

MUNICIPAL TRANSPARENCY: DIVERSE AND CHANGING. SOME IDEAS TO WORK WITH

Flavio Lazos Garza

Introduction

Over the past 20 years, Mexico has been going through a complex and uneven decentralization process. With varying rhythms and substance, the federal government has been shifting responsibilities, attributes, functions and resources to the states and, to a lesser extent, to municipal governments.

In the context of elections that led to a change in the political party in power, and the zigzagging process of democratic consolidation in Mexico, issues such as information access, transparency and accountability have gained considerable ground—in multiple and contradictory forms—in the discourse, norms and practices (in that order) of all three levels of government. Nonetheless, in every case, citizens' capacity to sanction politicians and public employees who act irresponsibly continues to be severely limited.

Advances

There is clearly great disparity in municipal transparency in Mexico. It ranges from areas where modern regulations and practices prevail (in city governments such as Guadalajara, Monterrey or Chihuahua, to mention just a few), all the way to regions where authoritarian practices persist. In some medium-sized and rural municipalities, the norm is total opacity, with minimal checks and balances, as in Catorce in San Luis Potosí, a case that has been thoroughly documented.¹ The first set of regulations on municipal transparency was issued in 2002, months before the publication of the Federal Law for Transparency and Access to Information (LFTAIPG in Spanish) and many others followed.^{2 3}

¹ Denise McVea, "Local Transparency Still Opaque for Many Mexican Communities," Americas Program, International Relations Center (March 15, 2005). Available at: <http://americas.irc-online.org/articles/2005/0503localrtk.html>.

² The oldest precedent is the Regulation on the Right to Information of the Municipality of Monterrey, published in the *Periódico Oficial del Estado*, May 20, 2002. Available at: http://www.atlatl.com.mx/docs/Monterrey_RegInf.pdf.

³ For a complete breakdown of existing laws and regulations, see the website maintained by the Instituto Federal de Acceso a la Información (IFAI): www.ifai.org.mx.

However, the issue does not simply involve issuing new laws and regulations, one also needs to assess actual institutional performance, in order to make concrete progress visible. In mid-2005, the Citizens' Transparency Observatory (Observatorio Ciudadano para la Transparencia in Spanish) carried out a study to evaluate how thoroughly the federal government, state governments, and municipal governments of major cities comply with transparency and information requirements as established in their respective laws.⁴

The study used as variables some of the current legal obligations to publish information on the internet. It concluded that the executive, legislative and judicial branches of the federal government were doing the best job of compliance. Municipal governments as a whole came in second, with an average score that was higher than the executive, legislative and judicial branches at the state level, as shown in the following table:

Governmental Unit	Average / 100
Municipalities	52.3
States	42.8
Judicial Branches	42.2
Executive Branches	41.7
Legislative Branches	36.1

At the municipal level, in that sample, the municipality of Chihuahua got the highest score, followed by Manzanillo (Colima), Hermosillo (Sonora) and Mérida (Yucatán), which all came in together in second place. However, five municipalities in the study registered zero points on the scale (La Paz, Nayarit, Puebla, San Luis Potosí and Tlaxcala).

The study found that, “municipalities seem to behave in ways that are independent of the states. Moreover, the presence or absence of a law does not seem to be particularly determinant of the degree of transparency. This would seem to indicate that political will is the determining factor in the creation of transparent governments.”

Limitations

Another valuable instrument in this area is Citizens for Transparent Municipalities (Ciudadanos por Municipios Transparentes, or CIMTRA in Spanish) an initiative launched

⁴The results of this civil society initiative, organized by distinguished academics, can be seen at: <http://www.observatoriotransparencia.org.mx/>.

by public interest groups in 2002.⁵ The goals are two-fold: to measure the transparency of local governments, and to assist and advise those governments as they institutionalize specific processes and practices to move them further toward their goal.

CIMTRA takes stock of the information available to citizens from municipal governments. These assessments gather facts and document actions that take steps toward transparency, accountability, and access to information, and they are carried out by local civil society initiatives. Rather than seeking scientific or representative samples, the results reflect local civic commitment in action.

As of late 2006, CIMTRA studies had been applied in 71 municipalities nation-wide; of these, several municipalities have been recognized as setting the high water mark for transparency: San Pedro Garza García, Nuevo León; Chihuahua, Chihuahua; and Guadalajara, Jalisco. The overall average of the municipalities' score is a failing rate of 37.4 (on a scale from 0 to 100 points), but a disaggregation of the data shows that the averages are going up. In the first round of evaluations, the average was 24.8 points; in the second it was 47.2 points; and in the third it had reached 58.0. In other words, the studies show a clear learning curve: in general, the more often the study is applied to the same local government over time, the more the score will improve, because the municipalities are making institutional changes to become more transparent.

Despite the trend toward more information access in municipal government, it is a considerable challenge to increase the availability of electronic information. According to a census carried out by the National Institute for Federalism and Municipal Development (Instituto Nacional para el Federalismo y el Desarrollo Municipal, or INAFED in Spanish), in June of 2006, of all the 2,438 municipalities, only 24.9% had their own web page and 41.2% had access to e-mail. Again, we see the asymmetry: according to this report, in only four states did all the municipalities have a web page available (Aguascalientes, Baja California, Nuevo León y Quintana Roo); on the other hand, in nine states, fewer than 25% of the municipalities had them.

It is important to mention that in many rural municipalities, poor electricity and lack of adequate telephone lines still impede internet access. Although the web is not the only way to access information (especially in a country with severe functional illiteracy), it is fairly generalizable, economic and democratic.

⁵ For more information see: <http://cimtramx.tripod.com/transparencia/>. The organizations that launched the initiative are the Centro de Servicios Municipales "Heriberto Jara" (CESEM), the International City/County Management Association (ICMA—Latinoamérica), Acción Ciudadana para la Educación, la Democracia y el Desarrollo (ACCEDDE)—Jalisco, the Instituto Tecnológico y de Estudios Superiores de Occidente (ITESO), LOCALIS—Querétaro, Vertebra—Nuevo León, and Alianza Cívica.

From the IFAI's perspective, expanding the online access system is a priority, "because [otherwise] the transaction costs in the flow of information end up killing the right to it."⁶ Indeed, the bureaucratic processes of booths, long lines, forms and photocopying discourage transparency and make it expensive. The challenge is to create supplementary mechanisms that will facilitate access to information for social sectors that are not familiar with cybernetic reality.

The wide-ranging quality, applicability and scope of state level public information access laws have been exhaustively demonstrated: for some, the interests of government agencies take priority over individuals' rights.⁷ The conclusions of these studies are alarming because they reveal, first of all, the complex task of implementing transparency policies; they also reveal progress that is more form than content in the government's political decisions about making the policy process more transparent. Both dimensions are present at the municipal level—in plans to broaden contact with citizens as well as to develop arenas of electronic government.

Currently there is no federalist legal framework that would provide consistency for the three levels of government, and thus structure citizens' right to transparency and information. In 2006, the Guadalajara municipal government went to the Federal Supreme Court, declaring that the State of Jalisco's Law on Transparency and Public Information, passed in 2004, was not applicable to the Municipality of Guadalajara. They had already passed their own set of laws—the Reglamento del Consejo para la Transparencia y la Ética Pública (the Council's Regulations on Transparency and Public Ethics), and believed municipal autonomy should prevail. However, the Court rejected it as a constitutional case. The court's decision stated that to recognize municipal regulatory autonomy could create, "a Babel about transparency." Some authors share the opinion that state authority should take precedence in the information access issue, given the "extreme danger" of the fact that there are more than 2,400 sets of municipal regulations, in clear disagreement with advocates of municipal autonomy.^{8 9}

⁶ Comment by Ricardo Becerra Acosta, Director General de Atención a la Sociedad y Relaciones Institucionales of the IFAI. Interview conducted in early February, 2007.

⁷ Mauricio Merino, "El desafío de la transparencia. Una revisión de las normas de acceso a la información pública en las entidades federativas de México," in *Democracia y transparencia* (Mexico: Instituto Electoral del Distrito Federal Col. Sinergia, 2005). See also Eduardo Guerrero Gutiérrez and Leticia Ramírez de Alba, "La transparencia en el ámbito subnacional: Una evaluación comparada de las leyes estatales," in Sergio López-Ayllón (ed.), *Democracia, Transparencia y Constitución. Propuestas para un Debate Necesario* (Mexico: Instituto Federal de Acceso a la Información – Instituto de Investigaciones Jurídicas de la Universidad Nacional Autónoma de, 2006). See also "Estudio comparativo de Leyes de Acceso a la Información Pública" developed by the IFAI (updated June 2006) available at: http://www.ifai.org.mx/test/eym/Estudio_Comparativo.pdf.

⁸ Luis Alberto Domínguez González, "El acceso a la información pública en los municipios en México," in López-Ayllón, *Democracia, Transparencia y Constitución. Propuestas para un Debate Necesario* (2006).

⁹ www.ammac.org.mx/Comunicacion/Posicionamientos/Documentos/COMBL040.pdf.

Perspectives

With the understanding that the internet is an indispensable means for the effective extension of the right to access information, the Federal Institute for Public Information (IFAI in Spanish) and the World Bank designed Infomex, an internet system that would be adaptable to Mexican transparency laws and to both state and municipal parameters.¹⁰ This instrument, available to any state or municipal government that wants to adopt it, facilitates the internal processing of information requests and allows for a consistent exercise of the right to information among various institutions and levels of government. It is an interesting tool, but an under-used one.

The disparity in state and municipal practices of transparency demands in-depth legal solutions and resources to effectively promote accountability in a whole, meaningful way.

One response to this situation is the “Chihuahua Initiative.” Backed by five governors, it is a proposal to amend Article 6 of the Constitution and establish minimum standards for free access to information on the exercise of power and public resources—an approach that is fully compatible with a long-term federalist vision. Although it may seem to be a centralist solution, its emphasis is on guaranteeing an equal right to know for everyone, regardless of the municipality one happens to reside in.

The proposed reform seeks to reduce the current kaleidoscope effect of information access at the municipal level—diverse and fragmented. If the amendment goes through, the challenge will be to work constructively to close the gaps between areas of public policy, political organization and administrative audacity. This would contribute to a structural reform of the Mexican state, in keeping with current challenges of democracy.

Conclusions and Recommendations

Although transparency in Mexican municipalities is as heterogeneous as their socio-economic situations and institutional capacities, there is a slow and growing trend in municipal governments toward informational opening and accountability—and this trend is more marked than at the state level.

¹⁰ Ricardo Becerra, “Transparencia y medios electrónicos: el proyecto Infomex,” September 2006, available at: http://www.politicadigital.com.mx/nota.php?id_rubrique=13&id_article=187&color=4C5A8E.

In the context of the country's democratic transformation, issues of transparency and the right to public information should be part of deep changes in the relationship between governments and citizens.

It is crucial to make headway in, “substantive work toward coherence, connection and consistency between local and federal laws, and between federal laws and municipal regulations. This is not about forced homogenization, but about creating a shared project so we can avoid having 32 ways to exercise the same fundamental right, which is the deeper meaning of reforming Article 6 of the Constitution.”¹¹

To move towards legal equality and avoid confusion between transparency policies and the public's right to access information that government authorities produce, we urgently need to think through the process by which each of the governments in Mexico make broader changes. Government should re-conceptualize how the public sector interfaces with society more generally, each at its own rhythm, but all should move forward. As Merino notes, “what we need are many transparency policies. Each government should adopt what fits its own characteristics.”¹²

This means, in turn, rethinking the old model of “centralist federalism” in order to develop a model based on cooperative decentralization—one that is asymmetrical, gradual and negotiated, and includes public finance—and one in which the municipality plays a key, proactive role.

Citizen demand, rigorous scrutiny and informed participation should drive the construction of checks and balances at the local level that will ensure full rights to information, grounded in constitutional rights.

On this new foundation, a great deal of political will, resources, infrastructure and capacity will be needed in order to build these many transparency policies—as many as required by municipalities' diversity.

¹¹ Comment by Ricardo Becerra Acosta, Director General of Atención a la Sociedad y Relaciones Institucionales (Attention to Society and Institutional Relationships). Interview conducted early February, 2007.

¹² Mauricio Merino, “Muchas políticas y un solo derecho,” in López-Ayllón, *Democracia, Transparencia y Constitución. Propuestas para un Debate Necesario* (2006).