

# GLOBAL INTEGRITY

*AN INVESTIGATIVE REPORT TRACKING CORRUPTION, OPENNESS AND  
ACCOUNTABILITY IN 25 COUNTRIES*

## MEXICO

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# INTEGRITY SCORECARD

Overall, Mexico ranks 9th out of 25 countries on the Public Integrity Index, falling into the moderate tier. Mexico scores in the very strong tier (90-100) in Category 2, in the strong tier (80-90) for Category 5, in the moderate tier (70-80) for Categories 1, 3 and 6, and in the very weak tier (below 60) for Category 4.

1. **Civil Society, Public Information and Media**, Moderate, ranking 10th
2. **Electoral and Political Processes**, Very strong, ranking 1st
3. **Branches of Government**, Moderate, ranking 6th
4. **Administration and Civil Service**, Very weak, ranking 22nd
5. **Oversight and Regulatory Mechanisms**, Strong, ranking 11th
6. **Anti-Corruption Mechanisms and Rule of Law**, Moderate, ranking 15th

|               |   |     |             |
|---------------|---|-----|-------------|
| Category - 1: | Civil Society, Public Information and Media | 77  | Moderate    |
| I-1           | <u>Civil Society Organizations</u>          | 85  | Strong      |
| I-2           | <u>Access to Information Law</u>            | 82  | Strong      |
| I-3           | <u>Freedom of the Media</u>                 | 65  | Weak        |
| Category - 2: | Electoral and Political Processes           | 96  | Very Strong |
| II-1          | <u>National Elections</u>                   | 89  | Strong      |
| II-2          | <u>Election Monitoring Agency</u>           | 100 | Very Strong |
| II-3          | <u>Political Party Finances</u>             | 100 | Very Strong |
| Category - 3: | Branches of Government                      | 77  | Moderate    |
| III-1         | <u>Executive</u>                            | 94  | Very Strong |
| III-2         | <u>Legislature</u>                          | 68  | Weak        |
| III-3         | <u>Judiciary</u>                            | 68  | Weak        |
| Category - 4: | Administration and Civil Service            | 45  | Very Weak   |
| IV-1          | <u>Civil Service Regulations</u>            | 51  | Very Weak   |
| IV-2          | <u>Whistle-blowing Measures</u>             | 47  | Very Weak   |
| IV-3          | <u>Procurement</u>                          | 81  | Strong      |
| IV-4          | <u>Privatization</u>                        | 0   | Very Weak   |
| Category - 5: | Oversight and Regulatory Mechanisms         | 86  | Strong      |
| V-1           | <u>National Ombudsman</u>                   | 94  | Very Strong |
| V-2           | <u>Supreme Audit Institution</u>            | 100 | Very Strong |
| V-3           | <u>Taxes and Customs</u>                    | 67  | Weak        |
| V-4           | <u>Financial Sector Regulation</u>          | 82  | Strong      |
| Category - 6: | Anti-Corruption Mechanisms and Rule of Law  | 71  | Moderate    |
| VI-1          | <u>Anti-Corruption Law</u>                  | 82  | Strong      |
| VI-2          | <u>Anti-Corruption Agency</u>               | 74  | Moderate    |
| VI-3          | <u>Rule of Law and Access to Justice</u>    | 67  | Weak        |
| VI-4          | <u>Law Enforcement</u>                      | 61  | Weak        |

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# INTEGRITY ASSESSMENT

By Arturo Del Castillo

## Civil Society, Public Information and Media

In Mexico, citizens have the constitutional right to free association. However, the rules covering civic organizations are ambiguous and discretionary; not only do they obstruct the action of citizens, but they also exclude from legal recognition more than half of the current civic organizations, including those engaged in community development, ecology, human rights, and civic education. This has forced many of these organizations to operate outside of the institutional framework and to become estranged from the government. Many of them have to appeal to a different legal framework to obtain the legal status of a “civil association.” Citizens also have the constitutional right to form trade unions. However, many of the trade unions in Mexico still have strong ties with political parties, particularly the Institutional Revolutionary Party (PRI—*Partido Revolucionario Institucional*).

In 2002, the Law for Transparency and Access to Public Government Information (*Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*) was created to guarantee citizens the right to access information and basic government records. This law only contemplates access to information of the federal public administration, the legislature, the judicial power, and some autonomous constitutional organizations. The access to information of the local administration or Congress is not contemplated in this law; however, there has been a tendency to create state laws to regulate the transparency of and access to local government records. Today, most states of the Mexican Republic have already approved such a law, or are in the process of approving it.

Freedom of media and speech exist in Mexico. Since the triumph of Vicente Fox in the presidential election of 2000, there has been an effort to end the censorship that characterized the previous years, when the PRI governed. Nowadays, corruption is one of the most important is-

ssues on the public agenda. As a result, there is very little restraint on publishing corruption-related stories. Journalists and media entities are experiencing better times, in terms of freedom of speech. Nevertheless, there are still cases of physical intimidation against journalists; there even was one murder. It should be noted that the drug cartels and their members are the main intimidators of the press. On the other hand, there is no record of a civil society activist who worked on corruption issues being imprisoned, physically harmed, or assassinated.

In Mexico it is illegal to print malicious reports that hurt the reputation of any person. However, a report is not considered malicious if it only reports the truth or the sources were considered trustworthy. Consequently, there are no insult laws (laws that make it a criminal offense to “insult” the honor or dignity of public officials). Elected officials implicated in corruption cases are the primary persons who invoke libel laws in Mexico.

Media regulation is outdated, inefficient, and inadequate. Previously, media regulation was an important tool of the government to control the media. However, now that Mexico is in a process of democratization and of making public affairs more transparent, a new regulation is needed and corruption has to be eliminated in the government agency that regulates television and radio.

## Electoral and Political Processes

There are several mechanisms to guarantee a transparent and honest electoral process. The election-monitoring agency issues an identification document, which includes a section number. With that section number, citizens can find the address of their polling places in newspapers and on the Web site of the election-monitoring agency. Ballot boxes are assembled in front of representatives from the political parties and other observers. Leftover ballots are voided, and then the number of ballots and the number of voters are counted and compared.

The electoral process, which was once a charade to legitimate the PRI regime, is now comparable to the processes of other modern democracies. The main reason for this democratic improvement was the independence of the election-monitoring agency. It was previously part of the executive, and there were obvious cases of electoral fraud—for instance, the very controversial triumph of Carlos Salinas in the 1988 presidential elections. As a consequence of the independence of the Federal Electoral Institute (IFE—*Instituto Federal Electoral*), the election-monitoring agency, the results of the legislative elections have been characterized by the fact that no political party holds more than half the seats in Congress. Furthermore, the triumph of Vicente Fox in 2000 couldn't have been possible if the IFE weren't independent.

The IFE also monitors political party finances. It has initiated investigations and imposed several sanctions on political parties, when necessary. Most of the sanctions have been imposed because the campaigns have exceeded the expenditure limits. Recently, a hefty fine was imposed on the PRI after it was proved that the party received money from the trade union of Pemex, the large state-owned oil company, for the 2000 presidential campaign. The Institute has finished the investigation of the presidential campaign of the current president, Vicente Fox, and imposed a fine on the National Action Party (PAN—*Partido Acción Nacional*). According to the IFE, Fox's campaign received contributions from foreign individuals, which is illegal in the Mexican electoral process.

## Branches of Government

In Mexico, the effective separation between branches of government is relatively new. For several decades the government was controlled by the ruling party, the PRI. This situation started to change in the late 1990s, when it was possible to institutionalize the democratic mechanism of free

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elections and the effective separation of powers. Nowadays, it is possible to assert that Mexico is experiencing a real independence between branches of government, with a relatively effective system of checks and balances.

For instance, Congress controls the executive branch in many different ways, when there is not a majority party. The judicial branch is also taking a relevant role in the political arena. Thus, it is possible to observe important efforts to modernize public institutions. A new law that requires the federal public administration to have an impartial and independent civil service will enter into force in October 2003. There has also been significant progress in making the procedure for selecting high court judges more transparent. The judiciary can review the actions of the executive, through such actions as the protection trial and the constitutional controversy. Congress has used extensively its legal and practical authority to reduce or modify the whole budget proposal of the executive branch.

However, there are numerous ambiguities in law and overlaps in functions between powers that open the door to corruption and misadministration. The process of democratization and modernization has not finished yet, and it is evident in the poor performance of several institutions of the executive, legislature, and judiciary branches. Public institutions are facing the challenge of being not only transparent but also efficient and effective. This process of modernization and transparency has not been homogeneous and without conflict. For instance, there are no laws or regulations concerning gifts and hospitality for executive and legislature members. Several times, public officers and congressmen have taken advantage of this situation to obtain private benefits. There have also been several accusations of corruption in the judicial system; however, there have been very few convictions in those cases. The Counsel of the Federal Judgeship, the institution responsible to make judges accountable, is ineffective in terms of initiating investigations.

In conclusion, it seems that Mexico still remains in a transitional stage. It is not a completely modern state, with strong public institutions and rule of law. However,

it is important to note also the significant progress that its institutions have experienced in recent years, especially since democracy was established by free, competitive, and regular elections.

### Administration and Civil Service

A new federal civil service law entered into force in October 2003 to help professionalize and regulate the civil service, preventing corrupt practices such as nepotism and cronyism. Civil servants will be guaranteed continuance in their current positions, as long as they continue to show satisfactory results. The Public Function Secretary will be the agency that monitors conflict of interest regulations, asset disclosures, and employment conditions in the federal public administration.

One problem with reporting corruption in Mexico is that when a citizen or civil servant makes a complaint, there is no mechanism or law that protects him from recrimination or other negative consequences. There is an internal mechanism where citizens can report public sector corruption. It is a phone hotline, called Actel. The hotline is part of the General Directorate of Assistance to Citizens (Dirección General de Atención Ciudadana) of the Ministry of Public Function (SFP—*Secretaría de Función Pública*). The hotline has a full-time staff that enables the filing of complaints 24 hours a day, 365 days a year. A complaint is sent to the local comptroller office of the agency that employs the civil servant who committed a corrupt act. The internal reporting mechanism for public sector corruption initiates an investigation about 45 days after the complaint is filed.

Mexico has put substantial amounts of public procurement information online. Mexico's CompraNet publishes procurement opportunities, bid documents, relevant laws and procedures, and results of the tenders online. The Mexican chapter of Transparency International, *Transparencia Mexicana*, conducts the integrity pacts. In the integrity pact, an honest citizen, who has to be an expert in the area where the procurement is taking place, vouches for the legality of the procurement process.

In Mexico, there is no law or regulation concerning the privatization process. However, during the current administration there haven't been many privatizations. Besides, there aren't as many state-owned companies as there were in the late-1980s and early-1990s, therefore the creation of a law that regulates the privatization process isn't as important as it once was. However, if the government is trying to have a more transparent administration, a privatization law should be created.

### Oversight and Regulatory Mechanisms

In recent years, Mexico has experienced important progress in the institutionalization of several regulatory mechanisms and agencies that promote transparency, justice, political and economic stability. Some of these new institutions are:

- The National Commission of Human Rights. This commission is an ombudsman that specializes in the protection of human rights. It is an independent institution with financial and political autonomy. This institution plays an important role in the promotion of democratic values and civil rights defense. However, the recommendations of the commission are not mandatory. The government is not obliged to act on the findings of the commission, and therefore its recommendations are mere moral testimonies.

- The Supreme Audit Institution. This institution specializes in the financial investigation of public spending of the whole government (it includes the judiciary, the executive, the legislative and other autonomous institutions). The Supreme Audit Institution is not completely independent, since it depends directly on the Deputies Chamber of the Congress, although significant autonomy has been shown. This institution plays an important role in the promotion of accountability and financial transparency among the public organizations. So far, the government

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has acted on approximately 90 percent of the findings of the Supreme Audit Institution.

· **The Tax Service Administration.** This institution is a tax-collection agency. It has financial and political autonomy, and since December 2003 has been asked to make quarterly reports of performance and evasion to the legislature. This institution plays an important role in the promotion of tax collection and combating fiscal evasion. Its duties are particularly important, since Mexico is the lowest tax collector of the Organization of Economic Cooperation and Development (OECD) countries, with taxes accounting for less than 11 percent of its GDP.

· **The Central Bank.** Also known as Banco de México, it is an autonomous institution whose governing board members are proposed by the president and ratified by the Senate. This institution plays an important role in the promotion of macroeconomic stability that has reigned in Mexico since 1995. Its autonomy is considered one of the most important achievements of the last three administrations.

· **The National Banking and Securities Commission.** This commission is a financial regulatory agency. It is not an independent institution, but is rather an agency of the Department of the Treasury. This Commission is able to initiate investigations, although it relies more on audits of private consultants. This institution plays an important role in the promotion of free market competition and accountability in the private sector.

All these institutions have contributed to promote significant changes in the regulatory mechanisms of the country. Their performance is very laudable and they are key elements in the modernization of Mexico.

## Anti-Corruption Mechanisms and Rule of Law

There are different ways in which corruption is manifested. In Mexico, there are several illegal acts addressed by the Federal Penal Code (CPF—Código Penal Federal), which are considered corrupt practices. For example, to offer a bribe is an illegal act according to the Article 222 of the CPF, and to bribe a public officer in a

foreign country has been illegal since 1999, when the Mexican Senate ratified the Organization of Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Officials in International Business Transactions. However, it is important to note that several cases of corruption are not penalized due to lack of evidence and an ineffective judicial system.

Mexico does not have an independent anti-corruption agency. Corruption control is under the SFP, which is the institution responsible for the horizontal accountability inside the federal public administration. According to the Federal Law of Responsibilities of the Public Servants (*Ley Federal de Responsabilidades de los Servidores Públicos*), the SFP has legal faculties to investigate, prosecute, and punish corruption inside public administration. These legal dispositions allow very strict corruption control in critical areas of “big corruption,” such as acquisitions and tender, where it is possible to observe significant progress in the corruption control. However, it is also important to note that there are some overlaps between the duties of the SFP and the Superior Auditor of the Federation (*ASF—Auditoría Superior de la Federación*). This situation makes it difficult to have an efficient control of corruption.

The criminal justice system process is extremely deficient; from the detainment process to the trial process, the Mexican judicial system doesn't comply with the most basic quality standards. There is a general perception that the judicial system is corrupt, ineffective, and inefficient. Good legal counsel in Mexico is expensive. Richer citizens can win trials, since they can afford good lawyers. On the other hand, citizens who cannot afford legal counsel when charged with a crime receive legal counsel from the public defender, which frequently is of a very poor quality. Therefore, citizens who end up in prison are the poorer ones.

The perception in Mexico is that the police are very corrupt, principally the city police. Citizens don't find much difference between criminals and local policemen; therefore, they don't feel comfortable asking the police for help. Although there have been efforts to modernize the police

force, the benefits are not yet palpable. A mechanism where citizens can complain about police action was put into action, but it is limited to the federal police. There is also the hotline Actel, which is part of the General Directorate of Assistance to Citizens of the SFP. Every complaint is sent to the comptroller's office of the Ministry of Public Security (*SSP—Secretaría de Seguridad Pública*). As mentioned above, the hotline also receives complaints about civil servants who work in the federal public administration.

# CORRUPTION NOTEBOOK

By Leonarda Reyes

A large, bitten apple crossed out by a red line was projected on a screen when the National Agreement for Transparency and Against Corruption (*Acuerdo Nacional para la Transparencia y el Combate a la Corrupción*) was announced by President Vicente Fox in February 2001, just three months after taking office. The room was filled with leaders of 83 organizations, including labor unions, business leaders, professional associations, non-governmental organizations, educational institutions and political parties.

"This is a pledge that the federal government and the organizations involved walk from words to facts to clean Mexico from the dark shadow of corruption," Fox said. All in the room agreed and subscribed to the integrity principles.

However, Mexico's political parties continue to take big bites out of the apple. All major parties have been fined recently for illegal campaign funding, and an ongoing official investigation of Fox's 2000 campaign has unraveled a sophisticated strategy to hide at least US\$10 million of illegal donations. Illegal campaign financing has recently emerged as a new form of corruption in newly democratic Mexico. Under the authoritarian regime of the Institutional Revolutionary Party (PRI—*Partido Institucional Revolucionario*), which ruled Mexico for seven decades until it lost the 2000 election to Fox's National Action Party (PAN—*Partido Acción Nacional*), there were no rules against using public money in campaigns, no spending limits and no accountability. Political corruption had contaminated all of Mexico's federal and state governments.

On March 14, 2003, the Federal Electoral Institute (IFE—*Instituto Federal Electoral*), the Mexican body that regulates elections and campaign finance, fined PRI more than US\$90 million for allegedly diverting about US\$45 million from Pemex, Mexico's nationally owned oil company, to illegally finance its 2000 presidential campaign. The regulators charged that the money first went to Pemex's union and was later withdrawn by PRI employees,

who transported the funds to PRI headquarters over a 10-day period.

Pemex-PRI and PAN scandals have been the most high-profile recent corruption cases, but many others have unraveled, from extortion to conflict of interest at local and federal levels.

"If you don't cheat you don't advance," is a current saying in some circles, indicating that social tolerance of corruption is prevalent.

## Corruption: More profit, less risk

Mexican officials have endorsed the World Bank estimate that 9.5 percent of the gross domestic product ends up in corrupt hands. Using that calculation, US\$56 billion of public funds were lost to corruption in 2002.

Mexico does not have an official estimate of drug-dealing profits, though some estimate it to be US\$5 billion a year. Expert estimates of drug profits in Mexico go from US\$10 billion to US\$30 billion, but Colombian official drug profits are US\$5 billion; through Mexico passes 65 percent of Colombian cocaine. In addition, Mexico is the prime supplier of marihuana to the United States. American spending on illegal drugs is estimated to be US\$63 billion a year. Drug dealers spend 70 percent on costs, getting net earnings close to US\$19 billion a year. Though not all the corruption loss is paid by the public budget, the biggest target of corruption—as in many other countries—is the US\$22 billion a year spent by the government on public contracts.

"We calculate that 10 percent of the spending in public contracts goes to corruption," said Aliza Chelminsky, head of the Transparency Unit at the Ministry of Public Function. Using this estimate, annual corruption in public contracts amounts to US\$2.3 billion, but it could be even worse as the government ends up paying 20 percent more on overcosts for bad planning and also deliberately increased costs.

Pemex is the most corrupt situation in Mexico, but the health care system (IMSS and ISSSTE), the national power company

(CFE), the Ministry of Transportation and Communications (SCT—*Secretaría de Comunicaciones y Transportes*), and the National Water Commission are also rife with corruption. These federal agencies originate 90 percent of the federal public contracts.

*La mordida* (the bribe) paid to get a driver's license with no exam, avoid an expensive traffic ticket, or speed up other public services accounts for another US\$2.25 billion a year.

## A new era?

After seven decades of a single political party ruling Mexico with autocratic methods, human rights abuses, endemic corruption and impunity, there is still no national reflection, no revising of moral values and ethics to build a new Mexico.

"It seems quiet surprising, right?" said Alejandro Poiré, a scholar at Instituto Tecnológico Autónomo de México (ITAM), a private university in Mexico. "But this reflection didn't happen for two reasons: first, because PRI is still the biggest party in Mexico, and second because when Fox started saying we want a 'truth commission' to investigate and punish the guilty, that standpoint was defeated by another stance saying PRI is a reality, we cannot politically fight to the death with them. That has prevented any national, moral revision from happening."

Vicente Fox had not made any extraordinary promise to fight corruption. But this time people believed Fox, nursing high expectations that changes would occur. Nowadays the public, including the business community, is disappointed that little has happened.

"Choosing a moderate policy against corruption instead of a confrontational one was a huge, historic mistake, a mistake of enormous proportions," Poiré said. "There went an opportunity to consolidate a coalition to defend basic principles of respect and justice and to fight corruption and impunity and also to put

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PRI in the place it deserved for their abusive use of power.”

In fact, PRI continues to be a defining power. In the congressional election in July 2003, PRI won 118 seats, PAN 82, and the Democratic Revolution Party (PRD—*Partido de la Revolución Democrática*), the third political force, won 55.

With no strong new moral and legal rules in place, politicians and public servants are doing little. Except for the Pemex fine, which PRI is allowed to pay in installments, nobody has been sent to jail yet. Two of the Pemex union leaders are also PRI members of Congress protected by congressional immunity and cannot be indicted unless Congress agrees to remove that immunity. Ten other Pemex and PRI officials implicated in the corruption are fugitives.

A charge of money laundering was included in the beginning of the Pemex-PRI affair, a serious crime committed when operations are carried out with money from illegal sources. But in July 2003 the general prosecutor, who reports to the president, withdrew the charges. The rest of the Pemex-PRI corruption cases offenses are, by Mexican law, not considered serious crimes.

To use a legal saying, Mexico’s current moral principles are guided by the code “If it’s not forbidden, it is allowed.”

“I’d say more. It might be illegal, but if nobody sees you, it’s OK,” said Alejandro Posadas, scholar at the Center for Economic Teaching and Research (CIDE—*Centro de Investigación y Docencia Económicas*). “The corruption we’re talking about in Mexico is systemic, institutional, and social.”

In one recent case, Diego Fernández de Cevallos, an influential PAN leader in the Senate, found no conflict of interest in representing a private company as a lawyer. He won a case against the government and the court ordered the government to pay a fine of US\$116.7 million.

Conflict of interest is only prohibited in Mexico for administrative officials, not for legislators. After the Cevallos scandal, the three major parties—PRI, PAN, and PRD—started talks to regulate conflict of interest in the Congress, but as of mid-August 2003, the initiative had not been passed.

### With impunity

In Mexico, politicians or public servants can steal, bribe, or conspire to commit extensive frauds against the government and not spend a minute in jail. These crimes are not considered serious, regardless of the amount of public money stolen. If indicted, government officials enjoy freedom until they are sentenced, a process that can take years in the Mexican judicial system.

“Cases where criminal charges were initiated and no penalties were issued to alleged perpetrators stay in the mind of the public as impunity,” former federal comptroller Francisco Barrio said recently.

An initiative to establish that offenses committed by bureaucrats against the public would be treated as serious crimes was passed in the House of Representatives and forwarded to the Senate for approval in December 2001, where it sits as a “frozen” issue.

Fraud against the public can also, for political reasons, not be prosecuted at all. This is the case of Fobaproa, considered by many as the biggest corruption scandal in Mexico’s history.

Fobaproa had its origins in 1994 when the peso collapsed and many borrowers were unable to pay their debts. The PRI government bought billions of unpaid loans, signing agreements so that the banks could receive guarantee payments starting in February 2004. Congress is entitled to audit the bank loans and approve the payments from the federal budget, and since the initial agreement was made some of the banks have changed ownership.

According to auditors, the largest irregular loans were sold by four banks. They are Banamex, the biggest bank in Mexico that is now owned by Citicorp; the second biggest bank, Bancomer, now owned by Spanish bank BBVA; Bital Bank now owned by Spanish bank Santander; and Banorte.

The banks recently halted new congressional audits by using *amparo* (literally “shelter” or “refuge”), a legal procedure that protects Mexicans from illegal prosecution by law enforcement agencies. *Amparo* was meant to protect potential victims from authorities, but it has often been used by all sorts of suspected offenders

and criminals to prevent justice from being carried out.

The scandal broke in 1998, when it was revealed that some of the biggest bank debts were loans made to bank shareholder companies and to already bankrupt companies. The names of all the loan beneficiaries and the amounts approved illegally as debt were never made public because the information was protected by bank secrecy law. An audit in 1999 by a Canadian auditor found US\$7 billion in “unusual transactions” and three subsequent audits found more than US\$4 billion in irregular loans. One of these audits was conducted by a PAN official.

Financial analysts and the banks have warned the government that not paying the full debt would send a signal to international investors that Mexico wants to charge foreign companies for the past wrongdoings of the Mexican owners from whom they had purchased the banks.

To date, nobody has been investigated for the Fobaproa crimes, which occurred when PRI was in power. So why did the Fox administration taken no action to expose all the bank operations and clean up the Trust Fund for Protection of Bank Deposits (FOBAPROA—*Fondo Bancario de Protección al Ahorro*) once and for all? A written response from the president’s office to the Center for Public Integrity said the *amparo* filed did not intend to protect the banks from audits: it was filed because neither the Superior Auditor of the Federation (ASF—*Auditoría Superior de la Federación*) nor the Congress has the authority to order the administration in such matters, as the Fox administration must honor existing laws.

In September 2003, a judge ruled in favor of the banks to stop new audits, and then in November the Supreme Court ruled in favor of President Fox: The debt will not be reduced as intended by ASF and Congress.

Judges have their own corruption problems at both the federal and state levels. A United Nations report published in May 2001 said that

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Mexico's judicial system is highly corrupt. Though the report was strongly contested, the landscape hasn't changed much since. Also, some experts consider it a problem that criminal investigations in Mexico are conducted by government agencies and the process is not under the control of the judicial system.

While largely ineffective in punishing criminal corruption, the Fox administration has taken significant prevention measures.

Since December 2000, when Fox took office, his government has issued over 13,000 sanctions against public servants and laid off 1,297 of those sanctioned. Another 278 were indicted and 53 were convicted of crimes, but the actual number of people in jail has not been provided.

### Controlling corruption ... sort of

There's an advertisement on national television channels every night. The scene happens on a crowded street as a camera catches a woman picking up a banknote that a man inadvertently dropped on the sidewalk. Instead of calling the man, she puts the banknote in her purse. Another scene shows a man standing in line waiting to file some paperwork when he is approached by a second man, who offers him a few pesos in exchange for letting him "cut in" line.

"For a Mexico with integrity, no more bites," is the government's anti-corruption message. Walk into any public office, and an unbidden apple can be seen on every computer screen.

The Fox administration's strategy against corruption has three goals: prevention, prosecution, and encouraging the public to join in the fight. A campaign directed at changing attitudes and building consciousness about transparency and integrity has included all areas of government and public organizations. This has included ethics courses for civil servants, brochures on integrity in business, conduct codes for teaching in universities and educational institutions, media ads pointing out corrupt habits, and a Web site for children.

Also, the government has simplified its bureaucratic operating practices to eliminate paperwork and reduce chances for

corruption. Compranet, the Internet system for government purchases and public contracts, has been improved and it is anticipated that 90 percent of all tenders for government contracts will be on the Web site by the end of the year.

To get society more involved in the fight against corruption, the Fox administration has signed several agreements with academic institutions to measure and train public servants against corruption. In addition, "integrity pacts" were signed with Transparencia Mexicana, the Mexican branch of Transparency International, to monitor the tender process.

The "integrity pacts" became controversial when it was revealed that companies bidding for government contracts were asked by Transparencia Mexicana to make donations to fund its operations of US\$2,000 to US\$5,000. In a response to *Proceso* magazine, the publication that has made the issue public, Transparencia Mexicana said that as a "not for profit" organization it was legitimate to ask for voluntary donations to accomplish its goals.

Academics have questioned the practice of asking donations from the bidders, but emphasized that the matters in no way would compromise the entire Transparencia Mexicana work or the reputation of its president, Federico Reyes Heróles.

Public spending was until recently supervised by two parallel but different accounting systems in Mexico. The Ministry for Comptrollership and Administrative Development of Mexico (SECODAM—*Secretaría de la Contraloría y Desarrollo Administrativo*) was a federal ministry and the ASF reported directly to Congress. In 2003, SECODAM changed its name and objectives to become the Ministry of Public Function (SFP—*Secretaría de Función Pública*) with the focus on professionalizing the public service; in time, it will gradually cease all auditing.

Luis Carlos Ugalde, a researcher at CIDE, summarized the state of corruption in Mexico: "Good intentions at the top of the administration, but corruption has similar levels as before, and when it comes to state governments it's worse. Why? States have more money to spend, more

autonomy than before and no supervising."

Experts agree that Fox's strategy against corruption won't show dramatic changes in the short term, but perhaps in five or 10 years.

### Rushing for transparency

The first day the Transparency Law was in place last June, 41 people an hour rushed in to ask for information from the federal government. It was a special day for Mexicans accustomed to dealing with public servants who treated government information as private property. Along with its preventive anti-corruption strategy, the Transparency Law is a major accomplishment of the Fox administration. Since June 12, 2003, all citizens are entitled to get information from the government, the judicial system, and Congress.

However, the process of lawsuits in any court continues to be secret, as are administrative, civil or criminal investigations. Also, the Transparency Law puts no controls on legislators and judges. Both will decide for themselves what is classified or not, while the administration has the Federal Institute for Public Information Access (IFAI—*Instituto Federal de Acceso a la Información Pública*), an independent bureau, to make sure the information is available and to solve controversies when information is denied.

"Both the judicial system and the Congress have assumed a 'closed files' policy, especially the Congress," said Juan Francisco Escobedo, a scholar and the president of the Information and Democracy Foundation. "The law is imperfect in more than one sense. In my opinion a new reform has to be promoted maybe in a year to be able to oversee transparency in the administration, the Congress, and the judiciary."

Why didn't Fox push for wider reform?

"In the negotiations they made it clear that the government would not take on the responsibility of auditing the judiciary and the Congress,

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they refused to impose IFAI to all powers,” said Issa Luna, director of Freedom of Information Mexico.

The Transparency Law has classified information in two categories, “reserved” and “confidential.” The first cannot be released for up to 12 years. These provisions made both driver’s license files and citizen voting lists secret, as well as audits on companies and the names of their shareholders, confirmed Lina Ornelas, IFAI head of classification of information.

Since the federal law was approved, only a third of the states have issued analogous local laws, with some states adding more restrictions than the national law.

With only few exceptions, the media haven’t begun to investigate corruption; they just publish reports leaked by authorities or cases investigated by the government. Yet, the media are improving by starting to use the new Transparency Law and pursuing issues that were previously forbidden.

While direct and open political censorship has loosened, journalists are starting to notice a form of corruption—commercial censorship.

“A top official calls me and says: ‘I have a campaign coming, I need an interview to make it public and we’ll contract advertising.’ We do the interview for the news show and they buy advertising, with the deal conducted by the marketing department. Is that corruption? If so, that’s how it works,” said a prominent Mexican journalist. “You just have to see who advertises where and notice how there is no criticism of the advertisers.”

Large amounts of government advertising was the most effective control the PRI regime had on the media at federal, state, and municipal levels. In addition, reporters often got envelopes filled with cash at the end of a press conference or on tours with state governors or the president.

This old-fashioned, open corruption of the media started to change under Carlos Salinas and with the Ernesto Zedillo presidency in the late 1990s. But sources in the government and the media consulted by Global Integrity said that while the practice of bribing reporters has ceased, especially at the federal level, advertising as a

form of getting sympathetic coverage is still in place.

If advertising doesn’t work to co-opt a news organization, there are other means. Eight journalists of *Norte de Juárez* newspaper, in Chihuahua, faced legal action in October 2002 after revealing that the PRI governor, Patricio Martínez, had allegedly favored two friends with government contracts in exchange for their campaign contributions.

What would Mexico need to defeat corruption? The Fox administration has an initiative to create a court to rule on corruption cases, but it has not yet been sent to Congress.

In any case, it seems that any effective, important change to curb expensive corruption needs serious political will at the top—judges, congressmen, and senior administrators. In other words, honest politicians with a priority for public interest are needed, while civil society grows up and can stand strong against corruption.

# CORRUPTION TIMELINE

**March 1994** – Just a few months into a presidential campaign, Luis Donaldo Colosio, the designated heir to outgoing Institutional Revolutionary Party (PRI—*Partido Institucional Revolucionario*) President Carlos Salinas de Gortari, is shot and killed at a rally in Tijuana. Despite rumors of a high-level conspiracy to murder Colosio, and despite the suspicious deaths of several people connected to the case, the government eventually concludes its investigation in October 2000 by reiterating its initial theory that a lone gunman had been responsible for the assassination.

**August 1994** – On August 21, PRI candidate Ernesto Zedillo wins the presidency with just over 50 percent of the vote. Inaugurated on December 1, 1994, Zedillo was a substitute for the murdered Colosio, whose campaign he had been managing. A Yale-educated, fiscally conservative economist, Zedillo would go on to institute a number of electoral reforms and fraud-control measures that reduced the advantages of the incumbent PRI. Among other changes made during his presidency, Zedillo eventually closes down a secret presidential slush fund Congress set up during President Salinas' final year in office.

**November 1994** – Zedillo picks his cabinet, which includes Antonio Lozano, leader of the conservative opposition National Action Party (PAN—*Partido Acción Nacional*) in the Chamber of Deputies, who is tapped for attorney general. It is the first time in 65 years of PRI rule that a member of the opposition is appointed to the cabinet. In its first year under Lozano's guidance, the government forms elite anti-drug police units, raises salaries of law enforcement officials, improves law enforcement training, fires drug agents apprehended accepting bribes, and sends officials abroad to study ways to prevent organized crime.

**February 1995** – Raúl Salinas, the older brother of former President Carlos Salinas, is arrested on February 28 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 who had sparked a family feud by divorcing Raúl Salinas' sister. The case eventually drags on for four years, with 42 bound books of evidence forming the case against Salinas. In January 1999, Salinas is finally convicted of ordering the murder and is sentenced to 50 years in prison. In July 1999, an appeals court cuts the sentence to 27 years and 6 months, citing the weakness of the prosecution's case as grounds for the reduction.

**September 1995** – Attorney General Lozano issues a 13-page plan to overhaul the federal law enforcement system, which includes police and prosecutors. Lozano calls for a "deep purge" to curb corruption, and estimates that seven of 10 police officers have been tainted by drug cartels.

**November 1996** – Defying the agenda of President Zedillo, the PRI-controlled Congress pushes through several regressive electoral reforms that limit the power of opposition parties. The changes include: authorizing a massive public spending cap for the next elections, allotting US\$109 million for the incumbent PRI and US\$65 million for the opposition PAN; eliminating criminal penalties for defying campaign spending limits, which had been instituted in a 1994 round of reforms; eliminating equal-time rules for media access while giving the PRI increased access to the free public media; and making it more difficult for the Federal Electoral Institute (IFE—*Instituto Federal Electoral*) to implement personnel changes in local electoral commissions, many of which are dominated by PRI supporters.

**December 1996** – Zedillo fires Lozano following long-standing concerns of ineptitude in resolving Mexico's most important criminal matters, as well as newer accusations of partisanship, including the allegation that the attorney general had politicized the Massieu murder investigation.

**February 1997** – General Jesús Gutiérrez Rebollo, who had recently been named 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 Juárez drug cartel and other related crimes and is eventually sentenced to 32 years in prison. The Zedillo administration subsequently dissolves the agency and replaces it with a new anti-drug organization called the Office of the Special Prosecutor for Crimes Against Health (FEADS—*Fiscalía Especializada para la Atención de Delitos contra la Salud de México*). After being hit with additional charges in February 2000, Rebollo's prison sentence is increased to 71 years.

**June 1997** – Mexico ratifies the Inter-American Convention Against Corruption.

**July 1997** – The conservative PAN wins three additional governorships in what are acknowledged to be fair elections. Previous state elections had been supervised by a cabinet-level official and tainted by flagrant manipulation, but for the first time an independent authority conducted the election. The change in election rules had been pushed through a reluctant Congress by President Zedillo in the previous year.

**June 1998** – During a U.S. Customs Service-led operation called "Casablanca," banking officials from 12 of Mexico's 19 largest banks are charged by U.S. authorities with involvement in money laundering related to Mexican and Colombian drug cartels. In addition to confiscating tons of cocaine and marijuana, officials had seized nearly US\$100 million over a three-year period.

**October 1998** – Swiss officials seize over US\$90 million from the accounts of Raúl Salinas, who was accused of earning the money by protecting drug shipments. A Swiss report asserts that Salinas assumed control of nearly all

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drug shipments through Mexico after his brother became president in 1988. In July 1999, a Swiss court overturns prosecutors' attempts to confiscate the assets—now totaling US\$114 million—declaring that federal authorities should have deferred to local officials.

**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** – With 43 percent of the vote, Vicente Fox of PAN wins the presidential election, ending 71 years of rule by PRI. The election was considered to be the most free and fair in Mexico's history. The election that swept Fox into the presidency also diversified the Congress, bringing the PRI to 209 seats against PAN's 207, with the remaining 84 seats split among several smaller parties.

**December 2000** – Fox takes office on December 1, 2000. Three days later he 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*), as well as the Federal Agency of Investigation (AFI—*Agencia Federal de Investigación*), which is put in charge of reforming the notoriously corrupt federal judicial police. By early 2003, Fox claimed to have replaced more than 3,000 corrupt police officers since beginning his tenure.

**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 himself estimates that 9 percent of Mexico's annual GDP is siphoned off to corruption, a figure that exceeds its educational spending. Barrio immediately sends almost 700 auditors to examine government records, and soon cracks down on entities as varied as state oil company Pemex, the customs service, and the federal system of pharmacies. Within nine months of assuming his post,

Barrio had overseen the dismissal or discipline of more than 5,000 public servants swept up in the anti-corruption dragnet.

**June 2001** – In what comes to be known as the "toallagate" ("towelgate") scandal, a state-run Internet site discloses that the government was purchasing embroidered towels costing US\$500 and sheet sets costing US\$1,500 for the president's residence from a supplier that apparently did not exist. Further investigation by *Milenio* newspaper reveals that the Fox administration had spent US\$600,000 on remodeling and US\$1 million on household items at the presidential mansion. The furor tarnishes Fox's image for reform while prompting the resignation of a top Fox aide and the suspension or resignation of several other officials.

**April 2002** – The United Nations Special Rapporteur on the Independence of Judges and Lawyers publishes a 52-page report challenging the independence and effectiveness of Mexican judges. The report estimates that 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 the end of the year, the program had yet to be fully implemented. By mid-2003, Fox's government had released approximately 5,000 previously classified documents to the public, a major improvement in Mexican transparency.

**January 2003** – After six of its agents are arrested in Tijuana and the military seizes control of its offices in 11 states, FEADS is dissolved. The agents are accused of trying to extort US\$2 million from a drug syndicate in exchange for the release of two alleged traffickers and nearly five tons of marijuana. In the wake of the arrests, federal authorities reveal that they

are investigating 700 of their own anti-drug agents in an effort to stamp out corruption.

**March 2003** – The PRI is fined more than 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 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. On resigning, Barrio said that over the course of his two years in office he had overseen the investigation of 278 government officials for graft, 53 of whom were eventually sentenced to prison terms ranging from three months to nine years. Barrio departs offering a mixed assessment of his performance, acknowledging that despite some successes, universal bail availability and a lack of high-level prosecutions have created a sense of impunity for those accused of corruption.

**July 2003** – In an embarrassing blow to Fox in mid-term elections, the PRI surges back, 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.

**December 2003** – Congress rejects a tax-reform plan proposed by Fox, primarily because of a provision that would impose a 6 percent tax on currently tax-free food and medicine. Fox's defeat cements speculation that his remaining three years in office are unlikely to produce any meaningful reforms.




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# Mexico: Civil Society, Public Information and Media

## Sub-Category: I-1/Civil Society Organizations

|   | Indicators   | Scores |
|---|--|--------|
| 1 | <a href="#">In law, do citizens have a right to form civil society organizations (CSOs)?</a> | 1.00   |
| 2 | <a href="#">Can citizens organize into trade unions?</a>                                     | 0.88   |
| 3 | <a href="#">In practice, do CSOs actively engage in public advocacy campaigns?</a>           | 0.75   |
| 4 | <a href="#">Are citizens able to form CSOs?</a>  | 0.63   |
| 5 | <a href="#">Are civil society activists safe when working on corruption issues?</a>          | 1.00   |

### Indicator and sub-Indicator Details

|   |
|---|
| <b>1 In law, do citizens have a right to form civil society organizations (CSOs)?</b>   |
| <p><b>Score:</b> yes/1.00 </p> <p><b>Comments:</b> 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.</p> <p><b>References:</b> Article 9 of the Constitution.</p>   |
| <b>2 Can citizens organize into trade unions?</b>   |
| <p><b>- 2a: In law, citizens have a right to organize into trade unions.</b></p> <p><b>Score:</b> yes/1.00 </p> <p><b>Comments:</b> The Constitution guarantees citizens the right to organize into trade unions.</p> <p><b>References:</b> Article 123 of the Constitution, subpart XVI. Federal Labour Law, Articles 441, 356, 357, 359 and 381.</p> <p><b>Peer Review Comments:</b> Trade unions in Latin America, Europe, and North America are usually affiliated (officially or unofficially) with political parties. This is not a problem in Mexico. Instead, unions were used as means of authoritarian control and they have not yet established a bottom-up decision-making process. Secondly, labor courts continue to rule in favor of these old corporatist unions that prevent workers from organizing independent unions of their own choosing.</p>   |
| <p><b>- 2b: In practice, citizens are able to organize into trade unions.</b></p> <p><b>Score:</b> often/0.75 </p> <p><b>Comments:</b> 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).</p> <p><b>References:</b> "La libertad de asociación y la libertad sindical y el reconocimiento efectivo del derecho a la negociación colectiva", Working Paper of the International Labour Organization. <a href="http://www.ilo.org/public/spanish/standards/relm/gb/docs/gb277/3-2/coll/m5.htm">http://www.ilo.org/public/spanish/standards/relm/gb/docs/gb277/3-2/coll/m5.htm</a></p> <p><b>Peer Review Comments:</b> With respect to trade unions, they are more fragmented and independent than before. However, this is not a function of presidential alternation per se. It is more accurate to say that the PRI lost its corporatist control over the country's trade union movement as a consequence of the cyclical economic crises of 1982, 1987-88, and 1994-95. [Comment 2]: The greatest obstacle to union formation in Mexico has been the manipulation of the closed shop provision of the Federal Labor Law, which grants a monopoly of representation to any union that can negotiate a closed shop with the employer. The closed shop links employment to union membership and prevents any other union from operating with that workplace. Official (PRI) unions have used this provision to block efforts by workers to form more independent unions. Union leaders have also entered into "protection contracts" with employers, whereby they agree to "protect" the workplace from independent unionism (for a fee) by formally representing workers, often with no knowledge on the part of the workers that they are ostensibly unionized. This obstacle has received a significant blow recently, however, with a Supreme Court decision that the closed shop is unconstitutional. The labor law has yet to be reformed. This ruling must be repeated in several more cases, but it has the potential to be a major victory for union democracy in Mexico.</p> |
| <b>3 In practice, do CSOs actively engage in public advocacy campaigns?</b>   |

Score: often/0.75

Positive



Negative

**Comments:** CSOs actively engage in public advocacy campaigns. For instance, in September 2003, a CSO called Catholics Pro Choice demonstrated in the downtown area of México City to show their support of women who have had an abortion. This CSO actively campaigns to decriminalize abortion so that women can have abortions in hygienic conditions and thus lessen the probability of death during an abortion.

**References:** Alejandro Álvarez Bejar, "PEMEX: de la reestructuración a la privatización", Paper presented at LASA, April 17-19, 1997.

#### 4 Are citizens able to form CSOs?

**- 4a: In practice, the government does not create barriers to the organization of new CSOs.**

Score: often/0.75

Positive



Negative

**Comments:** The existing regulations for the CSOs are ambiguous and discretionary; not only do they obstruct the actions of the citizens, but they also exclude more than half of the current CSOs by the legal ambit, for instance, of CSOs engaged in community development, ecology, human rights and civic education. This has forced many CSOs to operate outside of the institutional framework and has also led to an estrangement between the government and the majority of CSOs.

**References:** Mexican Center of Philanthropic Institutions, (CEMEFI); "Entorno a la filantropía", document at the Web page [www.cemefi.org](http://www.cemefi.org).

**Peer Review Comments:** The new Federal Law of Promotion of Social Activities should make it clear as to the rules and procedures regulating the creation of new NGO's. Time periods and costs involved in setting one up should also become transparent, as well as NGO's rights to refer to the law for redress if they suffer any violation. [Comment 2]: It is actually quite easy to set up a civic association; what is difficult is being recognized as a nonprofit for fiscal purposes. There are barriers, but they are not barriers to forming the association, but rather to getting the benefits the associations deserve.

**- 4b: In practice, citizens can obtain any necessary license to form a CSO within a reasonable time period.**

Score: < 1 year/0.25

Positive



Negative

**Comments:** The current regulation does not govern, in a strict sense, the creation of foundations or nonprofit organizations. However, Mexican CSOs can appeal to a different legal framework to obtain the legal status of "Asociaciones Civiles" (Civil Associations). The process to obtain this type of license is arduous, lengthy and complex.

**References:** Mexican Center of Philanthropic Institutions, (CEMEFI); "Entorno a la filantropía", document at the Web page [www.cemefi.org](http://www.cemefi.org).

**- 4c: In practice, citizens can obtain any necessary license to form a CSO at a reasonable cost.**

Score: sometimes/0.50

Positive



Negative

**Comments:** The current regulation does not govern, in a strict sense, the creation of foundations or nonprofit organizations. However, Mexican CSOs appeal to a different legal framework to obtain the legal status of "Asociaciones Civiles" (Civil Associations). The process to obtain this type of license is arduous, lengthy and complex.

**References:** Mexican Center of Philanthropic Institutions, (CEMEFI); "Entorno a la filantropía", document at the Web page [www.cemefi.org](http://www.cemefi.org).

**Peer Review Comments:** It is complicated, but not overly so, to set up a Civil Association. Getting the other nonprofit fiscal benefits is a very difficult and arduous process. The real problem is a lack of clarity about what nonprofits are; the civil association category is very vague.

**- 4d: In practice, in the past year, no existing CSO has been banned by the government for non-violent advocacy.**

Score: yes/1.00

Positive



Negative

**Comments:** Yes, there is no record of an existing CSO being banned by the government for non-violent advocacy in the past year.

**References:** Mexican Center of Philanthropic Institutions, (CEMEFI); [www.cemefi.org](http://www.cemefi.org).

#### 5 Are civil society activists safe when working on corruption issues?

**- 5a: In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.**

Score: yes/1.00

Positive



Negative

**Comments:** Yes, there is no record of the imprisonment of any civil society activist who worked on corruption in the past year.

**References:**

**Peer Review Comments:** Civil society activists are at a higher risk of harassment, intimidation and violence at the state and municipal levels than at the federal level. In particular, state governments are criticized for not enforcing the law equally, and are more reluctant to tolerate journalists' and media criticism in general.

**- 5b: In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.**

Score: yes/1.00



**Comments:** Yes, there is no record of a civil society activist who was physically harmed due to his work on corruption in the past year.

**References:**

**- 5c: In practice, in the past year, no civil society activists working on corruption issues have been killed.**

Score: yes/1.00



**Comments:** Yes, there is no record of a civil society activist who was killed due to his work on corruption in the past year.

**References:**

## Mexico: Civil Society, Public Information and Media

### Sub-Category: I-2/Access to Information Law

|   | Indicators  | Scores |
|---|---|--------|
| 6 | <a href="#">In law do citizens have a right of access to information?</a>     | 1.00   |
| 7 | <a href="#">In practice, is the right of access to information effective?</a> |        |

#### Indicator and sub-Indicator Details

##### 6 In law do citizens have a right of access to information?

**- 6a: In law, do citizens have a right of access information and basic government records?**

Score: yes/1.00



**Comments:** In 2002 a law was created to guarantee the right to access information and basic government records.

**References:** Federal Law of Transparency and Access to Public Government Information (2002).

**Peer Review Comments:** There is also a right of access under Article 6 of the constitution.

**- 6b: In law, do citizens have a right of appeal if access to a basic government record is denied?**

Score: yes/1.00



**Comments:** The Federal Access to Information Institute resolves the requests made by citizens. If a record is denied the Institute can force the government agency to disclose the record, unless it was deemed classified.

**References:** Federal Law of Transparency and Access to Public Government Information (2002).

**Peer Review Comments:** The Institute cannot actually compel the government agency to disclose the record. It has great moral authority to encourage disclosure, however, if that fails, it has to go to another ministry (la Secretaria de Funcion Publica) and ask this ministry to punish the offending agency.

##### 7 In practice, is the right of access to information effective?

Score: Composite value, See commentary

**Comments:** This indicator is a composite of access to information scores in all sectors of government. Based on those measures, this country scored a 63 out of a best possible score of 100.

**References:**

## Mexico: Civil Society, Public Information and Media

### Sub-Category: I-3/Freedom of the Media

|    | Indicators  | Scores |
|----|---|--------|
| 8  | <a href="#">In law, is freedom of the media guaranteed?</a>         | 1.00   |
| 9  | <a href="#">In law, is freedom of speech guaranteed?</a>            | 1.00   |
| 10 | <a href="#">Are citizens able to form media entities?</a>           | 0.44   |
| 11 | <a href="#">Is the media able to report on corruption?</a>          | 0.83   |
| 12 | <a href="#">Are journalists safe when investigating corruption?</a> | 0.00   |

## Indicator and sub-Indicator Details

### 8 In law, is freedom of the media guaranteed?

Score: yes/1.00



**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.

**References:** Article 7 of the Constitution.

### 9 In law, is freedom of speech guaranteed?

Score: yes/1.00



**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.

**References:** Article 6 of the Constitution.

### 10 Are citizens able to form media entities?

- 10a: *In practice, the government does not create barriers to forming a media entity.*

Score: often/0.75



**Comments:** The government does not create any barriers for printed media. However, for television and radio the government can create barriers. Because the Communications Secretary is the agency that decides who obtains the concession, and the secretary doesn't 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 paid them a bribe.

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

- 10b: *In law, where a license is necessary, there is an appeal mechanism if a license is denied or revoked.*

Score: no/0.00



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

**References:** Federal Law of Radio and Television.

- 10c: *In practice, where necessary, citizens can obtain a media license within a reasonable time period.*

Score: < 6 months/0.50



**Comments:** The concession process 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.

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

**Peer Review Comments:** The Communications Secretary publishes the requirements needed to obtain a media license in the Diario Oficial de la Federación (Official Newspaper of the Federation), the newspaper in which the government publishes all the new laws, regulations and decrees. All citizens have access to this newspaper.

- 10d: *In practice, where necessary, citizens can obtain a media license at a reasonable cost.*

Score: sometimes/0.50



**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.

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

## 11 Is the media able to report on corruption?

- 11a: *In law, it is legal to report accurate news even if it damages the reputation of a public figure?*

Score: yes/1.00



**Comments:** News reports that damage the reputation of a senior politician are not illegal if they are accurate or the journalist had reason to believe his or her sources were trustworthy.

**References:** Printer law, article 5

**Peer Review Comments:** One of the problems with the existing "libel law" is that it prescribes criminal rather than civil penalties. Although the law is rarely invoked, public figures will occasionally threaten journalists with imprisonment.

- 11b: *In practice, the government does not encourage self-censorship of corruption-related stories.*

Score: often/0.75



**Comments:** Since the victory of Vicente Fox in the presidential election of 2000, there has been an effort to end the censorship that characterized previous years.

**References:** Interview with María de Jesús García, editorial coordinator of the "Reforma" newspaper.

**Peer Review Comments:** Media freedom is a phenomenon previous to Vicente Fox's presidency. It came about as a result of the political reforms that President Zedillo implemented in 1995-96 in exchange for PAN and PRD's congressional support for tough economic stabilization and adjustment measures after the economic debacle of December 1994. [Comment 2]: It is well known in Mexico that several state and local governments have close ties with local media. It is fairly common that local newspapers, and radio and TV stations will report news with a clear bias against parties other than the one in power in that specific state. It is commonly assumed that part of a state government's budget is used to bribe the media. However, at the national level it is true that the media are increasingly free to report on corruption.

- 11c: *In practice, there is no prior restraint on publishing corruption-related stories.*

Score: often/0.75



**Comments:** Corruption is now one of the most important issues on the public agenda and therefore there is very little restraint on publishing corruption-related stories. The media is experiencing more freedom than ever before.

**References:** Interview with María de Jesús García, editorial coordinator of the "Reforma" newspaper.

## 12 Are journalists safe when investigating corruption?

- 12a: *In practice, in the past year, no journalists investigating corruption have been imprisoned.*

Score: no/0.00



**Comments:** The most notorious case of a journalist being charged with libel is Isabel Arvide's imprisonment for writing an article linking Chihuahua's state attorney with the creation of a new drug cartel.

**References:** Committee to Protect Journalists ([www.cpj.org](http://www.cpj.org)); [www.isabelarvide.com](http://www.isabelarvide.com); Manuel Buendía Foundation, Freedom of Speech Unit.

- 12b: *In practice, in the past year, no journalists investigating corruption have been physically harmed.*

Score: no/0.00



**Comments:** According to a report by the Manuel Buendía Foundation, in 2002 there were 21 cases of physical aggression against journalists in Mexico.

**References:** Manuel Buendía Foundation, Freedom of Speech Unit.

- 12c: *In practice, in the past year, no journalists investigating corruption have been killed.*

Score: no/0.00



**Comments:** There was one assassination of the director of one magazine, believed to be drug-related.






**References:** Manuel Buendía Foundation, Freedom of Speech Unit.

# Mexico: Electoral and Political Processes

## Sub-Category: II-1/National Elections

|    | Indicators  | Scores |
|----|---|--------|
| 13 | <a href="#">In law, is universal and equal adult suffrage guaranteed to all citizens?</a> | 1.00   |
| 14 | <a href="#">Can all citizens exercise their right to vote freely and fairly?</a>          | 0.92   |
| 15 | <a href="#">Do citizens participate in the political process?</a>                         | 0.75   |

### Indicator and sub-Indicator Details

|    |   |
|----|---|
| 13 | <b>In law, is universal and equal adult suffrage guaranteed to all citizens?</b>  |
|    | <p><b>Score:</b> yes/1.00 </p> <p><b>Comments:</b> All adult citizens have the right to vote.<br/> <b>References:</b> Article 35 of the Constitution.</p>   |
| 14 | <b>Can all citizens exercise their right to vote freely and fairly?</b>   |
|    | <p><b>- 14a: In practice, all adult citizens can vote.</b></p> <p><b>Score:</b> almost always/1.00 </p> <p><b>Comments:</b> In the most recent election that took place on July 6, 2003, more than 121,000 election booths were installed throughout the country. The Federal Electoral Institute issues an identification document that is required to vote; a section number is written on the identification document. With that section number, citizens can find the address of their respective election booths in newspapers and on the Web page of the Federal Electoral Institute.<br/> <b>References:</b> Federal Electoral Institute; www.ife.org.mx</p> <p><b>- 14b: In practice, ballots are secret or equivalently protected.</b></p> <p><b>Score:</b> often/0.75 </p> <p><b>Comments:</b> First, ballot boxes are transparent, which hinders the possibility of inserting many ballots at once. Second, the ballot box is assembled in front of representatives from the political parties and other observers. Third, when the voting process is concluded, the remaining ballots (the ones that were not used during the election) are annulled. Then the number of ballots and the number of electors that voted are counted; these two numbers have to match.<br/> <b>References:</b> Federal Electoral Institute; www.ife.org.mx<br/> <b>Peer Review Comments:</b> Secret ballots have been particularly problematic in indigenous communities in southern Mexico, which have "usos y costumbres" (uses and customs) whereby voting has traditionally been public. Conveniently, some PRI politicians have used "usos y costumbres" to justify the lack of secret ballots in their communities.</p> <p><b>- 14c: In practice, elections are held according to a regular schedule.</b></p> <p><b>Score:</b> almost always/1.00 </p> <p><b>Comments:</b> Federal elections are held every three years according to a regular schedule. Congressmen are elected every three years, senators and the president are elected every six years. Local elections are held according to a regular schedule, however they may not coincide with the federal elections.<br/> <b>References:</b> Federal Electoral Institute; www.ife.org.mx<br/> <b>Peer Review Comments:</b> Probably the most common exception to elections being held according to a regular schedule is when accusations of fraud or corruption lead to new or early elections.</p> |
| 15 | <b>Do citizens participate in the political process?</b>  |
|    | <p><b>- 15a: In practice, all citizens have a right to form political parties.</b></p> <p><b>Score:</b> almost always/1.00 </p> <p><b>Comments:</b> Yes, all citizens have a right to form political parties. Three new political parties were created last year, however they lost their registration because each did not receive 2 percent of the</p>  |

national vote.

**References:** Federal Electoral Institute; Federal Code of Electoral Institutions and Procedures.

**Peer Review Comments:** The fact that some parties lose their register is a function of the electoral law, which established a 1.5 percent national vote threshold (planned reform raised threshold to 2 percent) to achieve representation in Congress. An important point which does not figure in this section is that the law forbids regional parties from competing in elections. Only parties with national constituencies (even if minoritarian in some regions) obtain a register that enables them to compete in elections.

- 15b: *In practice, all citizens have a right to run for public office.*

**Score:** almost always/1.00



**Comments:** Yes, however the candidates have to be proposed by a political party.

**References:** Federal Electoral Institute; Federal Code of Electoral Institutions and Procedures.

- 15c: *In practice, at least 30 percent of national legislators are women.*

**Score:** no/0.00



**Comments:** In the 58th legislature (2000-2003), women represent less than 20 percent of national legislators.

**References:** Congress; [www.camaradediputados.gob.mx](http://www.camaradediputados.gob.mx)

- 15d: *In practice, the ruling political party controls less than 2/3 of seats in the legislature.*

**Score:** yes/1.00



**Comments:** The ruling political party controls less than 50 percent of the seats in the legislature.

**References:** Congress; [www.camaradediputados.gob.mx](http://www.camaradediputados.gob.mx)

- 15e: *In practice, during the most recent election, political parties received media coverage roughly proportional to their popular support.*

**Score:** often/0.75



**Comments:** The most important source of funding for political parties comes from the government. The amount of money that is allocated to political parties depends on their popular support. Hence, political parties with the largest popular support can afford to spend more on advertising. Also, news coverage of a particular political party tends to be proportional to its popular support.

**References:** Federal Electoral Institute; [www.ife.org.mx](http://www.ife.org.mx)

**Peer Review Comments:** It is true that by law all political parties must receive a certain amount of "on air" time to make their political views known. However, there have been several studies that have shown that media coverage (in particular on television) is usually biased towards one or two parties, usually the PRI being one of them. Even though PRI is still one of the three parties with the highest popular support, its media coverage has traditionally been several times that of any other parties. This was still the case in the 2000 election. Radio and printed media is usually more proportional to a party's popular support.

## Mexico: Electoral and Political Processes

### Sub-Category: II-2/Election Monitoring Agency

|    | Indicators  | Scores |
|----|---|--------|
| 16 | <a href="#">In law, is there an election monitoring agency?</a> | 1.00   |
| 17 | <a href="#">Is the election monitoring agency effective?</a>    | 1.00   |

#### Indicator and sub-Indicator Details

##### 16 In law, is there an election monitoring agency?

**Score:** yes/1.00



**Comments:** The Federal Electoral Institute is a public agency that is responsible for organizing federal elections (for Congress, Senate and president).

**References:** Federal Code of Electoral Institutions and Procedures.

## 17 Is the election monitoring agency effective?

- 17a: *In law, the agency is protected from political interference.*

Score: yes/1.00



**Comments:** The agency is autonomous and receives regular funding. The counselors are proposed and ratified by the Congress.

**References:** Federal Code of Electoral Institutions and Procedures.

- 17b: *In practice, agency appointments are made that support the independence of the agency.*

Score: almost always/1.00



**Comments:** Federal Electoral Institute counselors are appointed by Congress and the agency is created as an institution independent of the executive. At one point it renewed some counselors and in 2003 another renewal of counselors took place (including the president of the Counsel).

**References:** Federal Electoral Institute. [www.ife.org.mx](http://www.ife.org.mx); Federal Code of Electoral Institutions and Procedures.

- 17c: *In practice, the agency has a professional, full-time staff.*

Score: almost always/1.00



**Comments:** The Federal Electoral Institute has an interior civil service regulation that assures the quality of the Institute's staff.

**References:** Federal Electoral Institute; [www.ife.org.mx](http://www.ife.org.mx)

- 17d: *In practice, the agency makes reports to the legislature following an election cycle.*

Score: almost always/1.00



**Comments:** The Federal Electoral Institute has recently made several reports of the last election (July 6, 2003).

**References:** Federal Electoral Institute; [www.ife.org.mx](http://www.ife.org.mx)

**Peer Review Comments:** There are reports of every national election since the agency's creation available online.

- 17e: *In practice, when necessary, the agency imposes penalties on offenders.*

Score: almost always/1.00



**Comments:** The Federal Electoral Institute has imposed sanctions on political parties. Most of the sanctions have been imposed because the campaigns have exceeded the expenditure limits. Recently, a hefty fine was imposed on the Partido Revolucionario Institucional (PRI) because it received money from the trade union of Pemex (the state's largest company) for the 2000 presidential campaign.

**References:** Federal Electoral Institute; [www.ife.org.mx](http://www.ife.org.mx)

## Mexico: Electoral and Political Processes

### Sub-Category: II-3/Political Party Finances

|    | Indicators  | Scores |
|----|---|--------|
| 18 | <a href="#">Are there regulations governing political party finances?</a>         | 1.00   |
| 19 | <a href="#">Are the regulations governing political party finances effective?</a> | 1.00   |
| 20 | <a href="#">Can citizens access the financial records of political parties?</a>   | 1.00   |

### Indicator and sub-Indicator Details

#### 18 Are there regulations governing political party finances?

- 18a: *In law, there are regulations governing private contributions to political parties.*

Score: yes/1.00



**Comments:** Yes, there are regulations governing private contributions to political parties.

**References:** Federal Code of Electoral Institutions and Procedures.

**Peer Review Comments:** There are also regulations governing public contributions to political parties.

**- 18b: In law, there are limits on individual donations to candidates and political parties.**

**Score:** yes/1.00



**Comments:** Yes, there are limits on individual donations to candidates.

**References:** Federal Code of Electoral Institutions and Procedures.

**- 18c: In law, there are limits on corporate donations to candidates and political parties.**

**Score:** yes/1.00



**Comments:** Corporate donations are not allowed. Only individuals can make donations to political parties.

**References:** Federal Code of Electoral Institutions and Procedures.

**Peer Review Comments:** The key danger with respect to party finances is the infiltration of drug cartels' money in exchange for favors, a problem that has been identified at the state level in places such as Guerrero, Michoacan, Jalisco, Sinaloa, Durango, and Chihuahua.

**- 18d: In law, there are limits on total party expenditure.**

**Score:** yes/1.00



**Comments:** There are limits on campaign-related expenditure.

**References:** Federal Code of Electoral Institutions and Procedures 1996, last amended 2002.

## 19 Are the regulations governing political party finances effective?

**- 19a: In practice, when necessary, an agency monitoring political party finances independently initiates investigations.**

**Score:** almost always/1.00



**Comments:** When necessary the Federal Electoral Institute has initiated investigations.

**References:** Federal Electoral Institute; [www.ife.org.mx](http://www.ife.org.mx)

**- 19b: In practice, when necessary, an agency monitoring political party finances imposes penalties on offenders.**

**Score:** almost always/1.00



**Comments:** The Federal Electoral Institute has imposed sanctions on political parties. Most of the sanctions have been imposed because the campaigns have exceeded the expenditure limits. Recently, a hefty fine was imposed on the Partido Revolucionario Institucional (PRI) because it received money from the trade union of Pemex (the states largest company) for the 2000 presidential campaign.

**References:** Federal Electoral Institute; [www.ife.org.mx](http://www.ife.org.mx)

**- 19c: In practice, contributions to political parties are audited.**

**Score:** almost always/1.00



**Comments:** The Federal Electoral Institute audits contributions to political parties. Recently, it has been investigating contributions to the presidential campaign of the current President, Vicente Fox. It is alleged that Fox's campaign illegally received contributions from foreign individuals.

**References:** Federal Electoral Institute; [www.ife.org.mx](http://www.ife.org.mx)

## 20 Can citizens access the financial records of political parties?

**- 20a: In law, citizens can access the financial records of political parties.**

**Score:** yes/1.00



**Comments:** Citizens can access the financial records of political parties through the Federal Electoral Institute.

**References:** Federal law of Transparency and Access to Public Government Information 2002; <http://www.ife.org.mx/wwwife/25pregu2.htm>; <http://www.ifai.org.mx/textos/guiaacceso/otros poderes/otros poderes.htm>

**- 20b: In practice, citizens can access the financial records of political parties within a reasonable time period.**

**Score:** < 1 month/1.00



**Comments:** The Federal Electoral Institute has advocated itself as a transparent institution. Hence, reports

can be accessed relatively quickly.

**References:** Federal Electoral Institute, [www.ife.org.mx](http://www.ife.org.mx) Public; Function secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Federal Access to Information Institute, [www.ifai.org.mx](http://www.ifai.org.mx)

**Peer Review Comments:** Records of campaign expenditures of each political party in the last presidential election were made available on the Internet within about a month of the elections

**- 20c: *In practice, citizens can access the financial records of political parties at a reasonable cost.***

**Score:** almost always/1.00



**Comments:** The Federal Electoral Institute has promoted itself as a transparent institution. Hence, reports can be accessed at practically no cost.





**References:** Federal Electoral Institute, [www.ife.org.mx](http://www.ife.org.mx) Public; Function secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Federal Access to Information Institute, [www.ifai.org.mx](http://www.ifai.org.mx)

# Mexico: Branches of Government

## Sub-Category: III-1/Executive

|    | Indicators  | Scores |
|----|---|--------|
| 21 | <a href="#">In law, can citizens sue the government for infringement of their civil rights?</a> | 1.00   |
| 22 | <a href="#">Can members of the executive be held accountable for their actions?</a>             | 1.00   |
| 23 | <a href="#">Is the executive leadership subject to prosecution?</a>                             | 1.00   |
| 24 | <a href="#">Are there regulations governing conflicts of interest by the executive branch?</a>  | 0.67   |
| 25 | <a href="#">Can citizens access the asset disclosure records of the head of state?</a>          | 1.00   |
| 26 | <a href="#">In practice, is the ruling party distinct from the state?</a>                       | 1.00   |

### Indicator and sub-Indicator Details

|    |   |
|----|---|
| 21 | <b>In law, can citizens sue the government for infringement of their civil rights?</b>  |
|    | <p><b>Score:</b> yes/1.00 </p> <p><b>Comments:</b> Citizens can protect themselves against government decisions that infringe on their civil rights.</p> <p><b>References:</b> Article 103 of the Constitution; sub-part I, Article 107 of the Constitution; Protection law, regulation of the Articles 103 and 107 of the Constitution.</p>  |
| 22 | <b>Can members of the executive be held accountable for their actions?</b>  |
|    | <p><b>- 22a: In practice, members of the executive give reasons for their policy decisions.</b></p> <p><b>Score:</b> almost always/1.00 </p> <p><b>Comments:</b> The executive has to present a National Development Plan, where the executive describes what it intends to do during its term (Article 26 of the Constitution). In this document the executive explains the reasons for policy decisions. When the executive submits a budget proposal it has also to explain the different allocations. At any time Congress can call a member of the executive to give reasons for his policy decisions (Organic Law of the Mexican Congress, first passed in 1979 and last modified in 2003).</p> <p><b>References:</b> Article 26 of the Constitution; Organic Law of the Mexican Congress, first passed in 1979 and last modified in 2003</p> <p><b>- 22b: In law, the judiciary can review the actions of the executive.</b></p> <p><b>Score:</b> yes/1.00 </p> <p><b>Comments:</b> The judiciary can review the actions of the executive through various actions, like the protection trial and the constitutional controversy. The protection trial is an administrative resource that allows a citizen to protect himself from a law, an action of the executive, or a judicial decision that infringes on his constitutionally protected civil rights. It can also be use by a state when a law, action of the executive, or a judicial decision wounds its sovereignty, or when a law, action of the executive, or a judicial decision invades the federal sphere. The constitutional controversy is an administrative resource that is used when one branch of the government invades the sphere of another one, or when the federal (or state) authority invades the state (or federal) sphere.</p> <p><b>References:</b> Articles 103, 105 and 107 of the Constitution.</p> <p><b>- 22c: In practice, when necessary, the judiciary reviews the actions of the executive.</b></p> <p><b>Score:</b> almost always/1.00 </p> <p><b>Comments:</b> Recently, the judicial power has made several reviews with the available mechanisms.</p> <p><b>References:</b> Interview with Alejandro Posadas, researcher at the CIDE law department.</p> |
| 23 | <b>Is the executive leadership subject to prosecution?</b>  |

Score: yes/1.00



**Comments:** The president can only be accused of treason to the country and of serious crimes of the common order.

**References:** Article 108 of the Constitution.

**Peer Review Comments:** No president has been formally accused or prosecuted for corruption.

**- 23b: In law, ministerial-level officials are not immune from prosecution.**

Score: yes/1.00



**Comments:** Ministerial-level officials are not immune from prosecution.

**References:** Article 110 of the Constitution

**Peer Review Comments:** No ministerial-level official has been formally accused or prosecuted for corruption.

**24 Are there regulations governing conflicts of interest by the executive branch?**

**- 24a: In law, the head of state is required to file an asset disclosure form.**

Score: yes/1.00



**Comments:** The head of state has to file an asset disclosure form. The Federal Law of Administrative Responsibilities of the Public Servants regulates this.

**References:** The Federal Law of Administrative Responsibilities of the Public Servants 2002

**- 24b: In law, ministerial-level officials are required to file an asset disclosure form.**

Score: yes/1.00



**Comments:** Yes, ministerial-level officials have to file an asset disclosure form.

**References:** The Federal Law of Administrative Responsibilities of the Public Servants 2002

**- 24c: In law, there are regulations concerning gifts and hospitality for the executive.**

Score: no/0.00



**Comments:** There are no laws or regulations concerning gifts and hospitality for the executive.

**References:** Interview with Alejandro Posadas, researcher at the CIDE law department.

**25 Can citizens access the asset disclosure records of the head of state?**

**- 25a: In law, citizens can access the asset disclosure records of the head of state.**

Score: yes/1.00



**Comments:** Yes, citizens can access the asset disclosure of the head of state. However, it is not mandatory for the president to make his asset disclosure public. It is up to the president if it is made public. If the president agrees, then the citizens can access the asset disclosure. The current president, Vicente Fox, has made his asset disclosure public and accessible to citizens.

**References:** Federal law of Transparency and Access to Public Government Information 2002; The Federal Law of Administrative Responsibilities of the Public Servants 2002

**- 25b: In practice, citizens can access the asset disclosure records of the head of state within a reasonable time period.**

Score: < 1 month/1.00



**Comments:** Citizens can access the asset disclosure of the head of state within a reasonable time period.

**References:** Executive Power Assessment in Transparency Matters, CIDE

**- 25c: In practice, citizens can access the asset disclosure records of the head of state at a reasonable cost.**

Score: almost always/1.00



**Comments:** Citizens can access the records at practically no cost.

**References:** Executive Power Assessment in Transparency Matters, CIDE

**26 In practice, is the ruling party distinct from the state?**

Score: almost always/1.00



**Comments:** In 2000 Vicente Fox won the presidential election. For more than 70 years all Mexican

presidents had been members of the Partido Revolucionario Institucional (PRI) rendering the distinction between ruling party and the state almost nonexistent. However, Fox's triumph marked the start of a new era. There has been a conscious effort in this administration to make a distinction between Fox's government and the Partido Acción Nacional PAN (Fox's political party). While at the national level there is a distinction, this is not always the case in various states. In states governed by the PRI such as Tabasco or Oaxaca (where the PRI has also the majority in the local congress), the distinction between the government and the ruling party is weak.

**References:** Accountability in municipal and state governments, Luis Carlos Ugalde. No. 4 of the accountability culture series.




**Peer Review Comments:** To be more cautious, states run by the PRI often blur the distinction between party and state, but so do several state governments run by the PRD and the PAN. Although the PRI is far more egregious in this regard, the other parties should not be left off the hook on this when they engage in the same practices.

## Mexico: Branches of Government

### Sub-Category: III-2/Legislature

|    | Indicators  | Scores |
|----|---|--------|
| 27 | <a href="#">Can members of the legislature be held accountable for their actions?</a>                       | 1.00   |
| 28 | <a href="#">In law, are members of the legislature subject to prosecution?</a>                              | 0.00   |
| 29 | <a href="#">Are there regulations governing conflict of interest by members of the legislature?</a>         | 0.50   |
| 30 | <a href="#">Can citizens access the asset disclosure records of members of the legislature?</a>             | 1.00   |
| 31 | <a href="#">Can citizens access legislative processes and documents?</a>                                    | 0.83   |
| 32 | <a href="#">Does the legislature have control of the budget?</a>  | 1.00   |
| 33 | <a href="#">Can citizens access the national budgetary process?</a>   | 0.50   |
| 34 | <a href="#">In law, is there a separate legislative committee which provides oversight of public funds?</a> | 1.00   |
| 35 | <a href="#">Is the legislative committee overseeing the expenditure of public funds effective?</a>          | 0.31   |

### Indicator and sub-Indicator Details

|           |   |
|-----------|---|
| <b>27</b> | <b>Can members of the legislature be held accountable for their actions?</b>  |
|           | <p><b>- 27a: In law, the judiciary can review the actions of the legislature.</b></p> <p><b>Score:</b> yes/1.00 </p> <p><b>Comments:</b> The judiciary can review the actions of the legislature through various actions like the protection trial and the constitutional controversy.</p> <p><b>References:</b> Articles 103, 105 and 107 of the Constitution.</p> <p><b>- 27b: In practice, when necessary, the judiciary reviews the actions of the legislature.</b></p> <p><b>Score:</b> almost always/1.00 </p> <p><b>Comments:</b> Recently, the judicial power has made several reviews with mechanisms like the protection trial and the constitutional controversy.</p> <p><b>References:</b> Interview with Alejandro Posadas, researcher at the CIDE law department.</p> |
| <b>28</b> | <b>In law, are members of the legislature subject to prosecution?</b>   |
|           | <p><b>Score:</b> no/0.00 </p> <p><b>Comments:</b> They are immune from prosecution, but their immunity can be removed.</p> <p><b>References:</b> Article 61 of the Constitution.</p> <p><b>Peer Review Comments:</b> Just recently, a judicial process has started against a legislator, Carlos Romero Deschamps; his term in Congress ended, hence his immunity expired. He is charged with embezzlement. He is the leader of the Pemex trade union (a state-owned Mexican petroleum company) and was allegedly involved in the diversion of funds from the trade union to the presidential campaign of the PRI in 2000. This</p>  |

is the first case of its kind. As of the end of 2003, no sanction has been imposed. (See: Reforma Newspaper: [www.reforma.com](http://www.reforma.com).) [Comment 2]: One paradox of democratization in Mexico has been that legislators' accountability has diminished. This is due to the fact that legislators have immunity from prosecution while in public office. Such immunity can only be overturned by an absolute majority of the Chamber of Deputies. Because putting together majorities has become more difficult as representation has become more plural since 1997, legislators' chances of being prosecuted while still in office have diminished. Nonetheless, charges against legislators are not prescribed in time so they can still be pressed against a particular legislator after his public tenure comes to an end, as was the case with ex-Senator Romero Deschamps.

## 29 Are there regulations governing conflict of interest by members of the legislature?

- 29a: *In law, members of the legislature are required to file an asset disclosure form.*

Score: yes/1.00



**Comments:** Members of the legislature must file an asset disclosure form in terms of the Federal Law of Administrative Responsibilities of the Public Servants 2002.

**References:** Federal law of Transparency and Access to Public Government Information 2002; Federal Law of Administrative Responsibilities of the Public Servants 2002.

- 29b: *In law, there are regulations concerning gifts and hospitality for members of the legislature.*

Score: no/0.00



**Comments:** There is no law or regulation concerning gifts and hospitality for members of the legislature.

**References:** Interview with Congress specialist Said Hernández

## 30 Can citizens access the asset disclosure records of members of the legislature?

- 30a: *In law, citizens can access the asset disclosure records of members of the legislature.*

Score: yes/1.00



**Comments:** Citizens can access the asset disclosure records of members of the legislature. However, it is not mandatory for the members of the legislature to make their respective asset disclosures public. Only if they decide to do so can citizens can access their asset disclosures.

**References:** Federal law of Transparency and Access to Public Government Information 2002; The Federal Law of Administrative Responsibilities of the Public Servants 2002.

- 30b: *In practice, citizens can access these records within a reasonable time period.*

Score: < 1 month/1.00



**Comments:** The Federal Access to Information Institute has designed the Information Request System that allows citizens to obtain the information they are seeking. Citizens can access this system through the Internet and in 15 working days an answer must be provided.

**References:** Public Function secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Federal Access to Information Institute, [www.ifai.org.mx](http://www.ifai.org.mx).

- 30c: *In practice, citizens can access these records at a reasonable cost.*

Score: almost always/1.00



**Comments:** The Information Request System does not charge its users.

**References:** Public Function secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Federal Access to Information Institute, [www.ifai.org.mx](http://www.ifai.org.mx).

## 31 Can citizens access legislative processes and documents?

- 31a: *In law, citizens can access records of legislative processes and documents.*

Score: yes/1.00



**Comments:** Yes, citizens can access records of legislative processes and documents.

**References:** Federal law of Transparency and Access to Public Government Information 2002.

- 31b: *In practice, citizens can access these records within a reasonable time period.*

Score: < 1 month/1.00



**Comments:** There has not been a proper assessment of how long it takes to access these records. However, it would generally take less than a month.

**References:** Interview with Luis Carlos Ugalde, professor at the CIDE Political Studies Division. He is a

specialist in matters of congress and national elections.

**- 31c: In practice, citizens can access these records at a reasonable cost.**

**Score:** sometimes/0.50



**Comments:** There has not been a proper assessment of the costs related to accessing these records. About 50 percent of the time citizens could access these records at a reasonable cost.

**References:** Interview with Luis Carlos Ugalde, professor at the CIDE Political Studies Division. He is a specialist in matters of congress and national elections.

### 32 Does the legislature have control of the budget?

**- 32a: In law, the legislature can amend the budget.**

**Score:** yes/1.00



**Comments:** The legislature approves the budget and it can amend executive proposals. The Budget, Accounting and Federal Public Spending Law was passed in 1976, first came into action in 1977, and was last modified in 2003. The Organic Law of the Mexican Congress was first passed in 1979 and last modified in 2003.

**References:** Article 73 of the Constitution; sub-part VII. Article 74 of the Constitution; subpart IV. Budget, Accounting and Federal Public Spending Law; Articles 11 and 15; Organic Law of the Mexican Congress, Articles 34 and 66.

**- 32b: In practice, significant public expenditures require legislative approval.**

**Score:** almost always/1.00



**Comments:** Every year, the executive delivers its budget proposal to the lower Congress to be discussed and approved in all its parts. The Congress has the legal and practical authority to reduce or modify the whole budget proposal, or just some parts of it. Since 1997, this faculty of the Congress has been used extensively.

**References:** "Análisis del proceso presupuestario en México, 2003;" document of the Latin-American Budget Transparency Index, 2003, elaborated by CIDE and Fundar.; "El Marco Jurídico del Presupuesto Público Federal", Working Paper, CIDE, 2002.

### 33 Can citizens access the national budgetary process?

**- 33a: In practice, the national budgetary process is conducted in a transparent manner in the debating stage.**

**Score:** sometimes/0.50



**Comments:** The budget proposal is sent to Congress on November 15 and has to be approved no later than the last day of December. Therefore, the whole debating stage is done hastily. In recent years the budget has been approved at the final hours of the year and in an unprofessional way.

**References:** "Análisis del proceso presupuestario en México, 2003;" document of the Latin-American Budget Transparency Index, 2003, elaborated by CIDE and Fundar; "El Marco Jurídico del Presupuesto Público Federal", Working Paper, CIDE, 2002.

**- 33b: In practice, citizens provide input at budget hearings.**

**Score:** almost never/0.00



**Comments:** There is no regulation concerning citizens at budget hearings. In practice, citizens cannot provide input at any stage of the budget process.

**References:** "Análisis del proceso presupuestario en México, 2003;" document of the Latin-American Budget Transparency Index, 2003, elaborated by CIDE and Fundar; "El Marco Jurídico del Presupuesto Público Federal", Working Paper, CIDE, 2002.

**- 33c: In practice, citizens can access itemized budget allocations.**

**Score:** almost always/1.00



**Comments:** Citizens can access the budget and find itemized budget allocations. Yet, the way the information is structured is complex and it changes almost every year, which makes comparisons between years very difficult.

**References:** "Análisis del proceso presupuestario en México, 2003;" document of the Latin-American Budget Transparency Index, 2003, elaborated by CIDE and Fundar; "El Marco Jurídico del Presupuesto Público Federal", Working Paper, CIDE, 2002.

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

Score: yes/1.00

Positive



Negative

**Comments:** There is a legislative public accounts committee. There is also the supreme audit institution that oversees public funds.

**References:** Interior Regulation of the Mexican Congress; Federal law of fiscal oversight 2000.

**35 Is the legislative committee overseeing the expenditure of public funds effective?**

**- 35a: In practice, department heads regularly submit reports to this committee.**

Score: almost never/0.00

Positive



Negative

**Comments:** The ministerial-level officials are the ones who regularly submit reports to Congress. Department heads do not submit reports to the Congress or to the public accounts committee. Reports are made by ministerial-level officials.

**References:** Congress. [www.camaradediputados.gob.mx](http://www.camaradediputados.gob.mx); According to Congress specialist Said Hernández.

**- 35b: In practice, a member of an opposition party presides over this committee.**

Score: often/0.75

Positive



Negative

**Comments:** The opposition party is always looking to preside over this committee. So, often a member of the opposition party presides over this committee.

**References:** Congress. [www.camaradediputados.gob.mx](http://www.camaradediputados.gob.mx); Interview with Congress specialist Said Hernández.

**- 35c: In practice, this committee is protected from political interference.**

Score: rarely/0.25

Positive



Negative

**Comments:** Other political parties can not put pressure on the committee. However, the executive and the political party of the president of the committee can influence the committee. The former head of this committee was Luis Pazos, a renowned economist. He had been politically approached by the treasury secretary. He resigned as a congressman and became the spokesman of this secretary. It can be inferred that Pazos job as a spokesman had something to do with political interference from the executive.

**References:** Congress. [www.camaradediputados.gob.mx](http://www.camaradediputados.gob.mx); Interview with Congress specialist Said Hernández.

**Peer Review Comments:** Luis Pazos was appointed as spokesman of the Ministry of Finance, but he remained in the post for less than two weeks. He is now Director of Banobras.

**- 35d: In practice, when necessary, this committee initiates independent investigations into financial irregularities.**

Score: rarely/0.25

Positive



Negative

**Comments:** The committee can initiate independent investigations, normally with outside consultants. However, these are rarely done.

**References:** Congress. [www.camaradediputados.gob.mx](http://www.camaradediputados.gob.mx); Interview with Congress specialist Said Hernández.

## Mexico: Branches of Government

### Sub-Category: III-3/Judiciary

|    | Indicators   | Scores |
|----|--|--------|
| 36 | <a href="#">In law, is the independence of the judiciary guaranteed?</a>             | 1.00   |
| 37 | <a href="#">Is the appointment process for high court judges effective?</a>          | 1.00   |
| 38 | <a href="#">Can members of the judiciary be held accountable for their actions?</a>  | 0.67   |
| 39 | <a href="#">Can citizens access the judicial system?</a>                             | 0.44   |
| 40 | <a href="#">In law, is there a program to protect witnesses in corruption cases?</a> | 1.00   |
| 41 | <a href="#">Are judges safe when adjudicating corruption cases?</a>                  | 0.00   |

## Indicator and sub-Indicator Details

### 36 In law, is the independence of the judiciary guaranteed?

Score: yes/1.00



**Comments:** The independence of the judiciary is guaranteed.

**References:** Organic law of the Judicial Power 1988, amended 2000.

### 37 Is the appointment process for high court judges effective?

- 37a: *In practice, there is a transparent procedure for selecting high court judges.*

Score: almost always/1.00



**Comments:** There has been significant progress in making the procedure for selecting high court judges more transparent.

**References:** Interview with Alejandro Posadas, researcher at the CIDE law department. Report of the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy, of the Mexican Judicial system.

- 37b: *In practice, there are certain professional criteria required for the selection of high court judges.*

Score: almost always/1.00



**Comments:** There has been an effort to improve the professional criteria required for the selection of high court judges.

**References:** Interview with Alejandro Posadas, researcher at the CIDE law department.

- 37c: *In law, there is a confirmation process for high court judges (i.e. conducted by the legislature or an independent body).*

Score: yes/1.00



**Comments:** There is only a confirmation process for members of the Supreme Court of Justice. The president proposes the candidates and the Senate ratifies them.

**References:** Article 96 of the Constitution.

**Peer Review Comments:** The Senate does not ratify presidential nomination of Supreme Court justices. The president has to submit a list of three candidates, out of which the Senate elects one. [Comment 2]: Even though Supreme Court justices are still identified in a majority of cases with the PRI, generational replacement should produce a similar pendular behavior in the Mexican Supreme Court as in the American, where presidents nominate candidates of their political persuasion when benches are vacated, and this results in a court at times dominated by conservatives, and at other times by progressives. Last, the most important judicial development occurred as a result of the judiciary's 1996 reform, which, among other things, made the judiciary the institution responsible for the resolution of electoral conflicts.

- 37d: *In law, high court judges are protected from removal without relevant justification.*

Score: yes/1.00



**Comments:** High court judges can only be removed by the Counsel of the Federal Judgeship. The decision can be appealed.

**References:** Organic law of the Judicial Power 1988, amended 2000.

- 37e: *In practice, high court judges are protected from political interference.*

Score: almost always/1.00



**Comments:** In practice, high court judges are relatively safe from losing their jobs and can conduct their work without interference.

**References:** Interview with Alejandro Posadas, researcher at the CIDE law department. Report of the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy, of the Mexican Judicial system.

### 38 Can members of the judiciary be held accountable for their actions?

- 38a: *In law, members of the judiciary are obliged to give reasons for their decisions.*

Score: yes/1.00



**Comments:** Members of the judiciary must give reasons for their decisions, but not all decisions must be made public.

**References:** Federal law of Transparency and Access to Public Government Information 2002.

- 38b: *In practice, members of the judiciary give reasons for their decisions.*

Score: almost always/1.00



**Comments:** Inquiries can be made, however there is no database for the whole judiciary.  
**References:** Interview with Alejandro Posadas, researcher at the CIDE law department.

- 38c: *In law, there is an ombudsman (or equivalent agency) for the judicial system.*

Score: yes/1.00



**Comments:** Yes, there is the Council of the Federal Judgeship.  
**References:** Organic law of the Judicial Power 1988, amended 2000.

- 38d: *In law, the judicial ombudsman (or equivalent agency) is protected from political interference.*

Score: yes/1.00



**Comments:** The Council of the Federal Judgeship is composed of seven counselors. One counselor is the president of the Supreme Court of Justice, three are designated by the judicial power, two by the Senate and one by the executive.  
**References:** Article 100 of the Constitution.

- 38e: *In practice, when necessary, the judicial ombudsman (or equivalent agency) initiates investigations.*

Score: almost never/0.00



**Comments:** In Mexico there have been several accusations of corruption in the judicial system, however there have been very few convictions. The Council of the Federal Judgeship is ineffective in terms of initiating investigations.  
**References:** Report of the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy, of the Mexican Judicial system.

- 38f: *In practice, when necessary, the judicial ombudsman (or equivalent agency) imposes penalties on offenders.*

Score: almost never/0.00



**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.  
**References:** Report of the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy, of the Mexican Judicial system.

### 39 Can citizens access the judicial system?

- 39a: *In practice, citizens earning the median yearly income can afford to bring a legal suit.*

Score: almost never/0.00



**Comments:** The median monthly income would be needed to pay for the services of an average or good lawyer for a month. Hence, it is unrealistic to bring a legal suit.  
**References:** Interview with Alejandro Posadas, researcher at the CIDE law department.

- 39b: *In practice, a typical small retail business can afford to bring a legal suit.*

Score: rarely/0.25



**Comments:** A small retail business can rarely afford to bring a legal suit.  
**References:** Interview with Alejandro Posadas, researcher at the CIDE law department.

- 39c: *In practice, the state provides legal counsel for defendants in criminal cases who cannot afford it.*

Score: almost always/1.00



**Comments:** The state provides legal counsel for defendants in criminal cases who cannot afford it. However, the legal counsel is of very poor quality. This is the reason why many of the defendants who are convicted, re those who could not afford good legal counsel.  
**References:** Interview with Alejandro Posadas, researcher at the CIDE law department.

- 39d: *In practice, all citizens have access to a court of law, regardless of geographic location.*

Score: sometimes/0.50



**Comments:** In areas where the population is predominantly indigenous, there can be problems of access to a court of law.

**References:** Interview with Alejandro Posadas, researcher at the CIDE law department.

**Peer Review Comments:** Corruption in lower courts continues to be rife. Parties to a lawsuit who can afford to bribe judges and court officials often stand a better chance of receiving a favorable judgment.

**40 In law, is there a program to protect witnesses in corruption cases?**

**Score:** yes/1.00



**Comments:** Yes, but only in cases related to organized crime.

**References:** Federal Law Against Organized Crime of 1996.

**41 Are judges safe when adjudicating corruption cases?**

**- 41a: In practice, in the last year, no high court judges have been physically harmed because of adjudicating corruption cases.**

**Score:** no/0.00



**Comments:** Judges have been threatened, mainly by drug cartels. When the judges have been intimidated, physical harm is very probable, however there is no record.

**References:** Interview with Alejandro Posadas, researcher at the CIDE law department.

**- 41b: In practice, in the last year, no high court judges have been killed because of adjudicating corruption cases.**

**Score:** no/0.00



**Comments:** High court judges have been assassinated last year in drug-related cases.






**References:** Interview with Alejandro Posadas, researcher at the CIDE law department.

# Mexico: Administration and Civil Service

## Sub-Category: IV-1/Civil Service Regulations

|    | Indicators  | Scores |
|----|---|--------|
| 42 | <a href="#">Are there national regulations for the civil service?</a>                         | 0.67   |
| 43 | <a href="#">Is the law governing the administration and civil service effective?</a>          | 0.38   |
| 44 | <a href="#">In law, are there conflict of interest regulations for senior civil servants?</a> | 1.00   |
| 45 | <a href="#">Can citizens access the asset disclosure records of senior civil servants?</a>    | 0.00   |

### Indicator and sub-Indicator Details

|           |  |
|-----------|--|
| <b>42</b> | <b>Are there national regulations for the civil service?</b>   |
|           | <p><b>- 42a: In law, there are regulations requiring an impartial and independent civil service.</b></p> <p>Score: yes/1.00 </p> <p><b>Comments:</b> Yes, there are regulations requiring an impartial and independent civil service.<br/> <b>References:</b> Law of the Professional Civil Service of the Federal Public Administration 2003.</p> <hr/> <p><b>- 42b: In law, there are regulations to prevent nepotism within the civil service.</b></p> <p>Score: yes/1.00 </p> <p><b>Comments:</b> Yes, there are regulations to prevent nepotism within the civil service.<br/> <b>References:</b> Law of the Professional Civil Service of the Federal Public Administration 2003.</p> <hr/> <p><b>- 42c: In law, there are regulations to prevent cronyism/patronage within the civil service.</b></p> <p>Score: yes/1.00 </p> <p><b>Comments:</b> Yes, there are regulations to prevent cronyism/patronage within the civil service.<br/> <b>References:</b> Law of the Professional Civil Service of the Federal Public Administration 2003.</p> <hr/> <p><b>- 42d: In law, civil servants convicted of corruption are prohibited from future government employment.</b></p> <p>Score: yes/1.00 </p> <p><b>Comments:</b> Yes, a civil servant can be banned from future public employment from one to 20 years.<br/> <b>References:</b> Federal law of responsibilities of the public servants 1982, last amended 2002.</p> <hr/> <p><b>- 42e: In law, there are restrictions for senior public servants entering positions in the private sector.</b></p> <p>Score: no/0.00 </p> <p><b>Comments:</b> There is no law that forbids senior public servants to enter positions in the private sector.<br/> <b>References:</b></p> <hr/> <p><b>- 42f: In law, there are regulations and registers concerning gifts and hospitality for senior civil servants?</b></p> <p>Score: no/0.00 </p> <p><b>Comments:</b> There is no law or regulation that concerns gifts and hospitality for senior civil servants.<br/> <b>References:</b></p> |
| <b>43</b> | <b>Is the law governing the administration and civil service effective?</b>  |
|           | <p><b>- 43a: In practice, civil servants are protected from political interference.</b></p> <p>Score: almost never/0.00 </p> <p><b>Comments:</b> With the new civil service law, which came into effect in 2003, civil servants should be free from political interference.<br/> <b>References:</b> Public Function secretary. <a href="http://www.funcionpublica.gob.mx">www.funcionpublica.gob.mx</a>; Law of the Professional Civil Service</p>   |

of the Federal Public Administration 2003.

**- 43b: In practice, civil servants are appointed according to professional criteria.**

**Score:** sometimes/0.50



**Comments:** With the new civil service law, which came into effect in 2003, civil servants should be appointed according to professional criteria.

**References:** Public Function secretary. [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Law of the Professional Civil Service of the Federal Public Administration 2003.

**Peer Review Comments:** In some government agencies (some examples include the Ministry of Finance, the Ministry of the Economy, and other smaller agencies such as the Federal Commission on Competitiveness and the Federal Institute for Access to Public Information) there are clear and transparent recruiting procedures, which result in hiring based mostly on professional criteria. Of course this is not the case of most agencies, and even in those mentioned there are still some cases of people being hired for their political or family connections.

**- 43c: In practice, civil servants are not employed based on nepotism.**

**Score:** often/0.75



**Comments:** With the new civil service law, which came into effect in October 2003, there should be no nepotism.

**References:** Public Function secretary. [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Law of the Professional Civil Service of the Federal Public Administration 2003.

**Peer Review Comments:** A law against hiring of family members for public employment has existed since 1983 and has been generally observed, again, at the federal level. [Comment 2]: One of the only regulations that have been relatively successful of the 1983 civil service reform was the banning of nepotism in the federal government, which is at best quite limited vis-à-vis the endemic character of this problem up to 1982.

**- 43d: In practice, civil servants are not employed based on cronyism/patronage.**

**Score:** sometimes/0.50



**Comments:** With the new civil service law, which came into effect in October 2003, civil servants should not be employed based on cronyism/patronage.

**References:** Public Function secretary. [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Law of the Professional Civil Service of the Federal Public Administration 2003.

**Peer Review Comments:** The problem of cronyism is difficult to pin down because Mexico is a presidential regime, in which incumbent presidents have great discretion with respect to the allocation of spoils of government. This is seen strongly in their decisions about staffing of the federal administration. It is estimated that an incoming president appoints up to 10,000 individuals to government positions. Is this cronyism? Yes, up to a point, because after all a constitutional prerogative of a president in a presidential system is extensive appointment (a constitutional perspective to this problem would simply highlight that the president is only complying with the law).

**- 43e: In practice, civil servants have clear job descriptions.**

**Score:** almost never/0.00



**Comments:** With the new civil service law, which came into effect in October 2003, civil servants will have clear job descriptions.

**References:** Public Function secretary. [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Law of the Professional Civil Service of the Federal Public Administration 2003.

**- 43f: In practice, in the past year, the government has paid civil servants on time.**

**Score:** almost always/1.00



**Comments:** The government usually pays civil servants on time.

**References:** Public Function secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx)

**- 43g: In practice, civil servants convicted of corruption are prohibited from future government employment.**

**Score:** rarely/0.25



**Comments:** Some civil servants who have been convicted of corruption have been able to get jobs in the local or federal government.

**References:** Arturo del Castillo.

**- 43h: In practice, restrictions on private sector employment for senior public officials are enforced.**

Score: almost never/0.00



**Comments:** There is no restriction that prevents senior public officials from being employed in the private sector.

**References:**

#### 44 In law, are there conflict of interest regulations for senior civil servants?

Score: yes/1.00



**Comments:** Yes, there are conflict of interest regulations for senior civil servants.

**References:** Federal law of responsibilities of the public servants 1982, last amended 2002.

#### 45 Can citizens access the asset disclosure records of senior civil servants?

- 45a: *In law, citizens can access the asset disclosure records of senior civil servants.*

Score: no/0.00



**Comments:** The Federal Law of Administrative Responsibilities of the Public Servants 2002 requires that all civil servants (from department heads up) submit asset disclosure records. These records are only made public if the civil servant agrees. The Federal Law of Transparency and Access to Public Government Information 2002 only obligates the salary of the civil servant to be made public, not the asset disclosure.

**References:** Federal law of Transparency and Access to Public Government Information 2002; Federal Law of Administrative Responsibilities of the Public Servants 2002

- 45b: *In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.*

Score: > 1 year/0.00



**Comments:** The Federal Access to Information Institute has designed the Information Request System that allows citizens to obtain the information they are seeking. Citizens can access this system through the Internet and in 15 working days an answer must be provided. This only includes the asset disclosure if the civil servant allows it to be made public, which almost never happens.

**References:** Public Function secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Federal Access to Information Institute, [www.ifai.org.mx](http://www.ifai.org.mx)

- 45c: *In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.*

Score: almost never/0.00



**Comments:** The Information Request System does not charge its users. This only includes the asset disclosure, if the civil servant allows it to be made public, which almost never happens.

**References:** Public Function secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Federal Access to Information Institute, [www.ifai.org.mx](http://www.ifai.org.mx)

## Mexico: Administration and Civil Service

### Sub-Category: IV-2/Whistle-blowing Measures

|    | Indicators  | Scores |
|----|---|--------|
| 46 | <a href="#">Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?</a>             | 0.00   |
| 47 | <a href="#">Is there an effective internal mechanism (i.e. phone hotline, e-mail address, local office) where civil servants can report corruption?</a> | 0.94   |

#### Indicator and sub-Indicator Details

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

- 46a: *In law, civil servants who report corruption are protected from recrimination or other negative consequences.*

Score: no/0.00



**Comments:** There is no law that protects civil servants who report corruption from recrimination.

**References:**

**- 46b: In practice, civil servants who report corruption are protected from recrimination or other negative consequences.**

**Score:** almost never/0.00



**Comments:** There is no law that protects civil servants who report corruption from recrimination.

**References:**

**- 46c: In law, private sector employees who report corruption are protected from recrimination or other negative consequences.**

**Score:** no/0.00



**Comments:** There is no law that protects private sector employees who report corruption from recrimination.

**References:**

**- 46d: In practice, private sector employees who report corruption are protected from recrimination or other negative consequences.**

**Score:** almost never/0.00



**Comments:** There is no law that protects private sector employees who report corruption from recrimination.

**References:**

**47 Is there an effective internal mechanism (i.e. phone hotline, e-mail address, local office) where civil servants can report corruption?**

**- 47a: In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.**

**Score:** almost always/1.00



**Comments:** There is a telephone hotline on which civil servants and citizens can report corruption. The hotline has a full-time staff, which enables citizens to make reports 365 days a year and 24 hours a day.

**References:** Public Function Secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Actel, Phone Assistance System for Citizens.

**- 47b: In practice, the internal reporting mechanism for public sector corruption receives regular funding.**

**Score:** almost always/1.00



**Comments:** The telephone hotline is part of the General Direction of Assistance to Citizens of the Public Function Secretary, which receives regular funding.

**References:** Public Function Secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Actel, Phone Assistance System for Citizens.

**- 47c: In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.**

**Score:** < 3 months/0.75



**Comments:** It takes approximately 45 days for a complaint to be acted upon.

**References:** Public Function Secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Actel, Phone Assistance System for Citizens.

**- 47d: In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.**

**Score:** almost always/1.00



**Comments:** The complaints are filed and sent to the internal comptroller offices of the affected agency. The internal comptroller then initiates an investigation. It takes an average of 45 days for an investigation to be started since the complaint is sent to the internal comptroller office.








**References:** Public Function Secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Actel, Phone Assistance System for Citizens.

# Mexico: Administration and Civil Service

## Sub-Category: IV-3/Procurement

|    | Indicators  | Scores |
|----|---|--------|
| 48 | <a href="#">Is the public procurement process effective?</a>        | 0.72   |
| 49 | <a href="#">Can citizens access the public procurement process?</a> | 0.90   |

### Indicator and sub-Indicator Details

|           |   |
|-----------|---|
| <b>48</b> | <b>Is the public procurement process effective?</b>   |
|           | <p><b>- 48a: In law, there are conflict of interest regulations for public procurement officials.</b></p> <p><b>Score:</b> yes/1.00 </p> <p><b>Comments:</b> Yes, there are conflict of interest regulations.<br/> <b>References:</b> Federal Law of administrative responsibilities of the public servants 2002.</p> <hr/> <p><b>- 48b: In practice, the conflict of interest regulations for public procurement officials are enforced.</b></p> <p><b>Score:</b> sometimes/0.50 </p> <p><b>Comments:</b> The conflict of interest regulations are enforced sometimes.<br/> <b>References:</b> Public Function Secretary; www.funcionpublica.gob.mx</p> <hr/> <p><b>- 48c: In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.</b></p> <p><b>Score:</b> yes/1.00 </p> <p><b>Comments:</b> Yes, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.<br/> <b>References:</b> Organic law of the Federal Public Administration; Federal Law of administrative responsibilities of the public servants</p> <hr/> <p><b>- 48d: In law, all major procurements require competitive bidding.</b></p> <p><b>Score:</b> yes/1.00 </p> <p><b>Comments:</b> In a public procurement at least three different individuals have to participate.<br/> <b>References:</b> Public Sector Law of acquisitions, leasing and services 2000, last amended 2003.<br/> <b>Peer Review Comments:</b> The key point to emphasize is the preponderance of contracts and resource allocation based on discretion, rather than a rule-based, transparent, fair process.</p> <hr/> <p><b>- 48e: In law, strict formal requirements limit the extent of sole sourcing.</b></p> <p><b>Score:</b> no/0.00 </p> <p><b>Comments:</b> In law there is no limit to sole sourcing.<br/> <b>References:</b> Public Sector Law of acquisitions, leasing and services 2000, last amended 2003..</p> <hr/> <p><b>- 48f: In law, unsuccessful bidders can instigate an official review of procurement decisions.</b></p> <p><b>Score:</b> yes/1.00 </p> <p><b>Comments:</b> The Public Function Secretary can receive complaints from unsuccessful bidders and start an official review of procurement decisions.<br/> <b>References:</b> Public Sector Law of acquisitions, leasing and services 2000, last amended 2003..</p> <hr/> <p><b>- 48g: In law, unsuccessful bidders can challenge procurement decisions in a court of law.</b></p> <p><b>Score:</b> yes/1.00 </p> <p><b>Comments:</b> Unsuccessful bidders can challenge the ruling of the Public Function Secretary in a court of law.<br/> <b>References:</b> Public Sector Law of acquisitions, leasing and services 2000, last amended 2003..</p> <hr/> <p><b>- 48h: In law, companies guilty of major violations of procurement regulations (i.e. bribery) are</b></p> |

**prohibited from participating in procurement bids.**

Score: yes/1.00



**Comments:** Companies guilty of major procurement violations are sanctioned by the Public Function Secretary with a fine of at least 50 monthly minimum wages and at most 1,000 monthly minimum wages. In addition, the Public Function Secretary can temporarily forbid these companies from participating in procurement bids for a minimum of three months and a maximum of five years.

**References:** Public Sector Law of Acquisitions, Leasing and Services 2000 last amended 2003.

**- 48i: In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.**

Score: almost never/0.00



**Comments:** There has not been a case where a company was found guilty of major procurement violations.

**References:**

**Peer Review Comments:** In practice, companies guilty of major violations of procurement regulations are able to circumvent the system, either through direct private lobbying of the federal executive, or short-circuiting the judicial process with long, expensive processes. This will not change until there is a special financial prosecutor at the federal level.

#### 49 Can citizens access the public procurement process?

**- 49a: In law, citizens can access public procurement regulations.**

Score: yes/1.00



**Comments:** Yes, citizens can access public procurement regulations.

**References:** Federal law of Transparency and Access to Public Government Information.

**- 49b: In practice, citizens can access public procurement regulations within a reasonable time period.**

Score: < 1 month/1.00



**Comments:** The Federal Access to Information Institute has designed the Information Request System that allows citizens to obtain the information they are seeking. Citizens can access this system through the Internet and in 15 working days an answer must be provided.

**References:** Public Function secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Federal Access to Information Institute, [www.ifai.org.mx](http://www.ifai.org.mx)

**- 49c: In practice, citizens can access public procurement regulations at a reasonable cost.**

Score: almost always/1.00



**Comments:** The Information Request System does not charge its users.

**References:** Public Function secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Federal Access to Information Institute, [www.ifai.org.mx](http://www.ifai.org.mx)

**Peer Review Comments:** The information request system does not charge its users when the information can be made available electronically (e.g. through the Internet). However, in those cases when the information has to be made available physically, such as in a diskette or by photocopies, the information request system charges its users for the cost necessary to make the information available, which is usually very accessible.

**- 49d: In practice, major public procurements are widely advertised.**

Score: often/0.75



**Comments:** Most of the major public procurements are widely advertised.

**References:** Public Function Secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx)

**- 49e: In practice, citizens can access the results of major public procurement bids.**

Score: often/0.75



**Comments:** Citizens can access most of the major public procurement bids.

**References:** Public Function Secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Federal law of Transparency and Access to Public Government Information 2002.

# Mexico: Administration and Civil Service

## Sub-Category: IV-4/Privatization

|    | Indicators  | Scores |
|----|---|--------|
| 50 | <a href="#">Is the privatization process effective?</a>                             | 0.00   |
| 51 | <a href="#">Can citizens access the terms and conditions of privatization bids?</a> | 0.00   |

### Indicator and sub-Indicator Details

#### 50 Is the privatization process effective?

- 50a: *In law, all businesses are eligible to compete for privatized state assets.*

Score: no/0.00



**Comments:** There are no laws or regulations concerning the privatization process.

**References:** Interview with Laura Sour, director of the Budget and Public Spending Program at CIDE

- 50b: *In law, there are conflict of interest regulations for government officials involved in privatization.*

Score: no/0.00



**Comments:** There are no laws or regulations concerning the privatization process.

**References:**

- 50c: *In practice, conflict of interest regulations for government officials involved in privatization are enforced.*

Score: almost never/0.00



**Comments:** There are no laws or regulations concerning the privatization process.

**References:**

#### 51 Can citizens access the terms and conditions of privatization bids?

- 51a: *In law, citizens can access the terms and conditions of privatization bids.*

Score: no/0.00



**Comments:** There are no laws or regulations concerning the privatization process.

**References:**

**Peer Review Comments:** 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.

- 51b: *In practice, citizens can access the terms and conditions of privatization bids within a reasonable time period.*

Score: > 1 year/0.00



**Comments:** There are no laws or regulations concerning the privatization process.

**References:**

- 51c: *In practice, citizens can access the terms and conditions of privatization bids at a reasonable cost.*

Score: almost never/0.00



**Comments:** There are no laws or regulations concerning the privatization process.





**References:**

# Mexico: Oversight and Regulatory Mechanisms

## Sub-Category: V-1/National Ombudsman

|    | Indicators  | Scores |
|----|---|--------|
| 52 | <a href="#">In law, is there a national ombudsman, public protector or equivalent agency covering the entire public sector?</a> | 1.00   |
| 53 | <a href="#">Is the national ombudsman effective?</a>  | 0.83   |
| 54 | <a href="#">Can citizens access the reports of the ombudsman?</a>   | 1.00   |

### Indicator and sub-Indicator Details

|    |   |
|----|---|
| 52 | <b>In law, is there a national ombudsman, public protector or equivalent agency covering the entire public sector?</b>  |
|    | <p><b>Score:</b> yes/1.00 </p> <p><b>Comments:</b> There is the National Commission of Human Rights (CNDH) which is an ombudsman that specializes in the protection of human rights.</p> <p><b>References:</b> National Human Rights Commission law.</p> <p><b>Peer Review Comments:</b> It is true that there is no traditionally defined national ombudsman covering the entire public sector; however, both the National Commission of Human Rights and the Secretary of Public Function (SFP) take one or more of the roles traditionally associated with an ombudsman. In particular, SFP has the following information in its Web page: "Mission: To lower corruption levels in the country and provide complete transparency to the management and performance of public servants and institutions of the National Public Administration." "2020 Vision: Society trusts and believes in the National Public Administration." "Objectives: * To prevent and lower corruption and impunity, and promote quality improvement in public management. * To control and detect corruption. * To punish corruption and impunity. * To give transparency to public management and achieve society's participation." Although some desirable characteristics of an ombudsman are not fulfilled by SFP, e.g. the Secretary is designated and can be removed at any time by the president, it does have some characteristics that deserve better scores than those received in this section. [Comment 2]: The National Human Rights Commission is an ombudsman that deals with human rights abuses, but this is often defined broadly to include cases of corruption and maladministration of justice. Therefore, it is close to the kind of ombudsmen that exist in other countries, though not quite the same as some (e.g., the Scandinavian ombudsmen). The CNDH is only partially effective in the execution of its mandate, and it has limited legal authority to ensure compliance with its decisions, but there have been important cases where the CNDH has effectively forced the public administration to change arbitrary and corrupt practices.</p> |
| 53 | <b>Is the national ombudsman effective?</b>   |
|    | <p><b>- 53a: In law, the ombudsman is protected from political interference.</b></p> <p><b>Score:</b> yes/1.00 </p> <p><b>Comments:</b> The president of the Human Rights Commission is elected by the senate and can only be removed under reasonable cause. It has financial autonomy.</p> <p><b>References:</b> National Human Rights Commission law.</p> <hr/> <p><b>- 53b: In practice, the ombudsman is protected from political interference.</b></p> <p><b>Score:</b> almost always/1.00 </p> <p><b>Comments:</b> Most of the recommendations made by the Commission are for the executive power (local or federal). The executive power hasn't done anything to counteract this.</p> <p><b>References:</b> National Human Rights Commission. <a href="http://www.cndh.org.mx">www.cndh.org.mx</a></p> <hr/> <p><b>- 53c: In practice, the ombudsman is protected from removal without relevant justification.</b></p> <p><b>Score:</b> almost always/1.00 </p> <p><b>Comments:</b> Since the creation of the Commission, no president has been removed. They have left the office only because their terms have ended.</p> <p><b>References:</b> National Human Rights Commission. <a href="http://www.cndh.org.mx">www.cndh.org.mx</a></p> <hr/> <p><b>- 53d: In practice, the agency has a professional, full-time staff.</b></p>  |

Score: almost always/1.00



**Comments:** The agency has a full-time staff.

**References:** National Human Rights Commission. [www.cndh.org.mx](http://www.cndh.org.mx) National Human Rights Commission law.

**- 53e: In practice, agency appointments support the independence of the agency.**

Score: almost always/1.00



**Comments:** The appointments are made to support the independence of the agency. Most of the recommendations made by the Commission are for the executive power (local or federal). The agency hasn't showed any signs of not being independent in its decisions.

**References:** National Human Rights Commission. [www.cndh.org.mx](http://www.cndh.org.mx) National Human Rights Commission law.

**- 53f: In practice, the agency receives regular funding.**

Score: almost always/1.00



**Comments:** The agency has financial autonomy: it can elaborate its own budget.

**References:** National Human Rights Commission. [www.cndh.org.mx](http://www.cndh.org.mx) National Human Rights Commission law.

**- 53g: In practice, the agency makes regular reports to the legislature.**

Score: almost always/1.00



**Comments:** The Commission makes regular reports to the legislature.

**References:** National Human Rights Commission. [www.cndh.org.mx](http://www.cndh.org.mx) National Human Rights Commission law.

**- 53h: In practice, the government acts on the findings of the agency.**

Score: almost never/0.00



**Comments:** The recommendations of the Commission are not mandatory and the government is not obliged to act on the findings. The recommendations are mere moral testimonies.

**References:** National Human Rights Commission. [www.cndh.org.mx](http://www.cndh.org.mx); National Human Rights Commission law.

**- 53i: In practice, the agency acts on citizen complaints within a reasonable time period.**

Score: < 6 months/0.50



**Comments:** The agency makes a recommendation about six months after it receives a complaint.

**References:** National Human Rights Commission. [www.cndh.org.mx](http://www.cndh.org.mx)

## 54 Can citizens access the reports of the ombudsman?

**- 54a: In law, citizens can access reports of the ombudsman.**

Score: yes/1.00



**Comments:** Citizens can access reports of the Human Rights Commission.

**References:** Federal Law of Transparency and Access to Public Government Information.

**- 54b: In practice, citizens can access the reports of the ombudsman within a reasonable time period.**

Score: < 1 month/1.00



**Comments:** The Federal Access to Information Institute has designed a system that allows citizens to obtain the information they are seeking. It is called the Information Request System. Citizens can access this system through the Internet. In 15 working days an answer must be provided.

**References:** Public Function secretary. [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Federal Access to Information Institute. [www.ifai.org.mx](http://www.ifai.org.mx)

**- 54c: In practice, citizens can access the reports of the ombudsman at a reasonable cost.**

Score: almost always/1.00



**Comments:** The Information Request System doesn't charge its users any money.








**References:** Public Function secretary. [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Federal Access to Information Institute. [www.ifai.org.mx](http://www.ifai.org.mx)

# Mexico: Oversight and Regulatory Mechanisms

## Sub-Category: V-2/Supreme Audit Institution

|    | Indicators   | Scores |
|----|--|--------|
| 55 | <a href="#">In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?</a> | 1.00   |
| 56 | <a href="#">Is the supreme audit institution effective?</a>  | 1.00   |
| 57 | <a href="#">Can citizens access reports of the supreme audit institution?</a>  | 1.00   |

### Indicator and sub-Indicator Details

|    |   |
|----|---|
| 55 | <b>In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?</b>   |
|    | <p>Score: yes/1.00 </p> <p>Comments: There is a national supreme audit institution.<br/>References: Federal law of fiscal oversight 2000.</p>   |
| 56 | <b>Is the supreme audit institution effective?</b>  |
|    | <p>- 56a: <i>In law, the supreme audit institution is protected from political interference.</i></p> <p>Score: yes/1.00 </p> <p>Comments: The head of the supreme audit institution is elected by the Congress and can only be removed for reasonable cause.<br/>References: Federal law of fiscal oversight 2000.</p> <p>- 56b: <i>In practice, the head of the agency is protected from removal without relevant justification.</i></p> <p>Score: almost always/1.00 </p> <p>Comments: The head of the agency has never been removed.<br/>References: Federal Audit Institution, www.asf.gob.mx; Federal law of fiscal oversight 2000.</p> <p>- 56c: <i>In practice, the agency has a professional, full-time staff.</i></p> <p>Score: almost always/1.00 </p> <p>Comments: The agency has a full-time staff.<br/>References: Federal Audit Institution, www.asf.gob.mx; Federal law of fiscal oversight 2000.</p> <p>- 56d: <i>In practice, agency appointments support the independence of the agency.</i></p> <p>Score: almost always/1.00 </p> <p>Comments: Agency appointments support the independence of the institution.<br/>References: Federal Audit Institution, www.asf.gob.mx; Federal law of fiscal oversight 2000.</p> <p>- 56e: <i>In practice, the agency receives regular funding.</i></p> <p>Score: almost always/1.00 </p> <p>Comments: The agency is autonomous and receives regular funding. However, the funding is not sufficient.<br/>References: Federal Audit Institution, www.asf.gob.mx; Federal law of fiscal oversight 2000.</p> <p>- 56f: <i>In practice, the agency makes regular reports to the legislature.</i></p> <p>Score: almost always/1.00 </p> <p>Comments: About every six months the agency makes reports to the legislature.<br/>References: Federal Audit Institution, www.asf.gob.mx; Federal law of fiscal oversight 2000.</p> <p>- 56g: <i>In practice, the government acts on the findings of the agency.</i></p> |

Score: almost always/1.00

Positive  Negative

**Comments:** The government acts on approximately 90 percent of the findings of the agency.

**References:** Interview with Algonso García Fernández, chief advisor of the General Auditor. Support program of the General Auditor. Federal Audit Institution.

#### 57 Can citizens access reports of the supreme audit institution?

- 57a: *In law, citizens can access reports of the agency.*

Score: yes/1.00

Positive  Negative

**Comments:** Yes, citizens can access reports of the agency.

**References:** Federal law of Transparency and Access to Public Government Information 2002.

- 57b: *In practice, citizens can access the agency reports within a reasonable time period.*

Score: < 1 month/1.00

Positive  Negative

**Comments:** The Federal Access to Information Institute has designed the Information Request System that allows citizens to obtain the information they are seeking. Citizens can access this system through the Internet and in 15 working days an answer must be provided.

**References:** Public Function secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Federal Access to Information Institute, [www.ifai.org.mx](http://www.ifai.org.mx)

- 57c: *In practice, citizens can access the agency reports at a reasonable cost.*

Score: almost always/1.00

Positive  Negative

**Comments:** The Information Request System does not charge its users.

**References:** Public Function secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Federal Access to Information Institute, [www.ifai.org.mx](http://www.ifai.org.mx)

**Peer Review Comments:** The information request system does not charge its users when the information can be made available electronically (e.g. through the Internet). However, in those cases when the information has to be made available physically, such as in a diskette or by photocopies, the information request system charges its users for the cost necessary to make the information available (such as shipping charges).

## Mexico: Oversight and Regulatory Mechanisms

### Sub-Category: V-3/Taxes and Customs

|    | Indicators  | Scores |
|----|---|--------|
| 58 | <a href="#">In law, is there a national tax collection agency?</a>                                      | 1.00   |
| 59 | <a href="#">Is the tax collection agency effective?</a>   | 0.58   |
| 60 | <a href="#">In practice, are tax laws enforced uniformly and without discrimination?</a>                | 0.25   |
| 61 | <a href="#">In law, is there a national customs and excise agency?</a>                                  | 1.00   |
| 62 | <a href="#">Is the customs and excise agency effective?</a>   | 0.92   |
| 63 | <a href="#">In practice, are customs and excise laws enforced uniformly and without discrimination?</a> | 0.25   |

### Indicator and sub-Indicator Details

#### 58 In law, is there a national tax collection agency?

Score: yes/1.00

Positive  Negative

**Comments:** There is a collection agency called the Tax Administration Service.

**References:** Tax Service Administration interior regulation.

**Peer Review Comments:** The Tax Administration Service depends on the Ministry of Finance. [Comment 2]: Taxpayers can resolve disputes with the protection law. They can protect themselves from taxes that are considered unconstitutional. (See: Protection law 1936, last amended 2001, regulation of the Articles 103 and 107 of the Constitution.)

#### 59 Is the tax collection agency effective?

- 59a: *In practice, the tax collection agency has a professional, full-time staff.*

Score: often/0.75



**Comments:** The tax collection agency has a full-time staff.

**References:** Tax Service Administration, [www.sat.gob.mx](http://www.sat.gob.mx)

**Peer Review Comments:** Yes, the agency has a solid, professional staff (and they are generally recognized as less politicized than other civil servants), but as yet there is no institutional insulation against cronyism and patronage in the agency. This may change with the civil service law, but it remains to be seen.

- 59b: *In practice, the agency receives regular funding.*

Score: almost always/1.00



**Comments:** The agency receives regular funding.

**References:** Tax Service Administration, [www.sat.gob.mx](http://www.sat.gob.mx)

- 59c: *In practice, the agency makes regular reports to the legislature.*

Score: almost never/0.00



**Comments:** Recently the agency was asked to make regular reports (every three months) about performance and tax evasion to the legislature. The agency has not made a report yet, but possibly by December 2003 the first report will be made.

**References:** Interview with Laura Sour, director of the Budget and Public Spending Program at CIDE.

**60 In practice, are tax laws enforced uniformly and without discrimination?**

Score: rarely/0.25



**Comments:** The tax laws are enforced patchily and with discrimination. Citizens and corporations can appeal some taxes under the protection law. If the resolution favors the taxpayer, it only favors the citizen or organization that presented the case; other citizens and corporations cannot benefit from that resolution. There is no jurisprudence over the resolution of a specific case. All the citizens and businesses in the informal economy do not pay any taxes.

**References:** Interview with Laura Sour, director of the Budget and Public Spending Program at CIDE.

**61 In law, is there a national customs and excise agency?**

Score: yes/1.00



**Comments:** The General Customs Administration, which depends of the Tax Collection Agency (SAT), has the functions of fiscalizing, watching and controlling the entrance and exit of merchandise and the way it is transported, assuring the fulfillment of the regulations about foreign trade established by the Ministry of Finance and other Ministries, etc.

**References:** Customs law 1981, last amended 2002. <http://www.aduanas.sat.gob.mx>

**Peer Review Comments:** The general administration of customs is the agency that receives the appeal; it is part of the tax collection agency. Customs administrative procedures are the ones that relate to the appeal mechanism.

**62 Is the customs and excise agency effective?**

- 62a: *In practice, the customs and excise agency has a professional, full-time staff.*

Score: almost always/1.00



**Comments:** In practice, the customs and excise agency has a professional, full-time staff.

**References:** Customs law.

- 62b: *In practice, the agency receives regular funding.*

Score: often/0.75



**Comments:** In practice, the agency often receives regular funding.

**References:** Customs law.

- 62c: *In practice, the agency makes regular reports to the legislature.*

Score: almost always/1.00



**Comments:** The agency almost always makes regular reports to the legislature.

**References:** Customs law.

**63 In practice, are customs and excise laws enforced uniformly and without discrimination?**

Score: rarely/0.25

Positive

Negative

**Comments:** There is great deal of discretion in the application of the law and the decisions made.

**References:** Interview.

**Peer Review Comments:** A key point to emphasize is that Customs and Excise are the direct prerogative of the Secretaria de Hacienda. On the one hand, this is one of the only professionalized civil service branches of government that has allowed a constant monitoring and analysis of changing patterns of imports-exports in Mexico. On the other hand, given that at least the four top appointments in the federal ministries are part of the presidential spoils, Customs and Excise remain under great suspicion over the unevenness of implementation. Equally worrying is the collusion between members of Customs and Excise with large scale smuggling to the United States, in particular the drug cartels, as well as other hideous activities, such as human organ and children smuggling.

## Mexico: Oversight and Regulatory Mechanisms

### Sub-Category: V-4/Financial Sector Regulation

|    | Indicators   | Scores |
|----|--|--------|
| 64 | <a href="#">In law, is there a central bank?</a>   | 1.00   |
| 65 | <a href="#">In practice, is the central bank independent of the executive?</a>                       | 1.00   |
| 66 | <a href="#">In law, is there a financial regulatory agency overseeing publicly listed companies?</a> | 1.00   |
| 67 | <a href="#">Is the financial regulatory agency effective?</a>  | 0.70   |
| 68 | <a href="#">Can citizens access the financial records of publicly listed companies?</a>              | 0.83   |
| 69 | <a href="#">Are business licenses available to all citizens?</a>                                     | 0.38   |

#### Indicator and sub-Indicator Details

##### 64 In law, is there a central bank?

Score: yes/1.00

Positive

Negative

**Comments:** Yes, there is a central bank called Banco de México.

**References:** Article 28 of the Constitution.

**Peer Review Comments:** General policies of the bank, such as inflation targets are made public. Recently the central bank auctioned off some of its reserves; this was made public and the process was conducted in a transparent manner. This general information is included on the central bank Web page ([www.banxico.gob.mx](http://www.banxico.gob.mx)). However, information about what was discussed in the meetings of the central bank's board cannot be accessed because they are deemed classified according to the Bank of Mexico law and the Federal Law of Transparency and Access to Public Government Information, Article 45, subpart II.

##### 65 In practice, is the central bank independent of the executive?

Score: almost always/1.00

Positive

Negative

**Comments:** The macroeconomic stability that has reigned in Mexico since 1995 and the Banco de México's conflicts with the treasury secretary are further proof of its independence.

**References:** Interview with Joaquín Martínez, executive officer of the legal department of Banco de México.

**Peer Review Comments:** In law, the central bank is autonomous. Members of the governing board are proposed by the president and ratified by the Senate. (See: Article 28 of the Constitution. Bank of Mexico Law 1994, last amended in 1999.)

##### 66 In law, is there a financial regulatory agency overseeing publicly listed companies?

Score: yes/1.00

Positive

Negative

**Comments:** The National Banking and Securities Commission is the regulatory agency that oversees the financial system.

**References:** National Banking and Securities Commission law 1995, last amended 2001.

##### 67 Is the financial regulatory agency effective?

- 67a: *In law, the financial regulatory agency is protected from political interference.*



**Comments:** The disciplinary decisions are confidential. Even some employees of a publicly listed company cannot access the records of disciplinary decisions for their own company.

**References:** Interview with Laura Sour, director of the Budget and Public Spending Program at CIDE; Interview with members of the executive staff of Banamex.

**- 68e: In practice, citizens can access the financial records of publicly listed companies within a reasonable time period.**

**Score:** < 1 month/1.00



**Comments:** This information can be obtained, within a reasonable time period, in press releases on financial Web sites or in financial information systems, such as Bloomberg or Reuters.

**References:** Interview with Laura Sour, director of the Budget and Public Spending Program at CIDE. Interview with members of the executive staff of Banamex

**- 68f: In practice, citizens can access the financial records of publicly listed companies at a reasonable cost.**

**Score:** almost always/1.00



**Comments:** This information can be obtained, at a reasonable cost, in press releases on financial Web sites or in financial information systems, such as Bloomberg or Reuters.

**References:** Interview with Laura Sour, director of the Budget and Public Spending Program at CIDE. Interview with members of the executive staff of Banamex

## 69 Are business licenses available to all citizens?

**- 69a: In law, business licenses are not restricted to domestically-owned enterprises.**

**Score:** yes/1.00



**Comments:** Yes, foreign enterprises are allowed to have a business license.

**References:** General law of Corporations (1934).

**- 69b: In law, a complaint mechanism exists if a business license request is denied.**

**Score:** no/0.00



**Comments:** There is no complaint mechanism.

**References:** General law of Corporations.

**- 69c: In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.**

**Score:** < 6 months/0.50



**Comments:** Citizens can obtain a business license, like a small import business, in approximately four months.

**References:** Interview with Laura Sour, director of the Budget and Public Spending Program at CIDE.

**- 69d: In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.**

**Score:** almost never/0.00



**Comments:** Citizens have to undertake several bureaucratic procedures to obtain a business license. A lot of personal time has to be invested in the different procedures.







**References:** Interview with Laura Sour, director of the Budget and Public Spending Program at CIDE.

# Mexico: Anti-Corruption Mechanisms and Rule of Law

## Sub-Category: VI - 1/Anti-Corruption Law

|    | Indicators   | Scores |
|----|--|--------|
| 70 | <a href="#">In law, is there legislation criminalizing corruption?</a> | 0.89   |
| 71 | <a href="#">In practice, are anti-corruption laws enforced?</a>        | 0.75   |

### Indicator and sub-Indicator Details

|    |   |
|----|---|
| 70 | <b>In law, is there legislation criminalizing corruption?</b>   |
|    | <b>- 70a: In law, attempted corruption is illegal.</b>  |
|    | Score: no/0.00    |
|    | <b>Comments:</b> Attempted corruption is not illegal.<br><b>References:</b> Interview with Alejandro Posadas, researcher at the CIDE law department.  |
|    | <b>- 70b: In law, extortion is illegal.</b>   |
|    | Score: yes/1.00   |
|    | <b>Comments:</b> Yes, extortion is illegal.<br><b>References:</b> Federal Penal Code 1931 last amended 2003. In Section, 10, chapter 6, article 218; Section 10, chapter 10, article 222; Section 10, chapter 11, article 222 bis.  |
|    | <b>- 70c: In law, offering a bribe (i.e. active corruption) is illegal.</b>   |
|    | Score: yes/1.00   |
|    | <b>Comments:</b> Yes, offering a bribe is illegal.<br><b>References:</b> Federal Penal Code 1931 last amended 2003. In Section, 10, chapter 6, article 218; Section 10, chapter 10, article 222; Section 10, chapter 11, article 222 bis.   |
|    | <b>- 70d: In law, receiving a bribe (i.e. passive corruption) is illegal.</b>   |
|    | Score: yes/1.00   |
|    | <b>Comments:</b> Yes, receiving a bribe is illegal.<br><b>References:</b> Federal Penal Code 1931 last amended 2003. In Section, 10, chapter 6, article 218; Section 10, chapter 10, article 222; Section 10, chapter 11, article 222 bis.  |
|    | <b>- 70e: In law, bribing a foreign official while in domestic territory is illegal.</b>  |
|    | Score: yes/1.00   |
|    | <b>Comments:</b> Yes, bribing a foreign official while in domestic territory is illegal.<br><b>References:</b> Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD) signed by Mexico in 1997, ratified by the Mexican senate in 1999. In the Mexican legislation it is contemplated in the Federal Penal Code 1931, last amended 2003 in Section 10, chapter 11, article 222 bis.<br><b>Peer Review Comments:</b> Bribing a foreign official was also made illegal with the OECD convention. |
|    | <b>- 70f: In law, using public resources for private gain is illegal.</b>   |
|    | Score: yes/1.00   |
|    | <b>Comments:</b> Using public resources for private gain is illegal. This includes the use of financial resources and the use of power derived from a position.<br><b>References:</b> Federal Penal Code 1931 last amended 2003. In Section 10, chapter 2, article 214; Section 10, chapter 3, article 215; Section 10, chapter 5, article 217; Section 10, chapter 8, article 220; Section 10, chapter 9, article 221; Section 10, chapter 12, article 223; Section 10, chapter 13, article 224.   |
|    | <b>- 70g: In law, using confidential state information for private gain is illegal.</b>   |

Score: yes/1.00



**Comments:** Yes, using confidential state information for private gain is illegal.

**References:** Federal Penal Code 1931, last amended 2003. In Section 10, chapter 2, article 214; Section 10, chapter 8, article 220.

- 70h: *In law, money laundering is illegal.*

Score: yes/1.00



**Comments:** Article 400bis of the Federal Penal Code prohibits money laundering of money or assets that represent the profit of an illegal activity. The term "illegal activity" comprises both domestic and foreign bribery for purposes of the Mexican legislation. Article 194 of the Federal Penal Code prohibits any activity that helps finance or facilitate any activity related to drug trafficking.

**References:** Federal Penal Code 1931, last amended 2003. Section 23, chapter 2, article 400 bis; Section 7, chapter 1, article 194.

- 70i: *In law, conspiracy to commit a crime (i.e. organized crime) is illegal.*

Score: yes/1.00



**Comments:** Yes, organized crime is illegal.

**References:** Federal law against organized crime 1996.

## 71 In practice, are anti-corruption laws enforced?

Score: often/0.75



**Comments:** There has been an emphasis in this presidential administration to fight corruption, hence there have been significant efforts to enforce anti-corruption laws.

**References:** Public Function Secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx)

# Mexico: Anti-Corruption Mechanisms and Rule of Law

## Sub-Category: V1-2/Anti-Corruption Agency

|    | Indicators  | Scores |
|----|---|--------|
| 72 | <a href="#">In law, is there an agency (or group of agencies) with a legal mandate to address corruption?</a> | 1.00   |
| 73 | <a href="#">Is the main anti-corruption agency effective?</a>   | 0.47   |
| 74 | <a href="#">Can citizens access the main anti-corruption agency?</a>  | 0.75   |

### Indicator and sub-Indicator Details

#### 72 In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Score: yes/1.00



**Comments:** Yes, the Public Function Secretary addresses corruption.

**References:** Interior Regulations of the Public Function Secretary.

**Peer Review Comments:** The National Human Rights Commission oversees policy abuses and some acts of corruption (though it has limited enforcement faculties).

#### 73 Is the main anti-corruption agency effective?

- 73a: *In law, the agency is protected from political interference.*

Score: no/0.00



**Comments:** The agency is a secretariat so it depends on the executive.

**References:** Organic Federal law of Public management.

- 73b: *In practice, the agency is protected from political interference.*

Score: almost never/0.00



**Comments:** The president has full discretion to name the head of the agency.

**References:** Article 89 of the Constitution, subpart II.

**Peer Review Comments:** From middle-upper public appointments (at least the four or five top posts in all the federal and state agencies) upwards, designations follow the logic of the spoils system encoded in the presidential system. The president retains all discretion over the dismissal of such top ranking officials, on whom responsibility for the running of anti-corruption agencies lie. Media reports suggest that democratization has not changed things at all, and that, for example, the ex-secretary of environment was forced to resign given sensitive charges of corruption close to the presidential entourage.

**- 73c: In practice, the head of the agency is protected from removal without relevant justification.**

**Score:** almost never/0.00



**Comments:** The president has full discretion to name the head of the agency.

**References:** Article 89 of the Constitution, subpart II.

**- 73d: In practice, appointments to the agency are based on professional criteria.**

**Score:** sometimes/0.50



**Comments:** The secretariat is being transformed. A new law which requires the federal public administration to have an impartial and independent civil service was enacted in October 2003.

**References:** Public Function Secretary. [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx)

**- 73e: In practice, the agency has a professional, full-time staff.**

**Score:** often/0.75



**Comments:** The secretariat is being transformed. A new law which requires the federal public administration to have an impartial and independent civil service was enacted in October 2003.

**References:** Public Function Secretary. [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx)

**- 73f: In practice, the agency receives regular funding.**

**Score:** almost always/1.00



**Comments:** The agency does receive regular funding.

**References:** Public Function Secretary. [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx)

**- 73g: In practice, the agency makes regular reports to the legislature.**

**Score:** almost never/0.00



**Comments:** The only report that is presented to the legislature is when the president makes his annual report. The report includes what his administration has done to fight corruption. The Public Function Secretary does not report independently of the executive to the legislature.

**References:** Article 69 of the Constitution

**- 73h: In practice, the agency has sufficient powers to carry out its mandate.**

**Score:** almost always/1.00



**Comments:** It has sufficient powers to carry out a full investigation.

**References:** Arturo del Castillo; Federal Law of administrative responsibilities of the public servants 2002.

**- 73i: In practice, when necessary, the agency independently initiates investigations.**

**Score:** almost always/1.00



**Comments:** The internal comptroller offices of each government organization can initiate their own investigations and then report to the Public Function Secretary.

**References:** Public Function Secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Arturo del Castillo

## 74 Can citizens access the main anti-corruption agency?

**- 74a: In practice, the main anti-corruption agency acts on complaints within a reasonable time period.**

**Score:** < 3 months/0.75



**Comments:** It takes approximately 45 days to act on a complaint.

**References:** Public Function Secretary, [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Actel, Phone Assistance System for Citizens.

**- 74b: In practice, citizens complain to the agency without fear of recrimination.**

Score: often/0.75

Positive



Negative

**Comments:** Usually the complaint process is dealt in a way that citizens do not fear any recrimination.

**References:** Public Function Secretary, www.funcionpublica.gob.mx; Actel, Phone Assistance System for Citizens.

## Mexico: Anti-Corruption Mechanisms and Rule of Law

### Sub-Category: VI -3/Rule of Law and Access to Justice

|    | Indicators  | Scores |
|----|---|--------|
| 75 | <a href="#">In practice, does the criminal justice process function according to the rule of law?</a> | 0.25   |
| 76 | <a href="#">In law, is there a general right of appeal?</a>   | 1.00   |
| 77 | <a href="#">Are citizens protected from detention without trial?</a>                                  | 0.75   |
| 78 | <a href="#">Are individual economic rights guaranteed?</a>  | 0.69   |

#### Indicator and sub-Indicator Details

|    |  |
|----|--|
| 75 | <b>In practice, does the criminal justice process function according to the rule of law?</b>   |
|    | <p><b>Score:</b> rarely/0.25</p> <p>Positive  Negative</p> <p><b>Comments:</b> This is an extremely deficient process. Poor citizens end up in jail because they are the ones who cannot afford legal counsel. The judicial process is irregular and the process is mainly done through written material (no statements or examinations in an open trial). The cases that are first dealt with are the easiest ones, where the police have caught the suspect. If a case is difficult to prove, it probably will not be begun.</p> <p><b>References:</b> Delinquency, Marginality and Institutional Performance. Legal Studies Division, CIDE.</p> <p><b>Peer Review Comments:</b> The most important factor to highlight is that criminal prosecution and the administration of justice remain in the hands of the executive branch through the Procuraduría General de la República (PGR) and the agencies of the Ministerio Público. There is nothing wrong in principle with law enforcement in the hands of the executive, as is the case in the United States. However, when this faculty is vested in weak institutions that have been organized along cartels that obtain rents through the use of the law as the commodity of negotiations, it is no surprise that this is the weakest pillar of Mexico's new democracy. The most disturbing signs of the last decade, in particular since the 1994-95 financial and economic collapse, have been the strong penetration of the federal, state and local police forces, and even more worryingly, of the strong penetration of the armed forces by organized crime. The Mexican drug cartels captured the American drug market and displaced their Colombian competitors in the late 1990s. Corrupt police and armed forces, coupled with weak, venal, politicized courts are an explosive cocktail. There is no rule of law in Mexico. Moreover, the law is in danger of becoming criminalized. [Comment 2]: The rule of law and the criminalization of law enforcement agencies have worsened between 2000 and 2003. On top of the criminalization of the police and the armed forces, there is also the unevenness of law enforcement due to the centrifugal nature of Mexican federalism. Prior to the collapse of the PRI, law enforcement was tied to the party and the undisputed leadership of the president in turn. Patronage and clientelist lines were party organized, but so was law enforcement. Governors, legislators and state level officials who were seen as effective and, therefore, good material for future campaigns, were rewarded, and thus escalated the ranks of the party and public bureaucracies and public office. This is not so today. The PGR's own Web page shows interesting statistics that highlight the unevenness of rule of law according to the 32 states in Mexico.</p> |
| 76 | <b>In law, is there a general right of appeal?</b>   |
|    | <p><b>Score:</b> yes/1.00</p> <p>Positive  Negative</p> <p><b>Comments:</b> Judicial decisions can be appealed. There is also the protection law which allows citizens to appeal certain decisions that infringe on their rights.</p> <p><b>References:</b> Article 103 of the Constitution, subpart I, Article 107 of the Constitution. Protection law, regulation of the Articles 103 and 107 of the Constitution.</p>   |
| 77 | <b>Are citizens protected from detention without trial?</b>  |

- 77a: *In practice, the government does not detain anyone without charging them for more than 48 hours.*

Score: often/0.75



**Comments:** In a recent survey that included three states (Mexico, the Federal District and Morelos) it was found that 73 percent of people detained reported that they were detained for less than 48 hours.

**References:** Delinquency, Marginality and Institutional Performance. Legal Studies Division, CIDE.

**- 77b: In practice, the government does not detain anyone accused of petty theft for longer than two weeks without a resolution in a court trial.**

Score: often/0.75



**Comments:** Very rarely is someone detained for more than two weeks in a petty theft case.

**References:** Delinquency, Marginality and Institutional Performance. Legal Studies Division, CIDE.

## 78 Are individual economic rights guaranteed?

**- 78a: In law, individual property rights are protected**

Score: yes/1.00



**Comments:** Yes, individual property rights are protected by law.

**References:** Article 14 of the Constitution. Civil Codes. Federal Penal Code.

**- 78b: In practice, individual property rights are protected.**

Score: sometimes/0.50



**Comments:** The judicial system in Mexico is not equally accessible to all citizens. Poor people are in a worse condition than people who can afford legal counsel. Often, legal information is not available to all, hence it is difficult for citizens to protect their property rights.

**References:** Interview with Alejandro Posadas, researcher at the CIDE law department.

**- 78c: In practice, the government does not expropriate property without appropriate compensation.**

Score: often/0.75



**Comments:** The law contemplates that in any expropriation of property, the market value has to be assessed to give appropriate compensation.

**References:** Expropriation law 1936, last amended 1997. Interview with Alejandro Posadas, researcher at the CIDE law department.

**- 78d: In practice, legal contracts are honored.**

Score: sometimes/0.50



**Comments:** The judicial system in Mexico is not equally accessible to all citizens. Poor people are in worse condition than people who can afford legal counsel. Often, legal information is not available to all, hence it is difficult for citizens to honor their contracts.

**References:** Interview with Alejandro Posadas, researcher at the CIDE law department.

# Mexico: Anti-Corruption Mechanisms and Rule of Law

## Sub-Category: VI -4/Law Enforcement

|    | Indicators   | Scores |
|----|--|--------|
| 79 | <a href="#">Is the law enforcement agency (i.e. the police) effective?</a>           | 0.42   |
| 80 | <a href="#">Can law enforcement officials be held accountable for their actions?</a> | 0.81   |

### Indicator and sub-Indicator Details

|    |   |
|----|---|
| 79 | Is the law enforcement agency (i.e. the police) effective?  |
|    | - 79a: In practice, appointments to the law enforcement agency are made according to professional criteria. |

**Comments:** Generally, the police does not perform according to professional criteria. Its lack of professional criteria is explained by the low wages, insufficient equipment and inadequate benefits given to police officers. The Federal Police has civil service regulations, hence appointments are made according to professional criteria. However, other types of police agencies do not have similar regulations, therefore, some appointments, in practice, are not made according to professional criteria.

**References:** "Policing and the Rule of Law in Latin America" project of the Max Planck Institute for Foreign and International Criminal Law. Report of Mexico, [www.iuscrim.mpg.de/forsch/straf/projekte/Mexiko.pdf](http://www.iuscrim.mpg.de/forsch/straf/projekte/Mexiko.pdf)

**- 79b: In practice, the agency has a budget sufficient to carry out its mandate.**

**Score:** sometimes/0.50



**Comments:** The problem of crime in Mexico surpasses the capacity of its police force. At the federal level it seems that the police forces (PFP and AFI) receive a significant amount of money. But at the state and local levels, the police forces receive lower budgets. Therefore, it is difficult to know if the budget is sufficient.

**References:** "Policing and the Rule of Law in Latin America" project of the Max Planck Institute for Foreign and International Criminal Law. Report of Mexico, [www.iuscrim.mpg.de/forsch/straf/projekte/Mexiko.pdf](http://www.iuscrim.mpg.de/forsch/straf/projekte/Mexiko.pdf)

**- 79c: In practice, the agency is protected from political interference.**

**Score:** rarely/0.25



**Comments:** High level officers (lieutenants, commanders and generals) are subject to political interference in the performance of their duties.

**References:** "Policing and the Rule of Law in Latin America" project of the Max Planck Institute for Foreign and International Criminal Law. Report of Mexico, [www.iuscrim.mpg.de/forsch/straf/projekte/Mexiko.pdf](http://www.iuscrim.mpg.de/forsch/straf/projekte/Mexiko.pdf)

**Peer Review Comments:** The federal police agency has operational and technical autonomy in exercising its mandate. (See the Federal Police Law 1998, updated 2000.) [Comment 2]: Certainly the popular perception of the police in Mexico is very poor and this weakness makes it difficult to have much confidence in the judicial branch, which also suffers from low prestige. The problem is severe because the system of justice functions with proofs and the collections of proof is suspect from the beginning, so the judicial process will be as well. In this sense, the legal advice from lawyers does not have much validity, because the process is generally contaminated at the investigation level. Furthermore, advice from lawyers does not have much validity, because the process is generally contaminated at the investigative level as evidence disappears, which affects the whole process.

## 80 Can law enforcement officials be held accountable for their actions?

**- 80a: In practice, there is an independent mechanism for citizen complaints about police action.**

**Score:** almost always/1.00



**Comments:** There is a phone hotline to which citizens can complain about police actions. The hotline is called the Phone Assistance System for Citizens and is part of the Public Function Secretary. It receives complaints about civil servants on the federal level, including police officers from the Federal Police Agency.

**References:** Public Security Secretary. [www.ssp.gob.mx](http://www.ssp.gob.mx) Public Function Secretary., [www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx); Actel, Phone Assistance System for Citizens.

**Peer Review Comments:** The National Human Rights Commission also has a role in oversight of police abuses.

**- 80b: In law, there is an agency to investigate and prosecute corruption committed by law enforcement officials.**

**Score:** yes/1.00



**Comments:** The Public Function Secretary is the agency that investigates and prosecutes corruption committed by law enforcement officials.

**References:** Federal Police Law 1998, updated 2000..

**Peer Review Comments:** The National Human Rights Commission also has a role in oversight of police abuses.

**- 80c: In law, law enforcement officials are not immune from prosecution.**

**Score:** yes/1.00



**Comments:** Yes, law enforcement officials are not immune from prosecution.

**References:** Federal Police Law 1998, updated 2000..

**- 80d: *In practice, law enforcement officials are not immune from prosecution.***

**Score:** rarely/0.25



**Comments:** Law enforcement officials are not immune from prosecution. However, it is highly probable that judicial investigations are blocked due to corruption inside the police force.

**References:** "Policing and the Rule of Law in Latin America" project of the Max Planck Institute for Foreign and International Criminal Law. Report of Mexico, [www.iuscrim.mpg.de/forsch/straf/projekte/Mexiko.pdf](http://www.iuscrim.mpg.de/forsch/straf/projekte/Mexiko.pdf)

## Mexico: Country Facts

| Land   | Facts   |
|--|---|
| Land area (sq km)  | 1.91 million  |
| Population   | 1.91 million  |
| Adult illiteracy rate (% of people ages 15 and above)      | 8.57  |
| Life expectancy at birth (years)                           | 73.39   |
| Infant mortality rate (per 1,000 live births)              | 24  |
| Population growth (annual %)                               | 1.5   |
| Population   | 99.42 million   |
| Ethnic breakdown   | Indian-Spanish (mestizo), 60%; Indian, 30%; Caucasian, 9%; other, 1%  |
| Religious breakdown  | Roman Catholic, 89%; Protestant, 6%; other, 5%  |
| Languages  | Spanish   |
| Political  | Facts   |
| Capital city   | Mexico City   |
| Character of government                                    | A federal republic; current constitution in effect since 1917   |
| Current president/prime minister                           | Vicente Fox   |
| Executive branch description                               | The president is directly elected for one six-year term.  |
| Legislative branch description                             | The Union Congress consists of a 128-member Senate and a 500-member Chamber of Deputies, both elected by popular vote. Senators serve six-year terms and members of the lower house serve for three years.  |
| Judicial branch description                                | A 21-member Supreme Court heads the judicial system. The justices of the Supreme Court are appointed for life by the president with the approval of the Senate. Lower courts include collegiate and single-judge circuit courts, district courts and jury courts. |
| Percentage of women in legislature                         | 16  |
| Economics  | Facts   |
| Aid (% of central government expenditures)                 | -0.06   |
| Aid per capita (US\$)                                      | 0.75  |
| Net foreign direct investment (current US\$)               | 21.02 billion   |
| GDP growth (annual %)                                      | -0.31   |
| GDP per capita (constant 1995 US\$)                        | 3739.1  |
| Consumer prices inflation (annual %)                       | 6.36  |
| Military expenditure (% of central government expenditure) | 3.24  |
| Military expenditure (% of GDP)                            | 0.5   |
| Tax revenue (% of GDP)                                     | 13.23   |
| Exchange rate to US\$1 (as of January, 2004)               | 10.94   |
| Currency   | Peso  |

|   |   |
|---|---|
| Public spending on education (% of GDP)   | 4.42  |
| Public health expenditure (% of GDP)  | 2.51  |
| Main exports  | Machinery and transport equipment, mineral fuels and lubricants, food, live animals |
| Unemployment (% of total labor force)   | 2   |
| External debt (current US\$)  | 158.29 billion  |
| <b>Information/Technology</b>   | <b>Facts</b>  |
| <i>Radio:</i>   |   |
| Radios (per 1,000 people)   | 330   |
| <i>Telephone:</i>   |   |
| Telephone mainlines (per 1,000 people)  | 137   |
| Mobile phones (per 1,000 people)  | 217   |
| <i>Television:</i>  |   |
| Television sets (per 1,000 people)  | 283   |
| Television broadcast stations   | more than 750 (including cable outlets)   |
| <i>Other Media:</i>   |   |
| Daily newspapers (published at least four times a week) in circulation per 1,000 people | 94  |
| Internet users  | 3.64 million  |