

Overall Score:

**68 - Weak**

Legal Framework Score:

**83 - Strong**

Actual Implementation Score:

**52 - Very Weak**

Category 1. Non-Governmental Organizations, Public Information and Media

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### 1.1. <sup>65</sup>Anti-Corruption Non-Governmental Organizations

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

67

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes | No

**Comments:**

The Federal Constitution spells out in Title I of Chapter 1, Article 9 that the right of peaceable association cannot be hindered or prohibited.

Non-governmental organizations are regulated also in a specific law called Ley Federal de Fomento a las Actividades Realizadas por Organizaciones de la Sociedad Civil. This law has the purpose of promoting civil societies' activities and establishing general rules for their finances and setting out their rights and obligations.

The right of association, which allows citizens to form NGOs, is recognized in the supreme law of the country. The frame that circles the right is located in the rights and liberties catalog, which recently was modified to the title of "The Human Right and its Guarantees," which gives full recognition of the international framework signed by Mexico. The reform appeared in the Official Paper in June 10, 2011.

**References:**

Federal Constitution, Title I of Chapter 1, Article 9.

Federal law governing activities of civil society organizations, or Ley Federal de Fomento a las Actividades Realizadas por Organizaciones de la Sociedad Civil.

**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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

**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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

**Comments:**

The specific law, Ley Federal de Fomento a las Actividades Realizadas por Organizaciones de la Sociedad Civil, grants the right to get funding from foreign or domestic sources, subject to the applicable tax rules.

**References:**

Ley Federal de Fomento a las Actividades Realizadas por Organizaciones de la Sociedad Civil, Chapter 2, Article 6.

**Yes:** A YES score is earned if anti-corruption/good governance NGOs 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 NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

**Comments:**

Ley Federal de Fomento a las Actividades Realizadas por Organizaciones de la Sociedad Civil sets out in Chapter 2, Article 7, IV, that NGOs must provide information on national or international funding if a competent authority requests it. That means it is not a public disclosure.

**References:**

Ley Federal de Fomento a las Actividades Realizadas por Organizaciones de la Sociedad Civil, Chapter 2, Article 7.IV.

**Yes:** A YES score is earned if anti-corruption/good governance NGOs 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 anti-corruption/good governance NGOs able to operate freely?

67

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

**Comments:**

Those interviewed point out that though NGOs that promote good governance and anti-corruption exist, they face important constraints in their formation. Because good governance and anti-corruption efforts are tough issues in Mexico, most NGOs have some difficulty in finding government financial resources. Moreover, some organizations have been harassed because of the nature of their work, e.g., pointing out public corruption or the malfunctioning of public officials.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2011, in Mexico City.

Alejandro Cerezo Contreras, coordinator, Urgent Action for Human Rights Defenders (ACUDEH, for its acronym in Spanish), interviewed Sept. 9, 2011, in Mexico City.

**100:** NGOs 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:** NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

**25:**

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

**Comments:**

Gerardo Sauri Suárez notes that NGOs engaged in issues such as good governance and anti-corruption exist, but that they are scarce. Also, he mentions that organizations actively engaged in these issues are greatly associated with government or other powerful entities to which not everyone has access. Although NGOs are proximate to governmental figures or to international organizations, he says, they are not exempt from the fact that information could be denied.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2011, in Mexico City.

Estudios Fronterizos, Universidad Autónoma de Baja California, José Ascención Moreno Mena/ Rosa Amelia Arballo Meza, "Experiencias en Políticas Pública de las ONGS de Baja California," 2003, <http://redalyc.uaemex.mx/pdf/530/53040804.pdf>

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

**75:**

**50:** Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

**Comments:**

Those interviewed say NGOs face important constraints when working on corruption and governance issues. One issue is that government offices don't have specific budgets to support this kind of organization.

Also, working on these themes inevitably puts organizations in a vulnerable position. Sometimes they are discredited for the job done and are pressured by diverse entities to stop "threatening" the integrity of public officials.

Recent news may serve as an example of harassment or threats to NGOs. Members of NGOs denounced the threats of President Felipe Calderon after activists presented their case to the International Criminal Court criticizing violence against civilians in the "drug war" between the president and cartels. Although these NGOs have not been shut down, attention must be paid to the intimidation with which numerous organizations are living.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2011, in Mexico City.

Alejandro Cerezo Contreras, coordinator, Urgent Action for Human Rights Defenders (ACUDEH, for its acronym in Spanish), interviewed Sept. 9, 2011, in Mexico City.

Acusadores de Calderón denuncian amenazas, Nov. 29, 2011,

[http://www.ovaciones.com/index.php?option=com\\_content&view=article&id=3499:acusadores-de-calderon-denuncian-amenazas&catid=46:politica&Itemid=83](http://www.ovaciones.com/index.php?option=com_content&view=article&id=3499:acusadores-de-calderon-denuncian-amenazas&catid=46:politica&Itemid=83)

**Yes:** A YES score is earned if there were no NGOs 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 NGO 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 NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

### 3. Are anti-corruption/good governance NGO activists safe when working on corruption issues?

33

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

**Comments:**

Activists involved in good governance and anti-corruption issues are commonly accused of committing moral damage. Although Mexico City's Human Rights Commission has not received a case of imprisonment for moral damage, activists face constraints in doing their jobs. Although there is evidence of a constant pressure, there is no example of an activist being imprisoned for fighting corruption.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2011, in Mexico City.

**Yes:** A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

**Comments:**

Those interviewed say that although activists denounce aggression before the competent authority, there is no way to follow up on that procedure. It is recommended that organizations document incidents of attempted action against the integrity of their personnel, so they will have evidence to support cases when the intervention of international organizations is necessary.

Some reports show that activists and journalists have been harmed or even killed (See e.g., Map of Freedom in the World 2011 Edition — Mexico).

The National Human Rights Commission reported that nine journalists were killed in 2010 and four more disappeared, making Mexico one of the world's most dangerous countries for journalists.

Similarly, the United Nations documented five killings of human rights defenders in 2010. The most highly publicized was the death in Chihuahua of Marisela Escobedo, an anti-impunity activist after the murder of her daughter.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2011, in Mexico City.

Alejandro Cerezo Contreras, coordinator, Urgent Action for Human Rights Defenders (ACUDEH, for its acronym in Spanish), interviewed Sept. 9, 2011, in Mexico City.

Map of Freedom in the World 2011 Edition — Mexico, and Freedom House Mexico Country Report 2011, <http://freedomhouse.org/template.cfm?page=363&year=2011&country=8091>

**Yes:** A YES score is earned if there were no documented cases of NGO 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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

**Comments:**

The relationship between the job of an activist and the killing of an activist is not really clear. Most of the time, the homicide is related to the job the person used to have; other times, authorities may intervene to change the forensic evidence that indicated the real cause of death.

Reports show that activists and journalists have been harmed or even killed (See e.g., Map of Freedom in the World 2011 Edition — Mexico).

Also, the National Human Rights Commission reported that nine journalists were killed in 2010 and that four more disappeared, making Mexico one of the world's most dangerous countries for journalists. Similarly, the United Nations documented five killings of human rights defenders in 2010. The most highly publicized was the December death in Chihuahua of Marisela Escobedo, who had become an anti-impunity activist after the murder of her daughter.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2011, in Mexico City.

Alejandro Cerezo Contreras, coordinator, Urgent Action for Human Rights Defenders (ACUDEH, for its acronym in Spanish), interviewed Sept. 9, 2011, in Mexico City.

Map of Freedom in the World 2011 Edition — Mexico, <http://freedomhouse.org/template.cfm?page=363&year=2011&country=8091>

**Yes:** A YES score is earned if there were no documented cases of NGO 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

04a. In law, citizens have a right to organize into trade unions.

Yes | No

**Comments:**

Article 123 of the Federal Constitution's Title VI recognizes that people have the right to a dignifying job and that trade unions must be promoted within the legal limits. Section XVI says that workers and employers have the right to gather in trade unions.

The legal framework also includes a specific law, the Ley Federal del Trabajo, that regulates the organization of trade unions in Title VII, Chapter 2, Articles 356 to 359.

**References:**

Federal Constitution, Title VI, Article 123, XVI.

Ley Federal del Trabajo, Title VII, Chapter 2, Articles 356 to 359.

**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.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

**Comments:**

Charts on the Web page of Junta de Conciliación de Arbitraje de la Ciudad de México indicate that in practice citizens are free to organize into trade unions, but that does not mean that they are free from political pressures. The U.N.'s International Labor Organization shows in its "Global Report: Freedom of Association in Practice: Lessons Learned" that Mexico has a large registry of trade unions related to different themes. This does not mean they are free from outside influences or from responding to interests different from labor rights.

**References:**

Junta Local de Conciliación y Arbitraje del Distrito Federal,  
[www.juntalocal.df.gob.mx/sindicat/consulta\\_registro\\_gnrl.html?orden=1](http://www.juntalocal.df.gob.mx/sindicat/consulta_registro_gnrl.html?orden=1)

Report of director-general, United Nations' International Labor Organization, Geneva, 2008, "Freedom of Association in Practice: Lessons Learned. Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work," [www.ilo.org/wcmsp5/groups/public/-/dgreports/-/dcomm/documents/publication/wcms\\_096122.pdf](http://www.ilo.org/wcmsp5/groups/public/-/dgreports/-/dcomm/documents/publication/wcms_096122.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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## 1.2. Media's Ability to Report on Corruption

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

05a. In law, freedom of the media is guaranteed.

Yes | No

**Comments:**

The Federal Constitution, in Title I, Chapter 1, Article 7, establishes that media liberty cannot be prohibited or hindered. This right includes writing and publishing liberties on any subject. Prior censorship is prohibited. No authority or law can limit the freedom of the media. Exceptions are made for private life, morality and the public peace.

The right for media liberty is included in the human rights catalog, which places on an important hierarchy in the legal frame.

**References:**

Federal Constitution, Title I, Chapter 1, 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.

05b. In law, freedom of speech is guaranteed.

Yes | No

**Comments:**

The Federal Constitution, in Title I, Chapter 1, Article 6, establishes that freedom of speech cannot be subjected to any judicial or administrative inquisition. The only limits are if it violates individual rights, the public order or public morality, or if it causes a crime. It also includes the right to reply.

**References:**

Federal Constitution, Title I, Chapter 1, 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?

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

**Comments:**

Mexico declined from “partly free” to “not free” in the ranking by Freedom House because of the escalating drug wars, which have taken a heavy toll on journalists. Violence and intimidation by cartels have steadily increased in a climate of impunity, leading to heightened self-censorship by journalists as a whole. More than 60 journalists have been murdered the past 10 years. In general,

it can be argued that Mexico allows freedom of the media, although there are limitations that prevent real competition. Some paperwork and finances are required, but this is a practical matter, not a government barrier.

**References:**

Freedom House, "Map of Press Freedom," [www.freedomhouse.org/template.cfm?page=251&year=2011](http://www.freedomhouse.org/template.cfm?page=251&year=2011)  
[www.freedomhouse.org/report-types/freedom-press](http://www.freedomhouse.org/report-types/freedom-press)

Sala de Prensa, November 2008, "La Libertad de Prensa en México. La Sombra de la Impunidad y la Violencia," [www.saladeprensa.org/art783.htm](http://www.saladeprensa.org/art783.htm)

**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.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

**Comments:**

There is no need for a special license. No specific written criteria suggest that a press media license is necessary. Liberty of the press is outlined in the Federal Constitution (Article 7), specifying there can be no previous censorship.

The first chamber (primera sala) of the Supreme Court of Justice issued a standard that the prohibition of censorship implies that the expression or communicative activities of particulars cannot be submitted to the requirement of asking previous permission from an authority.

The specific regulations related to special merchant activities or economic activities are regulated by civil law, but the general framework is that there does not exist a limitation to print freedom.

**References:**

Federal Constitution, Article 7.

The first chamber (primera sala) of the Supreme Court of Justice.

**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.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

There is no need for a special license. In Mexico, newspapers are guaranteed the absence of government regulation by Articles 6 and 7 of the country's Constitution, which guarantee freedom of the press and expression.

**References:**

McKenzie, Robert, "Estudio Comparativo de la Regulación de los Medios de Comunicación en Francia, Estados Unidos, México

**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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

In order to begin publication, print media entities have to be legally constituted. To do this, those wishing to publish have to meet some requirements and have resources to pay for documentation. The costs depend on the local fees.

**References:**

"Marco Legal — Licencias y Permisos para Iniciar Operaciones," [www.contactopyme.gob.mx/guiasempresariales/guias.asp?s=10&g=4&sg=28](http://www.contactopyme.gob.mx/guiasempresariales/guias.asp?s=10&g=4&sg=28) (fecha de consulta: 17 de octubre de 2011).

**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?

6

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

**Comments:**

The barriers to form a broadcast media entity are high. Communities can apply for radio broadcasting licenses, though political disputes often disrupt this process.

Community radio stations are highly vulnerable because no regulatory framework recognizes them. This leaves them at the mercy of officials and authorities, both state and federal. The limited legal framework is a specific barrier.

Broadcast mass media (particularly TV) are heavily regulated. Even if all requirements are met, recent decisions by relevant regulatory agencies make it almost impossible to have a concession by the Mexican government in order to form a media entity.

**References:**

María Cristina Capelo, researcher for Centro de Investigación para el Desarrollo, or CIDAC, and coordinadora de la Red Mexicana de Competencia y Regulación, interviewed August 2011 in Mexico City.

Media notes related to the work of Asociación Mundial de Radios Comunitarias, or AMARC.

Juan Carlos Burgos, consultant, interviewed January 2012 in Mexico City.

**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.

07b. 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:**

The Federal Law of Radio and Television does not refer to a specific appeal mechanism when a license is denied or revoked.

**References:**

Federal Law of Radio and Television, sometimes called the Ley Televisa.

**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.

07c. 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:**

Processes are long. The community radio broadcasters have to fight many legal and other barriers.

Operators of community radio Jenpoj (Winds of Fire) in the southern Mexican state of Oaxaca have had to face plunder, countless licensing procedures and the scarcity of public funds for these media.

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

**References:**

María Cristina Capelo, researcher for Centro de Investigación para el Desarrollo, or CIDAC, and coordinadora de la Red Mexicana de Competencia y Regulación, interviewed August 2011 in Mexico City.

Notes related to community radio broadcasters.

Juan Carlos Burgos, consultant, interviewed January 2012 in Mexico City.

**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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Processes are costly. The community radio broadcasters have to deal with transportation costs and paperwork, for example. Operators of community radio Jenpoj (Winds of Fire) in the southern Mexican state of Oaxaca have had to face plunder, countless licensing procedures and the scarcity of public funds for these media. The costs vary within the state.

The costs of licenses and concessions might be by themselves quite reasonable. However, the principal costs (and higher ones, for that matter) involve legal fees and payment to experts in order to be able to respond to information and document requests from the relevant authorities.

**References:**

María Cristina Capelo, researcher for Centro de Investigación para el Desarrollo, or CIDAC, interviewed August 2011 in Mexico City.

Media notes related to community radio broadcasters.

Juan Carlos Burgos, consultant, interviewed January 2012 in Mexico City.

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

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

**Comments:**

Although Mexico is one of the Western Hemisphere's most dangerous countries for the media, government censorship is generally not the reason. Rather, journalists have been caught in the drug trafficking war, which has heightened self-censorship by the profession as a whole. Generally, the Internet is a public space, like traditional media, in which the varied content and viewpoints are available.

**References:**

María Cristina Capelo, researcher for CIDAC and coordinadora de la Red Mexicana de Competencia y Regulación, interviewed August 2011 in Mexico City.

Issa Luna Pla, "La Ética en Internet,"  
<http://chasqui.comunica.org/luna72.htm>

Freedom House, "Freedom of the Press 2011," <http://freedomhouse.org/report/freedom-press/2011/mexico>

Freedom House, "Freedom of the Internet 2011," [http://freedomhouse.org/sites/default/files/inline\\_images/Mexico\\_FOTN2011.pdf](http://freedomhouse.org/sites/default/files/inline_images/Mexico_FOTN2011.pdf)

Reporters Without Borders, "World Report: Mexico," [http://en.rsf.org/report-mexico\\_184.html](http://en.rsf.org/report-mexico_184.html)

**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.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

**Comments:**

The government does not censor citizens creating content online.

**References:**

María Cristina Capelo, researcher for CIDAC and coordinadora de la Red Mexicana de Competencia y Regulación, interviewed August 2011 in Mexico City.

Issa Luna Pla, Programa Iberoamericano de Derecho de la Información, de la Universidad Iberoamericana. Cursos de Regulación en Nuevas Tecnologías en la Universidad de Oxford, "La Ética en Internet," <http://chasqui.comunica.org/luna72.htm>

Freedom House, "Freedom of the Press 2011," <http://freedomhouse.org/report/freedom-press/2011/mexico>

Freedom House, "Freedom of the Internet 2011," [http://freedomhouse.org/sites/default/files/inline\\_images/Mexico\\_FOTN2011.pdf](http://freedomhouse.org/sites/default/files/inline_images/Mexico_FOTN2011.pdf)

Reporters Without Borders, "World Report: Mexico," [http://en.rsf.org/report-mexico\\_184.html](http://en.rsf.org/report-mexico_184.html)

**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?

58

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes | No

**Comments:**

No legal measure prohibits the reporting of accurate news, even if the reputation of a public figure is damaged.

The Constitution establishes a limit to freedom of speech: when it offends good morals, infringes on the rights of others, incites crime or disturbs the public order. The Federal Civil Code establishes that there are procedures to deal with moral damage. Still, when the information being reported involves a public figure, the Supreme Court of Justice has stated there should be a balance between individual rights and the information that by its nature is of public interest.

The Supreme Court criteria are the 1a. XLIII/2010 of the First Chamber of the Supreme Court of Justice.

**References:**

Mexico's Constitution.

Federal Civil Code.

Supreme Court of Justice.

**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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

**Comments:**

Various communication specialists and human rights advocates point to the nonexistent plurality of the media as a restraint on the freedom of expression of those engaged in journalism and communication. Proof of this is the existence of a television duopoly.

Not only those who research corruption can see their rights curtailed, but also those who cover other issues that involve public officials. One example could be the dismissal of Carmen Aristegui, a Mexican journalist, from MVS News. Specialists believe the dismissal constitutes an assault on rights to freedom of expression and access to information and is a censorship mechanism.

Currently, Mexico is going through a difficult phase characterized by widespread violence. The fighting between federal forces and drug cartels has led to corruption issues and serious violations of human rights. Journalists and media entities have done research on these themes and have incurred the government's censure.

**References:**

Miguel Concha, "Aristegui y la Ética de la Responsabilidad," [www.amedi.org.mx/index.php?option=com\\_content&view=article&id=611:aristegui-y-la-etica-de-la-responsabilidad-miguel-concha&catid=54:reflexiones&Itemid=94](http://www.amedi.org.mx/index.php?option=com_content&view=article&id=611:aristegui-y-la-etica-de-la-responsabilidad-miguel-concha&catid=54:reflexiones&Itemid=94) (consulta: 15 de octubre de 2011).

Lorenzo Córdova Vianello, "El Cese de Carmen Aristegui," [www.amedi.org.mx/index.php?option=com\\_content&view=article&id=612:el-cese-de-carmen-aristegui-lorenzo-cordova-vianello&catid=54:reflexiones&Itemid=94](http://www.amedi.org.mx/index.php?option=com_content&view=article&id=612:el-cese-de-carmen-aristegui-lorenzo-cordova-vianello&catid=54:reflexiones&Itemid=94) (consulta: 15 de octubre de 2011).

La Jornada, "Despide MVS a Carmen Aristegui por 'Transgredir Código de Ética,'" [www.jornada.unam.mx/2011/02/07/index.php?section=politica&article=015n1pol](http://www.jornada.unam.mx/2011/02/07/index.php?section=politica&article=015n1pol) (consulta: 15 de octubre de 2011).

Freedom House, "Freedom of the Press 2011," <http://freedomhouse.org/report/freedom-press/2011/mexico>

Reporters Without Borders, "World Report: Mexico," [http://en.rsf.org/report-mexico\\_184.html](http://en.rsf.org/report-mexico_184.html)

Freedom House, "Freedom of the Internet 2011," [http://freedomhouse.org/sites/default/files/inline\\_images/Mexico\\_FOTN2011.pdf](http://freedomhouse.org/sites/default/files/inline_images/Mexico_FOTN2011.pdf)

**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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

**Comments:**

A Proceso article reports that during the government of Felipe Calderón, between 2007 and and late 2011, about 53,000 copies of the weekly Proceso were seized. This operation was disguised as massive buying in cities of Tamaulipas, Sonora, Sinaloa, Zacatecas, Morelos Hidalgo, Durango, Nuevo Leon, Guanajuato, Puebla and Veracruz.

The last concerted action to prevent the magazine from reaching its readers happened Sept. 25, 2011. Virtually all 1,821 copies of the edition sent to the state of Veracruz were acquired in the same way by young men who paid in cash.

Currently, Mexico is going through a difficult phase characterized by widespread violence. The fighting between federal forces and drug cartels has led not only to corruption issues, but also to serious violations of human rights. Journalists and media entities have done research on these themes and have incurred the government's censure. This means that obstacles prevent them from continuing their investigations, which might be considered a form of censorship.

**References:**

Gloria Leticia Diaz, "La Disfrazada Operación para Callarnos," [www.proceso.com.mx/?p=282952](http://www.proceso.com.mx/?p=282952) (consulta: 16 de octubre de 2011).

Jenaro Villamil, "Suspenden Entrevista con Anabel Hernández en Radio Fórmula," <http://jenarovillamil.wordpress.com/2011/02/16/suspenden-entrevista-con-anabel-herandez-en-radio-formula/> (consulta: 16 de octubre de 2011).

Freedom House, "Freedom of the Press 2011," <http://freedomhouse.org/report/freedom-press/2011/mexico>

Reporters Without Borders, "World Report: Mexico," [http://en.rsf.org/report-mexico\\_184.html](http://en.rsf.org/report-mexico_184.html)

Freedom House, "Freedom of the Internet 2011," [http://freedomhouse.org/sites/default/files/inline\\_images/Mexico\\_FOTN2011.pdf](http://freedomhouse.org/sites/default/files/inline_images/Mexico_FOTN2011.pdf)

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

75:

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

25:

**0:** The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

---

10. Are the media credible sources of information?

30

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

Yes | **No**

**Comments:**

Ley General de Sociedades Mercantiles does not require that printing companies publicly disclose their ownership.

**References:**

Ley General de Sociedades Mercantiles.

**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:**

No legal disposition establishes that broadcast companies must publicly disclose their ownership, not even the specific law regarding the theme, Ley Federal de Radio y Televisión.

**References:**

Ley Federal de Radio y Televisión.

**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:**

Most reporters and editors adhere to strict, professional practices in their reporting. Therefore, most of them have not been the targets of threats or violence. Nevertheless, journalists belonging to great media entities, such as Televisa or Televisión Azteca, are not impartial. Most of the time these media entities respond to political interests.

**References:**

Jesús Cantú, Sept. 26, 2011, "Obscena y Cínica Sociedad: Televisa-Peña Nieto," [www.proceso.com.mx/?p=282476](http://www.proceso.com.mx/?p=282476)

Elizabeth Palacios Barrientos, "Diagnóstico Sobre la Situación del Derecho a la Libertad de Expresión en la Ciudad de México 2010," Comisión de Derechos Humanos del Distrito Federal, México, 2011.

El Universal, José Cárdenas, Sept. 7, 2010, "Peña Nieto y Televisa," [www.eluniversal.com.mx/columnas/85830.html](http://www.eluniversal.com.mx/columnas/85830.html)

**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:**

Not all of the candidates have equal access to media entities. In some cases, the government makes use of media entities to suppress criticism or to favor one political party in the next election.

**References:**

Juliana Fregoso, “México: Controversia entre los Medios de Comunicación y el Gobierno,” in Chasqui (Ecuador), Number 80, 2002, pages 24 to 29, <http://redalyc.uaemex.mx/pdf/160/16008005.pdf>

El Siglo de Durango, Rubén Cárdenas, March 28, 2011, “Las Televisoras, Carlos Slim y Peña Nieto,” [www.elsiglodedurango.com.mx/noticia/306812.las-televisoras-carlos-slim-y-pena-nieto.html](http://www.elsiglodedurango.com.mx/noticia/306812.las-televisoras-carlos-slim-y-pena-nieto.html)

Jesús Cantú, “Obscena y Cínica Sociedad: Televisa-Peña Nieto,” [www.proceso.com.mx/?p=282476](http://www.proceso.com.mx/?p=282476) (consulta: 15 de octubre de 2011).

**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:**

In Mexico, some regulations are aimed at ensuring that all candidates and political parties have equal access to media spaces. In practice, it seems that coverage by media entities is still subject to political interests.

Television media are not diverse. Most free television channels belong to Televisa or Television Azteca. In addition, several journalists have documented the strong preference of Televisa for Enrique Peña Nieto, former governor of Mexico State and presidential candidate for 2012. These investigations have shown that the ex-officer has paid large sums of money from public resources to the station, which strengthens the hypothesis of Televisa’s tendency toward the candidate.

**References:**

Asociación Mexicana de Derecho a la Información, A.C., “Peña Nieto, Debilidad de Televisa,” [www.amedi.org.mx/index.php?option=com\\_content&view=article&id=134:pena-nieto-debilidad-de-televisa&catid=43:sociedad-y-poder&Itemid=84](http://www.amedi.org.mx/index.php?option=com_content&view=article&id=134:pena-nieto-debilidad-de-televisa&catid=43:sociedad-y-poder&Itemid=84) (consulta: 15 de octubre de 2011).

Jesús Cantú, “Obscena y Cínica Sociedad: Televisa-Peña Nieto,” [www.proceso.com.mx/?p=282476](http://www.proceso.com.mx/?p=282476) (consulta: 15 de octubre de 2011).

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

other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

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

25:

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

## 11. Are journalists safe when investigating corruption?

33

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

Yes | No

### Comments:

No journalists were imprisoned. Although Mexico is one of the Western Hemisphere's most dangerous countries for the media, government imprisonment of journalists is not the reason. Rather, journalists have been caught in the drug war, which has heightened violence and attacks on the profession as a whole.

### References:

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2001, in Mexico City.

Reporters Without Borders, "Press Freedom Barometer Netizens Imprisoned, 2011," <http://en.rsf.org/press-freedom-barometer-netizens-imprisoned.html?annee=2011>

**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:

Mexico is one of the Western Hemisphere's most dangerous countries for the media. Journalists have been caught in the drug war, and that has heightened violence against professionals in the media as a whole. Several journalists were harmed (and killed) in the course of their work. Journalists have been doing research on government and corruption, and therefore they are vulnerable to becoming targets of violence. Contrary to what many people may think, 60 percent of the aggressive acts against journalists come from governmental agencies and not from drug cartels, especially because of journalists' research on issues such as government ties to drug dealing, corruption and other illegal situations.

### References:

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2001, in Mexico City.

Elizabeth Palacios Barrientos, "Diagnóstico Sobre la Situación del Derecho a la Libertad de Expresión en la Ciudad de México 2010," Comisión de Derechos Humanos del Distrito Federal, México, 2011, [http://directorio.cdhd.org.mx/pdf/2011/10/diagnostico\\_cdhd.pdf](http://directorio.cdhd.org.mx/pdf/2011/10/diagnostico_cdhd.pdf)

El Economista, "Se Eleva Numero de Periodistas Muertos en Mexico," May 2, 2011, <http://eleconomista.com.mx/sociedad/2011/05/02/se-eleva-numero-periodistas-muertos-mexico-cndh>

Freedom House, "Freedom of the Press 2011," <http://freedomhouse.org/report/freedom-press/2011/mexico>

Reporters Without Borders, "World Report: Mexico," [http://en.rsf.org/report-mexico\\_184.html](http://en.rsf.org/report-mexico_184.html)

**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:**

Mexico is now considered among the worst countries on the continent in terms of press freedom. Although the relationship between the work of journalists and their murders is not always explicit, Reporters Without Borders reported that nine journalists were killed from June 2010 to September 2011:

Sept. 24, 2011 — Maria Elizabeth Macías, Primera Hora.  
Aug. 26, 2011 — Humberto Millán Salazar, Radio Formula, A-Discusión.  
July 26, 2011 — Yolanda Ordaz de la Cruz, Notiver.  
June 20, 2011 — Miguel Ángel López Velasco, Notiver.  
March 25, 2011 — Luis Emanuel Ruíz Carrillo, La Prensa.  
Nov. 5, 2010 — Carlos Alberto Guajardo Romero, Expreso de Matamoros.  
Sept. 16, 2010 — Luis Carlos Santiago Orozco, El Diario.  
July 10, 2010 — Marco Aurelio Martínez Tijerina, XEDD La Tremenda.  
July 10, 2010 — Guillermo Alcaraz Trejo, DHNET TV.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, Sept. 7, 2001, in Mexico City.

International Business Times, "Contralínea Exige Esclarecimiento de Asesinato de Periodistas," <http://mx.ibtimes.com/articles/17043/20110902/asesinan-periodistas-contralinea-cuerpos-iztapalapa.htm> (fecha de consulta: 2 de septiembre de 2011).

Reporters Without Borders, "Free Press Barometer, Journalists Killed, 2011," <http://es.rsf.org/el-barometro-de-la-libertad-de-prensa-periodistas-muertos.html?annee=2011#pays184>

Reporters Without Borders, "Free Press Barometer, Journalists Killed, 2010," <http://en.rsf.org/press-freedom-barometer-journalists-killed.html?annee=2010>

Reporters Without Borders, "World Report: Mexico," [http://en.rsf.org/report-mexico\\_184.html](http://en.rsf.org/report-mexico_184.html)

**Yes:** A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. 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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58  
1.3. Public Requests for Government Information

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12. Do citizens have a legal right to request information?

12a. In law, citizens have a right to request government information and basic government records.

Yes | No

**Comments:**

Constitution, Article 6 (right to information), Ley Federal de Transparencia y Acceso la Información Pública Gubernamental: The law establishes that all governmental information is public and shall be available to any person. The law also establishes that privacy and national security might be limitations on access to information.

**References:**

Mexico's 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 request 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 a request for a basic government record is denied.

Yes | No

**Comments:**

The law includes an appeal process when a government record is denied. The process is outlined in Articles 49 to 60 of Chapter 4, Title II of the federal law Transparencia y Acceso a la Información Pública.

**References:**

Title II, Chapter 4, Articles 49 to 60 of the federal law Transparencia y Acceso a la Información Pública.

**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:**

The federal law Transparencia y Acceso a la Información Pública establishes that there is a specific institution through which citizens can request government records.

The law also provides a procedure regulated in Articles 40 to 48, <http://www.ifai.org.mx/>.

**References:**

Federal law Transparencia y Acceso a la Información Pública, Instituto Federal de Acceso a la Información y Protección de Datos, Articles 33 to 39; Articles 40 to 48, [www.ifai.org.mx/](http://www.ifai.org.mx/)

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

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

### 13. Is the right to information requests effective?

50

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

100 | 75 | 50 | 25 | 0

**Comments:**

Generally, in response to requests for information, entities responsible for preparing the reports take longer than what is called for in the Federal Law on Access to Public Information. For information that may be politically sensitive, reporting units do not respond properly, which delays the rendering of the information on time.

**References:**

Artículo 19, "Quien Nada Debe ... Nada Teme," [www.articulo19.org/portal/index.php?option=com\\_content&view=article&id=179:quien-nada-debenada-teme&catid=13:altoparlante](http://www.articulo19.org/portal/index.php?option=com_content&view=article&id=179:quien-nada-debenada-teme&catid=13:altoparlante) (consulta: 16 de octubre de 2011).

Ernesto Villanueva (coord.), "El Ejercicio del Acceso a la Información Pública en México: una Investigación Empírica," tomo 2, México, UNAM-ITAIP, 2009.

**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 information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

In Mexico, access to public information is free. Most of the information can be found through institutional websites.

Nevertheless, the pursuit of politically sensitive or specialized information can bring financial burdens, such as when petitioners begin a legal procedure to obtain data denied by government institutions. The cost of information usually depends on what's requested, and whether it is sought through photocopies or by digital means. In general, if photocopies are not needed, there is no cost.

However, in one instance, as reported by the newspaper El Universal, there is sometimes a high cost involved in the requests for information. For instance, the request for contracts made by Pemex required a payment of 315,000 pesos. Certified copies can cost up to 50 pesos per page. <http://www.eluniversal.com.mx/nacion/191351.html>

**References:**

Artículo 19, "Quien Nada Debe ... Nada Teme," [www.articulo19.org/portal/index.php?option=com\\_content&view=article&id=179:quien-nada-debenada-teme&catid=13:altoparlante](http://www.articulo19.org/portal/index.php?option=com_content&view=article&id=179:quien-nada-debenada-teme&catid=13:altoparlante) (consulta: 16 de octubre de 2011).

**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 NGOs. 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 NGOs trying to access this information.

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

100 | 75 | 50 | 25 | 0

**Comments:**

When information requests are related to politically sensitive issues, governmental institutions deny the information based on confidentiality criteria or respond vaguely and without attending to the petitioner's request.

**References:**

Artículo 19, "Quien Nada Debe ... Nada Teme," [www.articulo19.org/portal/index.php?option=com\\_content&view=article&id=179:quien-nada-debenada-teme&catid=13:altoparlante](http://www.articulo19.org/portal/index.php?option=com_content&view=article&id=179:quien-nada-debenada-teme&catid=13:altoparlante) (consulta: 16 de octubre de 2011).

Ernesto Villanueva (coord.), "El Ejercicio del Acceso a la Información Pública en México: una Investigación Empírica," tomo 2, México, UNAM-ITAIP, 2009.

**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 information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

When information about simple issues is sought, the response comes during the established period. However, when specialized or sensitive information is requested, responses take a long time. The sources for these comments indicate that appeals presented to a specialized institution face a long process. This likely discourages citizens from filing appeals.

From January to July 2010, 4,723 appeals were submitted to the Federal Institute for Access to Information, or IFAI, after federal government agencies refused to provide information, provided biased data or contended that information was confidential or reserved. The number of nonconformities represented 78 percent of the total in 2009, when 6,038 appeals were made to the IFAI.

**References:**

Artículo 19, "Quien Nada Debe ... Nada Teme," [www.articulo19.org/portal/index.php?option=com\\_content&view=article&id=179:quien-nada-debenada-teme&catid=13:altoparlante](http://www.articulo19.org/portal/index.php?option=com_content&view=article&id=179:quien-nada-debenada-teme&catid=13:altoparlante) (consulta: 16 de octubre de 2011).

"Venciendo la Cultura del Secreto, Obstáculos en la Implementación de Políticas y Normas de Acceso a la Información Pública en Siete Países de América Latina," Centro de Archivos y Acceso a la Información Pública (CAInfo), 2011, <http://fundar.org.mx/mexico/pdf/venciendolacultura.pdf>

Ernesto Villanueva (coord.), "El Ejercicio del Acceso a la Información Pública en México: una Investigación Empírica," tomo 2, México, UNAM-ITAIP, 2009.

**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:**

To embark on a legal procedure to resolve an information request is sometimes not a resource available to all citizens. This resource is mostly available to non-governmental organizations, academies or similar institutions for which the information is vital for projects. Regular citizens are not familiar with these procedures and probably would not get involved in a legal procedure to obtain information.

The costs might include the expense of transportation. For example, in Guerrero information requests cannot be presented through the Internet. This is because not all governmental entities have implemented a digital service. Hence, someone seeking information may need to go to the capital of Guerrero (Chilpancingo) to present the request.

**References:**

Artículo 19, "Quien Nada Debe ... Nada Teme,"  
[www.articulo19.org/portal/index.php?option=com\\_content&view=article&id=179:quien-](http://www.articulo19.org/portal/index.php?option=com_content&view=article&id=179:quien-)

Ernesto Villanueva (coord.), "El Ejercicio del Acceso a la Información Pública en México: una Investigación Empírica," tomo 2, México, UNAM-ITAIP, 2009.

**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.

100 | 75 | 50 | 25 | 0

**Comments:**

It is a common practice for the government to give an explanation for not following up on information requests. Nevertheless,

when these requests are related to sensitive or specialized information, they are denied on the basis of confidentiality or an exception.

In practice, when the same request is made to several government agencies, they each deny information using different criteria. At other times, agencies justify their incapacity to give information by remitting petitioners to the responsible entity. But usually a formal legal reason is provided for not giving a response. For example, national security reasons and personal information are exceptions provided in the law.

**References:**

Artículo 19, "Quien Nada Debe ... Nada Teme,"  
[www.articulo19.org/portal/index.php?option=com\\_content&view=article&id=179:quien-nada-debenada-teme&catid=13:altoparlante](http://www.articulo19.org/portal/index.php?option=com_content&view=article&id=179:quien-nada-debenada-teme&catid=13:altoparlante) (consulta: 16 de octubre de 2011).

Universidad Veracruzana, "Derecho de Acceso a la Información en México,"  
[www.uv.mx/transparencia/avisos/presentaciones\\_2\\_coloquio/documents/DerechodeaccesoalainformacionenMexico.pdf](http://www.uv.mx/transparencia/avisos/presentaciones_2_coloquio/documents/DerechodeaccesoalainformacionenMexico.pdf)  
(consulta: 17 de octubre de 2011).

Ernesto Villanueva (coord.), "El Ejercicio del Acceso a la Información Pública en México: una Investigación Empírica," tomo 2, México, UNAM-ITAIP, 2009.

**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 2. Elections

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### 2.1. <sup>77</sup>Voting and Party Formation

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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 legal framework is clear about universal and equal adult suffrage. To vote, one must be Mexican and at least 18 years old.

**References:**

Federal Constitution, Title I, Chapter 4, Articles 34 to 36.

Código Federal de Instituciones y Procedimientos Electorales, Articles 1,4 and 6.

**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:**

Mexico's Constitution, in Title II, Chapter 1, Article 41, states that elections must be held periodically.

The special law for electoral issues, the Código Federal de Instituciones y Procedimientos Electorales, establishes in several sections the schedule for which different elections are to be held.

**References:**

Federal Constitution, Title II, Chapter 1, Article 41.

Código Federal de Instituciones y Procedimientos Electorales. (This code regulates the periods for elections throughout its text.)

**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?

83

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

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, all adult citizens have the right to vote. But whether they do so varies. Violence and distance can prevent citizens from voting. Alianza Cívica reported factual obstacles to voting, such as violent episodes.

Alianza Cívica's reports describe how after the assassination in June 2010 of Rodolfo Torre Cantú, the PRI candidate for governor of Tamaulipas, the organization expressed its rejection of violence and aggression. This attack showed once more the climate of insecurity in Tamaulipas and other areas of the country. This same atmosphere, unfortunately, is permeating the current elections.

**References:**

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Elecoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

Media reports, Alianza Cívica, 2010, <http://www.alianzacivica.org.mx/participacion.php>

**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:**

Although ballots legally are secret and protected, there are reports that suggest system failures. No means are available to conclude with 100 percent certainly that the process is protected, although the perception may suggest that.

Secret ballots are guaranteed by federal and local electoral institutes, since there are locks to enable such voting. In addition, citizens serve to monitor balloting. There are civil society efforts to guarantee the secrecy of electoral processes. However, media notes give accounts of failures, such as finding 118 empty ballots in the count (see: <http://www.elimparcial.com/EdicionEnLinea/Notas/Noticias/07072009/387345.aspx>).

**References:**

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

Media reports, Alianza Cívica, 2010, <http://www.alianzacivica.org.mx/participacion.php>

**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:**

By law, elections are to be held at specific times and periodically. Due to local laws, there are concurrent elections and less spending. This means federal and local elections may be held at the same time and can be every three years.

The media notes report that a local-level election process was suspended because of violence: In Puebla authorities suspended elections in 83 of the 656 auxiliary boards of Puebla, according to La Jornada del Oriente.

**References:**

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

La Jornada de Oriente,  
[www.lajornadadeoriente.com.mx/2011/04/25/puebla/pol205.php](http://www.lajornadadeoriente.com.mx/2011/04/25/puebla/pol205.php)

Diario Despertar de Oaxaca,  
[www.diariodespertar.com.mx/estado/costa/43299-Suspenden-por-violencia-elecciones-Nopala.html](http://www.diariodespertar.com.mx/estado/costa/43299-Suspenden-por-violencia-elecciones-Nopala.html)

**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

### Comments:

The Federal Constitution sets out the general criteria for organizing the state. It also determines the basic rights of anyone living in the country, including civil and political rights. The Código Federal de Instituciones y Procedimientos Electorales spells out the special processes and rules for the election process. It also governs political parties.

### References:

Federal Constitution, Articles 9 and 35.

Código Federal de Instituciones y Procedimientos Electorales, Article 5.

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

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

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

Yes | No

### Comments:

The Federal Constitution states that citizens have the right to be voted on for all offices subject to popular election and to be appointed to any other employment or commission if they meet the legal qualifications.

### References:

Federal Constitution, Title I, Chapter 2, Article 35, [www.oas.org/juridico/mla/en/mex/en\\_mex-int-text-const.pdf](http://www.oas.org/juridico/mla/en/mex/en_mex-int-text-const.pdf)

**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:

Until the 2009 electoral process, forming a political party was very simple. In fact, creating a political party was so easy that it became a great family business, for example, the Partido Verde Ecologista (Green Party). But today, with the approved changes to election procedures and code, forming a party takes hard work: several meetings where you have to guarantee up to 1.8

percent of participants with IDs to vote, photo identification and that the electoral authorities will also be present to endorse these assemblies. In reality, organizing a party is something available only to groups in power.

**References:**

El Universal,  
[www.eluniversal.com.mx/notas/610339.html](http://www.eluniversal.com.mx/notas/610339.html)

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

**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:**

Citizens have to go a long way to be able to grow within a political party. Inside the structure, you have to participate in the brigades, marches and gatherings, until the time to be a candidate might arrive. There are also limitations, for example, for women and indigenous people.

**References:**

Instituto Nacional de las Mujeres, "Mujeres y Hombres en México 2010."

"Diagnóstico de Derechos Humanos del Distrito Federal — Núcleo Democracia y Derechos Humanos," [http://directorio.cdhd.org.mx/informes/IV\\_democracia\\_ddhh.pdf](http://directorio.cdhd.org.mx/informes/IV_democracia_ddhh.pdf)

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

**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. Given the political party system, the proportional representation allows it.

**References:**

Fundar, Centro de Análisis e Investigación, 2011, "Curul 501"  
<http://curul501.org>

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

**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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## 2.2. Election Integrity

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

100

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

Yes

No

**Comments:**

Mexico's Constitution puts the Instituto Federal Electoral, or IFE, in charge of monitoring elections. The Código Federal de Instituciones y Procedimientos Electorales also designates the IFE as the electoral authority to monitor elections.

This legal framework shows the existence of a specific agency legally or formally established to ensure the integrity of the election process.

**References:**

Federal Constitution, Title II, Chapter 1, Article 41.V, [www.oas.org/juridico/mla/en/mex/en\\_mex-int-text-const.pdf](http://www.oas.org/juridico/mla/en/mex/en_mex-int-text-const.pdf)

Código Federal de Instituciones y Procedimientos Electorales, Article 104.1.

**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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18. Is the election monitoring agency effective?

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

Yes | No

**Comments:**

The Federal Constitution — Title II, Chapter I, Article 41.V — refers to the Instituto Federal Electoral as the autonomous institution in charge of monitoring the elections.

**References:**

Federal Constitution, Title II, Chapter I, Article 41.V.

Código Federal de Instituciones y Procedimientos Electorales, Article 106.

**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:**

The Instituto Federal Electoral board is usually selected through political negotiations among the political parties. This means that the process might not be transparent and free from political interests. In fact, the election of board members might be delayed because of political interests and the bargaining among the political forces, as the media note documents.

For example, in October 2010, the Institutional Revolutionary Party (PRI), National Action Party (PAN) and Party of the Democratic Revolution (PRD) negotiated over three IFE councilor positions. Continuing entrenched positions in favor of the PRI, they decided to keep PRI's Arely Gomez and exclude proposed candidates from the PRD.

**References:**

El Economista, Oct. 28, 2010, "Diputados Retrasan Elección de Consejeros del IFE," <http://eleconomista.com.mx/sociedad/2010/10/28/diputados-retrasan-eleccion-consejeros-ife>

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal during the 2009 process, interviewed Aug. 18, 2011, in Mexico City,

**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. The perception of the IFE revealed in a national survey in 2005 suggests that it is a professional institution.

**References:**

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

Terra, "Supera IFE en credibilidad a IFAE y CNDH," 2005, Notimex.-México, <http://www.terra.com.mx/articulo.aspx?articuloid=177052>

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

**75:**

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

**25:**

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

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

100 | 75 | 50 | 25 | 0

**Comments:**

The reports of the IFE can be consulted on its Web page. The reports are periodically revised. Despite this general availability, other reports are given first to political parties and then seldom, if ever, made public.

**References:**

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal during the 2009 process, interviewed Aug. 18, 2011, in Mexico City,

IFE annual reports, [http://www.ife.org.mx/portal/site/ifev2/XXIII\\_Informes/](http://www.ife.org.mx/portal/site/ifev2/XXIII_Informes/)

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

**75:**

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

**25:**

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

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

100 | 75 | 50 | 25 | 0

**Comments:**

In fact, sanctions are applied, but the inspection process is too slow and sometimes the sanctions are implemented a year later. Also, the amounts levied represent not a significant part of the gains involved, and sometimes the offenders even negotiate to pay the penalties incrementally. For example, an overall sanction fee of 65 million pesos was imposed on all seven political parties because of problems in their balance sheets. This was applied by the Instituto Federal Electoral (Federal Electoral Institute).

**References:**

El Universal ,José Gerardo Mejía, March 28, 2011, “Preparan Sanciones en el IFE,” [www.eluniversal.com.mx/notas/754817.html](http://www.eluniversal.com.mx/notas/754817.html)

El Universal, Nayeli Corte, Sept. 27, 2011, “IFE Aplicará Sanciones por 66 MDP; al PRI, la Mas Alta,” [www.eluniversal.com.mx/nacion/189313.html](http://www.eluniversal.com.mx/nacion/189313.html)

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

**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.

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## 19. Are elections systems transparent and effective?

79

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

100 | 75 | 50 | 25 | 0

**Comments:**

The voter registration system, which results in a nominal list and allows citizens to have a voter registration card with a photograph, is the only instrument through which to exercise the right to vote. Several complications allow citizens to have two or three voting credentials. This means that, strictly speaking, they can vote multiple times and that the systems won't detect it. Nevertheless, voters have access to registration lists with sufficient time to correct errors before voting.

**References:**

Official Web page that provides information related to voter registration, [http://www.ife.org.mx/portal/site/ifev2/Detalle\\_Credencial\\_para\\_Votar/?vgnextoid=191ae7c9b1741110VgnVCM1000002c01000aRCRD](http://www.ife.org.mx/portal/site/ifev2/Detalle_Credencial_para_Votar/?vgnextoid=191ae7c9b1741110VgnVCM1000002c01000aRCRD)

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

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

**75:**

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

**25:**

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

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

Yes | No

**Comments:**

The Federal Constitution says the Tribunal Electoral is the maximum jurisdictional authority dealing with electoral issues. Articles 184 and 185 of Ley Orgánica del Poder Judicial de la Federación regulate it.

**References:**

Federal Constitution, Title III, Chapter 4, Article 99.

Ley Orgánica del Poder Judicial de la Federación, Articles 184 and 185.

**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 appeal process with the Tribunal Electoral del Poder Judicial de la Federal allows the declaration, for example, of winners of elections when the margins are close or the resolution of disputes within the electoral process, such as excess campaign spending.

**References:**

El Universal, Edgar Ávila Pérez, July 29, 2010, "Impugnarán Elección de Veracruz ante Trife," [www.eluniversal.com.mx/notas/698623.html](http://www.eluniversal.com.mx/notas/698623.html)

Es Mas, Francisco Barradas, July 15, 2006, "Reparte TRIFE Desahogo de Impugnaciones," [www.esmas.com/noticierotelevisa/mexico/551198.html](http://www.esmas.com/noticierotelevisa/mexico/551198.html)

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

**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 is only responsible for safeguarding federal electoral materials and local election processes. Affirmation of the military's neutrality is more accurate after the 1990s.

**References:**

La Jornada, Ernesto Martínez Elorriaga, Nov. 9, 2007, "El Ejército Mantendrá Operativos en Michoacán Durante Elecciones: IEM," [www.jornada.unam.mx/2007/11/09/index.php?section=estados&article=040n2est](http://www.jornada.unam.mx/2007/11/09/index.php?section=estados&article=040n2est)

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

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

**75:**

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

**25:**

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

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

Yes | **No**

**Comments:**

Article 5.4 of the Código Federal de Instituciones y Procedimientos Electorales gives Mexican citizens the exclusive right to observe the preparation and development of the electoral process.

**References:**

Código Federal de Instituciones y Procedimientos Electorales, Article 5.4.

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

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

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

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

**Comments:**

Election observers are allowed by law, but they mostly come from civil organizations. The general public is not interested in participating.

**References:**

Official website of Juego Limpio,  
[www.alianzaciciva.org.mx/juegolimpio/juegoLimpio.html](http://www.alianzaciciva.org.mx/juegolimpio/juegoLimpio.html)

"Lodo y Elecciones," Sergio Aguayo,  
[www.propuestaciciva.org/monitoreo/2009/LIBROLODOYELECCIONESFINALOK24SEP09.pdf](http://www.propuestaciciva.org/monitoreo/2009/LIBROLODOYELECCIONESFINALOK24SEP09.pdf)

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

**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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83  
2.3. Political Financing Transparency

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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

**Comments:**

The Federal Constitution — Title II, Chapter 1, Article 41. II — establishes a legal limit and also that public resources must prevail over private sources.

Articles 77 and 78 of the Código Federal de Instituciones y Procedimientos Electorales establish the financing system for political parties, including that public funding must prevail over other types of financing. This law also sets specific limits dealing with the funding of political parties.

**References:**

Federal Constitution, Title II, Chapter 1, Article 41.II.

Código Federal de Instituciones y Procedimientos Electorales, Article 77 and 78.

**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

**Comments:**

Articles 77 and 78 of the Código Federal de Instituciones y Procedimientos Electorales establish the financing system for political parties. Corporations may not make contributions or donations, in cash or in kind, to political parties or candidates.

**References:**

Código Federal de Instituciones y Procedimientos Electorales, Articles 77 and 78.

**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

**Comments:**

Articles 78 of the Código Federal de Instituciones y Procedimientos Electorales sets the limits and uses for public financing. It also establishes the limits for other types of financing. The article restricts how much a party may accept. It also limits activities for which political parties may use the financing. Limits apply at any time.

**References:**

Código Federal de Instituciones y Procedimientos Electorales, Article 78.

**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

**Comments:**

Article 83 of the Código Federal de Instituciones y Procedimientos Electorales states that political parties must submit reports on the origin and amount of income received from any type of financing, as well as its use in accordance with rules outlined in the article.

**References:**

Código Federal de Instituciones y Procedimientos Electorales, Article 83.

**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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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

**Comments:**

Federal Constitution Article 41.V establishes that financial audits of the national political parties will be under the power of a technical body endowed with management autonomy.

**References:**

Federal Constitution, Article 41.V.

**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

**Comments:**

Article 41.V of the Federal Constitution requires that the audit of national political parties' finances be done by an autonomous technical department of the General Council of the Federal Electoral Institute. The department is to have a chief appointed by a vote of two-thirds of the General Council and nominated by the president councilor. The Constitution says "the law shall establish organization and functioning of this organ, as well as the procedures to impose sanctions by the General Council." In carrying out its functions, the technical body is not restricted by banking, fiduciary or fiscal secrets.

Article 79 of the Código Federal de Instituciones y Procedimientos Electorales designates the Unidad de Fiscalización de los Recursos de los Partidos Políticos as the technical organ of the General Council responsible for receiving and reviewing the financial reports of the parties.

**References:**

Federal Constitution, Article 41.V.

Código Federal de Instituciones y Procedimientos Electorales, Article 79.1.

**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 non-governmental organizations.

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

80

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

Yes | No

**Comments:**

The Federal Constitution — Title II, Chapter 1, Article 41. II — sets the legal limit and establishes that public resources must prevail over private sources.

Articles 77 and 78 of the Código Federal de Instituciones y Procedimientos Electorales establish the financing system for political parties, regulating that public funding must prevail over other types of financing. This law also sets specific limits dealing with the funding of political parties.

Funding from supporters includes cash or in-kind contributions made to political parties freely and voluntarily by Mexican individuals residing in the country.

**References:**

Federal Constitution, Title II, Chapter 1, Article 41. II.

Código Federal de Instituciones y Procedimientos Electorales, Articles 77 and 78.

**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

**Comments:**

Articles 77 and 78 of the Código Federal de Instituciones y Procedimientos Electorales establish the financing system for political parties, regulating that public funding must prevail over other types of financing. This law also sets specific limits dealing with the funding of political parties.

**References:**

Articles 77 and 78 of the Código Federal de Instituciones y Procedimientos Electorales.

**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

**Comments:**

Article 42 of the Código Federal de Instituciones y Procedimientos Electorales states specifically the information political parties must make public: the amounts of public funding awarded monthly, in any form, to their national, state, municipal and Federal District, during the last five years and until the most recent month, as well as deductions for penalties; the reports, annual or partial income and expenditure, both regular and pre-campaign and campaign, the statement of assets, the inventory of real property owned, and Annexes which form an integral part of previous papers, the relationship of donors and the amounts contributed by each.

**References:**

Código Federal de Instituciones y Procedimientos Electorales, Chapter 5, Articles 41 to 45,  
<http://info4.juridicas.unam.mx/ijure/ctfed/4.htm>

**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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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

Yes | No

**Comments:**

Federal Constitution Article 41.V requires that a technical body endowed with management autonomy be in charge of the audit of finances of national political parties.

**References:**  
Federal Constitution, Article 41.V.

**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

**Comments:**  
This technical body is in charge of auditing the political parties, not individual campaigns.

Although there is not a technical body in charge of individual campaigns, the body in charge of auditing political parties is the following:

Article 41.V of the Federal Constitution requires that the audit of national political parties' finances be done by an autonomous technical department of the General Council of the Federal Electoral Institute. The department is to have a chief appointed by a vote of two-thirds of the General Council and nominated by the president councilor. The Constitution says "the law shall establish organization and functioning of this organ, as well as the procedures to impose sanctions by the General Council." In carrying out its functions, the technical body is not restricted by banking, fiduciary or fiscal secrets.

Article 79 of the Código Federal de Instituciones y Procedimientos Electorales designates the Unidad de Fiscalización de los Recursos de los Partidos Políticos as the technical organ of the General Council responsible for receiving and reviewing the financial reports of the parties.

**References:**  
Federal Constitution, Article 41.V.

Código Federal de Instituciones y Procedimientos Electorales, Article 79.1.

**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 non-governmental organizations.

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

58

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:**  
In reality, the review of political party financing has changed, despite political finance monitors and an established process concerning the financing of political parties. Individuals still can directly and indirectly financially support a political party through exceptions and loopholes.

Even more serious is the current situation. The former director of Instituto Federal Electoral, Luis Carlos Ugalde, said organized crime is funding political campaigns in Mexico, but he said this funding is taking place in local processes in the organizations.

**References:**

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

Javier Aparicio, División de Estudios Políticos, CIDE, March 2006, “¿Cómo se Financian los Partidos Políticos en México?”

Vanguardia, “Crimen Organizado Financia Campañas, Asegura Ugalde,” Dec. 4, 2011, [www.vanguardia.com.mx/crimenorganizadofinanciacampanasaseguraugalde-1162372.html](http://www.vanguardia.com.mx/crimenorganizadofinanciacampanasaseguraugalde-1162372.html)

**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. Corporate financing for political parties is regulated: It must be accountable, and irregularities may be grounds for impeachment.

Even more serious is the current situation. The former director of Instituto Federal Electoral, Luis Carlos Ugalde, said organized crime is funding political campaigns in Mexico, but the funding is taking place in local processes in the organizations. Ugalde, who lectured in Villahermosa on “The Elections of 2012 and the Challenges of Democracy in Mexico,” said the electoral bodies are weakened by the harassment of political parties.

Conditions for strengthening the electoral bodies are not suitable, he said, “because in recent years political parties have sought to increase their influence on the arbitrators, taking advantage of election laws [that] are poorly designed, and therefore have weak electoral umpires and constantly attacked.”

Ugalde emphasized that “the strategy against drug trafficking and organized crime will not be a recurring theme in political campaigns of candidates for a tactical reason: The majority of Mexicans think they should keep that strategy, so I do not think there is a candidate to risk criticizing that struggle so that their opponents accuse them [of wanting] to agree with the drug.”

**References:**

Javier Aparicio, División de Estudios Políticos, CIDE, March 2006, “Cómo se Financian los Partidos Políticos en México.”

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in the Federal District.

Van Guardia, “Crimen Organizado Financia Campañas, Asegura Ugalde,” December 2011, [www.vanguardia.com.mx/crimenorganizadofinanciacampanasaseguraugalde-1162372.html](http://www.vanguardia.com.mx/crimenorganizadofinanciacampanasaseguraugalde-1162372.html)

**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

**Comments:**

Political parties make it difficult because of the bad quality of their reports. The audit institution reports that political parties often have irregular reporting, describing as an "ordinary expense" something which in reality was used for campaigning. This kind of irregularity in reports may lead to investigations.

**References:**

La Jornada, Alonso Urrutia, Aug. 28 2007, "Varios Partidos Políticos Falsearon al IFE Información sobre 40 Millones de Pesos," [www.jornada.unam.mx/2007/08/28/index.php?section=politica&article=006n1pol](http://www.jornada.unam.mx/2007/08/28/index.php?section=politica&article=006n1pol)

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

**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

**Comments:**

The media report describes an independent process started by Comisión de Fiscalización del Instituto Federal Electoral.

Another consideration in starting an independent investigation is the gravity of the fault committed.

**References:**

La Jornada, [www.jornada.unam.mx/2007/08/28/index.php?section=politica&article=006n1pol](http://www.jornada.unam.mx/2007/08/28/index.php?section=politica&article=006n1pol)

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

**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, though 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

**Comments:**

Depending on the severity of the misconduct, there may be sanctions. In fact, the Instituto Federal Electoral has applied economic sanctions arising from its reviews of income and expenditure reports of political parties. For example, the IFE applied a penalty of more than 66 million pesos in September 2011.

**References:**

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

El Universal, Nayeli Cortes, Sept. 27, 2011, "IFE Aplicara Sanciones por 66 MDP, al PRI, la Más Alta," [www.eluniversal.com.mx/nacion/189313.html](http://www.eluniversal.com.mx/nacion/189313.html)

Esmas, Fernando Mora, May 22, 2007, "Confirma IFE Sanciones por Anomalías en Gastos de Campaña," [www.esmas.com/noticierotelevisa/mexico/628611.html](http://www.esmas.com/noticierotelevisa/mexico/628611.html)

**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

**Comments:**

The issue is not simple, but there are mechanisms to audit political parties' finances. Parties fabricate/falsify the numbers sometimes when they are subject to an audit. Background is rarely provided for numbers, plus sometimes parties only give an account of all the mismanagement when they expire or lose their registration.

The review of party expenditures is unequal in each year and between parties: Of the total recurrent expenditures reported by the parties, only 67 percent, 45.6 percent and 25.7 percent, respectively, were audited in 1997, 2000 and 2003.

**References:**

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewer Aug. 18, 2011, in Mexico City.

Javier Aparicio, División de Estudios Políticos, CIDE, March 2006, "¿Cómo se Financian los Partidos Políticos en México?"

**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.

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

50

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

**Comments:**

The legal framework rules limit financing. Despite the legal restrictions, individuals can directly or indirectly financially support a candidate. Exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond formal limitations. Several media reports suggest that candidates also receive illicit funding. This means that the limits cannot be fully guaranteed.

**References:**

Milenio, Rogelio Augustin Esteban, Oct. 7, 2011, "Guerrero: Planean Blindar Elecciones Contra Financiamiento del Narco," [www.milenio.com/cdb/doc/noticias2011/9e61d90be55217d03a243d5aad2a4e6](http://www.milenio.com/cdb/doc/noticias2011/9e61d90be55217d03a243d5aad2a4e6)

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

**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

**Comments:**

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. A recent example is the interference or support that Televisa provides to the PRI.

**References:**

Javier Aparicio, División de Estudios Políticos, CIDE, March 2006, "¿Cómo se Financian los Partidos Políticos en México?"

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

Tabasco Hoy, Leslie Gómez for Agencia Reforma, Oct. 12, 2011, "Piden a los Partidos Candidatos 'Limpios'," [www.tabascohoy.com/noticia.php?id\\_notia=223557](http://www.tabascohoy.com/noticia.php?id_notia=223557)

SPD Noticias, June 27, 2011, "Critican en Twitter Presunto apoyo de Televisa al PRI con #elcanaldelasdespensas," [http://sdnnoticias.com/nota/107004/Critican\\_en\\_Twitter\\_presunto\\_apoyo\\_de\\_Televisa\\_al\\_PRI\\_con\\_elcanaldelasdespensas](http://sdnnoticias.com/nota/107004/Critican_en_Twitter_presunto_apoyo_de_Televisa_al_PRI_con_elcanaldelasdespensas)

**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

**Comments:**

The Federal Electoral Institute will start investigations, but often has difficulty determining sources of financing since they might involve organized crime.

The IFE lacks an updated map that allows citizens to identify sections and districts in which a drug may play a role in election campaigns. The risk of not having this map opens the door for people linked to criminal activities to aspire to officialdom in city hall or at the state or federal level, according to a study done by the Murrieta Foundation at the request of a unit of the United Nations Development Program.

Since 2009 the IFE had detected 92 municipalities with the "real possibility" of criminal interference in their electoral processes, the report states. Of these, 38 presented unique problems of drug trafficking. But there is no one map to help the institute and the Ministries of Public Security and National Defense investigate candidates in the cities where criminal participation is presumed.

**References:**

Excelsior, Arturo Paramo, Oct. 4, 2011, "Investiga el IEDF a Perredistas por Actos Anticipados de Campaña," [http://excelsior.com.mx/index.php?m=nota&id\\_notia=772485](http://excelsior.com.mx/index.php?m=nota&id_notia=772485)

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in the Federal District.

Animal Político, Francisco Sandoval Alarcón, May 27, 2011, "IFE, Sin Armas para Investigar Campañas Financiadas por el Narco," [www.animalpolitico.com/2011/05/ife-sin-armas-para-investigar-campanas-financiadas-por-el-narco/](http://www.animalpolitico.com/2011/05/ife-sin-armas-para-investigar-campanas-financiadas-por-el-narco/)

**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

**Comments:**

In fact, media reports and interviews suggest that the agency imposes penalties. The Federal Electoral Institute has imposed penalties related to campaign expenses, but it is sometimes slow to act.

**References:**

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

Noticias MVS, Angélica Melín Campos, Sept. 29, 2011, "Impugnará PRD Multa del IFE; Acusa Zambrano Sanciones Dobles," [www.noticiasmvs.com/noticias/nacionales/impugnara-prd-multa-del-ife-acusa-zambrano-sanciones-dobles-313.html](http://www.noticiasmvs.com/noticias/nacionales/impugnara-prd-multa-del-ife-acusa-zambrano-sanciones-dobles-313.html)

El Universal, Nayeli Cortes, Sept. 27, 2011, "IFE Aplicará Sanciones por 66 MDP; al PRI, la Mas Alta," [www.eluniversal.com.mx/nacion/189313.html](http://www.eluniversal.com.mx/nacion/189313.html)

Esmas, Fernando Mora, May 22, 2007, "Confirma IFE Sanciones por Anomalías en Gastos de Campaña," [www.esmas.com/noticierotelevisa/mexico/628611.html](http://www.esmas.com/noticierotelevisa/mexico/628611.html)

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

**Comments:**

The IFE may audit the political parties' finances, and through that it might audit the finances of the individual candidates' campaigns. This can be inferred because the funding of the political parties is used to ensure that both parties and candidates have the resources to operate and conduct their campaigns.

The issue might be complicated by the information process and the auditing criteria.

**References:**

Francisco Nava, adviser in the Federal District Legislative Assembly Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

Javier Aparicio, División de Estudios Políticos, CIDE, March 2006, "¿Cómo se Financian los Partidos Políticos en México?"

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.

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

38

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

100 | 75 | 50 | 25 | 0

### Comments:

The Federal Code of Electoral Institutions and Procedures specifies deadlines for parties to deliver reports of their annual income and expenses, as well as campaign expenses, which are themselves subject to review and audit by the Federal Electoral Institute. The parties have 60 days after each year or election to file such reports, and the Commission of Control of IFE has 60 and 120 days to review the annual reports and expenses of campaign, respectively.

According to reports from the same institute, nearly 100 percent of the income of the parties is audited within the period. However, review of expenditures is unequal annually and between parties: In 1997, 2000 and 2003, only 67 percent, 45.6 percent and 25.7 percent, respectively, of the total expenditures reported by the parties were audited.

### References:

Francisco Nava, adviser in the Federal District Legislative Assembly Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

Javier Aparicio, División de Estudios Políticos, CIDE, March 2006, "¿Cómo se Financian los Partidos Políticos en México?"

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:

Political parties don't comply with responses times required by the law related to access to information, which sets the time in which public institutions must respond to citizens. Political parties are required to disclose their financial statements because the Federal Law of Transparency includes at least 12 legal obligations, and the Federal Electoral Institute is in charge of regulating them. The National Action Party, for example, showed this kind of information, but it was from 2007.

Despite this, the time of reply may vary according to the appeal process and the quality of the information provided. This may imply that a citizen makes several information requests before receiving information.

### References:

El Universal, Lilia Saúl, June 8, 2011, "Incumplen Partidos con Transparencia en Internet,"

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

**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:**

To gain access to financial information, citizens have to invest time, make several calls and eventually travel to a specific office or pay for copies. All this imposes an economic cost. Traveling might imply an unreasonable cost for a wide range of people, specifically in the locations where information requests cannot be made through the Internet.

**References:**

Animal Político, "Partidos Grandes Incumplen Transparencia en Internet," June 2011, [www.animalpolitico.com/2011/06/partidos-grandes-incumplen-transparencia-en-internet/](http://www.animalpolitico.com/2011/06/partidos-grandes-incumplen-transparencia-en-internet/)

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

**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 NGOs. 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 NGOs 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

**Comments:**

The records, even the ones available on the Internet, are often lacking important details, are overly general or are otherwise incomplete.

**References:**

Animal Político, [www.animalpolitico.com/2011/06/partidos-grandes-incumplen-transparencia-en-internet/](http://www.animalpolitico.com/2011/06/partidos-grandes-incumplen-transparencia-en-internet/)

**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?

31

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:

Political parties do not reveal their financial information, and accessing it may take a long time. The legal framework for access to information sets the time in which public institutions shall respond to citizens. Despite this, the length of time may vary, depending on the appeal process and the quality of information provided. The law gives 15 days for the filing of an appeal. The appeal process may take a month or even more.

All this may imply that a citizen will submit several requests to obtain information.

### References:

El Universal, Lilia Saúl, June 8, 2011, "Incumplen Partidos con Transparencia en Internet," [www.eluniversal.com.mx/notas/771210.html](http://www.eluniversal.com.mx/notas/771210.html)

El Universal, Thelma Gómez Durán, Jan. 5, 2010, "Estados Violan Ley de Transparencia," [www.eluniversal.com.mx/notas/649567.html](http://www.eluniversal.com.mx/notas/649567.html)

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal during the process of 2009, interviewed Aug. 18, 2011, in México City.

Instituto Federal Electoral, "Información Básica Sistema Electoral Mexicano," [www.ife.org.mx/portal/site/ifev2/Informacion\\_Electoral/#5](http://www.ife.org.mx/portal/site/ifev2/Informacion_Electoral/#5)

**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.

**Comments:**

The media reports suggest that legal gaps must be filled to avoid vacant periods that may have consequences for transparency obligations. Political parties are required to disclose their financial statements because the Federal Law of Transparency includes at least 12 legal obligations, and the Federal Electoral Institute is in charge of regulating them. However, political parties do not reveal their financial information, and gaining access to it may take a long time.

**References:**

El Universal,  
[www.eluniversal.com.mx/notas/771210.html](http://www.eluniversal.com.mx/notas/771210.html)

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

La Crónica,  
[www.cronica.com.mx/nota.php?id\\_nota=571465](http://www.cronica.com.mx/nota.php?id_nota=571465)

**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.

**Comments:**

The legal framework related to transparency establishes obligations that political parties — and individual candidates — may respect on this matter. However they don't do it, and gaining access to financial information may imply that citizens must invest time, make several calls and eventually travel to a specific office or pay for copies of records. All this has an economic cost.

**References:**

Animal Político,  
[www.animalpolitico.com/2011/06/partidos-grandes-incumplen-transparencia-en-internet/](http://www.animalpolitico.com/2011/06/partidos-grandes-incumplen-transparencia-en-internet/)

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

**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 NGOs. 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 NGOs trying to access this information.

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

**Comments:**

The available records, even those on the Internet, often lack important details, are overly general or are otherwise incomplete.

The Universal noted that political parties do not comply with the requirement for information they must keep on their websites, though this requirement has been in place since the 2007 electoral transparency reform.

For example, the Institutional Revolutionary Party, National Action Party and Party of the Democratic Revolution do not provide financial information on how much their party leaders gain, updated data on their financial statements or the real estate they own, or provide information on disciplinary decisions involving members.

**References:**

Animal Político,  
[www.animalpolitico.com/2011/06/partidos-grandes-incumplen-transparencia-en-internet/](http://www.animalpolitico.com/2011/06/partidos-grandes-incumplen-transparencia-en-internet/)

El Universal,  
[www.eluniversal.com.mx/notas/771210.html](http://www.eluniversal.com.mx/notas/771210.html)

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

**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 3. Government Conflicts of Interest Safeguards & Checks and Balances

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#### 3.1. <sup>59</sup>Conflicts of Interest Safeguards & Checks and Balances: Executive Branch

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

100

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

Yes | No

**Comments:**

The Federal Constitution in Article 103.I establishes that the federal courts shall settle any dispute arising from acts or omissions by authorities against recognized human rights and under the protection of the Constitution and international treaties that Mexico has signed.

The mechanism is called the amparo trial, and it is regulated in a specific law, Ley de Amparo, Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos.

**References:**

Federal Constitution, Article 103.I.

Ley de Amparo, Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos (Law on Amparo, Regulatory Rules 103 and 107 of the Constitution of the United Mexican States).

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

69

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

100 | 75 | 50 | 25 | 0

**Comments:**

The law rules the periods and forms in which the executive has to present annual reports. This obligation is met by protocol events.

**References:**

CIDE, María del Carmen Pardo, 2009, "Los Mecanismo de Rendición de Cuentas en el Ámbito Ejecutivo de Gobierno."

Imagen Radio, Aug.19, 2010, "Calderón, Cuarto Informe de Gobierno," [www.imagen.com.mx/noticia/nacional/pulso/calderon,\\_cuarto\\_informe\\_de\\_gobierno/19873/](http://www.imagen.com.mx/noticia/nacional/pulso/calderon,_cuarto_informe_de_gobierno/19873/)

El Universal, Juan Arvizu and Andrea Merlos, Sept. 1, 2010, "Blake Entrega Informe de Gobierno de Calderón," [www.eluniversal.com.mx/notas/705806.html](http://www.eluniversal.com.mx/notas/705806.html)

**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

**Comments:**

The judiciary can review actions of the executive through amparo, when applicable. Among other branches of government, it can be done through constitutional controversy.

Article 105 of the Federal Constitution allows the Supreme Court of Justice to review issues between the executive and the Congress, as well as other cases stipulated by the Constitution.

**References:**

Federal Constitution, Article 105.

**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 judiciary reviews executive actions, though not always. The Office of the General Prosecutor, or PGR, is an organ of the executive branch. The Suprema Corte de Justicia de la Nación is the highest judicial entity that can resolve conflicts involving powers of the union, including the executive. The link [www2.scjn.gob.mx/alex/analisis.aspx](http://www2.scjn.gob.mx/alex/analisis.aspx), cited as a source for this scorecard, provides judicial statistics on constitutional disputes handled by the Supreme Court.

For example, the court reviewed the action of the PGR in the Acteal case. The court also decided that it was appropriate to examine the constitutional controversy that involved the Senate's opposition to a decree of the federal executive concerning the so-called digital switchover in Mexico. By a 7-3 vote, the high court ruled that the legislature did have standing to challenge the decree, which the Senate considered an invasion of the power of the Federal Telecommunications Commission. This shows that there are indeed cases in which the balance of power becomes the means to challenge executive actions. In this case, the legislature led the court to intervene.

**References:**

Suprema Corte de Justicia de la Nación, Estadística Judicial. Controversias Constitucionales, [www2.scjn.gob.mx/alex/analisis.aspx](http://www2.scjn.gob.mx/alex/analisis.aspx)

El Universal, Carlos Avilés, Aug. 6, 2009, "Caso Acteal: Encerraron a Inocentes," [www.eluniversal.com.mx/nacion/170444.html](http://www.eluniversal.com.mx/nacion/170444.html)

El Arsenal.Net, Nov. 10, 2011, "Senado Puede Impugnar Apagón Analógico: SCJN," [www.elarsenal.net/2011/11/10/resuelve-scn-que-senado-puede-impugnar-apagon-analogico/](http://www.elarsenal.net/2011/11/10/resuelve-scn-que-senado-puede-impugnar-apagon-analogico/)

Esmas.com, Oct. 14, 2009, "SCJN: Ulises Ruiz sí Violó Garantías en Oaxaca," [www2.esmas.com/noticierostelevisa/mexico/nacional/105697/scjn-ulises-ruiz-si-garantias-oaxaca](http://www2.esmas.com/noticierostelevisa/mexico/nacional/105697/scjn-ulises-ruiz-si-garantias-oaxaca)

**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

**Comments:**

In fact, the executive may take actions to gain the favor or approval of certain groups. The decrees of the president are often criticized. See: [www.eluniversal.com.mx/notas/746548.html](http://www.eluniversal.com.mx/notas/746548.html)

**References:**

"La Facultad Reglamentaria del Poder Ejecutivo en México. Un Estudio Histórico," Miguel Alejandro López Olvera.

"Reforma Fiscal vs. Remiendos Fiscales," Jesús Augusto Palma Mendozas, licenciado en derecho, [www.offixfiscal.com.mx/colaboraciones/remiendos\\_fiscales.htm](http://www.offixfiscal.com.mx/colaboraciones/remiendos_fiscales.htm)

El Universal, Édgar Ávila Pérez, Sept. 21, 2011, "Crítica Rector de UV Decreto Sobre Colegiaturas," [www.eluniversal.com.mx/notas/746548.html](http://www.eluniversal.com.mx/notas/746548.html)

**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.

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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

**Comments:**

The Federal Constitution establishes which authorities can be subject to "juicio político" (Article 110). It also states in Article 108 that the president, during his term of office, may only be charged with treason and serious common crimes.

**References:**

Federal Constitution, Article 110.

**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

**Comments:**

The Federal Constitution's Article 109 establishes that Congress and state legislatures within their respective spheres can issue laws of responsibilities for public servants and other rules that can lead to their punishment. The crimes committed by any public servant will be prosecuted and punished through criminal law. The Constitution also establishes that the laws shall determine the cases and circumstances in which criminal sanctions should apply.

**References:**

Federal Constitution, Article 109.

**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

**Comments:**

Two specific laws determine the obligations related to asset disclosure forms, which are known as the declaración de situación patrimonial (statement of financial situation). These forms are regulated by the following laws: Ley Federal de Responsabilidades de los Servidores Públicos, Title III, Chapter I, Article 47. XVIII and Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Title III, Article 36.

**References:**

Ley Federal de Responsabilidades de los Servidores Públicos, Title III, Chapter I, Article 47. XVIII.

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Title III, 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

**Comments:**

Two specific laws determine the obligations related to asset disclosure forms, which are known as the declaración de situación patrimonial (statement of financial situation). These forms are regulated by the following laws: Ley Federal de Responsabilidades de los Servidores Públicos, Title III, Chapter I, Article 47. XVIII and Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Title III, Article 36.

**References:**

Ley Federal de Responsabilidades de los Servidores Públicos, Title III, Chapter I, Article 47. XVIII.

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Title III, 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

**Comments:**

The law Federal de Responsabilidades de los Servidores Públicos establishes specific obligations of the public service, including the executive branch. It states that all public servants shall perform their jobs, positions or commissions without obtaining or seeking additional benefits.

**References:**

Ley Federal de Responsabilidades de los Servidores Públicos, Article 89.

**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:**

The Federal Constitution establishes an independent entity that reviews and controls the finances of the state (Auditoría Superior de la Federación, Article 79). The specific law regulating this is the Ley de Fiscalización y Rendición de Cuentas de la Federación. The law generally covers the review of public accounts, but it has no provision that specifically refers to the executive or executive branch asset disclosure forms. Still, the asset disclosure forms might be included in the general asset disclosure information this unit might review.

**References:**

Federal Constitution, Article 79.

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

**Comments:**

The legal framework mentions rules that public servants must refrain from performing the functions of a job, position or commission after the end of the period for which they were nominated or if they have ceased for any reason to exercise these duties. This applies to heads of state and government and to ministers entering the private sector after leaving government.

**References:**

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Title II, Chapter I, Article 9.

Ley Federal de Responsabilidades de los Servidores Públicos, Title III, Chapter I, Article 47.IX.

**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 employment in the private sector is only for one year, and a violation is considered a minor administrative offense.

**References:**

La Jornada, Elizabeth Velasco, Aug. 24, 2010, "Sancionan a Funcionarios de Capufe," [www.jornada.unam.mx/2010/08/24/politica/011n3pol](http://www.jornada.unam.mx/2010/08/24/politica/011n3pol)

Milenio, Mariana Nieto, Dec. 21, 2010, "Investigan el Contrato a Familiar," [www.milenio.com/cdb/doc/noticias2011/1b6bcde8bf538d981ccb8ca58c38109f](http://www.milenio.com/cdb/doc/noticias2011/1b6bcde8bf538d981ccb8ca58c38109f)

La Jornada, Laura Gomez, April 10, 2003, "Sancionan a 35 Funcionarios de Setravi por Abusos," [www.jornada.unam.mx/2003/04/10/052n3cap.php?origen=capital.html](http://www.jornada.unam.mx/2003/04/10/052n3cap.php?origen=capital.html)

**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:**

Although Article 89 of the Ley Federal de Responsabilidades de los Servidores Públicos explicitly states that public servants must report receiving gifts, this usually is not done because the requirement is weakly enforced. This applies at the federal and local levels.

**References:**

El Universal, Icela Lagunas, Feb. 26, 2008, "Castigan Fraude por Licencias 'Chuecas,'" [www.eluniversal.com.mx/ciudad/89100.html](http://www.eluniversal.com.mx/ciudad/89100.html)

Excelsior, July 17, 2011, "Soborna a Policías por una Infracción, los Graba y los Despiden," [www.excelsior.com.mx/index.php?m=nota&id\\_notas=754342](http://www.excelsior.com.mx/index.php?m=nota&id_notas=754342)

**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

**Comments:**

The general consensus is that periodic revisions are done, but that they are slow and cannot cover everything. By law, asset disclosures have to be audited. The Secretaría Superior de la Federación has to do these reviews. But it is very slow in carrying out its mandate. This makes the hiding of assets easy. The ASF does not have the capacity to review each disclosure. It does have annual reports of the public account (cuenta pública) and special reviews that are available.

**References:**

El Universal, Ezra Shabot, Aug. 15, 2011, "Los Gobernadores," [www.eluniversal.com.mx/editoriales/54242.html](http://www.eluniversal.com.mx/editoriales/54242.html)

"Perspectivas de la Auditoría Superior de la Federación como Órgano Constitucional Autónomo," Manuel Battlet Díaz, UNAM.

Auditoría Superior de la Federación, reports and publications, [www.asf.gob.mx/Section/46\\_Informes\\_y\\_publicaciones](http://www.asf.gob.mx/Section/46_Informes_y_publicaciones)

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.

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

0

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

Yes | No

**Comments:**

This kind of information is considered confidential and cannot be requested by citizens because, it can be argued, it might threaten the safety or lives of people in the public service.

**References:**

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, Article 13.

**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:**

The Instituto Federal de Acceso a la Información sometimes denies information requests because of the confidentiality clause. However, the IFAI website includes a table showing the dates on which the asset disclosures of these public servants were submitted, along with the types of disclosures.

**References:**

La Jornada, Elizabeth Velasco C., Jan. 10, 2008, "Carrillo Prieto No Autorizó que se Difunda su Patrimonio: IFAI," [www.jornada.unam.mx/2008/01/10/index.php?section=politica&article=017n2pol](http://www.jornada.unam.mx/2008/01/10/index.php?section=politica&article=017n2pol)

IFAI, decisions (audits, etc.), [www.ifai.org.mx/Ciudadanos/#pleno](http://www.ifai.org.mx/Ciudadanos/#pleno)

**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:**

Citizens cannot get access to this kind of information because it is often denied on the grounds that it must be kept private for the personal security of the civil servant.

**References:**

La Jornada, Elizabeth Velasco C., Jan. 10, 2008, "Carrillo Prieto No Autorizó que se Difunda su Patrimonio: IFAI," [www.jornada.unam.mx/2008/01/10/index.php?section=politica&article=017n2pol](http://www.jornada.unam.mx/2008/01/10/index.php?section=politica&article=017n2pol)

Resolución del IFAI,  
[www.ifai.org.mx/resoluciones/2006/48.pdf](http://www.ifai.org.mx/resoluciones/2006/48.pdf)

**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 NGOs. 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 NGOs 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:**

This kind of information is not available to citizens.

**References:**

La Jornada, Elizabeth Velasco C., Jan. 10, 2008, "Carrillo Prieto No Autorizó que se Difunda su Patrimonio: IFAI," [www.jornada.unam.mx/2008/01/10/index.php?section=politica&article=017n2pol](http://www.jornada.unam.mx/2008/01/10/index.php?section=politica&article=017n2pol)

Resolución del IFAI, Oct. 10, 2005, [www.ifai.org.mx/resoluciones/2006/48.pdf](http://www.ifai.org.mx/resoluciones/2006/48.pdf)

**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.

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

25

31a. 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 government bureaucracy is an extension of the ruling party. Public servants utilize their positions to serve their parties, and it is common that they publicly support candidates of their parties (see the Universal media report).

**References:**

"El Presidencialismo Mexicano en Busca del Justo Medio," Lorenzo Meyer, CIDE.

La Jornada, Gabriela Rodríguez, March 25, 2011, "¿Partido o Proyecto?" [www.jornada.unam.mx/2011/03/25/index.php?section=opinion&article=022a2pol](http://www.jornada.unam.mx/2011/03/25/index.php?section=opinion&article=022a2pol)

El Universal, Olga Rosario, June 19, 2010, "Acusan a Ulises Ruiz por Favorecer a Candidato," [www.eluniversal.com.mx/notas/688945.html](http://www.eluniversal.com.mx/notas/688945.html)

**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.

## 3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

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

### Comments:

The Constitution allows the Supreme Court of Justice to review laws passed by the legislature and have the effect of declaring them invalid.

### References:

Federal Constitution, Articles 103, 105 and 107.

**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:

The Supreme Court of Justice has spoken about the constitutionality of certain laws, like the one passed in Mexico City related to abortion within the first 12 weeks of pregnancy.

### References:

El Universal, Sept. 28, 2011, "Ley Contra Aborto Restringe Otros Derechos," [www.eluniversal.com.mx/notas/797166.html](http://www.eluniversal.com.mx/notas/797166.html)

El Universal, Carlos Avilés, Aug. 4, 2010, "SCJN: Mayoría Avala los Matrimonios Gay," [www.eluniversal.com.mx/primera/35334.html](http://www.eluniversal.com.mx/primera/35334.html)

Azteca noticias, June 21 2011, "Revisa SCJN Constitucionalidad de ley Tras Reforma en DH," [www.aztecanoticias.com.mx/notas/seguridad/59727/revisa-scnj-constitucionalidad-de-ley-tras-reforma-en-dh](http://www.aztecanoticias.com.mx/notas/seguridad/59727/revisa-scnj-constitucionalidad-de-ley-tras-reforma-en-dh)

**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:**

The Federal Constitution establishes in Article 111 the process by which members of the national legislature are subject to criminal proceedings, though they have a constitutional "fuero" that makes it difficult for members to be prosecuted. The process outlined in Article 111 is controlled by the legislature.

**References:**

Federal Constitution, Articles 111 and 61.

**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?

57

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

**Yes** | No

**Comments:**

Two specific laws determine the obligations related to asset disclosure forms, which are known as the declaración de situación patrimonial (statement of financial situation). These forms are regulated by the following laws: Ley Federal de Responsabilidades de los Servidores Públicos, Title III, Chapter I, Article 47. XVIII and Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Title III, Article 36.

**References:**

Ley Federal de Responsabilidades de los Servidores Públicos, Title III, Chapter I, Article 47.

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Title III, 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

**Comments:**

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 9 establishes specific restrictions for someone leaving public service.

In 2007, the Senate approved the Ley Contra el Conflicto de Intereses. According to this law, legislators are not allowed to represent the interest of a private entity (individual or company) against a public one while they serve in the legislature.

**References:**

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 9.

Ley Contra el Conflicto de Intereses.

**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

**Comments:**

Article 8 of the Ley Federal de Responsabilidades Administrativas de los Servidores Públicos establishes specific obligations for the public service, including the national legislature. It states that all public servants shall perform their jobs, positions or commissions without obtaining or seeking additional benefits or gifts.

Members of the national legislature are public servants, so the general rules are applicable.

**References:**

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Title II, Chapter I, Article 8.

**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

**Comments:**

The legislature has its own internal audit operation.

**References:**

Ley Orgánica del Congreso General de los Estados Unidos Mexicano, Article 113.

**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:**

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. Since 2007, when the Senate approved the Ley Contra el Conflicto de Intereses, legislators are not allowed to represent a private interest (individual or company) against a public entity during their time in the legislature. However, the law does not forbid legislators to be shareholders of a company. This occurs. Moreover, the law is not that effective in forbidding employment in the private sector after a legislative term. To the contrary, legislative positions are not considered long-term careers, and legislative work often is considered to be a platform for other things.

**References:**

"Incompatibilidad y Licencias Parlamentarias," Instituto de Investigaciones Jurídicas, México, March 25, 2011, <http://biblio.juridicas.unam.mx/libros/5/2123/43.pdf>

El Universal, Arturo Zárate Vite, April 27, 2007, "Aprueba Senado Ley Contra Conflicto de Intereses," [www.eluniversal.com.mx/notas/419202.html](http://www.eluniversal.com.mx/notas/419202.html)

El Universal, Arturo Zárate Vite, March 29, 2007, "Discutirá Senado Ley Sobre Conflicto de Intereses Después de Vacaciones," [www.eluniversal.com.mx/notas/415402.html](http://www.eluniversal.com.mx/notas/415402.html)

**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

**Comments:**

Bribery cases have been alleged against lawmakers. For example, legislators were accused of bribery during the discussion of energy reform.

**References:**

El Universal, Ricardo Gómez and Andrea Merlos, June 17, 2008, "Causa Reacciones Encontradas Versión de Presunto Soborno a Diputados," [www.eluniversal.com.mx/notas/515630.html](http://www.eluniversal.com.mx/notas/515630.html)

Gaceta.mx, Oct. 20, 2010, "Acusan a Felipe Garza de Sobornar a Diputados para Aprobar 287 Cuentas Públicas," [www.gaceta.mx/vnoticias.aspx?idnota=29724%20%20&balazo=%20Acusan%20a%20Felipe%20Garza%20de%20sobornar%20a%20diputados%20para%20aprobar%20287%20cuenta](http://www.gaceta.mx/vnoticias.aspx?idnota=29724%20%20&balazo=%20Acusan%20a%20Felipe%20Garza%20de%20sobornar%20a%20diputados%20para%20aprobar%20287%20cuenta)

El Universal, Lilia Saúl and Mariana León, May 25, 2011, "Predomina Opacidad en Congresos," [www.eluniversal.com.mx/primera/36917.html](http://www.eluniversal.com.mx/primera/36917.html)

**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.

**References:**

El Universal,  
[www.eluniversal.com.mx/primera/36917.html](http://www.eluniversal.com.mx/primera/36917.html)

El Informador,  
[www.informador.com.mx/jalisco/2010/221705/6/incumplen-10-ex-diputados-con-su-declaracion-patrimonial.htm](http://www.informador.com.mx/jalisco/2010/221705/6/incumplen-10-ex-diputados-con-su-declaracion-patrimonial.htm)

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?

0

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

Yes | No

**Comments:**

This kind of information is considered confidential. Members of the legislature are required to submit a statement of financial condition that is timely and truthful. This kind of information cannot be requested by citizens because, it can be argued, it might threaten the safety or life of people in the public service.

**References:**

Reglamento de la Cámara de Diputados, Article 8.

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, Article 13.

**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, non-governmental 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

**Comments:**

As with other public servant disclosures, asset disclosures of members of the national legislature are not to be known by citizens.

**References:**

La Jornada, Elizabeth Velasco C., Jan. 10, 2008, "Carrillo Prieto No Autorizó que se Difunda su Patrimonio: IFAI," [www.jornada.unam.mx/2008/01/10/index.php?section=politica&article=017n2pol](http://www.jornada.unam.mx/2008/01/10/index.php?section=politica&article=017n2pol)

Resolución del IFAI, Oct. 10, 2005, [www.ifai.org.mx/resoluciones/2006/48.pdf](http://www.ifai.org.mx/resoluciones/2006/48.pdf)

**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

**Comments:**

Asset disclosures by members of the national legislature are not available to citizens.

**References:**

La Jornada, Elizabeth Velasco C., Jan. 10, 2008, "Carrillo Prieto No Autorizó que se Difunda su Patrimonio: IFAI," [www.jornada.unam.mx/2008/01/10/index.php?section=politica&article=017n2pol](http://www.jornada.unam.mx/2008/01/10/index.php?section=politica&article=017n2pol)

Resolución del IFAI, Oct. 10, 2005, [www.ifai.org.mx/resoluciones/2006/48.pdf](http://www.ifai.org.mx/resoluciones/2006/48.pdf)

**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 NGOs. 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 NGOs 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

**Comments:**

Asset disclosure information is not available to citizens.

**References:**

La Jornada, Elizabeth Velasco C., Jan. 10, 2008, "Carrillo Prieto No Autorizó que se Difunda su Patrimonio: IFAI," [www.jornada.unam.mx/2008/01/10/index.php?section=politica&article=017n2pol](http://www.jornada.unam.mx/2008/01/10/index.php?section=politica&article=017n2pol)

Resolución del IFAI, Oct. 10, 2005, [www.ifai.org.mx/resoluciones/2006/48.pdf](http://www.ifai.org.mx/resoluciones/2006/48.pdf)

**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

**Comments:**

The legislature is subject to be required to provide information considered public. Information related to records of legislative processes and documents is public.

**References:**

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, Article 3

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, Articles III.3, 7 and 9

**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:**

Legislative output is available through the Internet. The quality of the information available in each state depends on the local legislature. At the federal level, the information is available through the following link: [www.diputados.gob.mx/trabajo\\_legislativo.htm](http://www.diputados.gob.mx/trabajo_legislativo.htm). It is easy to get access to the information from the plenary sessions. However, the documents and draft reports that are discussed in committees are not that easy to access.

**References:**

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City.

**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:**

The legal framework related to transparency establishes a series of obligations for the legislature. Citizens may invest time when information is not readily available, or pay for copies. NGOs also work to make such information available.

**References:**

Francisco Nava, adviser in the Federal District Legislative Assembly, Representante del Otrora Partido Social Demócrata ante el Consejo General del Instituto Electoral del Distrito Federal en el proceso de 2009, interviewed Aug. 18, 2011, in Mexico City

Curul 501 (Web page), <http://curul501.org/>

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

**75:**

**50:** Records impose a financial burden on citizens, journalists or NGOs. 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 NGOs trying to access this information.

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52

### 3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

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36. Are judges appointed fairly?

50

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

Yes | No

**Comments:**

A specific law regulates national-level judges. The law, Ley Orgánica del Poder Judicial de la Federación, sets the procedures to launch a judicial career.

**References:**

Ley Orgánica del Poder Judicial de la Federación, Title VII, Chapter I, Articles 112 to 117.

**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:**

Regarding appointment of members of the Superior Courts of Justice, the special rapporteur thinks that Mexico should take necessary measures, including structural and legislative changes, to ensure full independence of the local judiciary from the executive branch.

Judges and trial judges are usually appointed through competitive examination. However, this is not the practice in all regions. In some regions, judges may be named directly.

The special rapporteur reiterates that it is essential to develop and apply objective selection and promotion processes for the judiciary.

**References:**

El Informador, Aug. 19, 2011, "Denuncian Nepotismo en Selección de Jueces," [www.informador.com.mx/jalisco/2011/315791/6/denuncian-nepotismo-en-seleccion-de-jueces.htm](http://www.informador.com.mx/jalisco/2011/315791/6/denuncian-nepotismo-en-seleccion-de-jueces.htm)

"Informe de la Relatora Especial Sobre la Independencia de los Magistrados y Abogados," 17° período de sesiones, Misión a México, 2011.

**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:**

The Federal Constitution establishes that the confirmation process for national-level judges is conducted by the Consejo de la Judicatura Federal, which is an organ of the judiciary. This means that an independent entity does not conduct the process. A specific law, Ley Orgánica del Poder Judicial de la Federación, sets the same norm.

**References:**  
Federal Constitution, Article 97

Ley Orgánica del Poder Judicial de la Federación, Article 121

**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?

75

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

Yes | No

**Comments:**

Reasons for decisions must be given since judicial decisions can be appealed to a higher level. The Federal Constitution states that the judiciary should substantiate and justify its actions. The law Organica del Poder Judicial de la Federación also includes the process to set responsibilities for members of the judiciary.

**References:**

Ley Orgánica del Poder Judicial de la Federación, Articles 129 to 140

Federal Constitution

**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:**

Judges have to give reasons for their actions, but the quality may be questionable, especially when the arguments relate to human rights. They barely use international human rights standards.

**References:**

La Jornada,  
[www.jornada.unam.mx/2010/02/14/index.php?section=opinion&article=018a1pol](http://www.jornada.unam.mx/2010/02/14/index.php?section=opinion&article=018a1pol)

"Diagnóstico de Derechos Humanos para el Distrito Federal," chapter about the judicial system, Mexico City, 2008.

**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

**Comments:**

The Federal Constitution in Article 94 establishes that Consejo de la Judicatura Federal (Federal Judicial Council) is the disciplinary agency for the national-level judicial system.

**References:**

Federal Constitution, Article 94.

**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

**Comments:**

The Federal Constitution in Article 100 establishes that the Consejo de la Judicatura Federal is an organ of the federal judiciary with technical independence. This means that it is independent in its management and is free to issue rulings. This organ is formed by members of the judiciary, including the president of the Supreme Court, circuit judges and district judges, and two directors appointed by the Senate and one by the president of the republic.

**References:**

Federal 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 cases of corruption or other misconduct, judges are investigated and receive disciplinary sanctions. During the past two years, 108 public servants in the federal judiciary were sanctioned by the Federal Judicial Council for committing irregularities that included lack of professionalism, dishonesty, provision of cash for their own benefit, sexual harassment and abuse of power.

**References:**

Milenio, Ruben Mosso, March 23, 2011, "Sancionan a Jueces y Magistrados del CJF," [www.milenio.com/cdb/doc/noticias2011/7124535617041c8e5402057a53431e7b](http://www.milenio.com/cdb/doc/noticias2011/7124535617041c8e5402057a53431e7b)

**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:**

The Consejo de la Judicatura is in charge of establishing sanctions for the judiciary. This often happens in cases of corruption and irregularities such as lack of professionalism, dishonesty, cash available for their own benefit, sexual harassment and abuse of power. In May 2011, the Federal Judiciary Council found justification to sanction 108 employees, among them 14 magistrates, 18 judges, 13 registrars and 26 court clerks, but none of them for corruption or illicit enrichment. The council examined 592 cases.

**References:**

El Universal, María de la Luz González, March 24, 2011, "Judicial Sanciona a 108 de sus Miembros,"  
www.eluniversal.com.mx/nacion/184334.html

La Jornada, "Sanciona el CJF a 108 Xervidores; en 72 Casos fue por Falta de Profesionalismo,"  
www.jornada.unam.mx/2011/05/28/politica/003n1pol

**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?

61

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

Yes | No

**Comments:**

Members of the national-level judiciary are required to submit statements of their financial condition to the appropriate authority.

This applies to ministers of the Supreme Court's Office, circuit judges, district judges, court clerks and clerks of any category or description;

**References:**

Ley Federal de Responsabilidades de los Servidores Públicos, Article 80. VI.

**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

**Comments:**

The law Federal de Responsabilidades Administrativas de los Servidores Públicos establishes specific obligations for the public service, including the judiciary. It states that all public servants shall perform their jobs, positions or commissions without obtaining or seeking additional benefits.

**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

**Comments:**

Asset declarations are held by the internal comptroller and are not subject to an external audit. A specific organ within the judiciary, the Consejo de la Judicatura Federal, reviews the asset disclosure form. This council is regulated in the Ley Orgánica del Poder Judicial de la Federación.

**References:**

Consejo de la Judicatura Federal regulated in the Ley Orgánica del Poder Judicial de la Federación, Articles 68 to 76.

**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

**Comments:**

The legal framework requires that public servants refrain from exercising the functions of a job, position or commission after the end of the period for which they were nominated or have ceased for any other reason to do these functions.

**References:**

Ley Federal de Responsabilidades de los Servidores Públicos,  
Article 47

Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 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, however, but with corruption while they are in office. In essence, there are no real restrictions for judges after they leave their public positions.

**References:**

La Jornada,  
[www.jornada.unam.mx/2007/11/23/index.php?section=politica&article=011n1pol](http://www.jornada.unam.mx/2007/11/23/index.php?section=politica&article=011n1pol)

"Informe de la Relatora Especial Sobre la Independencia de los Magistrados y Abogados, 17.º Período de Sesiones," Misión México, 2011.

**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.

100 | 75 | 50 | 25 | 0

**Comments:**

Numerous sanctions are imposed on judges for corruption. For example, the Federal Judiciary Council found inconsistencies in the evolving heritage of the district judge in administrative matters Tovilla Alvaro Leon, who had five bank accounts in his name to which resources had been transferred in two years. Recently, at least 20 million pesos were transferred. This did not correspond to the level of his monthly salary, which reaches 129,000 pesos. Because of this, the judge was suspended from his duties.

**References:**

"Corrupción Judicial e Impunidad: El caso de México," Miguel Carbonell, Instituto de Investigaciones Jurídicas, México

El Universal, Carlos Avilés Allende, July 25, 2010, "Los Siete Pecados Capitales de los Jueces Mexicanos," [www.eluniversal.com.mx/nacion/179262.html](http://www.eluniversal.com.mx/nacion/179262.html)

Animal Político, July 11, 2011, "Suspenden al Juez del Caso El Encino por Presuntos Sobornos," [www.animalpolitico.com/2011/07/suspenden-al-juez-tovilla-por-presuntos-sobornos/](http://www.animalpolitico.com/2011/07/suspenden-al-juez-tovilla-por-presuntos-sobornos/)

El Universal, Pascual Salanueva Camargo, Jan. 28, 2001, "Jueces en Busca de Credibilidad," [www2.eluniversal.com.mx/pls/impreso/noticia.html?id\\_nota=46398&tabla=nacion](http://www2.eluniversal.com.mx/pls/impreso/noticia.html?id_nota=46398&tabla=nacion)

**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:**

It is difficult to have accurate information because of the transparency limitations within the judiciary. However, the reports have been audited. For example, with a total of eight votes, the Supreme Court agreed Oct. 11, 2011, to the disclosure of assets for appellate judges, judges, secretaries and senior officials. This was in response to a request by the Probitry Section, which wanted the disclosures in order to examine the accounts and avoid the consequences of an illicit enrichment.

**References:**

El Universal, April 12, 2011, "Los Jueces y la Transparencia," [www.eluniversal.com.mx/editoriales/52346.html](http://www.eluniversal.com.mx/editoriales/52346.html)

"CSJ Acuerda Pedir Declaración Patrimonial a Magistrados, Jueces, Secretarios y Oficiales Mayores," Oct. 12, 2011, [www.google.com.mx/#sclient=psy-ab&hl=es&source=hp&q=declaración+patrimonial+de+jueces&pbx=1&oq=declaración+patrimonial+de+jueces&aq=f&aql=&gs\\_sm=e&gs\\_upl=184114610&bav=on.2,or.r\\_gc.r\\_pw.,cf.osb&fp=7cb1482030c63dd2&biw=1366&bih=555](http://www.google.com.mx/#sclient=psy-ab&hl=es&source=hp&q=declaración+patrimonial+de+jueces&pbx=1&oq=declaración+patrimonial+de+jueces&aq=f&aql=&gs_sm=e&gs_upl=184114610&bav=on.2,or.r_gc.r_pw.,cf.osb&fp=7cb1482030c63dd2&biw=1366&bih=555)

El Universal, Pascual Salanueva Camargo, Jan. 28, 2001, "Jueces en Busca de Credibilidad," [www2.eluniversal.com.mx/pls/impreso/noticia.html?id\\_nota=46398&tabla=nacion](http://www2.eluniversal.com.mx/pls/impreso/noticia.html?id_nota=46398&tabla=nacion)

**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.

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

0

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

Yes | **No**

**Comments:**

This kind of information is considered confidential and cannot be requested by citizens because, it can be argued, it might threaten the safety or lives of people in the public service.

**References:**

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, Article 13.

**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:**

Citizens cannot have access to this kind of information.

**References:**

La Jornada, Elizabeth Velasco C., Jan. 10, 2008, "Carrillo Prieto No Autorizó que se Difunda su Patrimonio: IFAI," [www.jornada.unam.mx/2008/01/10/index.php?section=politica&article=017n2pol](http://www.jornada.unam.mx/2008/01/10/index.php?section=politica&article=017n2pol)

Resolución del IFAI, Oct. 10, 2005, [www.ifai.org.mx/resoluciones/2006/48.pdf](http://www.ifai.org.mx/resoluciones/2006/48.pdf)

**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:**

Asset disclosures are not available to citizens.

**References:**

La Jornada, Elizabeth Velasco C., Jan. 10, 2008, "Carrillo Prieto No Autorizó que se Difunda su Patrimonio: IFAI,"

**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 NGOs. 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 NGOs 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:**

Asset disclosures are not available to citizens. The Instituto Federal de Acceso a la Información states that asset disclosure records contain information on individuals' origin, family life, address, telephone number and property and that release of the data would affect their privacy. All the asset declarations of public servants have personal information (address, phone number, bank accounts, etc.), but generally this information is deleted from the requested documents in question.

**References:**

La Jornada, Elizabeth Velasco C., Jan. 10, 2008, "Carrillo Prieto No Autorizó que se Difunda su Patrimonio: IFAI," www.jornada.unam.mx/2008/01/10/index.php?section=politica&article=017n2pol

Resolución del IFAI, Oct. 10, 2005, www.ifai.org.mx/resoluciones/2006/48.pdf

**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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### 3.4. Budget Process Oversight & Transparency

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

83

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

Yes | No

**Comments:**

The legislature has the opportunity to modify the the budget presented by the executive. This legislative authority is regulated by the Federal Constitution. In fact, it is under the exclusive authority of the Cámara de Diputados.

**References:**

Federal Constitution, Article 74. IV.

**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:**

Significant public expenditures require legislative approval because they are in the budget, and the legislature approves the budget. However, the contribution of the legislature is extremely limited because more than 90 percent of the expenditures are already committed. In addition, rules have been incorporated into the negotiation process that establish that if the legislature wants to increase the resources of a program, legislators must also indicate which other programs will lose funding.

**References:**

"Reporte Legislativo, Número 1, Febrero — Abril 2011," Integralia, México, 2011.

Rocio Moreno, consultant, interviewed Oct. 10, 2011, in México City

**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:**

Yes, the legislature has the ability to monitor the budget and can give input as long as certain conditions are met. When there is a change bigger than 4 percent, the legislature has to be consulted.

Few people working in the legislature give input on changes in the budget process. This happens during the budgeting negotiation, but is subject to agreements inside the chamber and few staff members have deep knowledge of the budget process.

Civil society organizations have an important role in explaining budgetary needs related to specific sensitive social issues.

**References:**

"Reporte Legislativo, Número 1, Febrero — Abril 2011," Integralia, México, 2011.

Rocio Moreno, consultant, interviewed Oct.10, 2011, in México City.

**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.

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

58

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:**

Substantial changes have occurred in how the process is discussed in terms of transparency in the timing of the budget committee and the rules to be followed by other commissions to participate in the exercise; however, the changes have not been sufficient.

Mexico has no formal mechanisms to ensure the integration of the priorities of citizens in the budget process. This happens in both the formulation and the approval, as there are no legal obligations for the executive or for legislative public consultations at these stages.

**References:**

Rocio Moreno, consultant, interviewed Oct. 10, 2011, in México City.

"Reporte Legislativo, Número 1, Febrero — Aabril 2011," Integralia, México, 2011.

"Índice Latinoamericano de Transparencia Presupuestaria. Una Comparación de Diez Países," Coordinación: Briseida Lavielle, Mariana Pérez and Helena Hofbauer, México, D.F., October 2003, [www.fundar.org.mx/mexico/wpcontent/uploads/publicaciones/indice\\_latinoamericano.pdf](http://www.fundar.org.mx/mexico/wpcontent/uploads/publicaciones/indice_latinoamericano.pdf)

International Budget Partnership, "Open Budget Index 2011, Mexico," <http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-Mexico.pdf>

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

**75:**

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

**25:**

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

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

**Comments:**

Ordinary citizens do not participate. Civil society organizations are more likely to participate because of the political capital they have. In fact non-governmental organizations have had an impact in the designation of resources, such as damage repair for human rights violations and on health issues. But the organizations must constantly pay attention so that budget advances don't regress in subsequent budgeting processes. In a historic case (November 2010), the plenary of the House of Representatives overwhelmingly approved money in the 2011 Expenditure Budget for a reparations fund after judgments were issued by the Inter-American Court of Human Rights. It should be noted that the work involved different deputies and members of commissions on human rights, the budget and public accounts, and femicide.

Compliance with judgments of the Inter-American Court is not the result of good will. Rather, this entity's jurisdiction has been recognized, and thus its declarations become an obligation for Mexico.

**References:**

Fundar, May 26, 2011, "El Estado Mexicano en Deuda con las Mujeres," <http://fundar.org.mx/mexico/?p=778>

Fundar, Nov. 18, 2010, "Legislativo Manda Mensaje de Compromiso con el Cumplimiento de Sentencia Emitidas por la Corte IDH," <http://fundar.org.mx/mexico/?p=743>

Animal Político, Aug. 19, 2011, "Diego de la Mira, El Regateo de Septiembre," [www.animalpolitico.com/blogueros-res-publica/2011/08/19/el-regateo-de-septiembre/](http://www.animalpolitico.com/blogueros-res-publica/2011/08/19/el-regateo-de-septiembre/)

Rocio Moreno, consultant, interviewed Oct. 10, 2011, in Mexico City.

International Budget Partnership, "Open Budget Index 2011, Mexico," <http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-Mexico.pdf>

**100:** Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

**25:**

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

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

**Comments:**

Citizens, journalists and civil society organizations can get access to itemized lists of budget allocations, but this information may be difficult to obtain, incomplete or out of date.

The Open Budget Index 2011 stated that some countries had made "significant improvements." In Latin America, leadership on transparency in national budgets "is bad," said International Budget Partnership representative Michael Castro. Mexico scored 52 points out of 100 for budget transparency.

**References:**

"Introducción al Análisis Presupuestal, 2001," [www.fundar.org.mx/mexico/wp-content/uploads/publicaciones/mat-introduccionanalisisdepresupuestos.pdf](http://www.fundar.org.mx/mexico/wp-content/uploads/publicaciones/mat-introduccionanalisisdepresupuestos.pdf)

El Economista, Nov. 9, 2010, "México Incumple en Transparencia," <http://eleconomista.com.mx/finanzas-publicas/2010/11/09/mexico-incumple-transparencia>

Rocio Moreno, consultant, interviewed Oct. 10, 2011, in Mexico City.

International Budget Partnership, "Open Budget Index 2011, Mexico," <http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-Mexico.pdf>

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

75:

50: Citizens, journalists and NGOs 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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42. In law, is there a separate legislative committee which provides oversight of public funds?

100

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

Yes | No

**Comments:**

Congress has a specific commission to provide oversight of public funds: Comisión de Presupuesto y Cuenta Pública and Comisión de Vigilancia de la Auditoría Superior de la Federación. The number and functions of congressional commissions are spelled out in the law Orgánica del Congreso General de los Estados Unidos Mexicanos.

**References:**

Ley Orgánica del Congreso General de los Estados Unidos Mexicanos, Articles 39.XXVIII and 40

List of commissions available at [http://sitl.diputados.gob.mx/LXI\\_leg/listado\\_de\\_comisioneslxi.php?tct=1](http://sitl.diputados.gob.mx/LXI_leg/listado_de_comisioneslxi.php?tct=1)

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

58

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

100 | 75 | 50 | 25 | 0

**Comments:**

It is unclear how lawmakers use information about the effectiveness of expenditures during the budget discussion. That is, there is no clear connection between what they approve and the results. In practice, department heads produce monthly, quarterly and year-end reports.

**References:**

Rocio Moreno, consultant, interviewed Oct.10, 2011, in Mexico City.

"Reporte Legislativo, Número 1, Febrero — Abril 2011," Integralia, México, 2011.

**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:**

The Senate and Chamber of Deputies have proportional representation of the ruling and opposition parties. The Chamber of Deputies is composed of the PRI (223 members, or 45 percent), PAN (148 members, 30 percent), PRD (97 members, 19 percent), Green (17 members, 3 percent), Labour (6 members, 1 percent), Convergence (5 members, 1 percent) and Independent parties (4 members, 1 percent). The Senate is made up of the PRI (58 members, 45 percent), PAN (47 members, 37 percent), PRD (15 members, 12 percent), Green (5 members, 4 percent) and Independent parties (3 members, 2 percent).

The budget is supposed to consider the needs of citizens and guarantee the continuity of programs and services. Despite this, the budget discussion is known as a negotiation in which partisan interests, pressure groups and others often take part. Thus, partisan interests are the rule, often guiding the actions of the committee.

**References:**

La Crónica, José Sosa, Sept. 19, 2011, "Presupuestos Públicos: El Debido Equilibrio entre las Partes," [www.cronica.com.mx/notaOpinion.php?id\\_notas=606082](http://www.cronica.com.mx/notaOpinion.php?id_notas=606082)

Rocio Moreno, consultant, interviewed Oct. 10, 2011, in Mexico City.

**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:**

The Chamber of Deputies has the power to create commissions of inquiry to monitor something in particular. It is noteworthy that there is no clarity on the outcome of these commissions and their relevance to prevent further irregularities.

**References:**

Rocio Moreno, consultant, interviewed Oct. 10, 2011, in Mexico City.

**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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## Category 4. Public Administration and Professionalism

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### 4.1. Civil Service: Conflicts of Interest Safeguards and Political Independence

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

75

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

Yes | No

**Comments:**

A law, Ley del Servicio Profesional de Carrera en la Administración Pública Federal, establishes that the Professional Career Service System is a mechanism to ensure equal opportunities to public service based on merit and to encourage development of the public service for the benefit of society.

**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

**Comments:**

The law, Ley del Servicio Profesional de Carrera en la Administración Pública Federal, sets the guiding principles of the Professional Career Service System as legality, efficiency, objectivity, quality, impartiality, fairness, competence, merit and equity. The law is oriented to prevent nepotism, cronyism and patronage within the civil service.

**References:**

Ley del Servicio Profesional de Carrera en la Administración Pública Federal, Article 2.

**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

**Comments:**

The law states that the Professional Career Service is part of the federal executive power and conducted by the Secretaría de la Función Pública. The redress mechanism is contemplated in Articles 76 to 89 of the Ley del Servicio Profesional de Carrera en la Administración Pública Federal.

**References:**

Ley del Servicio Profesional de Carrera en la Administración Pública Federal, Articles 76 to 89

**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:**

The law establishes that civil servants convicted of corruption can be prohibited from future government employment. This prohibition may be imposed for one to 10 years. It is not a lifetime ban. The relevant articles establishing this are Articles 52 and 53.VI of the Ley Federal de Responsabilidades de los Servidores Públicos.

**References:**

Articles 52 and 53.VI of the Ley Federal de Responsabilidades de los Servidores Públicos, [www.diputados.gob.mx/LeyesBiblio/pdf/115.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/115.pdf)

**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?

22

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

100 | 75 | 50 | 25 | 0

**Comments:**

Public administration is still linked to politics and not to professionalism. This could be illustrated by the recent resignation of Mexico City's secretary of social development, who was fired by Mexico City's president for making declarations against him.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2011, in Mexico City.

Rosalio Martinez, "Exige Ebrard renuncia de Martí Batres," [www.urbepolitica.com/index.php?id=nota&seccion=gobierno\\_df&ide=158](http://www.urbepolitica.com/index.php?id=nota&seccion=gobierno_df&ide=158) (fecha de consulta: jueves 6 de septiembre de 2011).

**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.

100 | 75 | 50 | 25 | 0

**Comments:**

Although most government agencies hire their personnel based on the Professional Civil Service, positions with a major capacity for decision-making are still designated by party loyalties or other political compromises. Most civil servants do not belong to the Professional Civil Service, a government entity that conducts evaluations of efficiency and compromise [conflicts of interest] for certain civil servants.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2011, in Mexico City.

**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:**

Although most government agencies hire their personnel based on the Professional Civil Service, positions with a major capacity for decision making are still designated by party loyalties or other political compromises. Most civil servants do not belong to the Professional Civil Service, a government agency that evaluates efficiency and compromises [conflicts of interest] of some civil servants.

Mexico City has experienced resignations by people who were relevant for the defense of human rights. Most left because of political aspirations or because they belonged to the campaign team of an important candidate. The election period hinders most of the work done by civil society organizations.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2011, in Mexico City.

Laura Gomez, "Piden Renuncia al Director del Lasis; la Entrega Postfechada," [www.jornada.unam.mx/2011/09/13/capital/035n2cap](http://www.jornada.unam.mx/2011/09/13/capital/035n2cap) (fecha de consulta: 14 de septiembre de 2011).

Juan Martín Pérez García, executive director of The Children's Rights Network (REDIM, for its acronym in Spanish), interviewed.

**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.



**Comments:**

For positions within the civil service structure, the responsibilities and attributes of each are outlined in laws and other measures. Nevertheless, a concern of civil servants is that personnel hired outside this structure, such as eligible salaried employees or those who do outsourced work, lack clear responsibilities and access to all benefits that civil servants have.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2011, in Mexico City.

**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

**Comments:**

It is difficult to measure the percentage of salary that bonuses represent. Although citizens can get an idea by submitting a petition to the Federal Institute of Access to Information, civil servants do not publish reports in which they specifically explain how they allocate the budget in order to cover their social benefits.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2011, in Mexico City

**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

**Comments:**

The government generally does not publish a list, but rather the name and position of each person working for a specific agency. However, this information is not available to everyone, so someone wanting it must spend time exploring the transparency portal of each agency. Besides, websites are not updated on a regular basis, and changes are not immediately apparent.

Although not all information is available, government agencies also publish job vacancies through the website "Trabaja en," where citizens can apply for any position if they meet the requirements. Despite the existence of this mechanism, most of the positions are given based on nepotism, cronyism or patronage.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2011, in Mexico City.

**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:**

Most investigations depend on the legislative and executive branches, because Mexican politicians who are on duty cannot be judged unless their "fuero," or immunity, is retired.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2011, in Mexico City.

**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

**Comments:**

At the highest levels, civil servants usually are paid on time. Those at lower levels have to wait months to receive their pay because the budget is insufficient.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2011, in Mexico City

**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:**

In Mexico, no mechanism bans civil servants who commit a felony from occupying another political position. As mentioned previously, most positions, especially those with major capacity for decision-making, are still designated by party loyalties or other political compromises.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2011, in Mexico City

**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?

50

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

Yes | No

**Comments:**

All public servants have an obligation to safeguard legality, honesty, loyalty, fairness and efficiency during their employment, office or commission. If they do not, penalties can apply. Their obligations include providing timely and truthful statements about their financial condition.

**References:**

Ley Federal de Responsabilidades de los Servidores Públicos, Article 47. XVIII.

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

**Comments:**

Three laws establish that civil servants have an obligation to decline to hear matters that may involve a conflict of interest with the functions they perform.

**References:**

Ley del Servicio Profesional de Carrera en la Administración Pública Federal, Article 11.X.

Ley Federal de Responsabilidades de los Servidores Públicos, Title III, Chapter I, Article 47.XIII.

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Article 36, Title II, Chapter I, Article 8. XI.

**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

**Comments:**

The laws state that public servants must refrain from exercising the functions of a job, position or commission after the end of the period for which they were nominated, or if they have ceased to do them for any other reason.

**References:**

Ley Federal de Responsabilidades de los Servidores Públicos, Title II, Chapter I Article 9.

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Articles 8 and 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:**

A law, Federal de Responsabilidades Administrativas de los Servidores Públicos, establishes specific obligations for the public service, including all civil servants. It states that all public servants must perform their jobs, positions or commissions without obtaining or seeking additional benefits.

**References:**

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Title II, Chapter I, 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

**Comments:**

The Secretaría de la Función Pública depends on the executive branch. As a consequence, it might not be considered an independent third party. Reglamento Interior de la Secretaría de la Función Pública, Article 1, sets forth the internal rules for the Secretaría, and Article 26, is related to asset disclosure forms.

**References:**

Reglamento Interior de la Secretaría de la Función Pública, Article 1 and Article 26.

**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:**

In Mexico, no mechanism restricts civil servants from seeking employment in the private sector after they end their public service mandate.

The cooling period is applied or visible only when civil servants have to leave their current positions in order to compete for another position in the public administration.

For example, if the current governor of Mexico City plans to be a candidate for Mexico's presidency, legally he should resign one year before elections.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2011, in Mexico City,

**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

**Comments:**

In Mexico, unions that supposedly defend the rights of workers exist. However, the vast majority of these groups defend their benefits and do not attempt to improve productivity and efficiency.

There is also no regulation of the use of resources intended for public function and those that civil servants use for personal matters. Such is the case of legislators who sometimes use transportation personnel for personal matters, or the existence of a "prestanombres (name-lender)" to acquire property without giving accountability.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2011, in Mexico City.

**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

**Comments:**

In Mexico, it is difficult for civil servants to separate their personal beliefs from public policy making. Corruption and the use of the public services are deeply combined with personal interests.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2011, in Mexico City.

“'Hereda' Gordillo el Panal a su Hija,” <http://anuario.upn.mx/index.php/noticias-educativas/2011/650-reforma/40508-hereda-gordillo-el-panal-a-su-hija.html>

**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

**Comments:**

Civil servants' assets are indeed audited through the declarations of assets, but not all public officials declare all of their property. As mentioned before, legislators sometimes make use of public resources to solve personal matters. Also civil servants use the “prestanombres (name-lenders)” to acquire property without accounting for it.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2011, in Mexico City.

**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:**

This kind of information is considered confidential and may not be requested by citizens because, it can be argued, it might threaten the safety or lives of people in the public service.

**References:**

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, Article 13.

**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 could be available on the Internet, but almost none of them are. Some public servants refuse to make them public.

**References:**

W Radio, Nayeli Cortés, Sept. 28, 2010, "Nava No Acepta Hacer Públicos Datos Patrimoniales," [www.wradio.com.mx/nota.aspx?id=1364231](http://www.wradio.com.mx/nota.aspx?id=1364231)

El Universal, Lilia Saul Rodríguez, June 6, 2011, "Líderes de la ALDF Ocultan Declaración," [www.eluniversal.com.mx/ciudad/106459.html](http://www.eluniversal.com.mx/ciudad/106459.html)

**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:**

Although most asset disclosures are not available to the public for alleged public safety reasons, the possibility of access exists. The access-to-information process may involve the cost of copies and the time to pursue the data. Some asset disclosures might be available if the public servants who submitted them agree to their release. Still, the access-to-information process would be used, meaning the disclosures would not be public for all citizens.

**References:**

W Radio, Nayeli Cortés, Sept. 28, 2010, "Nava No Acepta Hacer Públicos Datos Patrimoniales," [www.wradio.com.mx/nota.aspx?id=1364231](http://www.wradio.com.mx/nota.aspx?id=1364231)

El Universal, Lilia Saul Rodríguez, June 6, 2011, "Líderes de la ALDF Ocultan Declaración," [www.eluniversal.com.mx/ciudad/106459.html](http://www.eluniversal.com.mx/ciudad/106459.html)

**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 NGOs. 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 NGOs 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

**Comments:**

Public servants are required to file declarations of assets. However, the Federal Law of Transparency and Access to Public Information says these statements are confidential. That is, public servants should specify whether or not to make their statements public. It is common for public servants to request confidentiality for security reasons. Because civil servants may choose not to release their disclosures, it is difficult to assess the quality of the information.

**References:**

W Radio, Nayeli Cortés, Sept. 28, 2010, "Nava No Acepta Hacer Públicos Datos Patrimoniales," [www.wradio.com.mx/nota.aspx?id=1364231](http://www.wradio.com.mx/nota.aspx?id=1364231)

El Universal, Lilia Saul Rodríguez, June 6, 2011, "Líderes de la ALDF Ocultan Declaración," [www.eluniversal.com.mx/ciudad/106459.html](http://www.eluniversal.com.mx/ciudad/106459.html)

**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.

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## 4.2. Whistle-blowing Protections

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

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

Yes | **No**

**Comments:**

The law outlining the responsibilities of federal public servants establishes the obligation to inform workers under one's direction to report in writing to the supervisor or the internal comptroller any acts or omissions in the exercise of job functions. Although there is this legal provision, there is no specific norm dealing with the protection of public servants reporting such actions.

**References:**

Ley Federal de Responsabilidades de los Servidores Públicos, Article 47.XX

**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

**Comments:**

The security situation has transcended to undermine the security of protected witnesses. The report from Transparencia Mexicana explains that the most important factors that prevent the detection of irregularities in critical areas include fear of reprisals and of collusion among public officials and between them and individuals.

**References:**

La Crónica de Hoy, Claudia Noemi Perez, April 6, 2010, "Denuncian a Orvañanos y ex Funcionarios de Cuajimalpa por Supuesta Corrupción," [www.cronica.com.mx/nota.php?id\\_nota=498864](http://www.cronica.com.mx/nota.php?id_nota=498864)

Transparencia Mexicana, "Transparencia Mexicana Diagnóstico Institucional del Sistemal Federal de Control (SFC)," [www.transparenciamexicana.org.mx/documentos/diagnostico/dsfc.pdf](http://www.transparenciamexicana.org.mx/documentos/diagnostico/dsfc.pdf)

El Universal, María Aría de la Luz González, Dec. 1, 2009, "Matan a Testigo Protegido de PGR en Starbucks del DF," [www.eluniversal.com.mx/notas/643349.html](http://www.eluniversal.com.mx/notas/643349.html)

**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 no explicit protections for whistle-blowers.

**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

**Comments:**

In general, the violence and insecurity of the past years in Mexico make it complicated for private employees and ordinary citizens to report corruption within public offices and corporations.

**References:**

Transparencia Mexicana, "Transparencia Mexicana Diagnóstico Institucional del Sistemal Federal de Control (SFC)," [www.transparenciamexicana.org.mx/documentos/diagnostico/dsfc.pdf](http://www.transparenciamexicana.org.mx/documentos/diagnostico/dsfc.pdf)

El Universal, Alberto Torres, Aug. 9, 2011, "ONG Temen Repetición del Caso Marisela," [www.eluniversal.com.mx/nacion/187899.html](http://www.eluniversal.com.mx/nacion/187899.html)

Sipse.com, June 7, 2011, "Resaltan Administración Compleja en el Ayuntamiento de Tulum," [www.sipse.com/noticias/106395-resaltan-administracion-compleja-ayuntamiento-tulum.html](http://www.sipse.com/noticias/106395-resaltan-administracion-compleja-ayuntamiento-tulum.html)

Milenio, Feb. 14, 2010, "En Juárez Todos Tienen Miedo," [www.msemanal.com/node/1907](http://www.msemanal.com/node/1907)

**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.

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

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

Yes | No

**Comments:**

The law establishes a special agency called the Secretary of the Public Functions to receive complaints and allegations of breached obligations by public servants. The secretary works to promote a culture of abiding by the rules and paying taxes, of preventing and disciplining corrupt activity and of setting professional standards of efficiency and effectiveness within the government, among other goals.

**References:**

Reglamento Interior de la Secretaría de la Función Pública, Article 39 F. III and IV.

Ley Federal de Responsabilidades de los Servidores Públicos, Article 57.

Secretaria de la Función Pública, [www.funcionpublica.gob.mx/index.php/conoce-la-sfp/mision-y-vision.html](http://www.funcionpublica.gob.mx/index.php/conoce-la-sfp/mision-y-vision.html)

**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.

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

63

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

100 | 75 | 50 | 25 | 0

**Comments:**

Since its creation, the Secretaría de la Función Pública has constituted a professional civil service. However, the staff may not be considered the most qualified to fulfill its duty. Analysts have disputed claims of efficiency and legality in the federal government during the presidencies of Vicente Fox and Felipe Calderón. The Ministry of Public Service, which is responsible for providing transparency and fighting corruption, has been led by friends and political allies of both presidents.

"In this and other ministries we see friends and relatives within charts, not professionals. It even has finally lock the career services of some of them (we have the case symptomatic of Foreign Affairs). Thus the discourse of efficiency is empty talk," says Israel Covarrubias, chief of the journal Metapolítica.

**References:**

El Universal, Gabriel Grinberg, Oct. 23, 2002, "Crearán Secretaría de Función Pública," [www2.eluniversal.com.mx/pls/impreso/noticia.html?id\\_not=13316&tabla=primera](http://www2.eluniversal.com.mx/pls/impreso/noticia.html?id_not=13316&tabla=primera)

El Universal, Ignacio Alvarado Álvarez, Aug. 26, 2009, "Corrompen Oficina Anticorrupción," [www.eluniversal.com.mx/primera/33520.html](http://www.eluniversal.com.mx/primera/33520.html)

**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:**

Juan Pardinas, the director of analysis and public finances for the Mexican Institute for Competitiveness, described the Secretaría de la Función Pública as ineffective. It does receive regular funding.

**References:**

El Universal, José Manuel Arteaga, Aug. 19, 2009, "IMCO Pide Desaparecer Función Pública y Reforma Agraria," [www.eluniversal.com.mx/notas/620500.html](http://www.eluniversal.com.mx/notas/620500.html)

Sergio Javier Jiménez, "Desaparece Calderón Sector, SRA y SFP," Sept. 8, 2009, [www.eluniversal.com.mx/notas/625109.html](http://www.eluniversal.com.mx/notas/625109.html)

**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:**

The Secretaría de la Función Pública (SFP) has a telephone line for complaints. Media reports suggest that the SFP might not respond to the complaints because of political pressure from other government agencies. Workers dismissed from the Ministry of the Interior (Secretaría de Gobernación — SG) reported the existence of harassment, corruption and abuse of power in this unit that was headed by Jose Francisco Blake Mora, who was killed in a helicopter crash in November 2011.

**References:**

Secretaría de la Función Pública's telephone line for complaints: [www.funcionpublica.gob.mx/index.php/contacto/denuncia.html](http://www.funcionpublica.gob.mx/index.php/contacto/denuncia.html)

La Jornada, Fabiola Martínez, Feb. 28, 2011, "Empleados Cesados Denuncian Abuso de Poder, Hostigamiento y cCorrupción en SG," [www.jornada.unam.mx/2011/02/28/index.php?section=politica&article=021n1pol](http://www.jornada.unam.mx/2011/02/28/index.php?section=politica&article=021n1pol)

**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

**Comments:**

The Secretariat of Public Function undertakes investigations against officials for corruption and inexplicable enrichment.

**References:**

El Universal, José Gerardo Mejía, June 1, 2010, "SFP Investiga Desvío de Recursos de Funcionarios," [www.eluniversal.com.mx/notas/684518.html](http://www.eluniversal.com.mx/notas/684518.html)

CNN Mexico, Nov. 10, 2010, "Función Pública Investiga la Presunta Corrupción en el IMSS," [mexico.cnn.com/nacional/2010/11/10/funcion-publica-investiga-la-presunta-corrupcion-en-el-imss](http://mexico.cnn.com/nacional/2010/11/10/funcion-publica-investiga-la-presunta-corrupcion-en-el-imss)

Contralinea, Nancy Flores, April 2011, "Función Pública Investiga a la Directora de PMI por Supuesta Malversación," [contralinea.info/archivo-revista/index.php/2011/04/03/funcion-publica-investiga-a-la-directora-de-pmi-por-supuesta-malversacion/](http://contralinea.info/archivo-revista/index.php/2011/04/03/funcion-publica-investiga-a-la-directora-de-pmi-por-supuesta-malversacion/)

**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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58  
4.3. Government Procurement: Transparency, Fairness, and  
Conflicts of Interest Safeguards

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51. Is the public procurement process effective?

78

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

Yes | No

**Comments:**

Two laws spell out that civil servants, including procurement officials, must not be involved in matters that may involve a conflict of interest with the functions they perform.

**References:**

Ley Federal de Responsabilidades de los Servidores Públicos, Title III, Chapter I, Article 47.XIII.

Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, Title II, Chapter I, Article 8.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 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

**Comments:**

The federal government rules the civil service process, and has a specific law. It also is in charge of the programs and policies for training and promotion.

**References:**

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

**Comments:**

In Mexico, it is difficult for civil servants to separate their personal beliefs from public policy making. The perception of the expert is that regulations against conflict-of-interest issues are rarely enforced. There are no documented cases of recusal or punishment for this.

**References:**

Gerardo Sauri Suárez, coordinator of rapporteurs for Mexico City's Human Rights Commission, interviewed Sept. 7, 2001, in Mexico City.

**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

**Comments:**

The Secretariat de Contraloría y Desarrollo Administrativo, or the Secretariat of Comptrollership and Administrative Development, is to monitor the evolution of the financial positions of public servants in the departments and agencies of the Federal Public Administration.

**References:**

Ley Federal de Responsabilidades de los Servidores Públicos, Article 79

**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

**Comments:**

Articles 28 to 39 of the Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público establish the process for competitive bidding.

**References:**

Federal Constitution, Article 134

Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Title II, Chapter 2, Articles 28 to 39

**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

**Comments:**

The Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público aims to regulate the application of Article 134 of the Constitution in acquisitions, leases of personal property and services of any nature that relate to the public administration. It also governs the exceptions to public bids. Sole sourcing is allowed only when there are no other options.

**References:**

Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Articles 40 to 42.

**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

**Comments:**

The law aims to regulate the application of Article 134 of the Constitution in acquisitions, leases of personal property and services of any nature related to the public administration. It also governs the exceptions to public bids and the appeal process related to bids.

**References:**

Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Articles 65 to 70 and 71 to 76.

**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**

**Comments:**

The process contemplated in the Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público does not consider a judicial alternative.

**References:**

Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público.

**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

**Comments:**

The Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público aims to regulate the application of Article 134 of the Constitution in acquisitions, leases of personal property and services of any nature that concern the public administration. It also governs the exceptions to public bids .

**References:**

Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Title V, Articles 59 to 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:**

Individuals guilty of procurement violations may be disqualified from performing certain actions or activities as a penalty. The Secretaría de la Función Pública has a list of the penalties and sanctions applied for this reason. For example, the Secretaría de la Función Pública has penalized public servants from Pemex.

**References:**

Boletín de la Secretaría de la Función Pública,  
[www.upn.mx/index.php?option=com\\_content&view=article&id=843&Itemid=588](http://www.upn.mx/index.php?option=com_content&view=article&id=843&Itemid=588)

Terra, October 2011, "Inhabilita la Función Pública a Cuatro Funcionarios de Pemex,"  
[www.terra.com.mx/noticias/articulo/1223787/Inhabilita+la+Funcion+Publica+a+cuatro+funcionarios+de+Pemex.htm](http://www.terra.com.mx/noticias/articulo/1223787/Inhabilita+la+Funcion+Publica+a+cuatro+funcionarios+de+Pemex.htm)

**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?

92

52a. In law, citizens can access public procurement regulations.

Yes | No

### Comments:

Article 7.XIII of the Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental is related to all contracts concluded in terms of applicable law. Citizens may be able to access the law applicable to procurement processes.

### References:

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, Title I, Chapter 1, Article 7.XIII, XIV

**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

### Comments:

The law establishes transparency obligations:

- a) Public works, property acquired, leased and contracted services, in the case studies or research must state the specific topic;
- b) The amount;
- c) The name of the supplier, contractor or person or entity with whom the contract has been concluded; and
- d) The terms of contract enforcement.

### References:

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, Title I, Chapter 1, Article 7.XIII, XIV.

**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

### Comments:

Records are available online. The executive branch makes a list public through the Internet.

**References:**

Presidencia de la República,  
<http://presidencia.gob.mx/licitaciones/>

Licitaciones,  
[www.licitacion-es.com.mx/](http://www.licitacion-es.com.mx/)  
[www.compranet.gob.mx](http://www.compranet.gob.mx)

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

**Comments:**

Most of the information is available online.

**References:**

Presidencia de la República,  
<http://presidencia.gob.mx/licitaciones/>

Licitaciones,  
[www.licitacion-es.com.mx/](http://www.licitacion-es.com.mx/)  
[www.compranet.gob.mx](http://www.compranet.gob.mx)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

**75:**

**50:** Records impose a financial burden on citizens, journalists or NGOs. 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 NGOs trying to access this information.

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

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

**Comments:**

The bids and processes are made public and can be consulted online.

**References:**

Presidencia de la República,  
<http://presidencia.gob.mx/licitaciones/>

**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

**Comments:**

The government has a website, Compranet, that has the specific purpose of making the records of public procurement results publicly available.

**References:**

Presidencia de la República,  
<http://presidencia.gob.mx/licitaciones/>

Licitaciones,  
[www.licitacion-es.com.mx/](http://www.licitacion-es.com.mx/)  
[www.compranet.gob.mx](http://www.compranet.gob.mx)

**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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#### 4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

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53. Is the privatization process effective?

50

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

Yes | No

**References:**

The legal framework does not consider this possibility.

**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

**Comments:**

The two laws cited as references apply to conflicts of interest issues generally. The laws govern public administration with possible conflicts and public servants' responsibilities. They include formal regulations defining and regulating conflicts of interest between public duty and private interests for privatization officials.

**References:**

Ley Federal de Responsabilidades de los Servidores Públicos, Title III, Chapter I, Article 47.XIII.

Ley Federal de Responsabilidades Administrativas de Los Servidores Públicos, Title II, Chapter I, Article 8.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:**

It is hard to find information on this subject because the privatization process usually is kept confidential. Recently there was a case concerning conflict of interest related to Pemex, the state oil company. This case was investigated because of its gravity: The chairman of the Senate's Energy Committee, Jorge Nordhausen Gonzalez, was accused of influence peddling, death threats, fraud, irregularities and breaches of contract involving his business, SICSA, to the detriment of Pemex. According to information obtained from the Federal Institute of Access to Information, Pemex Exploration and Production awarded 199 contracts for work such as installing alarms, intercom equipment on oil rigs and electrical installations from 1987 to June 2005. From 1987 to 1999, SICSA was awarded 37 contracts (fewer than 20 percent). But from 2001 to 2005, when Nordhausen took the Senate office and later became president of the Energy Committee, Pemex was awarded 162 contracts, according to the magazine Contralínea. This was an average annual increase of more than 1,300 percent. These kinds of cases tend to stay out of the public light and are rarely investigated.

**References:**

María Cristina Capelo, researcher for Centro de Investigación para el Desarrollo, A. C., Mexico, interviewed August 2011 in Mexico City.

Contralínea, "Tráfico de Influencias del Senador Nordhausen," <http://contralinea.com.mx/archivo/2005/julio/htm/senador/trafico.htm>

**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

### Comments:

Transparency obligations for contracts include these details:

- Public works, property acquired, leased and contracted services, in the case studies or research must state the specific topic;
- The amount;
- The name of the supplier, contractor or person or entity with whom the contract was concluded; and
- The terms of contract enforcement.

The government also has a specific link to find out more about bids. It is available at the Servicio de Administración y Enajenación de Bienes, [www.sae.gob.mx/Comercializacion/ProcesosdeVenta/Paginas/ProcesosdeVenta.aspx](http://www.sae.gob.mx/Comercializacion/ProcesosdeVenta/Paginas/ProcesosdeVenta.aspx)

### References:

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental," Title I, Chapter I, Article 7, XIII and XIV

Servicio de Administración y Enajenación de Bienes,  
[www.sae.gob.mx/Comercializacion/ProcesosdeVenta/Paginas/ProcesosdeVenta.aspx](http://www.sae.gob.mx/Comercializacion/ProcesosdeVenta/Paginas/ProcesosdeVenta.aspx)

**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

### Comments:

Some formal processes are used to let the the public know about privatization. Such processes normally include publication in the Official Gazette for the purchase and sale of shares, as well as bankruptcy, winding up and liquidation processes.

Although there are formal mechanisms for informing the public about them, privatizations mostly are advertised by the media. Privatization in Mexico tends to be a sensitive issue because of political agendas. Thus, privatization processes, even the execution of new laws intended to facilitate privatization, get a lot of media attention.

### References:

La Jornada,  
<http://www.jornada.unam.mx/2008/09/30/index.php?section=economia&article=025n2eco>

Juan Carlos Burgos, consultant, interviewed February 2012, in Mexico City.

**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

**Comments:**

The agreement cited as a reference creates a permanent Interdepartmental Commission on Public Expenditure, Finance and Privatization, which aims to focus on federal spending, including investment and financing, as well as coordination and monitoring of divestiture of parastatals (quasi-governmental organizations, corporations, businesses or agencies) or economic units for productive purposes. This commission announces the privatization operations.

**References:**

Acuerdo por el que se Crea con Carácter Permanente la Comisión Intersecretarial de Gasto Público, Financiamiento y Desincorporación,"  
[http://dof.gob.mx/nota\\_detalle.php?codigo=5076631&fecha=31/12/2008](http://dof.gob.mx/nota_detalle.php?codigo=5076631&fecha=31/12/2008)

**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:**

Legislation on privatization is public and readily available. But if any citizen wanted to get through IFAI to actually see the privatization agreement papers, some documents would be incredibly difficult to obtain.

**References:**

La Jornada,  
[www.jornada.unam.mx/2008/09/30/index.php?section=economia&article=025n2eco](http://www.jornada.unam.mx/2008/09/30/index.php?section=economia&article=025n2eco)

Juan Carlos Burgos, consultant, interviewed February 2012 in Mexico City.

**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.

**Comments:**

Legislation on privatization is public. However, if any citizen wanted to get through IFAI to actually see the privatization papers, some documents would be incredibly difficult to obtain.

**References:**

La Jornada,  
[www.jornada.unam.mx/2008/09/30/index.php?section=economia&article=025n2eco](http://www.jornada.unam.mx/2008/09/30/index.php?section=economia&article=025n2eco)

Juan Carlos Burgos, consultant, interviewed February 2012 in Mexico City.

**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 NGOs. 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 NGOs trying to access this information.

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## Category 5. Government Oversight and Controls

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### 5.1. National Ombudsman

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

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes | No

**Comments:**

The Constitution provides that the Congress and the state legislatures, within their respective jurisdictions, will establish agencies to protect human rights as recognized by the Mexican legal system. They are to receive all complaints about administrative acts or omissions committed against human rights by any authority or public servant, with the exception of the Federal Judicial Power.

**References:**

Federal Constitution, Title III, Chapter 4, Article 102.B.

**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.

## 56. Is the national ombudsman effective?

73

56a. In law, the ombudsman is protected from political interference.

Yes | No

### Comments:

Federal constitutional Article 102.B establishes that the national ombudsman, through the National Commission of Human Rights, will have managerial and budgetary autonomy, legal existence and assets.

### References:

Federal Constitution, Title III, Chapter 4, Article 102.B.

**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 reports suggest that the institutionalization of autonomy and independence for the national ombudsman remains weak. There is still the question of whether ombudsmen are chosen through political agreements among various "actors," rather than for their abilities and commitment to the protection and promotion of human rights.

### References:

"Los Organismos Públicos de Derechos Humanos en México. Nuevas Instituciones, Viejas Prácticas," Cecile Lachenal, Juan Carlos Martínez and Miguel Moguel, 2009, Fundar, Centro de Análisis e Investigación, A.C.

"CNDH 2003, Análisis de Gestión, Autonomía y Transparencia," Programa Atalaya Mexico, March 2004.

**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.

**Comments:**

The president of the National Commission of Human Rights is also president of a consulting council to the commission and serves a term of five years. The president may be reelected only once and can be removed from office only under terms of the Constitution.

**References:**

"Los Organismos Públicos de Derechos Humanos en México. Nuevas Instituciones, Viejas Prácticas," Cecile Lachenal, Juan Carlos Martínez and Miguel Moguel, 2009, Fundar, Centro de Análisis e Investigación, A.C.

"CNDH 2003, Análisis de Gestión, Autonomía y Transparencia," Programa Atalaya Mexico, March 2004.

**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.

**Comments:**

The study and media reports show that the full staff of the national ombudsman office does not translate into better service or improved human rights conditions in the country. The largest expenditure component of the National Commission of Human Rights is for the people who work there, i.e., wages and other staff benefits. The ombudsman's office hires, pays well and seems to be an end in itself, since no improvements were found from the increase in personnel.

**References:**

Nexos en Línea,  
<http://redaccion.nexos.com.mx/?p=2220>

La Razón,  
[www.razon.mx/spip.php?article54090](http://www.razon.mx/spip.php?article54090)

"Nuestros Caros Defensores de los Derechos Humanos: el Caso de la Comisión Nacional de Derechos Humanos," Carlos Elizondo Mayer-Serra, Ana Laura Magaloni Kerpel, Serie El Uso y Abuso de los Recursos Públicos, Cuaderno de debate No. 3, Mexico, October 2010.

**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).

**Comments:**

The studies suggest that the Senate has the responsibility to elect the members of the Human Rights Commission's advisory board. The law requires that the Senate conduct a consultation among civil society groups before making its decision. However, the Human Rights Commission has not developed clear, transparent, inclusive and plural standards for this election.

**References:**

Nexos en Línea, "Los Recursos Públicos de la CNDH, un Resumen," <http://redaccion.nexos.com.mx/?p=2220>

"Los Organismos Públicos de Derechos Humanos en México. Nuevas Instituciones, Viejas Prácticas," Cecile Lachenal, Juan Carlos Martínez and Miguel Moguel, 2009, Fundar, Centro de Análisis e Investigación, A.C.

La Razón, Nov. 11, 2010, "La CNDH Más Cara del Mundo Quiere 24% Más de Gasto," [www.razon.mx/spip.php?article54090](http://www.razon.mx/spip.php?article54090)

"Nuestros Caros Defensores de los Derechos Humanos: el Caso de la Comisión Nacional de Derechos Humanos," Carlos Elizondo Mayer-Serra, Ana Laura Magaloni Kerpel, Serie El Uso y Abuso de los Recursos Públicos, Cuaderno de debate No. 3, Mexico, October 2010.

**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.

**Comments:**

The studies by the Center for Economic Research and Teaching make clear that the national ombudsman's office is very expensive.

**References:**

Nexos en Línea, <http://redaccion.nexos.com.mx/?p=2220>

La Razón, [www.razon.mx/spip.php?article54090](http://www.razon.mx/spip.php?article54090)

"Los Organismos Públicos de Derechos Humanos en México. Nuevas Instituciones, Viejas Prácticas," Cecile Lachenal, Juan Carlos Martínez and Miguel Moguel, 2009, Fundar, Centro de Análisis e Investigación, A.C.

"Nuestros Caros Defensores de los Derechos Humanos: el Caso de la Comisión Nacional de Derechos Humanos," Carlos Elizondo Mayer-Serra, Ana Laura Magaloni Kerpel, Serie El Uso y Abuso de los Recursos Públicos, Cuaderno de debate No. 3, Mexico, October 2010

**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

**Comments:**

In fact, the ombudsman office presents reports. However, their quality and transparency have to be evaluated according to the advances in human rights and the promotion of such rights. The reports are available at: [www.cndh.org.mx/node/15](http://www.cndh.org.mx/node/15)

**References:**

Ricardo Bonilla Esparza, El Siglo, RInde Informe CEDH en el Congreso Local, March 27, 2007, [www.elsiglodedurango.com.mx/noticia/124875.rinde-informe-cedh-en-el-congreso-local.html](http://www.elsiglodedurango.com.mx/noticia/124875.rinde-informe-cedh-en-el-congreso-local.html)

National Commission of Human Rights Mexico, Recommendations and Reports, [www.cndh.org.mx/node/15](http://www.cndh.org.mx/node/15)

**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

**Comments:**

The National Human Rights Commission will start or cooperate in investigations, but it often relies on external pressure to set priorities or has limited effectiveness when investigating. The general division of labor is that the national ombudsman initiates investigations, but the issues are brought to the autonomous agency's attention through external pressures from civil society.

**References:**

La Silla Rota, Feb. 24, 2011, "CNDH Inicia Investigación por Niños Baleados en Juárez," [http://lasillarota.com.mx/index.php?option=com\\_k2&view=item&id=5261:cndh-inicia-investigaci%C3%B3n-por-ni%C3%B1os-baleados-en-ju%C3%A1rez](http://lasillarota.com.mx/index.php?option=com_k2&view=item&id=5261:cndh-inicia-investigaci%C3%B3n-por-ni%C3%B1os-baleados-en-ju%C3%A1rez)

Sin Embargo, Aug. 24, 2011, "CNDH Inicia Investigación por Desaparición de Periodista en Sinaloa," [www.sinembargo.mx/24-08-2011/30308](http://www.sinembargo.mx/24-08-2011/30308)

"CNDH 2003, Análisis de Gestión, Autonomía y Transparencia," Programa Atalaya, Mexico, March 2004.

**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 because it lacks the capacity to do so. The ombudsman can only give recommendations. But the ombudsman's office can coordinate with other agencies for this to happen.

**References:**

La Razón, Nov. 11, 2010, "La CNDH Más Cara del Mundo Quiere 24% Más de Gasto," [www.razon.mx/spip.php?article54090](http://www.razon.mx/spip.php?article54090)

"Los Organismos Públicos de Derechos Humanos en México. Nuevas Instituciones, Viejas Prácticas," Cecile Lachenal, Juan Carlos Martínez and Miguel Moguel, 2009, Fundar, Centro de Análisis e Investigación, A.C.

"CNDH 2003, Análisis de Gestión, Autonomía y Transparencia," Programa Atalaya, Mexico, March 2004.

El Universal, CNDH Emite Recomendacion General por Allanamientos, August 12, 2011, [www.eluniversal.com.mx/notas/785601.html](http://www.eluniversal.com.mx/notas/785601.html)

**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 necessarily lead to policy changes. The recommendations of the Comisión Nacional de los Derechos Humanos have been ignored several times.

The recent constitutional reforms related to human rights tend to enforce the capacity of the commission to require authorities to justify when they refuse to accept its recommendations.

With 361 votes in favor, none against and no abstentions, the House of Representatives passed an amendment that also provides greater investigative powers for the commission regarding gross violations of individual rights.

**References:**

Azteca Noticias, Jan. 17, 2011, "Exigen Garantizar Seguridad para ... Más Notas Liberan a Esposa del Párroco de ... Ignora Marina Recomendaciones de la CNDH."

Animal Político, Dec. 15, 2010, "Autoridades Deberán Explicar por qué Ignoran a la CNDH," [www.animalpolitico.com/2010/12/autoridades-deberan-explicar-por-que-ignoran-a-la-cndh/](http://www.animalpolitico.com/2010/12/autoridades-deberan-explicar-por-que-ignoran-a-la-cndh/)

"Los Organismos Públicos de Derechos Humanos en México. Nuevas Instituciones, Viejas Prácticas," Cecile Lachenal, Juan Carlos Martínez and Miguel Moguel, 2009, Fundar, Centro de Análisis e Investigación, A.C.

"CNDH 2003, Análisis de Gestión, Autonomía y Transparencia," Programa Atalaya, Mexico, March 2004

**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

**Comments:**

The information on how to complain is available: <http://www.cndh.org.mx/node/79> The process might be long, depending on the investigations and the willingness of other entities to cooperate. The agency acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**References:**

"Los Organismos Públicos de Derechos Humanos en México. Nuevas Instituciones, Viejas Prácticas," Cecile Lachenal, Juan Carlos Martínez and Miguel Moguel, 2009, Fundar, Centro de Análisis e Investigación, A.C.

"CNDH 2003, Análisis de Gestión, Autonomía y Transparencia," Programa Atalaya, Mexico, March 2004.

Comisión Nacional de los Derechos Humanos de México, [www.cndh.org.mx/node/79](http://www.cndh.org.mx/node/79)

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?

83

57a. In law, citizens can access reports of the ombudsman(s).

Yes | No

**Comments:**

The Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental (Article 3) requires that the reports produced by law be available to citizens ( Article 7 .XV).

Article 53 of the Ley de la Comisión Nacional de los Derechos Humanos establishes the information and reports the national ombudsman must present.

**References:**

Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, Articles 3 and 7.XV.

Ley de la Comisión Nacional de los Derechos Humanos, Article 53.

**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

**Comments:**

The reports are available at Recomendaciones e Informes: [www.cndh.org.mx/node/15](http://www.cndh.org.mx/node/15). Citizens may ask for more information, according to the transparency obligations at: <http://www.cndh.org.mx/node/542>.

**References:**

Centro Nacional de Derechos Humanos, [www.cndh.org.mx/node/15](http://www.cndh.org.mx/node/15) and request more information at: <http://www.cndh.org.mx/node/542>.

"CNDH 2003, Análisis de Gestión, Autonomía y Transparencia," Programa Atalaya, Mexico, March 2004.

**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

**Comments:**

Access to certain information is not available through the Human Rights Commission Web page. Those seeking the information may need to visit an office. Photocopies may also be needed.

**References:**

The reports are available at:  
[www.cndh.org.mx/node/15](http://www.cndh.org.mx/node/15)

Citizens may ask for more information, according to the transparency obligations at: <http://www.cndh.org.mx/node/542>

"CNDH 2003, Análisis de Gestión, Autonomía y Transparencia," Programa Atalaya, Mexico, March 2004.

**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 NGOs. 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 NGOs trying to access this information.

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## 5.2. Supreme Audit Institution

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

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

**Comments:**

The supreme audit institution of the Federation of the Chamber of Deputies has technical and managerial autonomy in the exercise of its powers and in decisions on its internal organization, operation and resolutions, in the manner provided by law. The control function is to be exercised in accordance with the principles of legality, finality, fairness and reliability. The legal framework mentioned also sets the specific responsibilities of the institution.

**References:**

Federal Constitution, Article 79.

Ley de Fiscalización y Rendición de Cuentas de la Federación, Article 2, establishes that the Auditoria Superior de la Federación is the supreme audit institution referred to in Article 74, Sections II and VI, and Article 79 of the Constitution.

**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.

---

59. Is the supreme audit institution effective?

81

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

**Comments:**

Federal Constitution Article 79 establishes that the national supreme audit institution has technical and management autonomy in the exercise of its powers and in decisions about its internal organization, operation and resolutions, according to the law. The Ley de Fiscalización y Rendición de Cuentas de la Federación establishes the process to remove the federal auditor.

**References:**

Federal Constitution, Article 79.

Ley de Fiscalización y Rendición de Cuentas de la Federación.

**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.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

The president cannot remove the auditor general, and the Auditoría Superior de la Federación depends on the camera (legislative power). Despite this, the autonomy of the ASF is conditioned by a monitoring committee of the Chamber of Deputies, composed precisely on the basis of party quotas, with an evaluation unit that oversees the operation and performance of the ASF. The Monitoring Committee in recent years developed a left-handed competition with the ASF, mainly by creating obstacles for jealousy and the limelight. In addition to the interests of the parties, the closeness of some to the executive branch can generate political arrangements and flexibility for monitoring faults. This is a demanding role, no doubt, guaranteed independence. The ASF does not decide the budget, and cannot audit more than 6 percent of state action.

**References:**

Rocio Moreno, consultant, interviewed Oct. 10, 10 2011, in Mexico City

"Perspectivas de la Auditoría Superior de la Federación como Órgano Constitucional Autónomo," Instituto de Investigaciones Jurídicas, UNAM, Manuel Bartlett Díaz, 2009, <http://biblio.juridicas.unam.mx/libros/6/2739/8.pdf>

**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

**Comments:**

As the Auditoría Superior de la Federación has evolved, the quality of the staff has improved.

**References:**

Rocio Moreno, consultant, interviewed Oct. 10, 2011, in Mexico City.

"Informe Sobre la Evolución y el Desempeño de la Auditoría Superior de la Federación," Mauricio Merino con la colaboración de Michiko Aramburo, October 2009, CIDE.

"Perspectivas de la Auditoría Superior de la Federación como Órgano Constitucional Autónomo," Instituto de Investigaciones Jurídicas, UNAM, Manuel Bartlett Díaz, 2009, <http://biblio.juridicas.unam.mx/libros/6/2739/8.pdf>

**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

**Comments:**

The ASF has proved to be an independent and autonomous organ of the executive, which allows it to issue in a certain manner objective recommendations and also make appointments based on professional qualifications.

**References:**

"Informe Sobre la Evolución y el Desempeño de la Auditoría Superior de la Federación," Mauricio Merino con la colaboración de Michiko Aramburo, October 2009, CIDE.

Rocio Moreno, consultant, interviewed Oct. 10, 2011, in Mexico City.

"Perspectivas de la Auditoría Superior de la Federación Como Órgano Constitucional Autónomo," Instituto de Investigaciones Jurídicas, UNAM, Manuel Bartlett Díaz, 2009, <http://biblio.juridicas.unam.mx/libros/6/2739/8.pdf>

**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

**Comments:**

Each year a budget is assigned to the ASF, which can be found in the Expenditure Budget of the Federation.

**References:**

"Informe Sobre la Evolución y el Desempeño de la Auditoría Superior de la Federación," Mauricio Merino con la colaboración de Michiko Aramburo, October 2009, Centro de Investigación y Docencia Económicas (CIDE).

Rocio Moreno, consultant, interviewed Oct. 10, 2011, in Mexico City.

**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:**

Once the fiscal year ends, 14 months later the ASF issues and publishes its report. Available at: [www.asf.gob.mx/Default/Index](http://www.asf.gob.mx/Default/Index)

**References:**

"Informe Sobre la Evolución y el Desempeño de la Auditoría Superior de la Federación," Mauricio Merino con la colaboración de Michiko Aramburo, October 2009, Centro de Investigación y Docencia Económicas (CIDE).

Rocio Moreno, consultant, interviewed Oct. 10, 2011, in Mexico City.

**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 since most of the ASF's observations are related to previous years; sometimes the policy responsibilities are different. There is weak enforcement. The cited report shows a gap between the increasing efforts by the ASF to do more in-depth audits and the specific effects in the design of public spending and administrative practices.

**References:**

"Informe Sobre la Evolución y el Desempeño de la Auditoría Superior de la Federación," Mauricio Merino con la colaboración de Michiko Aramburo, October 2009, Centro de Investigación y Docencia Económicas.

Rocio Moreno, consultant, interviewed Oct. 10, 2011, in Mexico City.

**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

**Comments:**

Yes, the audit agency is able to initiate its own investigations. It also receives input from the Chamber of Deputies and from civil

society review. The study explains that the ASF may act in different kinds of investigations. They include investigations of complaints related to corruption, damage to society or economic gravity, and the exercise of federal public resources.

**References:**

"Informe Sobre la Evolución y el Desempeño de la Auditoría Superior de la Federación," Mauricio Merino con la colaboración de Michiko Aramburo, October 2009, Centro de Investigación y Docencia Económicas.

Rocio Moreno, consultant, interviewed Oct. 10, 2011, in Mexico City.

**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?

83

60a. In law, citizens can access reports of the audit agency.

Yes | No

**Comments:**

A specific federal access-to-information law governs reserved and confidential information. The ASF's annual and special reports are not that kind of information. In fact, they can be consulted online at: [www.asf.gob.mx/Section/46\\_Informes\\_y\\_publicaciones](http://www.asf.gob.mx/Section/46_Informes_y_publicaciones)

**References:**

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

**Yes:** A YES score is earned if all supreme auditor reports are available to the general public.

**No:** A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

No, the reports are available 14 months after the end of the fiscal year. This might be considered a very long time and prevents the ASF's recommendations from being taken into account.

If the reports have been published, citizens can gain access to them in a reasonable amount of time because they are public. Citizens might seek them through the information-access legal procedure under certain circumstances.

**References:**

Rocio Moreno, consultant, interviewed Oct. 10, 2011, in Mexico City.

**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

**Comments:**

The reports are public and are available through the Internet. They can be consulted on the Web page: [www.asf.gob.mx/Default/Index](http://www.asf.gob.mx/Default/Index)

**References:**

Rocio Moreno, consultant, interviewed Oct. 10, 2011, in Mexico City

**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 NGOs. 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 NGOs trying to access this information.

88

### 5.3. Taxes and Customs: Fairness and Capacity

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

100

61a. In law, is there a national tax collection agency?

Yes | No

**Comments:**

The Servicio de Administración Tributaria is the national agency in charge of tax collection. It has a specific law, the Ley del Servicio de Administración Tributaria, that establishes that the Tax Administration is responsible for enforcing tax legislation and customs so that individuals and corporations contribute proportionally and equally to public spending. It also has the mandate to audit taxpayers to comply with the tax and customs arrangements.

**References:**

Ley del Servicio de Administración Tributaria, Article 2.

**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.

---

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

The users' perception of the quality of the SAT has improved, as has its staff. Surveys suggest that in comparing the Tax Administration with other agencies that provide services to the public, taxpayers consider the SAT as an institution that gives better service.

**References:**

El Universal, Orquidea Soto, March 16, 2006, "Perciben Usuarios Mejoras en el SAT," [www2.eluniversal.com.mx/pls/impreso/noticia.html?id\\_nota=44825&tabla=finanzas](http://www2.eluniversal.com.mx/pls/impreso/noticia.html?id_nota=44825&tabla=finanzas)

Servición de Administración Tributaria (SAT), Comunicado de prensa núm. 41, Mexico, D. F., Dec. 18, 2007.

María Cristina Capelo, coordinadora de la Red Mexicana de Competencia y Regulación de CIDAC, interviewed August 2011 in Mexico City.

**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

**Comments:**

In fact, each year the tax agency receives regular funding, which can be reviewed at: [www.sat.gob.mx/sitio\\_internet/transparencia/51\\_3536.html](http://www.sat.gob.mx/sitio_internet/transparencia/51_3536.html)

**References:**

María Cristina Capelo, coordinadora de la Red Mexicana de Competencia y Regulación de CIDAC, interviewed August 2011 in Mexico City.

SAT, Presupuesto Asignado [www.sat.gob.mx/sitio\\_internet/transparencia/51\\_3536.html](http://www.sat.gob.mx/sitio_internet/transparencia/51_3536.html)

**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.

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

25

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

**Comments:**

Tax law is applied unequally. Some groups of citizens are more, or less, likely to evade tax laws than others. The study from CIDE explains that Mexico has a serious problem of tax administration. For every 2 pesos it should enter into the public purse, the Tax Administration Service collects a little more than a peso. That means that almost 50 percent of Mexico's collection potential is lost in avoidance, evasion, fraud and other types of tax noncompliance.

**References:**

"La Capacidad de Recaudar Impuestos del Gobierno Mexicano: ¿El Tema Previo a la Reforma Fiscal?" Marcelo Bergman, CIDE.

María Cristina Capelo, coordinadora de la Red Mexicana de Competencia y Regulación de CIDAC, interviewed August 2011 in Mexico City.

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.

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

100

64a. In law, is there a national customs and excise agency?

Yes | No

**Comments:**

This law governs the tax collecting actions and norms of the Servicio de Administración Tributaria, or SAT, and also establishes its specific responsibilities.

**References:**

Ley del Servicio de Administración Tributaria, Title I, Chapter 2, Article 7.II.

**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.

## 65. Is the customs and excise agency effective?

63

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, the Servicio de Administración Tributaria, has a reduced staff. This is a problem specific to the customs and excise agency and is caused by the lack of an efficient customs legal framework. The agency has a staff, but it is unable to fulfill the agency's duty.

### References:

CNNExpansion, Oct. 17, 2011, "Aduanas Interiores Desaprovechadas," [www.cnnexpansion.com/manufactura/2011/10/17/aduanas-solo-se-aprovechan-70](http://www.cnnexpansion.com/manufactura/2011/10/17/aduanas-solo-se-aprovechan-70)

María Cristina Capelo, coordinadora de la Red Mexicana de Competencia y Regulación de CIDAC, interviewed August 2011 in Mexico City.

**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

### Comments:

As a public agency, the SAT receives regular funding. But some changes are needed to improve its functioning related to its budget. To ensure institutional autonomy, the budget for the SAT must be approved by the legislature.

### References:

María Cristina Capelo, coordinadora de la Red Mexicana de Competencia y Regulación de CIDAC, interviewed August 2011 in Mexico City.

"La Capacidad de Recaudar Impuestos del Gobierno Mexicano: ¿El Tema Previo a la Reforma Fiscal?" Marcelo Bergman, Centro de Investigación y Docencia Económicas, [www.presupuestoygastopublico.org/documentos/presupuesto/Recaudacion\\_Impuestos.pdf](http://www.presupuestoygastopublico.org/documentos/presupuesto/Recaudacion_Impuestos.pdf)

**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.

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

0

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

### Comments:

Corruption and other circumstances have a direct impact on the application of customs and excise services. The Servicio de Administración Tributaria is a weak organization that has shown little capacity to combat tax evasion and fraud. Part of its hardship can be tied to the institutional legacy of Mexican politics. But it can also be linked to the lack of a clear and sustained political point to the detection and punishment of fraud.

Mexico has a serious problem with tax administration. For every 2 pesos it should enter into the public purse, the Tax Administration Service collects only a little more than 1 peso. That is, Mexico loses almost 50 percent of its collection potential to escape, evasion, fraud and other types of tax noncompliance.

### References:

"La Capacidad de Recaudar Impuestos del Gobierno Mexicano: ¿El Tema Previo a la Reforma Fiscal?" Marcelo Bergman, Centro de Investigación y Docencia Económicas, [www.presupuestoygastopublico.org/documentos/presupuesto/Recaudacion\\_Impuestos.pdf](http://www.presupuestoygastopublico.org/documentos/presupuesto/Recaudacion_Impuestos.pdf)

El Informador, "La Corrupción en Aduanas Afecta Economía y Seguridad Nacional," September 2010, <http://www.informador.com.mx/mexico/2010/185807/6/la-corrupcion-en-aduanas-afecta-economia-y-seguridad-nacional.htm>

**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.

## 5.4. Oversight of State-Owned Enterprises

### 67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

### Comments:

The legal framework mentions rules specifically for state-owned companies by legal norms or procedures, though a specific

agency does not exist.

**References:**

Ley Federal de las Entidades Paraestatales.

Ley Orgánica de la Administración Pública Federal.

Ley de Fiscalización y Rendición de Cuentas de la Federación.

**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.

---

**68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?**

55

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | No

**Comments:**

The legal framework, Articles 2 and 3 of the Ley de Fiscalización y Rendición de Cuentas de la Federación, considers state-owned companies subject to revision. The Camara de Diputados, or Chamber of Deputies, is in charge of the review of the Public Accounts. The chamber relies on the Superior Audit of the Federation for that purpose, and the ASF is responsible for the oversight of this account.

The Auditoria Superior de la Federación has technical and managerial autonomy in the exercise of its powers and decisions about its internal organization and operation according to law.

**References:**

Ley de Fiscalización y Rendición de Cuentas de la Federación, Articles 2 and 3.

**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:**

Although state-owned companies increase their staff size, the impact is questionable. For example, employment showed a very different behavior between state and private companies.

The drop in sales of public enterprises had an inverse effect on employment: In 2009 staffs for the state-owned companies were not reduced; instead, they were increased (1.1 percent increased their templates). Pemex, for example, added 3.551 jobs, up 2 percent, versus the 2009 tally. The staff is big, but that does not mean it fulfills its mandate.

**References:**

Cindy Pacheco Palacios, La Jornada, Las Paraestatales, "Tierras Sin Ley", Acepta el Gobernador Torreblanca, July 25, 2008, [www.lajornadaguerrero.com.mx/2008/07/25/index.php?section=sociedad&article=011n1soc](http://www.lajornadaguerrero.com.mx/2008/07/25/index.php?section=sociedad&article=011n1soc)

CNNExpansion.com, "Paraestatales Venden Menos y Emplean Mas," June 15, 2010, [www.cnnexpansion.com/las-500-de-expansion/2010/06/11/las-paraestatales-caen-en-ventas-pero-a](http://www.cnnexpansion.com/las-500-de-expansion/2010/06/11/las-paraestatales-caen-en-ventas-pero-a)

María Cristina Capelo, coordinadora de la Red Mexicana de Competencia y Regulación de CIDAC, interviewed August 2011 in Mexico City.

**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 agency, series of agencies or equivalent mechanism has a regular source of funding, but it may be under pressure because political considerations have an effect on agency funding. The corruption in Pemex has spread, and the state oil company constantly asks for more money. This does not mean it is more efficient or has eliminated corruption issues.

Regulatory agencies in Mexico are mostly decentralized organisms of the Federal Public Administration, although they are still linked by law or their statute to a ministry. For example, the Mexican Federal Telecommunications Commission is decentralized from the Ministry of Communications and Transportation, and the Mexican Federal Competition Commission is decentralized from the Ministry of Economics. They have autonomous budgets received directly from the federal budget. Thus, the Ministry of Finance can make budget cuts to regulatory agencies, but political pressure still means that agencies receive more or less funding depending on which party holds the majority in Congress.

**References:**

El Economista, Margarita Palma Gutiérrez, July 18, 2010, "Pemex Pedirá 54% Más Presupuesto en 2011," <http://eleconomista.com.mx/industrias/2010/07/18/pemex-va-mas-presupuesto>

El Economista, Nov. 16, 2010, "Pemex Recibirá un Presupuesto Limitado," <http://eleconomista.com.mx/corporativos/2010/11/16/pemex-recibira-presupuesto-limitado>

María Cristina Capelo, coordinadora de la Red Mexicana de Competencia y Regulación de CIDAC, interviewed August 2011 in Mexico City.

Juan Carlos Burgos, consultant, interviewed February 2012 in Mexico City.

**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.

**Comments:**

The Secretaría de la Función Pública can investigate. However, the investigations tend to be slow because of political interference. Further, penalties often are not imposed.

For example, in a case of high-level corruption, there was cooperation within agencies, but Gustavo Alonso Salvador Torres was found not guilty. The Federal Electricity Commission (CFE) and the Secretariat of Public Function (SPF) filed separate investigations in 2006 related to the deputy director of research at the National Center for Energy Control, Gustavo Alonso Salvador Torres.

The CFE also filed a criminal suit for corruption on multi-year contracts. The case was appealed to the Enrique O. Santacana, the Attorney General. Mr. Santacana is president of Power Technologies a U.S. subsidiary of Swiss semi-conductor manufacturer, ABB.

Both the CFE and the SFE determined that there were “elements to criticize [the official] administratively.” The Attorney General’s determination is still unknown.

**References:**

Enrique Mendex, La Jornada, “CFE y SFP Archivarón en 2006 Pesquisa a Alto Funcionario Acusado de Corrupción,” March 2, 2010, [www.jornada.unam.mx/2010/03/02/index.php?section=politica&article=012n1pol](http://www.jornada.unam.mx/2010/03/02/index.php?section=politica&article=012n1pol)

El Siglo de Torreón, Feb. 15, 2011, “CFC Inicia Investigación a Pemex,” [www.elsiglodetorreon.com.mx/noticia/600285.cfc-inicia-investigacion-a-pemex.html](http://www.elsiglodetorreon.com.mx/noticia/600285.cfc-inicia-investigacion-a-pemex.html)

María Cristina Capelo, coordinadora de la Red Mexicana de Competencia y Regulación de CIDAC, interviewed August 2011 in Mexico City.

Juan Carlos Burgos, consultant, interviewed February 2012 in Mexico City.

La Jornada, “CFE y SFP Archivarón en 2006 Pesquisa a Alto Funcionario Acusado de Corrupción,” March 2, 2010, [www.jornada.unam.mx/2010/03/02/index.php?section=politica&article=012n1pol](http://www.jornada.unam.mx/2010/03/02/index.php?section=politica&article=012n1pol)

**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.

**Comments:**

Penalties are rare, even though investigations take place.

**References:**

El Siglo de Torreón, Jan. 26, 2011, “Imponen Multa Millonaria a Trabajadores de Pemex,” [www.elsiglodetorreon.com.mx/noticia/594850.html](http://www.elsiglodetorreon.com.mx/noticia/594850.html)

María Cristina Capelo, coordinadora de la Red Mexicana de Competencia y Regulación de CIDAC, interviewed August 2011 in Mexico City.

Juan Carlos Burgos, consultant, interviewed February 2012 in Mexico City.

**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?

45

69a. In law, citizens can access the financial records of state-owned companies.

Yes | No

### Comments:

According to the Ley Orgánica de la Administración Pública Federal, state-owned companies such as Pemex and CFE must comply with the transparency obligations for all the entities of the executive branch and Federal Public Administration.

The information may be asked for through INFOMEX. The mentioned entities are subject to this system.

### References:

Ley Federal de Transparencia y Acceso a la Información Pública, Articles 3 and 7.

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

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

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

### Comments:

The financial information is available at: [www.transparenciapresupuestaria.gob.mx/finanzas/finanzas.html](http://www.transparenciapresupuestaria.gob.mx/finanzas/finanzas.html)

It is regularly updated. State-owned companies, such as Pemex, disclose financial data. But sometimes it is flawed. Some companies misstate financial data.

### References:

Maria Cristina Capelo, coordinadora de la Red Mexicana de Competencia y Regulación de CIDAC, interview August 2011 in Mexico City.

Contralinea, February 2008, "Transfiere Pemex 900 MDP a Paraíso Fiscal," [www.contralinea.com.mx/archivo/2008/febrero/htm/transfiere-pemex-millones-paraiso-fiscal.htm](http://www.contralinea.com.mx/archivo/2008/febrero/htm/transfiere-pemex-millones-paraiso-fiscal.htm)

**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

**Comments:**

Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies, such as Pemex, may use flawed or deceptive accounting procedures.

**References:**

Contralinea, "Quebranto en finanzas de Pemex Refinación," [www.contralinea.com.mx/archivo/2007/mayo2/htm/Quebranto\\_PEMEX\\_refinacion.htm](http://www.contralinea.com.mx/archivo/2007/mayo2/htm/Quebranto_PEMEX_refinacion.htm)

Maria Cristina Capelo, coordinadora de la Red Mexicana de Competencia y Regulación de CIDAC, interviewed August 2011 in Mexico City.

**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

**Comments:**

There is difficulty in accessing financial information. For example, information related to Pemex might not be available until more than 10 years from now.

**References:**

La Jornada, Elizabeth Velasco, Jan. 15 2008, "Impone el IFAI Veda Hasta de 18 Años a Información Financiera de Pemex," [www.jornada.unam.mx/2008/01/15/index.php?section=politica&article=005n1pol](http://www.jornada.unam.mx/2008/01/15/index.php?section=politica&article=005n1pol)

El Universal, Aug. 19, 2009, "Cuotas Sindicales, Arcas Millonarias Inauditables," [www.eluniversal.com.mx/finanzas/72990.html](http://www.eluniversal.com.mx/finanzas/72990.html)

Juan Carlos Burgos, consultant, interviewed February 2012 in Mexico City.

**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

**Comments:**

The information will be available, but there are many obstacles and burdens, such as photocopies and traveling to a specific office.

**References:**

La Jornada, Elizabeth Velasco, Jan. 15, 2008, "Impone el IFAI Veda Hasta de 18 Años a Información Financiera de Pemex," [www.jornada.unam.mx/2008/01/15/index.php?section=politica&article=005n1pol](http://www.jornada.unam.mx/2008/01/15/index.php?section=politica&article=005n1pol)

El Universal, Aug. 19, 2009, "Cuotas Sindicales, Arcas Millonarias Inauditables," [www.eluniversal.com.mx/finanzas/72990.html](http://www.eluniversal.com.mx/finanzas/72990.html)

Juan Carlos Burgos, consultant, interviewed February 2012 in Mexico City.

**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 NGOs. 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 NGOs trying to access this information.

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67  
5.5. Business Licensing and Regulation

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70. Are business licenses available to all citizens?

75

70a. In law, anyone may apply for a business license.

Yes | No

**Comments:**

The Constitution establishes that no one may be prevented from engaging in the profession, industry, trade or work of his/her choice if it is lawful. The exercise of this freedom can only be stopped by a judicial determination, when attacking the rights of third parties, or by government resolution when they hurt the rights of society. No one shall be deprived of the fruits of his/her labor except by judicial decision.

The Ley General de Sociedades Mercantiles is subordinated to the Constitution. But no one can be limited on this right, except when it might be limited in relation to age.

**References:**

Federal Constitution, 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

**Comments:**

This freedom, as it is recognized in the Constitution, can be appealed through the "amparo" resource.

**References:**

Ley de Amparo, Reglamentaria de los Artículos 103 and 107 de la Constitución Política de los Estados Unidos Políticos.

**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:**

According to the Doing Business 2011 report, it takes 9 days to receive business licenses.

**References:**

World Bank Doing Business 2011: Making a difference for entrepreneurs, Mexico Report, November 2011, <http://www.doingbusiness.org/reports/global-reports/doing-business-2011>

**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:**

Licenses are required and impose a financial burden. For example, they may require a visit to a specific office, such as in a regional or national capital. The Doing Business in México Web page gives information about the costs of starting a business in

Mexico. This information was also confirmed by the consultant cited as a source, revealing that there may exist obstacles to getting a license. Bribery is common. as are delays caused by the bureaucracy.

**References:**

World Bank Doing Business 2011: Making a Difference for Entrepreneurs, Mexico Report, November 2011, <http://www.doingbusiness.org/reports/global-reports/doing-business-2011>

María Cristina Capelo, coordinadora de la Red Mexicana de Competencia y Regulación de CIDAC, interviewed August 2011 in Mexico City.

**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?**

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

Yes | No

**Comments:**

The law establishes the safety and health standards that businesses must follow. The standards are located in the Ley Federal del Trabajo (Article 132).

There are also standards set by the Ley del Seguro Social, which regulates the Instituto Mexicano del Seguro Social (Article 81), and by the Ley del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado (Article 71, for example).

**References:**

Ley Federal del Trabajo, Article 132.

Ley del Seguro Social, Article 81.

Ley del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado, Article 71.

**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

**Comments:**

The Ley General de Equilibrio Ecológico sets out these regulations, and it is available online.

**References:**

Ley General de Equilibrio Ecológico.

Procuraduría Federal del Protección al Ambiente,  
[www.profepa.gob.mx/innovaportal/v/32/1/mx/normatividad\\_ambiental.html](http://www.profepa.gob.mx/innovaportal/v/32/1/mx/normatividad_ambiental.html)

**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

**Comments:**

The Ley Federal del Trabajo governs work relationships. It contains specific rules related to subjects such as safety and health standards. The Ley Federal del Trabajo is in Article 123 A of the Constitution.

**References:**

Ley Federal del Trabajo, Articles 51, 166, 167, 170 (related to pregnancy health), 176, 301 and 337.

**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 and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

**Comments:**

Inspections are conducted, but the security and health standards are not met. The media reports describe accidents. This means the inspections are not effective, and the rights of the workers are not effectively guaranteed.

**References:**

Secretaría del Trabajo y Previsión Social,  
<http://www.stps.gob.mx/bp/index.html>

International Labor Organization, "OIT: Lugares de Trabajo Inseguros," June 15, 2006,  
[http://www.adnmundo.com/contenidos/laboral/oit\\_seguridad\\_laboral\\_inspecciones\\_entrevista\\_la\\_150606.html](http://www.adnmundo.com/contenidos/laboral/oit_seguridad_laboral_inspecciones_entrevista_la_150606.html)

**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:**

The inspections take place, but only a few businesses follow the environmental standards. The inspections have to deal with several obstacles: resources and corruption. The legal framework is also ignored. The Secretaría del Medio Ambiente has – but does not use – the authority to make recommendations about environmental impact. This means not only that the inspections do not take place, but that businesses do not comply with environmental standards.

**References:**

Andrea Cerami, lawyer at Centro Mexicano de Derechos Ambiental, interviewed Oct. 18, 2011, in México City, [www.cemda.org.mx/](http://www.cemda.org.mx/)

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.

100 | 75 | 50 | 25 | 0

**Comments:**

Business inspections by the government to ensure that public safety standards are met are generally done an even-handed way, though exceptions exist and accidents in mines have occurred.

Neglect, corruption and abuse by entrepreneurs protected by federal and state labor have resulted in tragedy. On May 3, 2011, a "little well" of a coal mine exploded in Sabinas, Coahuila. It claimed the lives of three workers. In coal mines in Mexico, minimum conditions of safety to prevent fatal accidents are not met, and these areas have much less social security.

**References:**

Kaosnlared.net, "Tragedia en Mina de Carbón en Sabinas, Coahuila. Acción Urgente por los Mineros," May 4, 2011, <http://old.kaosnlared.net/noticia/165968/mexico-tragedia-mina-carbon-sabinas-coahuila-accion-urgente-mineros>

Secretaría del Trabajo y Previsión Social, [www.stps.gob.mx/pastadeconchos/Resultado\\_%20final\\_Operativo\\_%20Minas\\_310707.pdf](http://www.stps.gob.mx/pastadeconchos/Resultado_%20final_Operativo_%20Minas_310707.pdf)

La Crónica, Daniel Blancas Madrigal, May 8, 2011, "Incontables Irregularidades en Minas del País, Denuncia CNDH," [www.cronica.com.mx/nota.php?id\\_notas=576986](http://www.cronica.com.mx/nota.php?id_notas=576986)

International Labor Organization, [www.adnmundo.com/contenidos/laboral/oit\\_seguridad\\_laboral\\_inspecciones\\_entrevista\\_la\\_150606.html](http://www.adnmundo.com/contenidos/laboral/oit_seguridad_laboral_inspecciones_entrevista_la_150606.html)

**100:** Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

**75:**

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

**25:**

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

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## Category 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

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### 6.1. ~~72~~ Anti-Corruption Law

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#### 73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

**Yes** | No

**Comments:**

The penal framework considers acts of attempted corruption to be illegal, as outlined in Articles 214 to 224 of the Código Penal Federal (Federal Criminal Code). Currently, a law is being discussed in the Congress that expressly relates to anti-corruption.

**References:**

Código Penal Federal, Articles 214 to 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

**Comments:**

Article 390 of the Código Penal Federal addresses extortion.

**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

**Comments:**

Offering bribes is illegal. This includes acts of bribery related to foreign officials.

**References:**

Código Penal Federal, Chapter X, Article 222 and Chapter XI, Article 222-bis.

**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

**Comments:**

Bribery, accepting or giving bribes, is penalized by the Código Penal Federal.

**References:**

Código Penal Federal, Chapter X, Article 222.II.

**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

**Comments:**

The specific criminal law considers it illegal to give bribes to foreign officials.

**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

**Comments:**

It is illegal to use public resources for private gain and illicit enrichment.

**References:**

Código Penal Federal, Articles 214, 215, 217, 220, 221, 223 and 224.

**Yes:** A YES score is earned if using public resources for private gain is illegal.

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

73g. In law, using confidential state information for private gain is illegal.

Yes | No

**Comments:**

Using confidential state information for private gain is defined as a crime in Articles 214 and 220.II of the Código Penal Federal.

**References:**

Código Penal Federal, Articles 214 and 220.II.

**Yes:** A YES score is earned if using confidential state information for private gain is illegal.

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

73h. In law, money laundering is illegal.

Yes | No

**Comments:**

Article 400-bis of the Código Penal Federal states that penalties will be imposed on anyone who, by himself/herself or through another person, does any of the following: to "acquire, transfer, manage, guard, change, deposit, give in guarantee, invest, transport or transfer within the national territory, or from the national territory to a foreign jurisdiction, or vice versa, resources, rights or property of any kind, knowing they proceed from or represent the product of an illicit activity, with any of the following purposes: hide or pretend to hide, conceal or impede finding out the origin, location, destination or ownership of said resources, rights or assets, or foster any illegal activity."

**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

**Comments:**

Article 16 of the Federal Constitution defines and criminalizes organized crime. The specific law that addresses it is the Ley Federal Contra la Delincuencia Organizada.

**References:**

Federal Constitution, Article 16.

Ley Federal Contra la Delincuencia Organizada.

**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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## 6.2. Anti-Corruption Agency or Equivalent Mechanisms

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

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | No

**Comments:**

The law Orgánica de la Administración Pública Federal designates the Secretaría de la Función Pública as the agency to oversee actions against corruption and describes the agency's responsibilities.

**References:**

Ley Orgánica de la Administración Pública Federal, Title II, Chapter 2, 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.

---

75. Is the anti-corruption agency effective?

44

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | No

**Comments:**

The Secretaría de la Función Pública is subordinated to the executive branch.

**References:**

Reglamento Interior de la Secretaría de la Función Pública, Article 1.

**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:**

In 2010, the Secretaria de la Función Publica accused 1,778 people of corruption, bringing the cumulative figure in six years to 1,948 criminal complaints, La Jornada reported on Dec.10, 2010. In addition, during 2010 the government body had disqualified more than 500 officials from performing public functions and imposed sanctions on 4,000 companies, according to the La Jornada report.

Despite this, the independence of the agency has been questioned, as well as the appointment process for its chief. The critics target the link between the SFP and the executive. The anti-corruption agency is directly subordinated to the president. Article 89 of the Constitution states that the president is free to appoint members of his Cabinet, which includes the anti-corruption agency. Therefore, political biases are expected.

**References:**

El Universal, Ignacio Alvarado Álvarez, Aug. 26 2009, "Corrompen Oficina Anticorrupción," [www.eluniversal.com.mx/primer/33520.html](http://www.eluniversal.com.mx/primer/33520.html)

La Jornada, Dec. 10, 2010, "En Tres Años, la Corrupción Creció en el País, Percepción de 75 Percent de Mexicanos," [www.jornada.unam.mx/2010/12/10/index.php?section=politica&article=022n1pol](http://www.jornada.unam.mx/2010/12/10/index.php?section=politica&article=022n1pol)

Zocalo, May 23, 2011, "Proponen que Titular de la SFP Salga de Terna," [www.zocalo.com.mx/seccion/articulo/proponen-que-titular-de-la-sfp-salga-de-terna](http://www.zocalo.com.mx/seccion/articulo/proponen-que-titular-de-la-sfp-salga-de-terna)

**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 Article 1 of Reglamento Interior de la Secretaría de la Función Pública. The Constitution's Article 89 enables the president to appoint members of his Cabinet, which includes the secretary of the anti-corruption agency,

**References:**

El Siglo de Torreon, Salvador Vega Casillas, Nuevo Secretario de la SFP, September 28, 2007, [www.elsiglodetorreon.com.mx/noticia/300563.salvador-vega-casillas-nuevo-secretario-de-la.html](http://www.elsiglodetorreon.com.mx/noticia/300563.salvador-vega-casillas-nuevo-secretario-de-la.html)

Jorge Ramos Perez, El Universal, Designa Calderon a Subsecretarios de la Funcion Publica, December 4, 2006, [www.eluniversal.com.mx/notas/391979.html](http://www.eluniversal.com.mx/notas/391979.html)

**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

**Comments:**

A professional civil service exists, but appointments may be questioned.

**References:**

El Universal, Ignacio Alvarado Álvarez, Aug. 26, 2009, "Corrompen Oficina Anticorrupción," [www.eluniversal.com.mx/primera/33520.html](http://www.eluniversal.com.mx/primera/33520.html)

La Jornada, Dec. 10, 2010, "En Tres Años, la Corrupción Creció en el País, Percepción de 75% de Mexicanos," [www.jornada.unam.mx/2010/12/10/index.php?](http://www.jornada.unam.mx/2010/12/10/index.php?)

Zocalo, May 23, 2011, "Proponen que Titular de la SFP Salga de Terna," [www.zocalo.com.mx/seccion/articulo/proponen-que-titular-de-la-sfp-salga-de-terna](http://www.zocalo.com.mx/seccion/articulo/proponen-que-titular-de-la-sfp-salga-de-terna)

**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

**Comments:**

Since its creation, the Secretaría de la Función Pública has been considered a professional civil service. However, the staff may not be considered the most qualified to fulfill its duty. Analysts have disputed claims of efficiency and legality in the federal government during the presidencies of Vicente Fox and Felipe Calderón. The ministry, which is responsible for providing transparency and fighting corruption, has been led by friends and political allies of both presidents.

**References:**

Gabriel Grinberg, El Universal, Crearan Secretaría de Funcion Publica, October 23, 2002, [www2.eluniversal.com.mx/pls/impreso/noticia.html?id\\_nota=13316&tabla=primera](http://www2.eluniversal.com.mx/pls/impreso/noticia.html?id_nota=13316&tabla=primera)

El Universal, Ignacio Alvarado Álvarez, "Corrompen Oficina Anticorrupción," Aug. 26, 2009, [www.eluniversal.com.mx/primera/33520.html](http://www.eluniversal.com.mx/primera/33520.html)

La Jornada, Dec. 10, 2010, "En Tres Años, la Corrupción Creció en el País, Percepción de 75% de Mexicanos," [www.jornada.unam.mx/2010/12/10/index.php?](http://www.jornada.unam.mx/2010/12/10/index.php?)

**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

**Comments:**

The Secretaría de la Función Pública receives regular funding. Reports on its budget are available at: [www.funcionpublica.gob.mx/index.php/programas/acuerdo-nacional-por-la-seguridad/informe-1er-trimestre-2011.html](http://www.funcionpublica.gob.mx/index.php/programas/acuerdo-nacional-por-la-seguridad/informe-1er-trimestre-2011.html)

**References:**

Secretaría de la Función Pública, Informe 1er Trimestre 2011. [www.funcionpublica.gob.mx/index.php/programas/acuerdo-nacional-por-la-seguridad/informe-1er-trimestre-2011.html](http://www.funcionpublica.gob.mx/index.php/programas/acuerdo-nacional-por-la-seguridad/informe-1er-trimestre-2011.html)

**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

**Comments:**

The reports are available at [www.funcionpublica.gob.mx/index.php/transparencia.html](http://www.funcionpublica.gob.mx/index.php/transparencia.html). Some of the reports are presented every three months.

**References:**

María Cristina Capelo, coordinadora de la Red Mexicana de Competencia y Regulación de CIDAC, interviewed August 2011 in Mexico City.

Secretaría de la Función Pública. "Transparencia," [www.funcionpublica.gob.mx/index.php/transparencia.html](http://www.funcionpublica.gob.mx/index.php/transparencia.html)

**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:**

The Secretaría de la Función Pública applies sanctions according to its mandate. However, it has not reduced corruption considerably. A 2010 survey by Transparency International revealed that 75 percent of Mexicans had the perception that corruption in the country had increased in the past three years, while 52 percent of those polled described the fight against corruption as ineffective.

**References:**

La Jornada, Alfredo Mendez, Dec. 10, 2010, "En Tres Años, la Corrupción Creció en el País, Percepción de 75% de Mexicanos," [www.jornada.unam.mx/2010/12/10/index.php?section=politica&article=022n1pol](http://www.jornada.unam.mx/2010/12/10/index.php?section=politica&article=022n1pol)

Terra, June 4, 2010, "Incrementa Función Pública Denuncias por Corrupción de Funcionarios," [www.terra.com.mx/noticias/articulo/912678/Incrementa+Funcion+Publica+denuncias+por+corrupcion+de+funcionarios.htm](http://www.terra.com.mx/noticias/articulo/912678/Incrementa+Funcion+Publica+denuncias+por+corrupcion+de+funcionarios.htm)

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.

100 | 75 | 50 | 25 | 0

**Comments:**

The agency starts investigations but is limited in its effectiveness. In 2010, the Secretaría de la Función Pública accused 1,778 people of possible acts of corruption, bringing the cumulative figure in six years to 1,948 criminal complaints. In addition, during 2010 the ministry had disqualified more than 500 officials from performing public functions and imposed sanctions on more than 4,000 companies.

**References:**

Contralínea, October 2008, "Investiga Función Pública a Director de la SRA," [www.contralinea.com.mx/archivo/2008/octubre/htm/investigacion-favoritismo-en-sra.html](http://www.contralinea.com.mx/archivo/2008/octubre/htm/investigacion-favoritismo-en-sra.html)

La Jornada, Dec. 10, 2010, "En Tres Años, la Corrupción Creció en el País, Percepción de 75% de Mexicanos," [www.jornada.unam.mx/2010/12/10/politica/022n1pol](http://www.jornada.unam.mx/2010/12/10/politica/022n1pol)

El Universal, José Gerardo Mejía, June 1, 2010, "SFP Investiga Desvío de Recursos de Funcionarios," [www.eluniversal.com.mx/notas/684518.html](http://www.eluniversal.com.mx/notas/684518.html)

CNN Mexico, Funcion Public Investiga la Presunta Corrupcion en le IMSS, November 10, 2010, [mexico.cnn.com/nacional/2010/11/10/funcion-publica-investiga-la-presunta-corrupcion-en-el-imss](http://mexico.cnn.com/nacional/2010/11/10/funcion-publica-investiga-la-presunta-corrupcion-en-el-imss)

**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.

---

## 76. Can citizens access the anti-corruption agency?

50

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

### Comments:

The media report suggests that the Secretaría de la Función Pública might not respond to complaints because of political pressures, coming even from other government agencies.

### References:

Secretaría de la Función Pública has a telephone line for complaints:  
[www.funcionpublica.gob.mx/index.php/contacto/denuncia.html](http://www.funcionpublica.gob.mx/index.php/contacto/denuncia.html)

Fabiola Martinez, La Jornada, Empleados Cesados Denuncian Abuso de Poder, Hostigamiento y Corrupcion en SG, February 28, 2011  
[www.jornada.unam.mx/2011/02/28/index.php?section=politica&article=021n1pol](http://www.jornada.unam.mx/2011/02/28/index.php?section=politica&article=021n1pol)

Maria Cristina Capelo, coordinadora de la Red Mexicana de Competencia y Regulación de CIDAC, interviewed August 2011 in Mexico City.

**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

### Comments:

In general, citizens who report less serious cases of corruption can approach the specialized agency. But the “hard” cases mean that citizens won’t approach the agency to complain because they fear recriminations. The witness protection program also is not as effective as it should be. People have been killed after reporting corruption.

**References:**

El Universal, José Gerardo Mejía, June 1, 2010, "SFP Tiene en la Mira a Cientos de Funcionarios por Corrupción," [www.eluniversal.com.mx/nacion/178095.html](http://www.eluniversal.com.mx/nacion/178095.html)

El Universal, José Gerardo Mejía, Aug. 11, 2010, "SFP Denuncia a Funcionarios por Usurpación," [www.eluniversal.com.mx/notas/701032.html](http://www.eluniversal.com.mx/notas/701032.html)

El Universal, Adriana Covarrubias, Sept. 8, 2011, "Mil 500 Funcionarios Denunciados por Corrupción: SFP," [www.eluniversal.com.mx/notas/792237.html](http://www.eluniversal.com.mx/notas/792237.html)

María Cristina Capelo, coordinadora de la Red Mexicana de Competencia y Regulación de Centro de Investigación para el Desarrollo, A. C., interviewed August 2011 in Mexico City.

**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.

---

65  
**6.3. Judicial Independence, Fairness, and Citizen Access to Justice**

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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

**Comments:**

Federal Constitution Article 23 addresses the criminal process. Provisions include that no criminal trial shall have more than three instances and that no one should be put on trial twice for the same crime.

The states and the federal government must modify their process legislation according to the new penal system. (Constitutional Reform 2008)

**References:**

Federal Constitution, Article 23.

Constitutional Reform 2008.

**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:**

The studies suggest not only that criminal procedures are slow, but that they also are full of irregularities that translate into human rights violations.

"Diagnóstico de Derechos Humanos del Distrito Federal (Diagnosis of Human Rights of the Federal District)" is an important document elaborated through academic, governmental and civil society efforts.

**References:**

"Diagnóstico de Derechos Humanos para el Distrito Federal," chapter about the judicial system, Mexico City, 2008.

"Corrupción Judicial e Impunidad: El Caso de México," Miguel Carbonell, Instituto de Investigaciones Jurídicas, Mexico.

**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

**Comments:**

"Diagnóstico de Derechos Humanos del Distrito Federal" is an important document elaborated through academic, governmental and civil society efforts. Although it shows a local point of view, the document generally reflects the access-to-justice obstacles at the national level.

**References:**

"Diagnóstico de Derechos Humanos para el Distrito Federal," chapter about the judicial system, Mexico City, 2008.

Convocatoria Diagnóstico y Programa de Derechos Humanos del Estado de Oaxaca,  
<http://www.oaxaca.gob.mx/?p=12577>

**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.

---

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

50

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

**Comments:**

Judges tend to follow the rule of law because of the formal and Positivist tradition. Despite this, the system allows them to make interpretations. This sometimes translates to discrimination. Another issue is that sometimes relevant cases are not penalized. This occurs because judges themselves are corrupt and do not allow a case to proceed in the formal adjudication process, or a judge is influenced by bribery. Only 1.06 percent of cases result in judicial sentences.

**References:**

"La Implementación de los Juicios Orales en el Sistema de Justicia Penal Mexicano: ¿Qué Sigue Después de la Reforma Constitucional?" Oscar Vázquez Marín, [www.juridicas.unam.mx/publica/rev/refjud/cont/12/rjf/rjf10.htm](http://www.juridicas.unam.mx/publica/rev/refjud/cont/12/rjf/rjf10.htm)

"Diagnóstico de Derechos Humanos para el Distrito Federal," chapter about the judicial system, Mexico City, 2008.

Miguel Carbonell, Instituto de Investigaciones Jurídicas, "Corrupción Judicial e Impunidad: El Caso de México," 2006, Mexico, <http://biblio.juridicas.unam.mx/libros/6/2770/4.pdf>

**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

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

**Comments:**

The Mexico Evalua study shows that an enforcement problem exists. In general, the majority of offenders who incur penalties are punished for crimes of low complexity, and probably of little gravity. This leads to the conclusion that those in prisons are not the more dangerous criminals.

**References:**

Miguel Carbonell, Instituto de Investigaciones Jurídicas, "Corrupción Judicial e Impunidad: El Caso de México," 2006, Mexico, <http://biblio.juridicas.unam.mx/libros/6/2770/4.pdf>

"SIIS: Sistema de Indices e Indicadores en Seguridad Pública," Mexico Evalua.

**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.

## 80. Is the judiciary able to act independently?

88

80a. In law, the independence of the judiciary is guaranteed.

Yes | No

### Comments:

The Federal Constitution provides that state judicial powers will be vested in state courts established through the state constitutions.

The independence of the judges is to be guaranteed by the state constitutions and Organic Laws of the States, which establishes the conditions for entry, training and retention of those who serve in the state judiciaries.

Magistrates and judges for local judiciaries are to be appointed preferably from those who have "either worked in the judiciary in an efficient and honorable way or deserved to be distinguished because of their integrity, talent or remarkable background in the legal profession."

Magistrates and judges shall receive an adequate remuneration, which may not be diminished during their assignment.

### References:

Federal Constitution, Article 116.III.

**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

### Comments:

The special rapporteur notes that structural and organizational weaknesses remain in the judicial system, especially at the federal level, which affect the independence and autonomy of the judiciary. The special rapporteur expresses concern that the requirement for confirmation or ratification of an appointment after an initial period may affect the independence of judges, magistrates and justices "as they may be subject to undue pressures in exercising their functions and not enjoy the necessary impartiality in the need for confirmation."

"A different question would be to establish a trial period or obligatory practice after which the appointment is confirmed. Otherwise, short-term mandates can weaken the judicial system," the special rapporteur's report said.

### References:

"Informe de la Relatora Especial Sobre la Independencia de los Magistrados y Abogados. Consejo de Derechos Humanos," 17. ° período de sesiones, Misión a México, 2011.

"Corrupción Judicial e Impunidad: El Caso de México," Miguel Carbonell, Instituto de Investigaciones Jurídicas, 2006, Mexico, <http://biblio.juridicas.unam.mx/libros/6/2770/4.pdf>

"Judicial Reform in Mexico. Toward a New Criminal Justice System," Trans-Border Institute (TBI), 2010.

**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

**Comments:**

The Federal Judicial Council is responsible for setting the provisions to regulate affairs within the jurisdiction of the circuit courts and the district courts.

**References:**

Ley Orgánica del Poder Judicial de la Federación, Article 81.XXIV.

**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

**Comments:**

The Federal Judicial Council is responsible for determining the number and territorial limits of the circuits and also determining the number and, where appropriate, field of specialization and unit Collegial courts in each of the circuits. The cited law, Ley Orgánica del Poder Judicial de la Federación, also governs the process of removal.

**References:**

Ley Orgánica del Poder Judicial de la Federación, Article 81.V.

**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

**Comments:**

The report suggests that judges may have security protocols, but there is no proof of harm. No media reports available suggested that judges investigating corruption cases were harmed.

**References:**

"Informe del Relator Especial Sobre la Promoción y Protección del Derecho a la Libertad de Opinión y de Expresión," Frank La Rue, 17.º período de sesiones, Misión a México, 2011.

**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

**Comments:**

There were no incidents during the reporting period.

In 2007, a judge was killed because of his participation in a corruption trial. Federal Judge Rene Hilario Nieto Contreras, who was in charge of cases involving the drug cartels of the Arellano Felix, Gulf and Juarez, was shot from a moving car while riding aboard his vehicle through the streets of Toluca. The administrator of justice led one of six federal courts assigned to the maximum security prison of La Palma, where they develop the most important trials against members of organized crime and drug trafficking.

**References:**

El Universal, Francisco Gómez and Eduardo Alonso, Aug. 18, 2006, "Matan a Juez Encargado de Casos del Narcotráfico," [www.eluniversal.com.mx/nacion/141814.html](http://www.eluniversal.com.mx/nacion/141814.html)

El Universal, Javier Cabrera Martinez, Jan. 22, 2011, "Asesinan a Juez en Cosalá, Sinaloa," [www.eluniversal.com.mx/notas/746778.html](http://www.eluniversal.com.mx/notas/746778.html)

**Yes:** A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

**No:** A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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

46

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

**Comments:**

The report clearly shows discrimination in access to justice for specific groups. The issue of linguistic rights of indigenous people can translate into human rights violations. The treatment of the people by the officials and the justice system is hostile. For example, waiting to be served in the public prosecutor's offices takes hours, and the facilities are not appropriate or comfortable for long waits. The access to justice is worst for indigenous women.

**References:**

"Informe Sobre el Estado que Fuardan los Derechos Lingüísticos de los Pueblos y Comunidades Indígenas en el Sistema de

"Diagnóstico de Derechos Humanos para el Distrito Federal," chapter about the judicial system, Mexico City, 2008.

**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

**Comments:**

The documents show that access to justice poses considerable difficulties for women. Discrimination and violence against women are deeply internalized, and the judicial system still has a long way to go in recognizing and protecting women's human rights. Indigenous women may not even have access because of costs, language, distance and discrimination. High levels of violence against women in Mexico are both the consequence and the symptom of the generalized discrimination and gender inequality. This is compounded by other types of discrimination like national origin, ethnicity and economic or social position that are associated with lack of equal access to state protection. Some groups, especially migrant, poor and indigenous women, are particularly vulnerable to violence. This may discourage women from coming to courts.

**References:**

Cimac Noticias, Gladis Torres Ruiz, May 19, 2010, "Inaccesible a Fodo Nivel, la Justicia para las Mujeres en Jalisco," [www.cimacnoticias.com.mx/site/10051903-Inaccesible-a-todo.42575.0.html](http://www.cimacnoticias.com.mx/site/10051903-Inaccesible-a-todo.42575.0.html)

Cimac Noticias, March 8, 2010, "Niega Justicia a las Mujeres, Impunidad en Sistema Penal," [www.cimacnoticias.com.mx/site/10030808-Niega-justicia-a-la.41774.0.html](http://www.cimacnoticias.com.mx/site/10030808-Niega-justicia-a-la.41774.0.html)

"Informe de la Relatora Especial Sobre la Violencia Contra la Mujer, sus Causas y Consecuencias," Yakin Ertürk, Comisión de Derechos Humanos, 62° período de sesiones, 2006.

"Observaciones Finales del Comité para la Eliminación de la Discriminación Contra la Mujer: México," 2006.

"Diagnóstico de Derechos Humanos para el Distrito Federal," chapter about judicial system, Mexico City, 2008.

**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

**Comments:**

By law, everyone is entitled to an adequate defense. This can freely be chosen from the time of arrest. If you do not want or cannot name someone to represent you after being requested to do so, the judge will appoint a public defender. You have the right to have counsel present at all trial proceedings, and the counselor is obligated to appear as often as required.

**References:**

Federal Constitution, Article 20.A.VIII.

Ley Federal de Defensoría Pública.

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

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

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

**Comments:**

State-provided legal aid is available, but flawed. The ombudsman's office often receives complaints about abuse or neglect by the staff of the court or the defenders provided by the state. Reports show that the economic conditions of people are a factor in access to justice. People with fewer economic resources who must rely on public defenders have inadequate access to justice.

**References:**

"Judicial Reform in Mexico. Toward a New Criminal Justice System," Trans-Border Institute, 2010

Emeequis, Oct. 3, 2011, "Defensores de Oficiodel DF Pierden 99.6% de los Casos: Alto a la Presunción de Culpa," [www.m-x.com.mx/2011-10-03/defensores-de-oficio-del-df-pierden-99-6-de-los-casos-alto-a-la-presuncion-de-culpa/](http://www.m-x.com.mx/2011-10-03/defensores-de-oficio-del-df-pierden-99-6-de-los-casos-alto-a-la-presuncion-de-culpa/)

El sol de Toluca, July 5, 2011, "Apalean Demasiado a Defensores de Oficio No Saben de Juicios Orales y Sólo Concilian Conflictos Económicos," [www.oem.com.mx/elsoldetoluca/notas/n2134033.htm](http://www.oem.com.mx/elsoldetoluca/notas/n2134033.htm)

"Diagnóstico de Derechos Humanos para el Distrito Federal," chapter about judicial system, Mexico City, 2008.

**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:**

Access to justice is expensive, even for middle-class Mexicans. The average cost of a court trial in the Federal District is \$12,215.00 pesos. In Chile trials cost one-third of that.

The academic Guillermo Zepeda Lecuona, author of "Crime Without Punishment," published by the Fondo de Cultura Economica, summarizes: The Mexican system of justice works: The pressure of society that demands results makes the authorities' response fast and easy, but unfair and socially and economically costly.

**References:**

El Universal, Nurit Martínez, March 7, 2011, "Mujeres, Víctimas del Sistema de Justicia," [www.eluniversal.com.mx/nacion/184042.html](http://www.eluniversal.com.mx/nacion/184042.html)

Informador, May 9, 2010, "Culpables por Cuotas," [www.informador.com.mx/primer/2011/275248/6/culpables-por-cuotas.htm](http://www.informador.com.mx/primer/2011/275248/6/culpables-por-cuotas.htm)

"Diagnóstico de Derechos Humanos para el Distrito Federal," chapter about the judicial system, Mexico City, 2008.

El Universal, Roberto Barboza Sosa, Feb. 21. 2008, "Se Alcanzará Justicia Pronta y Expedita con Reforma Judicial: Experto," [www.eluniversal.com.mx/notas/484291.html](http://www.eluniversal.com.mx/notas/484291.html)

**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

**Comments:**

The online report shows that small businesses can overcome costs, including those of trials. Speed, low costs and continuation of viable businesses characterize the top-performing economies. According to data collected by Doing Business, resolving insolvency takes 1.8 years on average and costs 18 percent of the debtor's estate. The average recovery rate is 67.1 cents on the dollar.

**References:**

International Finance Corp., "Doing Business, 2012 — Enforcing Contracts," <http://espanol.doingbusiness.org/data/exploreeconomies/mexico/#enforcing-contracts>

<http://espanol.doingbusiness.org/rankings>

**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

**Comments:**

The study suggests that some citizens may be unable to reach a courtroom at low cost because of location.

**References:**

"Impartición Discriminatoria de la Justicia (Un Panorama del Acceso a la Justicia en México y en la Región Costas Sur de Jalisco)," Enrique Flores Terriquez.

**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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## 6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

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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

**Comments:**

The procedures have improved a great deal (there are reliable screening tests for all levels), and the professional service is being implemented (to enter and move up the merit scale in the Federal Police). However, much remains to be done because negative inertia from the past lingers.

**References:**

Karla Mora, El Universal DF, Poligrafo y 5 Controles de Confianza para Ser Policia de Investigacion, September 3, 2011, [www.eluniversaldf.mx/home/nota33141.html](http://www.eluniversaldf.mx/home/nota33141.html)

Cesar Reyes, consultant at Zumma, interviewed September 2011, in Mexico City.

**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

**Comments:**

During the budget negotiation, the budget for this agency is a relevant issue. Despite this, the general view is that the budget is insufficient for the agency to fulfill its mandate.

**References:**

Informador.com.mx, "Reducen Mil 811 MDP en Presupuesto para Seguridad en 2010," [www.informador.com.mx/mexico/2009/155087/6/reducen-mil-811-mdp-en-presupuesto-para-seguridad-en-2010.htm](http://www.informador.com.mx/mexico/2009/155087/6/reducen-mil-811-mdp-en-presupuesto-para-seguridad-en-2010.htm)

La Jornada, Israel Rodríguez, Jan. 30, 2011, "A Seguridad, más Presupuesto que a Salud, Ciencia y Tecnología en Conjunto," [www.jornada.unam.mx/2011/01/30/index.php?section=economia&article=027n2eco](http://www.jornada.unam.mx/2011/01/30/index.php?section=economia&article=027n2eco)

Cesar Reyes, consultant at Zumma, interviewed September 2011, in Mexico City.

**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's Office (Procuraduría General de la Justicia — PGR), is directly subordinated to the president. According to Article 89 of the Constitution, the president is free to appoint members of his Cabinet, which includes the PGR. Therefore, political biases are expected. The same applies to the secretary of public security (Secretaría de Seguridad Pública).

**References:**

La Jornada, [www.jornada.unam.mx/2005/04/28/005n1pol.php](http://www.jornada.unam.mx/2005/04/28/005n1pol.php)

**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?

75

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | No

**Comments:**

Citizens can complain through the National Commission of Human Rights (Comisión Nacional de los Derechos Humanos). Article 3 of the Human Rights Commission law establishes that it can receive complaints. The process is regulated through Articles 25 to 42.

**References:**

Comisión Nacional de los Derechos Humanos, Articles 3 and 25 to 42.

**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. Some efforts are being implemented through the Citizens Advisory Council of the Ministry of Public Security.

The Secretaría de Seguridad Pública has a Web page where citizens can submit complaints, [www.ssp.gob.mx/CNDDefWeb/pageflows/CND/queja.do](http://www.ssp.gob.mx/CNDDefWeb/pageflows/CND/queja.do).

The Procuraduría General de la República also has a citizen-attention program, [www.pgr.gob.mx/servicios/Atencion/presentacion.asp](http://www.pgr.gob.mx/servicios/Atencion/presentacion.asp).

**References:**

Mirador, Newsletter Semanal, Surten Efecto Quejas Ciudadanas; Investigan a 105 Policías Irresponsables, June 4, 2010, [http://newsletter.ieaip.org/jul\\_01/index.php](http://newsletter.ieaip.org/jul_01/index.php)

Cesar Reyes, consultant at Zumma, interviewed September 2011, in Mexico City.

**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

**Comments:**

The Secretaría de Seguridad Pública has a program to respond to complaints and to keep track of the internal operation. It is called Programas de Atención a Quejas y Recomendaciones por Presuntas Violaciones a Derechos Humanos (Program of Attention to Complaints and Recommendations of Alleged Violations to Human Rights).

There is a Suprocuraduría de Protección a los Derechos Humanos y Prevención del Delito (Assistant Attorney General for Protection of Human Rights and Crime Prevention), within the Attorney General's Office (Procuraduría General de la Justicia).

**References:**

Ley General del Sistema Nacional de Seguridad Pública, Chapter III, Article 99.

**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:**

Yes, there is the position of chief of internal affairs, filled through appointment by the president and charged with investigating and punishing corruption within the Federal Police. However, much remains to be done, since this person is appointed by the president and depends on the structure of the Federal Police.

The SSP has a program intended to respond to internal corruption. [www.ssp.gob.mx/portalWebApp/ShowBinary?nodeId=/BEA%20Repository/304378/archivo](http://www.ssp.gob.mx/portalWebApp/ShowBinary?nodeId=/BEA%20Repository/304378/archivo)

**References:**

EnInteriores.com, Mari Trini Rosas, May 25, 2010, "Asuntos Internos Investiga Casos de Corrupción en SSP," <http://eninteriores.com/2010/05/25/asuntos-internos-investiga-casos-de-corrupcion-en-ssp/>

Cesar Reyes, consultant at Zumma, interviewed September 2011, in Mexico City.

"Decreto por el que se Aprueba el Programa Sectorial de Seguridad Pública 2007–2012," [www.ssp.gob.mx/portalWebApp/ShowBinary?nodeId=/BEA%20Repository/304378/archivo](http://www.ssp.gob.mx/portalWebApp/ShowBinary?nodeId=/BEA%20Repository/304378/archivo)

**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

**Comments:**

Article 13 of the Federal Constitution establishes that there is no immunity for any public servant.

**References:**

Federal 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 officials are subject to criminal proceedings. What might be in doubt is whether they are in fact punished.

**References:**

Cesar Reyes, consultant at Zumma, interviewed September 2011, in Mexico City.

NTR Zacatecas, June 14, 2011, Investigan a Policías Federales en Tabasco,"

<http://ntrzacatecas.com/noticias/mexico/2011/06/14/investigacion-a-policias-federales-en-tabasco/>

La Cronica, Alejandro Paez, "Separan e Investigan a Policías Federales Amotinados en Juárez," [www.cronica.com.mx/nota.php?id\\_notas=524614](http://www.cronica.com.mx/nota.php?id_notas=524614)

**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.