

Global Integrity Scorecard:

Mexico

2009

Reporter's Notebook: Mexico

Tithes and punishment

By *Leonarda Reyes**

The fire and smoke coming from the daycare center could be seen blocks away. Desperate mothers jammed through the center's entrance gate, knowing their children were inside. The daycare center was, in fact, actually a warehouse. Minimal health and safety modifications had been made to the building to allow for the care of children.

It lacked fire exits, fire equipment and fire alarms. Still, local health and federal officials had approved it as a safe place.

That afternoon 29 children died in Hermosillo, the capital of the northern state of Sonora, some of them while sleeping during their afternoon naps. Within days, the number of children killed from complications from the blaze increased to 49.

Days of outrage followed. Parents led protests after they learned that one of the center's owners was related to the governor and the president's wife. Relatives of the governor owned a dozen daycare centers authorized by the national health care system (IMSS — *Instituto Mexicano del Seguro Social*). For the parents, it did not matter at which government level the connections took place, both local and federal politicians were thought to be corrupt and guilty. Some parents however, blamed themselves.

"I am guilty of trusting, of paying my taxes, of voting for them. I am responsible for the death of my son," said Roberto Zavala, a young father. Other voices corrected him: "It is not you, it is them, the corrupt ones."

In a way, Zavala described the type of corruption to which Mexicans are exposed these days. While there is a general feeling that petty corruption has been decreasing — there is no need to pay a bribe to get a legitimate driver's license, a passport or other similar services — the hidden, difficult-to-detect corruption, as well as legal and grand corruption, is rampant coast to coast in the country.

A classic form of corruption in Mexico is called *diezmo* (tithe) in the state of Guanajuato, a highly religious state. If a bridge, a road or a school is built or a permit is issued, the contractor must pay about 10 percent bribe to compete for a small contract. Only the contractors who lose the bids might complain, and oftentimes only in private and in the hope that the next contract will go to them.

Diezmos are not an act of the contractor's generosity. *Diezmos* are paid to officials to award a public contract to a bidder or company and it works this way: the companies participating in a bid are very careful to quote the right quality and not to overprice, but when the company wins the bid and gets the contract, the original amount can be increased up to 25 percent and those additions are for sure going to be approved.

This form of corruption is widespread at every level of government, be it federal, state or municipal. Pemex, the Mexican state-owned oil company, 11th biggest in the world, is a good example. "The government has fought corruption at the low levels inside Pemex, but (as they) pressed the balloon below it got bigger at the upper levels. The corruption is up high now and it's the big corporations and big contracts where it shows," said Armando Etcheverry, an oil expert and former Pemex employee.

The bribes are usually paid in cash and in different percentages, depending on how much money is involved in the contract. Sometimes the money is deposited in off-shore bank accounts.

Impunity granted

The Federal Prosecution Office (PGR— *Procuraduría General de la República*) investigates federal corruption with the head prosecutor reporting to the President. This means that any federal officer, low-level or high-level, is investigated by his or her own boss. Therefore, the political motives very often taint the investigations. The same is true in the states and municipalities.

The judicial system also has its own corruption problems, but most of them originate during the investigation stage. Investigators are not part of the judicial system in Mexico, they are part of the Administration and report to the Federal Prosecution Office, whose head reports to the President. The same model applies to states.

Although judges, courts and the Supreme Court (judicial system) are widely perceived as corrupt, judges rely on the investigations and often times these investigations have been tainted during the process.

"In my experience as a lawyer, judges are doing their job. The problem is that they trust the *Ministerio Público*, (the prosecution's branch in charge of the investigations) and the investigators are clumsy, the evidence altered because they are incompetent, not well trained or (they don't) get well paid. Yes, the officer who serves notifications asks for bribes. It is because they have a lot of work and if you want it fast, you pay, but the real problems start with the investigation," said Jorge Arana, who has been practicing law for 15 years.

His experience is also supported by academic research. Petty thieves who cannot bribe the investigators or hire expensive lawyers are put behind bars. Jails in Mexico are full of them.

Some revenge

Late on Sunday July 5, 2009, the reports were stunning. It was the night of the federal election of the House of Representatives and for the Industrial Revolutionary Party leaders (PRI — *Partido Revolucionario Institucional*), the results were favorable beyond belief.

PRI had held power in Mexico for seven decades until 2000, when the conservative party, the National Action Party (PAN — *Partido Acción Nacional*), won the presidency. But on the morning after the 2009 election, the dinosaur — as PRI is often called — emerged awake and in good health. PRI came out of the election as the most powerful force in the House. For PAN, the president's party, it was a catastrophic loss. PAN leaders, still in shock, established a commission to understand the reasons for their defeat. Voters understood well the reasons for the change in power: They had expected corruption to decrease and for the economic situation to improve under PAN. Instead, citizens only saw a change in style.

In the past, corrupt PRI politicians would deny any wrongdoing. They would try to disguise and hide evidence of misconduct. Eventually someone would be fired. The PAN style, instead, was up front: wrongdoing and morally questionable acts were defended as correct, despite all evidence to the contrary.

For example, in late August, 2009, one departing PAN legislator, Gerardo Priego, received a check for more than one million pesos (US\$75,000) from the House-contracted travel agency for tickets he had not used. Priego returned the money but the PAN national leader, César Nava, instead of calling on his fellow party members to do the same, in light of the enormous economic global crisis that has hit Mexico particularly hard, insisted that "it is not an obligation or a must-do."

Fraud? Who says it is corrupt for a politician to keep unspent public money?

A new breed

Economic insecurity and narcotics traffic have created a new breed of corruption in Mexico. During the past five years, the drug cartels have expanded massively, promoting a war that has killed thousands of people. The drug cartels corrupt everyone, whether they want to be corrupted or not, by fear, by money or by both.

"We were intercepted by several men in different vehicles. They forced us out of the patrol cars, threatening us with gun machines. They said they were the cartel and did not want us to interfere with their activities. They also said they knew where we and our families lived," said a police officer in a deposition published by *Proceso* magazine. She and her partner looked the other way from that day on and started getting small bribes every month.

She was charged with conspiracy, along with 17 other police officers.

With an increasing understanding of how the political system works, the cartels' strategies to control the government have become more sophisticated. Newly elected mayors of the main three political parties were "invited" to attend a meeting in the state of Michoacán, on the Pacific, a drug transport area and home of a cartel. The mayors were forced into a ballroom and there, surrounded by armed men, were threatened and informed by the drug lords that the cartel was going to appoint the police chiefs in every municipality. A dozen mayors, police chiefs and other officials were charged for

conspiracy in May 2009.

Sick and tired

Millions in Mexico are sick and ashamed of corruption. Any crime that goes unpunished, any misconduct, or any abuse of power is automatically attributed to corruption.

Exactly how tired are Mexicans of corruption and corrupt politicians? Prior to the July 2009 election, activists launched an Internet campaign, which garnered great media attention. It called on citizens to cast voided ballots in order to express disgust for the corrupt politicians and, in general, for the political system that allows it.

When the votes were counted, close to six percent were voided. That is 1.7 million ballots, not a huge number, but it represents active and informed voters and not passive citizens.

There are also examples of people taking justice into their own hands. In the past, groups of citizens have detained robbers, alleged kidnappers and rapists and handed them to the police. Now, businessmen and other professionals, tired of impunity, have hired "para-police," a clandestine group that seeks "justice" when the government does not. The group beats and kills when necessary, according to the chief commander, who was interviewed by *Milenio* newspaper. The group has existed for 12 years.

Vigilante justice will never succeed, nor will it be enough to rid the country of corruption and impunity. Such action is the result of desperation, just as desperation caused activists to void their voting ballots, despite the fact that they knew it would not change much. What such behavior makes clear, however, is that Mexicans, by the millions, are ready to take action. Whether it is effective or not is still left to be seen.

** Leonarda Reyes worked 11 years for Reforma-El Norte group, in Mexico. Investigations she conducted revealed widespread electoral fraud and corruption involving public contracts. Reyes also covered the U.S. invasion of Panama and Mexico's relations with Cuba. She later became Reforma's national assignment editor and went on to work for three years as managing editor for TV Azteca News. Later, she was appointed director of production for its nationwide affiliates. Reyes was a 1990 Knight Fellow at Stanford University, founded the Center for Journalism and Public Ethics in Mexico, in 2003, and was its director until February, 2009.*

Mexico: Corruption Timeline

March 1994 — Luis Donaldo Colosio, the designated heir to outgoing Institutional Revolutionary Party (PRI-*Partido Revolucionario Institucional*) President Carlos Salinas de Gortari, is shot and killed at a presidential campaign rally in Tijuana. Despite rumors of a high-level conspiracy, a six-year government investigation concludes that a lone gunman is responsible for the assassination.

August 1994 — PRI candidate Ernesto Zedillo wins the presidency. Zedillo institutes a number of electoral reforms and fraud-control measures that reduce the advantages of the incumbent PRI, such as closing down a secret presidential slush fund Congress had set up during President Salinas' final year in office.

November 1994 — Zedillo picks Antonio Lozano, leader of the conservative opposition National Action Party (PAN-*Partido Acción Nacional*) in the Chamber of Deputies, to be his attorney general, the first time in 65 years of PRI rule that a member of the opposition is appointed to the cabinet. Under Lozano's guidance, the government forms elite anti-drug police units, raises law enforcement salaries, improves law enforcement training and fires drug agents caught accepting bribes.

February 1995 — Raúl Salinas, the older brother of former President Carlos Salinas, is arrested in connection with the 1994 murder of José Francisco Ruiz Massieu, the second-in-command of the PRI and a former Salinas brother-in-law whose divorce had sparked a family feud. In January 1999, Salinas is convicted of ordering the murder and is sentenced to 50 years in prison. His conviction is overturned on appeal in June 2005.

September 1995 — Attorney General Lozano issues a 13-page plan to overhaul the federal law enforcement system and calls for a "deep purge" to curb corruption.

November 1996 — Defying President Zedillo, the PRI-controlled Congress pushes through several electoral measures that weaken campaign finance regulation and favor the PRI at the expense of opposition parties.

December 1996 — Zedillo fires Lozano following charges of ineptitude in resolving Mexico's most important criminal matters and accusations of politicizing the Massieu murder investigation.

February 1997 — General Jesús Gutiérrez Rebollo, director of the National Institute to Combat Drugs (INDC-*Instituto Nacional para el Combate a las Drogas*), is arrested on charges of taking bribes from the Juarez drug cartel and related crimes. He is eventually sentenced to 71 years in prison. Zedillo dissolves the agency and replaces it with the Office of the Special Prosecutor for Crimes against Health (FEADS-*Fiscalía Especializada para la Atención de Delitos contra la Salud de México*). Six years later, FEADS is dissolved after six agents are caught engaging in an extortion scheme.

June 1997 — Mexico ratifies the Inter-American Convention against Corruption.

July 1997 — In the first state elections supervised by an independent authority, the conservative PAN wins three additional governorships.

June 1998 — The U.S. Customs Service-led "Operation Casablanca" results in banking officials from 12 of Mexico's 19 largest banks being charged by U.S. authorities with involvement in money laundering related to Mexican and Colombian drug cartels. Tons of cocaine and marijuana and nearly 11 billion pesos (US\$100 million) are seized over a three-year period.

October 1998 — Swiss officials seize over 980 million pesos (US\$90 million) from the accounts of Raúl Salinas, who is alleged to have earned the money by protecting drug shipments through Mexico after his brother became president in 1988.

May 1999 — Mexico ratifies the Organization of Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Officials in International Business Transactions.

July 2000 — Vicente Fox of PAN wins the presidential election, ending 71 years of rule by PRI. The election also diversifies the Congress, bringing the PRI to 209 seats against PAN's 207, with the remaining 84 seats split among several smaller parties.

December 2000 — Three days after taking office, Fox issues a presidential decree establishing the

new Intersecretarial Commission for Transparency and Combat against Corruption (*Comisión Intersecretarial para la Transparencia y el Combate a la Corrupción*), and the Federal Agency of Investigation (AFI-Agencia Federal de Investigación), which is put in charge of reforming the notoriously corrupt federal judicial police.

January 2001 — Fox signs an executive order establishing a permanent cabinet-level commission to promote open government and fight corruption. Fox appoints Francisco Barrio as federal comptroller, who operates as the *de facto* anti-corruption "czar." Barrio immediately sends almost 700 auditors to examine government records and cracks down on state oil company Pemex, the customs service, and the federal system of pharmacies. Within nine months, Barrio's anti-corruption dragnet results in the dismissal or discipline of more than 5,000 public servants.

June 2001 — In what comes to be known as *toallagate* ("towelgate"), a state-run Internet site discloses that the government was purchasing 5,400 peso (US\$500) embroidered towels and 16,000 peso (US\$1,500) sheet sets for the president's residence from a supplier that apparently did not exist. The newspaper Milenio reveals that the Fox administration had spent 6.5 million pesos (US\$600,000) on remodeling and 11 million pesos (US\$1 million) on household items at the presidential mansion. The scandal leads to the resignation of a top Fox aide and the suspension or resignation of several other officials.

April 2002 — The U.N. Special Rapporteur on the Independence of Judges and Lawyers publishes a 52-page report that estimates 50 percent to 70 percent of Mexican judges are corrupt. The same month, a separate report estimates that 7 percent of Mexico's GDP is siphoned off via corruption.

June 2002 — President Fox signs the Law for Transparency and Access to Public Government Information (*Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*), which enables the public to request information from all state bodies, as well as all private agencies that manage state funds. By mid-2003, Fox's government had released approximately 5,000 previously classified documents to the public.

March 2003 — The PRI is fined more than 980 million pesos (US\$90 million) by the Federal Electoral Institute (IFE-*Instituto Federal Electoral*), the Mexican body that regulates elections and campaign finance, for failing to declare about 490 million pesos (US\$45 million) of "campaign donations" funneled through a petroleum workers union by the state oil monopoly, Pemex.

March 2003 — Anti-corruption czar Francisco Barrio resigns from his post to run for Congress.

July 2003 — In an embarrassing blow to Fox, the PRI surges back in mid-term elections, winning a number of congressional and mayoral ballots and capturing several governorships. The electoral defeat slows down Fox's plans for economic, labor, and energy reforms. Experts are quick to declare Fox a lame-duck president.

February 2004 — A video broadcast on Mexican television purportedly shows Senator Jorge Emilio Gonzalez, leader of the Mexican Green Party (PVEM-*Partido Verde Ecologista de México*), negotiating a 22 million peso (US\$2 million) bribe in exchange for helping arrange land development projects in Cancun.

March 2004 — Mexican television broadcasts a video showing René Bejarano, a Mexico City legislator and top level official of the Democratic Revolution Party (PRD-*Partido de la Revolución Democrática*), accepting a large sum of cash from businessman Carlos Ahumada. Both Ahumada and Bejarano are charged with corruption and put in jail, but the case against Bejarano is dropped in July 2005.

June 2004 — The Supreme Court rules that cases of "disappearance" (a euphemism for kidnapping and murder) committed by PRI security forces during the "dirty war" can be tried even if they are decades old.

June 2004 — Six Mexican civil society organizations announce that their "citizens' audit" of a Ministry of Health program run by a private company called Provida uncovered numerous examples of corruption. Public outcry leads to an official audit, which confirms the CSOs' findings, the removal of three Health Ministry officials and the initiation of judicial action against Provida and its legal representatives.

April 2005 — The lower house votes to strip Mexico City Mayor Andres Manuel Lopez Obrador of his immunity from prosecution for violating a court order in a property dispute. The move is widely perceived to be a political ploy to prevent Lopez Obrador from entering the 2006 presidential race, and the government soon drops the charges.

November 2005 — Mexican television broadcasts a video showing the PRD's former secretary of political relations, Ramón Sosamontes, handing over a suitcase full of dollar bills to Carlos Ahumada, the businessman caught on tape in 2004 allegedly bribing Mexico City legislator René Bejarano. Another video broadcast the same night shows the PRD's former candidate for the Oaxaca governorship, Gabino Cué, asking Ahumada for a campaign contribution.

July 2006 — PAN candidate Felipe Calderon narrowly defeats PRD candidate Andres Manuel Lopez Obrador in the presidential election.

Jan. 24, 2007 — Reporters for the San Antonino de Velasco-based Radio Calenda, Emilio Santiago and Darío Campos, are attacked by local government supporters while covering a grassroots community council meeting. At least 50 government supporters break into the meeting and attack council members and the reporters. The government officials take Campos and 13 council members to the local government offices where they are held for at least three hours.

April 12, 2007 — President Felipe Calderon signs a legislation that effectively eliminates 'honor crimes' such as criminal defamation, libel, and slander at the federal level, repealing defamation as a criminal offense. This new legislation makes it impossible for a journalist to face prison sentences at the federal level for 'honor crimes'. Defamation, slander and libel are now civil offenses and are subject to monetary damages and corrections of the erroneous material.

May 2007 — A federal prosecutor working on organized crime issues for the attorney general's office is assassinated in Mexico City.

June 25, 2007 — Around 300 high-ranking police officers are temporarily suspended in a bid to tackle corruption within the force. Officers will face a 'trust test', which includes drug checks, a lie detector and psychological tests.

August 2007 — Political pressure causes both the chief of staff and the president of Mexico's National Electoral Tribunal to step down after allegations are made that the two were involved in a kickback scheme diverting funds from an office renovation project.

September 2007 — Due to controversy in the 2006 presidential election, laws are passed restricting political financing of campaign advertisements and banning smear campaigns. Limits on campaign spending also are lowered.

May 2008 — The Mexican attorney general announces that over 4,000 people have been killed in drug-related violence since President Calderon took office 18 months ago.

September 2008 — Government minister Juan Camilo Mourino urges his fellow members of congress to help clean Mexican politics of drug money, especially as parliamentary election campaigns begin.

After publishing an article critical of the police, journalist Carlos Solis Reina is shot at by Federal Preventive Police (PFP) while driving with a companion. A stray bullet wounds a young girl in the area. Reina and his friend are arrested for the girl's murder and allegedly tortured while in police custody.

April 2009 — Public buildings are closed as the swine flu sweeps across the country. Soon after, infections are diagnosed around the world.

July 2009 — Mexican voters show greater support for the opposition Institutional Revolutionary Party in mid-term congressional elections.

Mexico: Integrity Indicators Scorecard**Overall Score: 72 - Moderate**

Category I	Civil Society, Public Information and Media	82	Strong
I-1	Civil Society Organizations	90	Very Strong
I-2	Media	66	Weak
I-3	Public Access to Information	92	Very Strong
Category II	Elections	84	Strong
II-1	Voting & Citizen Participation	93	Very Strong
II-2	Election Integrity	93	Very Strong
II-3	Political Financing	64	Weak
Category III	Government Accountability	60	Weak
III-1	Executive Accountability	68	Weak
III-2	Legislative Accountability	54	Very Weak
III-3	Judicial Accountability	49	Very Weak
III-4	Budget Processes	67	Weak
Category IV	Administration and Civil Service	63	Weak
IV-1	Civil Service Regulations	60	Weak
IV-2	Whistle-blowing Measures	52	Very Weak
IV-3	Procurement	83	Strong
IV-4	Privatization	56	Very Weak
Category V	Oversight and Regulation	77	Moderate
V-1	National Ombudsman	91	Very Strong
V-2	Supreme Audit Institution	96	Very Strong
V-3	Taxes and Customs	56	Very Weak
V-4	State-Owned Enterprises	75	Moderate
V-5	Business Licensing and Regulation	66	Weak
Category VI	Anti-Corruption and Rule of Law	70	Moderate
VI-1	Anti-Corruption Law	100	Very Strong

VI-2	Anti-Corruption Agency	67	Weak
VI-3	Rule of Law	57	Very Weak
VI-4	Law Enforcement	56	Very Weak

1: Are anti-corruption/good governance CSOs legally protected?

1a *In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.*

Score: YES

References: Article 9 of the Constitution.

Social Scientist's Comments: The right to free association with any lawful objective, when done in a peaceful manner, cannot be prohibited. Political matters only concern the citizens. Any meeting to petition or to protest some act or authority is not illegal, unless it is violent in nature.

1b *In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.*

Score: YES

References: Ley Federal de Fomento a las Actividades Realizadas por Organizaciones de la Sociedad Civil.

1c *In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.*

Score: YES

References: Ley Federal de Fomento a las actividades realizadas por Organizaciones de la Sociedad Civil, Article 7, IV:
States that NGOS are obliged to "proporcionar la información que les sea requerida por autoridad competente sobre sus fines, estatutos, programas, actividades, beneficiarios, fuentes de financiamiento nacionales o extranjeras o de ambas, patrimonio, operación administrativa y financiera, y unso de los apoyos y estímulos públicos que reciban"

Peer Reviewer's Comments: Just a spelling correction: It should be "y uso de los apoyos y estímulos públicos que reciban"

2: Are good governance/anti-corruption CSOs able to operate freely?

2a *In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.*

Score: 100

References: Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the national chapter of Transparency International.
Interview with Vladimir Juárez, President of Integridad Ciudadana

Social Scientist's Comments: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

2b *In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.*

Score: 50

References: Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the national chapter of Transparency International.
Interview with Vladimir Juárez, President of Integridad Ciudadana

Social Scientist's Comments: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but they have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

2c *In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.*

Score: YES

References: Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the national chapter of Transparency International
Interview with Vladimir Juárez, President of Integridad Ciudadana

Social Scientist's Comments: There is no evidence of any CSOs being shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

3: Are civil society activists safe when working on corruption issues?

3a *In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.*

Score: YES

References: Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.
Interview with Vladimir Juárez, President of Integridad Ciudadana

Social Scientist's Comments: There were no CSO activists imprisoned because of their work covering corruption during the period of time that was analyzed.

3b *In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.*

Score: YES

References: Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.
Interview with Vladimir Juárez, President of Integridad Ciudadana

Social Scientist's Comments: There were no documented cases during the specific study period of assaults on CSO activists who were covering corruption.

3c *In practice, in the past year, no civil society activists working on corruption issues have been killed.*

Score: YES

References: Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.
Interview with Vladimir Juárez, President of Integridad Ciudadana.

Social Scientist's Comments: There were no documented cases during the specific study period of CSO activists being killed because of their work covering corruption.

4: Can citizens organize into trade unions?

4a *In law, citizens have a right to organize into trade unions.*

Score: YES

References: The Constitution, Article 123, subpart XVI.
Federal Labour Law, Articles 441, 356, 357, 359 and 381.

Social Scientist's Comments: Trade unions are allowed by law, regardless of political ideology, religion or objectives. However, historically, the trade unions in Mexico had been subordinated to the power structure. They are not really independent and their demands are defined by the political agenda.

4b *In practice, citizens are able to organize into trade unions.*

Score: 50

References: Academic report, [\[LINK\]](#)
Interview with Eduardo Ibarra, Professor and Researcher of the Universidad Autónoma Metropolitana, Campus Cuajimalpa.

Social Scientist's Comments: In the past nine years, new and independent trade unions have been created, such as the Fesebes (Federación de Sindicatos de Bienes y Servicios), which is an independent confederation of unions. However, many of the trade unions in Mexico still have strong ties with political parties, essentially the Partido Revolucionario Institucional (PRI). Therefore, it is more accurate to state that trade unions exist, but they are not always relevant to politics or policy debates. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

5: Are media and free speech protected?

5a *In law, freedom of the media is guaranteed.*

Score: YES

References: The Constitution, Article 7

Social Scientist's Comments: The freedom to write and publish writings on any matter is inviolable. No law or authority can limit the freedom of the media; it is only limited by respect for privacy, morale and public peace.

5b *In law, freedom of speech is guaranteed.*

Score: YES

References: The Constitution, Article 6

Social Scientist's Comments: The expression of ideas is not subject to any legal investigation unless it infringes on the rights of another person, disturbs the public peace, leads to a crime or goes against the moral standards.

6: Are citizens able to form print media entities?

6a *In practice, the government does not create barriers to form a print media entity.*

Score: 100

References: Interview with Manuel Alejandro Guerrero, head of the Department of Communications of the Universidad Iberoamericana.
Interview with José Buendía, President of Fundación Prensa y Democracia.

Social Scientist's Comments: The government does not create any barriers to formation of printed media.

6b *In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.*

Score: NO

References: Federal Law of Radio and Television.

Social Scientist's Comments: If a license is denied or revoked, there is no appeal mechanism in the Federal Law of Radio and Television.

Peer Reviewer's Comments: The researcher cites the Federal Law of Radio and Television; however, this indicator refers to print media. Please clarify if the Federal Law of Radio and Television covers print media, or if there is no Mexican law or regulation that establishes an appeals mechanism if a print media license is denied or revoked.

6c *In practice, where necessary, citizens can obtain a print media license within a reasonable time period.*

Score: 100

References: Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.
Interview with José Buendía, President of Fundación Prensa y Democracia.

[\[LINK \]](#)

Social Scientist's Comments: According to the official information, citizens can obtain a print media license within five days.

6d *In practice, where necessary, citizens can obtain a print media license at a reasonable cost.*

Score: 100

References: Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.
Interview with José Buendía, President of Fundación Prensa y Democracias.

[\[LINK \]](#)

**Social Scientist's
Comments:**

According to the official information, it is necessary to obtain two different licenses: one for the print media's title (approx. US\$150) and the other for the print media's content (approx. US\$180 USD):
"El costo del Certificado de Licitud de Título es de \$1973.00, y por el Certificado de Licitud de Contenido es de \$2,466.00. El pago por ambos Certificados debe efectuarse en la sucursal bancaria de su preferencia (o a través de su portal en internet), utilizando las hojas de ayuda respectivas, a través del sistema de pago electrónico e5cinco."

7: Are citizens able to form broadcast (radio and TV) media entities?

7a *In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.*

Score: 50

References: Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.
Interview with José Buendía, President of Fundación Prensa y Democracia.

Social Scientist's Comments: The government can create barriers for television and radio . Because the Communications Secretary is the agency that decides who obtains the concession, and the secretary does not have to justify its decisions, the process to form a media entity is arbitrary and not transparent.
The Communications Secretary has a great deal of discretion. Corruption exists in the concession of new radio entities; hence, the officials of the Communications Secretary can assure that the concession goes to the company that pays them a bribe.

Peer Reviewer's Comments: Have there been any concrete cases where it was suspected (or proved) that a radio or TV concession was obtained through bribery, nepotism or any other questionable or illegal method?

7b *In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.*

Score: NO

References: Federal Law of Radio and Television.

Social Scientist's Comments: If a license is denied or revoked, there is no appeal mechanism within the Federal Law of Radio and Television.

7c *In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.*

Score: 0

References: Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.
Interview with José Buendía, President of Fundación Prensa y Democracia.

Social Scientist's Comments: In practice the concession process for obtaining a broadcast media license is highly discretionary. The time period of each process varies widely. In some cases it takes two months, but in others it takes more than a year.

7d *In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.*

Score: 25

References: Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.
Interview with José Buendía, President of Fundación Prensa y Democracias.

Social Scientist's Comments: The companies or individuals that want to obtain a television or radio concession do not have to pay any fees to participate in the process. However, they have to show the Communications Secretary why they are the best candidate. In many cases, a participant bribes an official of the Secretary to assure the concession; hence, there is a cost involved.

Peer Reviewer's Comments: Have there been any concrete cases where it was suspected (or proved) that a radio or TV concession was obtained through bribery, nepotism or any other questionable or illegal method?

8: Can citizens freely use the Internet?

8a *In practice, the government does not prevent citizens from accessing content published on-line.*

Score: 100

References: Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.
Interview with José Buendía, President of Fundación Prensa y Democracias.

Social Scientist's Comments: The government does not prevent citizens from accessing content published online. However, in Mexico only the 30 percent of the population actually has access to the Internet due to educational and poverty issues.

8b *In practice, the government does not censor citizens creating content on-line.*

Score: 100

References: Penal Federal Code.
Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.
Interview with José Buendía, President of Fundación Prensa y Democracias.

Social Scientist's Comments: There is no government censorship in this area. Nevertheless, the government can bring criminal charges against sites that promote child pornography or commercial piracy.

9: Are the media able to report on corruption?

9a *In law, it is legal to report accurate news even if it damages the reputation of a public figure.*

Score: YES

References: Código Federal de Procedimientos Penales
Código Civil de la Federación

Código Penal Federal

Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.

Interview with José Buendía, President of Fundación Prensa y Democracias.

Social Scientist's Comments: In law, there is no restriction on reporting news, even if it damages the reputation of a public figure.

9b *In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.*

Score: 50

References: Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.
Interview with José Buendía, President of Fundación Prensa y Democracias.

Social Scientist's Comments: In practice, some media owners' groups make some attempts to restrict media coverage of corruption-related issues through unofficial means due to the security issues since some stories are closely related to the activities of the drug cartels.

9c *In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.*

Score: 100

References: Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.
Interview with José Buendía, President of Fundación Prensa y Democracias.

Social Scientist's Comments: In practice, the government does not restrain, by any means, the publication of any corruption-related stories.

10: Are the media credible sources of information?

10a *In law, print media companies are required to publicly disclose their ownership.*

Score: NO

References: Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.
Interview with José Buendía, President of Fundación Prensa y Democracias.

Social Scientist's Comments: Print media companies are not required to publicly disclose their ownership.

10b *In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.*

Score: NO

References: Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.
Interview with José Buendía, President of Fundación Prensa y Democracias.

Social Scientist's Comments: In law, broadcast media companies are not required to publicly disclose their ownership.

Peer Reviewer's Comments: What about the Federal Law of Radio and Television? Doesn't it require public disclosure of media ownership? Does the bidding (concession) process require the disclosure of all individuals and companies that participate (even though it is not necessary to be made public)?

10c *In practice, journalists and editors adhere to strict, professional practices in their reporting.*

Score: 50

References: Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.
Interview with José Buendía, President of Fundación Prensa y Democracias.

Social Scientist's Comments: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors, but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

10d *In practice, during the most recent election, political parties or independent candidates received fair media coverage.*

Score: 100

References:

Federal Electoral Institute (IFE), [\[LINK\]](#)

Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.

Interview with José Buendía, President of Fundación Prensa y Democracias.

**Social Scientist's
Comments:**

All political parties have some access to media outlets. Individual media outlets may have biases, but, on balance, the national media coverage is fair.

10e *In practice, political parties and candidates have equitable access to state-owned media outlets.*

Score:

100

References:

Federal Electoral Law, [\[LINK\]](#)

Interview with Manuel Alejandro Guerrero, head of the Department of Communications of the Universidad Iberoamericana.

Interview with José Buendía, President of Fundación Prensa y Democracias.

**Social Scientist's
Comments:**

The Federal Electoral Institute (IFE) ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

11: Are journalists safe when investigating corruption?

11a *In practice, in the past year, no journalists investigating corruption have been imprisoned.*

Score: YES

References: Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.
Interview with José Buendía, President of Fundación Prensa y Democracias.

Social Scientist's Comments: During the time period of this analysis, there was no indication that any journalists were imprisoned due to their work covering corruption.

11b *In practice, in the past year, no journalists investigating corruption have been physically harmed.*

Score: NO

References: Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.
Interview with José Buendía, President of Fundación Prensa y Democracias.

Social Scientist's Comments: There are several cases of journalists who had been physically harmed or executed by the drug cartels in cases related to organized crime.

11c *In practice, in the past year, no journalists investigating corruption have been killed.*

Score: NO

References: International Federation of Journalist Report, [\[LINK\]](#)
Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.
Interview with José Buendía, President of Fundación Prensa y Democracias.

Social Scientist's Comments: According to several reports (e.g., International Federation of Journalists and Reportes Sans Frontieres) in the last year, at least 60 Mexican journalists have been killed due to their investigations relating to the drug cartels.

12: Do citizens have a legal right of access to information?

12a *In law, citizens have a right of access to government information and basic government records.*

Score: YES

References: Constitution, Article 6 (right to information), Ley Federal de Transparencia y Acceso la Información Pública Gubernamental

Social Scientist's Comments: There is a formal right, including constitutional guarantees, to access government documents. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

12b *In law, citizens have a right of appeal if access to a basic government record is denied.*

Score: YES

References: Articles 49 and 50, Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental

Social Scientist's Comments: There is a formal process of appeal for rejected information requests.

12c *In law, there is an established institutional mechanism through which citizens can request government records.*

Score: YES

References: Instituto Federal de Acceso a la Información (IFAI), [\[LINK\]](#)
Articles 40 to 48, Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental.

Social Scientist's Comments: There is a formal institution Instituto Federal de Acceso a la Información (IFAI) through which citizens can access government records available under freedom of information laws.
In addition, in 2007, the Mexican Congress approved an amendment to the access to information law that requires all levels of government to standardize their regulations and computer systems to allow public access to government records from anywhere in the country.

13: Is the right of access to information effective?

13a *In practice, citizens receive responses to access to information requests within a reasonable time period.*

Score: 75

References: Interview with Juan Pablo Guerrero, Commissioner of the Instituto Federal de Acceso a la Información (IFAI).
Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.

Social Scientist's Comments: In the federal government, access to records can be obtained within a reasonable time. However, in other states or branches of government (for instance the Judiciary and Congress), the citizens may experience some additional delays.

13b *In practice, citizens can use the access to information mechanism at a reasonable cost.*

Score: 100

References: Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental.
Interview with Juan Pablo Guerrero, Commissioner of the Instituto Federal de Acceso a la Información (IFAI).
Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.

Social Scientist's Comments: Citizens are only charged for photocopying and mailing. There are no searching fees.

13c *In practice, responses to information requests are of high quality.*

Score: 50

References: Interview with Juan Pablo Guerrero, Commissioner of the Instituto Federal de Acceso a la Información (IFAI).
Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.

Social Scientist's Comments: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought. In addition, answers given by government agencies are based solely on the specific question of the citizen; thus, the citizen must write his/her question very carefully.

13d *In practice, citizens can resolve appeals to access to information requests within a reasonable time period.*

Score: 100

References: Interview with Juan Pablo Guerrero, Commissioner of the Instituto Federal de Acceso a la Información (IFAI).
Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.

Social Scientist's Comments: The Instituto Federal de Acceso a la Información (IFAI) acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily toward resolution.

13e *In practice, citizens can resolve appeals to information requests at a reasonable cost.*

Score: 100

References: Interview with Juan Pablo Guerrero, Commissioner of the Instituto Federal de Acceso a la Información (IFAI).
Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.

Social Scientist's Comments: In most cases, the appeals mechanism is an affordable option to middle-class citizens who seek to challenge an access to information ruling.

13f *In practice, the government gives reasons for denying an information request.*

Score: 75

References: Interview with Juan Pablo Guerrero, Commissioner of the Instituto Federal de Acceso a la Información (IFAI).
Interview with Manuel Alejandro Guerrero, Head of the Department of Communications of the Universidad Iberoamericana.

Social Scientist's Comments: The government usually discloses its reasons for denying an information request to the requester, with some exceptions.

14: Is there a legal framework guaranteeing the right to vote?

14a *In law, universal and equal adult suffrage is guaranteed to all citizens.*

Score: YES

References: Constitution, Article 36
Constitution, Article 35, Fracc. I y II Article IV of the Código Federal de Instituciones y Procedimientos Electorales.

Social Scientist's Comments: The right to vote is guaranteed to all citizens of the country.

14b *In law, there is a legal framework requiring that elections be held at regular intervals.*

Score: YES

References: Constitution, Articles 51, 56, 83 and 116, Código Federal de Instituciones y Procedimientos Electorales.

Social Scientist's Comments: There is an electoral law framework enshrined in law that mandates elections at reasonable intervals.

Peer Reviewer's Comments: The articles cited by the researcher may correspond to the previous version of Código Federal de Instituciones y Procedimientos Electorales. The code was reformed and the new relevant articles are 19 and 210.

15: Can all citizens exercise their right to vote?

15a *In practice, all adult citizens can vote.*

Score: 100

References: Interview with Benito Nacif, Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Social Scientist's Comments: By law and by practice, voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

Peer Reviewer's Comments: The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

15b *In practice, ballots are secret or equivalently protected.*

Score: 100

References: Interview with Benito Nacif, Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Social Scientist's Comments: By law and by practice, ballots are secret, or there is a functional equivalent protection in all cases.

Peer Reviewer's Comments: The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

15c *In practice, elections are held according to a regular schedule.*

Score: 100

References: Interview with Benito Nacif, Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Social Scientist's Comments: In practice, elections are held according to a regular schedule.

Peer Reviewer's Comments: The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

16: Are citizens able to participate equally in the political process?

16a *In law, all citizens have a right to form political parties.*

Score: YES

References: COFIPE, Article 5,
Constitution, Articles 9, 35, fracc. III, 41 fracc. I

16b *In law, all citizens have a right to run for political office.*

Score: YES

References: COFIPE, Article 36

Social Scientist's Comments: The COFIPE requires all candidates to be backed by a registered political party. No independent candidacies are permitted. This has led some to claim that not everyone actually has a "right" to run. Many argue that the absence of independent candidacies restricts rights.

16c *In practice, all citizens are able to form political parties.*

Score: 50

References: Interview with Benito Nacif, Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Social Scientist's Comments: While there is no guarantee of electoral success, political parties can form freely without opposition. However, the barriers to forming and maintaining a political party are quite high. Parties need to prove the pre-existence of tens of thousands of supporters to be able to register and receive at least 2 percent of the national popular vote in each election to maintain their registration.

Peer Reviewer's Comments: The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

16d *In practice, all citizens can run for political office.*

Score: 50

References: Interview with Benito Nacif, Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Social Scientist's Comments: The COFIPE requires all candidates to be backed by a registered political party. No independent candidacies are permitted. This has led some to claim that not everyone actually has a "right" to run. Many argue that the absence of independent candidacies restricts rights.

Peer Reviewer's Comments: Because independent candidates (those who are not backed by a political party) cannot run and there is a system of party lists, I would say that a 50 score is appropriate.

16e *In practice, an opposition party is represented in the legislature.*

Score: 100

References: Interview with Benito Nacif, Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Social Scientist's Comments: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

Peer Reviewer's Comments: The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

17: In law, is there an election monitoring agency or set of election monitoring agencies/entities?

17 In law, is there an election monitoring agency or set of election monitoring agencies/entities?

Score:	YES
References:	Constitution, Article 41, fracc. III COFIPE articles 68 to 71.
Social Scientist's Comments:	The Federal Electoral Institute (Instituto Federal Electoral -- FEI) is a public agency that is responsible for organizing federal elections for Congress, Senate and president.
Peer Reviewer's Comments:	Change FEI to IFE (for Instituto Federal Electoral), which is the proper acronym in Spanish. The articles cited by the researcher are outdated. Recent reforms changed the relevant articles. Constitution, Article 41, fracc. V, COFIPE articles 104 to 107.

18: Is the election monitoring agency effective?

18a *In law, the agency or set of agencies/entities is protected from political interference.*

Score: YES

References: Constitution, Articles 41 and 99, Federal Electoral Institute and Federal Electoral Tribunal

Peer Reviewer's Comments: Article 106 of COFIPE states that the Federal Electoral Institute is autonomous. COFIPE articles 108 to 112 describe the main bodies that comprise the Federal Electoral Institute; these articles also specify the election/designation process for the counselors, the President of the General Council, and the Executive Secretary of this institute.

A separate entity, a special prosecutor's office that is responsible for any criminal investigation related to electoral violations (Fiscalía Especializada Para la Atención de Delitos Electorales -- FEPADE) is part of the PGR, Mexico's Justice Department, which is part of the executive branch.

18b *In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.*

Score: 25

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: Appointments are usually based on professional qualifications. However, appointed individuals may have clear party loyalties. The current electoral board of the Federal Electoral Institute (Instituto Federal Electoral -- IFE) was selected through a very illegitimate process, since it was based on the political bargaining among the political parties.

18c *In practice, the agency or set of agencies/entities has a professional, full-time staff.*

Score: 100

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Social Scientist's Comments: The agency or set of agencies/entities is sufficiently staffed to fulfill its basic mandate.

Peer Reviewer's Comments: The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

18d *In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.*

Score: 75

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Peer Reviewer's Comments: Please specify what reports the Instituto Federal Electoral (IFE) releases, also mention those of the Federal Electoral Tribunal (FEI). The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

18e *In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.*

Score: 100

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: In general, when rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

Peer Reviewer's Comments: Can you mention any investigations or reports on infractions by the special prosecutor's office responsible for criminal investigation related to electoral violations (Fiscalía Especializada Para la Atención de Delitos Electorales -- FEPADE)?
The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

19: Are elections systems transparent and effective?

19a *In practice, there is a clear and transparent system of voter registration.*

Score: 100

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration and ensure that errors are corrected before they vote.

Peer Reviewer's Comments: The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

19b *In law, election results can be contested through the judicial system.*

Score: YES

References: Constitution, Article 99, Electoral Tribunal

Social Scientist's Comments: Citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

19c *In practice, election results can be effectively appealed through the judicial system.*

Score: 100

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: The electoral appeals mechanism takes cases from both candidates that complain of flaws in the electoral process, as well as citizens who bring complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

Peer Reviewer's Comments: The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

19d *In practice, the military and security forces remain neutral during elections.*

Score: 100

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

Peer Reviewer's Comments: The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

19e *In law, domestic and international election observers are allowed to monitor elections.*

Score: YES

References: COFIPE: articles 5 and 82.

Social Scientist's Comments: Domestic and international election observers are allowed to monitor the electoral process.

Peer Reviewer's Comments: Article 5 states the right of Mexican citizens to participate as domestic election observers. Since the code was reformed, article 82 is no longer relevant to this issue. The COFIPE does not explicitly mention that it permits international observers to observe federal elections; however, in practice they are typically allowed.

19f *In practice, election observers are able to effectively monitor elections.*

Score: 100

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: Election observers have unfettered access to polling sites, counting stations and voters. The government does not interfere with the observers' activities.

Peer Reviewer's Comments: The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

20: Are there regulations governing the financing of political parties?

20a *In law, there are limits on individual donations to political parties.*

Score: YES

References: COFIPE Chapter 2: Strict Limits on Private Contributions (corporations are prohibited, clear limits for individual contributions)
COFIPE, Article 49

Peer Reviewer's Comments: The COFIPE was reformed; therefore, article 49 is no longer relevant. The relevant articles of COFIPE are 77 and 78.

20b *In law, there are limits on corporate donations to political parties.*

Score: YES

References: COFIPE, Article 11 and article 49.2.g

Peer Reviewer's Comments: Corporate donations are not allowed. Only individuals can make donations to political parties.
The COFIPE was reformed; therefore, articles 11 and 49 are no longer relevant. The relevant articles of COFIPE are 77 and 78.

20c *In law, there are limits on total political party expenditures.*

Score: YES

References: COFIPE, Article 49

Peer Reviewer's Comments: The COFIPE was reformed making article 49 no longer relevant. The new relevant article is 229. There are limits on expenditures related to propaganda, operational campaign expenditures, and those expenditures that are realized before the official campaign starts (precampaña); for instance, expenses for primary elections within parties.

20d *In law, there are requirements for the disclosure of donations to political parties.*

Score: YES

References: COFIPE, Article 49-B

Peer Reviewer's Comments: The COFIPE was reformed making article 49 no longer relevant (49-B does not even exist any more). The new relevant articles are 41-45. The changes in the law make explicit the obligations that political parties have in matters of transparency. Public information of political parties include income and expenditure reports and a list of the donors that display the amounts that each one donated; any citizen can access this information by making a request to the Federal Electoral Institute.

20e *In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.*

Score: YES

References: COFIPE, Article 49-B

Peer Reviewer's Comments: The COFIPE was reformed making article 49 no longer relevant (49-B doesn't even exist any more). The new relevant articles of the COFIPE are 77 and 81. The responsible body of auditing the financial statements of the political parties is the Oversight Unit (Unidad de Fiscalización de los Recursos de los Partidos Políticos) of the Federal Electoral Institute.

20f *In law, there is an agency or entity that monitors the financing of political parties.*

Score: YES

References: COFIPE, Article 49, subsection 6 and Article 38, subsection 1.k

Peer Reviewer's Comments: The COFIPE was reformed making articles 49 and 38 no longer relevant. The new relevant articles of the COFIPE are 77-81. The Federal Electoral Institute is formally assigned to monitor and enforce laws and regulations around the financing of political parties; the implementation unit within this institute is the Oversight Unit (Unidad de Fiscalización de los Recursos de los Partidos Políticos).

21: Are there regulations governing the financing of individual political candidates?

21a *In law, there are limits on individual donations to political candidates.*

Score: YES

References: COFIPE, Articles 11, 49, 49-A and 49-B

Peer Reviewer's Comments: The COFIPE was reformed therefore article 49 is no longer relevant. The relevant articles of COFIPE are 77 and 78.

21b *In law, there are limits on corporate donations to individual political candidates.*

Score: YES

References: COFIPE, Articles 11 and 49.2.g

Peer Reviewer's Comments: Corporate donations are not allowed. Only individuals can make donations to political parties or candidates. The COFIPE was reformed; therefore, articles 11 and 49 are no longer relevant. The relevant articles of COFIPE are 77 and 78.

21c *In law, there are requirements for the disclosure of donations to individual political candidates.*

Score: YES

References: COFIPE Articles 49-A and 49-B require full disclosure of donations to the electoral authorities Federal Electoral Institute (Instituto Federal Electoral -- IFE), but the law does not require that this information be made public.

Peer Reviewer's Comments: The COFIPE was reformed making article 49 no longer relevant (49-B does not even exist any more). The new relevant articles are 41-45. The changes in the law make explicit the obligations that political parties (and consequently political candidates) have in matters of transparency. Public information of political parties include income and expenditure reports and a list of the donors that display the amounts that each one donated; any citizen can access this information by making a request to the Federal Electoral Institute.

21d *In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.*

Score: YES

References: COFIPE, Article 49-B

Peer Reviewer's Comments: The COFIPE was reformed making article 49 no longer relevant (49-B does not even exist any more). The new relevant articles of the COFIPE are 77 and 81.

The responsible body of auditing the financial statements of the political parties (and consequently political candidates) is the Oversight Unit (Unidad de Fiscalización de los Recursos de los Partidos Políticos) of the Federal Electoral Institute.

21e *In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.*

Score: YES

References: COFIPE, Article 49, subsection 6 and Article 38, subsection 1.k

Peer Reviewer's Comments: The COFIPE was reformed making articles 49 and 38 are no longer relevant. The new relevant articles of the COFIPE are 77-81. The Federal Electoral Institute is formally assigned to monitor and enforce laws and regulations around the financing of political parties (and consequently political candidates' campaigns); the implementation unit within this institute is the Oversight Unit (Unidad de Fiscalización de los Recursos de los Partidos Políticos).

22: Are the regulations governing the political financing of parties effective?

22a *In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.*

Score: 50

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations.

Peer Reviewer's Comments: The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

22b *In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.*

Score: 50

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations.

Peer Reviewer's Comments: The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

22c *In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.*

Score: 25

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE)
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE)

Peer Reviewer's Comments: The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

Existing limits are routinely bypassed or willfully ignored, mainly because the sanctions for going over the limits are not that harsh.

See Reforma, January 10, 2010. Narco-poder: tema para la reforma política by Martha Martínez. In this article Carlos Jiménez, a former corruption prosecutor from Spain says the following: Estamos desvirtuando el sistema democrático; exceder ciertos límites del gasto electoral tendría que ser objeto de sanciones más eficaces, de lo contrario los partidos seguirán rebasando los gastos de campaña, porque saben que las consecuencias no son gravosas, no les perjudican.

See also Mileno, December 25 2009. Sanción por exceder gastos de campaña <http://www.milenio.com/node/348023>

22d *In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.*

Score: 75

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Peer Reviewer's Comments: The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

22e *In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.*

Score: 75

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Peer Reviewer's Comments: Please cite specific examples of recent penalties that were imposed on offenders.

The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

22f *In practice, contributions to political parties are audited.*

Score: 50

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Peer Reviewer's Comments: Can you explain what the problem is? Is it that audits are limited in some way? Is it because the Instituto Federal Electoral (IFE) lacks staff and money? Or is it a simply a lack of political will?

The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

23: Are the regulations governing the political financing of individual candidates effective?

23a *In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.*

Score: 25

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Peer Reviewer's Comments: The exceptions and loopholes to donations of individuals and corporations to political parties that the researcher mentions also affect the ability of the individuals and corporations to indirectly support individual candidates above and beyond the formal limitations.
The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

23b *In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.*

Score: 50

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Peer Reviewer's Comments: The exceptions and loopholes to donations of individuals and corporations to political parties that the researcher mentions also affect the ability of the individuals and corporations to indirectly support individual candidates above and beyond the formal limitations.
The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

23c *In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.*

Score: 75

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Peer Reviewer's Comments: The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

23d *In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.*

Score: 75

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Peer Reviewer's Comments: Please cite specific examples of recent penalties that were imposed on offenders.
The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

23e *In practice, the finances of individual candidates' campaigns are audited.*

Score: 50

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Peer Reviewer's Comments: Can you explain what the problem is? Is that audits are limited in some way? Is it because the Instituto Federal Electoral (IFE) lacks staff and money? Or is it a simply a lack of political will?
The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

24: Can citizens access records related to the financing of political parties?

24a *In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.*

Score: 75

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Peer Reviewer's Comments: Can you give a time frame for how often political parties disclose data relating to financial support and expenditures?
The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

24b *In practice, citizens can access the financial records of political parties within a reasonable time period.*

Score: 25

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the national chapter of Transparency International.

Social Scientist's Comments: Records take about three to four weeks; however, the information is not that reliable and accurate. A recent media report of Jorge Octavio Ochoa, from El Universal, states:

"La consejera María Marbán dijo que sería importante que subieran en Internet su padrón de bienes inmuebles, si son propios o están en renta, a nombre de quién están las escrituras. Los partidos políticos en México son el reino de la opacidad. No se sabe con precisión el número de sus afiliados y, salvo el caso del PSD, todos incumplen el Código Electoral en materia de transparencia ni el Reglamento de Transparencia del IFE.

Esto fue señalado por las comisionadas del IFAI, Jacqueline Peschard, y María Marbán Laborde, que cuestionaron por igual la poca disposición de los partidos a rendir cuentas.

María Marbán dijo que sería importante que los partidos subieran en Internet su padrón de bienes inmuebles, si son propios o están en renta, a nombre de quién están las escrituras.

Hemos padecido, dijo, escándalos importantes en términos de los bienes inmuebles que se compran con el financiamiento público de los partidos, aseveró al participar en la Jornada de Transparencia

organizada por el IFE, IFAI y Tribunal Electoral.

Peschard recordó que hace seis meses se aprobó el Reglamento de Transparencia del IFE y, salvo el PSD, el resto de los partidos ha incumplido con difundir sus padrones de afiliados a que por ley están obligados.

Revisó cada uno de los casos: el PAN tiene un vínculo identificado como tal, pero al consultarlo no hay información alguna; el PRD, sí tiene un listado pero se requiere un código para acceder.

El PT, aunque sí cuenta con una página de Internet, "no es posible acceder a la misma".

Los partidos incumplen no sólo el Código electoral en materia de transparencia, sino con el Reglamento de Transparencia del Instituto.

"Y aunque el Cofipe establece que faltar a las obligaciones de transparencia es sancionable por la autoridad, la pregunta que se antoja pertinente es si el IFE puede garantizar que los partidos acaten puntualmente las disposiciones en materia de transparencia en medio de una campaña en curso".

Peer Reviewer's Comments: The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

24c *In practice, citizens can access the financial records of political parties at a reasonable cost.*

Score: 50

References: Interview with Benito Nacif, Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.

Social Scientist's Comments: In principle, the access to the financial records should be free; however, in practice, it is necessary to invest time, make several calls and eventually applicants must travel to visit to a specific office. All this has an economic cost.

Peer Reviewer's Comments: I believe the researcher's comments justify a 50 score.

24d *In practice, the publicly available records of political parties' finances are of high quality.*

Score: 50

References:

Interview with Benito Nacif, Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.

Peer Reviewer's Comments:

I believe from what is mentioned in the previous two indicators (24b, 24c) that a score of 50 should be granted. Is the information available of political parties' finances really useless? Please justify.

The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

25: Can citizens access records related to the financing of individual candidates' campaigns?

25a *In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.*

Score: 25

References: Interview with Benito Nacif, Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Social Scientist's Comments: Individual candidates usually publish their sources of founding or expenditures once a year; however, politically sensitive information is regularly withheld from public disclosure. Even with most recent changes in the COFIPE, the individual candidates publish their sources of founding or expenditures once a year, but it does not imply that the records are published in the accurate moment to be accountable.

Peer Reviewer's Comments: Is the information really withheld even with the changes in the COFIPE that demand more transparency from political parties and candidates?
The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

25b *In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.*

Score: 0

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Social Scientist's Comments: In practice, citizens face persistent delays in obtaining the financial records of individual candidates, and even if they are able to access it, the information is normally not that accurate and reliable.

Peer Reviewer's Comments: If the comments of the researcher are accurate, then the Federal Electoral Institute isn't doing too good a job at implementing the new transparency obligations to political parties and candidates; and these last two are not doing their job of complying with the new regulations.
The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the

Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

25c *In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.*

Score: 25

References: Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.

Social Scientist's Comments: It is difficult, if not impossible, to get access to such a information. Therefore, the cost is related to the time that the individual wants to invest attempting to get that information. Several calls and an extensive Internet search will be necessary. Eventually, it may also be necessary to visit a specific office.

Peer Reviewer's Comments: The researcher comments point towards a score of 50, or at least 25.

25d *In practice, the publicly available records of political candidates' campaign finances are of high quality.*

Score: 50

References: Interview with Benito Nacif, Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the national chapter of Transparency International.

Peer Reviewer's Comments: As with the indicator about political parties' finances (24d) I believe that a score of 50 should be given. Are the available records of political candidates' campaign finances really useless? Please justify. The correct spelling of the interviewee's name is Benito Nacif. A more precise translation of his position would be Electoral Counselor of the Instituto Federal Electoral (IFE), or member of the General Council of the Instituto Federal Electoral (IFE).

26: In law, can citizens sue the government for infringement of their civil rights?

26 *In law, can citizens sue the government for infringement of their civil rights?*

Score: YES

References: Amparo suit, regulated by Constitutional articles 103 and 107.

Social Scientist's Comments: "Injunction" (amparo) is a constitutional guarantee proceeding unique to Mexico. It protects people or companies against unlawful and arbitrary acts by authorities.

27: Can the chief executive be held accountable for his/her actions?

27a *In practice, the chief executive gives reasons for his/her policy decisions.*

Score: 50

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: The president gives a State of the Union address each year on September 1, but does not take questions or listen to the positions of the opposition parties. Press conferences are more like presentations than a dialogue with the press. After the State of the Union address, cabinet ministers must appear before Congress and answer tough questions, but this process is usually quite formulaic and is not covered extensively by the press.

Peer Reviewer's Comments: This indicator should receive a score of 75 or at least 50. I do not agree with the assessment of the press conferences as being mere presentations. I believe there is no censoring of such sessions. Videos and transcripts of the press conferences are available at the President's office web page (<http://www.presidencia.gob.mx>); you can also find at this web page press releases, speeches, interviews with the president and cabinet members conducted by the media. The State of the Union address is not the only venue where the president explains his policy decisions. There are other mechanisms for the executive (such as the president or cabinet members) to give formal explanations on all policy matters. The executive is mandated by law to elaborate a National Development Plan in which the executive explains what it intends to do during its term (Article 26 of the Constitution). In this document, the chief executive gives reasons for its policy decisions.

Also, at any time Congress can call a member of the executive on any given matter to explain a specific policy issue and thus explain the reasons behind the executive's decisions (Organic Law of the Mexican Congress).

27b *In law, the judiciary can review the actions of the executive.*

Score: YES

References: Constitution, Articles 103, 105 and 107, Amparo and Constitutional controversies.

27c *In practice, when necessary, the judiciary reviews the actions of the executive.*

Score: 75

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: The Supreme Court has become much more active over the last year. Some judicial decisions have had significant implications for some actions of the executive such as the recent conclusion on the Oaxaca issues of 2006.
In the coming days, the Supreme Court must present a conclusion regarding two important issues: the termination process of the public electric company (Compañía de Luz y Fuerza del Centro) and the current shareholder structure of Banamex, a subsidiary bank of Citigroup. Both cases could affect the governmental law interpretation and policy strategy of the current administration.

27d *In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.*

Score: 75

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Peer Reviewer's Comments: Some of the recent decrees:
October 2009: Dissolution of one of the publicly owned electric utilities: Compañía de Luz y Fuerza del Centro.
April 2009: Diverse actions and measures are ordered related to health matters to help prevent and control the spread of the H1N1 (swine flue).
September 2008: Formalization of a reward system that establishes guidelines for the rewards given to citizens that give information that helps investigations on federal crimes.
April 2007: Derogation of articles penalizing libel and slander from the Federal Penal Code.
March 2007: Fiscal stimulus for employers that hire senior citizens and people with a disability.

28: Is the executive leadership subject to criminal proceedings?

28a *In law, the heads of state and government can be prosecuted for crimes they commit.*

Score: YES

References: Constitution, Chapter 4 (Juicio Político); however, the President can only be accused by the Senate (Constitutional articles 110 and 111).

Peer Reviewer's Comments: Article 108 of the Constitution states that the president, while serving his term, can only be accused of treason (to the country) and of serious crimes of the common order.

28b *In law, ministerial-level officials can be prosecuted for crimes they commit.*

Score: YES

References: Constitution, Article 111.

Peer Reviewer's Comments: Actually the correct article of the constitution regarding this question is article 110.

29: Are there regulations governing conflicts of interest by the executive branch?

29a *In law, the heads of state and government are required to file a regular asset disclosure form.*

Score: YES

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 36.

29b *In law, ministerial-level officials are required to file a regular asset disclosure form.*

Score: YES

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 36.

29c *In law, there are regulations governing gifts and hospitality offered to members of the executive branch.*

Score: YES

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 8.

29d *In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).*

Score: YES

References: Ley de Fiscalización y Rendición de Cuentas de la Federación.

Social Scientist's Comments: According to the Article 7 of the Ley de Fiscalización y Rendición de Cuentas de la Federación there is a legal requirement for a external auditing (conducted by the Auditoria Superior de la Federación) of executive branch asset disclosures. For this Federal Law asset disclosures is defined as "Cuenta Pública". Art. 7:
 Artículo 7.- Para los efectos de esta Ley, la Cuenta Pública estará constituida por: a) Los Estados Contables, Financieros, Presupuestarios, Económicos y Programáticos; b) La información que muestre el registro de las operaciones derivadas de la aplicación de la Ley de Ingresos y del ejercicio del Presupuesto de Egresos de la Federación; c) Los efectos o consecuencias de las mismas operaciones y de otras cuentas en el activo y pasivo totales de la Hacienda Pública Federal y en su patrimonio neto, incluyendo el origen y aplicación de los recursos, y d) El resultado de las operaciones de los Poderes de la Unión y entes públicos federales, además de los estados detallados de la Deuda Pública Federal.

Peer Reviewer's Comments: The aforementioned law (Ley de Fiscalización y Rendición de Cuentas de la Federación) does not explicitly mention that the executive branch asset disclosure forms must be audited by the Supreme Audit Institution.

29e In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

Score: YES

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Articles 8.XII and 9

29f In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

Score: 50

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: The prohibition against post-government private sector employment is only for one year and violation of it is only considered a minor administrative offense.

Peer Reviewer's Comments: Regardless of they involve a minor administrative offense, have the regulations been enforced? Have offenders been penalized?

29g In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

Score: 50

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: The Ley Federal de Responsabilidades de los Servidores Públicos in article 89 explicitly states that public servants must report the receipt of gifts. However, it is a common practice to not report the actual receipt of gifts due to the weak enforcement of this regulation.

29h In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

Score: 25

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Peer Reviewer's Comments: Who is supposed to audit the executive branch asset disclosures? How often do the institutions perform the audit?

30: Can citizens access the asset disclosure records of the heads of state and government?

30a *In law, citizens can access the asset disclosure records of the heads of state and government.*

Score: NO

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos (Article 40) only permits access if explicitly authorized by the public servant Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental articles 3 fracc.XIV b), 4 fracc. I y II, 7, 9, 12.

Peer Reviewer's Comments: Actually the correct one to refer to is article 3 fracc. XIV a). The other articles: 4 (fracc. I and II), 7, 9, and 12 do not mention that the asset disclosure of the president (who is the head of state and government) should be published or available to citizens (only an omission). However, it is article 13 fracc. IV that states that information that puts in jeopardy the safety or health of an individual will be considered reserved or confidential. This is the relevant article because it can be argued that public asset disclosures could be used by kidnappers to gather useful information and target civil servants.

30b *In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.*

Score: 0

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: Not even the president's asset declaration is made public. Even when authorized by public servants, not all of the information is available. See, for example, IFAI resolution 48/06.

Peer Reviewer's Comments: The previous president, Vicente Fox, made his asset disclosure public and accessible to citizens. However, it was not mandatory for the President to publicly disclose his assets.
The IFAI resolution of 2006 (<http://www.ifai.org.mx/resoluciones/2006/48.pdf>) is about a specific case of an information request for the asset disclosures of several public servants, including cabinet-level officials; IFAI denies the information request because of the confidentiality clause; however, they do include a table showing the dates on which the asset disclosures of these public servants were submitted, along with the types of disclosures.

30c *In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.*

Score: 0

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: Not even the president's asset declaration is public. Even when authorized by public servants, not all of the information is available. See, for example, IFAI resolution 48/06.

Peer Reviewer's Comments: The previous president, Vicente Fox, made his asset disclosure public and accessible to citizens. However, it was not mandatory for the President to publicly disclose his assets.
The IFAI resolution of 2006 (<http://www.ifai.org.mx/resoluciones/2006/48.pdf>) is about a specific case of an information request for the asset disclosures of several public servants, including cabinet-level officials; IFAI denies the information request because of the confidentiality clause; however, they do include a table showing the dates on which the asset disclosures of these public servants were submitted, including the types of disclosures.

30d *In practice, the asset disclosure records of the heads of state and government are of high quality.*

Score: 25

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: Not even the president's asset declaration is made public. Even when authorized by public servants, not all of the information is available. See, for example, IFAI resolution 48/06.

Peer Reviewer's Comments: You can ask about the dates that the asset disclosures were submitted. This information is not completely useless. Therefore, I think a score of 25 is warranted.
The IFAI resolution of 2006 (<http://www.ifai.org.mx/resoluciones/2006/48.pdf>) is about a specific case of an information request for the asset disclosures of several public servants, including cabinet-level officials; IFAI denies the information request because of the confidentiality clause; however, they do include a table showing the dates on which the asset disclosures of these public servants were submitted, including the types of disclosures.

31: In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

31 *In practice, official government functions are kept separate and distinct from the functions of the ruling political party.*

Score: 50

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

32: Can members of the legislature be held accountable for their actions?

32a *In law, the judiciary can review laws passed by the legislature.*

Score: YES

References: Constitution, Articles 103, 105, 107: Amparo, Constitutional Controversies, Constitutional actions.

32b *In practice, when necessary, the judiciary reviews laws passed by the legislature.*

Score: 100

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**Social Scientist's
Comments:**

When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws that have been passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. The recent decision in the Telecommunications Law case (Ley Televisa) was an historic case of the judiciary defending the Constitution against overreaching by Congress.

32c *In law, are members of the national legislature subject to criminal proceedings?*

Score: NO

References: Constitution, Articles 61 and 111.

**Social Scientist's
Comments:**

Legislators have immunity, but they can be impeached and tried while they are in office. They can also be subject to proceedings once they have left their posts.

Peer Reviewer's Comments: Article 111 of the Constitution states that the lifting of immunity can only be done by the Chamber of Deputies, which creates an obvious conflict-of-interest situation. The process would be highly partisan. I believe that there has not been any case (at least in the past 30 years) where immunity has been lifted from a legislator so that he could be prosecuted for criminal allegations. A criminal process against Carlos Romero Deschamps, a former legislator, only started when his term concluded.

33: Are there regulations governing conflicts of interest by members of the national legislature?

33a *In law, members of the national legislature are required to file an asset disclosure form.*

Score: YES

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 36.

33b *In law, there are restrictions for national legislators entering the private sector after leaving the government.*

Score: YES

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Articles 8 and 9.

33c *In law, there are regulations governing gifts and hospitality offered to members of the national legislature.*

Score: YES

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Articles 8 and 9.

33d *In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.*

Score: NO

References: Disclosure forms are held by the internal comptroller of the legislature, and there is no external review.

33e *In practice, the regulations restricting post-government private sector employment for national legislators are effective.*

Score: 50

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: Since 2007 the Senate approved the Ley contra el Conflicto de Intereses. According to this Law, the legislators are not allow to represent the interest of a private (individual or company) against a public entity, during their term as legislators. However, the law does not forbid that legislators be shareholders of a company. Moreover, the law is not that accurate fobiding the employment in the private sector after the legislative term.

Peer Reviewer's Comments: The researcher's comments and score are not consistent with that of the indicator 33b. Can the researcher cite specific cases and explain why private sector employment is permitted after legislative service when the law states otherwise?

33f *In practice, the regulations governing gifts and hospitality offered to national legislators are effective.*

Score: 50

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Peer Reviewer's Comments: I agree that there might not be an effective mechanism to monitor whether legislators receive gifts or hospitality, but I think the score is too low.

33g *In practice, national legislative branch asset disclosures are audited.*

Score: 25

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: Disclosure forms are held by the internal comptroller of the legislature, and there is no external review. As I understand, by "external review" we mean that the audit is performed by an independent entity of the Legislative branch. Therefore, the internal comptroller is not necessary an "independent" entity.

Peer Reviewer's Comments: What is meant by external review? Does the the internal comptroller use generally accepted auditing practices when auditing the legislative branch asset disclosures?

34: Can citizens access the asset disclosure records of members of the national legislature?

34a *In law, citizens can access the asset disclosure records of members of the national legislature.*

Score: **NO**

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 40.
Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, Articles 3 fracc.XIV b), 4 fracc. I y II, 7, 9, 12.

Social Scientist's Comments: Forms are accessible only if access is authorized by the legislator.

Peer Reviewer's Comments: The articles that the researcher cites in the Freedom of Information and Transparency Law do not mention that legislators' asset disclosures should be published or available to citizens (it is only an omission). However, it is article 13 fracc. IV (not cited by the researcher) which states that information that puts in jeopardy the safety or health of an individual will be considered reserved or confidential. This is the relevant article because it can be argued that public asset disclosures could be used by kidnappers to gather useful information and target civil servants.

34b *In practice, citizens can access legislative asset disclosure records within a reasonable time period.*

Score: **0**

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

34c *In practice, citizens can access legislative asset disclosure records at a reasonable cost.*

Score: **0**

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

34d *In practice, the asset disclosure records of members of the national legislature are of high quality.*

Score: **25**

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Peer Reviewer's Comments: You can ask the dates on which the asset disclosures were submitted. This information is not completely useless. Therefore I think a score of 25 is warranted.

There is a case where an information request for the asset disclosures of several public servants was denied by the IFAI denied because of the confidentiality clause. However, the response does include a table showing the dates (and types) that the asset disclosures of these public servants were submitted, including the types of disclosures. This 2006 IFAI resolution is available at <http://www.ifai.org.mx/resoluciones/2006/48.pdf>

35: Can citizens access legislative processes and documents?

35a *In law, citizens can access records of legislative processes and documents.*

Score: YES

References: Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, Articles 3 fracc.XIV b), 4 fracc. I y II, 7, 9, 12.

35b *In practice, citizens can access records of legislative processes and documents within a reasonable time period.*

Score: 75

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: All the information on what occurs during plenary sessions is easily available. Nevertheless, information on discussions and documents that is managed by committees is almost impossible to access. It is easy to get access to the information on what occurs during the plenary sessions. However, the documents and draft reports that are discussed in the committees are not that easy to access.

Peer Reviewer's Comments: If the information is easily available, a high score should be given. Beside I do not agree with the researcher's assessment: The Web page contains various records of the discussions, hearings and sessions of the different legislative committees.

35c *In practice, citizens can access records of legislative processes and documents at a reasonable cost.*

Score: 75

References: Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: Costs of accessing records of legislative processes and documents are at a minimum, and are charged only for photocopies, as per the Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental.
All information on what occurs during plenary sessions is easily available. Nevertheless, information on discussions and documents that is managed by committees is almost impossible to access. The documents and draft reports that are discussed in the committees are not that easy to access, therefore additional cost should be included.

Peer Reviewer's Comments: If there are minimal costs to retrieve the information, then a score of 100 should be given. Besides, I do not agree with the researcher's assessment: The Web page contains various records of the discussions, hearings and sessions of the different legislative committees.

36: Are judges appointed fairly?

36a *In law, there is a transparent procedure for selecting national-level judges.*

Score: YES

References: There is a competitive selection process for judges, as per articles 112-117 of the Ley Orgánica del Poder Judicial de la Federación.

36b *In practice, professional criteria are followed in selecting national-level judges.*

Score: 75

References: Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: It is very difficult to get around the legal procedures for selecting national-level judges. Favoritism is prevalent, but this only affects the decision between candidates who all formally comply with the legal requirements.

36c *In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).*

Score: NO

References: Article 81, fracc. VII of the Ley Orgánica del Poder Judicial de la Federación and Article 76 fracc. II.
The Constitution, Article 97.

Social Scientist's Comments: Only Supreme Court justices have to be approved by the Senate. Other judges have to be approved by the Consejo de la Judicatura, but this commission is not really independent since it is presided over by the president of the Supreme Court and a majority of its members are from the judiciary.

Peer Reviewer's Comments: There is no fracc. II in article 76 of the Ley Orgánica del Poder Judicial de la Federación.

37: Can members of the judiciary be held accountable for their actions?

37a *In law, members of the national-level judiciary are obliged to give reasons for their decisions.*

Score: YES

References: Ley Orgánica del Poder Judicial de la Federación. Reasons for decisions must be given since all judicial decisions can be appealed to a higher level. The decisions can be consulted online or through a formal request.

37b *In practice, members of the national-level judiciary give reasons for their decisions.*

Score: 50

References: Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE). Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: Reasons for judicial decisions are always given, but there is a wide variety in the quality and the depth of them. Most of them can be viewed on the Internet.

37c *In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.*

Score: YES

References: Constitutional articles 94, 97, 99 and 100 (Consejo de la Judicatura Federal)

37d *In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.*

Score: YES

References: The Consejo de la Judicatura is controlled by members of the judiciary itself, presided over by the president of the Supreme Court. Constitution, Article 100.

Peer Reviewer's Comments: Although the Council of the Federal Judgeship (in Spanish, Consejo de la Judicatura Federal) is not independent from the Supreme Court, it is independent from executive ministries and legislative committees. The scoring criteria is confusing: Does it mean independence only from the other branches of government? Or also from other bodies within the judiciary?

37e *In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.*

Score: 25

References: Report of the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy, of the Mexican Judicial system.
Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: In Mexico, there have been several accusations of corruption regarding the judicial system; however, there have been very few convictions. The Council of the Federal Judgeship is ineffective in terms of initiating investigations.

Peer Reviewer's Comments: The United Nations report was done in 2001. It might be outdated for a contemporary analysis.

37f *In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.*

Score: 25

References: Report of the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy, of the Mexican Judicial system.
Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: In Mexico, there have been several accusations of corruption in the judicial system; however, the Council of Federal Judgeship has rarely imposed any penalty.

Peer Reviewer's Comments: The United Nations report was done in 2001. It might be outdated for a contemporary analysis.

38: Are there regulations governing conflicts of interest for the national-level judiciary?

38a *In law, members of the national-level judiciary are required to file an asset disclosure form.*

Score: YES

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 36.

38b *In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.*

Score: YES

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 8.

38c *In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.*

Score: NO

References: Asset declarations are held by the internal comptroller, and no external audit is mandated.

38d *In law, there are restrictions for national-level judges entering the private sector after leaving the government.*

Score: YES

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Articles 8 & 9.

38e *In practice, the regulations restricting post-government private sector employment for national-level judges are effective.*

Score: 100

References: Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: The career track for judges in the private sector is strong. The problem is not with their post-government employment, but corruption while they are in office.

38f *In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.*

Score: 25

References: Miguel Carbonell, "Corruption in Mexico's Judiciary," 2007 Transparency International Report, UN Comaraswamy report.
Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the

Universidad Nacional Autónoma de México (UNAM).

**Social Scientist's
Comments:**

There are endemic problems with corruption in the judiciary. Miguel Carbonell, in his report "Corruption in Mexico's Judiciary 2007", clearly states that "Mexico's justice system reacts oddly when dealing with criminals involved in organised crime, especially drug trafficking. Since drug trafficking is a federal crime, it must be addressed by judges from the federal jurisdiction. This leaves the fight against drug trafficking in the hands of a very few people who are therefore more vulnerable to corruption."

In a more recent scandal, in September 22, 2009, the newspaper El Universal published an extensive report on corruption in the judicial system. The following is a summary of that report:

"Una investigación hecha por el Consejo de la Judicatura Federal, a raíz de una denuncia que promovió un ex trabajador, permitió demostrar que en juzgados y tribunales federales ubicados en Yucatán laboran familiares de todo nivel, de al menos siete magistrados y 3 juezas.

Se trata de un caso, que, en opinión de académicos y juristas, corrobora el dicho que ubica al Poder Judicial como la Gran Familia o la Familia Judicial; y que es tan sólo la muestra de lo que ocurre a nivel nacional en todos los juzgados y tribunales, en donde los hijos, las nueras, los yernos, los sobrinos, las esposas, y, claro, hasta los compadres de los impartidores de justicia abundan.

Pero en el que el Consejo de la Judicatura Federal considera que no es posible sancionar a los funcionarios judiciales porque no violaron ninguna norma, debido a que sus familiares fueron contratados y laboran en los juzgados y tribunales de sus compañeros, y no en los que ellos dirigen.

En otras palabras, en opinión del Consejo, lo que internamente es visto como un tráfico disfrazado de plazas, un trueque o un intercambio de lugares entre juzgadores, mediante el cual se burla la prohibición de contratar a familiares en sus propios tribunales, actualmente no puede ser sancionado.

Ante tal motivo, al conocer este mismo caso, la Comisión Nacional de Ética Judicial, un organismo de reciente creación que agrupa a todos los impartidores de justicia, locales y federales, emitió una recomendación en la que le pidió al Consejo de la Judicatura Federal prohibir y sancionar este tipo de prácticas.

Dicha comisión, que, de manera paradójica, es presidida por el propio presidente de la Suprema Corte de Justicia de la Nación y del Consejo, le solicitó a la Judicatura que incluya una norma que prohíba todo acuerdo o compromiso entre los magistrados de circuito o los jueces de distrito para nombrar recíprocamente, al cónyuge o familiares del otro en sus tribunales.

Los acuerdos entre impartidores de justicia para intercambiar plazas con salarios que van desde los 20 mil hasta los 80 mil pesos, es un secreto que todo mundo conoce en el Poder Judicial de la Federación, asegura un magistrado de circuito que pide el anonimato

y que afirma que, incluso, quienes no se suman a esta práctica son mal vistos y aislados."

Peer Reviewer's Comments: The comments provided by the researcher deal with corruption in the judiciary as a whole, but barely touches the specific issue that the indicator is trying to assess. Besides, the example the researcher cites from the newspaper is in one state, therefore we are not necessarily dealing with members of the national-level judiciary. I agree that there might not be an effective mechanism to monitor the enforcement of the the regulations governing gifts and hospitality offered to members of the national-level judiciary.

38g *In practice, national-level judiciary asset disclosures are audited.*

Score: 25

References: Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: No external review of national-level judiciary asset disclosures has been mandated or carried out. As I understand, by "external review" we mean that the audit is performed by an independent entity of the Judicial branch. Therefore, the internal comptroller is not necessary an "independent" entity.

Peer Reviewer's Comments: What is meant by external review? Does the the internal comptroller use generally accepted auditing practices when auditing the national-level judiciary asset disclosures?

39: Can citizens access the asset disclosure records of members of the national-level judiciary?

39a *In law, citizens can access the asset disclosure records of members of the national-level judiciary.*

Score: **NO**

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 40 .

Social Scientist's Comments: Asset disclosure records of members of the national-level judiciary are only accessible when explicitly authorized by the public servant himself.

Peer Reviewer's Comments: Also relevant are articles 3 fracc. XIV c) and e), and 13 fracc. IV of the Federal Access to Information and Transparency Law (Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental). The latter article states that information that puts in jeopardy the safety or health of an individual will be considered reserved or confidential. This is the relevant article because it can be argued that public asset disclosures could be used by kidnappers to gather useful information and target civil servants.

39b *In practice, citizens can access judicial asset disclosure records within a reasonable time period.*

Score: **0**

References: Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: Judicial asset disclosure records are only accessible when explicitly authorized by the public servant himself.

39c *In practice, citizens can access judicial asset disclosure records at a reasonable cost.*

Score: **0**

References: Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: The costs of accessing judicial asset disclosure records are prohibitive to most citizens, journalists, or CSOs.

39d *In practice, the asset disclosure records of the national-level judiciary are of high quality.*

Score: **25**

References: Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: For all practical purposes, the asset disclosure records of the national-level judiciary are not available.

Peer Reviewer's Comments: You can ask the dates on which the asset disclosures were submitted. This information is not completely useless. Therefore I think a score of 25 is warranted.
There is a case where an information request for the asset disclosures of several public servants was denied by the IFAI because of the confidentiality clause; however, the response does include a table showing the dates that the asset disclosures of these public servants were submitted, along with the types of disclosures. This 2006 IFAI resolution is available at <http://www.ifai.org.mx/resoluciones/2006/48.pdf>.

40: Can the legislature provide input to the national budget?

40a *In law, the legislature can amend the budget.*

Score: YES

References: Constitution, Article 74.

40b *In practice, significant public expenditures require legislative approval.*

Score: 75

References: Interview with Laura Sour, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. Specific projects of infrastructure, such as those performed by Pemex, do not need a Legislative approval. They are allocated by direct awarded contracts.

Peer Reviewer's Comments: I'm not sure what exceptions the researcher is talking about. I believe this indicator deserves a score of at least 75.

40c *In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.*

Score: 50

References: Luis Carlos Ugalde, "The Mexican Congress: Old Player, New Power."
Interview with Laura Sour, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: Legislators have very few staff members. There are only a couple of advisers for each congressman.

Peer Reviewer's Comments: Although what the researcher mentions is correct, there are mitigating circumstances that might warrant a higher score. Legislators, particularly those from the PAN, rely on CSOs to provide advice to legislators; these CSOs have experts on their staff; an illustrative example is that of the Fundación Miguel Estrada Iturbide (<http://www.fmei.org.mx>).

Also, in Mexico there are 128 senators and 500 deputies (members of Congress) in a country with a population of just over 100 million people; compare that with 100 senators and 435 members of Congress in the United States, which has 3 times the population of Mexico. So even if legislators have very few staff members, there are a lot of legislators in Mexico.

41: Can citizens access the national budgetary process?

41a *In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).*

Score: 50

References: Interview with Laura Sour, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: There is a formal, transparent process for budget debates, but major budget modifications may be negotiated in separate, closed sessions.

41b *In practice, citizens provide input at budget hearings.*

Score: 25

References: Interview with Laura Sour, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: Some "public hearings" regarding the budget are held, but there is no evidence that this actually has any impact on the budget itself.

41c *In practice, citizens can access itemized budget allocations.*

Score: 50

References: Interview with Laura Sour, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

42: In law, is there a separate legislative committee which provides oversight of public funds?

42 *In law, is there a separate legislative committee which provides oversight of public funds?*

Score: YES

References: There are two commissions: Comisión de Presupuesto y Cuenta Pública and Comisión de Vigilancia de la Auditoría Superior de la Federación.

43: Is the legislative committee overseeing the expenditure of public funds effective?

43a *In practice, department heads regularly submit reports to this committee.*

Score: 50

References: Interview with Laura Sour, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: All expenditure information is concentrated in the Secretaría de Hacienda y Crédito Público and submitted on a yearly basis to Congress in the Cuenta Pública. The Secretary also must appear before Congress at least once a year. Nevertheless, in practice, there is not much dialogue or direct active oversight of executive expenditure by Congress.

Peer Reviewer's Comments: Reports are made by ministerial-level officials.

43b *In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.*

Score: 75

References: Interview with Laura Sour, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: Normally, the Comisión de Presupuesto is led by the party in control of the executive while the Comisión de Vigilancia is led by an opposition party.

Peer Reviewer's Comments: For the recently elected congress in 2009, the chairman of the Comisión de Presupuesto y Cuenta Pública is Luis Videgaray from the PRI (which is not the party in the control of the executive, but the one who won most seats in this past election); the chairman of the Comisión de Vigilancia de la Auditoría Superior de la Federación is Damian Peralta from PRD (which is one of the opposition parties). The composition of both committees is roughly equitable.

43c *In practice, when necessary, this committee initiates independent investigations into financial irregularities.*

Score: 25

References: Interview with Laura Sour, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analysts and Professor of the Universidad Nacional Autónoma de México (UNAM).

**Social Scientist's
Comments:**

Committees initiating independent investigations into financial irregularities occurs in some high level cases (i.e. Bribiesca Sahagún, FOBAPROA, etc.) but this is rare in general.

44: Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

44a *In law, there are regulations requiring an impartial, independent and fairly managed civil service.*

Score: YES

References: Ley del Servicio Profesional de Carrera en la Administración Pública Federal.

44b *In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.*

Score: YES

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 8.

Peer Reviewer's Comments: Article 8 of the Ley Federal de Responsabilidades Administrativas de los Servidores Públicos states the prohibitions that civil servants have. In broad terms this article prohibits nepotism, cronyism, and patronage in the civil service.
The Ley del Servicio Profesional de Carrera en la Administración Pública Federal establishes the mechanisms to prevent nepotism, cronyism, and patronage in the civil service: competitive recruitment (articles 22-34), promotion procedures (35-43), performance evaluation (54-58), and causes for dismissal or separation from the civil service job and its due process (59-63). The causes for dismissal are: being indicted of a crime, receiving a penalty stemming from a violation of the other civil service law (Ley Federal de Responsabilidades Administrativas de los Servidores Públicos) that merits dismissal, poor performance in the evaluations or failing to pass the mandatory training twice, and reiterated and unjustified noncompliance of the obligations stated in this law (Ley del Servicio Profesional de Carrera en la Administración Pública Federal); for this last case, a civil servant who may be dismissed is granted the right to have a hearing.

44c *In law, there is an independent redress mechanism for the civil service.*

Score: YES

References: The Secretaría de la Función Pública is not really "independent" since it is part of the executive branch and its leadership is directly appointed by the president. Nevertheless, it is "independent" from the other secretariats who hire personnel.

Peer Reviewer's Comments: The relevant articles of the Ley del Servicio Profesional de Carrera en la Administración Pública Federal are 76-80.
The Secretaría de la Función Pública is in charge of the first stage of the redress mechanism (an administrative process). Appeals can then be done through the judiciary; there are two applicable courts: the Tribunal Federal de Conciliación y Arbitraje and the Tribunal

Federal de Justicia Fiscal y Administrativa.

44d *In law, civil servants convicted of corruption are prohibited from future government employment.*

Score: YES

References: Ley Federal de Responsabilidades Administrativas de los Servidores Publicos Article 8 fracc. X, Article 13 fracc. V, Article 16 fracc. III.

Social Scientist's Comments: Not all civil servants convicted of corruption are prohibited from future government employment. It happens only if those who are convicted are specifically punished by "inhabilitación" by the Secretaría de la Función Publica for the offense.
In addition, the lack of an integrated national "blacklist" allows officials who have been convicted in one jurisdiction to find employment in a different jurisdiction.

45: Is the law governing the administration and civil service effective?

45a *In practice, civil servants are protected from political interference.*

Score: 50

References: David Arellano, *Gestión Estratégica Para El Sector Público*, Fondo de Cultura Económica, 2004.
Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Social Scientist's Comments:

During the current administration, the civil service program was not a high priority on the administrative agenda. The implementation of the civil service has been practically abandoned. Applying for a public officer position is not a clear process that is based on a meritocratic approach, but is actually based on family or informal relationships. The following is a summary of several cases relating to this:

[\[LINK\]](#)

Denuncias interpuestas contra el Servicio Profesional de Carrera revelan irregularidades en procesos de selección, que deberían guiarse por el mérito, la igualdad y la transparencia. Los inconformes observan parcialidad en los concursos y violación a la ley. Los favorecidos, funcionarios que temporalmente tienen a su cargo el puesto que se concursaba

Denuncias de candidatos al Servicio Profesional de Carrera revelan anomalías en el proceso de selección para plazas en Apoyos y Servicios a la Comercialización Agropecuaria (Aserca), dependiente de la Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación; en la Secretaría de Energía (Sener) y en el Consejo Nacional para la Cultura y las Artes (Conaculta).

Los ganadores de las plazas fueron funcionarios con cargos eventuales en las vacantes a concursar. Favoritismo, omisión y violación a la Ley del Servicio Profesional de Carrera de la Administración Pública Federal (LSPCAPF) son los reclamos de los inconformes. El 10 de abril de 2003, en el Diario Oficial de la Federación, se publicó la ley que garantizaría la igualdad de oportunidades en el acceso a la función pública, con base en el mérito y con el fin de impulsar el desarrollo de la función pública para beneficio de la sociedad.

En el Primer informe de gobierno, el presidente Felipe Calderón Hinojosa indicó que hasta el 31 de julio de 2007 se recibieron 143 inconformidades sobre la selección de personal en 14 secretarías y 22 órganos descentralizados, y se presentaron 20 recursos de revocación por los resultados obtenidos en los concursos. Además, se realizaron 1 mil 979 designaciones con base en el artículo 3

La administración pública central se conformó con 160 mil 655 plazas, de las que 38 mil 253 se sujetaron al Servicio Profesional de Carrera (SPC) en 15 dependencias y 61 órganos. En los primeros seis meses de ese año, el Registro Único de Servidores Públicos tenía inscritos 29 mil 344 servidores en el SPC.

Según el Sexto informe de gobierno de Vicente Fox Quesada, al 30 de junio de 2006 se hicieron 288 nombramientos temporales. Hasta esa fecha, la administración pública federal tenía 649 mil 187 plazas, de las que 42 mil 944 estuvieron sujetas al SPC en 75 dependencias y órganos desconcentrados. Entre enero y junio de 2006 se integraron 136 inconformidades relacionadas con los subsistemas de Ingreso y de Evaluación del Desempeño del SPC en 14 secretarías y 21 órganos desconcentrados, y fueron interpuestos 33 recursos de revocación en contra de los concursos para ocupar plazas en 11 secretarías y siete órganos.

Peer Reviewer's Comments: Although there may certainly be cases of favoritism, I believe that civil servants have no clear political affiliation; I believe there have been no cases of politically motivated firings. The cases that the researcher refers to mostly deal with disputes regarding the fairness of the selection process.



34.

45b In practice, civil servants are appointed and evaluated according to professional criteria.

Score: 50

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Social Scientist's Comments:

The three cases below are based on information from [\[LINK\]](#)

Caso Aserca

En el oficio dirigido el 3 de julio de 2007 a Javier Guzmán Rodríguez, director general de Administración y Finanzas de Aserca, la Unidad de Recursos Humanos y Profesionalización de la Administración Pública Federal, de la Secretaría de la Función Pública (SFP), señala que el puesto en cuestión (el de coordinador general de Apoyos de Aserca, ocupado por Gustavo Adolfo Cárdenas Gutiérrez) deberá estar ocupado por persona distinta a la que actualmente se encuentra nombrada.

El 4 de junio de 2007, Guzmán Rodríguez había solicitado a la SFP que dejara sin efectos el nombramiento temporal de Cárdenas Gutiérrez y se giraran instrucciones al Comité Técnico de Profesionalización para cancelar el concurso de esa vacante, publicado en el Diario Oficial de la Federación el 30 de mayo de 2007. Así el puesto permanecería como de libre designación.

El servidor público argumentó que la plaza debería estar ubicada en el grupo y grado JA, por el nivel de responsabilidad y funciones que desarrolla, tal y como se cataloga en el maestro de puestos, es decir, no debería sujetarse a concurso.

Anticipó que en caso de no proceder su petición, sería necesario que la Unidad de Recursos Humanos y Profesionalización modificara el carácter de la vacante, para continuar con el desarrollo de la convocatoria y prorrogar a dos meses más la ocupación del puesto por Cárdenas Gutiérrez.

En el oficio SSFP/408/0649 del que Contralínea posee copia el titular de la unidad, Darío Treviño Muguerza, respondió que no se tramitaría la solicitud, en virtud de que la plaza sí estaba registrada como de carrera, ni se autorizaría la prórroga. A su vez, expone que el artículo 34 de la ley ordena que la designación temporal del puesto se aplaze hasta por cuatro meses.

La LSPCAPF advierte en su artículo 34 que sólo en casos excepcionales y cuando peligre o se altere el orden social, los servicios públicos, la salubridad, la seguridad o el ambiente (&) los titulares de las dependencias o el oficial mayor respectivo u homólogo podrá autorizar el nombramiento temporal para ocupar un puesto (&) sin necesidad de sujetarse al procedimiento de reclutamiento y selección a que se refiere esta ley.

El Reglamento de la Ley del Servicio Profesional de Carrera, publicado el 2 de abril de 2004, preveía que las dependencias podrían ocupar temporalmente una vacante por un periodo no mayor a seis meses a partir de la designación. Dicho plazo menciona el artículo tercero será improrrogable y el puesto deberá ser ocupado mediante concurso.

Sin embargo, la modificación al estatuto, publicada el 6 de septiembre de 2007 en el Diario Oficial de la Federación, estipula en su artículo 92, párrafo cuarto: Estos nombramientos tendrán la temporalidad que determinen los titulares de las dependencias o el oficial mayor u homólogo, la que no podrá exceder de 10 meses.

Así, el encargado de asegurar que se canalicen oportunamente los recursos a los beneficiarios de los programas de apoyos al campo fue designado coordinador temporal el 1 de enero de 2007.

En el Formato art. 34, informe de nombramiento autorizado en términos del artículo 34 de la LSPCAPF, Aserca señala, como causa de excepción para el otorgamiento del cargo, que peligre o se altere los servicios públicos, como



consecuencia de circunstancias que pueden provocar pérdidas o costos adicionales. El motivo por el que la dependencia consideró que Cárdenas Gutiérrez cubría el perfil del puesto fue que el servidor contaba tanto con la experiencia, como con los conocimientos técnicos requeridos.

La ocupación máxima de la plaza puntualiza el documento sería por seis meses, del 1 de enero al 30 de junio de 2007. Precisa el 6 de marzo de 2007 como fecha límite para que el coordinador de apoyos emitiera la convocatoria por la que se concursaría su puesto; sin embargo, el concurso fue declarado desierto. Un exservidor público de Aserca, quien solicita omitir su nombre por temor a represalias, dice haber realizado la evaluación de capacidades técnicas para la plaza. Asegura que, por petición de Cárdenas Jiménez, el examen tendría que hacerse de tal manera que ningún postulante calificara para el puesto.

El 1 de febrero de 2007 como consta en otro formato el funcionario recibió de nuevo un nombramiento temporal que concluiría el 31 de julio del año pasado. Esta vez la fecha máxima para la emisión de la convocatoria fue el 7 de abril.

Una vez más fue designado el 1 de julio mediante el formato de A34-V.2. La prórroga requerida fue por dos meses máximo y la vigencia hasta el 31 de octubre. El 1 de agosto recibió una prórroga más por cuatro meses, con lo que concluiría su cargo el 30 de noviembre. Aunque tuvo como fechas límite para convocar el 24 de agosto y el 3 de octubre, lo hizo hasta el 26 de marzo de 2008.

Gustavo Adolfo Cárdenas Gutiérrez continúa como coordinador de apoyos de Aserca. Por cada Formato art. 34, el funcionario firmó manifestando no haber sido asignado anteriormente bajo el supuesto del artículo 34 de la LSPCAPF.

Caso Sener

Con el folio 114-4404, Enrique Cárdenas Hoeflich que preside la Asociación por un Servicio Público de Carrera Transparente contendió para obtener el puesto de director general de Recursos Humanos, Innovación y Servicios en la Sener el 4 de mayo de 2006. Casi un año después, el 2 de marzo de 2007, el candidato presentó recurso de revocación contra el fallo del concurso 4404.

A la solicitud de información 0001800002507, realizada por Cárdenas Hoeflich, la dependencia respondió que el folio ganador correspondía a Jorge Luis Garza de la Fuente, quien ocupaba la plaza bajo los supuestos del artículo 34 de la Ley del Servicio Profesional. De los 87 concursos convocados por la Sener desde 2004, seis más tuvieron como vencedores a servidores públicos que fueron nombrados de forma temporal para ocupar el cargo concursado.

Según documento fechado el 6 de marzo de 2007 en el que la Dirección General Adjunta de Servicios Legales de Profesionalización, de la Unidad de Recursos Humanos y Profesionalización de la Administración Pública Federal, solicita al Comité de Selección de la Sener información sobre el caso, el aspirante con folio 114-404 requirió la anulación del concurso por actos acontecidos en la fase de entrevista. Entre ellos, que el ganador Jorge Luis Garza de la Fuente debió excusarse de participar en el Comité de Selección en todas las etapas del concurso y no fue así, pues aparece su firma como presidente en la convocatoria.

Copia del acta de la 15 sesión extraordinaria del Comité Técnico de Profesionalización de la Sener comprueba que Garza de la Fuente fue secretario técnico. En la reunión celebrada el 6 de marzo de 2006 se validó la descripción, perfil y valuación del puesto de director general de Recursos Humanos, Innovación y Servicios de la Sener. Así se acordó eliminar los requisitos de capacidades técnicas transversales, liderazgo y mercadotecnia y enfatizar el de recursos humanos y materiales.

El escrito está firmado por Óscar Javier Torre Gómez, presidente del comité. Siete meses después, lo hace como jefe de la plaza en el acta de la 56 sesión, que anuncia como ganador a Garza de la Fuente. A las observaciones del inconforme se suma que la relación de calificaciones publicada en RH Net arroja que los dos candidatos que llegaron a la entrevista, Cárdenas Hoeflich y Garza de la Fuente, obtuvieron 90 y 80 puntos en dicha etapa. Como calificación total en sus exámenes alcanzaron 78 y 82, respectivamente.

La Dirección General Adjunta de Servicios Legales de Profesionalización le solicitó al Comité Técnico de Selección de la Sener, que encabeza Georgina Kessel, un informe sobre los motivos por los que Garza de la Fuente no aparecía como participante activo del concurso. El 20 de marzo de 2007, Alejandro Herrera Macías, titular del comité, contestó que dado que la convocatoria se publicó cuando funcionaba la versión anterior de la página electrónica TrabajaEn diseñada para administrar el reclutamiento y selección de los aspirantes se identificó al candidato con el alfanumérico 90FF21E4CC.

También informó que él ocupaba el puesto que se concursó por movimiento lateral y que Garza de la Fuente presentó su renuncia al cargo. El 28 de marzo de 2007, la Unidad de Recursos Humanos y Profesionalización de la Administración Pública Federal determinó que el recurso de revocación R/0012/SENER/2007 era improcedente.

Caso Conaculta

El 6 de agosto de 2007, Sergio Moreno Vásquez presentó el recurso de revocación R/0027/CONACULTA72007, en contra de la resolución emitida el 25 de julio de 2007 por el Comité de Selección del Conaculta. En dicho proceso se eligió como ganador a Octavio Salazar Guzmán, con folio 92-7646, para continuar en el puesto de director general de Administración. El funcionario ocupaba dicha plaza bajo los términos del artículo 34 de la Ley del Servicio Profesional.

Según consta en la resolución de la Unidad de Recursos Humanos y Profesionalización de la Administración Pública Federal del 29 de febrero de 2008, el inconforme argumenta que se le otorgaron preferencias al aspirante, pues dicho folio debió quedar descartado por no presentar los exámenes de capacidades gerenciales en mayo de 2007 tal y como fuimos requeridos a presentarlos el resto de los participantes.

La queja fue ratificada por la Dirección General Adjunta de Servicios Legales de Profesionalización el 3 de septiembre de 2007, al resolver el recurso de inconformidad I/0168/CONACULTA72007. Anteriormente, la Dirección General de Ingreso, Capacitación y Certificación de la SFP emitió el oficio SSFP/ICC/245/2007, donde advierte que el candidato no se presentó a la evaluación por supuestas cuestiones de logística.

La Dirección de Planeación y Desarrollo de Capital Humano de Conaculta le informó a la SFP que en junio de 2007 el sistema RH Net presentó inconsistencias en su operación. Por ello, asegura la convocante, Salazar Guzmán no respondió el examen de liderazgo en línea el 6 de junio. Al aspirante se le otorgó una prórroga para presentarlo el 14 de junio, fecha en que el sistema falló, y el 21 de junio, cuando obtuvo un puntaje de 82.

Indica que en ocho folios no hubo registro de calificaciones obtenidas el 6 de junio y advierte que ninguno de ellos correspondió al del candidato: Se observa que en el desarrollo de la evaluación de la capacidad gerencial de liderazgo se otorgaron preferencias al aspirante con folio 92-7646, toda vez que no se justifica el cambio de fecha de aplicación, dado que no hay evidencia de inconsistencias técnicas.

Concluye que ello constituye la inobservancia a los principios rectores del Sistema del Servicio Profesional de Carrera de la Administración Pública Federal, en específico la imparcialidad, e insiste que no hay justificación para que el actual director de administración de Conaculta no continuara con la prueba de liderazgo, cuando sí concluyó la evaluación de visión estratégica en la misma fecha.

La Unidad de Recursos Humanos y Profesionalización de la Administración Pública Federal, a través de la Dirección General Adjunta de Servicios Legales de Profesionalización, responde al recurso de revocación de Moreno Vásquez que lo descrito en modo alguno incidió en la selección del candidato.

Ni mucho menos agrega la aplicación en fecha distinta a la del 6 de junio entraña la premisa de ser descartado del proceso de selección, que de ningún modo acredita un agravio al hoy recurrente. De esta manera dice que el resultado favorable en el examen gerencial es únicamente atribuible al mérito del

propio candidato.

Además, califica los testimonios presentados por el inconforme como afectados de credibilidad. Los testigos declararon que Salazar Guzmán no estuvo presente el 14 de mayo de 2007 durante la aplicación de la prueba técnica. No obstante, anota la Unidad, el Registro de Aspirantes para Exámenes confirma la asistencia de 15 aspirantes y no 12, como lo refirieron los declarantes.

Sergio Moreno Vásquez también alegó que la calificación otorgada al ganador estuvo viciada de discrecionalidad por los integrantes del Comité Técnico de Selección al momento de la entrevista. Tanto el quejoso como Salazar Guzmán obtuvieron el mayor puntaje en todo el proceso de evaluación.

La Dirección General Adjunta de Servicios Legales de Profesionalización desestima la denuncia y niega que la entrevista del Comité Técnico inobservara los principios de equidad y de competencia por mérito. Expone que la evaluación de aspectos técnicos durante la prueba como el contenido del artículo 80 de la Ley Federal de Presupuesto y Responsabilidad Hacendaria y las medidas a tomarse respecto al exiguo presupuesto asignado al subsector de cultura cumple con el propósito de la Ley del Servicio Profesional de Carrera.

En su recurso de revocación, el recurrente también declara que hubo conflicto de intereses: La secretaria técnica A, como jefe de la vacante, debo suponer fue la que nombró al artículo 34, ya que éste en otras dependencias lo nombra el oficial mayor, pero aquí no existe y lo más parecido es precisamente la Dirección General de Administración.

El área responde que el alegato no corresponde al ámbito de competencia de la Unidad de Recursos Humanos y Profesionalización de la Administración Pública Federal ni de la dirección, sino del Órgano Interno de Control en Conaculta. Por lo que el inconforme tendrá que denunciar los actos conforme a la Ley Federal de Responsabilidades Administrativas de los Servidores Públicos.

La SFP resuelve que la determinación del Comité Técnico de Selección del Conaculta, de declarar por unanimidad ganador del concurso para ocupar la plaza de director general de administración a Octavio Salazar Guzmán, se apega a las disposiciones legales y administrativas que rigen a los concursos. Contralínea solicitó entrevista con Darío Treviño Mugerza, titular de la Unidad de Recursos Humanos y Profesionalización de la Administración Pública Federal, de la Secretaría de la Función Pública. A través del área de Comunicación Social de la Sagarpa, se requirió entrevista con Gustavo Adolfo Cárdenas Gutiérrez, coordinador de apoyos de Aserca. También se hizo la petición con el director general de administración de Conaculta, Octavio Salazar Guzmán. No obstante, en ningún caso se obtuvo respuesta.

Peer Reviewer's Comments: Although there may be some questionable cases, I believe that most appointments and professional assessments are usually based on professional qualifications (meaning that the candidates selected fulfill at least the minimum requirements).

45c *In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.*

Score: 50

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Social Scientist's Comments: Based on my interviews, it is possible to conclude that nepotism, cronyism and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family members or friends to favorable positions in the civil service, or lend other favorable treatment.

45d *In practice, civil servants have clear job descriptions.*

Score: 75

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Peer Reviewer's Comments: For most of the jobs posted for vacancies (at the website <http://trabajaen.gob.mx>) there tends to be a clear job description. For civil servants who are already in the public service, you can find descriptions about their level of seniority and compensation; however, you don't always find their assigned functions (<http://www.portaldetransparencia.gob.mx/pot/informacion/begin.do?method=begin>)

45e In practice, civil servant bonuses constitute only a small fraction of total pay.

Score: 100

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Peer Reviewer's Comments: The following study is not consistent with the score given by the researcher: "Los Salarios de los Altos Funcionarios en México desde una Perspectiva Comparativa" Laura Carrillo Anaya and Juan Pablo Guerrero Amparán.
<http://www.presupuestoygastopublico.org/v2/ppgp.php?IdPagina=6>

45f In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

Score: 50

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Peer Reviewer's Comments: The government does make public the current job openings; it also has a directory of civil servants; however, there is no itemized list that has the number of current workers, or current and filled vacancies. The information the government publishes does not lend itself to spotting the existence of "ghost" workers.

45g In practice, the independent redress mechanism for the civil service is effective.

Score: 50

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Social Scientist's Comments: The civil service redress mechanism must rely on approval from the executive. In addition, politically sensitive investigations are almost impossible to move forward on.

Peer Reviewer's Comments: The researcher is only referring to the Secretaría de la Función Pública who is in charge of the administrative redress process. However appeals can then be done through the judiciary. The researcher does not assess how the two applicable courts function: the Tribunal Federal de Conciliación y Arbitraje and the Tribunal Federal de Justicia Fiscal y Administrativa.

45h In practice, in the past year, the government has paid civil servants on time.

Score: 100

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Peer Reviewer's Comments: I believe there are no reports about delays in payments to civil servants, so the score should be 100.

45i *In practice, civil servants convicted of corruption are prohibited from future government employment.*

Score: 50

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Social Scientist's Comments: A system of formal blacklists and cooling-off periods to prevent those civil servants who have been convicted of corruption from future government employment is in place, but the system has flaws. Some civil servants who have been punished in the federal level have actually been hired by state or local governments. The system of formal blacklists is better described as a loosely-coupled system.



46: Are there regulations addressing conflicts of interest for civil servants?

46a *In law, senior members of the civil service are required to file an asset disclosure form.*

Score: YES

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 36.

46b *In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.*

Score: YES

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 8.

46c *In law, there are restrictions for civil servants entering the private sector after leaving the government.*

Score: YES

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Articles 8 & 9.

46d *In law, there are regulations governing gifts and hospitality offered to civil servants.*

Score: YES

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 8.

Social Scientist's Comments: The Ley Federa de Responsabilidades Administrativas regulates gifts and hospitality offered to civil servants. According to this law, for instance, it is forbidden to give a present to a civil servant if the cost of such a present is higher of \$550 MXP (\$US42). Civil servants who receive a present that exceeds such a cost are expected to report it to the controller of his/her office.

Peer Reviewer's Comments: I cannot find in article 8 where this law states that gifts of \$550 MXP (US\$42) should be reported to the comptroller. I think there is no limit.
The researcher should accurately cite where he obtained this figure.

46e *In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.*

Score: NO

References: There are no legal or regulatory requirements for the independent auditing of civil service asset disclosures.

46f *In practice, the regulations restricting post-government private sector employment for civil servants are effective.*

Score: 25

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE). Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Social Scientist's Comments: According to a draft report of David Arellano --to be published in this year-- a significant portion of civil servants --not just the high-profile-- jump to the private sector without respecting the cooling off periods.

Peer Reviewer's Comments: I believe there is no effective mechanism to enforce the post-government regulations. What is known are the high-profile cases of Francisco Gil Díaz and Javier Arrigunaga -- they did not respect the cooling-off periods and went straight to the private sector.

46g *In practice, the regulations governing gifts and hospitality offered to civil servants are effective.*

Score: 50

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE). Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Peer Reviewer's Comments: There is no effective mechanism to track possible infractions of these regulations. However, there is not much information available on how many civil servants have actually accepted significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h *In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.*

Score: 25

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE). Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Peer Reviewer's Comments: A notable example at the state level is that of the former governor of Sonora and his relatives who owned multiple daycare centers that were authorized by the national health care system. A tragic fire in one of these daycare centers evidenced that although local and federal public safety officials deemed the daycare center safe, it were clearly was not complying with safety standards.

46i *In practice, civil service asset disclosures are audited.*

Score: 0

References:

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Peer Reviewer's Comments: This is not consistent with indicator 46e. Who audits the civil service asset disclosures?

47: Can citizens access the asset disclosure records of senior civil servants?

47a *In law, citizens can access the asset disclosure records of senior civil servants.*

Score:	NO
References:	Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 40.
Social Scientist's Comments:	Citizens can access the asset disclosure records of senior civil servants only if authorized to by the public servant himself.
Peer Reviewer's Comments:	The Freedom of Information and Transparency Law (Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental) article 13 fracc. IV states that information that puts in jeopardy the safety or health of an individual will be considered reserved or confidential. You can argue that public asset disclosures could be used by kidnappers to gather useful information and target civil servants.

47b *In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.*

Score:	25
References:	Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE). Interview with Javier González, Public Officer, Secretaría de la Función Pública.
Social Scientist's Comments:	Asset disclosure records of senior civil servants may be available on the Internet, but almost none of them actually are.

47c *In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.*

Score:	25
References:	Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE). Interview with Javier González, Public Officer, Secretaría de la Función Pública.
Social Scientist's Comments:	Asset disclosure records of senior civil servants may be available on the Internet, but almost none of them actually are.

47d *In practice, the asset disclosure records of senior civil servants are of high quality.*

Score:	25
References:	Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE). Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Peer Reviewer's Comments: You can ask the for dates on which the asset disclosures were submitted; this information is not completely useless. Therefore I think a score of 25 is warranted.

There is a case where an information request for the asset disclosures of several public servants was denied by the IFAI because of the confidentiality clause; however, the response does include a table showing the dates that the asset disclosures of these public servants were submitted. This 2006 IFAI resolution is available at <http://www.ifai.org.mx/resoluciones/2006/48.pdf>.

48: Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

48a *In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.*

Score: NO

References: The Attorney General's office (PGR) has a witness protection program, but this only applies to cases of organized crime.

48b *In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.*

Score: 0

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE). Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Peer Reviewer's Comments: Not even the protected witnesses for organized crime cases are effectively protected from negative consequences. A case worth mentioning was that of a protected witness, Édgar Enrique Bayardo del Villar, who was recently was shot down in a Starbucks coffee shop in Mexico City. (<http://www.eluniversal.com.mx/notas/643349.html>). This case was related to drug trafficking, but also corruption. (Some of his testimony led to the imprisonment of some federal officers)

48c *In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.*

Score: NO

References: There are general protections in the Federal Labor law (article 46) against unjust firing, but no explicit protections for whistle-blowers.

48d *In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.*

Score: 0

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE). Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Peer Reviewer's Comments: There is no law that protects private sector employees who report report cases of corruption, graft, abuse of power, or abuse of resources from recrimination or other negative consequences.

49: In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

49 *In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?*

Score: YES

References: Dirección General de Atención Ciudadana de la Secretaría de la Función Pública, Article 37 fracc. III y IV of the Reglamento Interno de la Secretaría de la Función Pública.

Peer Reviewer's Comments: The correct name of the cited legislation is Reglamento Interior de la Secretaría de la Función Pública
http://www.funcionpublica.gob.mx/leyes/ri_sfp/ri_sfp.html.

50: In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

50a In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

Score: 50

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE). Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Social Scientist's Comments: At the federal level, the anti-corruption agency is the Ministry of Public Service (Secretaría de la Función Pública). This agency is responsible for several other programs and public policies. Therefore, corruption control is not its only concern. As a consequence, the agency has limited staff and resources. At the local and state level, the situation is even worse, since in some places there is no anti-corruption agency.

50b In practice, the internal reporting mechanism for public sector corruption receives regular funding.

Score: 50

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE). Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Social Scientist's Comments: The anti-corruption agency has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget, especially this year due to the economic crisis.

Peer Reviewer's Comments: Mexico's current President, Felipe Calderón, sent in his budget proposal to congress for the FY2010 along with a plan to eliminate three ministries, including the Ministry of Public Service (Secretaría de la Función Pública). The proposal said that this ministry would be replaced by a comptroller's office that was part of the president's office.
The argument for the elimination of these ministries was to save some money through budget cuts. Ultimately, Congress rejected the proposal to eliminate the three ministries.

50c In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

Score: 50

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE). Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Social Scientist's Comments: Some complaints may not be acknowledged, and simple issues may take more than two months to resolve. For instance, the investigation in case of "Hermanos Bibriesca" (2006-2007), and other highly public scandals, took more than a half a year to finish. There are still some doubts about the accuracy of the investigation.

50d *In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.*

Score: 75

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE). Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Peer Reviewer's Comments: The Ministry of Public Service (Secretaría de la Función Pública) does not publish information or reports on this issue.

51: Is the public procurement process effective?

51a *In law, there are regulations addressing conflicts of interest for public procurement officials.*

Score: YES

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 8.

Peer Reviewer's Comments: The law addressing conflicts of interest for public procurement officials applies to civil servants in general.

51b *In law, there is mandatory professional training for public procurement officials.*

Score: YES

References: La Ley del Servicio Profesional de Carrera en la Administración Pública Federal, Articles 10 and 11.

Peer Reviewer's Comments: The law addressing conflicts of interest for public procurement officials applies to civil servants in general.

51c *In practice, the conflicts of interest regulations for public procurement officials are enforced.*

Score: 50

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Javier González, Public Officer, Secretaría de la Función Pública.

51d *In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.*

Score: NO

References: La Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 36, Asset Declarations.

Peer Reviewer's Comments: The cited law is only about mandatory asset disclosures for civil servants in general. The law does not establish a monitoring mechanism for the incomes and spending habits of public procurement officials.

51e *In law, major procurements require competitive bidding.*

Score: YES

References: La Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público ARTICLES 28-39
Constitution, Article 134, second and third paragraphs.

51f *In law, strict formal requirements limit the extent of sole sourcing.*

Score: YES

References: La Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público permits sole sourcing only in exceptional cases when there are no other options.

Peer Reviewer's Comments: The relevant articles of the Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público are 40-42.

51g *In law, unsuccessful bidders can instigate an official review of procurement decisions.*

Score: YES

References: La Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Articles 65-70.

Peer Reviewer's Comments: Also relevant in regard to official review of procurement decisions are articles 71-76.

51h *In law, unsuccessful bidders can challenge procurement decisions in a court of law.*

Score: NO

References: La Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Articles 65-70.

Peer Reviewer's Comments: The cited articles only details an administrative process, not an appeal process through a court of law. Article 85 briefly mentions that some controversies can be resolved in federal courts but only in cases where there was no pact on arbitrage or the agreed clauses are inapplicable.
The researcher must justify why a YES score is warranted.

51i *In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.*

Score: YES

References: Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Article 61.

Peer Reviewer's Comments: Other articles about penalties on companies that are guilty of major violations of procurement regulations are 59 and 60.

51j *In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.*

Score: 50

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**Social Scientist's
Comments:**

The Secretaría de la Función Pública publishes the list of "proveedores inhabilitados" at:

[\[LINK\]](#)

But, lack of coordination between different levels of government is a major loophole in preventing companies that are guilty of major violations of procurement regulations from participating in future procurement bids.

52: Can citizens access the public procurement process?

52a *In law, citizens can access public procurement regulations.*

Score: YES

References: Ley Federal de Transparencia, Article 7, fracc. XIII.

Peer Reviewer's Comments: Article 7, fracc. XIV describes the obligation to make publicly available the rules and regulations of every government body to which this law applies to.

52b *In law, the government is required to publicly announce the results of procurement decisions.*

Score: YES

References: Ley Federal de Transparencia, Article 7, fracc. XIII y XVII.

52c *In practice, citizens can access public procurement regulations within a reasonable time period.*

Score: 100

References: www.compranet.gob.mx
Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Javier González, Public Officer, Secretaría de la Función Pública.

52d *In practice, citizens can access public procurement regulations at a reasonable cost.*

Score: 100

References: www.compranet.gob.mx
Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Javier González, Public Officer, Secretaría de la Función Pública.

52e *In practice, major public procurements are effectively advertised.*

Score: 100

References: www.compranet.gob.mx
Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Javier González, Public Officer, Secretaría de la Función Pública.

52f *In practice, citizens can access the results of major public procurement bids.*

Score: 75

References:

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Javier González, Public Officer, Secretaría de la Función Pública.

53: Is the privatization process effective?

53a *In law, all businesses are eligible to compete for privatized state assets.*

Score: NO

References: There is not an explicit law that regulates the issue of businesses being eligible to compete for privatized state assets.

53b *In law, there are regulations addressing conflicts of interest for government officials involved in privatization.*

Score: YES

References: Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 8, fracc. XI.

53c *In practice, conflicts of interest regulations for government officials involved in privatization are enforced.*

Score: 25

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Annalists and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: In the last 12 years, there has not been any privatization process. In the past, some violations may not have been prosecuted, or some officials may have been exempt from the regulations.

Peer Reviewer's Comments: I am not sure where the researchers gets the information that there has not been a privatization process in the last 12 years. During Vicente Fox's presidential administration, there were some privatizations.

54: Can citizens access the terms and conditions of privatization bids?

54a *In law, citizens can access privatization regulations.*

Score: YES

References: There are no laws or regulations concerning the privatization process. It is true that there are no laws or regulations concerning privatizations. However, in practice, the terms and conditions of privatization bids are made available, and citizens always have the option to request information on privatizations through the Information Request System.

54b *In practice, privatizations are effectively advertised.*

Score: 50

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analysts and Professor of the Universidad Nacional Autónoma de México (UNAM).

54c *In law, the government is required to publicly announce the results of privatization decisions.*

Score: YES

References: Ley Federal de Acceso a la Información Pública Gubernamental, Article 13.

Peer Reviewer's Comments: The cited law is not really relevant. The appropriate legislation is an executive order: Acuerdo que crea la Comisión Intersecretarial de Desincorporación. April 1995:
[http://www.ordenjuridico.gob.mx/Federal/PE/APF/CI/CID/07041995\(1\).p](http://www.ordenjuridico.gob.mx/Federal/PE/APF/CI/CID/07041995(1).p)

54d *In practice, citizens can access privatization regulations within a reasonable time period.*

Score: 50

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analysts and Professor of the Universidad Nacional Autónoma de México (UNAM).

Social Scientist's Comments: There is not a law of "privatizations bids", however the privatization of a public entity is highly reported by the media and citizens can access to the regulations. For instance, the privatizations of Satmex and Grupo Fertin (the most recent privatizations bids), were to some extent well reported.

Peer Reviewer's Comments: Since there is no law regarding citizen access to privatization regulations the appropriate score would be zero.

54e *In practice, citizens can access privatization regulations at a reasonable cost.*

Score: 50



is

on



ns.

df.



re
al

›,



- References:** Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Annalists and Professor of the Universidad Nacional Autónoma de México (UNAM).
- Social Scientist's Comments:** There is not a law of "privatizations bids", however the privatization of a public entity is highly reported by the media and citizens can access to th regulations. The cost are relatively to what is consider "reasonable cost" For a sigle citizen the cost of a private bid cold be very expensive, but fo a private equity could be an accectable investment.
- Peer Reviewer's Comments:** Since there is no law regarding citizen access to privatization regulations the appropriate score would be zero.

re
.
r
s,

55: In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

55 *In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?*

Score: YES

References: Comisión Nacional de los Derechos Humanos, (Constitution, Article 102).

56: Is the national ombudsman effective?

56a *In law, the ombudsman is protected from political interference.*

Score: YES

References: Constitution, Article 102: The Comisión Nacional de los Derechos Humanos (CNDH) is an autonomous agency.

56b *In practice, the ombudsman is protected from political interference.*

Score: 50

References: Interview with José Buendía, President of Fundación Prensa y Democracias.
 Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
 Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Social Scientist's Comments: The Comisión Nacional de los Derechos Humanos (CNDH) is typically independent. Yet, it is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information that he/she needs to carry out its investigations.

56c *In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.*

Score: 100

References: Interview with José Buendía, President of Fundación Prensa y Democracias.
 Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
 Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Social Scientist's Comments: The Ombudsman can only be removed through formal impeachment proceedings by Congress (Title 4 of the Constitution). This is extremely complicated process and has never come even close to taking place.

56d *In practice, the ombudsman agency (or agencies) has a professional, full-time staff.*

Score: 100

References: Interview with José Buendía, President of Fundación Prensa y Democracias.
 Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
 Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

56e *In practice, agency appointments support the independence of the ombudsman agency (or agencies).*

Score: 75

References: Interview with José Buendía, President of Fundación Prensa y Democracias.
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Social Scientist's Comments: Appointments are usually based on professional qualifications. However, political parties play a significant role in the appointments since they must approve the assignment; therefore, it could be possible that appointed individuals have clear party loyalties.

Peer Reviewer's Comments: Generally speaking, the appointment process of the members of the council is not as politicized or controversial.

56f *In practice, the ombudsman agency (or agencies) receives regular funding.*

Score: 100

References: Interview with José Buendía, President of Fundación Prensa y Democracias.
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

56g *In practice, the ombudsman agency (or agencies) makes publicly available reports.*

Score: 100

References: Interview with José Buendía, President of Fundación Prensa y Democracias.
Interview with Leonardo Curzio, Political Analysts and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

56h *In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.*

Score: 75

References: Interview with José Buendía, President of Fundación Prensa y Democracias.
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

56i *In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.*

Score: 25

References: Interview with José Buendía, President of Fundación Prensa y Democracias.
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Social Scientist's Comments: The ombudsman agency does not effectively penalize offenders. The agency make judgments but does not enforce them, nor does it cooperate with other agencies in enforcing penalties. In fact, the Comisión Nacional de los Derechos Humanos (CNDH) just provides "recommendations," but there is no punishment or enforcement.

56j *In practice, the government acts on the findings of the ombudsman agency (or agencies).*

Score: 25

References: Interview with José Buendía, President of Fundación Prensa y Democracias.
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Social Scientist's Comments: The ombudsman's reports do not lead necessarily to policy changes. The "recommendations" of the Comisión Nacional de los Derechos Humanos (CNDH) have been ignored several times.

56k *In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.*

Score: 50

References: Interview with José Buendía, President of Fundación Prensa y Democracias.
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

57: Can citizens access the reports of the ombudsman?

57a *In law, citizens can access reports of the ombudsman(s).*

Score: YES

References: Yearly reports are on the Internet at www.cndh.org.mx.

57b *In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.*

Score: 100

References: Interview with José Buendía, President of Fundación Prensa y Democracias.
Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

57c *In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.*

Score: 100

References: Interview with José Buendía, President of Fundación Prensa y Democracias.
Interview with Leonardo Curzio, Political Annalists and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with José Antonio Crespo, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

58: In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

58 *In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?*

Score: YES

References: Constitution, Article 79, Supreme Federal Auditor (Auditor Superior de la Federación)

59: Is the supreme audit institution effective?

59a *In law, the supreme audit institution is protected from political interference.*

Score: YES

References: "Technical" and "management" autonomy are given by article 79 of the Constitution.

Peer Reviewer's Comments: The Supreme Federal Auditor can be removed by Congress (the Chamber of Deputies) with a two-thirds vote of the present members; this can only be done after a hearing and with just cause described in the law (Ley de Fiscalización y Rendición de Cuentas de la Federación, articles 91-93).

59b *In practice, the head of the audit agency is protected from removal without relevant justification.*

Score: 100

References: Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.

Social Scientist's Comments: In general, yes, the head of the audit agency is protected from removal without relevant justification. But there is an article in the Federal Oversight Law which allows Congress to dismiss the auditor if he has committed "grave offenses" which are very broadly defined. Nevertheless, this has not been used in practice.

59c *In practice, the audit agency has a professional, full-time staff.*

Score: 100

References: Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.

59d *In practice, audit agency appointments support the independence of the agency.*

Score: 75

References: Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.

59e *In practice, the audit agency receives regular funding.*

Score: 100

References: Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.

59f *In practice, the audit agency makes regular public reports.*

Score: 100

References: Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.

Social Scientist's Comments: The Auditoria Superior de la Federacion published its reports on its web site:[\[LINK\]](#).

Peer Reviewer's Comments: I believe the reports are presented to the legislature and the citizens have access to them through the The Freedom of Information and Transparency Law (Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental).

59g *In practice, the government acts on the findings of the audit agency.*

Score: 25

References: Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the national chapter of Transparency International.

Social Scientist's Comments: Audit reports do not lead necessarily to policy changes, especially because most of the ASF's "observations" are related to previous years; sometimes the policy responsibilities are different. There is weak enforcement.

59h *In practice, the audit agency is able to initiate its own investigations.*

Score: 100

References: Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.

60: Can citizens access reports of the supreme audit institution?

60a *In law, citizens can access reports of the audit agency.*

Score: YES

References: Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental. Article 3, fracc. XIV and Article 7.

Peer Reviewer's Comments: Also article 3 fracc. IX.

60b *In practice, citizens can access audit reports within a reasonable time period.*

Score: 100

References: Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.

60c *In practice, citizens can access the audit reports at a reasonable cost.*

Score: 100

References: Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.

61: In law, is there a national tax collection agency?

61 *In law, is there a national tax collection agency?*

Score: YES

References: Sistema de Administración Tributaria (SAT), www.sat.gob.mx Ley del Servicio de la Administración Tributaria (Articles 2, 7 fracc. I, IV y V), Reglamento Interior del Servicio de Administración Tributaria.

62: Is the tax collection agency effective?

62a *In practice, the tax collection agency has a professional, full-time staff.*

Score: 50

References: Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.

Peer Reviewer's Comments: Reports of this budget analysis program (<http://www.presupuestoygastopublico.org>) point toward a lower score.

62b *In practice, the tax agency receives regular funding.*

Score: 75

References: Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National chapter of Transparency International.

Peer Reviewer's Comments: Reports of this budget analysis program (<http://www.presupuestoygastopublico.org>) point toward a lower score.

63: In practice, are tax laws enforced uniformly and without discrimination?

63 *In practice, are tax laws enforced uniformly and without discrimination?*

Score: 0

References: Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.

Social Scientist's Comments: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax laws than others; for instance, powerful entrepreneurial groups, unions or civil organizations that are protected by political leaders or parties, such as those groups that are protected by the Partido de la Revolución Democrática (PRD).

The following is a CNNExpansion's report on this concern:

México deja captar alrededor de un 25% de su capacidad recaudatoria por actos de elusión y evasión fiscal, dijo el martes el secretario de Hacienda, Agustín Carstens. El país además de resentir una caída en los ingresos petroleros, presenta una disminución en la recaudación tributaria, misma que mantiene los niveles más bajos con respecto al producto interno bruto, comparada con países de América Latina y entre naciones miembro de la Organización para la Cooperación y el Desarrollo Económico.

El funcionario recordó ante el pleno de la Cámara de Diputados que entre los países de la OCDE el porcentaje que se deja de recaudar por este tipo de actos es de 15%. "Al inicio del sexenio (2006) teníamos un 28% y continuamos reduciéndolo", dijo Carstens en su comparecencia en la Cámara Baja.

El Ejecutivo presentó recientemente una propuesta fiscal, donde se prevén modificaciones en materia de cobros y actos de fiscalización, dotando de mayores herramientas al servicio de administración tributaria, brazo fiscal de Hacienda.

La dependencia calcula que existe poco más 400,000 mdp por recuperar en materia de ingresos fiscales, por lo que la modificaciones que se proponen en el Código Fiscal de la Federación, se podrían recuperar más de 20, 000 mdp."

64: In law, is there a national customs and excise agency?

64 *In law, is there a national customs and excise agency?*

Score: YES

References: The Administración General de Aduanas is part of the SAT.

Peer Reviewer's Comments: Ley del Servicio de la Administración Tributaria article 7 fracc. II.

65: Is the customs and excise agency effective?

65a *In practice, the customs and excise agency has a professional, full-time staff.*

Score: 25

References: Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.

Social Scientist's Comments: The customs and excise agency has no staff, or its staff is limited so that it is clearly unqualified to fulfill its mandate. This is a problem that is specific to the customs and excise agency due to the lack of an efficient customs law framework.

65b *In practice, the customs and excise agency receives regular funding.*

Score: 75

References: Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.

Peer Reviewer's Comments: Reports of this budget analysis program (<http://www.presupuestoygastopublico.org>) point toward a lower score.

66: In practice, are customs and excise laws enforced uniformly and without discrimination?

66 *In practice, are customs and excise laws enforced uniformly and without discrimination?*

Score: 25

References: Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).
Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.

Social Scientist's Comments: In general, most people (in both the public and private sector) complain about the corruption and irregular practices of customs officials; but, unfortunately, there are few, if any, trustworthy studies of the phenomenon. This is a major area for future research.
In general, the problem is centered around kickbacks for allowing the illegal importation of goods. For instance, the inundation of goods from China recently has been attributed to this phenomenon.

67: In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

67 *In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?*

Score: YES

References: Ley Orgánica de la Administración Pública Federal, Article 37.
Ley Federal de Entidades Paraestatales, Articles 60 and 62.

Social Scientist's Comments: The Secretary of the Public Function, through its comptrollers in each state-owned company, oversees the transparency and accountability of operations.

Peer Reviewer's Comments: The researcher previously referred to the Secretary of the Public Function as the the Ministry of Public Service (Secretaría de la Función Pública), which is the anti-corruption agency at the federal level.

68: Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

68a *In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.*

Score: **NO**

References: The Secretary of the Public Function is directly appointed by the president and does not have autonomy. The Superior Federal Auditor is part of congress and subject to political pressures from the legislature.

Social Scientist's Comments: In Mexico, the state-owned companies are audited and controlled by two entities: the internal control, which is performed by the Secretary of Public Function (an entity of the executive branch) and the external control, which is performed by the Supreme Federal Auditor, which is an autonomous agency. So, it depends on the type of control that we need to answer this question. If we take into account the ASF the most likely answer should be YES, but if we take into account the SFP the answer should be NO.

Peer Reviewer's Comments: The Supreme Federal Auditor is not part of congress. The Supreme Audit Institution is an autonomous agency. The statement about the Supreme Federal Auditor is not consistent with indicators 59a and 59b. The researcher previously referred to the Secretary of the Public Function as the the Ministry of Public Service (Secretaría de la Función Pública), which is the anti-corruption agency at the federal level.

68b *In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.*

Score: **75**

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE). Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Social Scientist's Comments: The state-owned companies are run by an oversight staff that is clearly unqualified to fulfill its mandate due to, a large extent, on the control and influence that the unions have in the administration of these companies. For instance, the oil company PEMEX, has significant problems, but the union actually blocks any possible administrative reform. Unions are based on corrupt practices that make any reasonable managing of the public companies impossible.

Peer Reviewer's Comments: The oversight staff qualifications and the obstruction by the unions are two separate issues. Therefore, I think this indicator deserves a higher score.

68c *In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.*

Score: 50

References: Interview with David Arellano, Professor and Researcher, the Centro de Investigaciones y Docencia Económicas (CIDE). Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Social Scientist's Comments: The state-owned companies have a regular source of funding, but they are pressured by cuts in their annual budget, especially this year because the economic crisis. Political considerations have an effect on agency funding. For instance, PEMEX's budget is subject to political considerations that make it impossible to establish an efficient budget administration.

68d *In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.*

Score: 50

References: Interview with David Arellano, Professor and Researcher, the Centro de Investigaciones y Docencia Económicas (CIDE). Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Social Scientist's Comments: The agencies that oversee state-owned companies start investigations, but these are limited in their effectiveness or in the cooperation with other investigative agencies. The state-owned companies may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its own judgments.

The following is a example of a fraud scandal in the Electric Power Company (Comisión Federal de Electricidad). Taken from: [\[LINK\]](#)

Descubren fraude contra la CFE. Dos empleados hicieron transferencias bancarias por casi 4 mdp a sus cuentas personales; Diana Patricia Gutiérrez y Julián García quedaron detenidos por el presunto fraude.

Un juez federal otorgó una orden de arraigo contra dos personas presuntamente responsables de fraude a la Comisión Federal de Electricidad (CFE) por un monto de tres millones 884 mil 25 pesos.

La Procuraduría General de la República (PGR) informó que la CFE presentó una denuncia al detectar dos transferencias por un millón 998 mil 547 y un millón 885 mil 478 pesos hacia cuentas personales sin relación comercial u operativa con la empresa.

Mediante un comunicado, destacó que lleva a cabo revisiones junto con la CFE y ha registrado, con técnicas y procedimientos contables, transferencias indebidas en ejercicios anteriores, por un monto que aún está por determinarse.

La Unidad Especializada en Investigación de Delitos Fiscales y Financieros de la Subprocuraduría de Investigación Especializada en

Delitos Federales inició la averiguación UEIDFF/FINM15/200/2007.

Peritos en las materias de informática, dactiloscopia, fotografía y topografía acudieron a las instalaciones de la paraestatal, para efectuar una inspección ocular y levantar diversas pruebas periciales.

De esa manera, el Ministerio Público Federal procedió a la detención urgente de Diana Patricia Gutiérrez Molina y Julián García Aguado, trabajadores de la CFE, por estar relacionados con los retiros indebidos detectados con motivo de la denuncia.

Ambos empleados quedaron bajo arraigo por su presunta responsabilidad en el delito de fraude previsto en el Artículo 386 del Código Penal Federal, y del 113 Bis de la Ley de Instituciones de Crédito.

El Ministerio Público Federal solicitó y obtuvo la orden de arraigo por 30 días contra Gutiérrez Molina y García Aguado, quienes fueron llevados al Centro de Investigaciones Federales para continuar integrando la indagatoria y definir las responsabilidades jurídicas que correspondan.

A su vez, la CFE precisó que las diferencias de registros entre las operaciones efectuadas y los movimientos bancarios fueron detectadas en la unidad administrativa de la Subdirección de Transmisión.

Por ello, el director general de la CFE, Alfredo Elías Ayub, instruyó al abogado general a presentar de inmediato ante la PGR la denuncia de hechos contra quien resulte responsable, e iniciar las investigaciones correspondientes.

La CFE señaló, en un comunicado, que está coadyuvando con la PGR en las actuaciones que lleva a cabo, las cuales se han caracterizado por su celeridad y eficiencia.

Apuntó que desde el momento en que detectaron la irregularidad la empresa adoptó medidas adicionales correctivas y preventivas de control en todas las áreas administrativas de la entidad en tanto concluyen las investigaciones.

68e *In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.*

Score: 25

References: Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Javier González, Public Officer, Secretaría de la Función Pública.

Social Scientist's Comments: The owned-state companies enforce rules, but they are limited in their effectiveness or are reluctant to cooperate with other agencies. They may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce their judgments. Normally, fraud or corruption scandals that involve operational-level personnel are investigated and in some cases prosecuted. However,

scandals that involve top management directors are usually not investigated.

The following is a media report on this issue: [\[LINK\]](#)

Robos crean pérdida millonaria a Pemex

Los robos de energéticos a la petrolera mexicana generan millones de dólares a los contrabandistas; en 2008 se localizaron 400 tomas ilegales en ductos de la petrolera, generando pérdidas de 700 mdd.

El Gobierno estadounidense está investigando si existen compañías con conocimiento del robo a Pemex. EU entrega 2.4 mdd a México por fraude. El monto entregado a la PGR y al SAT provienen del fraude de Tramo Petroleum contra Pemex. En EU, cae petrolero por robo a Pemex.

Un ejecutivo se declaró culpable del cargo de delincuencia organizada por el robo de crudo mexicano. Los Zetas ordeñan ductos de Pemex. Funcionarios de la paraestatal protegen y ayudan al grupo delictivo en el robo de combustible. Depuración contra la ordeña de Pemex El presidente de México anunció una estrategia para combatir la ordeña del petróleo a la empresa. Roban a Pemex 5,800 mdp en petrolíferos.

La empresa reportó que la pérdida por el robo de combustibles ascendió a 9,300 mdp en 2008.

El problema endémico que tiene la petrolera estatal mexicana Pemex con el robo de combustible en su red de ductos quedó en evidencia, ante la notoriedad que tuvo esta semana la investigación sobre el contrabando de combustible en la frontera entre México y Estados Unidos. Las autoridades aduaneras de Estados Unidos entregaron recientemente al Gobierno mexicano 2.4 millones de dólares provenientes de la venta de crudo robado y luego vendido en la frontera.

Los robos de gasolina, diesel e inclusive combustible de avión desde los ductos de Pemex le han generado millones de dólares de ganancias a los contrabandistas. El combustible perdido tiene un costo significativo para el país, que importa más de 40% de la gasolina que consume a pesar de ser uno de los principales productores de crudo en el mundo.

Los criminales perforan los ductos e instalan tomas clandestinas para luego cargar el combustible en camiones cisterna. La mayor parte del combustible es vendido a dueños de gasolineras y propietarios de empresas con grandes flotas de vehículos. Pemex con frecuencia localiza las tomas clandestinas e incauta los camiones con el combustible robado, pero los arrestos son poco comunes y peor aún las sentencias a prisión.

Peer Reviewer's Comments: I believe the researcher's comments justify a 25 score for this indicator.

69: Can citizens access the financial records of state-owned companies?

69a *In law, citizens can access the financial records of state-owned companies.*

Score: YES

References: Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, Article 3, fracc. XIV f and Article 7.

Social Scientist's Comments: According to the mentioned law and articles, the entities subject to the transparency obligations are all the entities of the Executive branch and Federal Public Administration. According to the Ley Organica de la Administracion Publica Federal, that includes the state-owned companies, such as Pemex and CFE.

Peer Reviewer's Comments: The law that is cited by the researcher does not mention state-owned companies.

69b *In practice, the financial records of state-owned companies are regularly updated.*

Score: 75

References: Interview with David Arellano, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE). Interview with Javier González, Public Officer, Secretaría de la Función Pública.

69c *In practice, the financial records of state-owned companies are audited according to international accounting standards.*

Score: 100

References: KPMG's report on PEMEX external audit, 2008. Interview with David Arellano, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE). Interview with Javier González, Public Officer, Secretaría de la Función Pública.

69d *In practice, citizens can access the financial records of state-owned companies within a reasonable time period.*

Score: 75

References: Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International. Interview with David Arellano, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

69e *In practice, citizens can access the financial records of state-owned companies at a reasonable cost.*

Score: 75

References: Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International. Interview with David Arellano, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

70: Are business licenses available to all citizens?

70a *In law, anyone may apply for a business license.*

Score: YES

References: Ley General de Sociedades Mercantiles, Article, 5.

Peer Reviewer's Comments: Article 5, but of the Constitution. The Ley General de Sociedades Mercantiles does not mention any excluded groups or category of citizens regarding applications for a business license.

70b *In law, a complaint mechanism exists if a business license request is denied.*

Score: YES

References: Ley Federal de Procedimiento Administrativo Juicio de Amparo

Peer Reviewer's Comments: There doesn't exist a law with that name. There is the Ley Federal de Procedimiento Administrativo. Could the researcher cite the relevant law correctly?

70c *In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.*

Score: 75

References: World Economic Forum, Global Competitiveness Report 2008.

Social Scientist's Comments: The wait for obtaining a business license is 142 days on average according to the World Economic Forum.

Peer Reviewer's Comments: Doing Business 2010 report indicates it takes 13 days to start a business in Mexico.

70d *In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.*

Score: 50

References: World Economic Forum, Global Competitiveness Report 2008.

Social Scientist's Comments: Business licenses are required, and this requirement imposes a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

71: Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

71a *In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.*

Score: YES

References: Ley Federal del IMSS.
Ley Federal del Trabajo.

71b *In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.*

Score: NO

References: Interview with Miguel Angel Pando, Executive Director, Consejo Coordinador Empresarial (CCE).

71c *In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.*

Score: YES

References: Ley Federal del Trabajo.

72: Does government effectively enforce basic health, environmental, and safety standards on businesses?

72a *In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.*

Score: 50

References: Interview with Miguel Angel Pando, Executive Director, Consejo Coordinador Empresarial (CCE).

Social Scientist's Comments: Business inspections by the government to that ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing. The following is a media report on this issue: [\[LINK\]](#)

Farmacéuticas intentan "curar" la corrupción

El vocero de los laboratorios acepta que no todas las empresas respetan el código de ética, lo que impide la sana competencia y perjudica tanto a pacientes como al sistema de salud. No han bastado un consejo autónomo y un código autorregulatorio, ni un compromiso de transparencia firmado con el gobierno federal. Las prácticas no éticas en la relación entre la industria farmacéutica y los profesionales de la salud, incluyendo el pago de sobornos, están muy arraigadas y no cambiarán de la noche a la mañana, acepta, con preocupación, Jaime Uribe de la Mora, presidente de la Cámara Nacional de la Industria Farmacéutica. Las peores consecuencias, agrega, son el daño que producen al sistema nacional de salud y a los pacientes, aparte de impedir una competencia sana en el sector farmacéutico.

EL UNIVERSAL publicó el martes pasado un reportaje producido por la Unidad de Investigación que documenta con precisión los recursos cooptadores de corporativos farmacéuticos hacia médicos y pacientes, ya sea mediante obsequios y el financiamiento a ellos y sus familiares de viajes a congresos y seminarios nacionales e internacionales.

El dirigente de la Canifarma advierte en entrevista que si bien estas prácticas comenzaron a ser reguladas desde 2005, estableciendo el Consejo de Ética y Transparencia de la Industria Farmacéutica (órgano autónomo) y el Código de Buenas Prácticas de Promoción de la Industria Farmacéutica, no todas las empresas afiliadas los respetan.

Podría parecer insólito, pero de 2005 a la fecha, explica Uribe de la Mora, la propia cámara ha interpuesto ante el Consejo 49 quejas contra empresas asociadas que realizan prácticas proscritas, como dar a los médicos obsequios que superan el valor permitido, patrocinar viajes a familiares o realizar pagos a trasmano a profesionales de la salud.

Según las estadísticas del Consejo referido, 40% de las quejas presentadas por la Cámara fueron contra agremiadas que realizaron

pagos indebidos a médicos. Uribe de la Mora precisa que no se considera pago indebido el que un médico asista patrocinado por una empresa a un congreso científico, sino que aquella pague, además, los gastos del acompañante.

Asimismo, 25% de las quejas fueron por publicidad imprecisa, confusa o engañosa; 20% se originó porque durante un congreso médico se realizaron actividades no relacionadas con la formación profesional, como ofrecer un show de un cantante; eso está prohibido... ese tipo de hospitalidades inducen a que el médico se sienta comprometido con la industria, explica el dirigente.

Y 15% restante fue contra empresas que dieron obsequios prohibidos en las prácticas de promoción. El Código de Buenas Prácticas de Promoción de la Industria Farmacéutica asienta que los laboratorios pueden obsequiar a médicos regalos de poco valor, es decir, que no rebasen 10 salarios mínimos, a menos de que se trate de material científico, cuyo costo no podrá ser mayor a 40 salarios mínimos.

El presidente de la Canifarma asegura que de las 49 quejas, 47 han sido resueltas a través de amonestaciones y sanciones económicas (cuyo monto dice ignorar). Todas las compañías involucradas han aceptado las resoluciones, sólo en tres casos han expresado desacuerdo, pero al final todas han acatado plenamente lo que ha resuelto el Consejo.

Por ética, el dirigente se negó a proporcionar los nombres de las empresas farmacéuticas sancionadas.

Antes era más fácil influir

Dice que hace tiempo comenzó a cambiar la relación de la industria con médicos. ¿Cómo era?

Hace 10 años hubo denuncias porque había prácticas en las que, por ejemplo, los laboratorios hacían invitaciones no sólo a congresos, sino a viajes de lujo, a cruceros, para convencer a los médicos de que sus productos eran los mejores. Daban obsequios a los médicos no sólo privados, sino a los de instituciones (públicas), porque ellos son, al final, los que van a definir cuál será el consumo de determinados productos que tendrán instituciones como el Seguro Social, el ISSSTE, Pemex... Desde 2005 comenzó un cambio de la industria.

¿Las consecuencias de estas prácticas para el sistema nacional de salud, los pacientes y la industria?

Afectan a los tres sectores. Antes había prácticas que inducían, incluso, a funcionarios públicos y a médicos que trabajan en instituciones públicas, a ingresar en los cuadros básicos medicamentos de patente que son caros, lo cual no se justificaba plenamente porque había otros con la misma función, más económicos.

¿Esto sigue haciéndose?

Ahora, el Consejo de Salubridad General es muy cuidadoso

cuando se incluye un nuevo producto en cuadros básicos... Cuando no existían estos códigos (de ética y buenas prácticas) era más fácil influir y había menos trabas para ingresar un medicamento en los cuadros básicos y beneficiar a una empresa... Antes de 2005 se daban esas prácticas no éticas... desde hace tiempo se están cuidando estas cosas.

¿Las consecuencias para pacientes?

Con los pacientes el problema es que muchas veces una publicidad engañosa puede inducir a la auto-receta, con lo cual mucha gente no va a tener el beneficio esperado.

¿Y para la industria?

Antes, con las malas prácticas, las compañías hacían congresos o viajes de placer con los médicos, para hacerles sentir que su producto era mejor que el de la competencia, por ejemplo de una industria nacional. Buscaban quitar competencia... incluso perseguían (convertirse en) monopolios para tener mejores precios y mayor utilidad.

¿Financian a organizaciones de médicos o pacientes?

Antes era una práctica común; ahora, en el código está prohibido. Antes para que pudieran entrar los representantes médicos de los laboratorios tenían que pagar una cuota a hospitales o clínicas.

Médicos entrevistados aseguran que está práctica continúa sobre todo en hospitales privados.

Está prohibido. Incluso de 2005 a la fecha el Consejo de Ética y Transparencia de la Industria Farmacéutica ha presentado 14 quejas contra sociedades médicas, hospitales públicos y privados del Distrito Federal y distintos estados, por prácticas contrarias al compromiso con la transparencia (que suscribió la industria con la Secretaría de Salud)

¿Por qué se han presentado las quejas?

Porque cobran por dejar pasar a los visitantes médicos. En el caso de las asociaciones médicas, porque han incurrido en una falta de ética... Ciertas asociaciones médicas estaban acostumbradas a recibir dinero y lo utilizaban para financiar investigaciones. (No recibir) mucho de esos presupuestos que recibían de la industria farmacéutica les ha afectado. Lo que se busca es que haya la mayor transparencia.

¿Cuántos representantes médicos tiene registrados la Cámara?

No tiene registrados los representantes médicos... casi todas las empresas grandes tienen más de mil representantes en toda la República.

Para una relación realmente transparente entre industria y gremio médico, ¿no debería cancelarse la entrega de obsequios a los profesionales de salud?

Creo que sí. Es algo que está en continua revisión.

72b *In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.*

Score: 50

References: Interview with Miguel Angel Pando, Executive Director, Consejo Coordinador Empresarial (CCE).

Social Scientist's Comments: Business inspections by the government to ensure that public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing. The following is a media report on this issue: [\[LINK\]](#)

Supuestas irregularidades de la Semarnat y la Profepa, así como del gobernador Ney González Sánchez afectan a residentes de Bahía de Banderas, Nayarit. En la localidad Cruz de Huanacastle se erige el complejo inmobiliario Aura Arena Blanca, cuya construcción ha violentado la normatividad ecológica y urbanística de la zona, denuncia el abogado Coufal Díaz.

El complejo inmobiliario Aura Arena Blanca, en Bahía de Banderas, Nayarit, provoca daños a la ecología y viola las normas ambientales, de uso del suelo y urbanísticas, denuncia Eric Coufal Díaz, abogado defensor de los residentes afectados. Señala que el gobernador del estado, Ney González Sánchez, ordenó romper en forma ilegal los sellos de clausura de las obras que colocó la Procuraduría de Justicia de la entidad.

El complejo inmobiliario afecta el patrimonio de particulares que fincaron ahí sus residencias, por el impacto que representa la construcción de torres y edificios que amenazan la seguridad de sus inmuebles. Uno de los afectados es Jon Shirley, exvicepresidente de Microsoft, quien advierte que acudirá a instancias internacionales para exponer su caso.

En las denuncias ante autoridades judiciales, Eric Coufal entregó evidencias de las omisiones del gobierno mexicano, que en el caso del desarrollo Aura Arena Blanca constituyen hechos violatorios a las leyes y normas ambientales establecidas en el marco del Acuerdo de Cooperación Ambiental de América del Norte.

Ante estos hechos la Secretaría de Medio Ambiente y Recursos Naturales (Semarnat) y la Procuraduría Federal de Protección al Ambiente (Profepa) emitieron el pasado 15 de julio un comunicado en el cual rechazaron que se haya cometido ecocidio con estas obras.

Las autorizaciones se refieren exclusivamente a los aspectos ambientales del proyecto y su expedición no exime a los promoventes de obtener los permisos o licencias requeridas por otras dependencias del Ejecutivo federal, o bien por autoridades de otros órdenes de gobierno, conforme a la legislación local que resulte aplicable al tipo de proyecto que se pretende desarrollar, señalaron.

Cualquier afectación de índole estructural, arquitectónica o urbanística no es responsabilidad de la autoridad ambiental federal, sino de quienes ejecuten las obras de ingeniería que, a juicio de los afectados, constituyen un riesgo para sus intereses y lo que, en su caso, puede ser reclamado en las vías judiciales previstas en la legislación civil, dice el comunicado de ambas dependencias.

En entrevista vía telefónica, el abogado Coufal Díaz señala que la actitud de estas instancias federales resulta por demás sospechosa, ya que en lugar de asumir su responsabilidad para vigilar la correcta aplicación de la legislación ambiental, protegen los intereses de desarrollistas ecocidas.

Dice que la autoridad federal otorgó indebidamente los permisos cuando ya se habían consumado los actos de delincuencia ambiental, como fue la excavación de más de 25 mil metros cúbicos de tierra. Además, cuestionó el que ambas dependencias no hayan dado respuesta a los recursos de revisión interpuestos desde el 11 de febrero pasado con motivo de dichas autorizaciones y tampoco a la denuncia popular promovida el 18 de ese mismo mes.

Al respecto, la dependencia admite que, en efecto, actualmente se encuentra en trámite ante la Semarnat un recurso de revisión interpuesto contra las autorizaciones otorgadas para el mencionado proyecto, por lo que la delegación en Nayarit realizó una visita de inspección y reportó que no había irregularidades.

Precisa que el 14 de julio personal de la Dirección General de Inspección de Impacto Ambiental y Zona Federal Marítimo Terrestre constató preliminarmente que no existen daños al medio ambiente ni al ecosistema, ya que el desarrollo inmobiliario no se ubica dentro de un Área Natural Protegida ni en zona de manglares. Tampoco se ha detectado flora y fauna silvestres que hayan sido afectadas o que pudieran serlo.

Sin embargo, el personal encontró algunas irregularidades no significativas que ya fueron notificadas al desarrollador, quien informó a la autoridad haber iniciado su regularización ante la Semarnat.

Fue a finales de 2007 cuando ese grupo inmobiliario, representado por los empresarios Alberto Djaddah Jamous, Ricardo Sarraf Assad, Jacobo Levy Tawil, Rafael Sevilla Arias, Juan Carlos Rodero Godínez, Carlos Pacheco Arredondo, Joseph Liberman Sourasky y Roberto Madrid Jácome, inició el desarrollo Aura Arena Blanca.

Entonces, lanzaron una agresiva campaña de publicidad con montajes ilusionistas donde se contemplaba el proyecto original de este complejo inmobiliario, que según los folletos y carteles disponibles representaba un proyecto condominal de baja densidad, aldeaño al coto turístico residencial conocido como Real del Mar.

Sin embargo, el proyecto original nunca fue respetado por los empresarios, ya que solicitaron al ayuntamiento de Bahía de Banderas una ampliación a la licencia de construcción, y donde, pese a que se violaba el Plan Municipal de Desarrollo vigente y otras reglas aplicables, les otorgaron un nuevo permiso. Técnicamente el

proyecto Aura Arena Blanca se encontraba fuera de la ley.

De esta manera, el grupo Anima o Torres Aura comenzó la construcción de un edificio de condominios que estaba proyectado para cuatro niveles y que continuó a ocho y terminó en 10 pisos, con todo y la agresión al entorno natural y a las residencias vecinas, seriamente afectadas en su privacidad e incluso estructuralmente.

También se edificaron dos torres de siete pisos en contravención a lo autorizado; se ejecutaron obras de despalme y excavación sin permiso o licencia por parte de la autoridad municipal y se obstruyeron e invadieron vialidades municipales, entre otros problemas.

La delegación de Semarnat en Nayarit concedió desde abril de 2008 la autorización para el proyecto inmobiliario, el cual fue avalado por el ayuntamiento presidido por el priista Héctor Paniagua Salazar, y que involucra directamente al exalcalde Jaime Cuevas Tello, también del Partido Revolucionario Institucional.

La parte afectada presentó denuncias ante la Procuraduría General de Justicia del estado de Nayarit, instancia que el pasado 7 de julio llevó a cabo la clausura y aseguramiento total de las obras, servicios y actividades de construcción del desarrollo inmobiliario, entre las que figuran las Torres A y B, además de la suspensión de las licencias de construcción.

Sin embargo, y en desacato a este mandato judicial, trabajadores de la empresa constructora removieron los sellos de clausura y allanaron el inmueble, hechos supuestamente ordenados por el gobernador de Nayarit, Ney González Sánchez, quien en lugar de velar por el cumplimiento del estado de derecho asume de manera personal la defensa de este grupo de desarrollistas, dice Coufal Díaz.

El gobernador Ney González Sánchez se limitó a comentar que la controversia por la empresa Aura Arena Blanca es una disputa entre particulares. Estaremos atentos y sensibles a lo que ordene la autoridad en la materia y a lo que resuelva la vía judicial. Hemos ofrecido mesas de trabajo que no han sido del interés de las partes, adujo.

Puede que tengan razón en no aceptar, ya que el gobierno de Nayarit no tiene intervención directa en el tema, excepto en las menciones que en medios se hace de la institución a mi cargo. Es un tema en el que tengo una opinión personal. En este caso concreto lo que menos importa es mi opinión personal. Se necesita la opinión de un juez, enfatizó el mandatario.

La clausura fue un montaje escénico a cargo de la procuraduría nayarita, ya que la agente del Ministerio Público, Elvia Ludmila Heredia Verdugo quien horas antes había ejecutado el mandato judicial y se encontraba a unos metros del lugar cuando se violaron los sellos, no impidió el allanamiento, por el contrario, ordenó el retiro de los 20 agentes judiciales para permitir el reinicio de los trabajos de construcción.

Entre los supuestos actos de ilegalidad relacionados con el desarrollo Aura Arena Blanca están las autorizaciones del cambio de uso del suelo y de impacto ambiental por parte de la delegación de la Semarnat, dependencia que fijó a los afectados una fianza de 20.5 millones de pesos para la suspensión de los trabajos.

Para que se haga justicia y se castigue los atropellos cometidos por el Grupo de Desarrollo Ánima en la Cruz de Huanacaxtle, se presentaron denuncias y recursos jurídicos federales: el recurso de revisión, interpuesto el 11 de febrero de 2009 ante la delegación de la Semarnat en Tepic, Nayarit; una denuncia popular, el 18 de febrero de 2009, así como el recurso de revisión, interpuesto el 20 de Marzo de 2009 ante la delegación de la Profepa.

Violación al MIA

Contrario a su función de ejecutar la política del Estado de protección ambiental, preservar los recursos naturales, e incidir en las causas que originan la contaminación, la pérdida de ecosistemas y de la biodiversidad, el delegado de Semarnat en Nayarit, Armando Zepeda Carrillo, asume una actitud de protección de los desarrolladores, señala el abogado.

Lo más grave, añade, es que de acuerdo con el oficio 138.01.00.01/1414/08, emitido por la Secretaría del Medio Ambiente y Recursos Naturales, el 24 de julio del 2007 les fue negado el dictamen de impacto ambiental presentado a esa dependencia.

Zepeda Carrillo no sancionó a los responsables del desarrollo Aura Arena Blanca, que violaron la Manifestación de Impacto Ambiental (MIA) y que causaron cuantiosos daños a una residencia ubicada en Real del Mar cuyo valor es de 10 millones de dólares. Fijó una desproporcionada fianza que asciende a más de 20 millones de pesos como condicionante para suspender las obras que el Grupo Aura construye en esa área.

La ley establece en su artículo 87 facción IV que cuando se solicita la suspensión se debe de decretar una garantía de daños y perjuicios que se pudieran ocasionar al suspenso, en este caso a los desarrolladores, pero aquí es precisamente una fijación excesiva, onerosa y en contra del particular afectado que es la víctima de los desarrolladores y la autoridad.

El Órgano de Fiscalización Superior de Nayarit emitió una recomendación para que se inicien acciones contra la extesorera municipal de Bahía de Banderas, María del Carmen Wong, por haber omitido en el envío de la cuenta pública 2007 los comprobantes relacionados con las cuentas del proyecto Aura Arena Blanca, derivado de los permisos, licencias y autorizaciones que les concedieron a los desarrolladores del grupo.

Existen antecedentes en Quintana Roo donde la Profepa ha ordenado demoliciones de construcciones que han incurrido en violaciones graves a las leyes de orden ambiental y urbano o que han invadido zonas de playa o predios de particulares. En Nayarit, los quejosos exigen que se cumpla el estado de derecho, pisoteado por el ayuntamiento de Bahía de Banderas y la

delegación de la Semarnat, principalmente.

72c *In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.*

Score: 50

References: Interview with Miguel Angel Pando, Executive Director, Consejo Coordinador Empresarial (CCE).

Social Scientist's Comments: Business inspections by the government to that ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing. The following is a media report on this issue: [\[LINK\]](#)

Un grupo de 60 comerciantes que laboran en la Quinta Avenida se ampararon en contra del ayuntamiento, debido a que no cumplen con las revisiones de protección civil en cuestiones de medidas de seguridad, más sin en cambio, quieren aplicarles multas, aseguró Ignacio Couoh Chim, miembro del Servicio Especializado de Artesanías.

La multa por no tener los trámites en orden es de hasta 12 mil pesos o hasta suspensión y clausura y el problema no era una cuestión de no colaborar con el gobierno municipal, sino todo lo contrario.

Explicó que dentro de los tantos requisitos que se les pide que cumplan en los negocios, hay un apartado de protección civil, en donde se indican que se tiene que tener una ruta de evacuación, salida de emergencia, anuncios que indiquen el camino, la existencia y ruta a sanitario y otros tantos trámites que se deben cumplir de acuerdo al giro comercial.

Ahora y después de varios meses, en donde de manera unilateral actuaron los comerciantes artesanales, ha estado acudiendo el personal de protección civil

Peer Reviewer's Comments: A notable example of a poorly done business inspections that was supposed to ensure that public safety standards happened in the state of Sonora. Here, a tragic fire in a daycare center evidenced that although local and federal public safety officials deemed the daycare center safe, it clearly was not complying with safety standards. It was found out that former relatives of Sonora's former governor owned multiple daycare centers, including where the fire took place.

73: Is there legislation criminalizing corruption?

73a *In law, attempted corruption is illegal.*

Score: YES

References: Código Penal Federal, Título X, Articles 214-224.

73b *In law, extortion is illegal.*

Score: YES

References: Código Penal Federal, Article 390.

Peer Reviewer's Comments: Other relevant articles: 218, 222, and 222 bis.

73c *In law, offering a bribe (i.e. active corruption) is illegal.*

Score: YES

References: Código Penal Federal, Article 222.

Peer Reviewer's Comments: Also relevant is article 222 bis (bribery of foreign officials).

73d *In law, receiving a bribe (i.e. passive corruption) is illegal.*

Score: YES

References: Código Penal Federal, Article. 222.

73e *In law, bribing a foreign official is illegal.*

Score: YES

References: Código Penal Federal, Article. 222 bis.

73f *In law, using public resources for private gain is illegal.*

Score: YES

References: Código Penal Federal, Article 217.

Peer Reviewer's Comments: Other relevant articles: 214, 215, 220, 221, 223, and 224.

73g *In law, using confidential state information for private gain is illegal.*

Score: YES

References: Código Penal Federal, Article 214.

Peer Reviewer's Comments: Also article 220.

73h *In law, money laundering is illegal.*

Score: YES

References: Código Penal Federal, Article 400 bis.

Peer Reviewer's Comments: Also article 194.

73i *In law, conspiracy to commit a crime (i.e. organized crime) is illegal.*

Score: YES

References: Ley Federal contra la Delincuencia Organizada, Articles 2 to 7.
Código Penal Federal, Articles 130 to 138, 203.

Peer Reviewer's Comments: Article 203 of the Código Penal Federal prohibits sexual tourism (prostitution) of underage people.
Articles 130-138 of the same code are about the crimes of sedition, mutiny and rebellion (insurrection).

74: In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

74 *In law, is there an agency (or group of agencies) with a legal mandate to address corruption?*

Score: YES

References: Secretaría de la Función Pública Ley Orgánica de la Administración Pública Federal, Article 37.

75: Is the anti-corruption agency effective?

75a *In law, the anti-corruption agency (or agencies) is protected from political interference.*

Score: NO

References: Ley Organica de la Administración Pública Federal. This is a Cabinet official appointed by the President.

75b *In practice, the anti-corruption agency (or agencies) is protected from political interference.*

Score: 25

References: Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International. Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

Social Scientist's Comments: The anti-corruption agency, the Ministry of Public Service (Secretaria de la Función Publica), is directly subordinated to the President. According to the Constitution, Article 89, the President is free to appoint the members of his cabinet, which includes the anti-corruption agency. Therefore, political biases are expected.

75c *In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.*

Score: 0

References: Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International. Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

Social Scientist's Comments: The anti-corruption agency, the Ministry of Public Service (Secretaria de la Función Publica), is directly subordinated to the President. According to the Constitution, Article 89, the President is free to appoint the members of his cabinet, which includes the anti-corruption agency. Therefore, political biases are expected.

Peer Reviewer's Comments: Mexico's current president, Felipe Calderón, sent along with his budget proposal to Congress for the FY2010 a plan to eliminate three ministries including the Ministry of Public Service (Secretaría de la Función Pública). The proposal said that this ministry would be substituted with a comptroller's office that was part of the president's office; it was argued that the elimination of these ministries would save some money through budget cuts. This proposal effectively would put the head of anti-corruption agency directly under the influence of the President (even more than a cabinet minister). Ultimately, Congress rejected the proposal to eliminate the three ministries.

75d *In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.*

Score: 50

References: Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.
Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

75e *In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.*

Score: 50

References: Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.
Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

Peer Reviewer's Comments: As the researcher mentioned in indicator 50a, at the federal level, the anti-corruption agency is the Ministry of Public Service (Secretaría de la Función Pública), which is responsible for multiple programs and public policies. Consequently, the agency has limited staff and resources to fulfill of its programs and policies.

75f *In practice, the anti-corruption agency (or agencies) receives regular funding.*

Score: 50

References: Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.
Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

Peer Reviewer's Comments: As the researcher mentioned in indicator 50b, the anti-corruption agency has a regular source of funding but it may be pressured by cuts, or threats of cuts to the agency budget, especially in 2009, due to the economic crisis.
Mexico's current president, Felipe Calderón, sent along with his budget proposal to congress for the FY2010 a plan to eliminate three ministries, including the Ministry of Public Service (Secretaría de la Función Pública); the proposal said that this ministry would be substituted with a comptroller's office that was part of the President's office; it was argued that the elimination of these ministries was to save some money through budget cuts. Ultimately, congress rejected the proposal to eliminate the three ministries.

75g *In practice, the anti-corruption agency (or agencies) makes regular public reports.*

Score: 75

References: Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.
Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

75h In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

Score: 50

References: Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.
Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

Social Scientist's Comments:

Even though in practice, the anti-corruption agency has sufficient power to carry out its mandate, the performance of this agency has been very questionable in recent years.

The following is a media report on this issue: [\[LINK\]](#)

Fracasa SFP en combatir corrupción gubernamental

Desde 2007 la Auditoría Superior de la Federación reprobó el desempeño de la Secretaría de la Función Pública. Sentenciada a desaparecer junto con otras dos secretarías de Estado para ahorrar en el gasto público, la propia SFP adolecía, desde hace años, de negligencia, ineficacia y opacidad, males que por mandato legal debía combatir en toda la administración pública

La Secretaría de la Función Pública (SFP) recibió una opinión negativa de la Auditoría Superior de la Federación (ASF) en el Informe del resultado de la revisión y fiscalización superior de la Cuenta Pública 2007.

Sujeta a tres evaluaciones de desempeño como vigilante de la actuación de los centros públicos de investigación, de la eficacia de programas gubernamentales y de la administración del patrimonio inmobiliario federal, la SFP incumplió en su misión de consolidar un gobierno honesto, eficiente y transparente.

La llamada secretaría anticorrupción, próxima a desaparecer, no realizó acciones que garantizaran la vigilancia, la transparencia, el control y seguimiento en la administración pública federal. El máximo órgano de fiscalización determinó que la SFP no realizó revisiones en 11 centros públicos de investigación; sólo incorporó 45 padrones de programas gubernamentales (38.5 por ciento del universo de atención), y presentó deficiencias en el aseguramiento, enajenación y venta de inmuebles. La ASF advierte que la falta de actuación de la Función Pública ocasiona que los centros de investigación pública no alcancen sus resultados, que no sea posible hacer más eficientes los programas gubernamentales en su operación y administración; que se garantice el buen aprovechamiento de la propiedad federal, y que se eviten desvíos, omisiones y otras irregularidades.

Opinión negativa de ASF

El ejercicio de la Secretaría de la Función Pública en el

cumplimiento de los convenios de desempeño con los centros públicos de investigación fue calificado con una opinión negativa de la ASF. En la revisión y fiscalización superior de la Cuenta Pública 2007 la ASF determinó que el Consejo Nacional de Ciencia y Tecnología (Conacyt), la Secretaría de Hacienda y Crédito Público (SHCP) y la Secretaría de la Función Pública no cumplieron con las disposiciones normativas de los convenios de desempeño de los centros públicos de investigación.

Según la Auditoría de desempeño sobre el cumplimiento de los convenios de desempeño de los centros públicos de investigación, durante 2007 se ejercieron 4 mil 456 millones 118 mil 100 pesos por los 24 centros públicos de investigación, coordinados por el Conacyt. La Ley de Ciencia y Tecnología los define como entidades paraestatales, cuyo objetivo es realizar actividades de investigación científica y tecnológica.

En su artículo 59 señala que se regirán mediante convenios donde se establezcan las bases de desempeño. De este modo la Secretaría de la Función Pública y la SHCP son responsables de evaluar trimestral y anualmente el cumplimiento de los compromisos asumidos por los centros en dichos acuerdos.

Ello con el propósito de mejorar las actividades en cada centro, alcanzar las metas y lograr los resultados programados, tener un ejercicio de gasto y rendición de cuentas más eficiente y transparente, y vincular los impactos con el monto del presupuesto que se le asigne.

El informe señala que en 2007 las evaluaciones realizadas por la SFP no incluyeron el compromiso de difundir resultados, y no correspondieron con la periodicidad anual. La SFP informó a la Auditoría Superior de la Federación que para que se celebren los convenios se hacía necesaria la publicación del Programa Especial de Ciencia, Tecnología e Innovación y el Programa de Mejoramiento de la Gestión. Sin embargo, no sucedió.

El reporte advierte en la Ley de Ciencia y Tecnología no se establece condición alguna para la suscripción de los acuerdos: El hecho de que los centros públicos de investigación no suscribieran los convenios de administración por resultados provocó que no estuvieran en posibilidades de adoptar un sistema de presupuesto basado en resultados que motivara a dichos centros a alcanzar los resultados.

En su lugar el Conacyt, la SFP y Hacienda autorizaron la aprobación de un Modelo de Convenio de Administración por Resultados; sin embargo, lo hicieron en fecha posterior a la establecida, el 22 de agosto de 2007. Como resultado, la ASF emitió 25 promociones de responsabilidad administrativa sancionatoria para los servidores públicos que por acto u omisión no suscribieron los acuerdos en los centros de investigación. Durante 2007 los órganos internos de control (OIC) y la Unidad de Auditoría Gubernamental (UAG), dependientes de la SFP, practicaron 232 auditorías en 20 de los 24 centros públicos de investigación. Sólo 20 correspondieron a auditorías de desempeño en 18 centros y generaron 13

observaciones.

No se practicaron auditorías al cumplimiento de convenios de desempeño en 11 centros públicos de investigación con OIC. Función Pública no explicó ante la Auditoría Superior de la Federación las causas de la irregularidad, pero sí dijo que todos los actos de fiscalización de los OIC y la UAG se orientaron a verificar el cumplimiento de las metas y objetivos de las instituciones: Es importante resaltar que, si bien no se llevaron a cabo las auditorías, sí existe un análisis de toda la información programática a efecto de validarla. Sobre las revisiones de control sólo se realizaron en tres de los 19 centros públicos de investigación que suscribieron convenios de desempeño: dos en evaluación de indicadores de desempeño y una en monitoreo de operaciones. Por lo que no se verificó el cumplimiento de las metas reportadas por dichos centros, indica la ASF. El máximo órgano de fiscalización recomendó que la SFP analice la factibilidad de realizar acciones de inspección y vigilancia establecidas en los convenios de desempeño suscritos por los 24 centros públicos de investigación.

Ineficiencia en control de programas gubernamentales

La Auditoría de desempeño del sistema integral de información de padrones de programas gubernamentales concluyó que la SFP no cumplió con el objetivo de integrar de forma estructurada y sistematizada la información de los programas a cargo de la administración pública federal.

El Sistema Integral de Información de Padrones de Programas Gubernamentales (SIIPPG) es una herramienta de cobertura nacional que integrará de forma estructurada y sistematizada la información objetiva y fehaciente de los proyectos de la administración pública federal. Su objetivo es promover la equidad y la igualdad de oportunidades otorgando bienes sociales y satisfactorios básicos, evitando duplicidades de atención.

La fiscalización señala que durante 2007 la Dirección General de Simplificación Regulatoria de la SFP erogó 15 millones 851 mil pesos para ese fin. Es decir, el 61 por ciento del presupuesto aprobado debido a que se mantuvieron vacantes nueve de las 25 plazas de su estructura orgánica. Las actividades del SIIPPG fueron realizadas por dos mandos superiores y un mando medio.

La Secretaría de Función Pública, observa el órgano de fiscalización, no incluyó metas e indicadores vinculados con el SIIPPG ni respecto a los objetivos de los programas gubernamentales.

Con la revisión de las bases de datos del Presupuesto de Egresos de la Federación para el Ejercicio Fiscal 2007, la ASF identificó 117 programas presupuestarios que recibieron subsidios y operaron con padrón de beneficiarios.

No obstante, Función Pública sólo incorporó 45 padrones al SIIPPG, lo que significó una cobertura de apenas el 38.5 por ciento respecto del universo de atención. Por ello, la ASF determinó que no hubo cobertura nacional.

Al comparar los 114 programas registrados por Función Pública con los 117 identificados por el órgano de fiscalización, se encontró que la entidad no consideró ocho programas. En su lugar, incorporó dos que no recibieron recursos ese año y tres de instituciones de seguridad social.

El informe de auditoría constató que la dependencia, en su carácter de responsable de la operación del SIIPPG, no contó con una plataforma informática que le permitiera explotar la base de datos de manera estructurada y sistemática: La ausencia de información sistematizada y estructurada advierte el reporte en el sistema de los 117 programas imposibilitaron la eficiencia y efectividad en su operación y administración, así como la atención y corrección de errores, desvíos, omisiones y cualquier otra irregularidad. Expone que el SIIPPG no dispone de sistemas o tableros de control y no existen sistemas de información respecto a las características geográficas, estadísticas y socioeconómicas de los beneficiarios: No integró una base de datos común que fuera útil para el diseño, desarrollo, evaluación y monitoreo de las políticas públicas. Permitted la inclusión de datos nulos, incompletos e inconsistencias.

De esta manera, al evaluar el padrón del Seguro Popular en 2007 la ASF identificó posibles duplicidades de beneficiarios: Por sí sola no garantiza que correspondan a la población objetivo determinada en las disposiciones legales que norman la operación de los servicios médicos de cada institución. La entidad no evidenció intercambio de información o la interconexión con la Secretaría de Desarrollo Social y la Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación.

Resultado de un cuestionario elaborado por la SFP a 23 operadores de programas en las dependencias, el 95.7 por ciento dijo que el SIIPPG no es utilizado para identificar, analizar y monitorear la concurrencia de recursos destinados para la operación de los programas. El mismo porcentaje respondió que no le permitió verificar si los beneficiarios correspondieron con la población objetivo y tampoco mejorar la eficacia en el proceso de incorporación de beneficiarios.

El 91.3 por ciento de los entrevistados señaló que las dependencias no tienen acceso al SIIPPG desde su plataforma informática, y el 74 por ciento aseguró que el sistema no simplificó los procesos de intercambio de la información de los padrones entre dependencias y entidades.

Al respecto, expone el informe de fiscalización, los grupos de trabajo convocados por Función Pública no tuvieron como fin analizar y consensuar las acciones y medidas orientadas a mejorar la eficiencia en la operación de los programas. Tampoco el de promover la estandarización de los formatos de captura de los beneficiarios. La ASF verificó que la SFP no constató que haya realizado evaluaciones y análisis comparativos. La entidad informó a la SFP que hasta el 15 de julio de 2008 no había celebrado convenios de coordinación con las entidades federativas y municipios, ni con organismos autónomos e instituciones públicas y privadas, como lo confiere el decreto por el que se creó el SIIPPG. Indaabin incumple en

protección de patrimonio federal

La Auditoría de desempeño al sistema de administración inmobiliario federal en la administración pública federal centralizada consideró que las secretarías de la Función Pública, de Hacienda y el Instituto de Administración y Avalúos de Bienes Nacionales (Indaabin) no cumplieron con disposiciones normativas en materia de administración, registro y protección del patrimonio inmobiliario federal. El Indaabin persistió en el incumplimiento observado por la ASF en la revisión de la Cuenta Pública de 2006. El valor de los bienes inmuebles de la administración pública federal sumó 10 mil 889 millones 155 mil pesos en 2007. De ese total, el órgano de fiscalización auditó 1 mil 418 millones 78 mil pesos. La auditoría revisó la eficacia del Indaabin, órgano desconcentrado de la Secretaría de la Función Pública, para vigilar y regular su adquisición, arrendamiento, enajenación, destino o afectación. En su revisión y fiscalización de la Cuenta Pública 2007, la ASF no pudo evaluar la economía con que el Indaabin aplicó los recursos. Durante ese año el órgano descentralizado de Función Pública ejerció un monto de 202 millones 446 mil 600 pesos, superior en 99.3 por ciento a los 101 millones 573 mil pesos presupuestados para cubrir las erogaciones por servicios personales. Además no contó con gasto autorizado para cumplir objetivos presupuestarios, ni de información para determinar el costo de sus metas. Entre 2001 y 2007 el número de inmuebles federales en uso de las dependencias disminuyó 11.1 por ciento, al pasar de 12 mil 938 a 11 mil 507. Del total, el 69.7 por ciento (8 mil 24 inmuebles) fueron concentrados en cuatro secretarías: Educación Pública, Medio Ambiente y Recursos Naturales, Salud y Función Pública. Sin embargo, de 2006 a 2007 el valor de los inmuebles se incrementó casi 9 por ciento. Dicha variación no fue incluida en los expedientes de cierre de la Cuenta Pública por dependencia, lo que no facilitó la fiscalización del valor de los bienes inmuebles. En 2007, 1 mil 356 inmuebles estuvieron bajo la administración del Indaabin: 845 sujetos a inspección o trámites inmobiliarios; 258 para comercialización; 236 fueron edificios públicos, y 17 estuvieron en uso de la SFP. La ASF verificó que 822 inmuebles no fueron aprovechados, mientras que 7 mil no acreditaron estar inscritos al Registro Público de Propiedad Federal, 2 mil 673 no comprobaron la propiedad y dominio de la federación y para 775, se desconocía. Constató que el Inventario del Patrimonio Inmobiliario Federal y Paraestatal no identifica el rango de aprovechamiento, la superficie total, el valor histórico y comercial, y la situación jurídica y administrativa. Tampoco el Sistema de Información Inmobiliaria Federal y Paraestatal mostró una integración sistematizada de información sobre el registro de la situación física, jurídica y administrativa del patrimonio inmobiliario de la administración pública federal. Según lo observado por la ASF, el Indaabin no dispuso de un manual de organización actualizado para 2007. Tampoco estableció indicadores que determinaran los alcances del pago de rentas en el gasto público federal, ni para evaluar que los recursos destinados a la conservación y mantenimiento de los inmuebles se apliquen con eficiencia. El órgano fiscalizador determinó que el monto ejercido durante 2007 en arrendamiento de inmuebles ascendió a 888 millones 790 mil 600

pesos. La Secretaría de Energía erogó recursos que significaron más de cinco veces el valor de los inmuebles a su cargo, mientras que lo ejercido por la Secretaría del Trabajo y Previsión Social fue superior tres veces más su valor. Por el contrario las secretarías de Salud y de la Reforma Agraria utilizaron casi la tercera parte del valor de sus bienes. En cinco secretarías: Medio Ambiente y Recursos Naturales, Comunicaciones y Transportes, Seguridad Pública, Marina y de la Defensa Nacional el porcentaje fue inferior al valor total del arrendamiento en 2007. La Consejería Jurídica del Ejecutivo federal no realizó gastos por este concepto. Respecto al mantenimiento y conservación de inmuebles, la ASF señala que el monto ascendió a 446 millones 634 mil 800 pesos. La Secretaría del Trabajo y Previsión Social erogó por este concepto dos veces el valor de los inmuebles, y la Secretaría de Energía ejerció 40.4 por ciento del valor de sus bienes. Por cada inmueble la administración pública federal erogó en mantenimiento y conservación 38 mil 800 pesos. Las tres dependencias que ejercieron un mayor presupuesto por bien fueron la Secretaría de Energía con 1 millón 315 mil pesos; la Secretaría de Economía con 948 mil 600 pesos, y la Secretaría del Trabajo y Previsión Social con 772 mil 700 pesos. El Indaabin no comprobó que se aplicaran los criterios de eficiencia (captación de ingresos, gastos administrativos, ocupación inmobiliaria, concesiones regularizadas, calidad en el servicio y sustentabilidad) en los 100 inmuebles que seleccionó como los más eficaces, como tampoco la realización de programas para regularizar bienes en 13 dependencias. El máximo órgano de fiscalización concluyó que en 2007 la SFP, mediante los OIC, no realizó acciones específicas de vigilancia en las dependencias de la administración pública federal en materia de administración, registro y protección del patrimonio inmobiliario federal bajo su responsabilidad, ni para que los registros de las operaciones y presentación de estados financieros se sustentaran en los postulados técnicos establecidos por la SHCP. Analizando el número de auditorías practicadas por OIC en el periodo 2006-2007, la ASF observó que se redujo su ritmo de crecimiento en 21.5 por ciento. Para 2007 se redujo en 76.6 por ciento la cantidad de auditorías realizadas al pasar de 449 (en 2001) a 105. No obstante las 479 observaciones realizadas por el incumplimiento de la aplicación de las normas y disposiciones en la materia, no se determinaron para el caso del patrimonio inmobiliario en ocho de las 21 dependencias que no enviaron para su examen o no les fueron autorizados libros principales de contabilidad. Se trata de las secretarías de Desarrollo Social; de Hacienda y Crédito Público; de Turismo; de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación, que no enviaron para su examen libros principales de contabilidad. Para el caso del Indaabin, las observaciones del OIC se refieren a la falta o exceso de cobertura de aseguramiento de bienes inmuebles; falta o desactualización de inventarios, expedientes, fichas catastrales y cédulas inmobiliarias; falta de títulos de propiedad, escrituración e inscripción en el Registro Público de la Propiedad; indebido uso de espacios físicos permisionados o concesionados. Así como incongruencia en el proceso de enajenación y venta de inmuebles; deficiencias en la operación de comités y órganos colegiados constituidos para vigilar su administración; inmuebles deteriorados, en estado de abandono,

con daño estructural o inadecuados para su uso eficiente, y un inadecuado registro u omisión de información financiera, contable o presupuestal. Según el informe de fiscalización, la SFP informó a la ASF que no existe un rubro específico para supervisar que las entidades atiendan de manera puntual la normativa emitida por el Indaabin en materia de administración, registro y protección. En relación al aseguramiento de patrimonio inmobiliario, la revisión y fiscalización superior a la Cuenta Pública 2007 señala que de los 11 mil 507 bienes registrados en el Inventario Nacional de Inmuebles Federales, sólo 1 mil 978 edificios fueron reportados en el Sistema de Administración de Bienes Asegurables (SABA). De las 21 dependencias de la administración pública federal, la Secretaría de Educación Pública no remitió la póliza de seguros a la SHCP, mientras que las secretarías de la Defensa Nacional y de Medio Ambiente y Recursos Naturales no actualizaron su inventario en el SABA. La SHCP, constató la ASF, careció de atribuciones de coordinación y supervisión para verificar la actualización de los inventarios y la contratación de seguros de riesgos de los bienes inmuebles. El órgano de fiscalización recomienda que se formalice la coordinación entre la secretaría y el Indaabin, con el fin de homologar criterios de registro sobre los inventarios de bienes patrimoniales. La ASF promovió se deslinden responsabilidades por no modificar el saldo de Cuentas incobrables en recuperación. Pese a lo observado en la Cuenta Pública 2006, el Indaabin persistió en el incumplimiento, pues mantuvo un monto de 1 millón 166 mil 800 pesos en cuentas improcedentes. [INFOGRAFÍA]

Funciones de la SFP respecto a dependencias y entidades de la Administración Pública Federal

- Organizar y coordinar el sistema de control y evaluación gubernamental
- Inspeccionar el ejercicio del gasto público federal
- Vigilar el cumplimiento de disposiciones en planeación, presupuesto, ingresos, financiamiento, inversión, deuda, patrimonio, fondos y valores
- Vigilar el cumplimiento de normas de control y fiscalización
- Vigilar el cumplimiento de sistemas de registro y contabilidad, contratación y remuneraciones de personal, contratación de adquisiciones, arrendamientos, servicios y ejecución de obra pública
- Regular la adquisición, arrendamiento, enajenación, destino o afectación de los bienes inmuebles
- Realizar las auditorías a dependencias y entidades en sustitución o apoyo de sus órganos de control
- Dirigir, organizar y operar el Sistema de Servicio Profesional de Carrera
- Recibir y registrar las declaraciones patrimoniales de los servidores públicos y verificar su contenido
- Atender quejas e inconformidades presentadas por particulares con motivo de convenios o contratos celebrados
- Conocer e investigar las conductas de los servidores públicos que constituyan responsabilidades administrativas, aplicar las sanciones y presentar las denuncias

75i *In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.*

Score:

50

References:

Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.
Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

**Social Scientist's
Comments:**

The anti-corruption agency initiates investigations, but it is limited in its effectiveness due to political considerations. The internal control units of the federal public administration also face some technical and human resource limitations. In consequence, anti-corruption control is, to a large extent, limited.

76: Can citizens access the anti-corruption agency?

76a *In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.*

Score: 75

References: Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.
Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

Peer Reviewer's Comments: Can you specify a time frame?

76b *In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of reprimand.*

Score: 50

References: Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the National Chapter of Transparency International.
Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

77: Is there an appeals mechanism for challenging criminal judgments?

77a *In law, there is a general right of appeal.*

Score: YES

References: Constitution, Articles 23, 103-105 and 107, Código Federal de Procedimientos Penales.

77b *In practice, appeals are resolved within a reasonable time period.*

Score: 25

References: Interview with José Antonio Crespo, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

Social Scientist's Comments: Most appeals are not resolved in a timely fashion.

77c *In practice, citizens can use the appeals mechanism at a reasonable cost.*

Score: 25

References: Interview with José Antonio Crespo, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

78: In practice, do judgments in the criminal system follow written law?

78 *In practice, do judgments in the criminal system follow written law?*

Score: 25

References: Transparency International, Global Corruption Report 2007: Special Focus - Judiciary & Corruption, Chapter by Miguel Carbonell on Mexico , 2007.
Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

79: In practice, are judicial decisions enforced by the state?

79 *In practice, are judicial decisions enforced by the state?*

Score: 25

References: Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor, Universidad Nacional Autónoma de México (UNAM).

80: Is the judiciary able to act independently?

80a *In law, the independence of the judiciary is guaranteed.*

Score: YES

References: Constitution, Articles 86 and 116.

Peer Reviewer's Comments: Article 86 of the Constitution is not relevant.

80b *In practice, national-level judges are protected from political interference.*

Score: 50

References: Transparency International, Global Corruption Report 2007: Special focus - Judiciary & Corruption, Chapter by Miguel Carbonell on Mexico , 2007.
Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

80c *In law, there is a transparent and objective system for distributing cases to national-level judges.*

Score: YES

References: Ley Orgánica del Poder Judicial de la Federación, Article 81, fracc. XXIV; administrated by the Consejo de la Judicatura Federal.

80d *In law, national-level judges are protected from removal without relevant justification.*

Score: YES

References: Ley Orgánica del Poder Judicial de la Federación, Article 81 fracc. XV.

81: Are judges safe when adjudicating corruption cases?

81a *In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.*

Score: YES

References: Interview with José Antonio Crespo, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor, Universidad Nacional Autónoma de México (UNAM).

81b *In practice, in the last year, no judges have been killed because of adjudicating corruption cases.*

Score: YES

References: Interview with Leonardo Curzio, Political Analyst and Professor, Universidad Nacional Autónoma de México (UNAM).
Interview with José Antonio Crespo, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

82: Do citizens have equal access to the justice system?

82a *In practice, judicial decisions are not affected by racial or ethnic bias.*

Score: 25

References: Interview with José Antonio Crespo, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with Leonardo Curzio, Political Analyst and Professor, Universidad Nacional Autónoma de México (UNAM).

**Social Scientist's
Comments:**

There are serious problems in relation to indigenous people. A recent debate and resolution of the Supreme Court, presented evidence of the problems that the indigenous face in Mexico in order to get a fair trial and judgment.

The following is a media report on this issue: [\[LINK\]](#)

La Suprema Corte de Justicia ordenó la liberación de 20 de los indígenas presos por la matanza de Acteal, ya que sus sentencias se basaron en pruebas y testigos fabricados por la PGR

Por cuatro votos a uno los ministros de la Primera Sala del máximo tribunal ampararon a los acusados, que llevan más de 11 años en la cárcel. Un segundo grupo de 28 presos, quienes purgan condena por la misma masacre, perpetrada el 22 de diciembre de 1997 en la comunidad chiapaneca, también será amparado; sin embargo, debido a que su caso estaba a cargo del ministro Sergio Valls, quien pidió no protegerlos, sus expedientes se le turnaron a otro de sus compañeros de mayoría para que redacte los nuevos proyectos de sentencia.

La Corte votará esos juicios pendientes con base en los lineamientos que determinó ayer en el tema. En su intervención, la ministra Olga Sánchez Cordero dijo que amparó a los acusados porque se detectó que en algunos casos un juez agregó, de manera irregular, delitos que ni siquiera había consignado el Ministerio Público.

Para el ministro Juan Silva, se envía un claro mensaje a las autoridades encargadas de perseguir y castigar los delitos en el sentido de que deben respetar la ley y los derechos humanos.

EL UNIVERSAL publicó el jueves pasado las conclusiones que había alcanzado la Corte sobre el asunto.

82b *In practice, women have full access to the judicial system.*

Score: 100

References: Interview with Leonardo Curzio, Political Annalists and Professor, Universidad Nacional Autónoma de México (UNAM).
Interview with José Antonio Crespo, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

82c *In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.*

Score: YES

References: Constitution, Article 20, fracción IX.

Peer Reviewer's Comments: The correct citation of the article is 20 B) fracc. IX).

82d *In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.*

Score: 50

References: Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with José Buendía, President, Fundación Prensa y Democracias.

82e *In practice, citizens earning the median yearly income can afford to bring a legal suit.*

Score: 25

References: Interview with José Buendía, President, Fundación Prensa y Democracias.
Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

Social Scientist's Comments: In general, the cost of engaging the legal system prevents middle-class citizens from filing suits. Attorney and administrative fees are high enough to discourage most citizens from bringing a case.

82f *In practice, a typical small retail business can afford to bring a legal suit.*

Score: 25

References: Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with José Buendía, President, Fundación Prensa y Democracias.

82g *In practice, all citizens have access to a court of law, regardless of geographic location.*

Score: 50

References: Interview with José Buendía, President, Fundación Prensa y Democracias.
Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

Peer Reviewer's Comments: I believe that geographic location does present a challenge to a citizen's access to a court of law. The score should be 50 at most.

83: Is the law enforcement agency (i.e. the police) effective?

83a *In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.*

Score: 50

References: Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with José Buendía, President, Fundación Prensa y Democracias.

83b *In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.*

Score: 50

References: Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with José Buendía, President, Fundación Prensa y Democracias.

83c *In practice, the law enforcement agency is protected from political interference.*

Score: 50

References: Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with José Buendía, President, Fundación Prensa y Democracias.

Social Scientist's Comments: The law enforcement agency, the Attorney General Office (Procuraduría General de la Justicia -- PGR) is directly subordinated to the President. According to the Constitution, Article 89, the President is free to appoint the members of his cabinet, which includes the PGR. Therefore, political biases are expected.

Peer Reviewer's Comments: The Attorney General Office (Procuraduría General de la Justicia -- PGR) is the Mexican equivalent of the Department of Justice. There are other agencies that would qualify as law enforcement agencies: the Ministry of Public Security (Secretaría de Seguridad Pública), which is also a cabinet position; and also the Policía Ministerial Investigadora (formerly the Agencia Federal de Investigación -- AFI), which is the Mexican equivalent of the FBI, and which may be less susceptible to political interference.

84: Can law enforcement officials be held accountable for their actions?

84a *In law, there is an independent mechanism for citizens to complain about police action.*

Score: YES

References: The federal Secretaría de la Función Pública (SFP) covers all government corruption, including police corruption. But there is no special entity for police corruption, and the SFP does not have enough muscle to actually investigate and intervene in police affairs.

84b *In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.*

Score: 50

References: Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE). Interview with José Buendía, President, Fundación Prensa y Democracias.

Social Scientist's Comments: There is no independent complaint mechanism. There are also systematic problems in dealing with accusations of police corruption.

Peer Reviewer's Comments: There is a corruption hotline for all federal civil servants.

84c *In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.*

Score: YES

References: There is no special agency. There is a "Suprocuraduría de Protección a los Derechos Humanos y Prevención del Delito" within the Attorney General Office (Procuraduría General de la Justicia -- PGR), but this does not have any statutory independence. The PGR is both "juez y parte."

Peer Reviewer's Comments: "Juez y parte" would translate as judge and prosecutor.

84d *In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.*

Score: 25

References: Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE). Interview with José Buendía, President, Fundación Prensa y Democracias.

Social Scientist's Comments: The anti-corruption agency may start investigations but not complete them, or it may fail to detect offenders. The agency may be partisan in its application of power.

84e *In law, law enforcement officials are not immune from criminal proceedings.*

Score: YES
References: Constitution, Article 13.
Peer Reviewer's Comments: Also Ley de la Policía Federal.

84f *In practice, law enforcement officials are not immune from criminal proceedings.*

Score: 0
References: Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).
Interview with José Buendía, President, Fundación Prensa y Democracias.

Social Scientist's Comments: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.