
3. To consider the possibility of integrating the compelled subjects, as stated in Article 51, under IFAI jurisdiction. Or, in any event, to define clear guidelines in order to homologate the work and information delivery mechanisms from the different responsible Link Units and agencies.

4. To consider mechanisms that allow performing a proper follow-up over a request when the availability of such information is subordinated to ambiguous terms that allow agencies to disregard the response times set by LFTAIPG

## **SELECTED BIBLIOGRAPHY**

### Transparency Regulations

1. Federal Law of Transparency and Access to Government Public Information.
2. Agreement by which the integration and operation of the Federal Superior Auditors Information Committee is established.
3. Parliamentary Agreement over the Law of Transparency and Access to Public Government Information in the Chamber of Senators.
4. House of Representatives Transparency and Access to Public Information Regulations.
5. General Council Agreement by which the Federal Electoral Institute Bylaws are approved regarding transparency and access to public information matters.
6. Federal Expense Budget Decree, 2004.

## **QUOTED BIBLIOGRAPHY:**

1. Hofbauer, Helena y Jorge Romero, "*El ABC del Presupuesto de Egresos de la Federación: retos y espacios de acción*", Fundar, México, 2002.
2. Ugalde, Luis Carlos, "*Rendición de cuentas y democracia: el caso mexicano*", Cuadernos de Divulgación de la Cultura Democrática 21, México, Instituto Federal Electoral, 2002.



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## **TRANSPARENCY, DEMOCRACY AND CITIZEN PARTICIPATION IN LEGISLATIVE ACTIONS; THE CASE OF THE LX LEGISLATURE OF CHIHUAHUA**

Red de Participación Ciudadana, A.C  
– [Citizen Participation Network, Civil Association]

In 1992, in the Chihuahua dessert region, where inhabitant's dreams drift by, a huge wave emerged: the wave for democracy. It was created by citizens and civil organizations with the purpose of observing the governor election process.

From then on, the civil movement has been a constant in this ocean of social restlessness: federal and local election processes were observed in 1994 and 1995; Indigenous Rights were promoted in 1999. To invigorate citizen participation in public matters, in January, 2001, Red Ciudadana was created with the participation of the following independent, non-partisan, plural and inclusive organizations: Equipo Pueblo-Chihuahua, [Chihuahua People Team]; Mujeres por México, [Women for Mexico]; Frente Democrático Campesino [Peasant Democratic Front]; Coordinadora Ciudadana [Citizen Coordination]; Comisión de Solidaridad y Defensa de los Derechos Humanos [Commission for Solidarity and Defense of Human Rights]; and Frente de Consumidores del Estado de Chihuahua [State of Chihuahua Consumers Front].

We realized that even though the Legislative Power is the highest citizen representation, we did not have – as citizens – access to information related to its tasks and to our Congress people performance evaluation mechanisms.



In the same year of the incorporation of Red Ciudadana, A.C., we launched a unique and innovative project titled "Transparency, democracy and citizen participation in legislative action", which was a social audit over the tasks of the LX Legislature of the State of Chihuahua.

One and a half year after starting the performance analysis, we present this report citizen exercise as a contribution to our country's democratic transition process, with the hope that this experience encourages and promotes the birth of new initiatives, so that the human right to participate in a critical and responsible manner in public matters becomes a reality and to indicate to whom currently are public officers, that their work should always face the people who elected them, and that they must report their activities.

## **INTRODUCTION**

Democratic progress in our country does not only occur in free, clean, and credible electoral processes. Democracy must be constructed day after day by means of an informed, critical, conscious and responsible participation of citizens in public matters. Such participation does not end in criticism or proposals to the Executive Power; it implies a serious social comptrollership not only over this power, but also over the Judicial and Legislative ones. In such a complex society as ours is, the task of functioning as counterweight to each other cannot be left only to State instances. Republicanism must necessarily have the complement of a constant exercise of citizen power in inspecting and leading all three powers.

In order to evaluate the performance of the State of Chihuahua Legislative, we undertook a deep research over such activity different aspects. More than twenty performance indicators for the Legislative Power were designed, in compliance with the Political Constitution of such Federal Entity and with the State Congress Organic Law. The analysis was based upon the information supplied by the Congress Presidency, the several parliamentary groups, and particular state congressmen. This report covers one year and one half of Legislative performance, from October 1<sup>st</sup>, 2001 to February 29, 2003. Only objective indicators were used and all results were carefully analyzed in team work to avoid any type of biased opinion.

For the performance of this work, we requested information from the Congress, based on the request right recognized in Article 8 of the Federal Constitution and Article 7 of the State Constitution.

Out of the 50 filed information requests, only in 20 cases (40%) a favorable response was received; in 11 cases (22%) the information was incomplete and in 19 cases (38%) the requests were simply disregarded. Part of the information we obtained to evaluate the Congress performance was not sourced from their responses to our information requests, but through revisions made to the State Official Newspaper and the Debate Diary. We were forced to constantly appear at the Plenum sessions and to maintain direct communication both with parliamentary coordinators and with different fractions Congressmen.

During our experience with the Congress, the need to have more specific analysis regarding important topics became increasingly evident. Many of them had already been discussed and disclosed in different events and documents, from which we can emphasize the following ones:

1. Legislative Power's Organic Law amendments analysis;
2. The right of access to information <sup>1</sup>;
3. Diagnosis over the right to information in Local Congress <sup>2</sup>.

It is necessary to clarify that our intent to monitor Congress activities was not due to any criticism desire towards a specific political party or government.

We consider that this transparency effort must move on systematically, with the purpose of strengthening and promoting an efficient exercise of the Legislative Power.

## **OBJECTIVES AND INDICATORS**

At the beginning of this work, our intention was targeted to promote informed, organized, critical and propositional actions from Chihuahua's civil society, so that the Congress of the State could carry out its tasks in a democratic and transparent manner, in compliance with accountability principles and enabling spaces for citizen participation.

Furthermore, our activity aimed (and we are still there), to cooperate in the construction of a Congress capable of issuing laws that effectively empower citizens' fundamental rights. Therefore, we needed to implement an impartial, detailed and public citizen supervision exercise; most certainly, from a participating

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<sup>1</sup> Document shared by the Reporter of Freedom of Speech of the Human Rights Inter-American Commission, during his visit on Mexico.

<sup>2</sup> Presented before human rights experts in charge of creating a national diagnosis over collaboration matters with United Nations.

society, organized in committees all along the state, demanding information and accountability from government and public officers.

In order to make this possible, we had to create permanent communication mechanisms between the State Congress and citizens, which is – ultimately - the representation axial shaft. In fact, representative function is the foundation of a democratic system, and one of the most important tasks of the representatives. The notion of representation is part of the participative democracy and it emerges from understanding that the representative must keep permanent communication with citizens for relevant decision making. This is why we need clear consultation and agreement mechanisms, capable of enabling individuals to express opinions and to be certain that they will be listened to and that they will be taken into account.

As it was mentioned, to assess Congress performance we created several indicators<sup>3</sup>.

Regarding legislators activities, these were:

- Professional profile
- Attendance rate
- Fulfilled processes
- Forum participations
- Reports over district visits and reports presented before the Congress

Legislative work:

- Commissions
- Work schedules and meetings held by the Commission
- Plenum performance
- Inspection
- Congress General Accounting
- Congress internal administration
- Administration Committee

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<sup>3</sup> It is worth to clarify that, due to space restrictions, this work does not include all the indicators used in this monitoring exercise.

## LX LEGISLATURE EVALUATION

### I. LEGISLATORS ACTIVITY

#### **Professional profile**

Regarding congressmen professional profile, we consider that there is a positive balance between different professions, as legislative tasks need a diversity of knowledge and points of view. It is important to observe that only 82% of representatives have higher education.

Nevertheless, it is worth to point out that there are discrepancies between different parliamentary fractions regarding their expertise as public officers and their academic degree, being the fraction of Institutional Revolutionary Party the one with the highest professional profile and experience.

The fact that most representatives have a significant career in partisan organizations has hindered an actual citizenship representation, because within the legislators' performance, especially during discussions and voting law initiatives, partisan origin and interest are decisive. Parliamentary fractions perform a double role: on one hand, they can foster with a greater power their established initiatives; on the other hand, they can waive particular and independent positions.

Regarding legislators professional journey, it is worth to mention that it is common that they use a popular election position to obtain political promotions, which affects the development in Chamber performance. During their office, three legislature members accepted new public offices. Martha Laguette, Pedro Dominguez and Mario Wong become federal representatives. Another legislator, Victor Anchondo, launched his pre – candidacy for the State government. In turn, many others were former representatives, councilmen or mayors.

#### **Attendance**

Representatives hold Plenums for seven months per year: from October to December and from March to June, with the possibility of having extraordinary sessions during adjourns. Sessions of Congress ordinary periods are held twice a week. Extraordinary sessions, during adjournment periods, are brief. Mandatory representative attendance is summarized to two days per week during session's period.

Is not possible to know about representatives' activities under adjournment periods, except for the reports they submit regarding their administrative work. No Plenum session had been postponed because of lack of quorum. In average, there were only three absences from representatives in one and a half year of office. We have no information that proves, in compliance with the law, that representatives unjustifiably absent in Plenum sessions had a discount from their salary.

## **Managements**

The reports provided by representatives reflect a hard job, especially regarding individual procedures, as consultancy or economic supports. The Congress has a special area for citizen service, aside from the fact that each partisan fraction dedicates a part of its activities and resources to this function.

Initially, only PAN and PRD representatives' fractions provided us with information. Later on, PRI delivered the information and PT did not produce any kind of information. It is worth to point out that the voting intention of this parliamentary fraction, integrated by only two representatives, has always been compliant with the PRI fraction.

Paragraph V of article 22 of the local Legislative Power Organic Law states that all procedures must be targeted to address collective claims; however, most of such procedures have addressed particular issues, fostering some sort of a patronage and distortion of representatives' role.

Before the lack of a common format to submit their reports, it is difficult to assess the Congress performance, as some legislators describe their activities by communities or municipalities, while others report their performance per addressed individuals, and still others, by characterized groups or issues. This situation lead us to create, together with parliamentary fractions' advisors, a format to capable of propitiating among legislators a systematic practice over their work, allowing citizens to have reliable information and to produce comparative studies.

## **Participations in Tribune**

The measurement over this topic has been complex, because it is difficult to precise what an intervention exactly is, given that a judgment presentation, for example, it is not comparable with a comment, motion, a simple reference or criticism against opposed positions.

From public reports created by Red Ciudadana over representatives' performance, some agreements were implemented with the purpose of avoiding disrespectful

references during the sessions. The results of the above were reflected in the third ordinary session period, in which there was a significant reduction of aggression in the tribune.

### **District and Congress Reports**

Article 65, paragraph IV of the State Constitution states that the following are among the duties of representatives:

“To visit, during legislature adjournments, the district that elected the corresponding representative, or the districts in which those representatives elected by proportional representation live, to obtain information regarding:

- 1) Conditions of public teaching, human rights, justice enforcement and administration;
- 2) The way in which public officers and employees fulfill their offices;
- 3) The condition of socioeconomic development and public services supply;
- 4) Obstacles to district progress and necessary measures to drive all and every element to promote public wealth;
- 5) To present before the Congress, at the opening of the immediate sessions' period after the visit, a written report containing the gathered observations, proposing at the same time the most convenient improvement measures.”

Different reports were made public in this legislature, with the purpose of promoting public knowledge about the performance of Congress and its representatives. However, they did not cover those topics included in paragraph IV of Constitutional article 65.

Representatives approved an amendment, which establishes the mandatory character of district visits after election, at least once per each adjournment period. If this amendment is fulfilled, it will facilitate an extended proximity between people and their representatives and a better knowledge by the representatives regarding their district. Nevertheless, it must be stated that during the mentioned amendment approval process, an addition to article 65 was proposed, stating that failure to submit the district condition report could be a cause of liability, but this was rejected.

It is worth to mention that the written structure of the above mentioned constitutional article, allows representatives not to submit their report, because the use of the mode “would”<sup>4</sup> implies the possibility of not presenting any report

if there are no relevant comments to report (as if our state or any district were free of needs).

Most of the reports inspected in this study, beyond evaluating the district state, were mere reports over the representative's work, over their partisan fraction or a comparison against the activities of former legislatures. Only 19 representatives considered in their reports some of the items set forth by law; and only one of them responded in compliance with all aspects thereby included. Eleven legislators did not present any report at all.

Visits to districts can be an important source of information to create law initiatives, because by a direct communication with the represented people, each district actual situation can be known, and from there, it is possible to promote initiatives targeted to population's life quality improvement. Unfortunately, during our district visits, we witnessed that more than just one communication space between legislators and represented people, actually were promotional partisan activities.

Finally, it is worth to mention that there is no system that allows a proper follow-up over the reports presented by representatives, and if such reports are produced, they are simply filed away in the Congress Library.

## **II. LEGISLATIVE WORK**

### **Commissions work**

To perform their tasks, the Congress is integrated by 23 legislative commissions, representing the space in which law initiatives, decree projects and other matters are studied and ruled, for their later presentation before the Congress Plenum (Art. 43 of Legislative Power Organic Law (LOPL acronym in Spanish)). The LOPL establishes that the commissions will be integrated by a minimum of three and a maximum of five representatives, that they will have an activities schedule and they will met, at least, twice per month during ordinary periods and at least once per month, during adjournments, by previous call from the President.

Commissions meetings will be private, but they can hold public meetings with purposes of information and hearing, if so is agreed upon by its members. Their judgments will be approved by majority of votes and their presidents will have quality vote, additional to the regular one.

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<sup>4</sup> 5) To present before the Congress, at the opening of the immediate sessions' period after the visit, a written report containing the gathered observations, proposing at the same time those measures that are considered convenient.

### **Work schedules and meetings held per Commission**

One of the obstacles we have faced in the evaluation of legislative work in their commissions is that there is no official legislative agenda, both in the Congress and the commissions' cases. This is why we consider that it is important to discuss and establish an agenda, agreed upon by the different political parties and society, thereby preventing the prevalence of interests that are beyond state and citizen interests.

Considering its conformation, current Congress commissions are just apparently plural. Nevertheless, their diverse political relevance becomes evident if we consider the amount and characterizations of the issues they deal with, and which party is presiding. Commissions work is disparate; meaning that while some of them concentrate a significant amount of work, the others remain almost unnoticed. Most resolutions over those matters that have been submitted to them, although not resulting from the planned task of a given commission, could at least have represented the product of a representative's campaign promises. Therefore, it is urgent to regulate citizen participation pathways in our State, by virtue that the commissions, in absence of clear criteria to prioritize the issues to be dealt with, are in charge of deciding if such issues should or should not be presented to the Plenum.



The following table accounts for such unbalanced work within commissions.

	<b>Commissions</b>	<b>Issue Totals</b>
	Library	1
	Municipal Development and Federal Invigoration	57
	Economic Development	12
	Rural Development	36
	Social Development	3
	Attention to handicapped individuals and vulnerable groups	15
	Public Education, Science and Technology	32
	Equity, Gender and Family	13
	Government and Constitutional Items	116
	Parliamentary Coordination Meeting	89
	Justice and Human Rights	58
	Works and Public Services	101
	Scheduling, Budgets and Public Treasury	185
	Ecology and Environment	10
	Health	7
	Work and Social Provision	18
	Congress General Accounting Surveillance	154
	Border Matters	51
	Civil Protection	14
	Indigenous Issues	3
	Special Commissions	11
	Attention to Elderly Citizens	10
	Youth and Sports	4
	Citizen Participation	15
	Plenum	33

In the LX Legislature, most commissions were presided by PRI, thereby granting this party an unquestionable pre-eminence over Legislature decisions, as amongst the powers granted by LOPL to the Commission President, are the following: to summon for commissions meetings; to monitor work schedule fulfillment; to have a quality vote additional to the regular one; to request supports; to distribute and coordinate Commission's tasks.

Congress commissions leads and targets are related to the interests of the partisan majority and disconnected from the capacities and competence of their tasks. It is necessary, therefore to regulate the distribution of the different positions with the purpose of creating a balance among the several forces and guarantee an objective and transparent performance, supported by an activity agenda.

Access to information related to commissions' performance has increased. During the first analyzed session period, we only received information from four commissions (17.4%), though none of them in response of the requested matters. For the third period we had information from 11 of the 23 existing commissions (48%). Despite this increase, it is necessary to have more detailed information, because in spite of the amount of filed requests, only a few commissions really served them. It is also necessary that the commissions' sessions become public, with the purpose of granting more transparency to their activities.

Another aspect of the commission's work that is necessary to improve is the level of absenteeism from legislators. We know, through some commissions reports, that a significant number of meetings had to be suspended due to lack of quorum. Therefore, the legislature produced an initiative to rule the attendance, not only for sessions but also to commission meetings, where the toughest legislative work is performed. Nevertheless, such initiative was rejected.

In addition to the above described problem, another obstacle must be added to the correct performance of commission's works. The Parliamentary Coordination Board (integrated by the four parliamentary coordinators and the Congress President in turn) has attained a significant power over legislative work, and it has turned into a space for agreements over the issues to be negotiated and the way in which voting is performed.

Currently, within the Commission of Government and Constitutional Items, an initiative of Law of Transparency and Access to Government Information is under study. This Law represents a need claimed by Red Ciudadana, after facing difficulties to access the information that was necessary for this paper, especially regarding the internal Congress management and organization.

## **PLENUM PERFORMANCE**

As opposed to what happens with the Commissions sessions, Plenum sessions are totally public, allowing citizens to know what is happening and under discussion. This legislature is characterized by the large amount of unanimously voted issues and by a full discharge of ruled matters, strongly defeating the

delays of former legislatures. However, we must remember that there are still relevant matters to be revised, despite the social claim. An outstanding case is the one related to the regulation over citizen participation pathways.

Despite the significant amount of ruled issues, only 18.6% is related to legislative matters. 32% are agreement points (petitions, exhorts, pronouncements, procedures), which, generally, are focused on settling partisan matters. It is essential to overcome the partisan focus and to concentrate the work in favor of citizenship.

It is worth to highlight that law initiatives and/or amendments, emanated from social claims proposing more citizen participation over public matters, were all rejected. For example: appointment of Counselors of Human Rights State Commission; the creation of a State Accounts Court; Indigenous Law approval; Legislative State Plan; the Supervisory Unit, among others. The integral amendment of the Electoral Law was postponed.

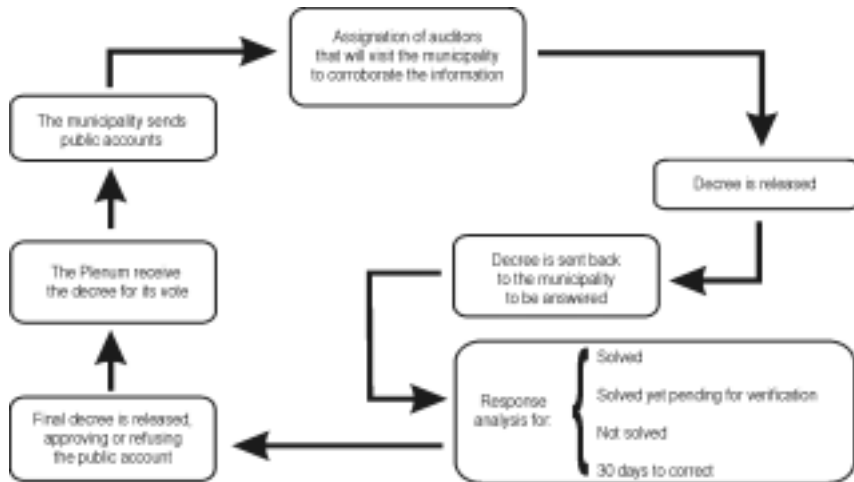
When especially transcendent social development proposals were presented, they were limited to popular consultation, thereby creating the use of hardly transparent criteria and analysis processes. As in the commissions case, there is no legislative agenda for the Congress Plenum, thereby favoring discretionality in the determination of the topics to discuss and their scheduling.

We divided this area in two parts, the first one is the supervisory function towards those entities that receive resources from public Treasury, and the second one, is a revision of the transparency over the exercise of resources inside the Congress itself.

## **THE SUPERVISION**

Congress has the faculty to examine, discuss and approve the State expenditures budget every year, by discussing and approving, first, the necessary contributions to cover them, under their own judgment. Additionally, the Congress must review State Government Public Account, which is presented by the Executive quarterly and yearly. The purpose of the revision is to know the results of the financial office, to confirm if it complies with the stated budgetary criteria, and to supervise the fulfillment of the objectives included in the programs.

The inspection process is detailed in the following outline:



The analysis was made from public accounts audits, which are presented to the Congress Plenum. They are published in the Debate Journal, information main source for Red Ciudadana. The judgment over public accounts is created from the audits performed by the Congress General Accountantship, which is a subordinated technical body of the Supervisory Commission and it is the latter one that is in charge of submitting such judgments to the Plenum.

The work of the Supervisory and Accountantship Commission is the most discussed one in the tribune, because according to some representatives, their work is partial, partisan and without clear criteria in accounts revision and judging. Despite the fact that all public accounts show numerous abnormalities, 95% of them were approved.

### **Congress General Accountantship**

In accordance with the State Congress General Accounting Organic Law, the Congress General Accountantship is the body in charge of performing the countable technical examination of the State and Municipalities Government public account, incomes and expenditures, and the patrimonial condition of decentralized bodies

or semi-state / municipal corporations, goods, assets or public funds, managed by any public entity, as well as state and municipal subsidies.

Regarding the Accountantship activity, in charge of verifying if the income derives from the strict application of income laws and other applicable dispositions in fiscal matters, to verify if public expense complies with the expenditure budget and to verify if the approved programs have been fulfilled. Regarding these activities, it is worth to highlight the following:

- There is no appropriate and uniform criteria for municipal public accounts revisions, causing that the audits are not actually reliable and fair;
- Follow-up over the remarks made to approved accounts is necessary;
- We have no evidence that any administrative and criminal faults are followed up, despite such activity as been recommended by the Congress Accountantship,
- There is no evidences of sanctions to those municipalities that present unapproved public accounts due to errors and/or faults, allowing them to have the same behavior and favoring the repetition of errors as a result from such tolerance.

Regarding Public Accounts, it is also possible to point out some deficiencies that create concern:

- No fulfillment by the municipalities of the established terms to produce or present documents before the Congress (30 days);
- Lack of valid documents to prove municipality purchases or sales;
- Some decentralized public bodies present investment accounts in dollars abroad, which created considerable losses (up to 80%), compared against the returns that would have been obtained if such investment had been made in CETES. All the above information is derived from financial speculations, which are not the main objective of the said bodies. Some examples of the mentioned bodies are: Promotora de la Industria Chihuahuense [Chihuahua Industry Promoter], Fideicomiso Pronaf [Pronaf Fideicommissum], Fideicomiso Salvacar [Salvacar Fideicommissum] and Fideicomiso por el Mejoramiento del Puente Internacional Córdoba [Cordoba International Bridge Improvement Fideicommissum].
- Tax evasion is fostered by considerable purchases from only one supplier who, in some cases, is a public officer's relative. There are also times when these public officers are the owners of the supplier companies.

- There are missing amounts of money that were never recovered, because there are no delivery / reception acts when officers are changed,
- Abnormalities are especially serious in item 33. In the studied municipalities, it was found that there are direct work adjudications, that there are no contracts, that contractors are not compelled by a guarantee, that more than necessary material has been supplied; that some works were never completed, that travel expenses and freights are paid to contractors. Inexistent machinery has been leased, that unpaid expenses are recorded, and there are no work delivery/reception acts.

However, it must be clarified that positive things have also happened. For example, some entities that have received public funds and were never audited before, had to take such type of an inspection for the first time, as is the case of the University of Chihuahua, after 48 years of life. Furthermore, an agreement was formalized indicating that the audits results must be published in the Congress Internet website. This is especially relevant, because the information will be readily available to the public.

Finally, and considering that some of the public accounts errors of are due to criteria discrepancies in the presentation and location of the corresponding information, the Accountantship undertook the task of providing training for the municipalities with the purpose of minimizing such errors.

Therefore, the Supervisory Commission now has the faculty to keep a control record over patrimonial statements; however, it is not empowered to request the competent authority to initiate the necessary procedures to detect possible criminal behaviors.

Unfortunately, an initiative intended to assess public servant's patrimonial statements was rejected. This initiative aimed to take the officer's immediately previous statement as a baseline, and in case of identifying any unjustified increase in an officer's patrimony, the State General Attorney would be notified in order to perform the necessary procedures.

Three initiatives, which aimed to invigorate the supervisory function and presented by the former legislature were rejected during this same legislative period. They were rejected despite the fact that citizens had been consistently demanding to have public bodies to guarantee transparency and proper use of public funds.

It is worth to highlight that the budgetary information provided to Red Ciudadana is not itemized, thereby eliminating any possibility of keep knowledge over the use of such resources.

### **Congress Internal Administration**

The public resources that have been allotted to Congress operation are extremely high. The following table is eloquent enough:

Number of Congress' legislators:	<b>33</b>
2 years Congress Budget:	<b>\$ 315, 829,000</b>
Cost per Chihuahua citizen, per day, per legislator:	<b>\$13,110</b>

In the information provided by the Main Clerkship, we observed a discrepancy in the Expenditures Budget approved by the representatives. Representatives approved a staff of 232 persons (including themselves). However, this entity's report includes 152 non-approved positions to directly assist the 33 representatives; in other words, 4.6 persons per representative, in addition to the 73 positions required for the Congress internal administration. This situation proves a lack of adherence to the approved budgets and reveals an extremely low transparency level in the handling of Congress resources.

It is necessary to perform a position analysis, as well as to evaluate the skills and performance of Congress employees, because in the period under study, aside from considering salary increments, an initiative was presented with the purpose of proposing a higher number of advisors per parliamentary fraction, specifying a minimum of six per fraction.

We consider that the mentioned initiative is not procedural, because a Technical and Research Unit already exists, precisely with consultancy functions and pursuant article 75 of the State Political Constitution: "To perform studies, provide information, address inquiries, issue judgments regarding law initiative projects, and to provide consultancy in all cases over strictly technical and legislative matters, as requested by the Plenum, Parliamentary Coordination Board and the resolution commissions".

## **Administration Committee**

The Administration Committee plays a very important role within the Congress, because in accordance with the sixth paragraph of article 70 of its Organic Law, it is the responsible for the control of Congress' expenditures budget exercise and to monitor the fulfillment of the corresponding expense application and verification regulations.

It is interesting to point out that this Committee is presided by the majority fraction (PRI) and that the other two members are the PAN and PRI fractions coordinators. At the beginning of this LX Legislature, we requested the disclosure of the Congress itemized budget, because we only had the budget general explanation that appeared in the official newspaper and this does not allow us to have a clear vision regarding the use of such resources.

To this date, we have not been provided with any legislative internal audit. State Constitutional article 8 states the citizen right to request information and the obligation of the requested officer is to respond within a term of 15 days; however, after one year and a half in office, there is no official response explaining the reason why the requested information has not been delivered to us as yet.

## **Conclusions and proposals:**

After monitoring Congress performance, we determined that there are numerous aspects that still need a significant amount of work in order to improve transparency and accountability mechanisms. Among them, it is worth to point out the following:

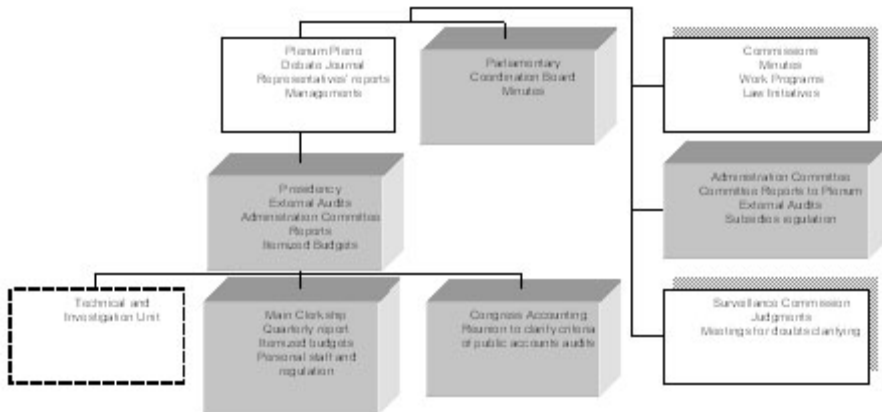
- It is necessary to have clear and precise regulations over the supervisory function performance in order to provide more credibility and impartiality to public accounts revisions. It is also necessary to establish sanctions for those who infringe such dispositions;
- It is necessary that the Congress General Accounting discloses the results and observations made over public accounts;
- It is also necessary to disclose the results obtained from State Congress audits. Such audits should be performed by an independent body elected by two thirds of the Congress;
- A deep and serious revision of the different laws that rule representatives and Congress roles is necessary to invigorate the Legislative Power functions, in order to balance the performance of the other two powers;



- It is important to have a legislative agenda, democratically and publicly agreed upon by the different political forces of our State, political parties and citizens in general;
- It is necessary to legislate over the right of access to information, to guarantee this prerogative independently from the political force in Government,
- With the purpose of creating a joint participation process between the citizens and Government, citizen participation pathways regulation, as set forth in our Constitution, must not be postponed any longer.

With the purpose of providing a general vision of our monitoring and access to information<sup>5</sup> work, we present a State Congress internal organization map, showing the different bodies from which Red Ciudadana requested information, and the areas with the highest level of opacity. These are highlighted with tri-dimensional squares and, as it can be observed, they are those in charge of the local Legislative Power administrative issues and the internal accounts. Those are the ones that did not serve any of our information requests.

## LX LEGISLATURE INFORMATION TRANSPARENCY MAP



<sup>1</sup> Due to space reasons, this work does not include the results of the Citizen Participation and Communication Programs, which embraces a series of activities carried out with different sectors of the Chihuahua's population, and over the creation of promotional materials, respectively. It is also impossible to include information related to the Advisory Council, which has as functions, among others, to guarantee the financial feasibility of this Legislative Transparency project.

## **Acknowledgments**

To all persons who, in one way or the other, have participated in this project; also, to local, national and international social organizations, to academic, government, state and federal institutions, to communication media and to LX Legislature of the H. Congress of the State of Chihuahua for their contributions for the completion of this project.

We hope that this citizen effort means a contribution to Mexican political culture.





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