

Overall Score:

63 - Weak

Legal Framework Score:

87 - Strong

Actual Implementation Score:

39 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁷⁵Civil 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 operation of NGOs)

Marco: Civil associations are foreseen in the Federal Civil Code from article 2670 to article 2687

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 states that NGOs are obliged to proporcionar la información que les sea requerida por autoridad competente sobre sus fines, estatutos, programas, actividades, beneficiarios, fuentes de financiamiento nacionales o extranjeras o de ambas, patrimonio, operación administrativa y financiera, y unso de los apoyos y estímulos públicos que reciban"

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?

67

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 anticorruption/good governance CSOs is extremely complicated and involves a lot of bureacratc tape. Legal assistance is a must.

The Secretary of Foreign Relations is in charge of registering any new NGOs, an indication that the Mexican government still considers NGOs to be foreign" entities.

References:

Article 15 of the Ley de Inversión Extranjera and article 13 of the Reglamento de la Ley de Inversión Extranjera y del Registro Nacional de Inversiones Extranjeras

Interview with Irma Ballesteros, founder of the Pablo Sandoval Foundation, Sept. 20, 2007

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.

100 | 75 | 50 | 25 | 0

Comments:

CSOs are very active in the public sphere, organizing conferences, public statements and networks. However, they rarely are invited by the government to participate directly in policymaking.

The government prefers to form citizen councils” with civil-society “representatives,” such as academics and journalists, rather than 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, “Diagnóstico de la negociación presupuestaria,” 2007

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 such 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 proactive or aggressive enough to provoke such a response.

References:

A newspaper search of the last year reveals no such cases.

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

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 person 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. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

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 proactive or aggressive enough to provoke such a response.

References:

A newspaper search of the last year reveals no such cases.

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. YES is a positive score.

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 proactive or aggressive enough to provoke such a response.

References:

A newspaper search of the last year reveals no such cases.

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

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?

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

YES | NO

References:

Article 9 of the Constitution (freedom of association)
 Article 123, A, XVI, of the Constitution (freedom to form trade unions)
 Ley Federal de Trabajo, Articles 354-385.

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

Comments:

Trade unions are widespread, but just about all of them are loyal to the government or to the corporations. There are severe limitations on independent union organizing. See comments from 2006 Global Integrity study. Additional comments below:

De acuerdo con el académico de la UAM y columnista de La Jornada Arturo Alcalde Justiniani, el 90% de los contratos sindicales en México son de los llamados de protección", que son "el producto más grotesco del modelo laboral mexicano. Se originan con el acto de simulación de la firma entre un patrón y el líder sindical de su elección; suelen mantenerse en secreto y tienen como finalidad esencial evitar que los trabajadores se organicen autónomamente, decidiendo sobre sus condiciones de trabajo. El contrato es depositado ante la Junta de Conciliación y Arbitraje, que complacientemente hace las veces de muro de contención, impidiendo la negociación colectiva real y la posibilidad del derecho de huelga."
<http://www.jornada.unam.mx/2007/03/31/index.php?section=opinion&article=020a1pol>

El secretario general de la Asociación Sindical de Pilotos Aviadores de México, Dennis Anthony Lazarus Jaber, coincide con Alcalde Justiniani en que "90 por ciento de los sindicatos existentes son de protección patronal; es decir, gremios cuyos líderes firman contratos colectivos a espaldas de los trabajadores, quienes son afiliados sin saberlo y que ignoran hasta quién es su supuesto dirigente" <http://www.mexicoabierto.org/section.php?name=news&id=1480&PHPSESSID=6a706726b0bbb5a20c069b1efe0ec148>

Graciela Bensusán, investigadora de la Universidad Autónoma Metropolitana-Xochimilco, los abogados laborales Arturo Alcalde Justiniani y Héctor Barba, así como Jorge Robles, uno de los coordinadores nacionales del Frente Auténtico del Trabajo (FAT), definen a este mecanismo (los contratos de protección) como "una lacra sindical". Proceso 1591, 28 de abril de 2007

References:

See references from 2006 Global Integrity study.

Updated information available at:

- 1) <http://www.mexicoabierto.org/section.php?name=news&id=1480&PHPSESSID=6a706726b0bbb5a20c069b1efe0ec148>
- 2) <http://www.jornada.unam.mx/2007/03/31/index.php?section=opinion&article=020a1pol>
- 3) Proceso 1591, 28 de abril de 2007

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:

Constitutional article 6 (freedom of speech)
Constitutional article 7 (freedom of the press)

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

NO: A NO score is earned if any specific publication relating to government affairs 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 to 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 print media entities?

75

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

100 | 75 | 50 | 25 | 0

Comments:

There are bureaucratic proceedings for licensing.

References:

http://www.serviciosdecalidad.gob.mx/index.php?option=com_content&task=view&id=221&Itemid=200&CCC=1&CIS=0
<http://www.sep.gob.mx/work/resources/LocalContent/35798/15/Reser.pdf>

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print 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.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

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

YES | NO

References:

Ley Federal de Procedimiento Administrativo
Ley de Amparo

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

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

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

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

References:

http://www.serviciosdecalidad.gob.mx/index.php?option=com_content&task=view&id=221&Itemid=200&CCC=1&CIS=0
<http://www.sep.gob.mx/work/resources/LocalContent/35798/15/Reser.pdf>

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 print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

http://www.serviciosdecalidad.gob.mx/index.php?option=com_content&task=view&id=221&Itemid=200&CCC=1&CIS=0
<http://www.sep.gob.mx/work/resources/LocalContent/35798/15/Reser.pdf>

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

31

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

100 | 75 | 50 | 25 | 0

Comments:

It is extremely difficult to form a new media entity with national impact. The recent decision by the Supreme Court to strike down significant sections of the new media law prevents greater monopolization of the control of air and radio frequencies. Nevertheless, it does not effect the status quo. For instance, local community radio" stations constantly face legal difficulties.

"De acuerdo con Raúl Trejo Delarbre, aun con la sentencia de inconstitucionalidad que dictó en junio de 2007 la SCJN con relación a la llamada "Ley Televisa", en el rubro de las radios comunitarias e indígenas no hubo cambios, en tanto que solo "5 de los 9 ministros consideraron que la ley debería establecer mecanismos claros para que se cumpla el derecho constitucional de las comunidades indígenas a tener acceso a concesiones o permisos de radio y televisión. Esa propuesta, resultado del dictamen presentado por el ministro Salvador Aguirre Anguiano y no de la demanda de inconstitucionalidad de los 47 ahora ex senadores, no alcanzó los votos necesarios para propiciar una modificación legal aunque tuvo consenso de la mayoría de los ministros que discutieron estos asuntos." <http://mediocracia.wordpress.com/2007/06/14/ley-televisa-que-cambio-que-sigue/>

"La falta de certeza jurídica, la discrecionalidad para obtener el permiso de funcionamiento y la violación del artículo segundo constitucional, que garantiza el derecho de los pueblos indígenas a tener sus propios medios de comunicación, son algunas de las violaciones en que incurre la ley Televisa, sostuvo Aleida Calleja, vicepresidenta de la Asociación Mundial de Radios Comunitarias (Amarc).

Al informar sobre los argumentos que esta agrupación, así como José Roldán Xopa, académico del Instituto Tecnológico Autónomo de México (ITAM) y la organización Artículo 19 sección México presentaron el pasado martes a los ministros de la Suprema Corte de Justicia de la Nación respecto a la inconstitucionalidad de la ley Televisa, Calleja resaltó que el principal objetivo era hacer visible la problemática en que se encuentran las radiodifusoras comunitarias.

Señaló que la ley vigente desde 2006 da "un trato desigual a los iguales" y con claras desventajas para los medios de comunicación que no persiguen fines de lucro, como son los comunitarios, culturales y educativos."
<http://www.jornada.unam.mx/2007/05/17/index.php?section=politica&article=008n1pol>

La competencia en los medios electrónicos de comunicación no ha sido fomentada en México; de acuerdo con el académico de la UAM y columnista Gabriel Sosa Platas, "La demanda de abrir el espectro radioeléctrico a más jugadores ha sido más visible en la televisión que en la radio, a partir de las manifestaciones públicas que al respecto han hecho sobre todo los accionistas de Palma 26: Manuel Saba exaccionista mayoritario de Unefón Holdings, y la estadounidense Telemundo, propiedad de General Electric. Según versiones periodísticas, esta demanda contó inicialmente con el aval del presidente Felipe Calderón. Incluso, el secretario de Comunicaciones y Transportes, Luis Téllez, manifestó, poco antes de tomar posesión de su cargo, que uno de los objetivos prioritarios del nuevo gobierno era promover la competencia en la industria de la radio y la televisión, así como controlar a los monopolios en el sector. (...) Sin embargo, Televisa y Televisión Azteca se pusieron de acuerdo: lanzaron una agresiva campaña en contra del Grupo Saba y presionaron políticamente a integrantes del equipo de Felipe Calderón, por lo que en enero de 2007, el presidente Calderón suspendió el proyecto de crear una tercera cadena de televisión."
<http://www.mexicanadecomunicacion.com.mx/Tables/fmb/foromex/incertidumbre.htm>

Es conveniente recordar que ya en 2005 las pretensiones de General Electric de operar en el mercado mexicano de televisión por medio de la inyección de recursos a CNI 40 se vieron truncadas por que la SCT no dio su visto bueno a la operación, lo que se acompañó de la férrea oposición de TV Azteca y Televisa <http://www.etcetera.com.mx/pagcero2ne64.asp>

Lo anterior es congruente con la opinión de Florence Toussaint, para quien el gobierno de Fox se opuso a cualquier iniciativa privada que no estuviese en la línea ideológica del conservadurismo panista." Proceso 1607, 19 de agosto de 2007

En mayo de 2007 inició operaciones en el Valle de México el canal de señal abierta 28, operado por Olegario Vázquez Raña, quien según Miguel Ángel Granados Chapa mantenía nexos estrechos con la familia Fox, ya sea mediante la concesión del negocio de flores y regalos en su cadena de hospitales a la esposa del hijo mayor de la señora Marta, ya sea ofreciendo un empleo de alto nivel en su negocio de hotelería a Ana Cristina Fox de la Concha. Es importante mencionar que durante el sexenio de Vicente Fox el empresario Vázquez Raña incrementó su presencia en los medios de comunicación mexicanos a través de la compra de la mayoría de las acciones del Grupo radiofónico Imagen y con la compra del periódico Excélsior. <http://www.etcetera.com.mx/paggranados1ne67.asp>

Es importante mencionar que Toussaint señala que "Los ingresos actuales de Canal 28 provienen de tres fuentes: los anunciantes que han generado las radiodifusoras; los otros miembros del grupo: hospitales y hoteles, y finalmente la nada pequeña tajada que le otorga el gobierno federal. A lo largo de la programación se pueden ver las campañas de autoelogio de la Sedesol, la Secretaría del Medio Ambiente, el Poder Judicial de la Federación, la Comisión Nacional de Derechos Humanos y el Senado de la República. Su recurrencia es tal que no es posible considerar que sean inserciones gratuitas en el escasisimo 1.2% al que tiene derecho el Estado. Y si así fuera, sería necesario que RTC nos mostrara el monitoreo. La comunicóloga concluye afirmando que Desde que el PAN asumió el poder en 2000, el cuadrante ha involucionado. Los monopolios crecen, lo público se privatiza, las opciones se reducen y las nuevas tecnologías sirven a los mismos poderes" Proceso 1607, 19 de agosto de 2007

References:

<http://mediocracia.wordpress.com/2007/06/14/ley-televisa-que-cambio-que-sigue/>
<http://www.jornada.unam.mx/2007/05/17/index.php?section=politica&article=008n1pol>
Alberto Benitez Tiburcio, José Roldán Xopa y Marta Villareal Rubalcaba, Los efectos de las reformas a la Ley Federal de Radio y Televisión y Ley Federal de Telecomunicaciones en la radiodifusión comunitaria", Documentos de Trabajo, Documento Académico de Derecho, Instituto Tecnológico Autónomo de México, ITAM
<http://www.mexicanadecomunicacion.com.mx/Tables/fmb/foromex/incertidumbre.htm>
<http://www.etcetera.com.mx/pagciro2ne64.asp>
Proceso 1607, 19 de agosto de 2007
<http://www.etcetera.com.mx/paggranados1ne67.asp>

100: Broadcast 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. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast 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: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

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

YES | NO

Comments:

There was no empirical change between 2006 and 2007, only a change in social scientist evaluation based on new evidence. Indeed, it is almost impossible to win an appeal (as noted in the 2006 review), but there is a formal appeal mechanism available through the amparo law and the administrative procedures act.

References:

Ley de Amparo
Ley Federal de Procedimiento Administrativo

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

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

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

100 | 75 | 50 | 25 | 0

Comments:

The Supreme Court recently struck down some parts of the new media law passed during 2006.

As Raúl Trejo Delabre has stated, La Corte consideró que la desigualdad en los trámites que debían emprender los solicitantes de concesiones (es decir, licencias para radiodifusión mercantil) y permisos (que son las licencias para radiodifusión no comercial) era inconstitucional. Por eso, eliminó de sendas fracciones del artículo 20 de la Ley de Radio y Televisión tres disposiciones que acentuaban la discrecionalidad del gobierno en el transcurso de esas gestiones. La disposición que obligaba a los solicitantes de permisos a entregar “cuando menos” la información enumerada en otras fracciones, la que permitía a la Secretaría de Comunicaciones y Transportes determinar “de considerarlo necesario” la realización de entrevistas con los solicitantes de permisos y la posibilidad que esa dependencia tenía para resolver “a su juicio” el otorgamiento de tales licencias,” sin embargo con la resolución de la SCJN dichas capacidades fueron suprimidas de la ley.

Nevertheless, congress has not yet passed a new law which will change the licensing process. Therefore, a change in score is not yet in order.

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> <http://mediocracia.wordpress.com/2007/06/14/ley-televisa-que-cambio-que-sigue>

Although some good news:

<http://mediocracia.wordpress.com/2007/06/14/ley-televisa-que-cambio-que-sigue/>

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.

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

100 | 75 | 50 | 25 | 0

References:

Same as 7c 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.

8. Can citizens freely use the Internet?

8a. In practice, the government does not prevent citizens from accessing content published online.

100 | 75 | 50 | 25 | 0

References:

A newspaper search did not reveal any cases during the period of study.

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content online.

100 | 75 | 50 | 25 | 0

Comments:

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

References:

Código Penal Federal

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

50

9a. 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, and who decides whether the news is actually accurate" or not.

In addition, Articles 1-3 of the Ley sobre Delitos de Imprenta states that it is illegal to publish information which "disturbs the public order" or might "cause a crime."

References:

Articles 5 and 6 of the Ley sobre 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.

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

100 | 75 | 50 | 25 | 0

Comments:

The government has purchased public service advertisements as a way of pressuring print media to behave themselves.

The case of the government's financial strangling, political pressure and temporary disappearance of Radio Monitor, run by José Gutiérrez Vivó, as punishment for his support for corruption investigations of the President and his wife as well as his support for the left-wing presidential candidate, demonstrates that this practice is still present today in Mexico.

The Olga Wornat case is another important example of government attempts at censorship.
<http://www.proceso.com.mx/noticia.html?sec=0&nta=54469>

In addition, narco-assassinations have led numerous media groups to self-censor drug-related stories. Proceso magazine, one of the few outlets which has not reduced coverage, frequently publishes its articles without the name of the reporter in order to protect the author from reprisals.

El caso de Radio Monitor, que durante el sexenio de Fox tuvo constantes roces con el gobierno debido al seguimiento informativo del caso Bribiesca es un ejemplo de la molestia que puede generar en el poder la cobertura de casos de corrupción, el director del grupo, José Gutiérrez Vivó denunció en los primeros días del gobierno de Calderón que había recibido "amenazas" por parte de miembros del equipo presidencial, dijo que recibió un mensaje del equipo entrante: "están castigados. Vamos a ver cómo se comportan. Si quieren difundir nuestra información, bien; si no, también. Cuando consideremos que hay un buen comportamiento, entonces se arreglará una entrevista con el presidente Calderón". Gutiérrez Vivó mencionó que nunca antes, en sus 40 años de comunicador, "había percibido una agresión perfectamente disfrazada y disimulada como la que estamos recibiendo desde mediados de la pasada administración". <http://www.jornada.unam.mx/2006/12/07/index.php?section=politica&article=019n1pol>

"Es importante señalar que para la fecha de las declaraciones Gutiérrez Vivó ya había anunciado el cese de las transmisiones de Radio Monitor en virtud de la insolvencia económica de la estación provocada por lo que el periodista calificó como un bloqueo publicitario impuesto desde el gobierno de Vicente Fox, que, añadió, se ha mantenido durante el de Felipe Calderón." <http://www.jornada.unam.mx/2007/06/30/index.php?section=politica&article=003n1pol>

"Gutiérrez Vivó declaró que el bloqueo a Monitor estuvo influido por la convicción de Vicente Fox de que el comunicador era perredista y apoyaba a López Obrador" <http://www.jornada.unam.mx/2007/06/30/index.php?section=politica&article=003n1pol>

References:

Carrasco Araizaga, Jorge. Castigo publicitario", Proceso, No 1613, 30 de septiembre de 2007.
(<http://canalabierto.blogspot.com/2007/10/medios.html>),
www.etcetera.com.mx/pag86ne56.asp
<http://www.jornada.unam.mx/2007/06/30/index.php?section=politica&article=003n1pol>
<http://www.jornada.unam.mx/2006/12/07/index.php?section=politica&article=019n1pol>
<http://www.proceso.com.mx/noticia.html?sec=0&nta=54469>
Reporteros Sin Fronteras, 2007 Annual Report

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.

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

100 | 75 | 50 | 25 | 0

Comments:

The have been occasional mass purchases of particular issues of print media in order to prevent a story from getting out.
www.rsf.org/article.php3?id_article=1572
<http://www.probidad.org/pfc/libexp/recopilaciones/2002/0604.html>

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:

<http://www.jornada.unam.mx/2007/06/18/index.php?section=politica&article=003n1pol>
<http://www.probidad.org/pfc/libexp/recopilaciones/2002/0604.html>
<http://www.lydiacacho.net/>

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. This score is appropriate if in countries where illiteracy is high, 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. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

65

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

YES | NO

References:

Article 17 of the Ley Federal de Radio y Televisión
Ley General de Sociedades Mercantiles, articles 2-6

YES: A YES score is earned if print 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 types of entities or agents from being disclosed.

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

YES | NO

References:

Article 17 of the Ley Federal de Radio y Televisión
Ley General de Sociedades Mercantiles

YES: A YES score is earned if broadcast 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.

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

100 | 75 | 50 | 25 | 0

Comments:

The recent (September 2007) response of the major radio and TV media corporations to the electoral reform which will imply a sharp cut in their profits during political campaigns demonstrates the extremes to which journalists and editors are capable of going in unethically mixing information, opinion and propaganda.

References:

Ernesto Villanueva, "Autoregulación Televisiva", El Universal, Opinion, September 15, 2007.
Revista Proceso, No. 1611, September 16, 2007

<http://www.eluniversal.com.mx/editoriales/38581.html>

Chappell Lawson, "Propaganda and Crony Capitalism: Partisan Bias in Mexican Television News," Forthcoming, Latin American Research Review

Chappell Lawson, Building the Fourth 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.

10d. 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 bias 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 featured in 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 (Specialists Raul Trejo 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.

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

100 | 75 | 50 | 25 | 0

References:

See 10d
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. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

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.

11. Are journalists safe when investigating corruption?

0

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

YES | NO

Comments:

En agosto de 2002, Angel Mario Ksheratto reveló en Cuarto Poder que María del Pilar López Hernández, jefe del Departamento de Escuelas del gobierno de Chiapas, había utilizado fondos públicos para comprar una casa. La funcionaria denunció entonces al periodista por difamación". Las penas de cárcel previstas para por la legislación de Chiapas para este tipo de delito se endurecieron en febrero de 2004, pasando de 2 a 3 años de cárcel como mínimo, y de 5 a 9 años como máximo, junto a una ampliación de las multas.

El 9 de enero de 2003, Angel Mario Ksheratto fue detenido por primera vez, y obligado a firmar en el registro de fianzas una vez por semana. Una formalidad que le obligaba a acudir a los locales de la justicia, situados a 120 kilómetros de Tuxtla Gutiérrez, donde trabaja. En octubre de 2005, el periodista fue arrestado de nuevo, sin orden judicial, y permaneció detenido durante varias horas.

El 4 de febrero de 2006, Angel Mario Ksheratto fue detenido por tercera vez, ya que el juez estimaba que no había cumplido con sus anteriores obligaciones judiciales. Cuatro días más tarde, fijó la fianza en 10.000 euros, una cantidad muy superior a los recursos que posee. El 9 de febrero, Gabriel Soberón, abogado del periodista, anunció a Reporteros sin Fronteras que va a plantear un recurso, con el fin de reducir el importe de la fianza. Preciso a la organización que la justicia dispone de un plazo de treinta días para pronunciarse. Treinta días durante los cuales el periodista permanecerá detenido.

References:

<http://www.criterios.com/modules.php?name=Noticias&file=article&sid=7754>

<http://www.ifj.org/default.asp?issue=mainresult&Language=ES&cntr=MEX>

Reporteros sin Fronteras, 2007 report (Mexico ranked as 136 out of 169 countries studied, only six places above Afghanistan)

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

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. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

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

YES | **NO**

References:

<http://www.ifj.org/default.asp?issue=mainresult&Language=ES&cntr=MEX>

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. A YES score is positive.

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.

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

YES | **NO**

Comments:

The International Federation of Journalists has classified Mexico as one of the most dangerous countries in the world for journalists.

La Federación Internacional de Periodistas (FIP) calificó a México como el país latinoamericano más peligroso para los comunicadores que profesionalmente abordan los temas de crimen y corrupción, asimismo, de acuerdo a la misma nota del periódico. Durante el sexenio panista de Fox Quesada, México se convirtió en 2005 "en el país más letal para prensa de todo el continente americano" y el 2006 quedó clasificado en el segundo puesto mundial, sólo detrás de Irak, y de entonces a la fecha se le considera como el país "más peligroso del mundo".

<http://www.jornada.unam.mx/2007/01/03/index.php?section=politica&article=005n1pol>

"Journalism put to the sword in 2006," la FIP señala un total de 10 periodistas o trabajadores de la información asesinados en México, y en tres de esos casos destaca las investigaciones que los asesinados llevaban a cabo acerca de temas de corrupción (pp. 17-20); por su parte, en el Informe anual 2007 de Reporteros Sin Fronteras, además de los casos reseñados por la FIP, se da cuenta de tres casos de reporteros que han desaparecido sin dejar rastro (pp. 44-45).

References:

<http://www.jornada.unam.mx/2007/01/03/index.php?section=politica&article=005n1pol>

International Federation of Journalists, Journalism put to the sword in 2006"

Reporteros Sin Fronteras, 2007 report

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. A YES score is positive.

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.

60
I-3. Public Access to Information

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

100

12a. 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 a la Información Pública Gubernamental

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. 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.

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

12b. 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. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

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

12c. 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, articles 40 to 48
John M. Ackerman, "El Instituto Federal de Acceso a la Información Pública: Diseño, Desempeño y Sociedad Civil," Universidad Veracruzana-CIESAS, 2007

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.

13. Is the right of access to information effective?

65

13a. 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 sometimes takes over a year in other branches (judiciary, congress, independent agencies).

References:

Informe Anual de Labores, Instituto Federal de Acceso a la Información Pública, 2007
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
Journal: Derecho Comparado de la Información
<http://www.juridicas.unam.mx/publica/rev/cont.htm?r=decojn>
John M. Ackerman, "The Limits of Transparency: The Case of Mexico's Electoral Ballots," The Mexican Law Review, June-December, 2007 (<http://info8.juridicas.unam.mx/cont/8/arc/arc1.htm>).

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.

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

100 | 75 | 50 | 25 | 0

Comments:

Citizens are only charged for photocopying and mailing. There are no searching fees.

References:
Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental

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.

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

100 | 75 | 50 | 25 | 0

Comments:
See 13a. The Independent Institute for Access to Information only has jurisdiction over the executive branch.

References:
See 13a

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.

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

100 | 75 | 50 | 25 | 0

Comments:
See 13a. 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:
See 13a

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.

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

100 | 75 | 50 | 25 | 0

Comments:

Reasons are always given, but they are often illegitimate.

See, for instance, John M. Ackerman, "The Limits of Transparency: The Case of Mexico's Electoral Ballots," *Mexican Law Review*, June-December 2007 <http://info8.juridicas.unam.mx/cont/8/arc/arc1.htm>.

References:

Constitutional article 36, Federal Transparency Law

Perla Gómez Gallardo, "La Calidad Jurídica de las Decisiones del IFAI," LIMAC

Journal: *Derecho Comparado de la Información*

<http://www.juridicas.unam.mx/publica/rev/cont.htm?r=decojn>

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. ⁷¹Voting & Citizen Participation

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

100

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

YES | NO

References:

Constitutional article 36

Constitutional article 35

Fracc. I y II

Article IV of the Código Federal de Instituciones y Procedimientos Electorales

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). 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.

14b. 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
Código Federal de Instituciones y Procedimientos Electorales

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.

15. Can all citizens exercise their right to vote?

67

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

100 | 75 | 50 | 25 | 0

Comments:

Difficulties with access to the vote in rural and indigenous communities have been documented.

References:

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.

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

100 | 75 | 50 | 25 | 0

Comments:

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 variety of critics.

References:

See Web sites 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.

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

100 | 75 | 50 | 25 | 0

References:

A newspaper search revealed few cases of delayed or accelerated elections in recent years. Sometimes polling stations are closed prematurely (Aguascalientes) or hard to reach.

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.

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

70

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

YES | NO

References:

COFIPE article 5
Constitutional articles 9, 35, fracc. III, 41 fracc. I

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.

16b. 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 it is not equivalent to an outright ban on “communists” or “terrorists” that exist in other countries.

Many argue that the absence of independent candidacies restricts rights. The central point is that in Mexico 90% of campaign funding must be public and there needs to be some way for candidates to justify receiving large amounts of money from the government. Earning the backing of a political party is what justifies the use of public monies.

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.

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

100 | 75 | 50 | 25 | 0

Comments:

No type of citizen is explicitly excluded, but the barriers to forming and maintaining a political party are quite high. Parties need to prove the pre-existence of tens of thousands of supporters to be able to register and receive at least 2% of the national popular vote in each election to maintain their registration.

References:

COFIPE

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.

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

100 | 75 | 50 | 25 | 0

References:

See sources and issues raised in 16a and 16c.

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.

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

100 | 75 | 50 | 25 | 0

Comments:

The power of the opposition in congress has become stronger over the past year.

References:

The current ruling party (PAN) only holds about 40% of the congressional seats, although their alliance with the former ruling party (PRI) has given them the two thirds majority required to unilaterally control the legislature. The other opposition party, PRD, cannot introduce legislation or bring bills to a vote without the consent of the ruling coalition.

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

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

100

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

YES | NO

References:

Constitutional article 41

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

NO: A NO score is earned if no domestic agency or set of domestic 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, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

55

18a. 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 to the orders of the president.

References:

Constitutional articles 41 and 99 (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 contesting 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 domestic election monitoring agency.

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

100 | 75 | 50 | 25 | 0

Comments:

This will hopefully change with the appointment of new electoral councilors over the coming months.

References:

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

<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.

18c. 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.

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.

18d. 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

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.

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

100 | 75 | 50 | 25 | 0

References:

Despite past activism (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 present general council of the IFE and the

Tribunal have been extremely ineffective in punishing evident wrongdoing. See, Tribunal Electoral, Dictamen Relativo al Cómputo Final de la Elección de Presidente de los Estados Unidos Mexicanos, Declaración de Validez de la Elección y de Presidente Electo (Tribunal Electoral del Poder Judicial de la Federación, 5 de Septiembre, 2006)" as well as the reports on the 281,000 unreported television and radio advertisements which have gone without sanction. <http://www.eluniversal.com.mx/nacion/149744.html>; http://www.cronica.com.mx/nota.php?id_notas=327219
The FEPADE has been totally absent from the political scene. Almost no one has been punished for electoral offenses in the past three years.
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.

19. Are elections systems transparent and effective?

75

19a. 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 in 2006, 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.

19b. 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.”

Marco: Ley General del Sistema de Medios de Impugnación en Materia Electoral (article 3rd)

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.

19c. 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, Sep. 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.

19d. 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,” The 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, Oct. 15, 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.

19e. 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 usually 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.

19f. 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%20Civica,ANCIFEM,Presencia%20Ciudadana,Delegaci3n%20de%20la%20UE,Global%20Exchange,Instituto%20Nacional%20Dem3crata,Red%20de%20Veedores) <http://www.ife.org.mx/portal/site/ife/menuitem.b9ee2c952b48c1f6eeae8860241000a0/>

In personal communication with members of the Global Exchange delegation, [election observers] 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.

77
II-3. Political Financing

20. Are there regulations governing political financing?

20a. 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)
Also article 49 of the COFIPE

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.

20b. In law, there are limits on individual donations to candidates and political parties.

YES | NO

References:

COFIPE (art. 11, 49, 49-A and 49-B)

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.

20c. In law, there are limits on corporate donations to candidates and political parties.

YES | NO

References:

COFIPE (article 11, article 49.2.g)

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.

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

YES | NO

References:

Constitutional article 41

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)

COFIPE article 49

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.

20e. 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 that this information is 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.

20f. 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.

20g. In law, there is an agency or entity that monitors the political financing process.

YES | NO

References:

COFIPE art. 49 subsection 6

Art. 38, subsection 1.k

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are the regulations governing political financing effective?

33

21a. 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 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>

In the most recent federal elections of 2006, the Federal Electoral Institute has declared (in May 2007 newspaper reports) that there is no information on who paid for a third of all television political advertisements (approximately 281,000 of almost 1,000,000 "spots"). The grounded suspicion is that these advertisements were funded by illegal private sources.

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.

21b. 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. Dictamen de Computo Final, Validez de la Elección y Declaración de Presidente Electo, Tribunal Electoral del Poder Judicial de la Federación, Sept. 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.

21c. 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

References:

See references for 21a and 21b

Se opone el PAN a transparentar contratos de campaña con Televisa

Desorden financiero e irregularidades en gastos electorales, la constante de todos los partidos"

La multa de PRI-PVEM es de 52 millones; Por el Bien de Todos, 24 millones, y AN, 18 millones

<http://www.jornada.unam.mx/2007/05/19/index.php?section=politica&article=003n1pol>

http://www.contralinea.com.mx/archivo/2007/agosto2/htm/Calderon_coartada_Zhenli.htm

"Ignora el IFE quiénes financiaron 200 mil spots a partidos políticos"

<http://www.jornada.unam.mx/2007/05/17/index.php?section=politica&article=003n1pol>

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.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The electoral law does not formally permit the IFE to independently initiate investigations. Nevertheless, the electoral tribunal has allowed the electoral institute to do so in a series of important decisions.

With regard to the 2006 elections, the IFE has initiated an important process of investigation into the 281,000 missing spots," but this has not had any significant results. There are many other areas where the IFE has simply not investigated, for instance the undue intervention of the private sector and the possible use of social spending for electoral purposes.

References:

Cárdenas (2004), Córdoba and Murayama (2006)

Ignora el IFE quiénes financiaron 200 mil spots a partidos políticos

<http://www.jornada.unam.mx/2007/05/17/index.php?section=politica&article=003n1pol>

Se opone el PAN a transparentar contratos de campaña con Televisa

Desorden financiero e irregularidades en gastos electorales, la constante de todos los partidos

La multa de PRI-PVEM es de 52 millones; Por el Bien de Todos, 24 millones, y AN, 18 millones

<http://www.jornada.unam.mx/2007/05/19/index.php?section=politica&article=003n1pol>

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.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Hefty fines have been imposed, but large penalties are more the exception than the rule. For instance, it appears that during 2007, the IFE drastically reduced the penalties it would impose on the parties at the last minute.

References:

Cárdenas (2004), Córdoba and Murayama (2006)
Ignora el IFE quiénes financiaron 200 mil espots a partidos políticos
<http://www.jornada.unam.mx/2007/05/17/index.php?section=politica&article=003n1pol>
Se opone el PAN a transparentar contratos de campaña con Televisa
Desorden financiero e irregularidades en gastos electorales, la constante de todos los partidos
La multa de PRI-PVEM es de 52 millones; Por el Bien de Todos, 24 millones, y AN, 18 millones
<http://www.jornada.unam.mx/2007/05/19/index.php?section=politica&article=003n1pol>

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.

21f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

Comments:

A small percentage of the spending is actually audited. The IFE has lacked both staff and resources in this area, as well as greater political will, to get to the bottom of irregular campaign financing.

References:

Cárdenas (2004), Córdoba and Murayama (2006)
Ignora el IFE quiénes financiaron 200 mil espots a partidos políticos
<http://www.jornada.unam.mx/2007/05/17/index.php?section=politica&article=003n1pol>
Se opone el PAN a transparentar contratos de campaña con Televisa
Desorden financiero e irregularidades en gastos electorales, la constante de todos los partidos
La multa de PRI-PVEM es de 52 millones; Por el Bien de Todos, 24 millones, y AN, 18 millones
<http://www.jornada.unam.mx/2007/05/19/index.php?section=politica&article=003n1pol>

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.

22. Can citizens access records related to political financing?

50

22a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

General numbers are provided, but political parties are not subject to FOIA requirements. Only some original documents (receipts, etc.) are available indirectly through the IFE. Last year's evaluation (25) was perhaps a bit extreme. But serious problems remain in this area.

References:

http://www.ife.org.mx/encuesta/jsp/FrameGen/gen_frame.jsp?pageFrame=http://www.ife.org.mx/documentos/PPP/ppp/f2006-fiscalizacion.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 regularly withheld from public disclosure.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Online access has been improved, but the information is still general. Political parties are not subject to FOIA requirements. Only some original documents (receipts, etc.) are available indirectly through the IFE.

References:

http://www.ife.org.mx/encuesta/jsp/FrameGen/gen_frame.jsp?pageFrame=http://www.ife.org.mx/documentos/PPP/ppp/f2006-fiscalizacion.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.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

See 22a and 22b

References:

http://www.ife.org.mx/encuesta/jsp/FrameGen/gen_frame.jsp?pageFrame=
<http://www.ife.org.mx/documentos/PPP/ppp/f2006-fiscalizacion.htm> sin costo alguno

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. ~~E2~~ Executive Accountability

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

100

23. 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

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.

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

63

24a. 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 1, 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 formulaic 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.

24b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

Constitutional articles 103, 105 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).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

The Supreme Court has become much more active over the last year. For instance, it has created three new special commissions to investigate possible human rights abuses by state governors.

During the Fox administration, there were also various important cases in which the judiciary directly intervened (examples include 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)

References:

<http://www.jornada.unam.mx/2007/06/20/index.php?section=politica&article=012n1pol>
<http://www.el-universal.com.mx/notas/417626.html>
<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. It does not need to relay upon the executive to initiate a constitutional or legal review.

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.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

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

References:

<http://www.presidencia.gob.mx>
http://archivos.diputados.gob.mx/Centros_Estudio/Cesop/Eje_tematico/8_trabajo.htm#rl3
<http://www.suracapulco.com.mx/anterior/2004/agosto/20/opinion1.htm>

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.

25. Is the executive leadership subject to criminal proceedings?

100

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

References:

Constitutional Chapter 4 (Juicio Político), although 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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

References:

Constitutional 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.

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

56

26a. 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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

See 26a

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.

26c. 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. X) I

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.

26d. 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. There are 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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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.

26e. 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.XII and article 9)

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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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

26f. 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

Comments:

The prohibition is only for one year and violation is only considered a minor administrative offense. The recent cases of Francisco Gil Díaz and Javier Arrigunaga demonstrate the ineffectiveness of this prohibition.

References:

<http://www.jornada.unam.mx/2007/01/03/index.php?section=economia&article=019n1eco>
Irma E. Sandoval, "Corrupción Estructural", Reforma Newspaper, Suplemento Enfoque, May 13, 2007

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.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

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 complete information on reported gifts.

The recent case of Vicente Fox's Red Jeep" which was given to him when he was president, but was not formally registered under his name or reported in his assets declaration, is a recent indication of the problems in this area.

References:

www.funcionpublica.gob.mx

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.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

References:

There are 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. Audits may be performed by entities known to be partisan or biased in their practices.

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

0

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

References:

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

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

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.

27b. 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

Comments:

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

References:

www.presidencia.gob.mx

<http://www.jornada.unam.mx/2005/11/30/016n3pol.php?partner=rss>

John M. Ackerman, El Instituto Federal de Acceso a la Información Pública: diseño, desempeño y sociedad civil, Cuadernos para la Democratización No.10, Universidad Veracruzana-CIESAS, 2007

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.

27c. 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:
See 27b

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.

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

50

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

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.seminarioprotecciondeprogramas.org.mx/>
<http://www.alianzacivica.org.mx/boletines.html#> See also, Dictamen de Computo Final, Validez de la Elección Presidencial y Declaratoria de Presidente Electo (TEPJF, Sept. 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 the 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 bureaucracy 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

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

92

29a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

Constitucional articles 103, 105, 107 (Amparo, Constitutional Controversies, Constitutional actions)

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).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The recent decision in the Telecommunications Law case (Ley Televisa™) was an historic case of the judiciary defending the Constitution against overreaching by congress.

The court will soon be making an important decision in the case of the reform of the national pension system (ISSSTE)

References:

<http://www.eluniversal.com.mx/notas/429847.html>

www.amedi.org.mx/spip.php?article316

<http://www.jornada.unam.mx/2007/06/06/index.php?section=politica&article=007n1pol>

<http://www.eluniversal.com.mx/nacion/152490.html>

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.

29c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

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

References:

Constitutional articles 61 and 111

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.

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

43

30a. 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.

30b. 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 (articles 8 & 9)

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.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

These regulations are very weak and general.

References:

See 30b

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.

30d. 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, and there is 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.

30e. 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 while a sitting senator won a million dollar case against the government as a lawyer in an expropriation suit.

References:

J. Cárdenas, PODERES FACTICOS E INCOMPATIBILIDADES PARLAMENTARIAS, IJ-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 offTM 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.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

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

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.

30g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

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

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. Audits may be performed by entities known to be partisan or biased in their practices.

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

0

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

Comments:

Forms are accessible only if authorized by the legislator.

References:

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

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.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

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

References:

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.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

See 31b

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.

32. Can citizens access legislative processes and documents?

58

32a. In law, citizens can access records of legislative processes and documents.

YES | NO

References:

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

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.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

All information on what occurs during plenary sessions is easily available. Nevertheless, information on discussions and documents managed by committees is almost impossible to access.

References:

<http://www.monitorlegislativo.org/>
<http://www.senado.gob.mx/transparencia/>
<http://www.diputados.gob.mx/transparencia.htm>
Personal experience of chief social scientists

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.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Costs are at a minimum, only for photocopies, as per the Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental.

References:

See 32b

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.

48
III-3. Judicial Accountability

33. Are judges appointed fairly?

58

33a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

References:

There is a 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. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

References:

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

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.

33c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

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

References:

Article 81 fracc. VII of the Ley Orgánica del Poder Judicial de la Federación
Interview with ex-Consejero de la Judicatura
Article 76 fracc. II and art. 97 of the Constitution

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).

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

50

34a. 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 online 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).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

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 sentences" 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.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

References:

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

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency 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 disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent 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 disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

Comments:

Given the serious nature of the problem of corruption and abuse of power in the judiciary (See, for instance, report of Param Cumaraswamy, UN Special Rapporteur on Independence of the Judiciary, on Mexico in 2001), the CJF has been quite passive.

En el informe 2006 del CJF, se detalla que dentro de las actividades de la Comisión de Disciplina se celebraron 38 sesiones ordinarias. Se recibieron en audiencia a 33 funcionarios judiciales, para imponer 4 amonestaciones públicas y 5 apercibimientos públicos. Por otra parte, resolvió 360 quejas administrativas y 13 denuncias administrativas.

Nevertheless, corruption and lack of professionalism remains rampant.

References:

http://www.cjf.gob.mx/secretarias/pleno/Info/IAL/IAL2006/PDF/SC_05SCJN.pdf

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

References:

See 34e

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) 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 judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) 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 judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

57

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

Artículo 36 de la Ley Federal de Responsabilidades Administrativas de los Servidores Públicos

YES: A YES score is earned if all members of the national-level judiciary 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 national-level judiciary is not required to publicly disclose assets.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

References:

Artículo 8 de la Ley Federal de Responsabilidades Administrativas de los Servidores Públicos

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

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

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

References:

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

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary 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 national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

References:

Articles 8 & 9 of the Ley Federal de Responsabilidades Administrativas de los Servidores Públicos

YES: A YES score is earned if there are regulations restricting national-level judges 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.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

Career track for judges is strong. The problem is not post-government employment, but corruption while in office.

References:

A newspaper search came up with no examples.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges 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 cases, judges 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. Judges 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.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are endemic problems with corruption in the judiciary.

References:

Miguel Carbonell, "Corruption in Mexico's Judiciary," 2007 Transparency International Report
UN Cumaraswamy report

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges 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 national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

No external review has been mandated or carried out.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary 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: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

36. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

Comments:

This is only accessible when explicitly authorized by the public servant himself.

References:

Article 40 de la Ley Federal de Responsabilidades Administrativas de los Servidores Públicos

YES: A YES score is earned if members of the national-level judiciary 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-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Such records are accessible only if explicitly authorized by the public servant concerned.

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.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

As for all branches of government, this is only possible if explicitly authorized by the public servant concerned.

References:

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, articles 18-20

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.

III-4. Budget Processes

37. Can the legislature provide input to the national budget?

58

37a. 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 only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

37b. 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, according to Arturo González de Aragón, Supreme Federal Auditor. 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.

37c. 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.

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.

38. Can citizens access the national budgetary process?

33

38a. 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

Comments:

Mexico's ranking on the international index of budget transparency for 2006 was 50 out of 100, three points lower than it was in 2005.

References:

<http://www.openbudgetindex.org/CountrySummaryMexicoSpanish.pdf>
www.fundar.org.mc

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.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

Some public hearings" are held, but there is no evidence that this actually has any impact on the budget itself.

References:

<http://www.openbudgetindex.org/CountrySummaryMexicoSpanish.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.

38c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

References:

www.openbudget.org
Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental

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.

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

100

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

YES | NO

Comments:

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

References:

www.cddhcu.gob.mx

Comisión de Presupuesto y Cuenta Pública and Comisión de Vigilancia de la Cámara de Diputados

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 within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

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

38

40a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

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.

References:

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.

40b. 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

Comments:

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.

References:

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.

40c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Fundar, A.C. DIAGNOSTICO DE LA NEGOCIACION PRESUPUESTARIA, 2006-2007, available at http://www.fundar.org.mx/secciones/publicaciones/PDF/diagnostico_negociacion.pdf

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.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

This occurs in some high level cases (i.e. Bribiesca Sahagún, FOBAPROA, etc.) but is rare in general.

References:

www.cddhcu.gob.mx Ugalde, op.cit.
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. ⁶²Civil Service Regulations

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

100

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

Ley del 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.

41b. 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.

41c. 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 is 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.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

This is not the case for all corruption convictions – only if those convicted are specifically punished by inhabilitación” by the Secretaría de la Función Publica for the offense.

In addition, the lack of an integrated national “blacklist” allows officials who have been convicted in one jurisdiction to gain employment in a different one.

References:

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

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.

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

58

42a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

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.

References:

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

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.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

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.

Es posible encontrar referencias negativas al desempeño del Servicio Profesional de Carrera en http://www.contralinea.com.mx/archivo/2007/septiembre2/htm/Fracasa_Servicio_Profesional_Carrera.htm

References:

www.trabajaen.gob.mx 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)
Articles Periodico Reforma

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.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

A paradigmatic case is that of the son-in-law of the head of the corrupt national teachers' union.

References:

<http://www.oem.com.mx/elsoldemexico/notas/n100206.htm>

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.

42d. 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.

42e. 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>
Los Salarios de los Altos Funcionarios en México desde una Perspectiva Comparativa

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.

42f. 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

Comments:

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental requires full disclosure of internal structures.

References:

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.

42g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

References:

It is too 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.

42h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

There are 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.

42i. 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.

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

58

43a. 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.

43b. 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 (articles 8 & 9)

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.

43c. 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.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

The 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 brings into question the independence of the state.

The clearest and most recent case is that of former Secretary of Finance and Public Credit, who immediately after leaving his post took up a job at HSBC. Javier Arrigunaga is another case of someone who went immediately to the bank BANAMEX after leaving his job at Mexico's equivalent of the FDIC (FOBAPROA").

El caso de Francisco Gil Díaz es una muestra de la incorporación de exfuncionarios públicos al sector privado, en este caso el posible conflicto de intereses es más que evidente en tanto que el exsecretario de hacienda se incorporó al Consejo de Administración del Banco HSBC, otros caso de este tipo es el de

References:

<http://www.jornada.unam.mx/2007/01/03/index.php?section=economia&article=019n1eco>

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.

43e. 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.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

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 them. The most recent important case is that of the son-in-law of the leader of the public teachers' union who is an undersecretary in the education ministry.

References:

Newspaper search

<http://www.reforma.com/nacional/articulo/717592/default.asp?PlazaConsulta=reforma&DirCobertura=>

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.

0

44a. 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.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

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

References:

They are 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.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

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

References:

They are 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

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

0

45a. 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 cases of organized crime.

References:

The Ley Federal de Trabajo oblige "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. There is no explicit legal protection for whistleblowers.

Marco:

Ley Federal de los Trabajadores al Servicio del Estado, Reglamentaria del Apartado B) del Artículo 123 Constitucional (article 46)

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

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.

45b. 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**

Comments:

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.

References:

Ernesto Villanueva, Presentation at the First International Conference on Corruption
www.corrupcion.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.

45c. 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:

There are general protections in the Federal Labor law (article 46) 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.

45d. 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:

There are no reported cases of whistleblowers existing or much less being successful. This is the best indicator that there isn't 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.

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

100

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

YES | NO

Comments:

The SACTEL system received 112,716 complaints in 2006.

References:

<http://200.34.175.29:8080/wb3/work/sites/SFP/resources/LocalContent/436/6/informeSFP06.pdf>
Dirección General de Atención Ciudadana de la Secretaría de la Función Pública
Article 37 fracc. III y IV of the Reglamento Interno de la Secretaría de la Función Pública

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

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

38

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

100 | 75 | 50 | 25 | 0

Comments:

The Secretaría de la Función Pública has a significant staff and budget, and the hotline reporting system receives over 100,00 phone calls a year. But these reports are not always followed up on with due rigor.

References:

<http://200.34.175.29:8080/wb3/work/sites/SFP/resources/LocalContent/436/6/informeSFP06.pdf>

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.

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

100 | 75 | 50 | 25 | 0

References:

See 47a

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.

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

100 | 75 | 50 | 25 | 0

Comments:

The Secretaría de la Función Pública reports that SACTEL has functioned beautifully but there is not independent evidence that these quick response times (usually under 10 days) actually have led to serious investigations and prosecutions.

References:

<http://200.34.175.29:8080/wb3/work/sites/SFP/resources/LocalContent/436/6/informeSFP06.pdf>

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.

47d. 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.

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos art. 8

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

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

48b. 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 11)

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, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

There are no documented 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.

References:

Antonio Azuela, Las Compras del Gobierno: Percepciones Duras, Datos Blandos,"
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.

48d. 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.

48e. In law, major procurements require competitive bidding.

YES | NO

References:

La Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público ARTICLES 28-39 ;second and third paragraph of the article 134 of the Constitution

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).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

La Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público permits 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.

48g. 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.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

See 48g

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.

48i. 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 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.

48j. 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.

49. Can citizens access the public procurement process?

92

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

YES | NO

References:

Ley Federal de Transparencia (article 7 fracc. XIII)

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Ley Federal de Transparencia (article 7, fracc. XIII y XVII)

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.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

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. These records are defined here as the rules governing the competitive procurement process.

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.

49d. 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. These records are defined here as the rules governing the competitive procurement process.

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.

49e. In practice, major public procurements are effectively 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 website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

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. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

49f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

The information is often limited only to the most recent fiscal year.

References:

www.compranet.gob.mx
Leonarda Reyes, "Desapariciones en Compranet", PROCESO magazine, No. 1563, October 15, pp. 40-41
Ley de Adquisiciones (article 26)

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

50. Is the privatization process effective?

33

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

YES | **NO**

Comments:

The state organ responsible is the Comisión Intersecretarial de Desincorporación, and there is no explicit regulation.

References:

http://www.segob.gob.mx/compilacion_juridica/webpub/Acu037.pdf

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.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

References:

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos art. 8; fracc. XI

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

References:

www.corrupcion.unam.mx (studies on privatization and bailouts)

SANDOVAL BALLESTEROS, IRMA ERÉNDIRA, Rentismo y Opacidad en Procesos de Privatización y Rescates en SANDOVAL IRMA (Coordinadora) Corrupción y Transparencia: Debatiendo las Fronteras entre Estado, Mercado y Sociedad, Instituto de Investigaciones Sociales, Editorial Siglo XXI, 2007

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.

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

80

51a. In law, citizens can access privatization regulations.

YES | NO

References:

http://www.sae.gob.mx/sae/comercial/?inicial=Empresas/Empresas_LicSubAct.asp

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

51b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

www.sae.gob.mx

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to

respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

ACUERDO QUE CREA LA COMISIÓN INTERSECRETARIAL DE DESINCORPORACIÓN.

D. O. F. 07 de abril de 1995.

ARTICULO DECIMOTERCERO. La dependencia coordinadora de sector correspondiente, con base en la estrategia de comunicación social establecida por la Comisión, mantendrá oportunamente informado al público sobre el avance de los trabajos que realice.

References:

[http://www.ordenjuridico.gob.mx/Federal/PE/APF/CI/CID/07041995\(1\).pdf](http://www.ordenjuridico.gob.mx/Federal/PE/APF/CI/CID/07041995(1).pdf)

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.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In the last year there are no cases. Historically this has been a major problem.

See: SANDOVAL BALLESTEROS, IRMA ERÉNDIRA, Rentismo y Opacidad en Procesos de Privatización y Rescates en SANDOVAL IRMA (Coordinadora) Corrupción y Transparencia: Debatiendo las Fronteras entre Estado, Mercado y Sociedad, Instituto de Investigaciones Sociales, Editorial Siglo XXI, 2007.

References:

Through FOIA requests

100: Records (defined here as the rules governing the competitive privatization process) 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.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

See 51d

100: Records (defined here as the rules governing the competitive privatization process) 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. ⁶³National Ombudsman

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

52. 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.

53. Is the national ombudsman effective?

57

53a. 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.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Independent studies show that the ombudsman's performance is highly variable and subject to political influence. A paradigmatic case is its recent presentation of an accion de inconstitucionalidad" against a new law in Mexico City which allows abortion.

References:

Human Rights Watch, EL CAMBIO INCONCLUSO: AVANCE Y DESACIERTOS EN DERECHOS HUMANOS DURANTE EL GOBIERNO DE FOX, 2006

John Ackerman, ORGANISMOS AUTONOMOS Y DEMOCRACIA: EL CASO DE MEXICO, Siglo XXI-IIJ/UNAM, 2007

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.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman can only be removed through formal impeachment proceedings by Congress (Title 4 of the Constitution). This is extremely complicated and has never been even close to taking place, even in the midst of the strong questions with regard to the performance of the ombudsman during 2007.

References:

John Ackerman, ORGANISMOS AUTONOMOS Y DEMOCRACIA: EL CASO DE MEXICO, Siglo XXI-IIJ/UNAM, 2007

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.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

See 53b

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.

53e. 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 has significant operational problems.

References:

Irma Eréndira Sandoval, El Servicio Profesional en Derechos Humanos en México," DFensor, Número 8, Agosto 2007

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.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:
www.cndh.org.mx

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.

53g. In practice, the ombudsman 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:
John Ackerman, 'Autonomía Disfuncional?: El Diseño y Desarrollo Institucional de la Comisión Nacional de los Derechos Humanos', in INSTITUTIONES, LEGALIDAD Y ESTADO DE DERECHO: EN EL MEXICO DE LA TRANSICION DEMOCRATICA, Gustavo Fondevila, ed. (Fontamara, 2006)
www.cndh.org.mx

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.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

References:
John Ackerman, 'Autonomía Disfuncional?: El Diseño y Desarrollo Institucional de la Comisión Nacional de los Derechos Humanos', in INSTITUTIONES, LEGALIDAD Y ESTADO DE DERECHO: EN EL MEXICO DE LA TRANSICION DEMOCRATICA, Gustavo Fondevila, ed. (Fontamara, 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.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The recent case of Ernestina Ascención demonstrates the subordination of the national ombudsman to the executive and its unwillingness to take on powerful interests.

References:

Newspaper reports on the case of Ernestina Ascención

<http://www.jornada.unam.mx/2007/09/03/index.php?section=politica&article=013n1pol>

<http://www.criterios.com/modules.php?name=Noticias&file=article&sid=12778>

John Ackerman, "Autonomía Disfuncional?: El Diseño y Desarrollo Institucional de la Comisión Nacional de los Derechos Humanos", in INSTITUTIONES, LEGALIDAD Y ESTADO DE DERECHO: EN EL MEXICO DE LA TRANSICION DEMOCRATICA, Gustavo Fondevila, ed. (Fontamara, 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.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

There are increasing amounts of unaccepted" recommendations.

References:

Human Rights Watch
Ackerman, 2007

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.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

John Ackerman, "Autonomía Disfuncional?: El Diseño y Desarrollo Institucional de la Comisión Nacional de los Derechos Humanos", in INSTITUTIONES, LEGALIDAD Y ESTADO DE DERECHO: EN EL MEXICO DE LA TRANSICION DEMOCRATICA, Gustavo Fondevila, ed. (Fontamara, 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.

54. Can citizens access the reports of the ombudsman?

33

54a. In law, citizens can access reports of the ombudsman(s).

YES | NO

References:

Yearly reports are on the Internet at www.cndh.org.mx, though they are 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.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Reports are insufficient.

References:

<http://www.atalaya.itam.mx>

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.

54c. 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:

<http://www.atalaya.itam.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. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. 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.

56. Is the supreme audit institution effective?

66

56a. 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.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

In general, yes, although there is an article in the Federal Oversight Law which allows Congress to dismiss the auditor if he has committed grave offenses,” very broadly defined. Nevertheless, this has not been used in practice.

References:

John Ackerman, ORGANISMOS AUTONOMOS Y DEMOCRACIA: EL CASO DE MEXICO, Instituto de Investigaciones Juridicas/Siglo XXI Editores, 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.

56c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The agency is 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.

56d. In practice, audit 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.

56e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

John Ackerman, ORGANISMOS AUTONOMOS Y DEMOCRACIA: EL CASO DE MEXICO, Instituto de Investigaciones Juridicas/Siglo XXI Editores, 2007. (Chap. 4)

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.

56f. In practice, the audit 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:

John Ackerman, ORGANISMOS AUTONOMOS Y DEMOCRACIA: EL CASO DE MEXICO, Instituto de Investigaciones Juridicas/Siglo XXI Editores, 2007. (Chap. 4)
www.asf.gob.mx

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.

56g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

The government has been quite resistant to many of the most important recommendations.

References:

John Ackerman, ORGANISMOS AUTONOMOS Y DEMOCRACIA: EL CASO DE MEXICO, Instituto de Investigaciones Juridicas/Siglo XXI Editores, 2007. (Chap. 4)
Irma E. Sandoval, TRANSPARENCIA EN FIDEICOMISOS, Cultura de la Rendición de Cuentas No.11., Auditoría Superior de la Federación, 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.

56h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

The agency has been seriously limited by a series of Supreme Court decisions.

References:

John Ackerman, ORGANISMOS AUTONOMOS Y DEMOCRACIA: EL CASO DE MEXICO, Instituto de Investigaciones

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.

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

67

57a. In law, citizens can access reports of the audit agency.

YES | NO

References:

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental. Articles 3 fracc. XIV d), and 7

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.

57b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

This is available on the Internet at www.asf.gob.mx, but citizens are only granted access to final results, not to the papers and documents of the entire audit process.

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.

57c. In practice, citizens can access the audit reports at a reasonable cost.

References:

This is available on the Internet at www.asf.gob.mx, but citizens are only granted access to final results, not to the papers and documents of the entire audit process.

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.

V-3. ⁷⁷Taxes and Customs

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

100

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

YES | NO

References:

Sistema de Administración Tributaria (SAT) www.sat.gob.mx
Ley del Servicio de la Administración Tributaria (articles 2, 7 fracc. I, IV y V)
Reglamento Interior del Servicio de Administración Tributaria

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.

59. Is the tax collection agency effective?

38

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

Comments:

Agency staff is underpaid and insufficient. Recently, many functions have been subcontracted to private corporations.

References:

Marcelo Bergman 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)
<http://www.jornada.unam.mx/2006/11/13/index.php?section=economia&article=028n1eco>

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.

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The SAT is not autonomous and is underfunded.

References:

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.

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

0

60. 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.

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

100

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

YES | NO

Comments:

The Administración General de Aduanas is part of the SAT.

References:

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.

62. Is the customs and excise agency effective?

38

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

100 | 75 | 50 | 25 | 0

Comments:

There are major problems with the professionalization of customs. The recent case of the illegal importation of drugs used to manufacture illegal amphetamines by Zhenli Ye Gon has uncovered the existence of systematic problems.

References:

http://www3.diputados.gob.mx/camara/005_comunicacion/b_agencia_de_noticias/003_2007/005_mayo/31_31/1649_urge_frenar_la_corrupcion_en_las

<http://www.eluniversal.com.mx/notas/410924.html>

http://www.sat.gob.mx/sitio_internet/servicios/noticias_boletines/33_9337.html

www.universal.com.mx/nacion/153911.html

<http://www.cnnexpansion.com/actualidad/2007/7/10/aduanas-omitio-reporte-sobre-ye-gon/view>

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.

62b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

www.presupuestoygastopublico.org
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.

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

25

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

100 | 75 | 50 | 25 | 0

Comments:

In general, most people (public and private sector) complain about the corruption and irregular practices of customs officials, but unfortunately there are few, if any, trustworthy studies of the phenomenon.

This is a major 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:

Irma E. Sandoval, Opacidad en el manejo de recursos públicos: El caso de fondos y fideicomisos," in Derecho a Saber: Balance y Perspectivas, Woodrow Wilson Center-FUNDAR, Mexico City, 2007

http://www.eluniversal.com.mx/columnas/vi_66542.html

<http://mx.news.yahoo.com/s/0808200777/mexico-pide-aldf-gobierno-federal-informe-corrupci-n-aduanas.html> (Zhenli Ye Gon case)

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.pdf 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. State-Owned Enterprises

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

100

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

The Secretary of the Public Function, through its comptrollers in each company, oversees the transparency and accountability of operations.

References:

Ley Orgánica de la Administración Pública Federal, art. 37
Ley Federal de Entidades Paraestatales arts. 60 y 62

YES: A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

45

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

Comments:

The Secretary of the Public Function is directly appointed by the president and does not have autonomy.

The Superior Federal Auditor is part of congress and subject to political pressures from the legislature.

References:

Ley Orgánica de la Administración Pública Federal
Ley de Fiscalización Superior

YES: A YES score is earned only if the agency or equivalent mechanism has some formal operational 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 or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

John Ackerman & Irma Eréndira Sandoval, "Fiscalización intraestatal y protección de programa sociales en México," forthcoming, Programa de las Naciones Unidas para el Desarrollo, Mexico City, 2007

100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

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

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

See 65b

100: The the agency or equivalent mechanism 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 the agency or equivalent mechanism 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.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

SFP 2006 Yearly Report http://200.34.175.29:8080/wb3/work/sites/SFP/resources/LocalContent/674/6/informe_labores_sfp.pdf
ASF 2006 Yearly Report
www.asf.gob.mx

100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency or equivalent mechanism 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 or equivalent mechanism 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.

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Irma E. Sandoval, Calderón & Corruption", Paper presented at conference on the State of Mexico's Democracy, Yale University, May 1st, 2007, Available at <http://www.yale.edu/macmillan/mexicosdemocracy/sandoval.pdf>
<http://www.jornada.unam.mx/2007/07/28/index.php?section=economia&article=023n1eco>
http://www.vanguardia.com.mx/diario/noticia/politica/nacional/podria_ir_munoz_leos_a_la_carcel/18085
http://200.34.175.29.8080/wb3/work/sites/SFP/resources/LocalContent/674/6/informe_labores_sfp.pdf

100: When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency or equivalent mechanism 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 or equivalent mechanism 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 partisan in its application of power.

66. Can citizens access the financial records of state-owned companies?

50

66a. In law, citizens can access the financial records of state-owned companies.

YES | NO

References:

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental (Articles 3 (fracc. XIV f), and 7)

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

References:

Irma Eréndira Sandoval, RENDICION DE CUENTAS Y FIDEICOMISOS: EL RETO DE LA OPACIDAD FINANCIERA, Serie: Cultura de la Rendición de Cuentas No.10, Auditoría Superior de la Federación, Mexico City, 2007

100: State-owned companies always disclose financial data, which is generally accurate and up to date.

75:

50: State-owned 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.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

References:

See 66b

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned 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: State-owned 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.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Irma Eréndira Sandoval, RENDICION DE CUENTAS Y FIDEICOMISOS: EL RETO DE LA OPACIDAD FINANCIERA, Serie: Cultura de la Rendición de Cuentas No.10, Auditoría Superior de la Federación, Mexico City, 2007
John M. Ackerman, EL INSTITUTO FEDERAL DE ACCESO A LA INFORMACION PUBLICA: DISEÑO, DESEMPEÑO Y SOCIEDAD CIVIL, Cuadernos para la democratización No.10, CIESAS-UV, 2007

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.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

See 66d

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.

65
V-5. Business Licensing and Regulation

67. Are business licenses available to all citizens?

50

67a. In law, anyone may apply for a business license.

YES | NO

References:

Ley General de Sociedades Mercantiles
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

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:
Ley Federal de Procedimiento Administrativo
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.

67c. 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

Comments:
The wait is 142 days on average according to the World Bank.

References:
<http://www.doingbusiness.org/ExploreEconomies/?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.

67d. 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://espanol.doingbusiness.org/ExploreEconomies/?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.

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

68a. In law, basic business regulatory requirements for meeting public health 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 public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public 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 public 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.

68c. In law, basic business regulatory requirements for meeting public safety 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 public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

<http://www.jornada.unam.mx/2007/10/17/index.php?section=sociedad&article=045n2soc>
<http://www.criterios.com/modules.php?name=Noticias&file=article&sid=6069>

100: Business inspections by the government to ensure that public health standards are being met 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 to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

<http://www.jornada.unam.mx/2006/05/24/042n1est.php>
<http://www.lacrisis.com.mx/cgi-bin/cris-cgi/DisComuni.cgi?colum16%7C20050905021934>
http://www.cemda.org.mx/artman2/publish/LITIGIO_AMBIENTAL_77/En_ciermes_con_apoyo_de_gobiernos_la_mayor_trage_4322.php
<http://www.lajornadasanluis.com.mx/2007/07/02/pol22.php>
<http://www.noticaribe.com.mx/cancun/2007/06/>

100: Business inspections by the government to ensure that public environmental standards are being met 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 to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

This is the responsibility of municipal governments.

The reality varies drastically between cities, but in general enforcement is a serious problem which is not often reported on by the media. A typical case is that of the Lobohombo discoteque in Mexico City which ended up on fire due to violation of safety regulations.

References:

http://noticias.vanguardia.com.mx/d_i_133341_t_Lobohombo_-un-caso-sin-resolver.htm
<http://www.eluniversal.com.mx/editoriales/30038.html>

100: Business inspections by the government to ensure that public safety standards are being met 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 to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials 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

VI-1. ⁵⁸Anti-Corruption Law

70. Is there legislation criminalizing corruption?

100

70a. In law, attempted corruption is illegal.

YES | NO

References:

Código Penal Federal (articles 12, 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.

70b. 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.

70c. 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.

70d. 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.

70e. In law, bribing a foreign official is illegal.

YES | NO

References:
Código Penal Federal (articles 214-224)
Marco: Código Penal Federal article 222 bis.

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

YES | NO

References:

Article 217 fracc. I D) y fracc. III of the Código Penal Federal

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.

70g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Article 214 fracc. III y IV and 220 fracc. II of the Código Penal Federal

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.

70h. 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.

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

YES | NO

References:

Ley Federal contra la Delincuencia Organizada (articles 2 to 7)
Código Penal Federal (articles 130 to 138, 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

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

100

71. 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
Ley Orgánica de la Administración Pública Federal (article 37)

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.

72. Is the anti-corruption agency effective?

33

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

This is a Cabinet official appointed by the President.

References:

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.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

This is 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).

References:

Irma Eréndira Sandoval, Calderón & Corruption," paper presented at the conference on The State of Mexico's Democracy, Yale University, May 1st, 2007. Available at: <http://www.yale.edu/macmillan/mexicosdemocracy/sandoval.pdf>
ASF, Informe de Resultados corresponding to the Cuenta Pública of 2004

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.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

This is up to presidential discretion. Calderon's head of the Secretary of the Public Function has just stepped down after only ten months of service to pursue the chairmanship of the ruling, PAN, party. Political appointments are typical for the office.

References:

Ley Orgánica de la Administración Pública Federal
Constitucional article 89

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.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

El servicio profesional de carrera (SPC), establecido por la Secretaría de la Función Pública (SFP) en 2004 para garantizar "la

legalidad, equidad y objetividad” en la contratación de servidores públicos en puestos técnico-directivos, obtuvo un desempeño de 508 puntos de un total de mil establecidos por la SFP, destaca la Auditoría Superior de la Federación (ASF) en el resumen ejecutivo de la Cuenta Pública 2005.

Aun cuando el SPC se puso en marcha el 2 de abril de 2004, luego de que se publicó el reglamento de la ley respectiva, la ASF detectó que en 2005 diversos subsistemas no se echaron a andar.

Cabe destacar que a finales de 2006, diputados de la 59 Legislatura cuestionaron el SPC porque no se licitó al Centro Nacional de Evaluación para la Educación Superior (Ceneval) la elaboración de los exámenes de ingreso al gobierno federal, y se detectó sólo en la SFP que más de 60 por ciento de los servidores que ingresaron provenían del estado de Chihuahua, de donde es originario su ex titular, Eduardo Romero.”

References:

<http://www.jornada.unam.mx/2007/05/15/index.php?section=politica&article=022n1pol>

Ley del Servicio Profesional de Carrera

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.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Staff is significant but still insufficient.

References:

Irma Eréndira Sandoval, Calderón & Corruption,” paper presented at the conference on The State of Mexico’s Democracy, Yale University, May 1st, 2007. Available at:

<http://www.yale.edu/macmillan/mexicosdemocracy/sandoval.pdf>

John Ackerman & Irma Eréndira Sandoval, “Fiscalización Intraestatal y Protección de Programas Sociales en México: Teoría, Práctica y Propuestas,” United Nations Development Program, Mexico City, Mexico, 2007

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.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Irma Eréndira Sandoval, Calderón & Corruption,” paper presented at the conference on The State of Mexico’s Democracy, Yale

University, May 1st, 2007. Available at:
<http://www.yale.edu/macmillan/mexicosdemocracy/sandoval.pdf>
John Ackerman & Irma Eréndira Sandoval, "Fiscalización Intraestatal y Protección de Programas Sociales en México: Teoría, Práctica y Propuestas," United Nations Development Program, Mexico City, Mexico, 2007

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.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:
Reports are annual.

References:
www.funcionpublica.gob.mx
Irma Eréndira Sandoval, Calderón & Corruption," paper presented at the conference on The State of Mexico's Democracy, Yale University, May 1st, 2007. Available at:
<http://www.yale.edu/macmillan/mexicosdemocracy/sandoval.pdf>
John Ackerman & Irma Eréndira Sandoval, "Fiscalización Intraestatal y Protección de Programas Sociales en México: Teoría, Práctica y Propuestas," United Nations Development Program, Mexico City, Mexico, 2007

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.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:
There are systematic problems in 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).

References:
Irma Eréndira Sandoval, Calderón & Corruption," paper presented at the conference on The State of Mexico's Democracy, Yale University, May 1st, 2007. Available at:
<http://www.yale.edu/macmillan/mexicosdemocracy/sandoval.pdf>
John Ackerman & Irma Eréndira Sandoval, "Fiscalización Intraestatal y Protección de Programas Sociales en México: Teoría, Práctica y Propuestas," United Nations Development Program, Mexico City, Mexico, 2007
ASF, Informe de Resultados corresponding to the Cuenta Pública of 2004

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.

72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

It depends what is meant by independently." All investigations are ultimately subject to presidential approval. The SFP has not been terribly proactive.

References:

Irma Eréndira Sandoval, Calderón & Corruption," paper presented at the conference on The State of Mexico's Democracy, Yale University, May 1, 2007. Available at:

<http://www.yale.edu/macmillan/mexicosdemocracy/sandoval.pdf>

John Ackerman & Irma Eréndira Sandoval, "Fiscalización Intraestatal y Protección de Programas Sociales en México: Teoría, Práctica y Propuestas," United Nations Development Program, Mexico City, Mexico, 2007

ASF, Informe de Resultados corresponding to the Cuenta Pública of 2004, 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.

73. Can citizens access the anti-corruption agency?

25

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Irma Eréndira Sandoval, Calderón & Corruption," paper presented at the conference on The State of Mexico's Democracy, Yale University, May 1st, 2007. Available at:

<http://www.yale.edu/macmillan/mexicosdemocracy/sandoval.pdf>

John Ackerman & Irma Eréndira Sandoval, "Fiscalización Intraestatal y Protección de Programas Sociales en México: Teoría, Práctica y Propuestas," United Nations Development Program, Mexico City, Mexico, 2007

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.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

There are no anonymity or confidentiality clauses.

References:

Irma Eréndira Sandoval, Calderón & Corruption," paper presented at the conference on The State of Mexico's Democracy, Yale University, May 1st, 2007. Available at:

<http://www.yale.edu/macmillan/mexicosdemocracy/sandoval.pdf>

John Ackerman & Irma Eréndira Sandoval, "Fiscalización Intraestatal y Protección de Programas Sociales en México: Teoría, Práctica y Propuestas," United Nations Development Program, Mexico City, Mexico, 2007

http://200.34.175.29.8080/wb3/work/sites/SFP/resources/LocalContent/674/6/informe_labores_sfp.pdf

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.

53
VI-3. Rule of Law

74. Is there an appeals mechanism for challenging criminal judgments?

50

74a. In law, there is a general right of appeal.

YES | NO

References:

Constitutional articles 23, 103-105 and 107
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.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Appeals at the federal level took 66.2 days on average during 2006.

References:

COMPARATIVO DE LOS INDICADORES JUDICIALES EN LOS TRIBUNALES UNITARIOS DE CIRCUITO 2005 – 2006
http://www.cjf.gob.mx/dgepj/mdej_tu_06.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.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

De acuerdo con el Centro de Investigación para el Desarrollo (CIDAC):

El principal costo en un litigio son los honorarios del abogado. Estos se rigen por las leyes del mercado: la asesoría jurídica de alta calidad tiene un precio elevado, ya que hay una oferta insuficiente que se enfrenta a un exceso de demanda. La hora de trabajo de un buen abogado se cotiza aproximadamente entre 300 y 600 nuevos pesos, dependiendo de las características del asunto. En términos de salario mínimo, esto significa que el costo de una hora de trabajo del abogado equivale entre 21 y 42 salarios mínimos diarios o entre 168 y 336 veces lo que perciben los trabajadores más pobres en una hora. De ahí que en la práctica muy pocos tengan acceso real a estos servicios.

Sin embargo, además de estos abogados de excelencia, que son pocos y caros, en México existe una amplia oferta de titulados en derecho. Esto significa que casi siempre se podrá tener acceso a algún tipo de asesoría jurídica de acuerdo con las posibilidades económicas del cliente, aunque debido a la creciente tecnificación de los procedimientos judiciales, los abogados litigantes no necesariamente tienen la preparación adecuada. Esta situación se ha traducido en graves desigualdades en el sistema de impartición de justicia.

References:

<http://www.cidac.org/vnm/libroscidac/puerta-ley/Cap-4.PDF>

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.

75. In practice, do judgments in the criminal system follow written law?

0

75. 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 (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.

76. In practice, are judicial decisions enforced by the state?

25

76. 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, *Reflexiones 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.

77. Is the judiciary able to act independently?

88

77a. 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.

77b. 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 (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.

77c. 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.

77d. 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 fracc. XV)

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.

78. Are judges safe when adjudicating corruption cases?

0

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

<http://www.eluniversal.com.mx/nacion/141814.html>

<http://200.38.86.53/PortalSCJN/RecJur/ReformaJudicial1/LibroBlancoReformaJudicial/TextoLibroBlanco.htm>

<http://www.esmas.com/noticierostelevisa/mexico/469918.html>

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. YES is a positive score.

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.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

El juez federal René Hilario Nieto Contreras, encargado de casos relacionados con los cárteles de las drogas de los hermanos Arellano Félix, del Golfo el y de Juárez, fue asesinado a balazos el 17 de agosto de 2006.

La magistrada Elvia Díaz de León reveló que tenemos aproximadamente a 7 u 8 jueces y magistrados de Tribunales Unitarios que están con protección."

La magistrada explicó que en todos los casos se trata de jueces y magistrados que están relacionados con procesos penales por delitos federales como el secuestro y narcotráfico.

Dijo que los jueces y magistrados amenazados de muerte trabajan en los Centros Federales de máxima seguridad como el de "La Palma", en el Estado de México; en el de Jalisco; Matamoros, Tamaulipas y en el Distrito Federal (DF).

References:

<http://www.eluniversal.com.mx/nacion/141814.html>
<http://200.38.86.53/PortalSCJN/RecJur/ReformaJudicial1/LibroBlancoReformaJudicial/TextoLibroBlanco.htm>
<http://www.esmas.com/noticierostelevisa/mexico/469918.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. YES is a positive score.

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.

79. Do citizens have equal access to the justice system?

29

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

There are serious problems with regard to indigenous peoples.

28 de febrero, 2007—Los pueblos indígenas tienen problemas para acceder a la justicia en México, según un informe presentado hoy ante el Senado del país por la Oficina de las Naciones Unidas para los Derechos Humanos.

La directora del estudio, Jan Perlyn, dijo que ni siquiera se cuenta con traductores o intérpretes que posibiliten una comunicación básica de estas personas durante los procesos legales.

Se concluyó que hay algunos obstáculos en la legislación y que por otra parte- hay diferencias entre lo que dicen las garantías en la ley y lo que sucede en la práctica. Si bien hay problemas en el acceso a la justicia para todos en México, para los indígenas estos obstáculos son mayores, subrayó.

La Oficina de la ONU pidió que las normas y costumbres de estas comunidades sean tomadas en cuenta en la aplicación de la justicia, y confió en que el informe de hoy sirva para mejorar la administración judicial.

References:

<http://www.un.org/spanish/News/fullstorynews.asp?NewsID=8921>
<http://www.hchr.org.mx/documentos/conferencias/28defebreroJan.pdf>

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.

79b. In practice, women have full access to the judicial system.

Comments:

Court decisions commonly distorted by gender bias (i.e. rape cases, divorce, etc.), although the courts criteria has begun to change.

Recientemente, en mayo de 2006, en el caso de la intervención policiaca en Atenco, Estado de México, hubo multiples denuncias de agresiones a mujeres, Aministría internacional emitió un reporte en el que da cuenta de las anomalías en el acceso a la justicia de las mujeres del caso, en tanto que hubo denegación de justicia, violencia sexual y física y tratos degradantes orientados principalmente a las mujeres.

AMinistía Internacional reporta también lo siguiente en su informe 2007:

La violencia contra las mujeres y la discriminación por motivos de género siguieron siendo generalizadas en todo México. La comisión especial del Congreso federal sobre casos de feminicidio dio a conocer un importante informe sobre los asesinatos de mujeres en 10 estados. En él se subrayaba la sistemática inacción de los gobiernos estatales a la hora de compilar información fidedigna sobre la violencia de género o de adoptar medidas eficaces para su prevención y castigo. Se aprobó una ley federal que reforzaba el derecho de las mujeres a vivir libres de violencia. En febrero se estableció la Fiscalía Especial para la Atención de Delitos relacionados con Actos de Violencia contra las Mujeres.

Patricia Olamendi, especialista en el tema, hizo un análisis, con base en el documento del INEGI, sobre el comportamiento de la violencia en México y las posibilidades reales de abatirla desde la legislación actual.

En Violencia contra las mujeres y legislación mexicana señala: en cuanto al derecho que tenemos las mujeres de ser respetadas en nuestra vida, libertad e integridad personal", hay que reconocer que la ley continúa permitiendo la impunidad de quienes maltratan, humillan, golpean e incluso asesinan a una mujer.

Al ratificar los Instrumentos Internacionales de Derechos Humanos, el Estado mexicano se comprometió a respetar los derechos contenidos en los tratados; tomar las medidas legislativas y administrativas para que las personas puedan ejercerlos y llevar a cabo acciones para asegurar su cumplimiento, advierte Olamendi.

Sin embargo, "del 2003 a la fecha, organismos internacionales, como la ONU, Cedaw, Relatores Especiales sobre violencia contra la mujer; OEA y la Comisión Interamericana de Derechos Humanos (CIDH) han hecho a México 200 recomendaciones por violaciones a los derechos humanos de las mujeres.

Entre ellas, destacan: poner fin a la impunidad respecto de la violencia contra la mujer, mediante reformas en la legislación y en los procedimientos de investigación en el sector judicial; promulgar en todos los estados y a escala federal leyes específicas para prevenir esos actos de violencia y responder a ellos; así como una ley federal que tipifique como delito la violencia doméstica.

En la legislación mexicana, dice la jurista Olamendi, son pocas las constituciones estatales que contemplan la violencia contra la mujer.

"El nivel de protección contra la violencia de género varía notablemente de estado a estado", apunta. Por ejemplo, el acoso sexual, laboral y académico se penaliza sólo en seis estados, con un día y hasta 3 años de prisión. En Coahuila únicamente se tipifica el delito si se trata de discriminación de género y en Chihuahua si se trata de una mujer que esté en desventaja.

Afirma que la Ley General de Acceso de las Mujeres a una Vida Libre de Violencia, aprobada por el Senado este año, es de observación en todo el territorio nacional, da respuesta al ámbito internacional y permite armonizar las políticas públicas.

References:

<http://web.amnesty.org/library/Index/ESLAMR410282006>

<http://thereport.amnesty.org/esl/Regions/Americas/Mexico>

<http://www.criterios.com/modules.php?name=Noticias&file=article&sid=11825>

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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

Comments:

State defenders are available but systematically incompetent.

References:

Artículo 20 constitucional, fracción IX
http://www.cjf.gob.mx/acceso_informacion/informes/informe2005ministro/PDF/IFDP.pdf
El Instituto Federal de Defensoría Pública

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

En 2006, de acuerdo al informe de labores del Consejo de la Judicatura Federal, en materia de defensa penal, 653 defensores públicos adscritos a las agencias investigadoras y órganos jurisdiccionales ubicados en 174 ciudades y poblaciones de la República, apoyados por 615 oficiales administrativos, realizaron un total de 164,722 acciones de defensa, promovieron 3,648 juicios de amparo, practicaron 159,903 visitas carcelarias y efectuaron 100,685 entrevistas a detenidos.

References:

http://www.cjf.gob.mx/secretarias/pleno/Info/IAL/IAL2006/PDF/SC_IFDP.pdf

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished 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 impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

This is definitely not the case.

El principal costo en un litigio son los honorarios del abogado. Estos se rigen por las leyes del mercado: la asesoría jurídica de alta calidad tiene un precio elevado, ya que hay una oferta insuficiente que se enfrenta a un exceso de demanda. La hora de trabajo de un buen abogado se cotiza aproximadamente entre 300 y 600 nuevos pesos, dependiendo de las características del asunto. En términos de salario mínimo, esto significa que el costo de una hora de trabajo del abogado equivale entre 21 y 42 salarios mínimos diarios o entre 168 y 336 veces lo que perciben los trabajadores más pobres en una hora. De ahí que en la práctica muy pocos tengan acceso real a estos servicios.

References:

<http://www.cidac.org/vnm/libroscidac/puerta-ley/Cap-4.PDF>

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.

79f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

This is very expensive, especially when the costs of bribes are taken into account. El principal costo en un litigio son los honorarios del abogado. Estos se rigen por las leyes del mercado: la asesoría jurídica de alta calidad tiene un precio elevado, ya que hay una oferta insuficiente que se enfrenta a un exceso de demanda. La hora de trabajo de un buen abogado se cotiza aproximadamente entre 300 y 600 nuevos pesos, dependiendo de las características del asunto. En términos de salario mínimo, esto significa que el costo de una hora de trabajo del abogado equivale entre 21 y 42 salarios mínimos diarios o entre 168 y 336 veces lo que perciben los trabajadores más pobres en una hora. De ahí que en la práctica muy pocos tengan acceso real a estos servicios.

References:

<http://www.cidac.org/vnm/libroscidac/puerta-ley/Cap-4.PDF>

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.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

This is especially problematic in indigenous areas.

References:

Enrique Flores Terríquez 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.

VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

42

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

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.

References:

Reglamento del Servicio de Carrera de Procuración de Justicia Federal, Ley Orgánica de la Procuraduría General de la República
<http://www.htm.pgr.gob.mx/reforma/index.htm> www.ordenjuridico.gob.mx/Federal/PE/PGR/Reglamentos/25012005.pdf

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.

80b. In practice, the law enforcement 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.

80c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

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.

Refiriéndose a la designación de Medina Mora en la PGR, El universal publicó que "Se requería un jurista, un abogado prestigioso no un panista vinculado a Vicente Fox y con ligas con El Yunque, opina el analista Jorge Zepeda Patterson".

References:

<http://www.eluniversal.com.mx/notas/391185.html>

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.

81. Can law enforcement officials be held accountable for their actions?

50

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

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.

References:

Ley Orgánica de la Administración Pública Federal (article 37)

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no independent complaint mechanism, and there are systematic problems with dealing with accusations of police corruption.

References:

See 81a

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.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

References:

There is 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 may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

81d. 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.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

There is no immunity.

Artículo 13. Nadie puede ser juzgado por leyes privativas ni por tribunales especiales. Ninguna persona o corporación puede tener fuero, ni gozar más emolumentos que los que sean compensación de servicios públicos y estén fijados por la ley. Subsiste el fuero de guerra para los delitos y faltas contra la disciplina militar; pero los tribunales militares en ningún caso y por ningún motivo podrán extender su jurisdicción sobre personas que no pertenezcan al Ejército. Cuando en un delito o falta del orden militar estuviere complicado un paisano, conocerá del caso la autoridad civil que corresponda.

References:

Constitutional article 13

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.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

Diversos organismos se refieren constantemente a la impunidad policiaca que prevalece en México, aunque la ley no permita fuero de ninguna clase a los policías, en los hechos en ocasiones es difícil castigarles por las faltas que cometen o siquiera iniciarles investigaciones. Casos como Atenco y Oaxaca son ejemplos de excesos policiacos que en lo general han permanecido impunes.

References:

<http://www.jornada.unam.mx/2006/06/29/023n2pol.php>

<http://www.criterios.com/modules.php?name=Solotexto&file=print&sid=12623>

<http://web.amnesty.org/Library/Index/ESLAMR410182007>

<http://www.jornada.unam.mx/2007/01/12/index.php?section=politica&article=014n2pol>

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.

