
CITIZENS CLAIM FOR TRANSPARENCY AND ACCOUNTABILITY: EXPERIENCE IN PUBLIC RESOURCES DEVIATION MONITORING

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I. GENDER EQUITY: CITIZENSHIP, WORK AND FAMILY, A.C., AND PUBLIC RESOURCES

Equidad de Género: Ciudadanía, Trabajo y Familia, A.C. is a non-government organization created in 1996 before the necessity to instruct and strengthen women with office, negotiation and leadership skills to analyze and assess public policies in Mexico from a gender perspective.

The purpose of the organization is to contribute to the achievement of greater gender equity, striving for equal opportunities for Mexican women, beginning with the encouragement to participate in the defense and promotion of their sexual and reproductive rights, as well as in the follow-up, analysis, evaluation and creation of public policies and budgets, from a gender perspective.

The organization also works around sensitization, information and training issues to promote and defend sexual and reproductive rights, and the creation of public budgets with a gender perspective in different sectors, which include: organized civil society, governments, healthcare institutions and practitioners, professionals,

academics, scholars, students, communication media, judicial power personnel and people in general.

Regarding public budgets, a top priority task is to create support information and tools for organized civil society groups, in order to strengthen their citizen claims within a frame of transparency and accountability.

Multiple international experiences over public budgets from a gender perspective, have involved the exercise of linking the commitments made by their governments in International Conferences organized by the Unit Nations¹ to promote equity among genders and the manner in which those governments collect and spend their resources. In order to determine the level of accomplishment in the fulfillment of the gender goals, public budgets represent a specific tool to strengthen social follow-up and evaluation activities, and thus, to demand accountability from their governments.

On the other hand, analysis and production of public budgets based on genders equity, aside from promoting such issue, they drive transparency when claiming for appropriate and opportune budgetary information, in order to be able to assess the impact of public recourses and policies over different population groups.

II. INTRODUCTION

The Federal Law of Transparency and Access to Government Public Information enactment represents one of the most relevant accomplishments in our country's move towards a full democracy and represents a response to a long history of actions performed by civil society organizations to contribute to the current political change. Within such move, those actions dedicated to citizen education and to the demand for transparency in electoral processes are highlighted. It is not by chance that such actions are focused on these aspects, fundamentally regarding the citizen education topic, since citizenship construction implies that individuals supervise the proper operation of government institutions.

From this standpoint, citizenship concept embraces a strong participation component. This participation than can operate directly when people move by

¹ International Conference of Population and Development, Cairo, Egypt, in 1994; and International Conference of Woman, Beijing, China, 1995.

their own resources and provide a spontaneous response to a material or social need; or indirectly, developed within regulatory and organizational frames as set forth by the State of Law.

One of the responsibilities of a Democratic State is to provide the necessary mechanisms so that society can take control over public chores, through transparency and accountability.

Consequently, in order to have more democratic societies, it is necessary – on one hand - to strengthen regulations and mechanisms that allow citizens to access information as part of a broader accountability system; on the other hand, a more participative, educated, tolerant, propositional and critical society is necessary to consolidate democracy. In other words, society must support such Democratic States.

Transparency and access to public information are basic inputs so that civil society introduces itself into the political and economic debate, regarding public policies. It provides knowledge about bureaucratic operation and it can be used to assess public function and, ultimately, to sanction it.

With access to information, it is possible to create exchange spaces between Government and civil society, providing a forum for project confrontation, debate, ideas, and agreements. This is why it is so important to have a Law that is capable of promoting and fostering the right of access to federal public information.

Equidad de Género: Ciudadanía, Trabajo y Familia, A.C., together with other civil society organizations as: Grupo de Información en Reproducción Elegida, Consorcio para el Diálogo Parlamentario y la Equidad, Salud Integral para la Mujer, Letra S y Fundar Centro de Análisis e Investigación A.C., and based on the Federal Law of Transparency and Access to Government Public Information, started an analysis process with the purpose of clarifying the supposed illegitimate public budget appropriations, by investigating the deviation of public funds made by Congressman Luis Pazos, President of the Budget and Public Account Commission for the LVIII Legislature, during the 2003 budget approval term, in December, 2002.

III. BUILDING A PATH TOWARDS BUDGETARY TRANSPARENCY

From the beginning of year 2003, evidences of a supposed deviation of 30 million of Mexican pesos from the Federation Expenditures Budget (PEF, acronym in Spanish) to National Pro-Vida Committee were presented; those resources were originally assigned for HIV/AIDS combat and prevention. From this, several civil society organizations decided to work jointly to locate the destination of the mentioned public resources.

Salud Integral para la Mujer (SIPAM), Consorcio para el Diálogo Parlamentario y la Equidad (Consorcio), Letra S, Grupo de Información en Reproducción Elegida (GIRE), Fundar Centro de Análisis e Investigación A.C. and Equidad de Género: Ciudadanía, Trabajo y Familia, A.C., (Equidad A.C.) got together with the common purpose of investigating the appropriation and allotment of said funds, supposedly pruned from HIV/AIDS budget.

Organizations undertook the task of searching information to clarify this matter. Given that this issue dealt with a public budget-related topic, it was initially intended to clarify the issue by means of a technical analysis of the 2003 FEB (Federation Expenditures Budget) in its three different classifications; but it was impossible to find a sufficiently clear breakdown to show the deviation. Given the trouble of the budgetary analysis, it was then determined to request information from the House of Representatives and, particularly, to the Equity and Gender Commission. With the documents obtained from that Commission, the following was demonstrated:

1. The House of Representatives of the LVIII Legislature approved on December 16, 2002, an additional amount of six hundred million of Mexican pesos to the appropriated amount contained in the Federation Expenditures Budget project for 2003, targeted to women health and other programs.
2. On December 30, 2002, Federation Expenditures Decree was published in the Federal Official Newspaper, where the additional 600 million of Mexican pesos were included.
3. On January 9, 2003, Congresswoman Josefina Hinojosa Herrera, member of Budget Sub – Commission of the Equity and Gender Commission of the House of Representatives, sent a document (CEG/ 1061/01-03) addressed to Congressman Luis Pazos de la Torre, President of Budget and Public Account Commission of the LVIII

Legislature, in which the distribution of the approved 600 million of Mexican pesos was detailed. This distribution included 208 million additional Mexican pesos for HIV/AIDS program.

4. The Health Secretary, Dr. Julio Frenk Mora, received from Congressman Luis Pazos on January 10, 2003, a written document (CPCP/1779/02) dated on December 17, reporting the distribution of 600 million of Mexican pesos *authorized by the House of Representatives*. This distribution is different than the one contained in Congresswoman Hinojosa's document, since the amount allotted for HIV/AIDS appears in the amount of 178 million of Mexican pesos plus the appearance of a new line, not previously approved by the House of Representatives, for the Woman Help Center (Pro-Vida), indicating an amount of 30 million of Mexican pesos.
5. On January 17, 2003, Representatives María Elena Chapa, Concepción González Molina, Ma. de las Nieves García Fernández, Flor Añorve Ocampo and Laura Pavón Jaramillo sent a letter to Representative Pazos by which they pointed out that the allotment of public resources emphasized in their document to the Secretary of Health did not correspond to the amount approved by the Equity and Gender Commission. They reminded him that, in compliance with constitutional article 74, no legislator is allowed to reassign a budget without previous consideration of the Congress Plenum. For the above, he is requested to respect assignations and to rectify his document addressed to Dr. Frenk Mora, and in case of failing to do so, such fault would be submitted to the Plenum for its discussion during the following period of sessions.
6. On the other hand, Representative Olga Haydee Flores Velasquez sent a letter on January 23 to Representative Luis Pazos, by which she undertakes the same position than the above-mentioned Congresspersons.
7. On February 11, 2003, Representative Pazos sent a letter to Mrs. Carmen Lira Saade, journalist for "La Jornada" newspaper, by which he denies that the budget for HIV/AIDS had been pruned and he further claims that he cannot increase or decrease any Federal Expenditures Budget just under his will.
8. On the other hand, during a meeting held by the National Counsel for Prevention and Control of HIV/AIDS on March 26, 2003, it was agreed that the Political Coordination Board of the House of Representatives would be called upon for an explanation over the changes made to the budget originally labeled for AIDS, which had been supposedly reduced.

As it can be observed, the information in hands of mentioned organizations was fragmented and incomplete, thus decided to join efforts to work for transparency and accountability over the assignation of public resources.

Equidad, A.C. searched in 2003 Federation Expenditures Budget the specific appropriation in which 30 million of Mexican pesos were allotted to Woman Help Centers, linked to National Pro-Vida Committee, A.C., though such appropriation appeared to be nonexistent.

The next step was to look for direct sources; for example, on July 24, 2003, an official document was sent to the Undersecretary of Expenditures of the Treasury Secretariat (SHCP, acronym in Spanish), requesting an explanation over the allotment of 30 million of Mexican pesos that did not appear in 2003 FEB.

The response to such request was received as late as August 19 of the same year, and it indicated that the competent administrative unit to provide said information was the SHCP Link Unit. On the other hand, the FEB approbation juridical framework was analyzed to determine if it was legal to allot public resources directly from the budget to a civil society organization. It was found that such is acceptable, according to article 8 of the Law of Budget, Accountability and Federal Public Expense.

Furthermore, the legal context of the FEB approbation period in the House of Representatives was studied, and it was found that the Constitution, in its articles 74 paragraph IV and 126, clearly state that only the House of Representatives has the faculty to inspect, discuss and approve the budget. The study of the legal groundings for budget appropriations did not render any resource capable of validating the action of the President of Budget and Public Account Commission of the LVIII Legislature. It was therefore considered that the reallocation of the 30 million was made unlawfully, so it was determined to call on several lawyers, specialized in this matter, to obtain their opinion regarding the actions that civil society could undertake to denounce this abnormality.

A justice specialized in taxation matters, an investigator from the National Autonomous University of Mexico Juridical Research Center, and a lawyer and former congressman were consulted. They recommended filing a claim before the House of Representatives. The three professionals agreed that there was no precedent of civil society formally denouncing abuse of power by a congressman.

The next step was to consult a lawyer from the Economic Research and Education Center (CIDE, acronym in Spanish) and two Administrative Law experts from the

Autonomous Technological Institute of Mexico (ITAM, acronym in Spanish). The latter ones produced a document titled “Public Expense, Accountability and Citizen Participation” in which they conclude that the Superior Federal Auditors were responsible for determining if congressman Pazos ordered the allotment of resources arbitrarily and, in compliance with constitutional article 79 paragraph IV, the same instance was also responsible for determining the existence of any damages or losses that could affect the Federal Public Treasury or the patrimony of any federal public entity.

IFAI: AN IMPORTANT ALLY IN THIS PROCESS

Based on the Law of Transparency and Access to Government Public Information, and parallel to the above-mentioned investigations, on August 5, 2003, Equidad A.C. started tracing information via *Internet*, using Information Request System (SISI, acronym in Spanish). The Treasury Secretariat was questioned over the allotment of 30 million of Mexican pesos that appeared in the above-mentioned document as assigned to Woman Help Center.

On September 2, 2003, SHCP responded, also through the SISI, confirming that 30 million Mexican pesos had been assigned to the Woman Help Center, through the Responsible Unit, “Public Charity Patrimony Administration”, appropriation 4308 for 4P3 project of the Health Secretariat.

With the information obtained through SISI, there was certainty over the allotment of 30 million of Mexican pesos to Woman Help Center through the Health Secretariat and that such appropriation was made without the consensus of the Congress Plenum. Furthermore, there were still many other questions to be answered:

1. Was there any amount of money cropped from the HIV/AIDS combat budget and then reoriented to Woman Help Centers?
2. Which were the criteria under which public resources were allotted through the Public Welfare Patrimony Administration?
3. Were such appropriations allotted by a bidding process?
4. What were those 30 million Mexican pesos would be used for?
5. Why was such amount allotted under instructions of Luis Pazos, when he was not enabled to do so?
6. Before whom should this apparently abnormal situation could be denounced?

On September 8, Equidad de Género, A.C. requested information once again from SISI over Public Welfare Patrimony Administration resources distribution criteria and amounts. Once the regulatory time elapsed, the response only led to a referral to the Health Secretariat Internet website, where Public Welfare Patrimony Administration was described by an organization chart. In fact, the calls to access resources were described, but there was no mention whatsoever on the accessible amounts or selection criteria.

Equidad A.C. continued to search information through SISI. On October 20, the Public Welfare Board of Patrons 2003 beneficiary list was requested. On November 25 a response was received.

On January 21, 2004, complete data related to each Woman Help Center, beneficiaries of 30 million Mexican pesos, was requested. On February 2, 2004 the requested information was served, though simply consisting of a directory related to the 12 Centers.

On February 9, 2004, a new request was filed through SISI to obtain information on the specific amounts assigned to each of the Woman Help Centers. The response was obtained on March 10, indicating that it was necessary to further precise the requested information, as according to the agreement dated March 14, 2003 between Public Welfare Patrimony Administration and National Pro-Vida Committee, the latter one was committed to report in detail over the destination and use of the total granted amount.

With the advice from IFAI regarding the suitability of a request of direct access to the files and not through specific questions and with the information over the existence of the mentioned agreement, it was then determined to request a copy of said agreement and the reports rendered by Pro-Vida. On March 25, a response was received stating that the cooperation agreement and the reports were integrated by 6,525 leafs, thus the interested person could make an appointment through the Health Secretariat Link Unit to consult the information at the Public Welfare Patrimony Administration headquarters.

After reviewing the documents, copies of the agreement, the financial report and the social impact reported by National Pro-Vida Committee were requested, for their analysis. As there were still many unanswered questions, on April 20, 2004, the Health Secretary was requested, through SISI, to submit a breakdown of the Public Welfare Patrimony Administration appropriation, as a part of the follow-up of this Health Secretariat non-concentrated body, where the discretionary handling

of resources was detected upon the assignation of 30 million Mexican pesos to the National Pro-Vida Committee.

IV. PUBLIC ACCUSATION

On November 6, 2003, representatives of Equidad de Género, A.C., Letra S, Sipam, GIRE, Fundar and Consorcio presented before the LIX Legislature Congressmen and before the mass communication media, the results rendered by the analysis of the information available up to that moment, regarding the supposed deviation perpetrated in the previous legislature. Civil society organizations considered that the House of Representatives was the competent instance to investigate the implications of the supposed deviation as well as to promote accountability to citizens.

This presentation was attended by eight representatives of the three main parliamentary fractions², as well as by 13 mass communication media representatives. In this meeting, a copy of the results was submitted and, at the same time, legislators committed themselves to respond to the following questions under a maximum term of 30 days:

1. Is the President of the Budget and Public Account Commission empowered to personally assign public resources to private organizations?
2. If not, to which sanction is he entitled to, due to such behavior?
3. Which is the House of Representatives' procedure to breakdown the approved additional resources?
4. Which are the mechanisms that legislative power includes to fulfill the Law of Transparency regarding accountability, face to face with the society?

² From PRD (Democratic Revolution Party): Minerva Hernández, Budget Commission Secretary; Marcela Lagarde, social equity area coordinator of PRD and member of the Equity and Gender Commission; Inti Martínez, member of Public Education and Educational Service Commission; Ana Lilia Guillén, member of Population, Borders and Migratory Matters Commission; Angélica Díaz del Campo, member of Budget Commission, and Martha Lucía Micher Camarena, Equity and Gender Commission Secretary.

Despite this commitment, on April 2004 no response had been received yet from the legislators. Three written communications were sent: two of them, dated on November 2004 and April 1, 2004 addressed to the legislators who attended the presentation and the third one addressed to the coordinators of the Parliamentary Groups (dated December 1, 2003).

After more than one year of gathering information about the supposed deviation, access is available to the documents that demonstrate that the resources were appropriated by instructions issued by Representative Luis Pazos through a cooperation agreement and it can be certified that the money was expended in Pro-Vida Committee organizations.

Given the relevance of the case, we shall continue to consult experts in Parliamentary Law and Public International Law in order to support the juridical aspects of the gaps contained in the law, which allow the deviation of public resources in an arbitrary manner and with no sanction whatsoever.

The final purpose of this investigation is to prevent this type of abnormalities from happening again and that every approval, execution and accountability process of public budgets are performed in a transparent manner and facing the citizens.

V. FINAL REFLECTIONS

Through its activities, civil society has developed a series of strategies, both to support its demands, and to force transparency over government office. In both cases, the lack of access to public information has been a significant limitation for the performance evaluation over government responsibilities.

The Federal Law of Transparency and Access to Government Public Information opens the possibility of exercising citizen right to public information. Within this framework, the Information Request System represents a tool to facilitate access to the data from any location in Mexico and even the world.

This experience allowed to question if any person can individually use his/her election position to favor any group of his/her choice using the people's money, even if such groups are against the guidelines of the National Development Plan and even carry out activities against constitutional dispositions.

Furthermore, it also claimed before public opinion and by a specific demand the actual possibility that a properly informed citizenship could use the necessary elements to demand transparency and accountability by the Government.

Regarding the mechanisms to request public information through the SISI, this undoubtedly represents a significant progress in transparency and accountability, by providing and easy user-friendly system to obtain the requested information. Nevertheless, the fact is that most of this population does not have the necessary mechanisms or the resources to exercise this right; among them, Internet is an obstacle for universal access to public information.

In order to move forward in accountability, it is also necessary that the State provides all material and symbolic resources to strengthen a more participant citizenship, not only as an effect, but as an objective per se.

If it is true that the information obtained through SISI has been very valuable, the manner in which it has been served has been extremely slow. For the term of twenty workdays that the agency's Link Units have to respond to the citizen's requests, it took more than six months to obtain the information that is now available to this date and it is still incomplete.

Considering the way in which an information request must be filed through SISI, it is worth to point out that the system forces the requester to state very precise questions; thus, if no precise reference information is available for a specific document, a satisfactory service to the questions filed will be hardly obtained.

It would be convenient to clarify, within the SISI web page, that it is possible to request complete files from the government records. Had this been so, the organizations would have requested, upon reception of the first response through SISI, access to the file of the Patrimony Management for Public Beneficence with the National Pro-Vida Committee instead of filing five separate requests.

On the other hand, it would be significantly important to improve the mechanisms for access to information of the Legislative and Judiciary Powers because, as observed in this case, sometimes the intended information involves the Executive Power together with any of the other two federal powers. In case of Legislative Power, the lack of transparency and access to information has represented a grave obstacle for accountability, as provided by the Federal Law of Transparency and Access to Government Public Information.

It is indispensable for the Government to continue efforts to disseminate the outreach of the instruments that SISI has made available to the people. IFAI works as a bridge to facilitate the citizen exercise of control and surveillance over Government performance.

Finally, it only remains to say that this experience is a clear example of Civil Society surveillance before the non-compliance and power abuse from public officers and the representatives elected by popular vote. Although it has been possible to move on in the clarification of the facts related to the deviation of public funds in the benefit of Pro-Vida, there is still a long journey towards transparency and accountability by the Government.

Note: The documents to support this investigation are readily available to the public in Equidad de Género, Ciudadanía, Trabajo y Familia, A.C. -<http://www.equidad.org.mx>-

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