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

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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 ¹. 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 ² implementation process in Mexico.

¹ By the time of this study the LFTAIPG was not yet in force.

² 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 information⁴.

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.

³ 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.

⁴ 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 ⁵.

⁵ 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 to 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.