

Overall Score:

**65 - Weak**

Legal Framework Score:

**82 - Strong**

Actual Implementation Score:

**46 - Very Weak**

Category I. Civil Society, Public Information and Media

---

## I-1. <sup>72</sup>Civil Society Organizations

---

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

100

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

**YES** | NO

**Comments:**

Constitutional Article 33 (prohibition of foreigners getting mixed up in politics) does limit the participation of many residents, but all "citizens" can participate.

**References:**

Article 9 of the constitution (freedom of association)

Ley Federal de Fomento a las Actividades Realizadas por Organizaciones de la Sociedad Civil (specific rules for functioning of NGOs)

**YES:** A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

**NO:** A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

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

**YES** | NO

**References:**

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

**YES:** A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

**NO:** A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

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

YES | NO

**References:**

Article 7, IV of the Ley Federal de Fomento a las actividades realizadas por Organizaciones de la Sociedad Civil

**YES:** A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

**NO:** A NO score is earned if no such public disclosure requirement exists.

---

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

75

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

100 | 75 | 50 | 25 | 0

**Comments:**

The creation of new anti-corruption/good governance CSOs is extremely complicated and involves lots of bureaucratic tape. Legal assistance is a must. The Secretary of Foreign Relations is in charge of registering any new NGOs, an indicator that the Mexican government still considers NGOs to be foreign” entities.

**References:**

Article 15 of the Ley de Inversión Extranjera

Article 13 of the Reglamento de la Ley de Inversión Extranjera y del Registro Nacional de Inversiones Extranjeras.

**100:** CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

**75:**

**50:** CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

**25:**

**0:** Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

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

**Comments:**

These CSOs are very active in the public sphere, organizing conferences, public statements, and networks. But they rarely are invited by the government to participate directly in policymaking. The government prefers to form citizen councils" with "representatives" of civil-society (i.e. academics, journalists, etc.) instead of directly involving CSOs as institutions.

**References:**

ISUNZA, Ernesto y Hevia, Felipe, Relaciones Sociedad Civil-Estado en México: Un Ensayo de Interpretación", Background Paper, México, Banco Mundial, 2005.  
FUNDAR, "La Transparencia y Acceso a la Información en el Proceso Presupuestario", 2005.

**100:** Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

**75:**

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

**25:**

**0:** Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

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

YES | NO

**References:**

A newspaper search of the last year reveals no cases.

**YES:** A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

**NO:** A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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

100

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

YES | NO

**Comments:**

Good governance NGOs have not been pro-active or aggressive enough to provoke such a response.

**References:**  
Newspaper search

**YES:** A YES score is earned if there were no CSO activists imprisoned related to work covering corruption.

**NO:** A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the p

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

YES | NO

**Comments:**  
Good governance NGOs have not been pro-active or aggressive enough to provoke such a response.

**References:**  
Newspaper search

**YES:** A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work.

**NO:** A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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

YES | NO

**Comments:**  
Good governance NGOs have not been pro-active or aggressive enough to provoke such a response.

**References:**  
Newspaper search

**YES:** A YES score is earned if there were no documented cases of CSO activists being killed related to a corruption case in the specific study period.

**NO:** A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

---

#### 4. Can citizens organize into trade unions?

63

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

YES | NO

**References:**

Article 9 of the Constitution (freedom of association)

**YES:** A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

**NO:** A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

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

100 | 75 | 50 | 25 | 0

**References:**

Trade unions are widespread, but just about all of them are loyal to the government or to the corporations. Extreme limits on independent union organizing.

Human Rights Watch: <http://hrw.org/spanish/docs/2005/02/09/mexico10158.htm>

Recent research conducted by the Economics Department at the National

University: <http://www.jornada.unam.mx/2005/09/26/019n1pol.php>

**100:** Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

**75:**

**50:** Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

**25:**

**0:** Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

---

## I-2. Media

---

### 5. Are media and free speech protected?

100

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

YES | NO

**References:**

Article 6, Constitution (freedom of speech)

Artículo 7, Constitution (freedom of the press)

**YES:** A YES score is earned if freedom of the press is guaranteed in law, including all political parties, religions, and ideologies.

**NO:** A NO score is earned if any specific publication relating to government is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

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

YES | NO

**References:**

Constitutional Article 6 (Freedom of Speech)  
Constitutional Article 7 (Freedom of the Press)

**YES:** A YES score is earned if freedom of individual speech is guaranteed in law, including all political parties, religions, and ideologies.

**NO:** A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

---

## 6. Are citizens able to form media entities?

6

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

100 | 75 | 50 | 25 | 0

**Comments:**

Recent reforms to the Ley Federal de Radio y Televisión guarantee the predominance of two media giants (Televisa and TV Azteca). Extremely difficult to form a new media entity with national impact.

**References:**

New version of the Ley Federal de Radio y Televisión.  
"Barriers to and persecution of Radios Comunitarios"

**100:** Media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system.

**75:**

**50:** Formation of media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

**25:**

**0:** Media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. Division of broadcast bandwidth is widely viewed to be used as a political tool.

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

YES | NO

**Comments:**

Neither of these laws explicitly permits an applicant to appeal a license decision. The only recourse left to someone denied a license is through the amparo suit process, which is valid for any act of government that claims to violate the constitution. This takes years and is extremely costly. We have not been able to find any cases in which a license was finally granted after carrying out such a case.

**References:**

Ley Federal de Radio y Televisión  
Comisión Calificadora de Publicaciones y Revistas Ilustradas

**YES:** A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied media license. A YES score is also earned if no license is necessary.

**NO:** A NO score is earned if there is no appeal process for media licenses.

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

100 | 75 | 50 | 25 | 0

**References:**

Significant problems with community radios"  
www.mexico.amarc.org.mx  
<http://www.derechoshumanos.org.mx/modules.php?name=News&file=article&sid=197>  
<http://www.jornada.unam.mx/2006/04/05/003n1pol.php>  
<http://www.etcetera.com.mx/pag48ne34.asp>

**100:** Licenses are not required or licenses can be obtained within two months.

**75:**

**50:** Licensing is required and takes more than two months. Some groups may be delayed up to six months.

**25:**

**0:** Licensing takes close to or more than one year for most groups.

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

100 | 75 | 50 | 25 | 0

**References:**

Same as above

**100:** Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

**75:**

**50:** Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

## 7. Are the media able to report on corruption?

58

7a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

### Comments:

The devil is in the details of course. Who decides whether the news is actually accurate or not?

### References:

Articles 5 and 6 of the Ley de Delitos de Imprenta

**YES:** A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

**NO:** A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

7b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

### References:

Reporteros Sin Fronteras (Reporters without borders), 2006 annual report: [http://www.rsf.org/article.php3?id\\_article=17155](http://www.rsf.org/article.php3?id_article=17155)

**100:** The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

**75:**

**50:** The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

**25:**

**0:** The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

7c. In practice, there is no prior government restraint on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

### Comments:

The case of journalist Lydia Cacho is particularly revealing. The Governor of the State of Puebla has done just about anything in his power to prevent the local media from including information on her research on the governor's alleged involvement in a pederast crime ring.

**References:**  
Newspaper reports

**100:** The government never prevents publication of controversial corruption-related materials.

**75:**

**50:** The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. In countries where illiteracy is higher, the government may allow a free print press but censor broadcast media.

**25:**

**0:** The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material.

---

## 8. Are the media credible sources of information?

63

8a. In law, media companies are required to disclose their ownership.

YES | NO

**Comments:**  
This law refers only to Radio and Television. The law is unclear about the disclosure of ownership of print media.

**References:**  
Article 17 of the Ley Federal de Radio y Televisión

**YES:** A YES score is earned if media companies are required by law to disclose all owners of the company.

**NO:** A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

8b. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

**References:**  
Chappell Lawson, "Propaganda and Crony Capitalism: Partisan Bias in Mexican Television News", Forthcoming, Latin American Research Review.  
Chappell Lawson, BUILDING THE FORTH ESTATE: DEMOCRATIZATION AND THE RISE OF A FREE PRESS IN MEXICO, University of California Press, 2002.

**100:** Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

**75:**

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

**25:**

**0:** Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

8c. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

**Comments:**

We should remember that the Federal Electoral Institute itself has been seriously questioned for its biases towards the government candidate. Our own systematic observation of the major television programs, radio shows and newspapers reveals that there was a systematic media bias against the principal opposition candidate Lopez Obrador. Although he was frequently on the media, news programs and analysts were much quicker to criticize him than Calderón. For instance, we can compare the media response to Lopez Obrador's "chachalaca" comment and its response to Calderón's aggressive negative advertisements, which were eventually declared illegal.

**References:**

<http://www.mexicanadecomunicacion.com.mx/Tables/RMC/rmc100/debate.html>

Media Specialist Raúl Trejo Delarbre and Florence Toussaint

**100:** All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

**75:**

**50:** Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

**25:**

**0:** The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

8d. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

**References:**

Same as previous question;

Also see Chappell Lawson & James McCann: Television News, Mexico's 2000 Elections and Media Effects in Emerging Democracies", British Journal of Political Science, March, 2006.

**100:** The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content.

**75:**

**50:** The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

**25:**

**0:** The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

---

## 9. Are journalists safe when investigating corruption?

0

9a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

**References:**

Lydia Cacho: <http://www.jornada.unam.mx/2006/01/16/019a1pol.php>

**YES:** A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period.

**NO:** A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

9b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

**Comments:**

This new fiscalía" has not been terribly effective. But its existence is a clear indicator of the depth of the problem.

**References:**

At least a dozen. This is a consistent problem in Mexico, so much so that the government has been forced to create a special investigatory force for crimes against journalists.

<http://losperiodistas.fremac.org.mx/archivo/2005/junio/htm/fiscalias.htm>

**YES:** A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues.

**NO:** A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

9c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

**References:**

Centro de Periodismo y Ética Pública, de 2005. 6 reporters killed in 2005, 16 during the presidency of Vicente

Fox. <http://www.cepet.org/libex/estadisticas.htm>

Reporteros Sin Fronteras, 2006 Annual Report: [http://www.rsfn.org/article.php3?id\\_article=17155](http://www.rsfn.org/article.php3?id_article=17155)

Mexican NGO Equipo Nizkor citing the UN: <http://www.derechos.org/nizkor/mexico/doc/periodistas.html>

**YES:** A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period.

**NO:** A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

---

45  
I-3. Public Access to Information

---

10. Do citizens have a legal right of access to information?

100

10a. In law, citizens have a right of access to government information and basic government records.

YES | NO

**References:**

Constitutional Article 6 (Right to Information)  
Ley Federal de Transparencia y Acceso la Información Pública Gubernamental

**YES:** A YES score is earned if there is a formal right to access any government documents. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request. There should be a formal process for requesting this information.

**NO:** A NO score is earned if there is no such right.

10b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

**References:**

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental (Art. 49 and 50)

**YES:** A YES score is earned if there is a formal process of appeal for rejected information requests.

**NO:** A NO score is earned if there is no such formal process.

10c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

**References:**

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental (Arts. 40-48)

**YES:** A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

**NO:** A NO score is earned if there is no such formal mechanism or institution.

## 11. Is the right of access to information effective?

70

11a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

### Comments:

Access is smooth in the Executive Branch, but takes sometimes over a year in other branches (Judiciary, Legislature, Independent Agencies)

### References:

Informe Anual de Labores, Instituto Federal de Acceso a la Información Pública, 2006  
"Transparency & Silence: A Survey of Access to Information Laws and Practices in 14 Countries", Open Society Institute, 2006.  
"Lost In Transition: Bold Ambitions, Limited Results for Human Rights under Fox", Human Rights Watch, 2006.

**100:** Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

**75:**

**50:** Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

**25:**

**0:** Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

11b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

### References:

Ley Federal de Transparencia. Citizens are only charged for photocopying and mailing. No searching fees.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

11c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

See 11a. The independent Institute for Access to Information only has jurisdiction over the executive branch.

**References:**

See 11a.

**100:** The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

**75:**

**50:** The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

11d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

11a. Yes for the executive branch. In other branches citizens need the help of a well paid lawyer to bring the suit to the courts.

**References:**

11a.

**100:** In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

**75:**

**50:** In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

**25:**

**0:** The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

11e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

**References:**

Ley Federal de Transparencia y Acceso a la Información Pública.

**100:** The government always discloses to the requestor the specific, formal reasons for denying information requests.

**75:**

**50:** The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

**25:**

**0:** The government does not regularly give reasons for denying an information request to the requestor.

---

## Category II. Elections

---

### II-1. <sup>76</sup>Voting & Citizen Participation

---

#### 12. Is there a legal framework guaranteeing the right to vote?

100

12a. In law, universal and equal adult suffrage is guaranteed to all citizens.

**YES** | NO

**References:**

Constitutional Article 36

**YES:** A YES score is earned if the right to vote is guaranteed to all citizens of that country. A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

**NO:** A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

12b. In law, there is a legal framework requiring that elections be held at regular intervals.

**YES** | NO

**References:**

Constitutional articles 51, 56, 83 and 116

**YES:** A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

**NO:** A NO score is earned if no such framework exists.

---

#### 13. Can all citizens exercise their right to vote?

83

13a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

**References:**

Difficulties with access to the vote in rural and indigenous communities. Study on voting conditions in rural communities, FLACSO-IFE, 2001.

**100:** Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

**75:**

**50:** Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

**25:**

**0:** Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

13b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

**References:**

The Código Federal de Procedimientos e Instituciones Electorales (COFIPE) establishes an elaborate system for maintaining the secrecy of the ballot. Nevertheless, in the most recent elections the management of the ballots has been seriously questioned by a diversity of actors. See websites for the Center for Economic Policy Research in Washington and Global Exchange in San Francisco.

**100:** Ballots are secret, or there is a functional equivalent protection, in all cases.

**75:**

**50:** Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

**25:**

**0:** Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

13c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

**References:**

Newspaper search. No cases of delayed or accelerated elections in recent years.

**100:** Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

**75:**

**50:** Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

**25:**

**0:** Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

---

#### 14. Are citizens able to participate equally in the political process?

85

14a. In law, all citizens have a right to form political parties.

YES | NO

**References:**  
COFIPE article 5

**YES:** A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

**NO:** A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

14b. In law, all citizens have a right to run for political office.

YES | NO

**Comments:**  
The COFIPE requires all candidates to be backed by a registered political party. No independent candidacies are permitted. This has led some to claim that not everyone actually has a right to run. But this is not equivalent to an outright ban on "communists" or "terrorists" that exist in other countries.

**References:**  
COFIPE Article 36

**YES:** A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

**NO:** A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

14c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

**References:**  
COFIPE. No type of citizen is explicitly excluded, but the barriers to forming and keeping alive a political party are quite high.

Parties need to prove the pre-existence of tens of thousands of supporters to be able to register and receive at least 2% of the national popular vote in each election to maintain their registration.

**100:** While there is no guarantee of electoral success, political parties can form freely without opposition.

**75:**

**50:** Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

**25:**

**0:** Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

14d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

**References:**

See 14a and 14c

**100:** While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

**75:**

**50:** Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

**25:**

**0:** Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

14e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

**References:**

The present ruling party (PAN) only holds about 40% of the congressional seats, although their alliance with the old ruling party (PRI) has given them the two thirds majority required to unilaterally control the legislature. For instance, the principal opposition party (PRD) has recently been excluded from the most important decision making bodies in Congress.

**100:** The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

**75:**

**50:** The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

**25:**

**0:** The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

---

---

## II-2. Election Integrity

---

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

100

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

YES | NO

**References:**

Constitucion article 41

**YES:** A YES score is earned if there is an agency or set of agencies/entities formally assigned to ensure the integrity of the election process.

**NO:** A NO score is earned if no agency or set of agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police.

---

16. Is the election monitoring agency effective?

75

16a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

**Comments:**

Nevertheless, the Fiscalía Especial para Delitos Electorales (FEPADE), responsible for any criminal investigation related to elections, is definitively NOT independent since it is part of the executive branch and responds directly to the orders of the president.

**References:**

Constitutional Article 41 (Federal Electoral Institute and Federal Electoral Tribunal)

**YES:** A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies being contested in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no election monitoring agency.

16b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

**References:**

The principal opposition party (PRD) was entirely excluded from the designation of the members of the present Federal Electoral Institute (IFE).

PRD leader Pablo Gómez: <http://memoria.com.mx/?q=node/337&PHPSESSID=51753d45f00e74>

**100:** Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

16c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

[www.ife.org.mx](http://www.ife.org.mx). The IFE has an extremely large budget and a well consolidated civil service.

Also see, John Ackerman, ORGANISMOS INDEPENDIENTES Y RENDICION DE CUENTAS: EL CASO MEXICANO, IJ-UNAM/Siglo XXI Editores, 2007. (Chap. 2)

**100:** The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

**25:**

**0:** The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

16d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

**References:**

IFE is generally communicative (Programa de Acompañamiento Ciudadano, <http://pac.ife.org.mx/>); there are also major problems. See Irma Sandoval "Transparencia y Elecciones", Revista Proceso No. 1550, 2006.

The Electoral Tribunal (TRIFE) never informed the public about the results of the partial recount conducted after the 2006 elections and has generally been opaque in its procedures (see reports of the Comité Conciudadano)

The FEPADE does not provide full information on its activities ([www.fepade.gob.mx](http://www.fepade.gob.mx))

**100:** Reports are released to the public on a predictable schedule, without exceptions.

**75:**

**50:** Reports are released, but may be delayed, difficult to access, or otherwise limited.

**25:**

**0:** The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

16e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**References:**

The IFE has been active in recent years applying fines to parties for bad reporting or irregular financing (see Jaime Cardenas, LOS CASOS DE PEMEX Y AMIGOS DE FOX, IJ-UNAM, 2004; L. Cordoba & C. Murayama ELECCIONES; DINERO y CORRUPCION, Cal y Arena, 2006)

The FEPADE has been totally absent from the political scene. No one has been punished for electoral offenses in the past three years. [www.fepade.gob.mx](http://www.fepade.gob.mx)

**100:** When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

**75:**

**50:** The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

---

## 17. Are elections systems transparent and effective?

75

17a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

**Comments:**

In general, the voter registration system is trustworthy, but there were problems with apparent voter shaving" on election day and apparently one of the candidates used the voter lists in an illegal fashion in order to get out the vote.

**References:**

Report of the Comité Conciudadano de Seguimiento al Proceso Electoral (July 10, 2006), about voter shaving" (illegal removal of voters from the list).

La Jornada, Martes 27 de junio de 2006: <http://www.jornada.unam.mx/2006/06/27/003n1pol.php>"

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

**75:**

**50:** There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

17b. In law, election results can be contested through the judicial system.

YES | NO

**References:**

Constitutional Article 99 (Electoral Tribunal): El Tribunal Electoral será, con excepción de lo dispuesto en la fracción II del artículo 105 de esta Constitución, la máxima autoridad jurisdiccional en la materia y órgano especializado del Poder Judicial de la Federación."

**YES:** A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

**NO:** A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

17c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

**References:**

Todd Eisenstadt: COURTING DEMOCRACY IN MEXICO: PARTY STRATEGIES AND ELECTORAL INSTITUTIONS" (Cambridge: 2004) (on effectiveness of the appeals mechanism)  
In the most recent presidential elections (2006) the performance of the electoral courts was widely questioned and distrusted, leading to an institutional crisis (See John Ackerman, "Magistrados `irresponsables'", Revista Proceso, No. 1558, September 10, 2006)

**100:** The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

**75:**

**50:** The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

**25:**

**0:** The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

17d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

**References:**

The Attorney General's office systematically went after the chief opposition candidate, López Obrador, in the most recent presidential elections. This included his impeachment as Mayor of Mexico City (See Ackerman & Ackerman, Immune to Democracy", New York Times, March 4, 2005) as well as a last-minute investigation a week before the presidential elections on

July 2, 2006.

In state-level elections, the situation is even more worrisome. See, for instance, the imprisonment of activists from the chief opposition party the day before the elections for the governor of the state of Tabasco (Newspaper reports, October 15th, 2006).

**100:** The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

**75:**

**50:** The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

**25:**

**0:** The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

17e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

**Comments:**

Article 82 does not give a blanket right to international actors to observe the elections, but in practice they are normally allowed full access.

**References:**

COFIPE: Article 5, domestic observers; Article 82

**YES:** A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

**NO:** A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

17f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

**References:**

[http://www.senado.gob.mx/internacionales/assets/docs/relaciones\\_parlamentarias/europa/foros/parlamento3.pdf#search=%22observadores%20union%20Alianza Cívica, ANCIFEM, Presencia Ciudadana, Delegación de la UE, Global Exchange, Instituto Nacional Demócrata, Red de Veedores](http://www.senado.gob.mx/internacionales/assets/docs/relaciones_parlamentarias/europa/foros/parlamento3.pdf#search=%22observadores%20union%20Alianza Cívica, ANCIFEM, Presencia Ciudadana, Delegación de la UE, Global Exchange, Instituto Nacional Demócrata, Red de Veedores) <http://www.ife.org.mx/portal/site/ife/menuitem.b9ee2c952b48c1f6eae8860241000a0/>

In personal communication with members of the Global Exchange delegation they mentioned that the immigration authorities have been very aggressive in making it clear to them that Article 33 of the Mexican constitution does not allow foreigners to get "mixed up with political affairs" of the country. They interpreted this as an outright effort at intimidation.

**100:** Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

**75:**

**50:** Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

**25:**

**0:** Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers

that their mission is rendered ineffective.

---

83  
II-3. Political Financing

---

18. Are there regulations governing political financing?

83

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

YES | NO

**References:**

COFIPE Chapter 2: strict limits on private contributions (corporations are prohibited, clear limits for individual contributions)

**YES:** A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

**NO:** A NO score is earned if there is no regulation of private contributions to political parties.

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

YES | NO

**References:**

COFIPE (Art. 11)

**YES:** A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

**NO:** A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

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

YES | NO

**References:**

COFIPE (Article 11) Corporate donations are prohibited

**YES:** A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

**NO:** A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

18d. In law, there are limits on total political party expenditures.

YES | NO

**References:**

Constitutional Article 41 and formal decision made by the electoral authorities for each election year. [http://www.ordenjuridico.gob.mx/Federal/OA/IFE/Acuerdos/2006/14022006\(4\).pdf](http://www.ordenjuridico.gob.mx/Federal/OA/IFE/Acuerdos/2006/14022006(4).pdf)

**YES:** A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

**NO:** A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

18e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

**References:**

COFIPE articles 49-A and 49-B require full disclosure of donations to the electoral authorities (IFE), but the law does not require this information to be made public. This information does not fall under Mexico's FOIA since it is personal information".

**YES:** A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

**NO:** A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

18f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

**References:**

COFIPE (Article 49-B)

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

---

19. Are the regulations governing political financing effective?

19a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

**References:**

The most famous cases are the PEMEXgate” and “Amigos de Fox” scandals in the 2000 elections. (See J. Cárdenas, LECCIONES DE LOS ASUNTOS PEMEX Y AMIGOS DE FOX, IJ-UNAM, 2004 and L. Códova and Ciro Murayama, ELECCIONES, DINERO Y CORRUPCION: PEMEXGATE y AMIGOS DE FOX, Ediciones Cal y Arena, 2006)  
<http://www.jornada.unam.mx/2005/12/15/003n1pol.php>

**100:** Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

**75:**

**50:** Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

19b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

**Comments:**

The electoral tribunal's decision of September 5th (which otherwise supports just about all of Calderon's arguments) explicitly states that the national corporate coordinating council's advertising campaign was an illegal, direct financial support for Calderon's campaign. The decision explicitly states that this is not an issue of free speech" but of illegal support for a particular candidate. No one has been punished or even seriously investigated for these violations, leading to an important negative precedent for the future.

**References:**

The 2006 elections were characterized by flagrant violation of the law by major corporate groups in support of the winning candidate, Calderón. The Electoral Tribunal documented this behavior but refused to act against it. (See Dictamen de Computo Final, Validez de la Elección y Declaración de Presidente Electo, Tribunal Electoral del Poder Judicial de la Federación, September 5, 2006)

**100:** Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

**75:**

**50:** Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making to donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

19c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

**Comments:**

Para Jaime Cárdenas, del IJ: <http://www.bibliojuridica.org/libros/libro.htm?l=1366>  
[http://www.nexos.com.mx/articulos.php?id\\_article=903&id\\_rubrique=303](http://www.nexos.com.mx/articulos.php?id_article=903&id_rubrique=303)

**References:**

See references from 19a and b. The situation is even worse at the sub-national level. The recent 2005 elections in the State of Mexico, for instance, were rife with exaggerated and blatant overspending by the official" candidate.

**100:** Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

**75:**

**50:** Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

19d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

Cárdenas (2004), Córdoba and Murayama (2006)

**100:** The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

**75:**

**50:** The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

19e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**References:**  
Same as above

**100:** When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

**75:**

**50:** The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

19f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

**References:**  
Same as above.

**100:** Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

**75:**

**50:** Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

**25:**

**0:** Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

---

## 20. Can citizens access records related to political financing?

42

20a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**  
Disclosure occurs once a year (twice during election years), but is not sufficiently detailed. For instance, no information on WHO contributes is made public. See [http://www.ife.org.mx/documentos/PPP/ppp/2005/formatos\\_IA/index.htm](http://www.ife.org.mx/documentos/PPP/ppp/2005/formatos_IA/index.htm)

**100:** Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

**75:**

**50:** Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

**25:**

**0:** Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

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

100 | 75 | 50 | 25 | 0

**References:**

Available on the internet but drastically incomplete. Extremely difficult to obtain full records.

See [http://www.ife.org.mx/documentos/PPP/ppp/2005/formatos\\_IA/index.htm](http://www.ife.org.mx/documentos/PPP/ppp/2005/formatos_IA/index.htm)

[http://www.ife.org.mx/documentos/PPP/ppp/2005/formatos\\_IA/index.htm](http://www.ife.org.mx/documentos/PPP/ppp/2005/formatos_IA/index.htm)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take two to four weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

20c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Free but drastically incomplete. Extremely difficult to obtain full records.

See [http://www.ife.org.mx/documentos/PPP/ppp/2005/formatos\\_IA/index.htm](http://www.ife.org.mx/documentos/PPP/ppp/2005/formatos_IA/index.htm)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

---

Category III. Government Accountability

---

III-1. <sup>61</sup>Executive Accountability

---

21. In law, can citizens sue the government for infringement of their civil rights?

100

21. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

**References:**

Amparo suit regulated by Constitutional articles 103 and 107 ón

**YES:** A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

**NO:** A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

---

22. Can the chief executive be held accountable for his/her actions?

69

22a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

**References:**

The president gives a State of the Union address each year on September 1st, but does not take questions or listen to the positions of the opposition parties. Press conferences are more presentations than a chance for dialogue with the press. After the State of the Union address, cabinet ministers need to appear before congress and answer tough questions, but this process is usually quite formalistic and is not covered extensively by the press.

**100:** The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

**75:**

**50:** The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

**25:**

**0:** The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

22b. In law, the judiciary can review the actions of the executive.

YES | NO

**References:**

Constitutional articles 103 and 107 (Amparo and Constitutional controversies)

**YES:** A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

**NO:** A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

22c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

**References:**

During the Fox administration there have been various important cases in which the judiciary has directly intervened (for example, the attempt to privatize the provision of electricity through an executive order, the ability of the president to veto the budget, the investigation of the alleged violations of the human rights of journalist Lydia Cacho by the governor of Puebla and the case of Oscar Espinosa)

<http://www.eluniversal.com.mx/nacion/136187.html>

Regarding the Oscar Espinosa Villarreal case: <http://www.jornada.unam.mx/2006/08/10/043n1cap.php>

Budget veto case ( <http://www.iis.unam.mx/obsdem/ap050513.htm> )

**100:** When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

**75:**

**50:** The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

**25:**

**0:** The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

22d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

**References:**

Executive orders and legal cases are used occasionally for crucial policy decisions (i.e. expropriations, privatization of electricity, refusal to obey orders of the Supreme Federal Auditor in the FOBAPROA case, etc.)

**100:** The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

**75:**

**50:** The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

**25:**

**0:** The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

---

23. Is the executive leadership subject to criminal proceedings?

23a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

**References:**

Constitutional Chapter 4 (Juicio Político)

Exception: The President can only be accused by the Senate (Constitutional articles 110 and 111)

**YES:** A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations.

**NO:** A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

23b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

**References:**

Constitucional article 111

**YES:** A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

**NO:** A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

---

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

24a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

**References:**

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos (Article 36)

**YES:** A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES.

**NO:** A NO score is earned if either the head of state or government is not required to disclose assets.

24b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

**References:**  
Same as above

**YES:** A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

**NO:** A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

24c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

**References:**  
Ley Federal de Responsabilidades Administrativas de los Servidores Públicos (Article 8)

**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

**NO:** A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

24d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

**References:**  
Asset Disclosure forms are held and reviewed by the internal comptroller of each agency. No independent audits.

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

24e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

**References:**  
Ley Federal de Responsabilidades Administrativas de los Servidores Públicos (Article 8)

**YES:** A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

24f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

**References:**  
Numerous examples of public-private complicities exist. For example, ex-president Ernesto Zedillo is now on the board of directors of ALCOA, Union Pacific and Procter & Gamble.  
[http://www.alcoa.com/global/en/about\\_alcoa/corp\\_gov/directors/Ernesto\\_Zedillo.asp](http://www.alcoa.com/global/en/about_alcoa/corp_gov/directors/Ernesto_Zedillo.asp)  
See La Jornada Newspaper, November 12, 2002 <http://www.jornada.unam.mx/2002/11/12/012n1pol.php?origen=politica.html>

**100:** The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

24g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

**References:**  
The Ley Federal de Responsabilidades de los Servidores Públicos in article 89 explicitly states that public servants must report the receipt of gifts. Nevertheless, the annual reports and the web page of the Internal Comptroller (SFP) do not include any information at all on reported gifts.

**100:** The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

24h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

**References:**

No documented cases of prosecution or investigation based on review of asset disclosures.

**100:** Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

**25:**

**0:** Executive branch asset disclosures are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

---

## 25. Can citizens access the asset disclosure records of the heads of state and government?

67

25a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

**References:**

Ley Federal de Responsabilidades (Art. 40) only permits access if explicitly authorized by the public servant.

**YES:** A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

**NO:** A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

25b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

President Fox has made his asset disclosure form public: <http://www.presidencia.gob.mx/buscador/index.php?contenido=25229&pagina=1&palabras=declaracion+patrimonial>  
However, most governors do not make their disclosures available.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some additional delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Those that are available are on the internet (i.e. the president). But most governors do not make their disclosures available.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

---

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

50

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

100 | 75 | 50 | 25 | 0

**Comments:**

Independent studies of the run-up to the 2006 presidential elections demonstrated systematic intervention of the government in electoral politics. The problem is particularly strong at the level of state governments.

**References:**

<http://www.alianzacivica.org.mx/boletines.html#>

See also, Dictamen de Computo Final, Validez de la Elección Presidencial y Declaratoria de Presidente Electo (TEPJF, September 5, 2006)

**100:** Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

**75:**

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

**25:**

**0:** The government is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

---

## III-2. Legislative Accountability

---

27. Can members of the legislature be held accountable for their actions?

58

27a. In law, the judiciary can review laws passed by the legislature.

YES | NO

**References:**

Constitucional article 105 (Amparo and Constitutional Controversies),

**YES:** A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

**NO:** A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

27b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

**References:**

Some important cases (i.e. budget veto, <http://www.doctorraulcarrancayrivas.com/entrevista.htm>) but generally not particularly active (for instance, refusal to review the constitutional reform on indigenous rights:

[http://www.centroprodh.org.mx/especiales/cronologia\\_indigena/Documento%20de%20an%E1lisis%20por%20la%20resoluci%F3n%20de%20la%20Corte](http://www.centroprodh.org.mx/especiales/cronologia_indigena/Documento%20de%20an%E1lisis%20por%20la%20resoluci%F3n%20de%20la%20Corte)

One crucial case on the docket is the issue of the recent reforms to the telecommunications law

( <http://www.jornada.unam.mx/2006/05/10/024n1pol.php>); this has not been decided yet by the court.

**100:** When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

**75:**

**50:** The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

**25:**

**0:** The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

27c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

**Comments:**  
Legislators benefit from immunity.

**References:**  
Constitutional Articles 61 and 1112

**YES:** A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

**NO:** A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

---

28. Are there regulations governing conflicts of interest by members of the national legislature?

43

28a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

**References:**  
Ley Federal de Responsabilidades Administrativas de los Servidores Públicos (Article 36)

**YES:** A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

**NO:** A NO score is earned if any member of the legislature is not required to disclose assets.

28b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

**References:**  
Ley Federal de Responsabilidades Administrativas de los Servidores Públicos (Article 8)

**YES:** A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

28c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

**References:**

Same as above

**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

**NO:** A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

28d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

**References:**

Disclosure forms are held by the internal comptroller of the legislature. No external review.

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

28e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | **0**

**Comments:**

Private sector employment is not only permitted after legislative service but also while a legislator is in office! This is well documented in Jaime Cardenas' up-to-date masterful study. Perhaps the most glaring example is that of ex-senator Diego Fernandez de Cevallos, a leading PAN senator, who recently won a million dollar case as a lawyer against the government in an expropriation suit while a sitting senator.

**References:**

J. Cárdenas, PODERES FACTICOS E INCOMPATIBILIDADES PARLAMENTARIAS, IIJ-UNAM, 2006.

**100:** The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

28f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

**References:**

Same as above

**100:** The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

28g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

**References:**

Same as above

**100:** Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

**25:**

**0:** Legislative branch asset disclosures are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

---

29. Can citizens access the asset disclosure records of members of the national legislature?

33

29a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

**References:**

Art. 40 Ley de Responsabilidades. Only if authorized by the legislator.

**YES:** A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

**NO:** A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

29b. In practice, citizens can access these records within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Available records are easily accessible, but only a minority of declarations are actually public.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

29c. In practice, citizens can access these records at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Available records are easily accessible, but only a minority of declarations are actually public.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

---

### 30. Can citizens access legislative processes and documents?

100

30a. In law, citizens can access records of legislative processes and documents.

YES | NO

**References:**

Ley Federal de Acceso a la Información Pública applies to Congress. Specific rules for access to congressional documents are included in Acuerdo de la Mesa Directiva por el que se establecen los criterios de clasificación, desclasificación y custodia de la información reservada y confidencial" <http://www.diputados.gob.mx/transparencia.htm>

**YES:** A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

**NO:** A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

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

100 | 75 | 50 | 25 | 0

**References:**

<http://www.monitorlegislativo.org/>

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

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

100 | 75 | 50 | 25 | 0

**References:**

Minimum costs, only for photocopies, as per the Ley Federal de Transparencia

<http://www.monitorlegislativo.org/>

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

### 31. Are judges appointed fairly?

58

31a. In practice, there is a transparent procedure for selecting national-level judges.

YES | NO

#### References:

Competitive selection process for judges, as per Articles 112-117 of the Ley Orgánica del Poder Judicial de la Federación.

**YES:** A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages.

**NO:** A NO score is given if there is no formal process of selection or the process is conducted without public oversight.

31b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

#### References:

Very difficult to get around the legal procedures. Favoritism is prevalent (Interview with anonymous Supreme Court minister), but this only affects the decision between candidates who all formally comply with the legal requirements.

**100:** National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

**75:**

**50:** Most national-level judges selected meet these qualifications, with some exceptions.

**25:**

**0:** National-level judges are often unqualified due to lack of training or experience.

31c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

#### References:

Only supreme court justices have to be approved by the Senate. Other judges have to be approved by the Consejo de la Judicatura, but this commission is not really independent since it is presided over by the president of the Supreme Court and a majority of its members are from the judiciary. Ley Orgánica del Poder Judicial de la Federación and interview with ex-Consejero de la Judicatura.

**YES:** A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

**NO:** A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

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

50

32a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

### References:

Ley Orgánica del Poder Judicial de la Federación. Reasons must be given since all judicial decisions can be appealed to higher level. The decisions can be consulted via internet or through a FOIA request.

**YES:** A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

**NO:** A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

32b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

### References:

Reasons are always given, but there is a wide variety in the quality and the depth of the reasons given (interview Miguel Carbonell). Most "sentencias" can be consulted via the internet.

**100:** Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

**75:**

**50:** Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

**25:**

**0:** Judges commonly issue decisions without formal explanations.

32c. In law, there is an ombudsman (or equivalent agency or mechanism) for the national-level judicial system.

YES | NO

### References:

Constitutional Articles 94 and 100 (Consejo de la Judicatura Federal)

**YES:** A YES score is earned if there is an ombudsman or equivalent mechanism for the judicial system. A judicial ombudsman is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure,

abuses of power or other failures of the judiciary.

**NO:** A NO score is earned if no agency or mechanism is specifically mandated to act as a judicial ombudsman.

32d. In law, the judicial ombudsman (or equivalent agency or mechanism) is protected from political interference.

YES | **NO**

**References:**

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

**YES:** A YES score is earned if there are formal rules establishing that the judicial ombudsman is operationally independent from political interference by the executive, legislative or judicial branches.

**NO:** A NO score is earned if there are no formal rules establishing the independence of the judicial ombudsman. A NO score is given if the judicial ombudsman function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

32e. In practice, when necessary, the judicial ombudsman (or equivalent agency or mechanism) initiates investigations.

100 | 75 | 50 | **25** | 0

**References:**

Communique 14-2005 of the Consejo de la Judicatura states that during the Council's first 10 years of existence it punished 192 federal circuit judges and 299 district judges. But independent reports have seriously questioned the effectiveness of the Council, pointing to the widespread nature of corruption in the judiciary. See report of Param Kumaraswamy, UN Special Rapporteur on Independence of the Judiciary.

**100:** The ombudsman aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The ombudsman is fair in its application of this power.

**75:**

**50:** The ombudsman will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The ombudsman, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The ombudsman rarely investigates on its own or cooperates in other agencies' investigations, or the ombudsman is partisan in its application of this power.

32f. In practice, when necessary, the judicial ombudsman (or equivalent agency or mechanism) imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

**References:**

Communique 14-2005 of the Consejo de la Judicatura states that during the Council's first 10 years of existence, it punished 192 federal circuit judges and 299 district judges. But independent reports have seriously questioned the effectiveness of the Council pointing to the widespread nature of corruption in the judiciary. See report of Param Kumaraswamy, UN Special Rapporteur on Independence of the Judiciary.

**100:** When rules violations are discovered, the ombudsman is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

**75:**

**50:** The ombudsman enforces rules, but is limited in its effectiveness. The ombudsman may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The ombudsman does not effectively penalize offenders. The ombudsman may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The ombudsman may be partisan in its application of power.

---

## III-4. Budget Processes

---

### 33. Can the legislature provide input to the national budget?

58

33a. In law, the legislature can amend the budget.

YES | NO

**References:**  
Constitutional Article 74

**YES:** A YES score is earned if the legislature has the power to add or remove items to the national government budget.

**NO:** A NO score is earned if the legislature can approve, but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

33b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

**References:**  
There are important off budget" funds over which congress does not have power.  
Arturo González de Aragón, Supreme Federal Auditor  
[http://www.ifai.org.mx/eventos/2006/SNT\\_2006/LaagendadeRendiciondeCuentas.pdf](http://www.ifai.org.mx/eventos/2006/SNT_2006/LaagendadeRendiciondeCuentas.pdf)

**100:** All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

**75:**

**50:** Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

**25:**

**0:** The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

33c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

**References:**

Legislators have very few staff members, only a couple of advisors for each congressman. See Luis Carlos Ugalde: The Mexican Congress: Old Player, New Power" (CSIS, 2000), <http://www.monitorlegislativo.org/>.

**100:** Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

**75:**

**50:** Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

**25:**

**0:** Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

---

### 34. Can citizens access the national budgetary process?

33

34a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

**References:**

Mexico's ranking on the international index of budget transparency for 2005 is 53.8 out of 100 <http://www.fundar.org.mx/indice2005/docs/paises/ReporteMexico2005.pdf>

**100:** Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

**75:**

**50:** There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

**25:**

**0:** Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

34b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

**References:**

Mexico's ranking on the international index of budget transparency for 2005 is 53.8 out of 100 <http://www.fundar.org.mx/indice2005/docs/paises/ReporteMexico2005.pdf>  
<http://www.fundar.org.mx/indice2005/docs/paises/ReporteMexico2005.pdf>

**100:** Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

**75:**

**50:** Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

**25:**

**0:** Citizens or CSOs have no formal access to provide input to the budget debate.

34c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

**References:**

The Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental requires access. The Secretaría de Hacienda y Crédito Público allows full access via internet to the national budget, although not all expenditures are itemized. See web site for the International Budget Project.

**100:** Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

**75:**

**50:** Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

**25:**

**0:** Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

---

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

100

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

YES | NO

**References:**

Two commissions: Comisión de Presupuesto y Cuenta Pública and Comisión de Vigilancia de la Auditoría Superior de la Federación. [www.cddhcu.gob.mx](http://www.cddhcu.gob.mx)

**YES:** A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

**NO:** A NO score is earned if no such body exists. A NO score is earned if there is a body executing this function but it is not under the direction of the legislature.

### 36. Is the legislative committee overseeing the expenditure of public funds effective?

31

36a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

**References:**

All expenditure information is concentrated in the Secretaría de Hacienda y Crédito Público and submitted to congress yearly in the Cuenta Pública. The Secretary also must appear before congress at least once a year.

Nevertheless, in practice there is not much dialogue or active oversight of executive expenditure directly by congress. [www.monitorlegislativo.org.mx](http://www.monitorlegislativo.org.mx)

**100:** Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

**75:**

**50:** Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

**25:**

**0:** There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

36b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

**References:**

Normally the Comisión de Presupuesto is led by the party in control of the executive and the Comisión de Vigilancia is led by an opposition party. See [www.cddhcu.gob.mx](http://www.cddhcu.gob.mx)

**100:** The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

**75:**

**50:** The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

**25:**

**0:** The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

36c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

**References:**

These committees are highly politicized. A recent example is the investigation into the behavior of the first lady and her family, leading to aggressive public declarations on both sides.

**100:** This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

**75:**

**50:** This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

**25:**

**0:** This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

36d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

**References:**

Some high level cases (i.e. Bribiesca Sahagún, FOBAPROA, etc.) but in general rare.  
[www.cddhcu.gob.mx](http://www.cddhcu.gob.mx)  
Ugalde, op.cit.  
[www.monitorlegislativo.org.mx](http://www.monitorlegislativo.org.mx)

**100:** When irregularities are discovered, the committee is aggressive in investigating the government.

**75:**

**50:** The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

---

Category IV. Administration and Civil Service

---

## IV-1. <sup>55</sup>Civil Service Regulations

---

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

37a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

**References:**

Ley de Servicio Profesional de Carrera en la Administración Pública Federal

**YES:** A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

**NO:** A NO score is earned if there are no formal rules establishing an independent civil service.

37b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

**References:**

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos (Article 8)

**YES:** A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

**NO:** A NO score is earned if no such regulations exist.

37c. In law, there is an independent redress mechanism for the civil service.

YES | NO

**Comments:**

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

**References:**

Ley del Servicio Profesional (Article 76)

**YES:** A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

**NO:** A NO score is earned if no such mechanism exists.

37d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

**Comments:**

Not for all corruption convictions. Only if specifically punished by inhabilitaci3n" by the Secretar3a de la Funci3n P3blica for the offense.

**References:**

Ley Federal de Responsabilidades Administrativas de los Servidores P3blicos.

**YES:** A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

**NO:** A NO score is earned if no such rules exist.

---

38. Is the law governing the administration and civil service effective?

61

38a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

**References:**

The Civil Service Law has only recently taken full effect (2005) and has not been fully tested. The historically authoritarian, patrimonial bureaucratic culture remains ingrained in government.  
David Arellano, GESTION ESTRATEGICA PARA EL SECTOR PUBLICO (Fondo de Cultura Econ3mica, 2004)  
Maria del Carmen Pardo, EL SERVICIO CIVIL DE CARRERA PARA UN MEJOR DESEMPEÑO DE LA GESTION PUBLICA (Auditor3a Superior de la Federaci3n, 2005)

**100:** Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

**75:**

**50:** Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

**25:**

**0:** Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

38b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

**References:**

The Civil Service Law has only recently taken full effect (2005) and has not been fully tested. The historically authoritarian, patrimonial bureaucratic culture remains ingrained in government.  
www.trabajaen.gob.mx  
David Arellano, GESTION ESTRATEGICA PARA EL SECTOR PUBLICO (Fondo de Cultura Econ3mica, 2004)

**100:** Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

38c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

**References:**

The Civil Service Law has only recently taken full effect (2005) and has not been fully tested. The historically authoritarian, patrimonial bureaucratic culture remains ingrained in government.

David Arellano, GESTION ESTRATEGICA PARA EL SECTOR PUBLICO (Fondo de Cultura Económica, 2004)

Maria del Carmen Pardo, EL SERVICIO CIVIL DE CARRERA PARA UN MEJOR DESEMPEÑO DE LA GESTION PUBLICA (Auditoría Superior de la Federación, 2005)

**100:** Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

**75:**

**50:** Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

**25:**

**0:** Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

38d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

**Comments:**

The civil service law does not cover all government posts. For instance, high-level positions such as Titulares de Unidad" and all posts in "decentralized entities" like the state oil company PEMEX are excluded from the law.

**References:**

<http://www.trabajaen.gob.mx>

**100:** Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

**75:**

**50:** Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

**25:**

**0:** Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

38e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

**References:**

<http://www.presupuestoygastopublico.org/v2/ppgp.php?IdPagina=6>

**100:** Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

**75:**

**50:** Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

**25:**

**0:** Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

38f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

**References:**

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental requires full disclosure of internal structures. See also [www.trabajaen.gob.mx](http://www.trabajaen.gob.mx)

**100:** The government publishes such a list on a regular basis.

**75:**

**50:** The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

**25:**

**0:** The government rarely or never publishes such a list, or when it does it is wholly incomplete.

38g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

**References:**

To soon to tell. Informal reports are mixed in terms of the effectiveness of these mechanisms.

**100:** The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

**75:**

**50:** The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

**25:**

**0:** The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

38h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

**References:**

No reports of delays in payments to civil servants.

**100:** In the past year, no civil servants have been paid late.

**75:**

**50:** In the past year, some civil servants have been paid late.

**25:**

**0:** In the past year, civil servants have frequently been denied due pay.

38i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

**References:**

The Secretaría de la Función Pública keeps a list of funcionarios inhabilitados" and it is almost impossible for convicted officials to be hired since a "constancia de inhabilitación" is also requested for almost all posts.

Civil Service Law (Article 21)

Nevertheless, there is NO prohibition on taking a job in a local government (state, municipal, etc.) if you have been convicted at the federal level. The contrary is also the case. This is a major loophole. There is no national/federal "blacklist".

**100:** A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

**75:**

**50:** A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

**25:**

**0:** There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

39. Are there regulations addressing conflicts of interest for civil servants?

63

39a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

**References:**

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos (article 8)

**YES:** A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

**NO:** A NO score exists if no such requirements exist in regulation or law.

39b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

**References:**

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos (Article 8)

**YES:** A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

39c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

**References:**

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos (Article 8)

**YES:** A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

**NO:** A NO score is earned if there are no such guidelines or regulations.

39d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

**References:**

Cooling-off period is only one year and there is a great deal of rotation between the private sector and government employment at high levels which puts into question the independence of the state.

High-level cases include Pedro Aspe, Esteban Moctezuma, but there are many others.

<http://www.milenio.com/semanal/191/heg1.htm>;

[http://www.canal100.com.mx/telemundo/entrevistas/?id\\_notas=5146](http://www.canal100.com.mx/telemundo/entrevistas/?id_notas=5146) [http://cronica.com.mx/nota.php?id\\_notas=169205](http://cronica.com.mx/nota.php?id_notas=169205)

**100:** The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

**References:**

Article 89 of the Ley Federal de Responsabilidades de los Servidores Públicos clearly states that the Secretaría de la Función Pública is required to maintain a list of all gifts and hospitality. Nevertheless, the web page of the Secretaría does not include any information that such a list exists.

Otherwise, see the reports of Transparency International, where Mexico systematically ranks poorly.

**100:** The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

39f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

**References:**

Multiple examples exist of conflict of interests affecting policy decisions. Perhaps even more indicative, we could not find a single report of a high-level official actually recusing.

The Diego Zavala case is only one of many publicly available cases: <http://www.jornada.unam.mx/2006/06/09/003n1pol.php>  
The Juan Bueno Torio case is similar: <http://www.jornada.unam.mx/2006/06/20/006n1pol.php>

**100:** The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

**75:**

**50:** The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

**25:**

**0:** Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

---

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

0

40a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

**References:**

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos (Article 40) – only if authorized by the public servant himself.

**YES:** A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

**NO:** A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

40b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | **0**

**References:**

On the internet if available, but almost no declarations are actually available.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

40c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

On the internet if available, but almost no declarations are actually available.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

---

## IV-2. Whistle-blowing Measures

---

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

0

41a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

**Comments:**

A Ley Federal de Protección a Informantes de Actos de Corrupción was presented to Congress in 2002, but this was rejected. The Attorney General's office (PGR) has a witness protection program, but this only applies to questions of organized crime.

**References:**

The Ley Federal de Trabajo obliges "just cause" to be demonstrated in order to fire public servants, and the Ley Federal de Responsabilidades (article 8) requires public servants to report wrongdoing.

No explicit legal protection for whistleblowers.

**YES:** A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

**NO:** A NO score is earned if there are no legal protections for public-sector whistleblowers.

41b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

**References:**

Since this is never the explicit reason for firing, it is very difficult to know. Nevertheless, the general impression is that the culture of complicity remains within the Mexican public service (See Ernesto Villanueva, Presentation at the First International Conference on Corruption, [www.corrupción.unam.mx](http://www.corrupción.unam.mx))

See also information on the particularly high profile case of Lilia Cortés, <http://oficiodepapel.com.mx/contenido/?m=20050225>

**100:** Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

41c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

**References:**

General protections in the Federal Labor law against unjust firing, but no explicit protections for whistleblowers.

**YES:** A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

**NO:** A NO score is earned if there are no legal protections for private-sector whistleblowers.

41d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | **0**

**References:**

No reported cases of whistleblowers existing or much less being successful. This is the best indicator that there isn't any effective protection.

**100:** Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

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

38

42a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

The Secretaría de la Función Pública has a significant staff and budget, and the hot-line reporting system receives over 100,00 phone calls a year. [http://www.funcionpublica.gob.mx/doctos/Rendicion\\_cuentasSFP2000\\_2005.pdf](http://www.funcionpublica.gob.mx/doctos/Rendicion_cuentasSFP2000_2005.pdf). But these reports are not always followed up on with due rigor.

**100:** The agency/entity has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

42b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

Same as above

**100:** The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

42c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

The Secretaría de la Función Publica reports that SACTEL has functioned beautifully

([http://www.funcionpublica.gob.mx/doctos/Rendicion\\_cuentasSFP2000\\_2005.pdf](http://www.funcionpublica.gob.mx/doctos/Rendicion_cuentasSFP2000_2005.pdf)) but there is not independent evidence that these quick response times (usually under 10 days) actually have led to serious investigations and prosecutions.

**100:** The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

42d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

The Secretaría does not offer information on this in its reports, an indicator that investigation does not usually occur.

**100:** When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

**75:**

**50:** The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

---

19  
IV-3. Procurement

---

43. Is the public procurement process effective?

90

43a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

**References:**

Ley Federal de Responsabilidades (Article 47)

**YES:** A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private gain for public procurement officials.

**NO:** A NO score is earned if no such rules exist.

43b. In law, there is mandatory professional training for public procurement officials.

YES | NO

**References:**

La Ley del Servicio Profesional de Carrera en la Administración Pública Federal (Articles 10 and 111)

**YES:** A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

**NO:** A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, or voluntary.

43c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

**References:**

No cases of recusal or punishment for this, an indicator that not all is perfect. Independent studies demonstrate that the procurement process in the Mexican government is quite irregular (See Antonio Azuela, *Las Compras del Gobierno: Percepciones Duras, Datos Blandos*, Forthcoming, Laboratory of Documentation and Analysis of Corruption and Transparency, Instituto de Investigaciones Sociales, UNAM).

**100:** Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

**75:**

**50:** Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

**25:**

**0:** Conflict of interest regulations do not exist, or are consistently ineffective.

43d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

**References:**

La Ley Federal de Responsabilidades Administrativas de los Servidores Públicos (Article 36, Asset declarations)

**YES:** A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

**NO:** A NO score is earned if no such mandate exists.

43e. In law, major procurements require competitive bidding.

YES | NO

**References:**

La Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público

**YES:** A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

**NO:** A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

43f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

**References:**

La Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público permit this only in exceptional cases when there are no other options.

**YES:** A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

**NO:** A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

43g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

**References:**

La Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público (Articles 65-70 )

**YES:** A YES score is earned if there is a formal appeal process for unsuccessful bidders.

**NO:** A NO score is earned if no such process exists.

43h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

**References:**  
Same as above

**YES:** A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

**NO:** A NO score is earned if no such process exists.

43i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

**Comments:**  
Nevertheless, there is an important federalist loophole since a company can still sell to local governments if prohibited at the federal level, and vice versa.

**References:**  
Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público (art. 61)  
Ley de Obras Públicas y Servicios Relacionados con las Mismas (art. 78)

**YES:** A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

**NO:** A NO score is earned if no such process exists.

43j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

**References:**  
The Secretaría de la Función Pública publishes the list of proveedores inhabilitados" at <http://www.funcionpublica.gob.mx/unaopsp/unaop1.htm>  
But, lack of coordination between different levels of government is a major loophole.

**100:** A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

**75:**

**50:** A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

**25:**

**0:** There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

---

#### 44. Can citizens access the public procurement process?

92

44a. In law, citizens can access public procurement regulations.

YES | NO

**References:**

Ley Federal de Transparencia (Article 7)

**YES:** A YES score is earned if procurement rules are, by law, open to the public.

**NO:** A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

44b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

**References:**

Same as above

**YES:** A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

**NO:** A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

44c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

[www.compranet.gob.mx](http://www.compranet.gob.mx)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**  
www.compranet.gob.mx

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

44e. In practice, major public procurements are widely advertised.

100 | 75 | 50 | 25 | 0

**References:**  
www.compranet.gob.mx

**100:** There is a formal process of advertising public procurements. This may include a government Web site, newspaper advertising, or other official announcements. All major procurements are advertised in this way.

**75:**

**50:** There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective.

**25:**

**0:** There is no formal process of advertising major public procurements or the process is superficial and ineffective.

44f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

**Comments:**  
Ley de Adquisicones (article 26)

**References:**  
www.compranet.gob.mx  
Although the information is often limited only to the most recent fiscal year. See Leonarda Reyes, Desapariciones en Compranet", PROCESO magazine, No. 1563, October 15, pp. 40-41.

**100:** Records of public procurement results are publicly available through a formal process.

**75:**

**50:** Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

**25:**

**0:** This information is not available to the public through an official process.

---

## IV-4. Privatization

---

45. Is the privatization process effective?

33

45a. In law, all businesses are eligible to compete for privatized state assets.

YES | **NO**

**References:**

No explicit regulation. The state organ responsible is the Comisión Intersecretarial de Desincorporación.

**YES:** A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

**NO:** A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

45b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

**YES** | NO

**References:**

Ley Federal de Responsabilidades de los Servidores Públicos (Article. 47)

**YES:** A YES score is earned if there are formal regulations defining and regulating conflicts of interest for government officials involved in privatization.

**NO:** A NO score is earned if there are no such formal regulations.

45c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | **0**

**References:**

Tesis Doctoral Irma Sandoval

**100:** Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

**75:**

**50:** Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

---

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

75

46a. In law, citizens can access the terms and conditions of privatization bids.

YES | NO

**YES:** A YES score is earned if there is a formal process of publishing the details of privatization bids that makes information available to all citizens.

**NO:** A NO score is earned if there is no formal publication process, or if any citizens are excluded by law from accessing this information.

46b. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

**YES:** A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

**NO:** A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

46c. In practice, citizens can access the terms and conditions of privatization bids within a reasonable time period.

100 | 75 | 50 | 25 | 0

#### References:

No recent cases. Historical cases (i.e. bank privatizations in the 1990s) were famously opaque. (See Irma Sandoval, THE POLITICS OF FINANCIAL LIBERALIZATION" Ph.D. Dissertation, University of California-Santa Cruz, 2006)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

46d. In practice, citizens can access the terms and conditions of privatization bids at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

No recent cases. Historical cases (i.e. bank privatizations in the 1990s) were famously opaque. (See Irma Sandoval, THE POLITICS OF FINANCIAL LIBERALIZATION" Ph.D. Dissertation, University of California-Santa Cruz, 2006)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

---

Category V. Oversight and Regulation

---

V-1. <sup>69</sup> National Ombudsman

---

47. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

47. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

**References:**

Comisión Nacional de los Derechos Humanos (Constitutional article 102)

**YES:** A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

**NO:** A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

---

48. Is the national ombudsman effective?

48a. In law, the ombudsman is protected from political interference.

YES | NO

**References:**

The Comisión Nacional de los Derechos Humanos (CNDH) is an autonomous agency according to constitutional article 102.

**YES:** A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

48b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

**References:**

John Ackerman, "Autonomía Disfuncional?: El Diseño y Desarrollo Institucional de la Comisión Nacional de los Derechos Humanos", in INSTITUCIONES, LEGALIDAD Y ESTADO DE DERECHO: EN EL MEXICO DE LA TRANSICION DEMOCRATICA, Gustavo Fondevila, ed. (Fontamara, 2006)

**100:** This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

**75:**

**50:** This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

**25:**

**0:** This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

48c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**References:**

Same as above

**100:** The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

48d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

Same as above

**100:** The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

48e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

**Comments:**

The civil service code has only recently been implemented and it will solidify the present functionalities in their positions, a large number of whom have spent time in the attorney general's office (PGR).

**References:**

Ackerman, 2006

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

48f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**  
Ackerman, 2006

**100:** The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

48g. In practice, the agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

**Comments:**  
Yearly reports are public, but there is a major problem with access to information at the CNDH since the agency has not allowed anyone to view any information on how they process complaints.

**References:**  
Ackerman, 2006

**100:** The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

**75:**

**50:** The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

**25:**

**0:** The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

48h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**  
Ackerman, 2006

**100:** The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

**75:**

**50:** The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

48i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**References:**

Ackerman, 2006

**100:** When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

**75:**

**50:** The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

48j. In practice, the government acts on the findings of the agency (or agencies).

100 | 75 | 50 | 25 | 0

**References:**

Ackerman, 2006

**100:** Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

**75:**

**50:** In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

**25:**

**0:** Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

48k. In practice, the agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Ackerman, 2006

**100:** The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

---

#### 49. Can citizens access the reports of the ombudsman?

67

49a. In law, citizens can access reports of the ombudsman(s).

YES | NO

**References:**

Yearly reports are on the internet at [www.cndh.org.mx](http://www.cndh.org.mx). Although they are extremely insufficient

**YES:** A YES score is earned if all ombudsman reports are publicly available.

**NO:** A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

49b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Ackerman, 2006. Reports are insufficient.

**100:** Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Reports are insufficient

**References:**  
Ackerman, 2006

**100:** Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

---

## V-2. Supreme Audit Institution

---

50. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

50. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

**References:**  
Constitutional article 79. Supreme Federal Auditor (Auditor Superior de la Federación)

**YES:** A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

**NO:** A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

---

51. Is the supreme audit institution effective?

69

51a. In law, the supreme audit institution is protected from political interference.

YES | NO

**References:**  
Technical" and "management" autonomy given by article 79 of the constitution.

**YES:** A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

51b. In practice, the head of the agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**References:**

John Ackerman, ORGANISMOS INDEPENDIENTES Y RENDICION DE CUENTAS: EL CASO MEXICANO, Instituto de Investigaciones Juridicas/Siglo XXI Editores, forthcoming, January 2007. (Chap. 4)

**100:** The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director of the agency can be removed at the will of political leadership.

51c. In practice, the agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

Underfunded and understaffed

**References:**

Ackerman, 2007

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

51d. In practice, agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

**References:**  
Ackerman, 2007

**100:** Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

51e. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**  
Ackerman, 2007

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

51f. In practice, the agency makes regular public reports.

100 | 75 | 50 | 25 | 0

**Comments:**  
There is a great deal of missing information in the reports and they are not widely distributed or publicized.

**References:**  
Ackerman, 2007

**100:** The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

**75:**

**50:** The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

**25:**

**0:** The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

51g. In practice, the government acts on the findings of the agency.

100 | 75 | 50 | 25 | 0

**References:**  
Ackerman, 2007

**100:** Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

**75:**

**50:** In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

**25:**

**0:** Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

51h. In practice, the supreme audit institution is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

**References:**  
Ackerman, 2007

**100:** The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

**75:**

**50:** The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

**25:**

**0:** The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

---

## 52. Can citizens access reports of the supreme audit institution?

100

52a. In law, citizens can access reports of the agency.

YES | NO

**References:**  
Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental.

**YES:** A YES score is earned if all supreme auditor reports are available to the general public.

**NO:** A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

52b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Available on the internet. [www.asf.gob.mx](http://www.asf.gob.mx)

**100:** Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Reports take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Available on the internet. [www.asf.gob.mx](http://www.asf.gob.mx)

**100:** Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

53. In law, is there a national tax collection agency?

YES | NO

**References:**

Sistema de Administración Tributaria (SAT) [www.sat.gob.mx](http://www.sat.gob.mx)

**YES:** A YES score is earned if there is a national agency formally mandated to collect taxes.

**NO:** A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

---

54. Is the tax collection agency effective?

38

54a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

Marcelo Bergman – [http://www.presupuestoygastopublico.org/documentos/reforma\\_fiscal/Recaudacion\\_Impuestos.pdf](http://www.presupuestoygastopublico.org/documentos/reforma_fiscal/Recaudacion_Impuestos.pdf)  
José Luis Calva, ed. AGENDA DEL DESARROLLO 2006-2020: FINANZAS PUBLICAS PARA EL DESARROLLO, Ed. Taurus-UNAM, 2006. (predominance of corruption in the SAT)

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

54b. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

The SAT is not autonomous and is underfunded. See [www.presupuestoygastopublico.org](http://www.presupuestoygastopublico.org)

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

---

55. In practice, are tax laws enforced uniformly and without discrimination?

0

55. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

**References:**

José Luis Calva, ed. AGENDA DEL DESARROLLO 2006-2020: FINANZAS PUBLICAS PARA EL DESARROLLO, Ed. Taurus-UNAM, 2006.

**100:** Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

**75:**

**50:** Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

**25:**

**0:** Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

---

56. In law, is there a national customs and excise agency?

100

56. In law, is there a national customs and excise agency?

YES | NO

**References:**

The Administración General de Aduanas is part of the SAT ([www.sat.gob.mx](http://www.sat.gob.mx))

**YES:** A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

**NO:** A NO score is earned if that function is spread over several agencies, or does not exist.

---

57. Is the customs and excise agency effective?

38

57a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

<http://www.jornada.unam.mx/2003/05/23/025n1eco.php?origen=economia.php&fly=1>

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

57b. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

[www.presupuestoygastopublico.org](http://www.presupuestoygastopublico.org)

[www.fundar.org.mx](http://www.fundar.org.mx)

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

---

58. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

58. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

**Comments:**

In general, everyone (public and private sector) complains about the corruption and irregular practices of customs officials, but unfortunately there are few, if any, trustworthy studies of the phenomenon. This is a major opportunity for future research. In general the problem is centered around kickbacks for allowing the illegal importation of goods. For instance, the inundation of goods from China recently has been attributed to this phenomenon.

**References:**

The recent assassination of a top official in the customs agency is an indication of serious problems, although the official story is quite different: [http://www.senado.gob.mx/comisiones/directorio/asuntosfronterizos/Content/frontera\\_norte/docs/aduana.pd](http://www.senado.gob.mx/comisiones/directorio/asuntosfronterizos/Content/frontera_norte/docs/aduana.pd)

See also: <http://www.lacrisis.com.mx/cgi-bin/cris-cgi/discomuni.cgi?column03%7c20040908133851>

**100:** Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

**75:**

**50:** Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

**25:**

**0:** Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

---

## V-4. Financial Sector Regulation

---

59. In law, is there a financial regulatory agency overseeing publicly listed companies?

100

59. In law, is there a financial regulatory agency overseeing publicly listed companies?

YES | NO

**References:**

Comisión Nacional Bancaria y de Valores

**YES:** A YES score is earned if there is an agency tasked with overseeing publicly listed companies in the public interest and ensuring that disclosure rules are met.

**NO:** A NO score is earned if this function is spread over several agencies or does not exist.

---

60. Is the financial regulatory agency effective?

40

60a. In law, the financial regulatory agency is protected from political interference.

YES | NO

**References:**

The Secretary of Finance and Public Credit directly appoints the head of the Ley de la Comisión Nacional Bancaria y de Valores (article 14).

**YES:** A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

60b. In practice, the agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

Civil Service reform only recently implemented.

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

60c. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

[www.presupuestoygastopublico.org](http://www.presupuestoygastopublico.org)

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

60d. In practice, when necessary, the financial regulatory agency independently initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

List of punishments at [http://www.cnbv.gob.mx/seccion.asp?sec\\_id=543&com\\_id=0](http://www.cnbv.gob.mx/seccion.asp?sec_id=543&com_id=0)

**100:** When irregularities are discovered, the agency is aggressive in investigating and/or in cooperating with other investigative bodies.

**75:**

**50:** The agency starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

60e. In practice, when necessary, the financial regulatory agency imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

The CNBV is notoriously lacking in independence (both in legal design and practice). It is generally captured by large financial interests. This is reflected in the infrequent and minimal penalties imposed on offenders.

**References:**

[http://www.cnbv.gob.mx/seccion.asp?sec\\_id=543&com\\_id=0](http://www.cnbv.gob.mx/seccion.asp?sec_id=543&com_id=0)

Irma Sandoval (2006) "The Politics of financial Liberalization": Crisis, Rent Seeking & State Interventionism in Mexico, Ph.D. thesis, Politics Department, University of California, Santa Cruz.

**100:** When rules violations are discovered, the agency is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

**75:**

**50:** The agency enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partis

---

## 61. Can citizens access the financial records of publicly listed companies?

88

61a. In law, citizens can access the financial records of publicly listed companies.

YES | NO

**References:**

Ley del Mercado de Valores (articles 2 & 104)

**YES:** A YES score is earned if the financial information of all publicly traded companies is required by law to be public.

**NO:** A NO score is earned if any category of publicly- owned or publicly-traded company is exempt from this rule, or no such rules exist.

61b. In practice, the financial records of publicly listed companies are regularly updated.

100 | 75 | 50 | 25 | 0

**Comments:**

Companies tend to publish regular financial reports but the reports are of questionable quality

**References:**

[http://www.bmv.com.mx/BMV/JSP/sec5\\_infogral.jsp](http://www.bmv.com.mx/BMV/JSP/sec5_infogral.jsp)

**100:** Publicly traded companies always disclose financial data, which is generally accurate and up to date.

**75:**

**50:** Publicly traded companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

**25:**

**0:** Financial data is not available, or is consistently superficial or otherwise of no value to investors.

61c. In practice, the financial records of publicly listed companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

**References:**

Theoretically yes: [www.cnbv.gob.mx](http://www.cnbv.gob.mx), [www.imcp.org.mx](http://www.imcp.org.mx)  
But plenty of cases of irregularities shed serious doubt on the professionalism of the audits. See for instance the case of TV Azteca, which was recently suspended from the NY stock exchange.

**100:** Financial records of all public companies are regularly audited by a trained third party auditor using accepted international standards.

**75:**

**50:** Financial records of public companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

**25:**

**0:** Publicly traded companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

61d. In practice, citizens can access the records of disciplinary decisions imposed by the government on publicly-listed companies.

100 | 75 | 50 | 25 | 0

**References:**

[http://www.cnbv.gob.mx/seccion.asp?sec\\_id=543&com\\_id=0](http://www.cnbv.gob.mx/seccion.asp?sec_id=543&com_id=0)

**100:** These records are freely available to all citizens through a formal official process.

**75:**

**50:** These records are available to all citizens, with some exceptions.

**25:**

**0:** These records are generally not available through official processes.

61e. In practice, citizens can access the financial records of publicly listed companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

[www.bmv.com.mx](http://www.bmv.com.mx)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

61f. In practice, citizens can access the financial records of publicly listed companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

[www.bmv.com.mx](http://www.bmv.com.mx)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

62a. In law, anyone may apply for a business license.

YES | NO

**References:**

Ley General de Sociedades Mercantiles and Constitutional Article 5

**YES:** A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

**NO:** A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

62b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

**References:**

Ley Federal de Procedimiento Administrativo and Juicio de Amparo

**YES:** A YES score is earned if there is a formal process for appealing a rejected license.

**NO:** A NO score is earned if no such mechanism exists.

62c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

222 days on average according to the World Bank: (<http://www.doingbusiness.org/ExploreEconomies/Default.aspx?economyid=127>).

**100:** Licenses are not required, or licenses can be obtained within roughly one week.

**75:**

**50:** Licensing is required and takes around one month. Some groups may be delayed up to a three months.

**25:**

**0:** Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

62d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

<http://www.doingbusiness.org/ExploreEconomies/Default.aspx?economyid=127>

**100:** Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

**75:**

**50:** Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

---

63. Do businesses receive equitable regulatory treatment from the government?

50

63a. In law, basic business regulatory requirements for meeting health, safety, and environmental standards are transparent and publicly available.

YES | NO

**References:**

See the World Bank study on the topic at: <http://www.doingbusiness.org/mexico>

**YES:** A YES score is earned if basic regulatory requirements for meeting health, safety, and environmental standards are publicly accessible and transparent.

**NO:** A NO score is earned if such requirements are not made public or are otherwise not transparent.

63b. In practice, business inspections by the government are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

**Comments:**

This is an area ripe for new research.

**References:**

See the World Bank study on the topic at: <http://www.doingbusiness.org/mexico>

**100:** Business inspections by the government (i.e. health, safety, or environmental inspections) are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

**75:**

**50:** Business inspections by the government (i.e. health, safety, or environmental inspections) are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections (i.e. health, safety, or environmental inspections) are routinely carried out by the government in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

---

Category VI. Anti-Corruption and Rule of Law

---

58  
VI-1. Anti-Corruption Law

---

64. Is there legislation criminalizing corruption?

100

64a. In law, attempted corruption is illegal.

YES | NO

**References:**

Código Penal Federal (Articles 214-224)

**YES:** A YES score is earned if corruption laws include attempted acts.

**NO:** A NO score is earned if this is not illegal.

64b. In law, extortion is illegal.

YES | NO

**References:**

Código Penal Federal (Article 390)

**YES:** A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

**NO:** A NO score is earned if this is not illegal.

64c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

**References:**  
Código Penal Federal (art.222)

**YES:** A YES score is earned if offering a bribe is illegal.

**NO:** A NO score is earned if this is not illegal.

64d. In law, receiving a bribe (i.e. passive corruption) is illegal.

**YES** | NO

**References:**  
Código Penal Federal (art.222)

**YES:** A YES score is earned if receiving a bribe is illegal.

**NO:** A NO score is earned if this is not illegal.

64e. In law, bribing a foreign official is illegal.

**YES** | NO

**References:**  
Código Penal Federal (Articles 214-224)

**YES:** A YES score is earned if bribing a foreign official is illegal.

**NO:** A NO score is earned if this is not illegal.

64f. In law, using public resources for private gain is illegal.

**YES** | NO

**References:**  
Código Penal Federal (Articles 214-224)

**YES:** A YES score is earned if using public resources for private gain is illegal.

**NO:** A NO score is earned if this is not illegal.

64g. In law, using confidential state information for private gain is illegal.

YES | NO

**References:**

Código Penal Federal articles 210 , 211, 214, 220 fracc. II

**YES:** A YES score is earned if using confidential state information for private gain is illegal.

**NO:** A NO score is earned if this is not illegal.

64h. In law, money laundering is illegal.

YES | NO

**References:**

Código Penal Federal (art. 400 bis)

**YES:** A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

**NO:** A NO score is earned if this is not illegal.

64i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

**References:**

Código Penal Federal (art. 203)

**YES:** A YES score is earned if organized crime is illegal.

**NO:** A NO score is earned if this is not illegal.

---

## VI-2. Anti-Corruption Agency

---

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

100

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

YES | NO

**References:**  
Secretaría de la Función Pública

**YES:** A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

**NO:** A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

---

## 66. Is the anti-corruption agency effective?

31

66a. In law, the agency (or agencies) is protected from political interference.

YES | NO

**References:**  
Cabinet official appointed by the President. Ley Organica de la Administración Pública Federal.

**YES:** A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

66b. In practice, the agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

**References:**  
Entirely dependent on the President.  
See performance audit conducted by the Supreme Federal Auditor on the Secretaría de la Función Pública included in its Informe de Resultados" corresponding to the Cuenta Pública of 2004 (presented to congress in March, 2006)

**100:** This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

**75:**

**50:** This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

**25:**

**0:** This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

66c. In practice, the head of the agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**References:**

Presidential discretion.

**100:** The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director(s) can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director(s) can be removed at the will of political leadership.

66d. In practice, appointments to the agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

**References:**

New civil service code only recently came into effect.

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

66e. In practice, the agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

Significant staff, but insufficient.

**100:** The agency (or agencies) has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

**25:**

**0:** The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

66f. In practice, the agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

Budget dependent on the will of the president.

**100:** The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

66g. In practice, the agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

**References:**

Yearly reports. See [www.sfp.gov.mx](http://www.sfp.gov.mx)

**100:** The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

**75:**

**50:** The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

**25:**

**0:** The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

66h. In practice, the agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

**References:**

Systematic problems actually punishing wrongdoing.

See performance audit conducted by the Supreme Federal Auditor on the Secretaría de la Función Pública included in its Informe de Resultados" corresponding to the Cuenta Pública of 2004 (presented to congress in March, 2006).

**100:** The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

**75:**

**50:** The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

**25:**

**0:** The agency (or agencies) lacks significant powers which limit its effectiveness.

66i. In practice, when necessary, the agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

Depends what you mean by independently". All investigations are ultimately subject to presidential approval. The SFP has not been terribly "proactive". See performance audit conducted by the Supreme Federal Auditor on the Secretaría de la Función Pública included in its "Informe de Resultados" corresponding to the Cuenta Pública of 2004 (presented to congress in March, 2006).

**100:** When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

**75:**

**50:** The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

---

## 67. Can citizens access the anti-corruption agency?

38

67a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

See performance audit conducted by the Supreme Federal Auditor on the Secretaría de la Función Pública included in its Informe de Resultados" corresponding to the Cuenta Pública of 2004 (presented to congress in March, 2006).

**100:** The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

67b. In practice, citizens can complain to the agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

**References:**

See performance audit conducted by the Supreme Federal Auditor on the Secretaría de la Función Pública included in its Informe de Resultados<sup>7</sup> corresponding to the Cuenta Pública of 2004 (presented to congress in March, 2006).

**100:** Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

---

56  
VI-3. Rule of Law

---

68. Is there an appeals mechanism for challenging criminal judgments?

58

68a. In law, there is a general right of appeal.

YES | NO

**References:**

Constitutional articles 103-105, Código Federal de Procedimientos Penales

**YES:** A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

**NO:** A NO score is earned if there is no such process.

68b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

During 2005 63.1 days on average in criminal cases INDICADORES JUDICIALES EN LOS TRIBUNALES UNITARIOS DE CIRCUITO 2005", [http://www.cjf.gob.mx/dgepi/mdej\\_tu\\_05.pdf](http://www.cjf.gob.mx/dgepi/mdej_tu_05.pdf).

**100:** Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

**75:**

**50:** Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

**25:**

**0:** Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

68c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Extremely expensive

**100:** In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

**75:**

**50:** In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

**25:**

**0:** The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

---

69. In practice, do judgments in the criminal system follow written law?

0

69. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

**References:**

Transparency International, Global Corruption Report 2007: Special focus – Judiciary & Corruption, chapter by Miguel Carbonell on Mexico (forthcoming: February, 2007).

**100:** Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely

factors in judicial outcomes.

**75:**

**50:** Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

**25:**

**0:** Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

---

70. In practice, are judicial decisions enforced by the state?

25

70. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

**References:**

Powerful actors systematically avoid enforcement as per Guillermo O'Donnell, *Reflecciones sobre Legalidad y el Estado de Derecho*, Conference presented at the National University of Mexico, May 20, 2005.

**100:** Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

**75:**

**50:** Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

**25:**

**0:** Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

---

71. Is the judiciary able to act independently?

88

71a. In law, the independence of the judiciary is guaranteed.

YES | NO

**References:**

Constitutional articles 86 and 116.

**YES:** A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation and managing the budget of the courts ).

**NO:** A NO score is earned if there are no formal rules establishing an independent judiciary.

71b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

**References:**

Transparency International, Global Corruption Report 2007: Special focus – Judiciary & Corruption, chapter by Miguel Carbonell on Mexico (forthcoming: February, 2007).

**100:** National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

**75:**

**50:** National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

**25:**

**0:** National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

71c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

**References:**

Ley Orgánica del Poder Judicial de la Federación (art. 81, fracc. XXIV)  
Administrated by the Consejo de la Judicatura Federal

**YES:** A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

**NO:** A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

71d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

**References:**

Ley Orgánica del Poder Judicial de la Federación (article 81)

**YES:** A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

**NO:** A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

---

72. Are judges safe when adjudicating corruption cases?

0

72a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | **NO**

**Comments:**

Judges, especially those who adjudicate drug trafficking related cases, are frequent victims of physical violence and intimidation.

**References:**

<http://200.38.86.53/PortalSCJN/RecJur/ReformaJudicial1/LibroBlancoReformaJudicial/TextoLibroBlanco.htm>

**YES:** A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period.

**NO:** A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

72b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | **NO**

**References:**

El Universal (August 18, 2006): <http://www.eluniversal.com.mx/nacion/141814.html>

**YES:** A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period.

**NO:** A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

---

73. Do citizens have equal access to the justice system?

17

73a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | **25** | 0

**References:**

Serious problems with regard to indigenous peoples.

**100:** Judicial decisions are not affected by racial or ethnic bias.

**75:**

**50:** Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

**25:**

**0:** Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

73b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

**References:**

Court decisions commonly distorted by gender bias (i.e. rape cases, divorce, etc.), although the courts criteria has begun to change.

**100:** Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system.

**75:**

**50:** Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes.

**25:**

**0:** Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence.

73c. In practice, the state provides legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

**References:**

State defenders are available but systematically incompetent.

**100:** State-provided legal aid is basic, but well trained and effective in representing the rights of indigent defendants.

**75:**

**50:** State-provided legal aid is available, but flawed. Legal aid may be unavailable to some indigent defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

**25:**

**0:** State-provided legal aid is unavailable to most indigent defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

73d. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

**References:**  
Definitely not!

**100:** In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

**75:**

**50:** In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

**25:**

**0:** The cost of engaging the legal system prevents middle class citizens from filing suits.

73e. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

**References:**  
Very expensive, especially when the costs of bribes are taken into account.

**100:** In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

**75:**

**50:** In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

**25:**

**0:** The cost of engaging the legal system prevents small businesses from filing suits.

73f. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

**References:**  
Especially problematic in indigenous areas.  
Enrique Flores Terrez in LETRAS JURIDICAS: <http://letrasjuridicas.cuci.udg.mx/numeros/02/EFT2006.pdf>

**100:** Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

**75:**

**50:** Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

**25:**

**0:** Courts are unavailable to some regions without significant travel on the part of citizens.

---

74. Is the law enforcement agency (i.e. the police) effective?

42

74a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

**References:**

Reglamento del Servicio de Carrera de Procuración de Justicia Federal, Ley Orgánica de la Procuraduría General de la República.

<http://www.whtm.pgr.gob.mx/reforma/index.htm>

[www.ordenjuridico.gob.mx/Federal/PE/PGR/Reglamentos/25012005.pdf](http://www.ordenjuridico.gob.mx/Federal/PE/PGR/Reglamentos/25012005.pdf)

Practice does not live up to these codes.

Cronyism and nepotism is more of a problem than political affiliations.

The civil service code has only recently been made operational.

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

74b. In practice, the agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

**References:**

US State Department: <http://g021.lib.uic.edu/col/51303.htm>

**100:** The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

**75:**

**50:** The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

**25:**

**0:** The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

74c. In practice, the agency is protected from political interference.

100 | 75 | 50 | 25 | 0

**References:**

The Attorney General is a presidential cabinet appointment (although it has to be ratified by the Senate). The political management of the PGR was infamous under Macedo de la Concha with Fox. The famous "desafuero" case is just one of many examples.

**100:** The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

**75:**

**50:** The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

**25:**

**0:** The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

---

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

50

75a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

**References:**

The federal Secretaría de la Función Pública (SFP) covers all government corruption, including police corruption. But there is no special entity for police corruption and the SFP does not have enough muscle to actually investigate and intervene in police affairs.

**YES:** A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions.

**NO:** A NO score is earned if there is no such mechanism.

75b. In practice, the independent reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Systematic problems with dealing with accusations of police corruption.

**100:** The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

75c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

**References:**

No special agency. There is a Suprocuraduría de Protección a los Derechos Humanos y Prevención del Delito" within the PGR, but this does not have any statutory independence. The PGR is both "juez y parte".

**YES:** A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity is separate from the regular police department.

**NO:** A NO score is earned if no such agency/entity exists.

75d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

**References:**

<http://www.jornada.unam.mx/2006/09/21/024n2pol.php>

**100:** When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

**75:**

**50:** The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

75e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

**References:**

No immunity

**YES:** A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

**NO:** A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

75f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

**References:**

U.S. State Department: <http://www.usembassy-mexico.gov/textos/st060308derechos.html>

Amnesty International: <http://www.amnestyusa.org/spanish/countries/mexico/document.do?id=ar&yr=2005>

**100:** Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

**75:**

**50:** Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

**25:**

**0:** Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.