



Transparency in Mexico: An Overview of Access to Information Regulations and their Effectiveness at the Federal and State Level

By Adriana García García

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Abstract

In 2015, the Mexican Congress enacted the General Transparency Law responding to organized advocacy efforts and active participation by scholars and local NGOs (including a coalition of Mexican NGOs) demanding for an enhanced and uniform access to information legislation across the country. Prior to the 2015 passage of the General Transparency Law, Mexico's 33 separate jurisdictions —31 states plus Mexico City and the federation—imposed different legal frameworks and institutional capacities on citizens and businesses, imperiling transparency. Given the role of transparent government in improving the rule of law, fighting corruption, and achieving economic growth, these differences were an area of significant concern. While every jurisdiction has complied with the new requirements, effective differences remain due to variation in states' institutional capabilities and political will for implementing the laws. According to the most recent ranking of transparency in Mexico performed by *Centro de Investigacion y Docencia Economicas*, the quality of freedom of information law increased but effective access decreased. The current study analyzes these differences as well as the effects of the 2015 General Transparency Law across Mexico. The results urge the necessity of monitoring the effective implementation of the recently improved laws. Otherwise, the improvement of laws will represent mere window-dressing rather than actual transparency and the benefits it brings.

Section I. Introduction

In recent years, broad indicators of the rule of law in Mexico have been polarized. On the one hand, corruption scandals at all levels of government and human rights' abuses occupy most of the media headlines. At the same time, the Mexican government made groundbreaking legal reforms to improve human rights and improve its criminal justice systems. Ultimately, the scandals have continued and the laws have therefore not created trust among Mexican citizens or investors.

The fact that Mexico is a federation and several legal systems coexist has complicated the issue. Politicians have used the differences across jurisdictions to escape accountability. These differences also increase the costs of adaptation for individuals and companies willing to engage in transactions with the government. The complexity of each legal framework and the lack of enforcement of the current laws represent significant challenges.

As a result, Mexican civil society has been actively participating in the public arena to improve transparency and accountability. Examples of the foregoing are three recent events that evidence how civil society engagements have improved *de jure* transparency and accountability in Mexico: (i) enactment of the 2015 General Transparency Law; (ii) the recent disclosure of the rules for the selection of Mexico's Supreme Court judges; and (iii) the enactment of the 3 of 3 Law.

Mexico's current General Transparency Law is an example of how international norms together with civil society empowerment can yield significant and tangible improvements in access to information regulations. To enact the General Transparency Law, the Mexican Congress assembled a team including two groups of NGOs—the Collective for Transparency and Mexican Information and Accountability Network Organization (*Red por la Rendición de Cuentas* in Spanish)—to draft the final law. As a result, the enacted law limits the ability of public officials to deny the existence of information that they should in fact hold; it expressly prohibits the categorical classification as secret of all information related to criminal investigations—a matter of significant dispute in Mexico; and importantly, adds corruption to the list of issues where information must never be withheld, along with both serious human rights violations and crimes against humanity. These apply across the board—as exceptions to all grounds for government secrecy.

The recent appointment process of two of Mexico's Supreme Court judges provides the second example. Responding to pressure from civil society groups, a petition signed by more than 25,000

people demanding judges' appointments be made without favoritism or political bias and the request for engagement of the UN Special Rapporteur on the Independence of Judges and Lawyers; for the first time in history, the Mexican Senate disclosed the rules for the selection of candidates and allowed for public scrutiny during the judges' selection process. Each candidate's hearing before the Senate must now be public and televised. NGOs, academics, experts and any person may provide relevant information regarding the candidates and may submit specific questions for the candidates.

In the same direction, also for the first time in Mexican history, civil society exercised its power (granted by Mexico's Federal Constitution) to submit a formal law proposal regarding government accountability to the Mexican Congress. Both civil society and academia engaged in the process of drafting the law and securing 120,000 signatures required by the Mexican Federal Constitution to oblige the Mexican Congress to analyze and discuss the draft. The draft sought to regulate the government's performance and sanction irregular activities to fight corruption. Although the original draft was not approved by the Congress, a modified version was enacted on July 18, 2016.

While the described cases provide good mechanisms to achieve transparency and accountability in Mexico, it is important to note that it is still necessary to secure their implementation. Although the 2015 passage of the General Transparency Law has created uniformity across jurisdictions, public access to information does not necessarily support true democratic oversight of government due to issues with enforcement and laws that remain weak.

This paper is particularly concerned with Freedom of Information (FOI) laws' implementation. Mexico has had laws on access to information since 2002. If well-designed, FOI laws establish the existence of the people's right to know about state action and the state's obligation to facilitate their knowledge. These laws also may facilitate the fulfillment of other rights by fostering participation and active citizenship (Roberts 2001; Bovens 2002; Basely and Burgess 2002; Stromberg 2002). Moreover, FOI acts may contribute significantly to government openness and accountability, helping to prevent and combat corruption (Rose-Ackerman 1999; Aderesa, Boix and Payne 2003; Reinikka and Svensson 2003; Peisakhin and Pinto 2010). In keeping with the understanding that transparency supports economic growth, research has related FOI laws to economic growth and development (Kaufmann and Vishwanath 2001; Heinemann and Illing 2002).

Given the consensus about the benefits of FOI acts, international organizations, civil society, and governments (both democratic and non-democratic) advocate for the incorporation of FOI acts within national legal frameworks.¹ Of course, this propaganda assumes the association between the legal incorporation of access to information on national legal frameworks (transparency *de jure*) and the effective access to information for citizens (transparency *de facto*). Almost three-quarters—73%—of Latin American countries have FOI laws in part as a result of the boom in government transparency advocacy.² However, *de facto* rights have not always followed *de jure* rights in this area (Howard, 1991; Epp, 1998; Lidberg, 2006). Better laws do not necessarily generate a better exercise of rights.

For example, according to Centre for Law and Democracy (CLD, 2013), El Salvador and Nicaragua have the highest quality FOI laws in Latin America. However, according to the Rule of Law Index, which measures transparency perceptions through a large-scale survey, citizens in El Salvador and Nicaragua perceive that they have very low access to information (.25 and .23 respectively; Agrast, Botero, Martinez, Ponce and Pratt 2014). Canada, by contrast, has a law considered low quality (the CLD ranks it .53) but a very high perception score in the Rule of Law index (.84). Such data suggests, at least, that a law's quality does not necessarily determine perceptions of its effectiveness (Boli-Bennett, 1976; Pritchard, 1986).

¹ Several NGOs have analyzed and compared countries' FOI laws. Some studies perform these comparisons in order to collect and disseminate best practices found and others for the purpose of creating measuring indexes (see for example, Centre for Law and Democracy and Asia Foundation, 2012). Transparency International has also conducted comparative studies on a regional scale (Transparency International, 1997). The Regional Alliance for Freedom of Expression and Information recently published a comparative analysis in Latin America (Regional Alliance for Freedom of Expression and Information, 2014). Open Society (2006) conducted a comparative analysis of silence and access to information in 14 countries. Banisar (2006) conducted an analysis of access to information, state secrets, and protection of journalists in 56 member countries of the Organization for Security and Cooperation in Europe. The United Nations Development Programme (2006) also conducted a guide to measure the impact of programs of access to information. The United Nations Educational, Scientific and Cultural Organization (Mendel, 2008) published a comparative legal survey of 14 countries in the light of international standards on access to information. Within this wide range of studies, scholars consider the rating developed by Information Access in Europe and the Centre for Law and Democracy to be one of the most complete and comprehensive (Centre for Law and Democracy, 2013).

² According to the United Nations Educational, Scientific and Cultural Organization (UNESCO) 19 Latin American and Caribbean countries have to date laws on access to information, among which are: Antigua and Barbuda (2004), Belize (1994), Brazil (2011), Colombia (1985), Chile (2008), Dominican Republic (2004), Ecuador (2004), El Salvador (2011), Guatemala (2008), Guyana (2013), Honduras (2006), Jamaica (2002), Mexico (2002), Nicaragua (2007), Panama (2002), Peru (2002), Saint Vincent and the Grenadines (2003), Trinidad and Tobago (1999) and Argentina (2003). See <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-information/foi-in-latin-america-and-the-caribbean/>.

According to data from Transparency Metrics 2010 and 2014 (Lopez-Ayllon et. al 2010; Velazquez et. al 2014), the overall average quality of FOI laws in Mexico at the federal and local level increased from 0.76 to 0.81.³ However, *de facto* transparency decreased. According to the data reported the average score, reflecting real access to information of a citizen through actual requests of information, decreased from 0.82 to 0.75.⁴ Moreover, while in 2010 Transparency Metrics found that any differences in Mexico's *de jure* and *de facto* transparency favored transparency *de facto*, that changed by 2014. While the quality of the laws improved, effective access had decreased.

The laws improved still further after the 2015 General Transparency Law, which is undoubtedly good news. However, the record of transparency in Mexico suggests that such enactment is not sufficient. The effective incorporation of the right to access information into national legal systems rests not only on the enactment of a law requiring it, but also on its implementation. Enactment (transparency *de jure*) provides a formal and public commitment to comply with a law, generates at least one ideal to be achieved, and provides the basis of citizens' expectations regarding their governments (Sunstein 1996; McAdams, 2000). Implementation (transparency *de facto*) provides citizens with the necessary tools to effectively exercise the right.

In order to delve into the current challenges that Mexico faces regarding transparency, this paper will present an overview of the differences in the laws, institutional capabilities, and effectiveness of government transparency at the state and federal level. The first part of the document describes the history of access to information laws in Mexico at the federal and state level, including the changes the general law triggered in 2015. The second part of the paper will describe the differences between *de jure* and *de facto* transparency in Mexico at the federal and at the state level. The third part concludes with a map depicting the current status of FOI laws in every jurisdiction across Mexico.

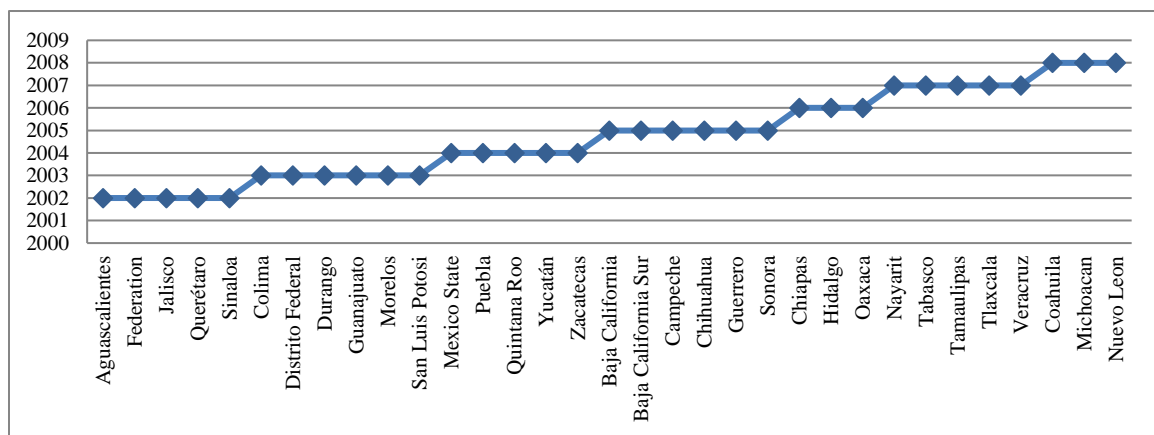
³ The calculation presented here refers to the average published in 2010 Transparency Metrics and average Transparency Metrics 2014 using the same methodology and the same variables used in 2010.

⁴ For purposes of properly comparing scores in the dimension of simulated user of both metrics (2010 and 2014), original calculations based on data Metrics of Transparency 2014 were conducted, using the same variables that were used to obtain the qualification in 2010.

Section II. Access to Information in Mexico: Legal Framework Timeline

Mexico’s 33 jurisdictions consist of a federation, Mexico City, and 31 states. Each has its own FOI law. Aguascalientes, Jalisco, Sinaloa, and the federation enacted Mexico’s earliest FOI laws, in 2002. Other states followed suit, and by 2008 all of Mexico’s jurisdictions (local and federal) had FOI laws (López Ayllon 2012). Graph 1 shows the years in which each of Mexico’s 31 states, the Federal District, and the federation enacted their FOI acts.

Graph 1. Year of Enactment of the First FOI Laws in Mexico



A number of jurisdictions have amended or replaced these FOI laws, such as Jalisco, which has had three different FOI acts. Table 1 describes enactment dates of every FOI act in every Mexican jurisdiction from 2002 to 2016.

Table 1. Timeline of FOI Laws in Mexico

State/Jurisdiction	Enactment of the first FOI law	Enactment of the second FOI law	Enactment of the third FOI law
Aguascalientes	26/08/02	5/22/06	
Baja California	12/08/05	10/1/10	4/29/16
Baja California Sur	20/03/05	3/12/10	5/4/16
Campeche	21/07/05	5/4/16	
Chiapas	12/10/06	5/4/16	
Chihuahua	15/10/05	8/29/15	
Coahuila	02/09/08	8/26/14	
Colima	01/03/03	10/26/13	
Ciudad de México	08/05/03	3/25/08	5/6/16
Durango	27/02/03	7/13/08	5/4/16
Estado de México	30/04/04	5/4/16	
Guanajuato	28/07/03	10/18/13	5/13/16
Guerrero	14/10/05	6/15/10	5/6/16
Hidalgo	29/12/06	5/4/16	
Jalisco	22/01/02	1/6/05	8/8/13
Michoacán	07/11/08	5/18/16	

Morelos	27/08/03	4/27/16	
Nayarit	22/12/07	5/3/16	
Nuevo León	19/07/08	7/1/16	
Oaxaca	16/09/06	3/15/08	3/11/16
Puebla	16/08/04	5/4/16	
Querétaro	27/09/02	11/13/15	
Quintana Roo	31/05/04	5/3/16	
San Luis Potosí	20/03/03	10/18/07	5/9/16
Sinaloa	26/04/02	5/4/16	
Sonora	25/02/05	4/28/16	
Tabasco	10/02/07	12/15/15	
Tamaulipas	05/07/07	4/27/16	
Tlaxcala	12/01/07	5/22/12	5/3/16
Veracruz	27/02/07	5/26/16 ⁵	
Yucatán	31/05/04	5/2/16	
Zacatecas	14/07/04	6/29/11	6/2/16
Federation	11/06/02	5/9/16	

Boldface indicates the enactment date of current FOI laws.

After the enactment of the first FOI's laws, Article 6 of the Mexican Constitution was amended on July 20, 2007 to establish and regulate the right to access information. The amended Article 6 established that all information public authorities hold is public, with only limited and temporary exceptions. It also established that personal data in possession of the government shall be protected and that all citizens have the right to file requests for information. The state could not require requesters to provide reasons for their requests or to pay for the cost of filling requests. The amendment also mandated the creation of summary proceedings to review answers to requests before independent and specialized oversight bodies. It established the obligation to publish government's budget spending. It also established punishments for public officials who failed to comply with the law.

Despite the 2007 amendment, transparency organizations' concerns persisted. The 2007 amendment did not establish any form of independent oversight for FOI compliance for the legislative and judicial powers. Further, the distinctions between laws at the federal and local level diminished transparency in the country. Landmark legislative action on February 7, 2014 sought to address the heterogeneity of the FOI framework. Congress amended Article 6 further to broaden the scope of the right to access information. It made labor unions, independent agencies, individuals, and corporations that receive public funds subject to transparency and access to information regulations. It required every public entity to document every action resulting from the exercise of its legal powers. It established the obligation to justify denials of requests. It established that every public entity must publish complete and updated information regarding the use of public resources and accountability indicators in their websites. It strengthened the independence and

⁵ The second enactment date for Veracruz is the date the state's legislature approved the law. It has not been enacted.

broadened the powers of the Instituto Nacional de Transparencia (INAI). Furthermore, it established an obligation for every state as well as Mexico City to create independent oversight bodies on transparency, to guarantee access to information, and to protect personal data held by the government through amendments to their constitutions. The strongest mechanism of standardization was Congress's new power to issue general laws implementing the principles and bases of government transparency, access to information, and protection of personal data held by the government and archives. In exercising this power, Congress enacted the 2015 General Transparency Law. It began considering draft proposals immediately after the enactment of the 2014 reform.

Towards Standardization: The General Transparency Law

In a process that would suggest the power of international standards coupled with civil society, to enact the General Law of Transparency, the Mexican Congress considered four draft proposals prepared, respectively, by IFAI, the left-leaning national political party *Partido de la Revolución Democrática (PRI)*, the NGO group *Colectivo por la Transparencia*,⁶ and the *Conferencia Mexicana para el Acceso a la Información*.⁷ After analyzing these proposals, the Mexican Congress invited a team of experts which included two groups of NGOs—the *Colectivo por la Transparencia* and *Red por la Rendición de Cuentas*⁸—to draft the final law. These coalitions represented more

⁶ This is a group of Non Governmental Organization conformed by *Alianza Cívica* (www.alianzacivica.org.mx), *Article 19* (www.article19.org), *Centro Mexicano de Derecho Ambiental* (www.cemda.org.mx), *Ciudadanos en Medios: democracia y información* (www.ciudadanosenmedios.org.mx), *Cultura Ecológica* (www.culturaecologica.org.mx), *DECA Equipo Pueblo* (www.equipopueblo.org.mx), *Fundar: Centro de análisis e investigación* (www.fundar.org.mx), *GESOC: Gestión social y participación* (www.gesoc.org.mx), *ONG Contraloría Ciudadana para la Rendición de Cuentas* (www.contraloriaciudadana.org.mx), *Presencia Ciudadana Mexicana* (www.presenciaciudadana.org.mx) and *Sonora Ciudadana A.C.* (www.sonoraciudadana.org.mx).

⁷ Representatives of federal and local public officers working for independent agencies of access to information integrate the conference. See <http://www.comaip.org.mx/indexa.html>.

⁸ This is a group of non-governmental organizations, government agencies, universities and research centers conformed by *Alianza Cívica A.C.* (www.alianzacivica.org.mx), *Archivo General de la Nación* (www.agn.gob.mx), *Artículo 19 A.C.* (articulo19.org), *Auditoría Superior de la Federación* (www.asf.gob.mx), *ASOFIS* (asofis.org.mx), *Bemerita Universidad Autónoma de Puebla* (www.buap.mx), *Bufete de Estudios Interdisciplinarios A.C.* (www.bufetedeestudios.org), *Centro de Contraloría Social-Ciesas* (<http://ccs-ciesas.org/>), *Centro de Estudios Mexicanos y Centroamericanos* (www.cemca.org.mx), *Centro de Investigación y Docencia Económicas* (www.cide.edu), *Centro Mexicano de Derecho Ambiental A.C.* (www.cemda.org.mx), *Centro Universitario de Ciencias Económico Administrativas* (www.cucea.udg.mx), *CIDAC* (www.cidac.org), *Ciudadanos en Medios A.C.* (www.ciudadanosenmedios.org), *Ciudadanos por Municipios Transparentes* (www.cimtra.org.mx), *Colegio de la Frontera Norte* (www.colef.mx), *Colegio de Jalisco A.C.* (coljal.edu.mx), *Colegio de México A.C.* (www.colmex.mx), *El Colegio de Sonora* (www.colson.edu.mx/), *Comisión de Acceso a la Información Pública y Protección de Datos Personales de Puebla* (www.caip.org.mx), *Comisión de Acceso a la Información Pública y Protección de Datos Personales del Estado de Tlaxcala* (caip-tlax.org.mx), *Comisión de Derechos Humanos del Estado de Puebla* (www.cdhpuebla.org.mx), *Comisión de Derechos Humanos del*

than fifteen civil society organizations. After an intense discussion process, the team released a first draft on December 2, 2014.

While the participating NGOs were satisfied in general with the content of the draft, they had six important objections: negative effects on economic stability as a cause to classify information; the existence of perpetual classification; the classification of banking, financial, and tax information that involves public resources; the lack of protection for whistleblowers; the imposition of sanctions on public servants who release confidential information; and the possibility of establishing exceptions to publicity through other laws (Article 19 2015).⁹ The bill addressed all of these objections except the last. It passed both chambers of the Congress on April 7, 2015.

Distrito Federal (www.cdhsdf.org.mx), *Comision de Transparencia y Acceso a la Informacion Publica del Estado de Nuevo Leon* (www.ctainl.org.mx), *Comision de Transparencia y Acceso a la Informacion Publica del Estado de Campeche* (www.cotaipcc.org.mx), *Comision Estatal para el Acceso a la Informacion Publica de Sinaloa* (www.ceaipes.org.mx), *Contraloria Ciudadana para la Rendicion de Cuentas A.C.* (www.contraloriaciudadana.org.mx), *Cultura Ecologica A.C.* (www.culturaecologica.org.mx), *Consejo Ciudadano a la Contraloria* (consejocontraloriapuebla.blogspot.mx), *Escuela Mexicana de Archivos A.C.* (www.escuelamexicanadearchivos.edu.mx), *Equipo Pueblo* (www.equipopueblo.org.mx), *Ethos Fundacion* (www.ethos.org.mx), *Facultad Latinoamericana de Ciencias Sociales* (www.flacso.edu.mx), *FUNDAR* (fundar.org.mx), *Gestion Social y Cooperacion* (gesoc.org.mx), *Ibero Puebla* (www.iberopuebla.edu.mx), *Impacto Legislativo* (impactolegislativo.org.mx), *INHUM* (www.iniciativas.org.mx), *Iniciativa Sinaloa* (www.iniciativasinaloa.org.mx), *INCIDE SOCIAL* (www.incidesocial.org), *Iniciativa Ciudadana para la Promocion de la Cultura del Dialogo, A.C.* (iniciativaciudadana.org.mx), *Integradora de Participacion Ciudadana* (www.integradoradeparticipacionciudadana.org), *Instituto de Acceso a la Informacion Publica del Distrito Federal* (www.infodf.org.mx), *Instituto de Acceso a la Informacion Publica Gubernamental del Estado de Hidalgo* (www.iaipgh.org.mx), *Instituto de Acceso a la Informacion del Estado de Mexico* (www.infoem.org.mx), *Instituto de Transparencia y Acceso a la Informacion Publica del Estado de Guerrero* (www.itaig.org.mx), *COTAIPO* (www.cotaipo.org.mx), *Instituto de Estudios para la Transicion Democratica* (www.ietd.org.mx), *Instituto de Transparencia y Acceso a la Informacion Publica de Baja California* (www.itaipbc.org.mx), *Instituto de Transparencia y Acceso a la Informacion Publica de Quintana Roo* (www.itaipqroo.org.mx), *Instituto de Transparencia y Acceso a la Informacion de Tamaulipas* (www.itei.org.mx), *Instituto de Investigaciones Juridicas de la UNAM* (www.juridicas.unam.mx), *Instituto Estatal de Acceso a la Informacion Publica de Yucatan* (www.inaipyucatan.org.mx), *Instituto Federal de Acceso a la Informacion y Proteccion de Datos* (inicio.ifai.org.mx), *Instituto Mexicano para la Competitividad A.C.* (imco.org.mx/es), *Instituto Federal Electoral*, *Instituto Morelense de Informacion Publica y Estadistica* (<http://www.imipe.org.mx/>), *Instituto para la Seguridad y la Democracia A.C.* (<http://insyde.org.mx/>), *Instituto Nacional de Administracion Publica* (<http://www.inap.mx/>), *Instituto Tabasqueño de Transparencia y Acceso a la Informacion* (<http://www.itaip.org.mx/>), *Instituto Veracruzano de Acceso a la Información (IVAI)*, *Instituto Tecnológico y de Estudios Superiores de Monterrey (ITESM)*, *LOCALIS* (www.locallis.org.mx), *Mexicanos Primero* (<http://www.mexicanosprimero.org/>), *Mexico Evalua Centro de Analisis de Politicas Publicas* (<http://www.mexicoevalua.org/>), *Jalisco Como Vamos* (<http://www.jaliscocomovamos.org/>), *Mexico Informate* (<http://mexicoinformate.org/>), *Observatorio Nacional Ciudadano Seguridad, Justicia y Legalidad* (<http://www.onc.orgmx/>), *Observatorio Ciudadano de Leon* (<http://www.ocl.org.mx/>), *Plan Estrategico de Juarez* (<http://www.planjuarez.org/>), *SOCIAL TIC* (<http://www.socialtic.org/>), *Sonora Ciudadana A.C.* (<http://www.sonoraciudadana.org.mx/>), *Transparencia Mexicana* (<http://www.tm.org.mx/c/inicio/>), *Universidad Autonoma de Tlaxcala* (<http://www.uatx.mx>), *Universidad Iberoamericana* (www.uia.mx), *Universidad Veracruzana* (<http://www.uv.mx/>).

⁹ See <http://www.articulo19.org/la-iniciativa-de-ley-general-de-transparencia-debe-garantizar-los-objetivos-de-la-reforma-constitucional/>.

Concerns remain about the enacted legislation. First, the grounds for information classification exceed those provided by the Organization of American States (OAS) Model Law, which contains the best international standards according to the Inter American Human Right system. Second, by failing to establish that any such classification should only affect laws of access to information, it expanded legislative discretion by establishing new grounds for reservation or confidentiality. Thus, it effectively made a huge number of regulations subject to the classification criteria.

Notwithstanding such disagreements, the new general law improves access to information in Mexico in several respects and is consistent with the OAS Model Law. Table 2 summarizes this section, showing the progression of events as Congress revised the Mexican FOI legal framework.

Table 2. Mexican FOI Legal Framework Timeline

Year	Legislative action	Content
2002	The first FOI laws enacted in Aguascalientes, Jalisco, Sinaloa, and the federation	Content of each law differed
2003		
2004		
2005		
2006		
2007	Article 6 of the Mexican Constitution was amended to establish explicitly the right to access information.	The amended Article 6: <ol style="list-style-type: none"> 1. Recognized the fundamental right of access to information. Established that all information held by public authorities is public and subject only to limited and temporary exceptions. 2. Established the government’s obligation to protect personal data in possession of the government. 3. Established that everyone has the right to file requests for information. Requesters are not required to provide reasons for their requests and there is no cost for filing requests. 4. Established summary proceedings to answer requests before independent and specialized agencies. 5. Established the obligation to publish government’s budget spending. 6. Established punishments for the government’s non-compliance with access to information requests.
2008	All 33 jurisdictions within Mexico had enacted an FOI law.	Content of each law differed
2014	Article 6 of the Mexican Constitution was amended to broaden the scope of the right to access information.	The amended Article 6: <ol style="list-style-type: none"> 1. Provided that labor unions, independent agencies, individuals, and corporations receiving public funds are to be subject to the Transparency and Access to Information Law. 2. Required every public entity to document every action resulting from the exercise of its legal powers. 3. Established the obligation to justify denials of information requests. 4. Established that every public entity must publish complete and updated information regarding the use of public resources and accountability indicators in their websites. 5. Strengthened the independence and broadened the powers of the INAI.
2015	The General Transparency Law was enacted to standardize the FOI legal framework at the federal and state level.	<ol style="list-style-type: none"> 1. Established that independent authorities, political parties, trusts, and unions that receive public funds, in addition to the bodies covered by the then-existing law (not only at the federal level but also at the state and municipal levels) were subject to the Transparency and Access to

		<p>Information Laws. Previously the federal law applied to fewer entities and each state had its own law, with varying transparency obligations.</p> <ol style="list-style-type: none"> 2. Limited public officials' ability to deny having certain information if they actually held it. Prohibited authorities for declaring entire categories of information as secret. 3. Prohibited the general "secret" classification for all information related to criminal investigations. 4. Added corruption, serious human rights violations, and crimes against humanity to the list of issues where information cannot be withheld. 5. Improved access to information consistent with the Model Law issued by the OAS.
2016	Enactment of new FOI laws at the federal and state level to comply with the content of the general law.	

Section III. *De jure* and *De facto* Transparency in Mexico

Before 2016, Mexican FOI laws varied in content and achieved different degrees of compliance with international and national standards. This section describes how FOI laws differed in content from one state to another and shows the different degrees of effectiveness of the right to access information in Mexico prior to compliance with the General Transparency Law.

Two major studies performed by *Centro de Investigacion y Docencia Economicas* (CIDE) in Mexico rank the quality and effectiveness of FOI laws in 2010¹⁰ and 2014¹¹ (Lopez-Ayllon et al. 2010; Velazquez et al. 2014). Both studies included four category of analysis: legal framework, public information in websites, answers to individual requests for information, and institutional design of oversight bodies.

The legal framework category assessed the quality of 33 FOI laws throughout the country. It included 156 variables spread across twelve categories of analysis: general principles, obliged entities, mandatory public information, reserved information, confidential information, personal data protection, archives regulations, oversight bodies, and institutional design of government areas with powers to answer requests of information.

The second category verified the compliance of mandatory publishing of information in websites. CIDE reviewed 18 websites in each jurisdiction, 594 websites in total. Three criteria guided the analysis: compliance with the law, quality of information and ease of access.

In the third category, CIDE analyzed answers to requests for information. To do this, CIDE simulated FOI users requesting information from government agencies in each of the 33 jurisdictions. They issued more than 1,800 information requests, covering the three branches of government in jurisdiction, independent agencies, decentralized authorities, and municipalities. The score of the responses consisted of (i) the compliance with the legal requirements for response and (ii) the quality of the answer.

¹⁰ See <http://metricadetransparencia2010.cide.edu/metrica.html>

¹¹ See <http://www.metricadetransparencia.cide.edu/>

Finally, the fourth category analyzed the institutional capacities of the oversight bodies. CIDE analyzed degrees of independence and specialization, as well as managerial, operational, and organizational attributes.

The results in both 2010 and 2014 revealed significant differences in the aggregated scores of the four categories between jurisdictions. The following map shows this diversity of response. The range of aggregated scores in the different jurisdictions varies from .56 (lightest blue – worse score) to .82 (darkest blue – best score) from a total of 1 point.

Map 1. Transparency in Mexico in 2014



Source: Metrica de la Transparencia 2014, available in <http://www.metricadetransparencia.cide.edu/?section=Mapas>

The Federal District scored the strongest transparency with 0.82, while Baja California Sur scored the weakest with 0.56. Table 3 breaks down these scores by category for each state and the federal district. The total score for the Federation was .832.

Table 3. Transparency in Mexico by Category

Jurisdiction	Quality of FOI laws	Website	Effectiveness	Oversight body	Institutional design	Total score
Aguascalientes	.791	.864	.585	.774	.633	.730
Baja California	.732	.873	.669	.527	.697	.700
Baja California Sur	.608	.632	.421	.522	.630	.562
Campeche	.797	.854	.609	.685	.803	.750
Chiapas	.731	.807	.693	.596	.742	.714
Chihuahua	.831	.882	.698	.826	.720	.791
Coahuila	.933	.867	.752	.877	.588	.803
Colima	.878	.823	.609	.702	.617	.726
Distrito Federal	.953	.982	.693	.743	.710	.817
Durango	.886	.838	.617	.677	.742	.752
Estado de México	.787	.773	.685	.692	.821	.752
Guanajuato	.754	.700	.612	.767	.688	.704
Guerrero	.803	.727	.453	.617	.607	.657
Hidalgo	.736	.772	.593	.593	.790	.695
Jalisco	.788	.939	.578	.595	.751	.730
Michoacán	.688	.827	.398	.416	.578	.582
Morelos	.829	.851	.674	.725	.672	.750
Nayarit	.792	.883	.591	.562	.727	.711
Nuevo León	.842	.941	.622	.690	.753	.770
Oaxaca	.831	.772	.702	.517	.690	.693
Puebla	.762	.928	.675	.573	.700	.728
Querétaro	.650	.759	.561	.699	.679	.670
Quintana Roo	.732	.741	.584	.653	.663	.674
San Luis Potosí	.855	.871	.714	.688	.859	.797
Sinaloa	.683	.804	.719	.701	.750	.731
Sonora	.948	.877	.722	.591	.604	.748
Tabasco	.773	.919	.693	.686	.705	.755
Tamaulipas	.718	.956	.645	.667	.496	.696
Tlaxcala	.782	.867	.677	.539	.704	.714
Veracruz	.942	.823	.670	.705	.752	.778
Yucatán	.839	.891	.514	.566	.708	.704
Zacatecas	.784	.959	.745	.499	.680	.733

The federation showed similar disparities among the different categories:

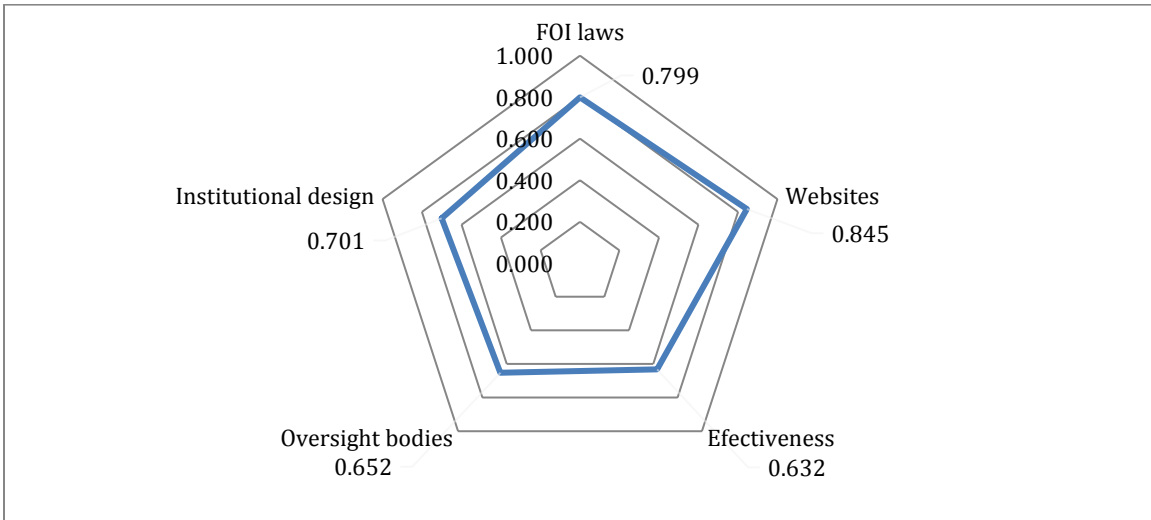


Source: Metrica de la Transparencia 2014, available at <http://www.metricadetransparencia.cide.edu/?section=Tablas>

As Table 3 shows, the score of each category varied from state to state. Further, Quality of FOI laws, which rate *de jure* transparency, did not correlate to effective access, *de facto* transparency.

Graph 2 shows the national transparency averages by category.

Graph 2. National Transparency Averages by Category

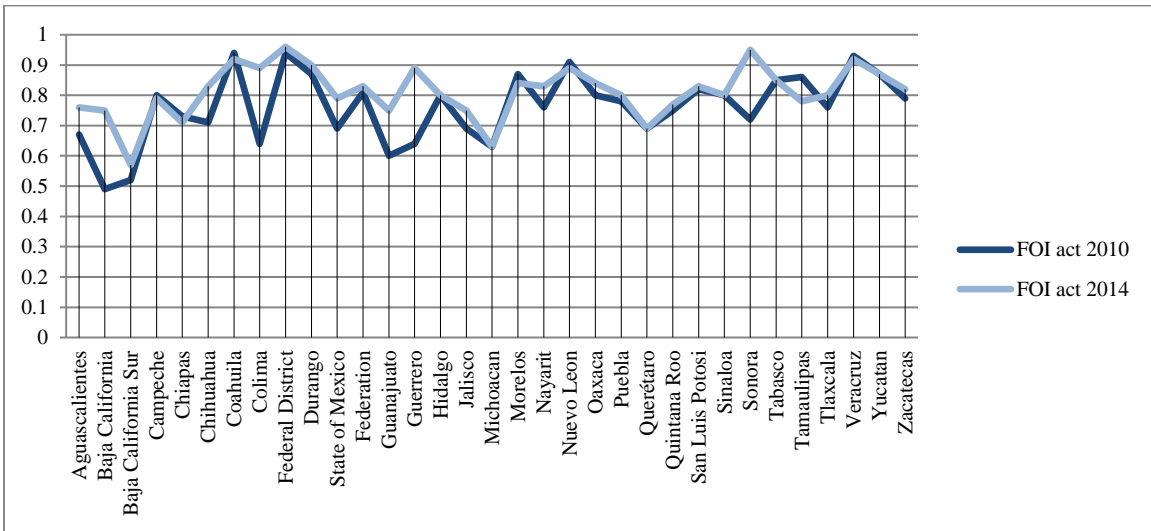


Source: Author's calculations based on *Metrica de la Transparencia 2014*, available at <http://www.metricadetransparencia.cide.edu/?section=Tablas>.

Better Laws Do Not Necessarily Improve Enforcement of Rights

Graph 3 juxtaposes the scores of the quality of FOI laws in 2010 (dark line) and 2014 (light line).

Graph 3. Quality of Mexican FOI Laws in 2010 and 2014

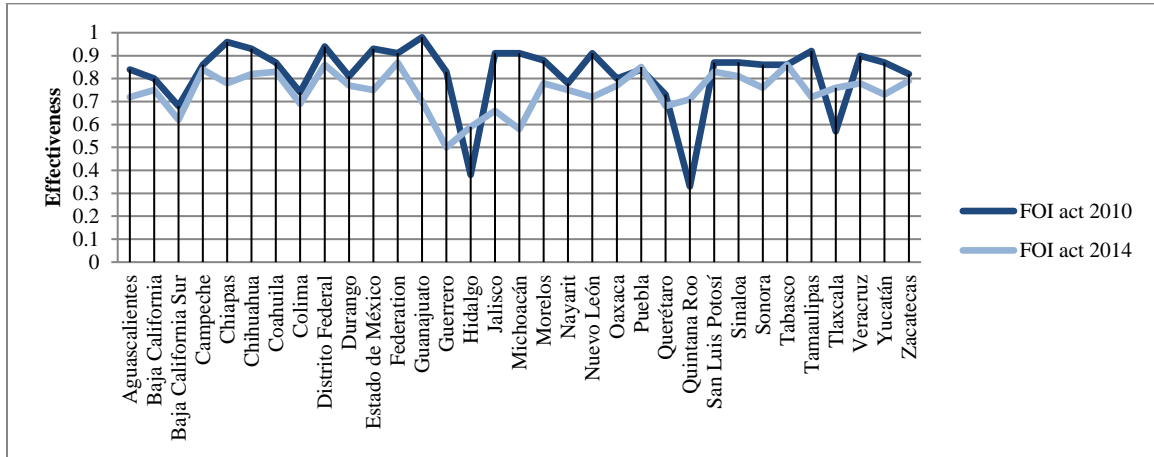


Source: Author's calculation (García-García 2014) based on *Metrica de la Transparencia 2014*, available in <http://www.metricadetransparencia.cide.edu/?section=Tablas>.

As seen in Graph 3, 61 percent of the jurisdictions improved their regulation scores from 2010 to 2014, 18 percent remained the same, and 21 percent decreased in their scores.

Graph 4 shows the scores for effectiveness in answering requests of information in 2010 and 2014.

Graph 4. Effectiveness of FOI Laws in 2010 and 2014

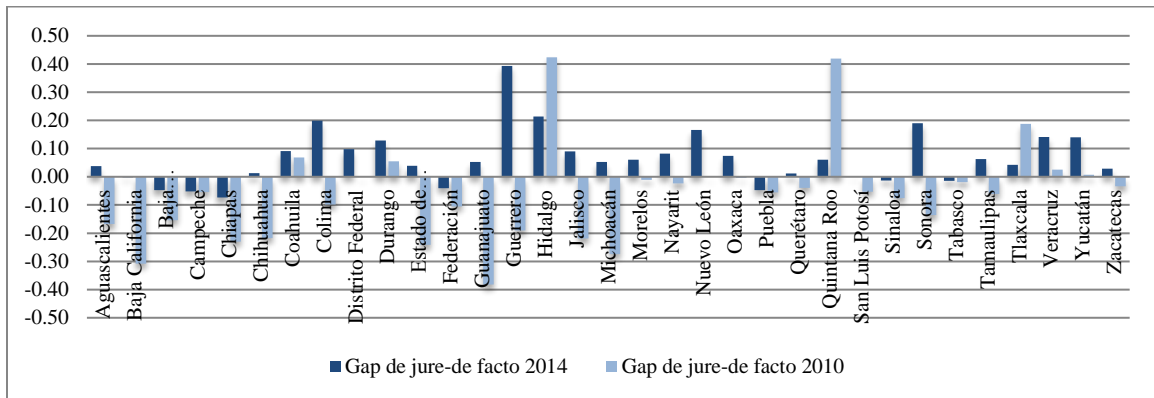


Source: Author’s calculation based on *Metrica de la Transparencia 2014*, available in <http://www.metricadetransparencia.cide.edu/?section=Tablas>.

As Graph 4 reflects, effectiveness declined in 89 percent of the jurisdictions. Despite the average improvement in FOI laws, effectiveness decreased.

Graph 5 compares the differences or gaps in the FOI laws quality scores (*de jure* transparency) and the FOI implementation scores (*de facto* transparency) for each jurisdiction in 2010 and 2014.

Graph 4. Gaps *de jure-defacto* 2010 and 2014



Source: Author’s calculation based on *Metrica de la Transparencia 2014*, available in <http://www.metricadetransparencia.cide.edu/?section=Tablas>.

In 2010, *de jure* transparency only outstripped *de facto* transparency in six jurisdictions; the other gaps show greater effective transparency than legal transparency. In 2014, the gap had reversed virtually throughout the country. Twenty-four jurisdictions had greater *de jure* than *de facto* transparency (includes 22 states that improved their quality FOI laws or did not change the quality).

Section IV. Current Status of FOI Laws in Mexico

The 2015 General Transparency Law established the normative framework of access to information nationwide. The specific obligations and rights the law established include:

1. A broad right of access to information, in possession or control by any public authority, based on the principle of maximum disclosure, so that all information held by public bodies is complete, timely, and accessible, subject to a clear and narrow regime of exceptions.
2. The law applies to all public authorities, including the executive, legislative and judicial branches at all levels of government, constitutional and statutory authorities, non-state bodies which are owned or controlled by government, and private organizations which operate with substantial public funds or benefits (directly or indirectly) or which perform public functions and services insofar as it applies to those funds or to the public services or functions they undertake.
3. The requirement for proof of harm in every case of classification of information.
4. Prohibition of the general classification for all information related to criminal investigations.
5. In addition to serious human rights violations and crimes against humanity the law added corruption to the list of issues where information cannot be withheld.
6. The obligation to create records of any government action when exercising its powers or functions so they cannot argue the lack of information.
7. The right to an appeal where access to the information is denied.
8. The right to make an anonymous request for information.
9. The obligation to disseminate widely, including on its website, key information including:
 - a. A description of its organizational structure, functions, duties, locations of its departments and agencies, operating hours, and names of its officials;
 - b. The qualifications and salaries of senior officials;
 - c. The internal and external oversight, reporting and monitoring mechanisms relevant to the public authority, including its strategic plans, corporate governance codes and key performance indicators, including any audit reports;
 - d. Its budget and its expenditure plans for the current fiscal year and past years and any annual reports on the manner in which the budget is executed;
 - e. Its procurement procedures, guidelines and policies, contracts granted, and contract execution and performance monitoring data;
 - i. A description of the powers and duties of its senior officers, and the procedure they follow to make decisions;
 - j. Any statutes, policies, decisions, rules, guidelines, manuals or other records containing interpretations, practices or precedents regarding the discharge by that public authority of its functions, that affect the general public;
 - k. Any mechanisms or procedures by which members of the public may make representations or otherwise influence the formulation of policy or the exercise of powers by that public authority;
 - l. A simple guide containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a

- f. The salary scales, including all components and sub-components of actual salary, relevant to all employee and consultant categories within the public authority;
- g. Relevant details concerning any services provided directly to members of the public, including customer service standards, charters and protocols;
- h. Any direct request or complaints mechanisms available to members of the public regarding acts, or a failure to act, by that public authority;
- request for information and an internal appeal;
- m. A list of requests received and records released
- n. A complete list of subsidies provided by the public authority;
- o. Frequently requested information; and
- p. Any additional information deemed appropriate by the public authority.

Additionally and most importantly the reform increased the independence and powers of the oversight bodies. Such oversight bodies are the government agencies with powers to monitor the compliance of the government with the laws. Therefore, their role is crucial to achieve effectiveness of the rights. According to the new law each state and the federation has the obligation to create specialized and independent oversight bodies with power to enforce the law, monitor compliance with it, and sanction non-compliance.

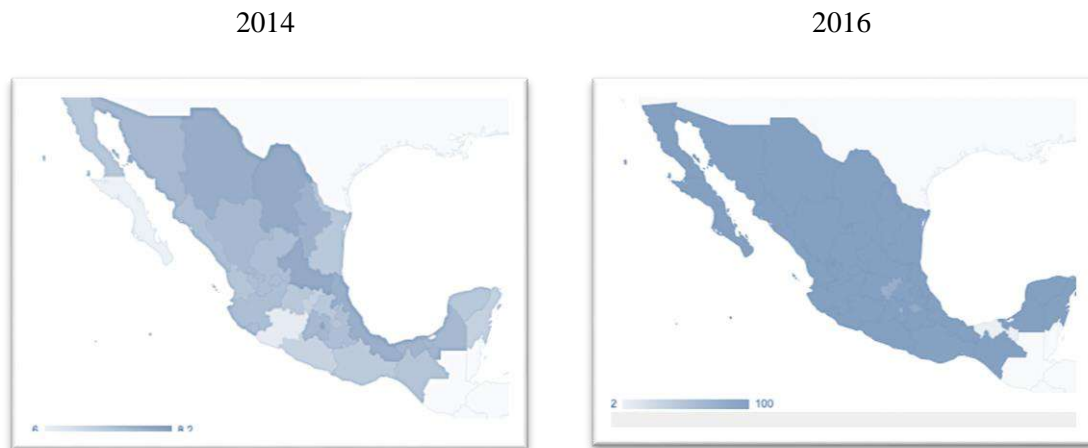
Every state, Mexico City, and the Federation have amended their FOI laws or enacted new ones to comply with the 2015 General Transparency Law.

State/Jurisdiction	FOI law enacted to comply with the General Law
Aguascalientes	27/07/2015
Baja California	29/04/2016
Baja California Sur	04/05/2016
Campeche	04/05/2016
Chiapas	04/05/2016
Chihuahua	29/08/2015
Coahuila	(10/09/2015)
Colima	(16/05/2015)
Ciudad de México	06/05/2016
Durango	04/05/2016
Estado de México	04/05/2016
Guanajuato	13/05/2016
Guerrero	06/05/2016
Hidalgo	04/05/2016
Jalisco	(10/11/2015)
Michoacán	18/05/2016
Morelos	27/04/2016
Nayarit	03/05/2016
Nuevo León	01/07/2016
Oaxaca	11/03/2016
Puebla	04/05/2016
Querétaro	13/11/2015
Quintana Roo	03/05/2016
San Luis Potosí	09/05/2016
Sinaloa	04/05/2016
Sonora	28/04/2016
Tabasco	15/12/2015
Tamaulipas	27/04/2016
Tlaxcala	03/05/2016
Veracruz	26/05/2016
Yucatán	02/05/2016
Zacatecas	02/06/2016
Federation	09/05/2016

Parentheses indicate the amendment of an existing FOI law instead of the enactment of a new one.

The content of the laws vary. Both *Colectivo por la Transparencia* and INAI have been monitoring compliance with the general transparency law by each jurisdiction. *Colectivo por la Transparencia* found that all states, except Sonora, comply with the new standards of the General Transparency Law.¹² INAI identifies five states (Hidalgo, Morelos, Oaxaca, Tabasco and Tlaxcala) and Mexico City that did not fully comply with the standards established in the new law. Their analysis suggests that specific articles of the new laws of such states and Mexico City fail to comply with the federal standards. INAI filed lawsuits against all six jurisdictions before the Supreme Court for violating the constitution. The number of INAI's detected incompatibilities appears on the following map showing far greater uniformity in 2016 than there was in 2014.

Map 2. Uniformity of Mexican FOI Laws in 2014 and in 2016



Source: Author's own calculation. Darker blue indicates greater conformity with the General Transparency Law.

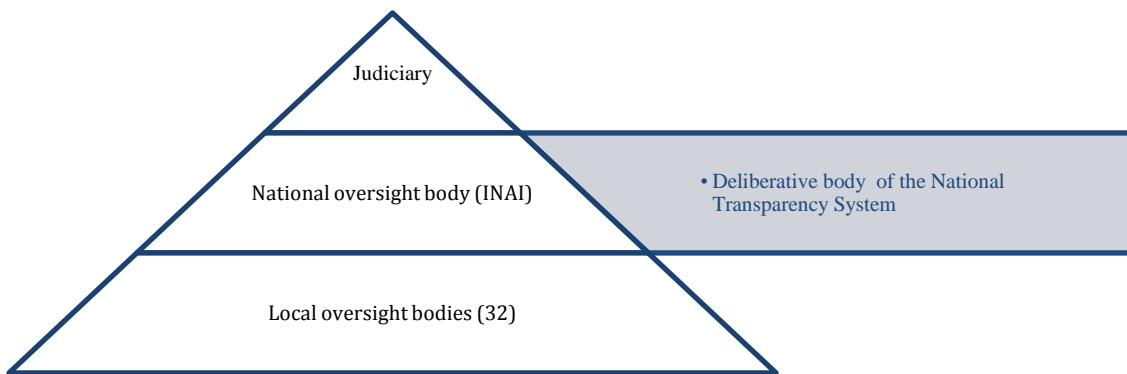
The Next Step: How to Police the Police?

Civil society has had a crucial role in the improvement of the Mexican legal framework regarding transparency. Because of the involvement of NGOs such as *Colectivo por la Transparencia* and *Red por la Rendición de Cuentas*, the laws are stronger and provide for stronger oversight. However, the comparison between 2010 and 2014 shows that strengthening the laws has no significant effect on *de facto* transparency. Therefore the only question is oversight.

¹² To see the complete analysis visit: <http://colectivoporlatransparencia.org/armoniza-tu-ley>

The institutional design enacted since the 2015 General Transparency Law establishes several mechanisms to supervise the compliance of the government with FOI laws. Each jurisdiction has its own oversight body. The INAI supervises decisions from each of these bodies and decisions by INAI are subject to judicial review. Additionally, the General Transparency Law created a deliberative body in which every local oversight body, INAI, the government auditing agency, the statistical government agency, and the archive agency are represented and have the power to supervise public policies regarding access to information in the whole country. The following diagram shows the current design.

Diagram 1. FOI Monitoring Mechanisms in Mexico



Oversight bodies have an important role in monitoring compliance with law. Therefore, ensuring independent appointments and tenure of commissioners and respecting strong institutional autonomy is essential to achieve effective oversight. In this regard, recently the coalition of NGOs *Red Nacional de Organismos Civiles de Derechos Humanos “Todos los Derechos para Todos y Todos”*¹³ raised concerns regarding the appointment processes of key actors in the system. More

¹³ This is a group of Non Governmental Organization conformed by *Arthemisas por la Equidad, ARTICLE 19, Oficina para México y Centroamérica, Asociación Jalisciense de Apoyo a Grupos Indígenas, Católicas por el Derecho a Decidir, Causa en Común, Centro de Derechos Humanos de las Mujeres, Centro de Derechos Humanos del Noroeste, Centro de Derechos Humanos Miguel Agustín Pro Juárez, Centro de Derechos Humanos Paso del Norte, Centro de Derechos Humanos Toaltepeyolo, Centro de Estudios Espinosa Yglesias (CEEY), Centro de Investigación y Capacitación Propuesta Cívica, Centro de Reflexión y Acción Laboral, Centro Fray Julián Garcés Derechos Humanos y Desarrollo Local, Centro Nacional de Comunicación Social, Colectivo Mujer y Utopía, Comisión de Solidaridad y Defensa de los Derechos Humanos, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, Comité de América Latina y el Caribe para la Defensa de los Derechos de las Mujeres, Comité de Derechos Humanos Ajusco, Confederación Patronal de la República Mexicana (COPARMEX), Consorcio para el Diálogo Parlamentario y la Equidad de Oaxaca, Elige Red de Jóvenes por los Derechos Sexuales y Reproductivos, Fomento Cultural y Educativo, Freedom House, Fundación para el debido proceso penal, Fundación para la Justicia y el Estado Democrático de Derecho, Fundación Pro Mujer Quintana Roo, Fundar, Centro de Análisis e Investigación, Grupo de Información en Reproducción Elegida (GIRE), I(dh) eas, Inclusión y Equidad Consultora Latinoamericana, Instituto de Derechos Humanos Ignacio Ellacuría, Instituto de*

than 80 human rights, transparency, and accountability organizations, together with academics and entrepreneurs, launched the campaign “we go for more” with the main objective of ensuring independent appointments in the country.¹⁴ Although the campaign does not target the FOI’s oversight bodies, this type of monitoring is essential to achieve effective control of FOI laws.

Moreover, the new regulatory framework imposes several obligations that may exceed these bodies’ time and capacities. For this reason, it is important to have active civil society participation in flagging non-compliance of the government. Both individual citizens and organized civil society will have the important task of policing the oversight bodies.

Justicia Procesal Penal, Instituto de Liderazgo Simone de Beauvoir, Instituto Mexicano de Derechos Humanos y Democracia, Instituto Mexicano para la Competitividad (IMCO), Instituto para la Seguridad y la Democracia, Justicia Pro Persona, La 72- Refugio para Migrantes, La Sandía Digital, Letra S, Sida, Cultura y Vida Cotidiana, Mexicanos contra la Corrupción y la Impunidad, México Evalúa, Observatorio Ciudadano Nacional del Femicidio, Por la Dignidad de las Mujeres, Red Mesa de Mujeres de Ciudad Juárez, Servicios de Inclusión Integral, Servicios y Asesoría para la Paz, Servicios y Asesoría para la Paz (SERAPAZ), Sonora Ciudadana, Transparencia Mexicana and WOLA.

¹⁴ See <http://causaencomun.org.mx/prensa/vamospormas/>

Section V. Conclusions

Democratic societies cannot properly function without transparency and accountability overseeing governments and providing to their constituents with access to review their performance. However, altruistic auto-control of government is seldom found in the Mexican case.

The debate on the effectiveness of legal limitations on tyranny has been going on for years. The results of existing studies can be divided into two major categories that reflect two positions. The first promotes optimism regarding the inclusion of rights in constitutions for their effective improvement of the state of human rights (Ackermann, 1989; Rosenthal, 1990; Elster, 1993; Finer et al, 1995). Justifications for this optimism include the idea that a public formal is more expensive to violate than a norm. Few empirical studies support optimism, however, those that do find some relationship between rights in law and enforcement (Blasi and Cingranelli, 1996; Davenport, 1996; Keith, 2002; Keith, Poe and Tate, 2009).

The second position is more pessimistic about the effectiveness of law. It concludes that constitutions provide a simple window-dressing protection (Howard, 1991, 3; Epp, 1998). Empirical analyses in support of the pessimistic view have found either inverse relationships between inclusion of constitutional rights and non-violation of human rights or no correlation (Boli-Bennett, 1976; Pritchard, 1986). Recent Mexican history supports this reading of the effectiveness of law in terms of freedom of information.

Improvements in FOI laws between 2010 and 2014 did not make them more effective; on the contrary. However, civil society has been successful in making the Mexican legal system more uniform regarding transparency. The Mexican legal framework is more uniform across states than it was before and conforms to high international standards.

However, the incorporation of rights in constitutions or legal texts is no longer surrounded by the fantasy of their immediate compliance. Researchers and international advocates no longer assume that FOI laws will produce *per se* effective transparency. Various works of analysis reveal that governments may promise access to information without ensuring their effective implementation. As Johan Lidberg indicates, FOI acts have been used as a tool of "public relations" that project the illusion of an informed public without ensuring reliable access to public information (Lidberg 2006).

Transcending the conception of law as a determinant of reality, there are public policy recipes that combine various factors with the ultimate aim of influencing the effective enforcement of rights. In relation to new access to information in Mexico two important ingredients can be highlighted. The first is the political and legal diversity of implementers. It has been noted that greater diversity increases the likelihood of effective enforcement (Negretto 2013; Melton and Ginsburg 2014, 7). Therefore, the diversity of oversight mechanisms may improve the effectiveness of the right to access information. The second ingredient is the institutional design of the law enforcement agents. Greater independence and autonomy of the oversight bodies may increase compliance (Neumann, 2009; Rios Cazares and Cejudo, 2010).

Most importantly, since factors such as the engagement of civil society into national enactment processes have been successful for improving FOI laws, reformers should incentivize participation of civil society not only at the enactment of FOI laws stage but also at the implementation stage. The ultimate goal must be to achieve not only transparency *de jure* but also transparency *de facto*. Therefore, civil society monitoring of the independence of the oversight bodies and compliance with the new legal framework are key factors to achieve effectiveness of the right to access information.

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