

Overall Score:

**72 - Moderate**

Legal Framework Score:

**83 - Strong**

Actual Implementation Score:

**59 - Very Weak**

Category I. Civil Society, Public Information and Media

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## I-1. <sup>82</sup>Civil Society Organizations

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### 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:**

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

**References:**

Article 9 of the Constitution.

**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:**

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

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

**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.

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

83

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:**

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

**References:**

Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the national chapter of Transparency International.

Interview with Vladimir Juárez, President of Integridad Ciudadana

**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:**

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

**References:**

Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the national chapter of Transparency International.

Interview with Vladimir Juárez, President of Integridad Ciudadana

**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

**Comments:**

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

**References:**

Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the national chapter of Transparency International

Interview with Vladimir Juárez, President of Integridad Ciudadana

**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. YES is a positive score.

**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.

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### 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:**

There were no CSO activists imprisoned because of their work covering corruption during the period of time that was analyzed.

**References:**

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

Interview with Vladimir Juárez, President of Integridad Ciudadana

**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:**

There were no documented cases during the specific study period of assaults on CSO activists who were covering corruption.

**References:**

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

Interview with Vladimir Juárez, President of Integridad Ciudadana

**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:**

There were no documented cases during the specific study period of CSO activists being killed because of their work covering corruption.

**References:**

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

Interview with Vladimir Juárez, President of Integridad Ciudadana.

**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.

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

75

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

YES | NO

**Comments:**

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

**References:**

The Constitution, Article 123, subpart XVI.

Federal Labour Law, Articles 441, 356, 357, 359 and 381.

**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:**

In the past nine years, new and independent trade unions have been created, such as the Fesebes (Federación de Sindicatos de Bienes y Servicios), which is an independent confederation of unions. However, many of the trade unions in Mexico still have strong ties with political parties, essentially the Partido Revolucionario Institucional (PRI).

Therefore, it is more accurate to state that trade unions exist, but they are not always relevant to politics or policy debates. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

**References:**

Academic report, <http://docencia.jzt.uam.mx/egt/publicaciones/articulos/mexitrad.pdf>

**100:** Trade unions are common and are an important part of 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.

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## I-2. Media

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

100

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

**YES** | NO

**Comments:**

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

**References:**

The Constitution, Article 7

**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

**Comments:**

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

**References:**

The Constitution, Article 6

**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.

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## 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:**

The government does not create any barriers to formation of printed media.

**References:**

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

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

**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 appeals mechanism if a license is denied or revoked.

YES | **NO**

**Comments:**

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

**References:**

Federal Law of Radio and Television.

**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

**Comments:**

According to the official information, citizens can obtain a print media license within five days.

**References:**

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

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

[http://www.serviciosdecalidad.gob.mx/index.php?option=com\\_content&task=view&id=221&Itemid=200&CCC=1&CIS=0](http://www.serviciosdecalidad.gob.mx/index.php?option=com_content&task=view&id=221&Itemid=200&CCC=1&CIS=0)

**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

**Comments:**

According to the official information, it is necessary to obtain two different licenses: one for the print media's title (approx. US\$150) and the other for the print media's content (approx. US\$180 USD):

El costo del Certificado de Licitud de Título es de \$1973.00, y por el Certificado de Licitud de Contenido es de \$2,466.00. El pago por ambos Certificados debe efectuarse en la sucursal bancaria de su preferencia (o a través de su portal en internet), utilizando las hojas de ayuda respectivas, a través del sistema de pago electrónico e5cinco.”

**References:**

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

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

[http://www.serviciosdecualidad.gob.mx/index.php?option=com\\_content&task=view&id=221&Itemid=200&CCC=1&CIS=0](http://www.serviciosdecualidad.gob.mx/index.php?option=com_content&task=view&id=221&Itemid=200&CCC=1&CIS=0)

**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.

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

19

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

100 | 75 | 50 | 25 | 0

**Comments:**

The government can create barriers for television and radio . Because the Communications Secretary is the agency that decides who obtains the concession, and the secretary does not have to justify its decisions, the process to form a media entity is arbitrary and not transparent.

The Communications Secretary has a great deal of discretion. Corruption exists in the concession of new radio entities; hence, the officials of the Communications Secretary can assure that the concession goes to the company that pays them a bribe.

**References:**

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

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

**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 appeals mechanism if a license is denied or revoked.

YES | **NO**

**Comments:**

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

**References:**

Federal Law of Radio and Television.

**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:**

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

**References:**

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

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

**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

**Comments:**

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

**References:**

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

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

**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.

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## 8. Can citizens freely use the Internet?

100

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

100 | 75 | 50 | 25 | 0

**Comments:**

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

**References:**

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

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

**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 on-line.

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:**

Penal Federal Code.

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

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

**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.

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

83

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

YES | NO

### Comments:

In law, there is no restriction on reporting news, even if it damages the reputation of a public figure.

### References:

Código Federal de Procedimientos Penales

Código Civil de la Federación

Código Penal Federal

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

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

**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:**

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

**References:**

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

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

**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:**

In practice, the government does not restrain, by any means, the publication of any corruption-related stories.

**References:**

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

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

**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.

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

50

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

YES | **NO**

### Comments:

Print media companies are not required to publicly disclose their ownership.

### References:

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

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

**YES:** A YES score is earned if print media companies are required by law to publicly 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 publicly disclosed.

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

YES | **NO**

### Comments:

In law, broadcast media companies are not required to publicly disclose their ownership.

### References:

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

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

**YES:** A YES score is earned if broadcast media companies are required by law to publicly 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 publicly disclosed.

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

100 | 75 | 50 | 25 | 0

**Comments:**

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

**References:**

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

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

**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:**

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

**References:**

Federal Electoral Institute (IFE), [http://www.ife.org.mx/portal/site/ifev2/Monitoreo\\_de\\_Medios/](http://www.ife.org.mx/portal/site/ifev2/Monitoreo_de_Medios/)

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

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

**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

**Comments:**

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

**References:**

Federal Electoral Law, <http://info4.juridicas.unam.mx/ijure/tcfed/4.htm?s=>

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

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

**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.

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## 11. Are journalists safe when investigating corruption?

33

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

YES | NO

**Comments:**

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

**References:**

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

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

**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

**Comments:**

There are several cases of journalists who had been physically harmed or executed by the drug cartels in cases related to organized crime.

**References:**

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

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

**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:**

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

**References:**

International Federation of Journalist Report, [http://www.soitu.es/soitu/2009/02/04/info/1233748580\\_360453.html](http://www.soitu.es/soitu/2009/02/04/info/1233748580_360453.html)

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

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

**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.

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## 66 I-3. Public Access to Information

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### 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

**Comments:**

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

**References:**

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

**YES:** A YES score is earned if there is a formal right to access 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

**Comments:**

There is a formal process of appeal for rejected information requests.

**References:**

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

**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

**Comments:**

There is a formal institution Instituto Federal de Acceso a la Información (IFAI) through which citizens can access government records available under freedom of information laws.

In addition, in 2007, the Mexican Congress approved an amendment to the access to information law that requires all levels of government to standardize their regulations and computer systems to allow public access to government records from anywhere in the country.

**References:**

Instituto Federal de Acceso a la Información (IFAI), <http://www.ifai.org.mx/>

Articles 40 to 48, Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental.

**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.

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

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

100 | 75 | 50 | 25 | 0

**Comments:**

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

**References:**

Interview with Juan Pablo Guerrero, Commissioner of the Instituto Federal de Acceso a la Información (IFAI).

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

**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.

Interview with Juan Pablo Guerrero, Commissioner of the Instituto Federal de Acceso a la Información (IFAI).

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

**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, responses to information requests are of high quality.

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

**Comments:**

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

**References:**

Interview with Juan Pablo Guerrero, Commissioner of the Instituto Federal de Acceso a la Información (IFAI).

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

**100:** Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

**75:**

**50:** Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

**25:**

**0:** The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

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

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

**Comments:**

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

**References:**

Interview with Juan Pablo Guerrero, Commissioner of the Instituto Federal de Acceso a la Información (IFAI).

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

**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.

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

100 | 75 | 50 | 25 | 0

**Comments:**

In most cases, the appeals mechanism is an affordable option to middle-class citizens who seek to challenge an access to information ruling.

**References:**

Interview with Juan Pablo Guerrero, Commissioner of the Instituto Federal de Acceso a la Información (IFAI).

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

**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.

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

**Comments:**

The government usually discloses its reasons for denying an information request to the requester, with some exceptions.

**References:**

Interview with Juan Pablo Guerrero, Commissioner of the Instituto Federal de Acceso a la Información (IFAI).

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

**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.

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 Category II. Elections
 

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 84  
 II-1. Voting & Citizen Participation
 

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## 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

**Comments:**

The right to vote is guaranteed to all citizens of the country.

**References:**

Constitution, Article 36

**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

**Comments:**

There is an electoral law framework enshrined in law that mandates elections at reasonable intervals.

**References:**

Constitution, 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.

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

100

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

100 | 75 | 50 | 25 | 0

**Comments:**

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

**References:**

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

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

**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:**

By law and by practice, ballots are secret, or there is a functional equivalent protection in all cases.

**References:**

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

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

**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

**Comments:**

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

**References:**

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

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

**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?

80

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

**YES** | NO

**References:**

COFIPE, Article 5,

Constitution, 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. Many argue that the absence of independent candidacies restricts rights.

**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:**

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

**References:**

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

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

**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

**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<sup>7</sup> to run. Many argue that the absence of independent candidacies restricts rights.

**References:**

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

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

**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. A system of party lists may discourage or prevent independent 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 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.

**References:**

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

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

**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.

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## II-2. Election Integrity

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### 18. Is the election monitoring agency effective?

80

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

**YES** | NO

#### References:

Constitution, 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:

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

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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

**Comments:**

The agency or set of agencies/entities is sufficiently staffed to fulfill its basic mandate.

**References:**

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

**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.

**References:**

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

**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.

**Comments:**

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

**References:**

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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?

100

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

100 | 75 | 50 | 25 | 0

### Comments:

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

### References:

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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<sup>o</sup> voting by non-existent voters is common.

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

YES | NO

### Comments:

Citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

**References:**

Constitution, Article 99, Electoral Tribunal

**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

**Comments:**

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

**References:**

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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

**Comments:**

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

**References:**

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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 overtly 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:**

Domestic and international election observers are allowed to monitor the electoral process.

**References:**

COFIPE: articles 5 and 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.

**Comments:**

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

**References:**

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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## 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

**Comments:**

The Federal Electoral Institute (Instituto Federal Electoral — FEI) is a public agency that is responsible for organizing federal elections for Congress, Senate and president.

**References:**

Constitution, Article 41, fracc. III COFIPE articles 68 to 71.

**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 exists 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.

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93  
II-3. Political Financing

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

100

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

YES | NO

**References:**

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

COFIPE, Article 49

**YES:** A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also 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 in a discriminatory manner.

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

YES | NO

**References:**

COFIPE, Article 11 and article 49.2.g

**YES:** A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

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

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

YES | NO

**References:**

COFIPE, Article 49

**YES:** A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

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

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

YES | NO

**References:**

COFIPE, Article 49-B

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

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

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

YES | NO

**References:**  
COFIPE, Article 49-B

**YES:** A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. 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' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

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

YES | NO

**References:**  
COFIPE, Article 49, subsection 6 and Article 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 the financing of political parties. 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. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

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

100

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

YES | NO

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

**YES:** A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also 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 candidates in a discriminatory manner.

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

YES | NO

**References:**

COFIPE, Articles 11 and 49.2.g

**YES:** A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

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

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

YES | NO

**References:**

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

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

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

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

YES | NO

**References:**

COFIPE, Article 49-B

**YES:** A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. 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 an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

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

YES | NO

**References:**

COFIPE, Article 49, subsection 6 and Article 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 the financing of individual political candidates' campaigns. 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. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

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## 22. Are the regulations governing the political financing of parties effective?

54

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

100 | 75 | 50 | 25 | 0

**Comments:**

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

**References:**

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**100:** Existing limits represent the full extent to which an individual can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which individuals can indirectly support 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 party; unregulated loans to 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 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.

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

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

**Comments:**

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

**References:**

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**100:** Existing limits represent the full extent to which a company can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which companies can indirectly support 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 party; unregulated loans to 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 political parties 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.

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

100 | 75 | 50 | 25 | 0

**References:**

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE)

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

**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.

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

100 | 75 | 50 | 25 | 0

**References:**

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

**100:** The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. 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, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency,

thought limited in effectiveness, is still fair in its application of power.

**25:**

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

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

100 | 75 | 50 | 25 | 0

**References:**

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

**100:** When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

**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, reluctant to cooperate with other agencies, 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 and may refuse cooperation with other agencies.

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

100 | 75 | 50 | 25 | 0

**References:**

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

**100:** Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

**75:**

**50:** Political party 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 may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

**25:**

**0:** Party 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.

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

55

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

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

### References:

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

**100:** Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. 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 particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates 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; unregulated loans to candidates (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 particular political candidate 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.

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

100 | 75 | 50 | 25 | 0

**References:**

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

**100:** Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. 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 an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates 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; unregulated loans to candidates (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 individual candidates 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.

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

100 | 75 | 50 | 25 | 0

**References:**

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

**100:** The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. 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. It may be reluctant to cooperate with other investigatory agencies.

**25:**

**0:** The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

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

100 | 75 | 50 | 25 | 0

**References:**

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

**100:** When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

**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, reluctant to cooperate with other agencies, 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 or may refuse to cooperate with other agencies.

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

100 | 75 | 50 | 25 | 0

**References:**

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

**100:** The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

**75:**

**50:** The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

**25:**

**0:** The finances of individual candidates' campaigns 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.

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

50

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

100 | 75 | 50 | 25 | 0

### References:

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

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

**75:**

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

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

100 | 75 | 50 | 25 | 0

### Comments:

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

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

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

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

Hemos padecido, dijo, escándalos importantes en términos de los bienes inmuebles que se compran con el financiamiento público de los partidos, aseveró al participar en la Jornada de Transparencia organizada por el IFE, IFAI y Tribunal Electoral.

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

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

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

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

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

#### References:

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the national chapter of Transparency International.

**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.

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

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

#### Comments:

In principle, the access to the financial records should be free; however, in practice, it is necessary to invest time, make several

calls and eventually applicants must travel to visit to a specific office. All this has an economic cost.

**References:**

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

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

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

**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.

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

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

**References:**

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

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

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

**100:** Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

**75:**

**50:** Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

**25:**

**0:** Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

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

25

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

100 | 75 | 50 | 25 | 0

### Comments:

Individual candidates usually publish their sources of founding or expenditures once a year; however, politically sensitive information is regularly withheld from public disclosure.

Even with most recent changes in the COFIPE, the individual candidates publish their sources of founding or expenditures once a year, but it does not imply that the records are published in the accurate moment to be accountable.

### References:

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

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

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

**75:**

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

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

100 | 75 | 50 | 25 | 0

### Comments:

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

**References:**

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

**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.

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

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

**Comments:**

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

**References:**

Interview with Benito Nazif, Electoral Advisor of the Instituto Federal Electoral (IFE).

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

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

**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.

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

100 | 75 | 50 | 25 | 0

**References:**

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

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

Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the national chapter of Transparency International.

**100:** Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

**75:**

**50:** Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

**25:**

**0:** Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

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Category III. Government Accountability

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III-1. ~~60~~ Executive Accountability

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

75

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

100 | 75 | 50 | 25 | 0

**Comments:**

The president gives a State of the Union address each year on September 1, but does not take questions or listen to the

positions of the opposition parties. Press conferences are more like presentations than a dialogue with the press. After the State of the Union address, cabinet ministers must appear before Congress and answer tough questions, but this process is usually quite formulaic and is not covered extensively by the press.

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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

YES | NO

**References:**

Constitution, 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).

27c. 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. Some judicial decisions have had significant implications for some actions of the executive such as the recent conclusion on the Oaxaca issues of 2006.

In the coming days, the Supreme Court must present a conclusion regarding two important issues: the termination process of the public electric company (Compañía de Luz y Fuerza del Centro) and the current shareholder structure of Banamex, a subsidiary bank of Citigroup. Both cases could affect the governmental law interpretation and policy strategy of the current administration.

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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 rely 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.

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

100 | 75 | 50 | 25 | 0

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

---

## 28. Is the executive leadership subject to criminal proceedings?

100

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

**YES** | NO

### References:

Constitution, Chapter 4 (Juicio Político); however, 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.

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

**YES** | NO

### References:

Constitution, 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.

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

78

29a. 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.

29b. In law, ministerial-level officials 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 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.

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

YES | NO

**References:**

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

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

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

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

YES | NO

**Comments:**

According to the Article 7 of the Ley de Fiscalización y Rendición de Cuentas de la Federación there is a legal requirement for a external auditing (conducted by the Auditoria Superior de la Federación) of executive branch asset disclosures. For this Federal Law asset disclosures is defined as Cuenta Pública". Art. 7:

Artículo 7.- Para los efectos de esta Ley, la Cuenta Pública estará constituida por: a) Los Estados Contables, Financieros, Presupuestarios, Económicos y Programáticos; b) La información que muestre el registro de las operaciones derivadas de la aplicación de la Ley de Ingresos y del ejercicio del Presupuesto de Egresos de la Federación; c) Los efectos o consecuencias de las mismas operaciones y de otras cuentas en el activo y pasivo totales de la Hacienda Pública Federal y en su patrimonio neto, incluyendo el origen y aplicación de los recursos, y d) El resultado de las operaciones de los Poderes de la Unión y entes públicos federales, además de los estados detallados de la Deuda Pública Federal.

**References:**

Ley de Fiscalización y Rendición de Cuentas de la Federación.

**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.

29e. 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, Articles 8.XII and 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.

29f. 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 against post-government private sector employment is only for one year and violation of it is only considered a minor administrative offense.

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**100:** The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases 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. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. 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. However, it is a common practice to not report the actual receipt of gifts due to the weak enforcement of this regulation.

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**100:** The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. 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.

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

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

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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

6

30a. 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 (Article 40) only permits access if explicitly authorized by the public servant Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental articles 3 fracc.XIV b), 4 fracc. I y II, 7, 9, 12.

**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.

30b. 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 made public. Even when authorized by public servants, not all of the information is available. See, for example, IFAI resolution 48/06.

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

30c. 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

**Comments:**

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

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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

100 | 75 | 50 | 25 | 0

**Comments:**

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

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**100:** The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

**75:**

**50:** The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

**25:**

**0:** The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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

100

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

YES | NO

**Comments:**

Injunction” (amparo) is a constitutional guarantee proceeding unique to Mexico. It protects people or companies against unlawful and arbitrary acts by authorities.

**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.

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

50

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

100 | 75 | 50 | 25 | 0

**Comments:**

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

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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## III-2. Legislative Accountability

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

67

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

YES | NO

#### References:

Constitution, 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).

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

100 | 75 | 50 | 25 | 0

#### Comments:

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

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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

YES

NO

**Comments:**

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

**References:**

Constitution, 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. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

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

61

33a. 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.

33b. 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 and 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.

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

YES | NO

**References:**

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

**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.

33d. 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.

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

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

**Comments:**

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

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**75:**

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

**25:**

**0:** The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

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

100 | 75 | 50 | 25 | 0

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**100:** The regulations governing gifts and hospitality to national legislators are regularly enforced. 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 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.

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

100 | 75 | 50 | 25 | 0

**Comments:**

Disclosure forms are held by the internal comptroller of the legislature, and there is no external review. As I understand, by external review” we mean that the audit is performed by an independent entity of the Legislative branch. Therefore, the internal comptroller is not necessary an “independent” entity.

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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:** 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.

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

6

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

YES | **NO**

### Comments:

Forms are accessible only if access is authorized by the legislator.

### References:

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

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

**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.

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

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

### References:

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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

100 | 75 | 50 | 25 | 0

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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

100 | 75 | 50 | 25 | 0

**References:**

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

**100:** The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

**75:**

**50:** The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

**25:**

**0:** The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

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

83

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

YES | NO

#### References:

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

**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 are exemptions to the general right that are not clearly defined by formal rules.

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

100 | 75 | 50 | 25 | 0

#### Comments:

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

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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

100 | 75 | 50 | 25 | 0

**Comments:**

Costs of accessing records of legislative processes and documents are at a minimum, and are charged only for photocopies, as per the Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental.

All information on what occurs during plenary sessions is easily available. Nevertheless, information on discussions and documents that is managed by committees is almost impossible to access. The documents and draft reports that are discussed in the committees are not that easy to access, therefore additional cost should be included.

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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-3.5 Judicial Accountability

#### 36. Are judges appointed fairly?

58

36a. 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.

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

100 | 75 | 50 | 25 | 0

##### Comments:

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

##### References:

Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

36c. 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 and Article 76 fracc. II.

The Constitution, Article 97.

**YES:** A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity 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 the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

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

67

37a. 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 for decisions must be given since all judicial decisions can be appealed to a higher level. The decisions can be consulted online or through a formal request.

**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).

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

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

**Comments:**

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

**References:**

Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

37c. 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. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to 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.

37d. 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.

Constitution, Article 100.

**YES:** A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative 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 executive ministry or legislative committee.

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

100 | 75 | 50 | 25 | 0

**Comments:**

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

**References:**

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

Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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

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

**Comments:**

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

**References:**

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

Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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

64

38a. In law, members of the national-level judiciary 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 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.

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

YES | NO

**References:**

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

**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality 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.

38c. 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.

38d. In law, there are restrictions for national-level judges 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-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.

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

100 | 75 | 50 | 25 | 0

**Comments:**

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

**References:**

Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**100:** The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases 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. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

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

**Comments:**

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

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

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

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

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

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

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

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

Los acuerdos entre impartidores de justicia para intercambiar plazas con salarios que van desde los 20 mil hasta los 80 mil pesos, es un secreto que todo mundo conoce en el Poder Judicial de la Federación, asegura un magistrado de circuito que pide el anonimato y que afirma que, incluso, quienes no se suman a esta práctica son mal vistos y aislados."

**References:**

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

Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**100:** The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. 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 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.

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

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

**Comments:**

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

**References:**

Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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:** 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.

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

6

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

YES | **NO**

**Comments:**

Asset disclosure records of members of the national-level judiciary are only accessible when explicitly authorized by the public servant himself.

**References:**

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

**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.

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

100 | 75 | 50 | 25 | 0

**Comments:**

Judicial asset disclosure records are only accessible when explicitly authorized by the public servant himself.

**References:**

Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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

100 | 75 | 50 | 25 | 0

**Comments:**

The costs of accessing judicial asset disclosure records are prohibitive to most citizens, journalists, or CSOs.

**References:**

Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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

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

**Comments:**

For all practical purposes, the asset disclosure records of the national-level judiciary are not available.

**References:**

Interview with Alejandro Posadas, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**100:** The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

**75:**

**50:** The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

**25:**

**0:** The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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## III-4. Budget Processes

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

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

YES | NO

**References:**

Constitution, 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.

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

100 | 75 | 50 | 25 | 0

**Comments:**

Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist.

Specific projects of infrastructure, such as those performed by Pemex, do not need a Legislative approval. They are allocated by direct awarded contracts.

**References:**

Interview with Laura Sour, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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

100 | 75 | 50 | 25 | 0

**Comments:**

Legislators have very few staff members. There are only a couple of advisers for each congressman.

**References:**

Luis Carlos Ugalde, The Mexican Congress: Old Player, New Power.”

Interview with Laura Sour, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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

42

41a. 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:**

There is a formal, transparent process for budget debates, but major budget modifications may be negotiated in separate, closed sessions.

**References:**

Interview with Laura Sour, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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

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

**Comments:**

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

**References:**

Interview with Laura Sour, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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

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

**Comments:**

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

**References:**

Interview with Laura Sour, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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

50

43a. 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 on a yearly basis to Congress in the Cuenta Pública. The Secretary also must appear before Congress at least once a year. Nevertheless, in practice, there is not much dialogue or direct active oversight of executive expenditure by Congress.

**References:**

Interview with Laura Sour, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

43b. 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 while the Comisión de Vigilancia is led by an opposition party.

**References:**

Interview with Laura Sour, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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

100 | 75 | 50 | 25 | 0

**Comments:**

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

**References:**

Interview with Laura Sour, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

**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.

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

100

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

YES | NO

**References:**

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

**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).

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Category IV. Administration and Civil Service

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IV-1. <sup>63</sup> Civil Service Regulations

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

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

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.

44b. 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.

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

YES | NO

**References:**

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

**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. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

**NO:** A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

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

YES | NO

**Comments:**

Not all civil servants convicted of corruption are prohibited from future government employment. It happens only if those who are convicted are specifically punished by "inhabilitación" by the Secretaría de la Función Pública for the offense.

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

**References:**

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos 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 or if the ban is not a lifetime ban.

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## 45. Is the law governing the administration and civil service effective?

64

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

100 | 75 | 50 | 25 | 0

**Comments:**

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

<http://www.contralinea.com.mx/archivo/2008/septiembre2/htm/favoritismo-servicio-profesional-carrera.htm>

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

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

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

En el Primer informe de gobierno, el presidente Felipe Calderón Hinojosa indicó que hasta el 31 de julio de 2007 se recibieron 143 inconformidades sobre la selección de personal en 14 secretarías y 22 órganos descentralizados, y se presentaron 20 recursos de revocación por los resultados obtenidos en los concursos. Además, se realizaron 1 mil 979 designaciones con base en el artículo 34.

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

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

#### References:

David Arellano, *Gestion Estrategica Para El Sector Publico*, Fondo de Cultura Económica, 2004.

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

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

**Comments:**

The three cases below are based on information from <http://www.contralinea.com.mx/archivo/2008/septiembre2/htm/favoritismo-servicio-profesional-carrera.htm>

**Caso Aserca**

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

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

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

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

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

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

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

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

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

En el Formato art. 34, informe de nombramiento autorizado en términos del artículo 34 de la LSPCAPF, Aserca señala, como causa de excepción para el otorgamiento del cargo, que peligre o se altere los servicios públicos, como consecuencia de circunstancias que pueden provocar pérdidas o costos adicionales. El motivo por el que la dependencia consideró que Cárdenas Gutiérrez cubría el perfil del puesto fue que el servidor contaba tanto con la experiencia, como con los conocimientos técnicos requeridos.

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

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

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

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

## Caso Sener

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

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

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

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

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

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

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

## Caso Conaculta

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

45c. 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:**

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

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

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

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

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**100:** Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility 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.

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

100 | 75 | 50 | 25 | 0

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

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

100 | 75 | 50 | 25 | 0

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

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

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

**Comments:**

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

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

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

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

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

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

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

**Comments:**

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

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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. Some bans are only temporary.

**25:**

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

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

56

46a. In law, senior members of the civil service 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 senior members of the civil service 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 senior member of the civil service is not required to disclose assets.

46b. 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.

46c. 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.

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

YES | NO

**Comments:**

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

**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.

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

YES | NO

**References:**

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

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

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

100 | 75 | 50 | 25 | 0

**Comments:**

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

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**100:** The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases 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.

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

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

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**100:** The regulations governing gifts and hospitality to civil servants are regularly enforced. 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.

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

100 | 75 | 50 | 25 | 0

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

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

100 | 75 | 50 | 25 | 0

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**100:** Civil service asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** Civil service 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:** Civil service 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.

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

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

YES | **NO**

**Comments:**

Citizens can access the asset disclosure records of senior civil servants only if authorized to by the public servant himself.

**References:**

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

**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.

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

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

**Comments:**

Asset disclosure records of senior civil servants may be available on the Internet, but almost none of them actually are.

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

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

100 | 75 | 50 | 25 | 0

**Comments:**

Asset disclosure records of senior civil servants may be available on the Internet, but almost none of them actually are.

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

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

100 | 75 | 50 | 25 | 0

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**100:** The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

**75:**

**50:** The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

**25:**

**0:** The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

## IV-2. Whistle-blowing Measures

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

0

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

YES | **NO**

### References:

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

**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.

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

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

### References:

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

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

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.

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

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

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

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

56

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

100 | 75 | 50 | 25 | 0

**Comments:**

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

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

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

100 | 75 | 50 | 25 | 0

**Comments:**

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

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

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

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

**Comments:**

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

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

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

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

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

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

100

49. 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

**References:**

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

**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.

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52  
IV-3. Procurement

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51. Is the public procurement process effective?

51a. 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, Article 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.

51b. 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. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

**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.

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

100 | 75 | 50 | 25 | 0

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

**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.

51d. 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.

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

**YES** | NO

**References:**

La Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público ARTICLES 28-39

Constitution, Article 134, second and third paragraphs.

**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).

51f. 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 sole sourcing 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.

51g. 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.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

**References:**

La Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Articles 65-70.

**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.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

**References:**

Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Article 61.

**YES:** A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

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

51j. 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

**Comments:**

The Secretaría de la Función Pública publishes the list of proveedores inhabilitados" at:

[http://www01.fcionpublica.gob.mx:8080/SanFicTec/jsp/Ficha\\_Tecnica/SancionadosN.htm](http://www01.fcionpublica.gob.mx:8080/SanFicTec/jsp/Ficha_Tecnica/SancionadosN.htm)

But, lack of coordination between different levels of government is a major loophole in preventing companies that are guilty of major violations of procurement regulations from participating in future procurement bids.

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

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## 52. Can citizens access the public procurement process?

96

52a. 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.

52b. 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.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

### References:

[www.compranet.gob.mx](http://www.compranet.gob.mx)

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

[www.compranet.gob.mx](http://www.compranet.gob.mx)

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

**References:**

www.compranet.gob.mx

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

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### 53. Is the privatization process effective?

42

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | **NO**

#### References:

There is not an explicit law that regulates the issue of businesses being eligible to compete for privatized state assets.

**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.

53b. 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, Article 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.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

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

#### Comments:

In the last 12 years, there has not been any privatization process. In the past, some violations may not have been prosecuted, or some officials may have been exempt from the regulations.

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Annalists and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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

70

54a. In law, citizens can access privatization regulations.

**YES** | NO

**References:**

There are no laws or regulations concerning the privatization process. It is true that there are no laws or regulations concerning privatizations. However, in practice, the terms and conditions of privatization bids are made available, and citizens always have the option to request information on privatizations through the Information Request System.

**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.

54b. In practice, privatizations are effectively advertised.

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

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Annalists and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

54c. In law, the government is required to publicly announce the results of privatization decisions.

**YES** | NO

**References:**

Ley Federal de Acceso a la Información Pública Gubernamental, Article 13.

**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.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

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

**Comments:**

There is not a law of privatizations bids", however the privatization of a public entity is highly reported by the media and citizens can access to the regulations. For instance, the privatizations of Satmex and Grupo Fertinal (the most recent privatizations bids), were to some extent well reported.

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Annalists and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

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

**Comments:**

There is not a law of privatizations bids”, however the privatization of a public entity is highly reported by the media and citizens can access to the regulations. The cost are relatively to what is consider “reasonable cost”. For a sigle citizen the cost of a private bid cold be very expensive, but for a private equity could be an accectable investment.

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Annalists and Professor of the Universidad Nacional Autónoma de México (UNAM).

**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.

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Category V. Oversight and Regulation

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V-1. <sup>77</sup>National Ombudsman

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## 56. Is the national ombudsman effective?

73

56a. In law, the ombudsman is protected from political interference.

YES | NO

### References:

Constitution, Article 102: The Comisión Nacional de los Derechos Humanos (CNDH) is an autonomous agency.

**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.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

### Comments:

The Comisión Nacional de los Derechos Humanos (CNDH) is typically independent. Yet, it is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information that he/she needs to carry out its investigations.

### References:

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

56c. 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 process and has never come even close to taking place.

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

**Comments:**

Appointments are usually based on professional qualifications. However, political parties play a significant role in the appointments since they must approve the assignment; therefore, it could be possible that appointed individuals have clear party loyalties.

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

**References:**

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

Interview with Leonardo Curzio, Political Annalists and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

The ombudsman agency does not effectively penalize offenders. The agency make judgments but does not enforce them, nor does it cooperate with other agencies in enforcing penalties. In fact, the Comisión Nacional de los Derechos Humanos (CNDH) just provides recommendations," but there is no punishment or enforcement.

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

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

**Comments:**

The ombudsman's reports do not lead necessarily to policy changes. The recommendations" of the Comisión Nacional de los Derechos Humanos (CNDH) have been ignored several times.

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

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

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

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## 57. Can citizens access the reports of the ombudsman?

100

57a. In law, citizens can access reports of the ombudsman(s).

**YES** | NO

**References:**

Yearly reports are on the Internet at [www.cndh.org.mx](http://www.cndh.org.mx).

**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.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

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

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

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

Interview with Leonardo Curzio, Political Annalists and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

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

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

YES | NO

**References:**

Comisión Nacional de los Derechos Humanos, (Constitution, 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.

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## V-2. Supreme Audit Institution

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59. Is the supreme audit institution effective?

88

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

**References:**

Technical" and "management" autonomy are 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.

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59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

In general, yes, the head of the audit agency is protected from removal without relevant justification. But there is an article in the Federal Oversight Law which allows Congress to dismiss the auditor if he has committed grave offenses” which are very broadly defined. Nevertheless, this has not been used in practice.

**References:**

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

**Comments:**

The Auditoria Superior de la Federacion published its reports on its web site: <http://www.asf.gob.mx/>.

**References:**

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

**Comments:**

Audit reports do not lead necessarily to policy changes, especially because most of the ASF's observations are related to previous years; sometimes the policy responsibilities are different. There is weak enforcement.

**References:**

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

Interview with Eduardo Bohórquez, Director of Transparencia Mexicana, the national chapter of Transparency International.

**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.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

---

## 60. Can citizens access reports of the supreme audit institution?

100

60a. In law, citizens can access reports of the audit agency.

YES | NO

**References:**

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental. Article 3, fracc. XIV and Article 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.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

---

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

100

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

YES | NO

**References:**

Constitution, 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.

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96  
V-3. Taxes and Customs

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62. Is the tax collection agency effective?

63

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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 tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

---

## 65. Is the customs and excise agency effective?

50

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

The customs and excise agency has no staff, or its staff is limited so that it is clearly unqualified to fulfill its mandate. This is a

problem that is specific to the customs and excise agency due to the lack of an efficient customs law framework.

**References:**

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

---

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

100

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

YES | NO

**References:**

Sistema de Administración Tributaria (SAT), [www.sat.gob.mx](http://www.sat.gob.mx) 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.

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

0

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

100 | 75 | 50 | 25 | 0

**Comments:**

Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax laws than others; for instance, powerful entrepreneurial groups, unions or civil organizations that are protected by political leaders or parties, such as those groups that are protected by the Partido de la Revolución Democrática (PRD).

The following is a CNNExpansion's report on this concern:

México deja captar alrededor de un 25% de su capacidad recaudatoria por actos de elusión y evasión fiscal, dijo el martes el secretario de Hacienda, Agustín Carstens. El país además de resentir una caída en los ingresos petroleros, presenta una disminución en la recaudación tributaria, misma que mantiene los niveles más bajos con respecto al producto interno bruto, comparada con países de América Latina y entre naciones miembro de la Organización para la Cooperación y el Desarrollo Económico.

El funcionario recordó ante el pleno de la Cámara de Diputados que entre los países de la OCDE el porcentaje que se deja de recaudar por este tipo de actos es de 15%. Al inicio del sexenio (2006) teníamos un 28% y continuamos reduciéndolo", dijo Carstens en su comparecencia en la Cámara Baja.

El Ejecutivo presentó recientemente una propuesta fiscal, donde se prevén modificaciones en materia de cobros y actos de fiscalización, dotando de mayores herramientas al servicio de administración tributaria, brazo fiscal de Hacienda.

La dependencia calcula que existe poco más 400,000 mdp por recuperar en materia de ingresos fiscales, por lo que la modificaciones que se proponen en el Código Fiscal de la Federación, se podrían recuperar más de 20, 000 mdp."

**References:**

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

---

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

100

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

YES | NO

### References:

The Administración General de Aduanas is part of the SAT.

**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.

---

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

25

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

100 | 75 | 50 | 25 | 0

### Comments:

In general, most people (in both the public and private sector) complain about the corruption and irregular practices of customs officials; but, unfortunately, there are few, if any, trustworthy studies of the phenomenon. This is a major area for future research.

In general, the problem is centered around kickbacks for allowing the illegal importation of goods. For instance, the inundation of goods from China recently has been attributed to this phenomenon.

**References:**

Interview with Leonardo Curzio, Political Analyst and Professor of the Universidad Nacional Autónoma de México (UNAM).

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

**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.

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## V-4. State-Owned Enterprises

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68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

40

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | **NO**

**Comments:**

In Mexico, the state-owned companies are audited and controlled by two entities: the internal control, which is performed by the Secretary of Public Function (an entity of the executive branch) and the external control, which is performed by the Supreme Federal Auditor, which is an autonomous agency. So, it depends on the type of control that we need to answer this question. If we take into account the ASF the most likely answer should be YES, but if we take into account the SFP the answer should be NO.

**References:**

The Secretary of the Public Function is directly appointed by the president and does not have autonomy. The Superior Federal Auditor is part of congress and subject to political pressures from the legislature.

**YES:** A YES score is earned only if the agency, series of agencies, 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, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

The state-owned companies are run by an oversight staff that is clearly unqualified to fulfill its mandate due to, a large extent, on the control and influence that the unions have in the administration of these companies.

For instance, the oil company PEMEX, has significant problems, but the union actually blocks any possible administrative reform. Unions are based on corrupt practices that make any reasonable managing of the public companies impossible.

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**100:** The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

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

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

The state-owned companies have a regular source of funding, but they are pressured by cuts in their annual budget, especially this year because the economic crisis. Political considerations have an effect on agency funding. For instance, PEMEX's budget is subject to political considerations that make it impossible to establish an efficient budget administration.

**References:**

Interview with David Arellano, Professor and Researcher, the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**100:** The agency, series of agencies, 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 agency, series of agencies, 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.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

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

**Comments:**

The agencies that oversee state-owned companies start investigations, but these are limited in their effectiveness or in the cooperation with other investigative agencies. The state-owned companies may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its own judgments.

The following is a example of a fraud scandal in the Electric Power Company (Comisión Federal de Electricidad). Taken from: <http://www.cnnexpansion.com/actualidad/2007/7/1/descubren-fraude-contra-la-cfe#>

Descubren fraude contra la CFE. Dos empleados hicieron transferencias bancarias por casi 4 mdp a sus cuentas personales; Diana Patricia Gutiérrez y Julián García quedaron detenidos por el presunto fraude.

Un juez federal otorgó una orden de arraigo contra dos personas presuntamente responsables de fraude a la Comisión Federal de Electricidad (CFE) por un monto de tres millones 884 mil 25 pesos.

La Procuraduría General de la República (PGR) informó que la CFE presentó una denuncia al detectar dos transferencias por un millón 998 mil 547 y un millón 885 mil 478 pesos hacia cuentas personales sin relación comercial u operativa con la empresa.

Mediante un comunicado, destacó que lleva a cabo revisiones junto con la CFE y ha registrado, con técnicas y procedimientos contables, transferencias indebidas en ejercicios anteriores, por un monto que aún está por determinarse.

La Unidad Especializada en Investigación de Delitos Fiscales y Financieros de la Subprocuraduría de Investigación Especializada en Delitos Federales inició la averiguación UEIDFF/FINM15/200/2007.

Peritos en las materias de informática, dactiloscopia, fotografía y topografía acudieron a las instalaciones de la paraestatal, para efectuar una inspección ocular y levantar diversas pruebas periciales.

De esa manera, el Ministerio Público Federal procedió a la detención urgente de Diana Patricia Gutiérrez Molina y Julián García Aguado, trabajadores de la CFE, por estar relacionados con los retiros indebidos detectados con motivo de la denuncia.

Ambos empleados quedaron bajo arraigo por su presunta responsabilidad en el delito de fraude previsto en el Artículo 386 del Código Penal Federal, y del 113 Bis de la Ley de Instituciones de Crédito.

El Ministerio Público Federal solicitó y obtuvo la orden de arraigo por 30 días contra Gutiérrez Molina y García Aguado, quienes fueron llevados al Centro de Investigaciones Federales para continuar integrando la indagatoria y definir las responsabilidades jurídicas que correspondan.

A su vez, la CFE precisó que las diferencias de registros entre las operaciones efectuadas y los movimientos bancarios fueron detectadas en la unidad administrativa de la Subdirección de Transmisión.

Por ello, el director general de la CFE, Alfredo Elías Ayub, instruyó al abogado general a presentar de inmediato ante la PGR la denuncia de hechos contra quien resulte responsable, e iniciar las investigaciones correspondientes.

La CFE señaló, en un comunicado, que está coadyuvando con la PGR en las actuaciones que lleva a cabo, las cuales se han caracterizado por su celeridad y eficiencia.

Apuntó que desde el momento en que detectaron la irregularidad la empresa adoptó medidas adicionales correctivas y preventivas de control en todas las áreas administrativas de la entidad en tanto concluyen las investigaciones.

**References:**

Interview with David Arellano, Professor and Researcher, the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

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

**75:**

**50:** The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

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

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

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

**Comments:**

The owned-state companies enforce rules, but they are limited in their effectiveness or are reluctant to cooperate with other agencies. They may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce their judgments. Normally, fraud or corruption scandals that involve operational-level personnel are investigated and in some cases prosecuted. However, scandals that involve top management directors are usually not investigated.

The following is a media report on this issue: <http://www.cnnexpansion.com/actualidad/2009/08/13/robos-crean-perdida-millonaria-a-pemex#>

Robos crean pérdida millonaria a Pemex

Los robos de energéticos a la petrolera mexicana generan millones de dólares a los contrabandistas; en 2008 se localizaron 400 tomas ilegales en ductos de la petrolera, generando pérdidas de 700 mdd.

El Gobierno estadounidense está investigando si existen compañías con conocimiento del robo a Pemex. EU entrega 2.4 mdd a México por fraude. El monto entregado a la PGR y al SAT provienen del fraude de Tramo Petroleum contra Pemex. En EU, cae petrolero por robo a Pemex.

Un ejecutivo se declaró culpable del cargo de delincuencia organizada por el robo de crudo mexicano. Los Zetas ordeñan ductos de Pemex. Funcionarios de la paraestatal protegen y ayudan al grupo delictivo en el robo de combustible. Depuración contra la ordeña de Pemex

El presidente de México anunció una estrategia para combatir la ordeña del petróleo a la empresa. Roban a Pemex 5,800 mdp en petrolíferos.

La empresa reportó que la pérdida por el robo de combustibles ascendió a 9,300 mdp en 2008.

El problema endémico que tiene la petrolera estatal mexicana Pemex con el robo de combustible en su red de ductos quedó en evidencia, ante la notoriedad que tuvo esta semana la investigación sobre el contrabando de combustible en la frontera entre México y Estados Unidos. Las autoridades aduaneras de Estados Unidos entregaron recientemente al Gobierno mexicano 2.4 millones de dólares provenientes de la venta de crudo robado y luego vendido en la frontera.

Los robos de gasolina, diesel e inclusive combustible de avión desde los ductos de Pemex le han generado millones de dólares de ganancias a los contrabandistas. El combustible perdido tiene un costo significativo para el país, que importa más de 40% de la gasolina que consume a pesar de ser uno de los principales productores de crudo en el mundo.

Los criminales perforan los ductos e instalan tomas clandestinas para luego cargar el combustible en camiones cisterna. La mayor parte del combustible es vendido a dueños de gasolineras y propietarios de empresas con grandes flotas de vehículos. Pemex con frecuencia localiza las tomas clandestinas e incauta los camiones con el combustible robado, pero los arrestos son poco comunes y peor aún las sentencias a prisión.

**References:**

Interview with David Arellano, Professor and Researcher of the Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

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

**75:**

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

**25:**

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

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

85

69a. In law, citizens can access the financial records of state-owned companies.

**YES** | NO

**Comments:**

According to the mentioned law and articles, the entities subject to the transparency obligations are all the entities of the Executive branch and Federal Public Administration. According to the Ley Organica de la Administracion Publica Federal, that includes the state-owned companies, such as Pemex and CFE.

**References:**

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, Article 3, fracc. XIV f and Article 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.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

**References:**

Interview with David Arellano, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**100:** State-owned companies always publicly 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, file the information behind schedule, or not publicly disclose certain data.

**25:**

**0:** Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

**References:**

KPMG's report on PEMEX external audit, 2008.

Interview with David Arellano, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Javier González, Public Officer, Secretaría de la Función Pública.

**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.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

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

Interview with David Arellano, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

**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.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

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

Interview with David Arellano, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

**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.

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67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

**Comments:**

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

**References:**

Ley Orgánica de la Administración Pública Federal, Article 37.

Ley Federal de Entidades Paraestatales, Articles 60 and 62.

**YES:** A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. 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, or if some state-owned companies are free from government oversight.

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75  
V-5. Business Licensing and Regulation

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70. Are business licenses available to all citizens?

81

70a. In law, anyone may apply for a business license.

YES | NO

**References:**

Ley General de Sociedades Mercantiles, 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

70b. 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.

70c. 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 for obtaining a business license is 142 days on average according to the World Economic Forum.

**References:**

World Economic Forum, Global Competitiveness Report 2008.

**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.

70d. 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

**Comments:**

Business licenses are required, and this requirement imposes a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

**References:**

World Economic Forum, Global Competitiveness Report 2008.

**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.

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

67

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

**YES** | NO

**References:**

Ley Federal del IMSS.

Ley Federal del Trabajo.

**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.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | **NO**

**References:**

Interview with Miguel Angel Pando, Executive Director, Consejo Coordinador Empresarial (CCE).

**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.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

**YES** | NO

**References:**

Ley Federal del Trabajo.

**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.

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

50

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

**Comments:**

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

The following is a media report on this issue: <http://www.eluniversal.com.mx/nacion/168522.html>

Farmacéuticas intentan curar" la corrupción

El vocero de los laboratorios acepta que no todas las empresas respetan el código de ética, lo que impide la sana competencia y perjudica tanto a pacientes como al sistema de salud.

No han bastado un consejo autónomo y un código autorregulatorio, ni un compromiso de transparencia firmado con el gobierno federal. Las prácticas no éticas en la relación entre la industria farmacéutica y los profesionales de la salud, incluyendo el pago de sobornos, están muy arraigadas y no cambiarán de la noche a la mañana, acepta, con preocupación, Jaime Uribe de la Mora, presidente de la Cámara Nacional de la Industria Farmacéutica. Las peores consecuencias, agrega, son el daño que producen al sistema nacional de salud y a los pacientes, aparte de impedir una competencia sana en el sector farmacéutico.

EL UNIVERSAL publicó el martes pasado un reportaje producido por la Unidad de Investigación que documenta con precisión los recursos cooptadores de corporativos farmacéuticos hacia médicos y pacientes, ya sea mediante obsequios y el financiamiento a ellos y sus familiares de viajes a congresos y seminarios nacionales e internacionales.

El dirigente de la Canifarma advierte en entrevista que si bien estas prácticas comenzaron a ser reguladas desde 2005, estableciendo el Consejo de Ética y Transparencia de la Industria Farmacéutica (órgano autónomo) y el Código de Buenas Prácticas de Promoción de la Industria Farmacéutica, no todas las empresas afiliadas los respetan.

Podría parecer insólito, pero de 2005 a la fecha, explica Uribe de la Mora, la propia cámara ha interpuesto ante el Consejo 49 quejas contra empresas asociadas que realizan prácticas proscritas, como dar a los médicos obsequios que superan el valor permitido, patrocinar viajes a familiares o realizar pagos a trasmano a profesionales de la salud.

Según las estadísticas del Consejo referido, 40% de las quejas presentadas por la Cámara fueron contra agremiadas que realizaron pagos indebidos a médicos. Uribe de la Mora precisa que no se considera pago indebido el que un médico asista patrocinado por una empresa a un congreso científico, sino que aquella pague, además, los gastos del acompañante.

Asimismo, 25% de las quejas fueron por publicidad imprecisa, confusa o engañosa; 20% se originó porque durante un congreso médico se realizaron actividades no relacionadas con la formación profesional, como ofrecer un show de un cantante; eso está prohibido... ese tipo de hospitalidades inducen a que el médico se sienta comprometido con la industria, explica el dirigente.

Y 15% restante fue contra empresas que dieron obsequios prohibidos en las prácticas de promoción. El Código de Buenas Prácticas de Promoción de la Industria Farmacéutica asienta que los laboratorios pueden obsequiar a médicos regalos de poco valor, es decir, que no rebasen 10 salarios mínimos, a menos de que se trate de material científico, cuyo costo no podrá ser mayor a 40 salarios mínimos.

El presidente de la Canifarma asegura que de las 49 quejas, 47 han sido resueltas a través de amonestaciones y sanciones económicas (cuyo monto dice ignorar). Todas las compañías involucradas han aceptado las resoluciones, sólo en tres casos han expresado desacuerdo, pero al final todas han acatado plenamente lo que ha resuelto el Consejo.

Por ética, el dirigente se negó a proporcionar los nombres de las empresas farmacéuticas sancionadas.

Antes era más fácil influir

Dice que hace tiempo comenzó a cambiar la relación de la industria con médicos. ¿Cómo era?

Hace 10 años hubo denuncias porque había prácticas en las que, por ejemplo, los laboratorios hacían invitaciones no sólo a congresos, sino a viajes de lujo, a cruceros, para convencer a los médicos de que sus productos eran los mejores. Daban obsequios a los médicos no sólo privados, sino a los de instituciones (públicas), porque ellos son, al final, los que van a definir cuál será el consumo de determinados productos que tendrán instituciones como el Seguro Social, el ISSSTE, Pemex... Desde 2005 comenzó un cambio de la industria.

¿Las consecuencias de estas prácticas para el sistema nacional de salud, los pacientes y la industria?

Afectan a los tres sectores. Antes había prácticas que inducían, incluso, a funcionarios públicos y a médicos que trabajan en instituciones públicas, a ingresar en los cuadros básicos medicamentos de patente que son caros, lo cual no se justificaba plenamente porque había otros con la misma función, más económicos.

¿Esto sigue haciéndose?

Ahora, el Consejo de Salubridad General es muy cuidadoso cuando se incluye un nuevo producto en cuadros básicos... Cuando no existían estos códigos (de ética y buenas prácticas) era más fácil influir y había menos trabas para ingresar un medicamento en los cuadros básicos y beneficiar a una empresa... Antes de 2005 se daban esas prácticas no éticas... desde hace tiempo se están cuidando estas cosas.

¿Las consecuencias para pacientes?

Con los pacientes el problema es que muchas veces una publicidad engañosa puede inducir a la auto-receta, con lo cual mucha gente no va a tener el beneficio esperado.

¿Y para la industria?

Antes, con las malas prácticas, las compañías hacían congresos o viajes de placer con los médicos, para hacerles sentir que su producto era mejor que el de la competencia, por ejemplo de una industria nacional. Buscaban quitar competencia... incluso perseguían (convertirse en) monopolios para tener mejores precios y mayor utilidad.

¿Financian a organizaciones de médicos o pacientes?

Antes era una práctica común; ahora, en el código está prohibido. Antes para que pudieran entrar los representantes médicos de los laboratorios tenían que pagar una cuota a hospitales o clínicas.

Médicos entrevistados aseguran que esta práctica continúa sobre todo en hospitales privados.

Está prohibido. Incluso de 2005 a la fecha el Consejo de Ética y Transparencia de la Industria Farmacéutica ha presentado 14 quejas contra sociedades médicas, hospitales públicos y privados del Distrito Federal y distintos estados, por prácticas contrarias al compromiso con la transparencia (que suscribió la industria con la Secretaría de Salud)

¿Por qué se han presentado las quejas?

Porque cobran por dejar pasar a los visitantes médicos. En el caso de las asociaciones médicas, porque han incurrido en una falta de ética... Ciertas asociaciones médicas estaban acostumbradas a recibir dinero y lo utilizaban para financiar investigaciones. (No recibir) mucho de esos presupuestos que recibían de la industria farmacéutica les ha afectado. Lo que se busca es que haya la mayor transparencia.

¿Cuántos representantes médicos tiene registrados la Cámara?

No tiene registrados los representantes médicos... casi todas las empresas grandes tienen más de mil representantes en toda la República.

Para una relación realmente transparente entre industria y gremio médico, ¿no debería cancelarse la entrega de obsequios a los profesionales de salud?

Creo que sí. Es algo que está en continua revisión.

**References:**

Interview with Miguel Angel Pando, Executive Director, Consejo Coordinador Empresarial (CCE).

**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.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

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

**Comments:**

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

The following is a media report on this issue:

<http://www.contralinea.info/archivo-revista/index.php/2009/08/02/denuncian-corrupcion-en-bahia-de-banderas/>

Supuestas irregularidades de la Semarnat y la Profepa, así como del gobernador Ney González Sánchez afectan a residentes de Bahía de Banderas, Nayarit. En la localidad Cruz de Huanacaxtle se erige el complejo inmobiliario Aura Arena Blanca, cuya construcción ha violentado la normatividad ecológica y urbanística de la zona, denuncia el abogado Coufal Díaz.

El complejo inmobiliario Aura Arena Blanca, en Bahía de Banderas, Nayarit, provoca daños a la ecología y viola las normas ambientales, de uso del suelo y urbanísticas, denuncia Eric Coufal Díaz, abogado defensor de los residentes afectados. Señala que el gobernador del estado, Ney González Sánchez, ordenó romper en forma ilegal los sellos de clausura de las obras que colocó la Procuraduría de Justicia de la entidad.

El complejo inmobiliario afecta el patrimonio de particulares que fincaron ahí sus residencias, por el impacto que representa la construcción de torres y edificios que amenazan la seguridad de sus inmuebles. Uno de los afectados es Jon Shirley, exvicepresidente de Microsoft, quien advierte que acudirá a instancias internacionales para exponer su caso.

En las denuncias ante autoridades judiciales, Eric Coufal entregó evidencias de las omisiones del gobierno mexicano, que en el caso del desarrollo Aura Arena Blanca constituyen hechos violatorios a las leyes y normas ambientales establecidas en el marco del Acuerdo de Cooperación Ambiental de América del Norte.

Ante estos hechos la Secretaría de Medio Ambiente y Recursos Naturales (Semarnat) y la Procuraduría Federal de Protección al Ambiente (Profepa) emitieron el pasado 15 de julio un comunicado en el cual rechazaron que se haya cometido ecocidio con estas obras.

Las autorizaciones se refieren exclusivamente a los aspectos ambientales del proyecto y su expedición no exime a los promoventes de obtener los permisos o licencias requeridas por otras dependencias del Ejecutivo federal, o bien por autoridades de otros órdenes de gobierno, conforme a la legislación local que resulte aplicable al tipo de proyecto que se pretende desarrollar, señalaron.

Cualquier afectación de índole estructural, arquitectónica o urbanística no es responsabilidad de la autoridad ambiental federal, sino de quienes ejecuten las obras de ingeniería que, a juicio de los afectados, constituyen un riesgo para sus intereses y lo que, en su caso, puede ser reclamado en las vías judiciales previstas en la legislación civil, dice el comunicado de ambas dependencias.

En entrevista vía telefónica, el abogado Coufal Díaz señala que la actitud de estas instancias federales resulta por demás sospechosa, ya que en lugar de asumir su responsabilidad para vigilar la correcta aplicación de la legislación ambiental, protegen los intereses de desarrollistas ecocidas.

Dice que la autoridad federal otorgó indebidamente los permisos cuando ya se habían consumado los actos de delincuencia ambiental, como fue la excavación de más de 25 mil metros cúbicos de tierra. Además, cuestionó el que ambas dependencias no hayan dado respuesta a los recursos de revisión interpuestos desde el 11 de febrero pasado con motivo de dichas autorizaciones y tampoco a la denuncia popular promovida el 18 de ese mismo mes.

Al respecto, la dependencia admite que, en efecto, actualmente se encuentra en trámite ante la Semarnat un recurso de revisión interpuesto contra las autorizaciones otorgadas para el mencionado proyecto, por lo que la delegación en Nayarit realizó una visita de inspección y reportó que no había irregularidades.

Precisa que el 14 de julio personal de la Dirección General de Inspección de Impacto Ambiental y Zona Federal Marítimo Terrestre constató preliminarmente que no existen daños al medio ambiente ni al ecosistema, ya que el desarrollo inmobiliario no se ubica dentro de un Área Natural Protegida ni en zona de manglares. Tampoco se ha detectado flora y fauna silvestres que hayan sido afectadas o que pudieran serlo.

Sin embargo, el personal encontró algunas irregularidades no significativas que ya fueron notificadas al desarrollador, quien informó a la autoridad haber iniciado su regularización ante la Semarnat.

Fue a finales de 2007 cuando ese grupo inmobiliario, representado por los empresarios Alberto Djaddah Jamous, Ricardo Sarraf Assad, Jacobo Levy Tawil, Rafael Sevilla Arias, Juan Carlos Rodero Godínez, Carlos Pacheco Arredondo, Joseph Liberman Sourasky y Roberto Madrid Jácome, inició el desarrollo Aura Arena Blanca.

Entonces, lanzaron una agresiva campaña de publicidad con montajes ilusionistas donde se contemplaba el proyecto original de este complejo inmobiliario, que según los folletos y carteles disponibles representaba un proyecto condominal de baja densidad, aledaño al coto turístico residencial conocido como Real del Mar.

Sin embargo, el proyecto original nunca fue respetado por los empresarios, ya que solicitaron al ayuntamiento de Bahía de Banderas una ampliación a la licencia de construcción, y donde, pese a que se violaba el Plan Municipal de Desarrollo vigente y otras reglas aplicables, les otorgaron un nuevo permiso. Técnicamente el proyecto Aura Arena Blanca se encontraba fuera de la ley.

De esta manera, el grupo Anima o Torres Aura comenzó la construcción de un edificio de condominios que estaba proyectado para cuatro niveles y que continuó a ocho y terminó en 10 pisos, con todo y la agresión al entorno natural y a las residencias vecinas, seriamente afectadas en su privacidad e incluso estructuralmente.

También se edificaron dos torres de siete pisos en contravención a lo autorizado; se ejecutaron obras de despalme y excavación sin permiso o licencia por parte de la autoridad municipal y se obstruyeron e invadieron vialidades municipales, entre otros problemas.

La delegación de Semarnat en Nayarit concedió desde abril de 2008 la autorización para el proyecto inmobiliario, el cual fue avalado por el ayuntamiento presidido por el priista Héctor Paniagua Salazar, y que involucra directamente al exalcalde Jaime Cuevas Tello, también del Partido Revolucionario Institucional.

La parte afectada presentó denuncias ante la Procuraduría General de Justicia del estado de Nayarit, instancia que el pasado 7 de julio llevó a cabo la clausura y aseguramiento total de las obras, servicios y actividades de construcción del desarrollo inmobiliario, entre las que figuran las Torres A y B, además de la suspensión de las licencias de construcción.

Sin embargo, y en desacato a este mandato judicial, trabajadores de la empresa constructora removieron los sellos de clausura y allanaron el inmueble, hechos supuestamente ordenados por el gobernador de Nayarit, Ney González Sánchez, quien en lugar de velar por el cumplimiento del estado de derecho asume de manera personal la defensa de este grupo de desarrollistas, dice Coufal Díaz.

El gobernador Ney González Sánchez se limitó a comentar que la controversia por la empresa Aura Arena Blanca es una disputa entre particulares. Estaremos atentos y sensibles a lo que ordene la autoridad en la materia y a lo que resuelva la vía judicial. Hemos ofrecido mesas de trabajo que no han sido del interés de las partes, adujo.

Puede que tengan razón en no aceptar, ya que el gobierno de Nayarit no tiene intervención directa en el tema, excepto en las menciones que en medios se hace de la institución a mi cargo. Es un tema en el que tengo una opinión personal. En este caso concreto lo que menos importa es mi opinión personal. Se necesita la opinión de un juez, enfatizó el mandatario.

La clausura fue un montaje escénico a cargo de la procuraduría nayarita, ya que la agente del Ministerio Público, Elvia Ludmila Heredia Verdugo quien horas antes había ejecutado el mandato judicial y se encontraba a unos metros del lugar cuando se violaron los sellos, no impidió el allanamiento, por el contrario, ordenó el retiro de los 20 agentes judiciales para permitir el reinicio de los trabajos de construcción.

Entre los supuestos actos de ilegalidad relacionados con el desarrollo Aura Arena Blanca están las autorizaciones del cambio de uso del suelo y de impacto ambiental por parte de la delegación de la Semarnat, dependencia que fijó a los afectados una fianza de 20.5 millones de pesos para la suspensión de los trabajos.

Para que se haga justicia y se castigue los atropellos cometidos por el Grupo de Desarrollo Ánima en la Cruz de Huanacaxtle, se presentaron denuncias y recursos jurídicos federales: el recurso de revisión, interpuesto el 11 de febrero de 2009 ante la delegación de la Semarnat en Tepic, Nayarit; una denuncia popular, el 18 de febrero de 2009, así como el recurso de revisión, interpuesto el 20 de Marzo de 2009 ante la delegación de la Profepa.

#### Violación al MIA

Contrario a su función de ejecutar la política del Estado de protección ambiental, preservar los recursos naturales, e incidir en las causas que originan la contaminación, la pérdida de ecosistemas y de la biodiversidad, el delegado de Semarnat en Nayarit, Armando Zepeda Carrillo, asume una actitud de protección de los desarrolladores, señala el abogado.

Lo más grave, añade, es que de acuerdo con el oficio 138.01.00.01/1414/08, emitido por la Secretaría del Medio Ambiente y Recursos Naturales, el 24 de julio del 2007 les fue negado el dictamen de impacto ambiental presentado a esa dependencia.

Zepeda Carrillo no sancionó a los responsables del desarrollo Aura Arena Blanca, que violaron la Manifestación de Impacto Ambiental (MIA) y que causaron cuantiosos daños a una residencia ubicada en Real del Mar cuyo valor es de 10 millones de dólares. Fijó una desproporcionada fianza que asciende a más de 20 millones de pesos como condicionante para suspender las obras que el Grupo Aura construye en esa área.

La ley establece en su artículo 87 fracción IV que cuando se solicita la suspensión se debe de decretar una garantía de daños y perjuicios que se pudieran ocasionar al suspenso, en este caso a los desarrolladores, pero aquí es precisamente una fijación excesiva, onerosa y en contra del particular afectado que es la víctima de los desarrolladores y la autoridad.

El Órgano de Fiscalización Superior de Nayarit emitió una recomendación para que se inicien acciones contra la extesorera municipal de Bahía de Banderas, María del Carmen Wong, por haber omitido en el envío de la cuenta pública 2007 los comprobantes relacionados con las cuentas del proyecto Aura Arena Blanca, derivado de los permisos, licencias y autorizaciones que les concedieron a los desarrolladores del grupo.

Existen antecedentes en Quintana Roo donde la Profepa ha ordenado demoliciones de construcciones que han incurrido en violaciones graves a las leyes de orden ambiental y urbano o que han invadido zonas de playa o predios de particulares. En Nayarit, los quejosos exigen que se cumpla el estado de derecho, pisoteado por el ayuntamiento de Bahía de Banderas y la delegación de la Semarnat, principalmente.

#### References:

Interview with Miguel Angel Pando, Executive Director, Consejer Coordinador Empresarial (CCE).

**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.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

**Comments:**

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

The following is a media report on this issue:

[http://www.noticaribe.com.mx/rivieramaya/2008/09/se\\_amparan\\_comerciantes\\_contra\\_revisiones\\_de\\_proteccion\\_civil.html](http://www.noticaribe.com.mx/rivieramaya/2008/09/se_amparan_comerciantes_contra_revisiones_de_proteccion_civil.html)

Un grupo de 60 comerciantes que laboran en la Quinta Avenida se ampararon en contra del ayuntamiento, debido a que no cumplen con las revisiones de protección civil en cuestiones de medidas de seguridad, más sin en cambio, quieren aplicarles multas, aseguró Ignacio Couch Chim, miembro del Servicio Especializado de Artesanías.

La multa por no tener los trámites en orden es de hasta 12 mil pesos o hasta suspensión y clausura y el problema no era una cuestión de no colaborar con el gobierno municipal, sino todo lo contrario.

Explicó que dentro de los tantos requisitos que se les pide que cumplan en los negocios, hay un apartado de protección civil, en donde se indican que se tiene que tener una ruta de evacuación, salida de emergencia, anuncios que indiquen el camino, la existencia y ruta a sanitario y otros tantos trámites que se deben cumplir de acuerdo al giro comercial.

Ahora y después de varios meses, en donde de manera unilateral actuaron los comerciantes artesanales, ha estado acudiendo el personal de protección civil

**References:**

Interview with Miguel Angel Pando, Executive Director, Consejor Coordinador Empresarial (CCE).

**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.

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Category VI. Anti-Corruption and Rule of Law

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## VI-1. <sup>70</sup>Anti-Corruption Law

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73. Is there legislation criminalizing corruption?

73a. In law, attempted corruption is illegal.

**YES** | NO

**References:**

Código Penal Federal, Título X, Articles 214-224.

**YES:** A YES score is earned if corruption laws include attempted acts.

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

73b. 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.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

**YES** | NO

**References:**

Código Penal Federal, Article 222.

**YES:** A YES score is earned if offering a bribe is illegal.

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

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

**YES** | NO

**References:**

Código Penal Federal, Article. 222.

**YES:** A YES score is earned if receiving a bribe is illegal.

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

73e. In law, bribing a foreign official is illegal.

**YES** | NO

**References:**

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.

73f. In law, using public resources for private gain is illegal.

**YES** | NO

**References:**

Código Penal Federal, Article 217.

**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.

73g. In law, using confidential state information for private gain is illegal.

**YES** | NO

**References:**

Código Penal Federal, Article 214.

**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.

73h. In law, money laundering is illegal.

**YES** | NO

**References:**

Código Penal Federal, Article 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.

73i. 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.

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## VI-2. Anti-Corruption Agency

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75. Is the anti-corruption agency effective?

39

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | **NO**

**References:**

Ley Organica de la Administración Pública Federal. This is a Cabinet official appointed by the President.

**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.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

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

**Comments:**

The anti-corruption agency, the Ministry of Public Service (Secretaria de la Función Publica), is directly subordinated to the President. According to the Constitution, Article 89, the President is free to appoint the members of his cabinet, which includes the anti-corruption agency. Therefore, political biases are expected.

**References:**

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

Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

**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.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

The anti-corruption agency, the Ministry of Public Service (Secretaria de la Función Pública), is directly subordinated to the President. According to the Constitution, Article 89, the President is free to appoint the members of his cabinet, which includes the anti-corruption agency. Therefore, political biases are expected.

**References:**

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

Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

**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.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

**References:**

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

Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

**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.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

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

**References:**

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

Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

**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.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

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

**References:**

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

Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

**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.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

**References:**

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

Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

**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.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

**Comments:**

Even though in practice, the anti-corruption agency has sufficient power to carry out its mandate, the performance of this agency has been very questionable in recent years.

The following is a media report on this issue: <http://www.voltairenet.org/article162335.html>

## Fracasa SFP en combatir corrupción gubernamental

Desde 2007 la Auditoría Superior de la Federación reprobó el desempeño de la Secretaría de la Función Pública. Sentenciada a desaparecer junto con otras dos secretarías de Estado para ahorrar en el gasto público, la propia SFP adolecía, desde hace años, de negligencia, ineficacia y opacidad, males que por mandato legal debía combatir en toda la administración pública

La Secretaría de la Función Pública (SFP) recibió una opinión negativa de la Auditoría Superior de la Federación (ASF) en el Informe del resultado de la revisión y fiscalización superior de la Cuenta Pública 2007.

Sujeta a tres evaluaciones de desempeño como vigilante de la actuación de los centros públicos de investigación, de la eficacia de programas gubernamentales y de la administración del patrimonio inmobiliario federal, la SFP incumplió en su misión de consolidar un gobierno honesto, eficiente y transparente.

La llamada secretaría anticorrupción, próxima a desaparecer, no realizó acciones que garantizaran la vigilancia, la transparencia, el control y seguimiento en la administración pública federal. El máximo órgano de fiscalización determinó que la SFP no realizó revisiones en 11 centros públicos de investigación; sólo incorporó 45 padrones de programas gubernamentales (38.5 por ciento del universo de atención), y presentó deficiencias en el aseguramiento, enajenación y venta de inmuebles. La ASF advierte que la falta de actuación de la Función Pública ocasiona que los centros de investigación pública no alcancen sus resultados, que no sea posible hacer más eficientes los programas gubernamentales en su operación y administración; que se garantice el buen aprovechamiento de la propiedad federal, y que se eviten desvíos, omisiones y otras irregularidades.

## Opinión negativa de ASF

El ejercicio de la Secretaría de la Función Pública en el cumplimiento de los convenios de desempeño con los centros públicos de investigación fue calificado con una opinión negativa de la ASF. En la revisión y fiscalización superior de la Cuenta Pública 2007 la ASF determinó que el Consejo Nacional de Ciencia y Tecnología (Conacyt), la Secretaría de Hacienda y Crédito Público (SHCP) y la Secretaría de la Función Pública no cumplieron con las disposiciones normativas de los convenios de desempeño de los centros públicos de investigación.

Según la Auditoría de desempeño sobre el cumplimiento de los convenios de desempeño de los centros públicos de investigación, durante 2007 se ejercieron 4 mil 456 millones 118 mil 100 pesos por los 24 centros públicos de investigación, coordinados por el Conacyt. La Ley de Ciencia y Tecnología los define como entidades paraestatales, cuyo objetivo es realizar actividades de investigación científica y tecnológica.

En su artículo 59 señala que se regirán mediante convenios donde se establezcan las bases de desempeño. De este modo la Secretaría de la Función Pública y la SHCP son responsables de evaluar trimestral y anualmente el cumplimiento de los compromisos asumidos por los centros en dichos acuerdos.

Ello con el propósito de mejorar las actividades en cada centro, alcanzar las metas y lograr los resultados programados, tener un ejercicio de gasto y rendición de cuentas más eficiente y transparente, y vincular los impactos con el monto del presupuesto que se le asigne.

El informe señala que en 2007 las evaluaciones realizadas por la SFP no incluyeron el compromiso de difundir resultados, y no correspondieron con la periodicidad anual. La SFP informó a la Auditoría Superior de la Federación que para que se celebren los convenios se hacía necesaria la publicación del Programa Especial de Ciencia, Tecnología e Innovación y el Programa de Mejoramiento de la Gestión. Sin embargo, no sucedió.

El reporte advierte en la Ley de Ciencia y Tecnología no se establece condición alguna para la suscripción de los acuerdos: El hecho de que los centros públicos de investigación no suscribieran los convenios de administración por resultados provocó que no estuvieran en posibilidades de adoptar un sistema de presupuesto basado en resultados que motivara a dichos centros a alcanzar los resultados.

En su lugar el Conacyt, la SFP y Hacienda autorizaron la aprobación de un Modelo de Convenio de Administración por Resultados; sin embargo, lo hicieron en fecha posterior a la establecida, el 22 de agosto de 2007. Como resultado, la ASF emitió 25 promociones de responsabilidad administrativa sancionatoria para los servidores públicos que por acto u omisión no suscribieron los acuerdos en los centros de investigación. Durante 2007 los órganos internos de control (OIC) y la Unidad de Auditoría Gubernamental (UAG), dependientes de la SFP, practicaron 232 auditorías en 20 de los 24 centros públicos de investigación. Sólo 20 correspondieron a auditorías de desempeño en 18 centros y generaron 13 observaciones.

No se practicaron auditorías al cumplimiento de convenios de desempeño en 11 centros públicos de investigación con OIC. Función Pública no explicó ante la Auditoría Superior de la Federación las causas de la irregularidad, pero sí dijo que todos los actos de fiscalización de los OIC y la UAG se orientaron a verificar el cumplimiento de las metas y objetivos de las instituciones: Es importante resaltar que, si bien no se llevaron a cabo las auditorías, sí existe un análisis de toda la información programática a efecto de validarla. Sobre las revisiones de control sólo se realizaron en tres de los 19 centros públicos de investigación que suscribieron convenios

de desempeño: dos en evaluación de indicadores de desempeño y una en monitoreo de operaciones. Por lo que no se verificó el cumplimiento de las metas reportadas por dichos centros, indica la ASF.

El máximo órgano de fiscalización recomendó que la SFP analice la factibilidad de realizar acciones de inspección y vigilancia establecidas en los convenios de desempeño suscritos por los 24 centros públicos de investigación.

#### Ineficiencia en control de programas gubernamentales

La Auditoría de desempeño del sistema integral de información de padrones de programas gubernamentales concluyó que la SFP no cumplió con el objetivo de integrar de forma estructurada y sistematizada la información de los programas a cargo de la administración pública federal.

El Sistema Integral de Información de Padrones de Programas Gubernamentales (SIIPPG) es una herramienta de cobertura nacional que integrará de forma estructurada y sistematizada la información objetiva y fehaciente de los proyectos de la administración pública federal. Su objetivo es promover la equidad y la igualdad de oportunidades otorgando bienes sociales y satisfactorios básicos, evitando duplicidades de atención.

La fiscalización señala que durante 2007 la Dirección General de Simplificación Regulatoria de la SFP erogó 15 millones 851 mil pesos para ese fin. Es decir, el 61 por ciento del presupuesto aprobado debido a que se mantuvieron vacantes nueve de las 25 plazas de su estructura orgánica. Las actividades del SIIPPG fueron realizadas por dos mandos superiores y un mando medio.

La Secretaría de Función Pública, observa el órgano de fiscalización, no incluyó metas e indicadores vinculados con el SIIPPG ni respecto a los objetivos de los programas gubernamentales.

Con la revisión de las bases de datos del Presupuesto de Egresos de la Federación para el Ejercicio Fiscal 2007, la ASF identificó 117 programas presupuestarios que recibieron subsidios y operaron con padrón de beneficiarios.

No obstante, Función Pública sólo incorporó 45 padrones al SIIPPG, lo que significó una cobertura de apenas el 38.5 por ciento respecto del universo de atención. Por ello, la ASF determinó que no hubo cobertura nacional.

Al comparar los 114 programas registrados por Función Pública con los 117 identificados por el órgano de fiscalización, se encontró que la entidad no consideró ocho programas. En su lugar, incorporó dos que no recibieron recursos ese año y tres de instituciones de seguridad social.

El informe de auditoría constató que la dependencia, en su carácter de responsable de la operación del SIIPPG, no contó con una plataforma informática que le permitiera explotar la base de datos de manera estructurada y sistemática: La ausencia de información sistematizada y estructurada advierte el reporte en el sistema de los 117 programas imposibilitaron la eficiencia y efectividad en su operación y administración, así como la atención y corrección de errores, desvíos, omisiones y cualquier otra irregularidad.

Expone que el SIIPPG no dispone de sistemas o tableros de control y no existen sistemas de información respecto a las características geográficas, estadísticas y socioeconómicas de los beneficiarios: No integró una base de datos común que fuera útil para el diseño, desarrollo, evaluación y monitoreo de las políticas públicas. Permitió la inclusión de datos nulos, incompletos e inconsistencias.

De esta manera, al evaluar el padrón del Seguro Popular en 2007 la ASF identificó posibles duplicidades de beneficiarios: Por sí sola no garantiza que correspondan a la población objetivo determinada en las disposiciones legales que norman la operación de los servicios médicos de cada institución. La entidad no evidenció intercambio de información o la interconexión con la Secretaría de Desarrollo Social y la Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación.

Resultado de un cuestionario elaborado por la SFP a 23 operadores de programas en las dependencias, el 95.7 por ciento dijo que el SIIPPG no es utilizado para identificar, analizar y monitorear la concurrencia de recursos destinados para la operación de los programas. El mismo porcentaje respondió que no le permitió verificar si los beneficiarios correspondieron con la población objetivo y tampoco mejorar la eficacia en el proceso de incorporación de beneficiarios.

El 91.3 por ciento de los entrevistados señaló que las dependencias no tienen acceso al SIIPPG desde su plataforma informática, y el 74 por ciento aseguró que el sistema no simplificó los procesos de intercambio de la información de los padrones entre dependencias y entidades.

Al respecto, expone el informe de fiscalización, los grupos de trabajo convocados por Función Pública no tuvieron como fin analizar y consensuar las acciones y medidas orientadas a mejorar la eficiencia en la operación de los programas. Tampoco el de promover la estandarización de los formatos de captura de los beneficiarios.

La ASF verificó que la SFP no constató que haya realizado evaluaciones y análisis comparativos. La entidad informó a la SFP que hasta el 15 de julio de 2008 no había celebrado convenios de coordinación con las entidades federativas y municipios, ni con organismos autónomos e instituciones públicas y privadas, como lo confiere el decreto por el que se creó el SIIPPG. Indaabin incumple en protección de patrimonio federal

La Auditoría de desempeño al sistema de administración inmobiliario federal en la administración pública federal centralizada consideró que las secretarías de la Función Pública, de Hacienda y el Instituto de Administración y Avalúos de Bienes Nacionales (Indaabin) no cumplieron con disposiciones normativas en materia de administración, registro y protección del

patrimonio inmobiliario federal. El Indaabin persistió en el incumplimiento observado por la ASF en la revisión de la Cuenta Pública de 2006.

El valor de los bienes inmuebles de la administración pública federal sumó 10 mil 889 millones 155 mil pesos en 2007. De ese total, el órgano de fiscalización auditó 1 mil 418 millones 78 mil pesos. La auditoría revisó la eficacia del Indaabin, órgano desconcentrado de la Secretaría de la Función Pública, para vigilar y regular su adquisición, arrendamiento, enajenación, destino o afectación.

En su revisión y fiscalización de la Cuenta Pública 2007, la ASF no pudo evaluar la economía con que el Indaabin aplicó los recursos. Durante ese año el órgano descentralizado de Función Pública ejerció un monto de 202 millones 446 mil 600 pesos, superior en 99.3 por ciento a los 101 millones 573 mil pesos presupuestados para cubrir las erogaciones por servicios personales. Además no contó con gasto autorizado para cumplir objetivos presupuestarios, ni de información para determinar el costo de sus metas.

Entre 2001 y 2007 el número de inmuebles federales en uso de las dependencias disminuyó 11.1 por ciento, al pasar de 12 mil 938 a 11 mil 507. Del total, el 69.7 por ciento (8 mil 24 inmuebles) fueron concentrados en cuatro secretarías: Educación Pública, Medio Ambiente y Recursos Naturales, Salud y Función Pública.

Sin embargo, de 2006 a 2007 el valor de los inmuebles se incrementó casi 9 por ciento. Dicha variación no fue incluida en los expedientes de cierre de la Cuenta Pública por dependencia, lo que no facilitó la fiscalización del valor de los bienes inmuebles.

En 2007, 1 mil 356 inmuebles estuvieron bajo la administración del Indaabin: 845 sujetos a inspección o trámites inmobiliarios; 258 para comercialización; 236 fueron edificios públicos, y 17 estuvieron en uso de la SFP.

La ASF verificó que 822 inmuebles no fueron aprovechados, mientras que 7 mil no acreditaron estar inscritos al Registro Público de Propiedad Federal, 2 mil 673 no comprobaron la propiedad y dominio de la federación y para 775, se desconocía.

Constató que el Inventario del Patrimonio Inmobiliario Federal y Paraestatal no identifica el rango de aprovechamiento, la superficie total, el valor histórico y comercial, y la situación jurídica y administrativa. Tampoco el Sistema de Información Inmobiliaria Federal y Paraestatal mostró una integración sistematizada de información sobre el registro de la situación física, jurídica y administrativa del patrimonio inmobiliario de la administración pública federal.

Según lo observado por la ASF, el Indaabin no dispuso de un manual de organización actualizado para 2007. Tampoco estableció indicadores que determinaran los alcances del pago de rentas en el gasto público federal, ni para evaluar que los recursos destinados a la conservación y mantenimiento de los inmuebles se apliquen con eficiencia.

El órgano fiscalizador determinó que el monto ejercido durante 2007 en arrendamiento de inmuebles ascendió a 888 millones 790 mil 600 pesos. La Secretaría de Energía erogó recursos que significaron más de cinco veces el valor de los inmuebles a su cargo, mientras que lo ejercido por la Secretaría del Trabajo y Previsión Social fue superior tres veces más su valor. Por el contrario las secretarías de Salud y de la Reforma Agraria utilizaron casi la tercera parte del valor de sus bienes.

En cinco secretarías: Medio Ambiente y Recursos Naturales, Comunicaciones y Transportes, Seguridad Pública, Marina y de la Defensa Nacional el porcentaje fue inferior al valor total del arrendamiento en 2007. La Consejería Jurídica del Ejecutivo federal no realizó gastos por este concepto.

Respecto al mantenimiento y conservación de inmuebles, la ASF señala que el monto ascendió a 446 millones 634 mil 800 pesos. La Secretaría del Trabajo y Previsión Social erogó por este concepto dos veces el valor de los inmuebles, y la Secretaría de Energía ejerció 40.4 por ciento del valor de sus bienes.

Por cada inmueble la administración pública federal erogó en mantenimiento y conservación 38 mil 800 pesos. Las tres dependencias que ejercieron un mayor presupuesto por bien fueron la Secretaría de Energía con 1 millón 315 mil pesos; la Secretaría de Economía con 948 mil 600 pesos, y la Secretaría del Tr

#### References:

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

Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

**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.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

**Comments:**

The anti-corruption agency initiates investigations, but it is limited in its effectiveness due to political considerations. The internal control units of the federal public administration also face some technical and human resource limitations. In consequence, anti-corruption control is, to a large extent, limited.

**References:**

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

Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

**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.

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## 76. Can citizens access the anti-corruption agency?

63

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

**References:**

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

Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

**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.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

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

**References:**

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

Interview with Benjamín Hill, Executive Director, Comisión Intersecretarial de Transparencia y Combate a la Corrupción.

**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.

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

100

74. 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.

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67  
VI-3. Rule of Law

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

50

77a. In law, there is a general right of appeal.

YES | NO

**References:**

Constitution, 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.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Most appeals are not resolved in a timely fashion.

**References:**

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

Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

**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.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

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

**References:**

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

Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

**100:** In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

**75:**

**50:** In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

**25:**

**0:** The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

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

25

78. 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.

Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

**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.

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

25

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

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

**References:**

Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

Interview with Leonardo Curzio, Political Analyst and Professor, Universidad Nacional Autónoma de México (UNAM).

**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.

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## 80. Is the judiciary able to act independently?

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

**References:**

Constitution, 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 includes 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.

80b. 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.

Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

**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.

80c. 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, Article 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.

80d. 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.

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## 81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor, Universidad Nacional Autónoma de México (UNAM).

**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.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

**References:**

Interview with Leonardo Curzio, Political Analyst and Professor, Universidad Nacional Autónoma de México (UNAM).

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

**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.

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## 82. Do citizens have equal access to the justice system?

54

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

**Comments:**

There are serious problems in relation to indigenous people. A recent debate and resolution of the Supreme Court, presented evidence of the problems that the indigenous face in Mexico in order to get a fair trial and judgment.

The following is a media report on this issue:  
<http://www.eluniversal.com.mx/primer/33453.html>

La Suprema Corte de Justicia ordenó la liberación de 20 de los indígenas presos por la matanza de Acteal, ya que sus sentencias se basaron en pruebas y testigos fabricados por la PGR

Por cuatro votos a uno los ministros de la Primera Sala del máximo tribunal ampararon a los acusados, que llevan más de 11 años en la cárcel. Un segundo grupo de 28 presos, quienes purgan condena por la misma masacre, perpetrada el 22 de diciembre de 1997 en la comunidad chiapaneca, también será amparado; sin embargo, debido a que su caso estaba a cargo del

ministro Sergio Valls, quien pidió no protegerlos, sus expedientes se le turnaron a otro de sus compañeros de mayoría para que redacte los nuevos proyectos de sentencia.

La Corte votará esos juicios pendientes con base en los lineamientos que determinó ayer en el tema. En su intervención, la ministra Olga Sánchez Cordero dijo que amparó a los acusados porque se detectó que en algunos casos un juez agregó, de manera irregular, delitos que ni siquiera había consignado el Ministerio Público.

Para el ministro Juan Silva, se envía un claro mensaje a las autoridades encargadas de perseguir y castigar los delitos en el sentido de que deben respetar la ley y los derechos humanos.

EL UNIVERSAL publicó el jueves pasado las conclusiones que había alcanzado la Corte sobre el asunto.

**References:**

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

Interview with Leonardo Curzio, Political Analyst and Professor, Universidad Nacional Autónoma de México (UNAM).

**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.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Leonardo Curzio, Political Annalists and Professor, Universidad Nacional Autónoma de México (UNAM).

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

**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.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

**YES** | NO

**References:**

Constitution, Article 20, fracción IX.

**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.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

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

**References:**

Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

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

**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.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

**Comments:**

In general, the cost of engaging the legal system prevents middle-class citizens from filing suits. Attorney and administrative fees are high enough to discourage most citizens from bringing a case.

**References:**

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

Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

**100:** In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

**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. Attorney fees are a significant consideration in whether to bring a case.

**25:**

**0:** The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

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

**100:** In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

**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. Attorney fees are a significant consideration in whether to bring a case.

**25:**

**0:** The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

**References:**

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

Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

**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.

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## VI-4. Law Enforcement

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

50

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

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

**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.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

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

**References:**

Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

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

**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.

83c. In practice, the law enforcement agency is protected from political interference.

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

**Comments:**

The law enforcement agency, the Attorney General Office (Procuraduría General de la Justicia — PGR) is directly subordinated to the President. According to the Constitution, Article 89, the President is free to appoint the members of his cabinet, which includes the PGR. Therefore, political biases are expected.

**References:**

Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

**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.

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

63

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

### References:

The federal Secretaría de la Función Pública (SFP) covers all government corruption, including police corruption. But there is no special entity for police corruption, and the SFP does not have enough muscle to actually investigate and intervene in police affairs.

**YES:** A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. 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

84b. 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. There are also systematic problems in dealing with accusations of police corruption.

**References:**

Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

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

**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.

84c. 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 Attorney General Office (Procuraduría General de la Justicia — 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.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

**Comments:**

The anti-corruption agency may start investigations but not complete them, or it may fail to detect offenders. The agency may be partisan in its application of power.

**References:**

Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

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

**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.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

**References:**

Constitution, 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.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

**Comments:**

Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.

**References:**

Interview with Alejandro Posadas, Professor and Researcher, Centro de Investigaciones y Docencia Económicas (CIDE).

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

**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.

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