

THE RIGHT TO ENVIRONMENTAL INFORMATION: THE ROLE OF THE FEDERAL AUTHORITIES AND CITIZEN PARTICIPATION

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ABSTRACT

This is a statement on the relationship between the right to environmental information and sustainable development. It is based on the assumption that enlarging the social participation limits through access to environmental information may contribute to an improved management of natural resources.

RÉSUMÉ

Il s'agit d'établir la relation entre le droit à l'information sur l'environnement et le développement durable. Cela ressort d'une hypothèse qui suppose que le fait d'étendre les limites de participation sociale par l'accès à l'information sur l'environnement pourrait contribuer à une meilleure gestion des ressources naturelles.

INTRODUCTION

As is the case for any other right, the exercise of the right to information regarding environmental issues presupposes the knowledge of the norm; however, in this case it also presupposes a process of social

communication. The exchange of information between people compelled to respect the right to environmental information and people exercising this right necessarily involves the possibility of having specialized previous knowledge.

In order to facilitate social communication the following conditions are required: the existence of at least two interlocutors, the possibility of generating information and the intention or the necessity of communicating, the last two conditions always determined within a historical and social context. Taking into account those elements, the present paper examines three levels of analysis regarding the right to information: the first refers to the obligation to generate, systematize and make available environmental information; the second refers to the obligation to design the mechanisms and means to access this information and the last refers to the exercise of the right to access this information, understand it and use it.

In the three levels, the relationship of interdependence between the needs and expectations of communication is obvious. What do we expect from the regulation of the right to environmental information? Is environmental information useful for the exchange of messages, answers and meanings? Is there a close relationship between the needs and expectations of people compelled to respect the right to environmental information and those of people exercising this right? Obtaining efficient and effective legal dispositions regarding environmental information will depend on the identification of these needs.

In a very general manner, a person's need for environmental information may coincide with that person's desire to contribute to the sustainable development. Nevertheless, the application of this principle is not simple. We live in an era where the worldwide tendency is to concentrate major decisions in the hands of a few, whereas the principles of environmental sustainability are based on the modification of production and consumption patterns and on the increase of citizen participation.

The debate over the exercise of the right to information in Mexico is not far out from this paradox; it occurs within the framework of the profound social and political changes we are going through, particularly at the level of our institutions. With the erosion of the historical consensus based on corporate and bureaucratic control which, up to fifteen years ago, has prevailed in the Mexican political system, the right to information may

become an important instrument in the construction of a new social consensus, if indeed citizen participation can be increased.

In Mexico, the General Law on Ecological Balance and Environmental Protection (LGEEPA), a Federal Regulation, establishes that access to environmental information is a mechanism whose purpose is "to enlarge the margins of citizen participation in environmental management"¹. A legal framework is granted to the consultative councils for sustainable development in which there is participation from NGOs, universities, entrepreneurs and state and local governments.

The National System of Environmental Information² proposes among its aims: the establishment of terms of reference and objectives for the development of public policies; the enlargement of the rational evaluation of the environmental policies based on objective data and indicators; the reduction of the size and distribution of the economic costs associated with environmental damage; the favoring of decentralized decisions; the orientating and fortifying of public participation in the exercise of the right to environmental information; the facilitation of the development of mechanisms for the evaluation, management and communication of environmental risks.

Some other institutions, such as the Democratic Revolution Party, emphasize that access to environmental information should include knowledge of the risks in which the community or person is being placed. Meanwhile, the academic and NGO communities see the exercise of the right to information as a mechanism that encourages awareness, that promotes the application of the law, that generates new forms of social participation and that democratizes the decision-making process regarding environmental issues³.

¹ Secretaría de Medio Ambiente, Recursos Naturales y Pesca-SEMARNAP, 1997, *Exposición de Motivos del Decreto que reforma, adiciona y deroga diversas disposiciones de la LGEEPA*, 10. Edición, México.

² Poder Ejecutivo Federal, 1996, *Programa de Medio Ambiente 1995-2000*, Ed. SEMARNAP-Instituto Nacional de Ecología, México.

³ Carmona, Ma. del Carmen, 1993, "Acceso a la información. Perspectivas Nacionales", *Memoria de la Primera Reunión de Norteamérica sobre Derecho Ambiental. Fase II*, Ed. Fundación Mexicana para la Educación Ambiental, Tepotzotlán, Estado de México, México.

Therefore we can ascertain that the principle of sustainable environmental development is not based on a consensus and also that the regulation of the right to environmental information indicates that the actors involved in it do not answer to equal interests and needs. Additionally, it seems that we are involved in a "fiction" because the right to environmental information guarantees the legal interest of all persons who may apply for it, but access to that information requires that the actors who exercise that right understand and use the data.

1. LEGAL PROVISIONS ESTABLISHED IN MEXICO TO GUARANTEE THE RIGHT TO ENVIRONMENTAL INFORMATION

Actually, all the social actors interested in the maintenance and management of natural resources accept that information is a necessary element for the elaboration of a general strategy for sustainable development. Since the Rio Conference of 1992, many nations have developed legal statutes linking access to information to citizen participation. In Mexico, Articles 109 bis and 159 bis of the LGEEPA establish the right to information and an informed social participation as two fundamental elements⁴.

With the 1996 amendments, the LGEEPA consists now of six titles which regulate: I) Distribution of Spheres of Competence, II) Biodiversity, III) Sustainable Development of Natural Resources, IV) Environmental Protection, V) Social Participation and Environmental Information and VI) Control and Security Measures and Sanctions. The Fifth Title which in 1988 regulated only Social Participation, was augmented in 1996 to include Environmental Information issues, in Chapters I and II respectively.

Chapter II of the Fifth Title, "The Right to Environmental Information", contains Articles 159 bis to 159 bis 6, which regulate successively: the nature and objectives of the National System of Environmental Information and Natural Resources; the publication of the biannual report; the edition and publication of the Official Gazette with legal provisions and environmental information; the availability of environmental

⁴ Azuara Monter, Iván, 1998, "Política ambiental en México", en Barba, Regina (coord), *La Guía Ambiental*, Ed. Unión de Grupos Ambientalistas IAP, México.

information to the public and the right to petition; the conditions under which the authorities will refuse the granting of information; the period that the authorities have to respond to information requests; and the responsibility that the solicitor of a request has for the correct use of the information.

Article 159 bis 3 establishes that the SEMARNAP, the state governments, including the Federal District, and the municipal governments have the obligation to observe the right to information and that the exercise of this right may be by any person who identifies himself, clearly requests the information needed and gives the motive for the request.

2. NATIONAL SYSTEM OF ENVIRONMENTAL INFORMATION

The LGEEPA "considers environmental information, any written, visual or database information, that environmental authorities may count with, regarding water, air, land, flora, fauna and natural resources in general, as well as regarding activities and measures that may affect them"⁵.

Environmental authorities have the obligation to integrate into the National System of Environmental Information (SINIA) the following concepts: the "information regarding all inventories of national resources existing in the national territory, the mechanisms for and results obtained about the monitored quality of air, water and land, the records, programs and actions taken"⁶, as well as the information pointed out in Article 109 bis: "The SEMARNAP must integrate an inventory of atmospheric emissions, residual water discharges on federal reservoirs or those infiltrating to the subsoil, materials and hazardous waste under its competence, coordinate the records established by the law and create a consolidated information system based on the authorizations, licenses or permits that must be granted related to the issue"⁷.

Additionally, the environmental authority is obliged to compile and integrate in SINIA "the relevant reports and documents resulting from

⁵ Art. 159 bis 3, LGEEPA.

⁶ Art. 159 bis.

⁷ Art. 109 bis.

scientific, academic activities, technical or any other works related with environmental issues and preservation of natural resources, which have been accomplished within the country by any domestic or foreign person or firm"⁸.

Development of SINIA is established in Chapter 10 of the Environmental Program 1995-2000 of the Federal Government, as a basic instrument for the development of policies, objectives and priorities of environmental management, as well as a mechanism to evaluate their performance. And, at the same time, SINIA is seen as an instrument to orient the behaviours of individuals, entrepreneurs and government agencies and their actions regarding decision-making.

This document recognizes that the information generated which is related to environmental issues is not easily available, as it is not integrated, nor compatible and cannot be exchanged. It also recognizes that the operation and development of SINIA will entail the consolidation and ordering of all information resources into a unique database management platform and the use of a superior technology, thus, "it is evident that more tangible results will come within a long-term horizon"⁹.

To carry out their goals, they will:

- Provide high-quality information to public organizations.
- Improve the efficiency of the Institution in relation to solutions, management and services.
- Provide information to internal and external users about the projects and programs, as well as their level of progress.
- Evaluate public and private environmental recovery.
- Publish and periodically spread thematic reports.
- Support the development and use of models which represent the complexity of environmental processes and simulation policies.

⁸ Art. 159 bis.

⁹ Poder Ejecutivo Federal, 1996, op. cit.

- Organize and validate the information from a large diversity of sources.
- Contribute, with reliable information, to the support of regulating controls and verification.
- Support the construction of integrated systems of economic and environmental accounting.
- Generate information in priority areas and regions.
- Evaluate the direction and efficacy of adopted policies.
- Maintain public information to encourage the responsibility and actions of society regarding environmental protection.
- Create, maintain and optimize documentary centers for public consultation.

For the operation of SINIA, the program proposes various "semiautonomous" systems:

- Environmental indicators system.
- Environmental accounts, complementing the National Accounting System (SCN).
- Geographic information system for the environment.
- Information system for the knowledge and use of biodiversity.
- Information system of the protected natural areas.
- Information system for toxic substances and hazardous waste.
- Register of pollutant transfers and emissions.
- Information system on international environmental cooperation.
- Information system on environmental regulation.
- Information system on compliance of environmental and natural resources regulations.
- Environment-monitoring laboratories.
- Mechanisms for the spreading of information.

The means for the spreading of information foreseen by SINIA are:

- The Official Gazette, published quarterly.
- Monographs series: Titles focused on issues of specialized technical interest.
- Biannual Report dedicated to the evaluation of environmental performance in Mexico.
- Workbooks: Proposals of environmental policies, experiences, results and investigation reports.
- Posters and brochures.
- Catalogues.
- Special reports.
- Internet WWW web page.
- Educational material to support environmental education programs.

SINIA presents different types of users:

User type	Function	Adjunction level
Internal SEMARNAP	Decision-making and design of environmental policy	High in general, national, regional; however, they must have access to all information
	Operational	Detailed and specific with option to obtain additional information
	Consulting	Highly detailed with the option to obtain additional information
Other agencies linked with environmental issues	Information exchange	On the basis of the user's competence
External	Consulting	On the basis of the policies established by the provider of the information consulted

Both the inclusion of Chapter II of the Fifth Title described above (the 1996 amendments) and SINIA's design represent a great advance towards guaranteeing the exercise of the right to information. However, their effectiveness and proper application require a deeper debate among agents concerning communication strategies that may necessitate the formulation of a complementary regulation: "for the adequate application of the right to information a regulation is required which completes the constitutional norm and the law, setting specific procedures that make possible its effectiveness and guarantee its protection"¹⁰.

This debate must consider, in the first place, the conditions which would allow the existence and holding of more than one opinion in the process of generation and systematization of environmental information, not only to establish efficient norms but in its own formulation. Article 159 bis opens the possibility of integrating into the database information that comes from alternative sources. It leaves to SINIA the responsibility of organizing and validating the information arising from this large diversity of sources. But in neither of the two instruments do we see defined the mechanisms, the criteria or the conditions under which such information will be validated and integrated by SINIA. Under the definition of the indicators of the information systems, the participation of independent expertise must be promoted and guaranteed.

In the planning and implementation of SINIA, a high priority is granted to the selection and development of alternatives regarding information issues, integration of systems, formats and databases, but the means of access are not established. Requesting of information from SINIA depends on "the generator features of the information consulted"¹¹, and since there is no regulation attached to it, the officer in charge of the area is permitted great latitude in responding to the request.

None of the LGEEPA, SINIA or SEMARNAP bylaws determine which specific authorities must provide information. Neither do they establish the responsibility of public and particular officers who refuse to

¹⁰ Mesta, Ma. Elena, 1988, "El derecho a la información", en Barba, Regina, op. cit., p. 624.

¹¹ Poder Ejecutivo Federal, op.cit.

provide information which, by law, they are obliged to generate and make available.

Finally, SINIA has established no mechanism to detect the needs of different users, neither has it, from the moment it was conceived as an instrument for policy evaluation, decision-making and behavior orientation, included the possibility of integrating another opinion.

SINIA looks upon environmental information as a mechanism to induce modifications in the attitudes of the citizens in general or particularly in the attitudes of those responsible for sources of emissions that may contaminate the environment. This position becomes extreme for some officers who understand that environmental information can be used as a political instrument to promote the autoregulation of market economies¹².

The problem lies in ascertaining whether the real intention of government is to generate, systematize and spread information to encourage actions from society for the benefit of environmental protection, or to manipulate and induce citizen participation to improve its public image.

For it to have reasonable success, the "fiction" that guarantees the legal right of any person to demand environmental information would require the development of specific strategies and the adoption of measures for obtaining data and information which would encourage the generation of more than one opinion, and this, not only as a means to decrease uncertainty levels, but as a mechanism for the definition and formulation of norms.

It may be possible to formulate and establish mechanisms necessary to rectify the inadequacies of the existing law, but in order to do this we must consider and include governmental needs to promote and strengthen public participation and support for the concept of sustainable development as well as society's desire to strengthen democratic procedures in the decision-making process.

¹² Sánchez Cataño, Luis, 1997, "Derecho a la información y registro de emisiones y transferencia de contaminantes (RETC), en *Gaceta Ecológica*, Núm. 42, Nueva Época, Primavera, México.