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## Valuing the Transparency Policy in Mexico: in search of a better configuration\*

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### Introduction

In government language it is easy to mistake information disclosure with transparency policy. Every day, it is very common to find that the government discloses information, and that it does not improve the routines of the instances which publish them, nor has it contributed to improve government performance. Every transparency policy contributes to change the working routines of the government, improves government performance, controls corruption and makes government accounting rendering more systematic.

Studies about government quality worldwide<sup>1</sup> show that although progress has been made in regard to corruption control and government efficiency in Latin America and the Caribbean, the advances made in relation to “voice and accounting” are non-existent, even more in relation to the indicators of the countries which are part of the Organization for Economic Cooperation and Development (OECD)) between the years of 1996 and 2002.

In Mexico, the right for information access was incorporated through an amendment to Article 6° of the Constitution, which came into force on December 1977. During some years it was estimated that this right could only be exercised by the political parties. On June 1996 a

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1 Daniel Kaufmann, Aart Kraay and Massimo Mastruzzi, “Governance Matters III: Governance Indicators for 1996-2002. Washington, World Bank, 2003.

new sense was established. This change in interpretation made the society certain that public authorities would give them information about their activities. Finally, with a series of resolutions pronounced on January 1997, December 1999 and March 2000, it was considered as a personal warranty limited by national and society interests and the respect to third parties rights<sup>2</sup>.

The enforcement of Public Government Information Access and Transparency Law established that the persons compelled<sup>3</sup> must give public access to the information about their organic structure, faculties, goals and objectives of each administrative unit, directory of public servers, monthly remuneration of every job position, services and formalities they offer, information about job positions, results of the audits to the budget financial period, design, execution, amounts and access criteria to the subsidy programs, beneficiary registry of the social programs established by the Decree of Budget Expenses of the Federation, concessions, permits and authorizations given, as well as contracting made in terms of the applicable legislation.

Nevertheless its relevance, the disclosure of this information is of limited value for social interests, because it may seem that the government just wants a greater public visibility without modifying the way in which the information is produced and used. In my point of view, the transparency policy in Mexico has no strategic value for the use of information.

If we consider the social interests in the information disclosure, we would surely find public information about impacts; however, in Mexico it is very common to find information about inputs, there is little information about results and you will hardly find any information about impact.

An information example about inputs is the public expenditure or the contracts for building schools, the results information only mentions if the school was built or not and the information about impact lets us know if the children could go to school and if they could learn

2 Jose Ramon Cossio, "Transparencia y Estado de Derecho", in John Ackerman (coordinator), Más allá del acceso a la Información. Mexico, Siglo XXI, 2008.

3 Subjects compelled according to the Information Access and Transparency Law: The Executive Power, Federal Public Administration and the Attorney General, the Legislative Power formed by the Chamber of Deputies, Senator Chamber, Permanent Commission and any of its organs, Judicial Power of the Federation, autonomous constitutional organs, federal administrative courts and any other federal organ.

anything<sup>4</sup>. In this article the concept government transparency is mentioned due to its importance and contribution in corruption control and the improvement in government performance, such as the ambits where it has its first impact, if not the only ones.

Finally, we want the readers to know that it is very important for the government and citizens to have a transparency policy which works well in practice and the parameters which must be taken into consideration for its design, introduction and evaluation so in the near future it contributes to improve government performance, control corruption and have a better accounting rendering.

## **I. Government transparency and its importance**

Government transparency is the disclosure of important information in easy and constant access networks. Transparency does not depend on the right of the person to have access to the information, it does not require an application, it is a system which must be operated in such a way that it yields the expected results<sup>5</sup>.

Unlike the petition rights or information access, transparency is a general condition of the State's functioning. Information is published and updated even without the direct action of an interested person. We talk about transparency when information disclosure is present, when there is the capacity to apply penalties and compensations. Then, accounting rendering is exercised and the capacity of demanding change in the institutions behavior is present.

Having a transparent government which proposes information access is one of the mechanisms which contribute to government accounting rendering, because it is from the publication of the government acts in a clear and systematic way, as well as the explanation of reasons, objectives, costs and benefits which support them, that penalties and compensations can be applied as well as demanding changes in the acts of government.

According to Luis F. <sup>6</sup>Aguilar Villanueva, in contemporary Governance there is no possibility of assuming that the functioning of the public

4 Jonathan Fox, "Transparencia y Rendición de Cuentas", in John Ackerman (coordinador), Más allá del acceso a la información, México, Siglo XXI, 2008.

5 José Ramón Cossío; art. cit.

6 Luis F. Aguilar Villanueva, Gobernanza y gestión pública, Mexico, FCE, 2006. Introduction and chapter 1.

policy systems are shaped from the intentions or preferences of the officials, or from the logic of public organizations. The way of the government –that is to say, the government auto-motivated and auto-referenced acting– must be overcome to adopt Governance ways and purposes, and its main characteristic is the role of Civil Society and its organizations.

If all the above is true –and as we are discussing here, accounting rendering and transparency, not defined as pure contact media between government and citizens, but as the space between shared analysis and open debate between both Governance extremes, the next step is to recognize the fundamental place that constant and continuous development and perfectionism of the transparency policy and the exercise of accounting rendering should have in the Mexican state.

We should consider –as a defining characteristic– that accounting rendering is a dynamic process which implies being in constant communication with society, it implies to explain and justify government actions. A better public accounting rendering is directly related with corruption control. The use of public power for personal benefit, through bribes and other forms of personal business, is a manifestation of lack of government accounting rendering.

Transparency, as well as accounting rendering, play a fundamental role in the optimal functioning of the State, mainly because it contributes to control corruption and improve government performance. It controls corruption because information disclosure facilitates knowledge about how government organs work, which in turn will avoid making bad decisions which are far from the established parameters for granting goods and services.<sup>7</sup>

In the same way, it contributes to improve government performance because it implies full access from the citizens to determinations and process developed by government organs, as well as results of programs and process which are operated by government agencies and entities.

Mauricio Merino identifies the following irregular conducts which can be present due to lack of an adequate transparency policy:

7 José Ramón Cossío, art. cit.

1. Hide public information for increasing personal patrimony;
2. Using privileged information for increasing personal political influence;
3. Excluding certain key actors in a decision process;
4. Simulate documentation from a process which should have been executed in a different way; and
5. Delay the information flow for making opportune decisions<sup>8</sup>.

According to Jonathan Fox there is an opaque and a clear transparency:

- a. Opaque transparency refers to official information ways which do not reveal how institutions perform in practice, whether in terms of how decisions are made or which are the results of their actions; and
- b. Clear transparency, on the other hand, refers to programs which reveal reliable and easy to access information about institutional performance, mentioning the responsibilities of the officials in charge, particularly in regard to decision making, as well as the real destination of their resources. Clear transparency sheds light about institutional behavior in such a way it lets the interested parties create constructive change strategies for the institution.<sup>9</sup>

In this sense we can make the first conclusion from this work which says that in Mexico there is not an adequate transparency policy. Most governments refuse to reveal data about their performance, expenses and results because there are no clear incentives to strive for a real transparency; besides, to make this kind of data obvious will face the government with the political costs of showing the benefits of some groups inside and out of bureaucracy.

This presumption of resource deviation or favoring interests is one of the main issues in the contemporary debate about transparency, because it does not necessarily imply this corruption acts which can be legally penalized, happen. It refers to the fact that a great part of the public programs adopt configurations which favor some interests and groups which go farther than the obvious and inevitable associations every policy assumes. What I am talking about are the issues which are not always acknowledged by the branches and entities of the Mexican government, which involve the adoption of

8 Mauricio Merino, "La transparencia como Política Pública", in John Ackerman (coordinador), Más allá del acceso a la Información, México, Siglo XXI, 2008.

9 Jonathan Fox, art.cit.

a productive sector criteria or an interest group when the time for creating certain policy or program comes. By doing so, they support the interests, good or bad, of the privileged groups.

Everyday we can see examples of this situation in the news, which go from the creation of a law which favors the media concessionaires which already exploit the public space, to granting construction and services contracts which favor certain type of companies and associations and eliminating competition rules or free access. The main problem here resides not in eliminating or cancelling the authority acts, but that there is a justifying guarantee and an open and documented explanation under which criteria these decisions were made. Using judicial terminology, what we need is for authorities to make their acts with motivation and justification.

According to Jonathan Fox, transparency in Mexico is opaque because not all institutions publish information about their performance, nor about the results of their actions.

## **II. Consideration for creating a transparency policy in Mexico**

It is fundamental to know what is the goal pursued by disclosing government information. When it is only for regulating information disclosing at its minimum, there is no added value for public purposes. It is about a “cosmetic”, transparency policy which is only looking for greater public visibility without modifying the way in which information is used and produced. It is, by definition, frivolous: when transparency does not change routines, it is bureaucratic, a transparency policy which does not assume the strategic value of information, is useless.<sup>10</sup>

In this sense, Mauricio Merino emphasizes four parameters to consider in a transparency policy<sup>11</sup>:

**1.- Publicity:** Requirement of proving with documents and making public the information about the way each organization makes its decisions. The author mentions it is fundamental to establish criteria which make this more explicit:

<sup>10</sup> Mauricio Merino, loc.cit.

<sup>11</sup> *Ibid.*

- The way in which public problems are selected;
- The criteria used for deciding the use of resources destined to public actions;
- The participating actors, the way in which the causes which generated the problems were established, the methods used and the action courses taken;
- The evaluation mechanisms of each public action, as well as the results obtained.

The absence of these criteria suggests an arbitrary exercise in the assignation of public resources.

Jonathan Fox considers that before proving with documents and making public any information, they should:

- a) Define the purpose they are looking for by making the publication, for example, if they are looking to control corruption. It is also thought to improve government performance or simply to give public information to society;
- b) Determine what must be made clear for fulfilling such purpose; and
- c) Define what is needed so transparency can work out, because it can depend on the disposition and capacity of the interested social actors, communication means, competition between political parties, efficiency of the auditing or judicial systems, etc.

For example, if it is defined that the purpose is corruption control, an access initiative to information about the disclosure of government contracts can be determined. For ensuring the efficiency of transparency in this example, it will be necessary that the auditing and judicial systems act from information availability and penalizing abuses. If the expectation is to force changes in information disclosure, the capacity for penalizing officials who violate standard or rights must exist, as well as the capacity for acting and promoting institutional meaningful changes for solving systemic problems.<sup>12</sup>

In Mexico there are laws and regulations about the access to public and transparency information. We, Mexicans, can ask the government for information, but on some occasions, authorities, entities, federal, state and municipal organizations do not have the information

12 Jonathan Fox, art. cit.

required in writing, so it is denied; or an extraordinary effort is made to produce it.

The first step for making a transparency policy work in Mexico is to determine what must be cleared and document such information. Once you have the information, the next challenge is a clear, complete, truthful and timely publishing. Transparency is not an exclusive issue of information access, it also implies an organizational change which requires documentation of relevant issues which are useful for improving decision making, as well as documenting information of interest for the citizens. Once the information is processed, it must be used in a strategic manner for improving overall quality of the organizational results.<sup>13</sup>

**2.- Inclusion:** The importance of incorporating and informing the actors who should intervene in the decision making. It is fundamental to consider the following in the transparency policy:

- Incorporation of different actors in the decision making, and from this, information about those who took part along the policy project, and
- Incorporation of different participation possibilities to the implementation network, (whether by direct action, by opinion or by vigilance) from those who have legitimate interest in the results of such policy.

The absence of these criteria suggests hidden interests, with no public transparency.

Empiric investigations have shown that when information about social programs is available for public access, citizen opinion creates a substantial improvement. Supervision and participation of civil society in decision making and in the functioning of the public sector constitute a great instrument for improving governance.<sup>14</sup>

In general terms, citizen opinion is not taken into consideration in Mexico for the design and evaluation of public policies;<sup>15</sup> that is why

13 Mauricio Merino, El desafío de la Transparencia Organizacional, México, IFAI, 2007. Disponible en <http://www.bibliojuridica.org/libros/6/2521/11.pdf>

14 Jairo Acuña-Alfaro y González de Asís, María, "Gobernabilidad y Auditoría Social en América Latina: Retos de Implementación y Replicabilidad", en Voz, Ojos y Oídos Auditoría Social en América Latina, Equipo de la Sociedad Civil de la Región de América Latina y el Caribe y el Banco Mundial y el Instituto del Banco Mundial, 2003.

15 José Sosa, "Estudio Introductorio" en José Sosa (editor) Política Pública y Participación Social: visiones alternativas, México, Divip-UNAM, 2006, p. 6 and ss.



it is important to promote citizen participation in transparency policy design and evaluation. In the design stage of policy, government could receive opinions from external groups for defining the transparency policy. For the evaluation stage, actors could help the government to identify the areas in which the policy is not working and could recommend possible measures to be taken for improving or rectifying the policy.

One restriction which could be present in inclusion is the reluctance of organizations to openly criticize officials when they are financed by the State or when financing comes from abroad and is administered by them, because the existence of the organization depends on the cooperation from public authorities.<sup>16</sup>

Another restriction occurs when the right for information access is not one of the priorities of the citizen agenda. This happens because actors do not perceive immediate satisfaction by the exercise of having access to the information and promoting accounting rendering of the officials. Monitoring benefits must be visible and promote officials to be open to dialogue and suggestions.

It would be ideal if civil society organizations had process and activities oriented to creating democratic capacities at the moment of exercising their right to access public information and promoting State officials to account for their acts. In this way problems and limitations imposed by social participation can be overcome, and they are among others, low organization capacity, capture risk of the social or cacique-like leaders, and in general, little information in regard to knowledge and exercise of rights.<sup>17</sup>

**3.- Verification:** Capacity of documenting and verifying that decisions and process were taken into practice in the same way they were specified by the regulations or the applicable explicit procedures. Every policy must assume an explicit commitment with the results they are expecting from them; that is to say, they must be established as action courses where it is possible to find results which can be publicly verified not only in the way the budget is spent, but also examining the way goals are being met.

16 Susan Rose-Ackerman, "Rendición de Cuentas y el Estado de Derecho en la consolidación de democracias" en: Perfiles Latinoamericanos. Revista de la Facultad Latinoamericana de Ciencias Sociales; No. 26, FLACSO, México, 2005.

17 José Sosa, loc. cit.

It is fundamental to:

- Establish the course of action to be followed since the design, a set of expected results which are clear and can be audited and verified;
- Establish precise and measurable goals about time and in accordance to the resources and restrictions at hand from the organization parties and the public servers which form them;
- Plan a set of immediate, intermediate and final results which can be measured along the implementation process of a policy, and
- Establish the evaluation criteria of the process, both internal and external, in terms of quality standards previously established, as well as the means for comparing costs and results obtained for each policy and each program.

It is the society, the interests of multiple individual or collective actors, who can guard government expenses and commitment to goals if they have the right information. Sadly this does not happen in Mexico, because actors do not have detailed information about government operations. Besides, on some occasions, government does not have the immediate, intermediate and final results in writing so they can be verified.

An adequate transparency policy should establish evaluation criteria to guarantee the fulfillment of goals as well as the adequate use of public resources.

**4.- Responsibility:** It is the definition of functions, such as precision and documentation of decisions which should be in charge of each of the actors who participate in the implementation of agreements. It is fundamental that the transparency policy include:

- Administration rules and procedures essential to guarantee that a bureaucratic body has the necessary professional capacity for carrying out the attributions and developing information handling which has been assigned to him in a stable way;
- What is expected of the constituents of each area within the organization, regarding the information they create, use or distribute, and
- What is expected from every public server, in regard of the previous definitions about the results looked by the organization and for its role in the transparency policy.

### III. Conclusions

Nowadays there is a great worldwide activism of public and private organizations which are worried about transparency. It is a more critical and evaluating society which is asking its government to make an effective and useful accounting of their acts. Society of the early XXI century demands to know how public resources are spent. It is necessary to make citizens feel more tranquil and peaceful by having the possibility of knowing precise data about government performance, expenses and results.

As I have mentioned earlier, it is not enough to have Laws, Regulations even political will to publish certain information on Web sites from the entities. Among other things, having more and better information which is available to every citizen, to be able to have a quick, timely, truthful, complete and well founded response to specific requests. It is necessary to have different access and search media for the information needed and finally, there must be regulations which guarantee their fulfillment.

It is also necessary a change in the organizations so they produce, use and distribute information, putting some distance between the mere fulfillment of a requisite but assuming it as a continuous and self interest function. In this sense, an adequate transparency policy assumes that organisms not only receive and process information in a passive way (only for fulfilling regulations), but that in reality they produce and use it in a strategic way for the common good of the organization. In order for the transparency policy to function at its best, it is essential that sanctions be applied to officials who violate standards or rights and who make bad use of the public resources.

Citizen participation is very important, because external actors could keep an eye on the way the government spends and fulfills its goals with the information it discloses. In order to have an active citizen participation, it is necessary to involve them from the design of the transparency policy. The government would generate the required documentation and would put it into disposition of the citizens and they would watch the fulfillment of goals.

An adequate transparency policy which considers active participation of every actor can contribute to improve government performance, control corruption and have a better account of expenses. Far from being conceived as unquestionable results formulas, transparency

and account for expenses must be acknowledged as central components of contemporary Governance in which the bond between Government-Citizens is indissoluble and unquestionable. In the way both parties fully assume the role they have to perform we will have better public policies and better results in favor of the development and well being which are expected.

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