

Transparency and Accountability in Mexico's Local Governments

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Abstracts

The process of democratic consolidation in Mexico has not resolved the issues of trust in public institutions due to the lack of mechanisms to implement public policies related to transparency and accountability. Municipal governments have struggled to meet transparency and accountability obligations due to the heterogeneity in their demographic, economic, cultural, and institutional composition. In the case of Sonora, most municipalities have faced difficulties in fulfilling these basic information obligations on their portals and assuming responsibility for the management of resources. The aim of this study is to explain the main factors that have hindered the fulfillment of these transparency and accountability obligations in the municipalities of the state of Sonora and to analyze the institutional instruments involved. This research reveals findings on the relationship between transparency and accountability policies and the municipal institutional design, and how the latter has represented an obstacle for the efficient implementation of these policies in Sonora's municipalities.

Keywords: Transparency, Accountability, Municipal Governments, Public Policies.

Introduction

At the end of the 20th century Mexico experienced great changes in its political system, specifically in its electoral institutions, when it went from a single-party hegemonic system to a competitive system where any political party has the possibility of winning in elections.

Currently, the country is undergoing a process to consolidate its democracy where it is facing problems to solve the issues of trust in public institutions, mainly in the governments of the areas of competence, political parties, and congresses. Part of this distrust is due to the fact that there were no mechanisms for public institutions to implement public policies on transparency and accountability.

Currently, legislation has been passed on these aspects; regulations have permeated the government at all levels and have even reached other non-governmental actors. The dilemma at present is how to implement them, how to provide resources and instruments to the obligated subjects so that they are in a position to comply on time and on the other hand, how to promote mechanisms for citizen participation.

At the municipal level, municipalities have presented problems in complying with these obligations, influenced by factors related to the heterogeneity of their demographic, economic, cultural and institutional constitution. This situation is recurrent in the case of most municipalities in Sonora, hence the objective of this paper is to explain the main factors that have hindered compliance with the obligations in terms of transparency and accountability in the municipal governments of the state of Sonora, as well as to analyze the institutional instruments that affect this process (Santini & Ordaz, 2018).

This paper is divided into three sections, the first one conceptually defines the subject of study, the second one opens a discussion on transparency and accountability policies and their regulatory framework, and, finally, the third section proposes an explanation of the factors that affect compliance with this type of obligations at the municipal level.

Materials and Methods

2.1 The Subject of the Study: Transparency and Accountability

The Materials and Methods should be described with sufficient details to allow others to replicate and build on the published results. Please note that the publication of your manuscript implicates that you must make all materials, data, computer code, and protocols associated with the publication available to readers. Please disclose at the submission stage any restrictions on the availability of materials or information. New methods and protocols should be described in detail while well-established methods can be briefly described and appropriately cited.

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Interventionary studies involving animals or humans, and other studies that require ethical approval, must list the authority that provided approval and the corresponding ethical approval code.

Modern states seek to develop transparency as a distinctive feature in the field of public administration in order to offer a response to citizens' demands. Initially, the right to access government information was formally recognized, and later institutions were built to promote and monitor compliance with this right.

Based on the idea that "...transparency is a quality applicable to the information flows that constitute the tools through which government action is identified, known, understood and evaluated...which refers to the availability and public knowledge of information" (Esquivel et

al., 2017), it is interpreted that there must be an obligation on the part of the government and the obligated subjects to provide or expose public information and that this information must comply with a series of requirements.

In principle, government transparency must include the component of reliability, because the other aspects that identify it depend to a greater extent on it. Reliability means that the source or generating institution from which the information originates follows the minimum review and supervision procedures, in other words, it guarantees that it is real, true, and therefore reliable. In the case of accessibility and opportunity go hand in hand, to the extent that the institution implements the mechanisms or systems to provide this information by different means, so that it arrives, acquires, sends or collects it in the times specified for it, that is to say, in a timely way. It involves the responsibility of two channels, the holders of the information and the requesters or requesters. On the one hand, the government and the obligated subjects, who must facilitate not only the access to information, but also the mechanisms for citizens to find the information they request, and, on the other hand, the citizen, who should use the information (Merino, 2005).

With this background, transparency can be understood as the process implemented by governments and obligated agents to present, promote and provide access to quality public information to citizens so that they can exercise a universal right.

In relation to accountability, there has been a conceptual discussion about its origin and the aspects it involves, especially in Latin American countries because at a theoretical level the closest word to which reference was made is of Anglo-Saxon origin Accountability, which did not have a literal and exact translation for what is known as public administration accountability. These misunderstandings have been overcome over time with the construction of the elements that the public administration must have to inform and be accountable for the use and destination of public resources.

John Ackerman proposes that accountability is "...a proactive process by which public officials explain and justify their plans of action, their performance and their achievements, and subject themselves to the corresponding sanctions and rewards" (Ackerman & Sandoval, 2008, p. 16). Following this line can be understood as the responsibility of government institutions and public officials to respond to citizens. A relationship in which the right of citizens to demand accountability and the responsibility of government to provide it is realized. Due to their political nature, governments are reluctant to expose their finances to public scrutiny, so mechanisms and instruments to prevent and monitor the correct use of public resources have not been their priority in any of their spheres, but mainly in state and municipal governments.

"The control that has significantly influenced the behavior of the administrative apparatus of government has had two main aspects: accounting, which emphasizes control over the cash flow and financial health of the various public agencies, and administrative, which seeks to ensure that the exercise of public spending and public action meet the set of regulatory requirements" (Guerrero, 2000, p. 8).

These two aspects have not been sufficient to prevent the embezzlement of millions of dollars that have occurred in local governments, and their priority has been a technical issue to partially

solve the audits of the auditing agencies that do not have the necessary tools to prevent or sanction.

Clearly, transparency alone will not solve all the problems of corruption or bring about the institutional changes that will allow for greater accountability. Access to information has been linked to accountability processes, with the assumption that the more information available, the better the ability of citizens to hold politicians and public officials to account (Piotrowski, 2007).

2.2 Policy implementation

In 1776, Anders Chydenius, a Swedish-Finnish MP and economist, promoted the first law on access to government information, the Freedom of the Press and Right of Access to Public Records Act (Ackerman & Sandoval, 2008). Sweden was the first country in the world to have this type of legislation (Scrollini, 2012). In the twentieth century, during the 1970s and 1980s, several countries, mostly Anglo-Saxon, such as the United States of America, Denmark, France, Canada, Australia, and New Zealand, included provisions on access to information in their legislation.

According to Villanueva (2000), there were two reasons for the inclusion of access to information policies in the Mexican public agenda: the Mexican state's signature to various international treaties and agreements, and the democratization process that took place at the end of the 20th century. Mexico's participation in the concert of nations had consequences within the country. These include a first group of structural reforms in Latin America that began with an approach in favor of neoliberal economic policies, such as trade liberalization, privatization, deregulation, opening to foreign investment, and limiting the state's participation in economic activities.

Within the framework of the so-called Washington Consensus, promoted mainly by international organizations such as the World Bank, the International Monetary Fund and the U.S. Treasury Department, Mexico began to include issues related to access to public information, transparency and accountability in its public agenda at the beginning of the 21st century, and more specifically in 2002 in the context of the so-called second generation of reforms. These reforms were based on the idea that the functioning of stable markets requires governments with a certain institutional capacity to incorporate access to information, transparency and accountability policies in their actions (Burki & Guillermo, 1998).

Institutionally, these rights have been enshrined in various international documents, such as the Universal Declaration of Human Rights, which states in Article 19 that "...everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". Similarly, Article 13 of the Inter-American Convention (INTER-AMERICAN COURT OF HUMAN RIGHTS, 2006) guarantees the right to information for citizens, and the need for its implementation has been reaffirmed by the Inter-American Court of Human Rights. There is a tendency, present in the so-called Model Law of the Organization of American States, to require that all information published, regardless of the format in which it is published, must be clearly readable and accessible to the entire population.

2.3. The regulatory framework

The right to information was first enshrined in the Mexican Constitution of 1977, when Article 6 of the Constitution was amended to read, “The right to information shall be guaranteed by the State. However, this individual guarantee was not supported by secondary legislation until the enactment of the Federal Law on Transparency and Access to Public Information (FLTAPI), published in the Official Gazette of the Federation (OGF) on June 11, 2002. In addition, the Federal Institute for Access to Public Information was created as the guarantor body of the federal public administration.

In 2014, the Federal Institute of Access to Public Information and Data Protection (FIAPIDP) was granted autonomy, becoming an autonomous body with legal personality and its own assets, with full technical and managerial autonomy, responsible for guaranteeing the right of access to public information and the protection of personal data held by obligated subjects. Progress has been made in the area of transparency, since June 2002 with the approved law and the creation of the Guarantor Institute, with the new reforms it becomes the National Institute of Transparency, Access to Information and Protection of Personal Data (INAI) as an autonomous constitutional body guarantor of the compliance of two fundamental rights: That of access to public information and the protection of personal data, until today with the General Law of Transparency and Access to Information published in the DOF on May 4, 2015, the inclusion of new obligations and new obligated subjects; thus in most states are enacted and harmonize the laws in this area.

In the case of Sonora, the first law on transparency was issued on February 25, 2005; later, the local Congress was responsible for enacting the new Law on Transparency and Access to Public Information of the State of Sonora in force on April 28, 2016, which serves as the basis for the analysis and level of compliance of municipalities specifically in their basic information obligations that must be published on their websites.

With regard to accountability, the Federal Constitution, in its article 134, establishes the principles that must be taken into account in the conduct of the administration: efficiency, effectiveness and honesty. The recent reform, published in the Official Gazette of the Federation on January 29, 2016, adds two more principles to these: economy and transparency. This implies procedures for the use and control of the public resources of the Mexican State in its three orders of government.

With the General Law of Public Accounting, published in the Official Gazette of the Federation on December 31, 2008, it was proposed to gradually develop the general criteria for public accounting, the publication of financial information and the creation of the public accounting system. This law is one of the most important steps taken in recent years and its implementation will allow harmonization of the accounting of the three levels of government.

With the recent reforms of February 26, 2015, the Chamber of Deputies approved in general and the ruling to create what has been called the “National Anti-Corruption System”. This decision includes the decree that modifies, adds and repeals various provisions of the Political Constitution of the United Mexican States.

The decree of May 27, 2015, amended several provisions of the Constitution related to the fight against corruption. The main axes of the constitutional reform are the powers granted to the Supreme Audit Office of the Federation (SAO), the Ministry of Public Administration (MPA), the Federal Administrative Court and the Specialized Anti-Corruption Prosecutor's Office, the creation of a Coordination Committee and a Citizens' Participation Committee.

In July 2016, the General Law of the National Anticorruption System entered into force, establishing in its Article 36 the bases to be taken into account by the federal entities for the development of the integration and operation of the State Anticorruption Systems. One year was set for the legislatures of the states, within the limits of their respective competences, to adopt the corresponding laws and regulatory adjustments to establish the State Anticorruption Systems in each of the states of the country.

With the approval of the Law of the State Anti-Corruption System, on June 30, 2016, Law No. 96 was approved, which amends and adds various provisions of the Political Constitution of the State of Sonora for the implementation of the State Anti-Corruption System, published in the Official Gazette of November 28, 2016, with the purpose of creating the State Anti-Corruption System, Establishes the Anti-Corruption Public Prosecutor's Office, establishes the Attorney General's Office of the State of Sonora as an autonomous body, and grants the Administrative Tribunal the power to impose sanctions on public officials for administrative acts that the law deems serious, as well as on individuals who participate in acts related to such acts.

The Superior Audit Law of the State of Sonora, approved on April 27, 2017 and effective from May 12 of the same year, aims to regulate the review, audit and superior audit of the financial statements and public accounts of the State and municipalities. It is emphasized that the Superior Audit and Audit Institute (SAAI) is given a fundamental role and is granted instruments of institutional strengthening, such as autonomy, which will allow it to carry out its functions with an independent perspective. For these laws to be effective in the case of the City Councils, it is crucial that they undoubtedly undergo a new institutional design that goes beyond the old administrative structures.

3. Obligations regarding transparency and accountability of municipalities

The development of local governments favors the solidity of the Mexican State. The process of democratization in the country begins, first of all, with the development of the life of the municipalities, which reflect the plurality that exists in the country; the reforms of Article 115 of the Constitution have contributed to federalism and the improvement of the administrative capacity of the municipal governments, adding to this a greater civic and social participation at the national level.

Unfortunately, no significant changes have been observed in the economic aspect, and serious problems persist in the finances and debts of the municipalities. During the first two decades of the 21st century, the possibility of fulfilling the obligations and powers of the municipal councils, which are assigned to them by the Constitution and the local laws, has not been fully developed,

which is attributed to the problems of the institutional design of the municipalities Marino (2004).

The municipalities of the state of Sonora are as heterogeneous as the rest of the country. In its geography, there are rural communities of 500 inhabitants that coexist with another of 800,000; there are communities whose economies are based on agriculture and others that are sustained by the maquiladora industry. Sonora has mountain communities, as well as coastal, agricultural and border communities, and the state is ethnically diverse. However, they are all required to fulfill their obligations as municipal governments. All municipalities must prepare their municipal development plan, their revenue and expenditure budgets, submit financial reports, comply with their transparency and accountability obligations, and resolve any observations on their public accounts, among others.

For the analysis of this study, 10 municipalities were selected, taking into account, firstly, the population criteria and, secondly, the geographical location of the municipalities. In terms of population, the selected municipalities represent more than 80% of the total population of the state. Due to their geographic location, these municipalities represent the different latitudes of the state of Sonora: north, south, center, coast, highlands, border and desert (columns 1 and 2 of Table 1).

In recent years, the municipal governments of the State of Sonora have had to assume new obligations in terms of transparency and accountability. The City Councils have to comply with 27 basic information obligations established in Article 81 of the Transparency and Access to Public Information Law of the State of Sonora, which states that “the obligated subjects shall make available to the public, and keep updated, in the respective portals and websites... as appropriate, the information on the subjects, documents and policies established in Article 70 of the General Law”. In addition, they must comply with 28 specific obligations provided for in article 85 of the same law, i.e. the City Councils must comply with 55 obligations of the Local Law.

Table 1. Municipalities of Sonora. Institutional instruments of the municipalities.

Municipality (1)	Population (2)	PMD (3) 2016-2018	Transp. (4) 2017	Observ. (5) 2009-2015	Total (6)
Hermosillo	884,273	Yes	55/27	510/329	1,821,373,951
Cajeme	433,050	No	55/23	143/109	1,004,267,653
Nogales	233,952	Yes	55/0	352/254	2,837,414,493
San Luis R.C.	192,739	Yes	55/7	197/177	602,858,828
Navojoa	163,650	No	55/14	115/58	273,242,726
Guaymas	158,046	Yes	55/21	280/218	721,384,852
Cananea	35,892	No	55/27	272/224	120,163,072
Agua Prieta	82,918	Yes	55/17	276/235	155,750,159
Huatabampo	80,524	Yes	55/11	342/222	491,679,910
Etchojoa	63,216	Yes	55/15	276/SD	146,374,615

Note: Own elaboration with data from INEGI, ISAF, Municipal Development Plans and Transparency Portals.

3.1. Factors affecting transparency and accountability compliance

The Municipal Development Plan (MDP) defines the main objectives and strategies for the development of the population of the municipality. In this analysis, the MDP of the 2016-2018 triennium was reviewed, taking into account the question of whether the municipalities of Sonora consider transparency and accountability as a priority.

The parameter to be considered was that these elements were considered in the guiding or main axes of the PMD; it was found that the plans of the municipalities of Cajeme, Navojoa and Cananea did not include in their guiding axes the specific topics of transparency and/or accountability (column 3 of Table 1), which leads to the conclusion that for the other seven municipalities, transparency and accountability are a matter of public and governmental interest.

The municipalities with the highest compliance in terms of transparency are Hermosillo and Cananea, with 27 commitments each. At the other extreme, the City Councils with the lowest compliance are Nogales, with zero obligations fulfilled, and San Luis Río Colorado, with 7 of the 55 obligations established by the local law, according to the last review in December 2017. With these data, it can be said that the City Councils of the State of Sonora do not comply with the transparency obligations that the law requires them to present in their portals (see column 4 of Table 1).

In order to verify the compliance of the municipalities with accountability, the results reports of the public accounts for the period 2009-2015 were analyzed, using as indicators the total number of observations and the number of observations to be resolved in the period in question (column 5 of Table 1). The municipalities with the highest compliance are Navojoa, with a total of 115 observations, of which 57 have been resolved and 58 remain to be resolved, representing 49.5% compliance; Hermosillo, with a total of 510 observations, of which 181 have been resolved and 329 remain to be resolved, representing 35.5% compliance.

In the case of the municipalities with the least attention to the observations raised were, first, San Luis Río Colorado with a total of 197 observations, of which 20 were resolved and 177 remained to be resolved, representing 10.1% compliance. The other municipality is Agua Prieta, with a total of 276 observations, of which 41 were resolved and 235 remained to be resolved, or only 14.8% of the observations were resolved. The technical capacity of the municipalities of Sonora depends to a great extent on the resources available to carry out government actions. Another instrument that was analyzed was the 2016 and 2017 expenditure budget, to check whether the allocation of resources was considered for transparency, accountability or open government purposes. None of the budgets of the 10 municipalities studied had a specific allocation for such purposes, although it can be inferred that a minimal and shared portion of the resources allocated for current expenditures was earmarked for such purposes.

The fourth instrument analyzed was the Municipal Government and Administration Law, which establishes that the government will be represented by a City Council composed of the Municipal President, a Syndic and the number of Aldermen established by this Law. The direct public administration with a minimum structure must be constituted by the Secretary, the Treasurer and the Chief of Police, in addition to an internal administrative system of governmental control and evaluation.

This organizational scheme of the municipal government is designed to meet the basic requirements of administration and operation, but not to assume the obligations of transparency and accountability established by law. Municipalities solve this problem moderately by assigning civil servants who are already part of the municipal structure to take care of these new obligations, but with material, training and time deficiencies.

The current institutional design of the municipal government does not have the instruments and mechanisms to assume these new responsibilities. The analysis of the Municipal Government and Administration Law shows that the structure of the City Councils is designed to perform elementary functions of organization and administration, in addition to the provision of public services that are historically the responsibility of the City Council, such as Drinking water, drainage, sewerage, treatment and disposal of sewage, public lighting, cleaning, collection, transfer, treatment and final disposal of waste, markets and supply centers, cemeteries, dairies, roads, parks, gardens and sports fields and their equipment, and public safety. No article of the Municipal Government and Administration Law refers to the transparency and/or accountability of municipal entities.

4. Conclusions

The problems faced by local governments have become more complex. They exceed the institutional and administrative capacities of municipalities, which are simply focused on providing quality services.

At this time, society's demands include participation in decision-making, access to information on the use of public resources, and the assumption of responsibility in government actions. Civil society demands that its governments go beyond their willingness to be accountable to citizens through the annual report that the mayor must present on the state of municipal affairs and the work carried out during the year.

Among the central functions of the municipality are those of planning, programming, budgeting, expenditure execution and government accounting. As already mentioned, the design of the City Hall was proposed with the basic elements for the municipal body to meet the minimum requirements of organization and administration, and not for the new obligations of government transparency.

The instrument that provides evidence of accountability is the public accounts of the municipal government. Regarding the public accounts for the period 2009-2015, it is observed that none of the 10 City Councils has resolved 60% of the total observations pointed out by the ISAF. The amounts observed are significant, the total amount observed in the period to these City Councils exceeds 8,000 million pesos. The most worrying thing is that the non-compliance with the use of public funds has no consequences or sanctions.

The human, material and financial resources of local governments are very limited. When reviewing expenditure budgets, it is not clearly and specifically stated how much money will be allocated to meet transparency and accountability obligations. The heads of the Transparency

Unit have been appointed to perform this task in a complementary way, or in other cases even in a secondary way, as they attend to it when there is time available.

Municipal development plans do not fulfill their purpose in the terms established by the Constitution. In some cases, they are accepted as a bureaucratic commitment or a letter of good intentions. Of the 10 plans analyzed, 7 include transparency and accountability in their guiding principles; however, although they are considered among their priorities, they still do not have the means to materialize them. It is necessary to provide municipalities with a legal framework that is congruent with the new requirements, technological resources, continuous training on the new obligations of transparency and accountability, and, above all, federal and state resources earmarked for the fulfillment of these new obligations.

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