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Effort to Reform Mexico’s Transparency Laws Stalls in Congress

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The two chambers of Congress in Mexico are feuding about measures to create a uniform transparency law in Mexico and expand the powers of the semi-independent transparency agency (Instituto Federal de Acceso a la Información y Protección de Datos, IFAI).

The move to reform Mexico’s transparency laws began in the Senate in December 2012, when the upper house approved an initiative to strengthen the powers of the IFAI, giving the agency oversight of state governments, political parties, labor unions, and any entity that receives any federal funding. The initiative also increased the number of commissioners to seven members from the existing five.

The creation of the institute in 2002 opened the door for the Mexican public to gain access to classified information, including documents that shed light on government operations (SourceMex, May 8, 2002). Human rights advocates lauded this move because they now could obtain documents that were previously off limits, including information on government operations where human rights violations were involved (SourceMex, June 19, 2002, Dec. 10, 2003, and June 22, 2005).

In 2010, the Mexico City daily newspaper El Universal used the freedom-of-information law to expose a government program that provided benefits originally intended for small and medium-sized farmers to politicians and drug traffickers (SourceMex, March 17, 2010).

While the 2002 transparency reforms served their purpose in opening access to documents previously not available to the public, the IFAI’s role was limited and the application of freedom-of-information actions was uneven at the state level.

"By early 2007, all the states in Mexico had a law in this area. However, there was one major problem: the criteria contained in such laws to exercise the right of access to information varied significantly," the IFAI said in the English-language version of its history that was posted on the institute’s Web site. "This meant that the requirements for entitlement were different depending on the state in question. Some required, for example, that the person making the request was a citizen of that state, others imposed various limitations on claims, or there were significant differences in the information that could be reserved. This created an unacceptable situation, for it was the same right to citizens, but with different exercise conditions in each state."

At present, 31 states, the Federal District, and the federal government each have laws regarding access to information. In addition, 214 municipalities have regulations on transparency and access to information, said the IFAI.

Senate approves sweeping changes to transparency law
In September 2012, outgoing President Felipe Calderón and then presidential candidate Enrique Peña Nieto raised concerns about the inadequate freedom-of-information system. At that point, Peña Nieto promised to push for changes and even developed a plan that he presented to Congress.
The Mexican Senate was the first to take action with the passage of legislation that expanded the powers of the IFAI and created a uniform set of guidelines to be used across the nation.

The initiative, approved in December 2012, obtained broad support from all the major parties, with Sen. Alejandro Encinas of the center-left Partido de la Revolución Democrática (PRD) touting the "political will" that allowed the legislation to pass. The measure, which gained support of 106 of the 113 senators present for the vote, was sent to the Chamber of Deputies for review.

"With the approval of these reforms, the Senate is providing better tools for citizens to gain access to all the public matters of our country," said Sen. Arturo Zamora, a member of the governing Partido Revolucionario Institucional (PRI).

"The access to public information is a human right, allowing us to know about any decision by authorities that will affect our lives," Sen. Laura Rojas of the conservative Partido Acción Nacional (PAN) said in a message sent on Twitter shortly after the legislation was approved.

**Chamber of Deputies waters down Senate measure**

The Chamber of Deputies examined the initiative for several months but did not take action until August 2013. In approving the initiative, the lower house introduced some changes that the Senate deemed unacceptable. The most significant change was to impose some restrictions on the type of documents that would be available to the public. Deputies—led by the PRI leadership in the lower house—introduced language stipulating that information deemed to threaten national security, economic stability, or human rights could be subject to veto. Among those empowered to exercise this veto were the director of the Banco de México (central bank), the president of the Comisión Nacional de Derechos Humanos (CNDH), and the head of the Suprema Corte de Justicia de la Nación (SCJN).

After protests from opposition parties in the lower house and from the Senate, the PRI leadership changed the resolution to give veto power only to the legal adviser to the Mexican president and only if the release of the information was deemed to pose a threat to national security.

Even with the changes, the Chamber of Deputies came under strong criticism. "With a regressive act, the members of the PRI in the Chamber of Deputies demonstrated that they are not as much the reformists as they claimed to be," columnist Leonardo Kourchenko wrote in the Mexico City daily business newspaper El Financiero. "They invoked the old principle of hiding delicate or sensitive information."

Several nongovernmental organizations—including Colectivo por la Transparencia, Artículo 19, Fundar, and México Infórmate—came out against the amended proposal, saying the measure gives public officials the opportunity to use almost any excuse to deny the public access to documents.

Some opposition legislators criticized the length of time it took for the Chamber of Deputies to consider the measure approved by the Senate. "The great paradox is that the process to reform transparency laws was less than transparent," said Deputy Ricardo Mejía, a member of Movimiento Ciudadano (MC). "It was a very opaque process."
The initiative that was changed by the Chamber of Deputies was sent back to the Senate for ratification, but a number of senators—particularly members of the PAN and PRD—said they would not vote for the bill in its current form.

Some analysts agreed that the changes imposed by the lower house must not be accepted because they were not in the public interest. "Transparency is a tool that makes accountability possible," columnist Edna Jaime wrote in the Mexico City daily newspaper Excélsior in early September. "For this function to work properly, the laws need to be deepened even more. Public entities should offer the citizen much more information than what is currently presented, and in a format and a language that is relevant to the users."

With the Senate refusing to ratify the measure amended by the Chamber of Deputies, the move to strengthen the IFAI, boost government transparency, and increase public access to information remains stalled. And, if and when the matter is decided, the measure must still be approved by 16 of Mexico’s state legislatures because of proposed changes to the federal Constitution.

The Chamber of Deputies, in an attempt to convince the Senate to approve the amended version, has enlisted the help of the current IFAI director Gerardo Laveaga, who urged senators to approve the measure passed by the lower house or risk a delay in implementing much-needed transparency reforms.

"With the delay, you would be putting at risk a reform that is crucial for Mexico, which is moving forward in a global environment that is increasingly competitive," Laveaga said in testimony before Senate.

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