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Honduras' Transparency Law A Disappointment To Those Who Fought For It

by LADB Staff

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With a score of just 2.5 of a possible ten, Honduras is tied for 131st place of 179 nations on Transparency International's annual Corruption Perceptions Index (CPI). There is no Central American nation beneath it. Now the most corrupt nation on the isthmus has given itself the means to become even more so.

The Honduran Instituto de Acceso a la Informacion Publica (IAIP) has moved to make essential documents from the Finance Ministry and the Revenue Directorate (Direccion Ejecutiva de Ingresos, DEI) inaccessible to the public for ten years. Thus, the citizenry has lost access to the national budget and documentation of budgetary expenditures including movement of money between and among governmental branches, as well as to the most mundane data needed to run businesses. Also to be excluded from public view are the results of investigations of fraud and tax evasion. Nor can the public obtain information about state contracts, consultancy fees, and more.

In Orwellian fashion, this all came about through mechanisms and institutions designed to do the opposite, to respond to public concerns about corruption. The Ley de Transparencia y Acceso a la Informacion Publica became operative in January. It required state institutions and organizations receiving state money to respond to requests for information. But also in the text was the power to obfuscate, to hide, to lie by omission, and to confer yet another layer of impunity upon people in high places.

Miscast actors in leading roles

The seeds of discontent were sewn before the opening date in October when IAIP commissioners Elizabeth Chiu Sierra, Arturo Sierra, Arturo Echenique Santos, and Gilma Agurcia were chosen by the Congress. Political parties led by the Unificacion Democratica (UD) and Partido del Inovacion Nacional y Unidad (PINU) protested that the commissioners were chosen exclusively by the dominant Liberal and Nacional parties. The commissioners did not enhance their public-relations profile when Arturo Echenique threatened legal action against anyone who questioned their election. They are all members of one or the other of the two major parties.

Felix Molina, journalist and member of the nongovernmental organization (NGO) C-Libre, which presented the first draft of the transparency bill, thumbnailed the commissioners, saying, "These commissioners have lengthy professional and political careers, but their actions have been repeatedly questioned throughout the years. Though they have come out unscathed every time, accusations against them are related to abuses of power. They are not ideal officials and seem to be off to a bad start because the whole country is keeping close watch precisely because of how they were elected."

Civil-society organizations that promoted and agitated for the passage of the transparency law joined the smaller parties in their outrage at the immediate co-optation of the process. But the Consejo Nacional Anticorrupcion (CNA), a civil-society organization that supervises the law, approved the congressional choices nevertheless. The organizations had worked for five years to get the law passed. They had worked specifically to make it, said reports, "one of the most used, monitored, and socially scrutinized" laws on the books. The January ceremony ushering the law into being overflowed with enthusiasm, even with the complaints. Pocket-sized copies were distributed.

The CNA arranged with the Universidad Nacional to develop a curriculum for journalists to learn how to work with the law and process public information for public consumption. The goal was for everyone to know, and to be able to take advantage of, the transparency the new law would bring. The CNA had even, in cooperation with the Red por la Transparencia de Honduras (RETHO), designed a system of indicators to measure the degree to which any state, private, or civil institution had developed mechanisms of openness and access to information. The commissioners outlined for the public how any individual would go about seeking public information.

Elizabeth Chiuz Sierra explained how the IAIP would intervene if a public institution were accused of hiding data. She emphasized that the law applies to NGOs that receive public moneys as well. In February, President Manuel Zelaya publicly made much of the law. It was one of his campaign promises. He told a large, cheering throng, "We will go down in history because we are transparent and we don't want corruption." The newspaper *El Herald* reported that the throng was paid US\$10 a person and fed. Professor and lawyer Ramon Romero of the Universidad Nacional Autonoma de Honduras (UNAH) commented on the irony, saying, "The march was taken over by the government as if it were its own initiative, and it is worrying that a demonstration of this kind should end up being corrupted by a government that is promoting transparency."

Since January, the IAIP has worked to publicize the law. In May, it held the first workshop for municipal officials. This was not a voluntary move on their part. Article 6 of the law stipulates that officials must be trained in the process to guarantee Habeas Data. But all this has turned out to be little more than a dumb show. Very soon after the January unveiling, it was evident that there was subterfuge at work. Jaime Lopez of Red Probidad told the press that the law violated international conventions on corruption and on freedom of expression. "Virtually any document can be classified as reserved. Any minister can do this if he or she considers that public access to that information may be prejudicial to humanitarian aid, national security, economic stability, or governability, among other vague criteria," he told an Inter Press Service reporter, adding, "It's incredible that a law with such a positive purpose can be twisted so as to serve the opposite intention." The Red Probidad director explained that IAIP lacks exclusive jurisdiction and that other institutions may exercise the same functions.

A mandated decade of darkness

In the present case, information has been classified as reserved. The law stipulates a full decade must pass before declassification, during which time the data can be purged. Any document can be destroyed at any time during the ten-year-period. "Reserved documents could be destroyed before they are due for declassification and thus the public would never be able to have access to

them," said Lopez. Former Honduran human rights ombud Leo Valladares described how the law deviates from international norms. He said it limits the right to information by arrogating that right to the state, "which is not true. It is an irrevocable right of every citizen, guaranteed by the American Convention on Human Rights and the freedom of expression enshrined in the Constitution." The transparency law plays another trick in stipulating that it only pertains to information produced after its own effective date. "This means," said Valladares, "that it won't be possible to investigate what happened years ago, and not even last year and this year, because the law says it will only fully enter into force in 2008. This is an open violation of the Constitution and [the Inter-American] Convention Against Corruption."

The history of transparency to date has left democracy wounded in Honduras. Said UNAH's Romero, "Everything points to the law on transparency being a joke....It was turned upside down in Congress; people in society seem not to react, and when they do, the government pulls a fast one on them." All of the foregoing does not exhaust the deficiencies of the transparency law. C-Libre enumerated all of these in its criticism of the law that came from the bill it presented, and called the exclusion of high

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