

National Integrity Systems

Country Study Report

Mexico 2001

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The information and opinions discussed in the document are the entire responsibility of the report authors.

Mexico

Introduction

Mexico has a presidential system. Its government is divided in three branches with formal division of Powers. The Legislative Branch of Government (Mexican Congress) is composed of two chambers, the Deputies Chamber and the Senators Chamber. Representatives for both chambers are elected through a mixed system, which considers both direct voting and proportional representation. This system was developed in the last 25-30 years in order to enhance pluralistic representation in both chambers. The composition of its lower chamber ("Cámara de Diputados") reflects the scheme: 300 deputies are directly representing 300 electoral units, 200 represent the share of the votes that each party received. The Senate House ("Cámara de Senadores"), has a similar system, representing each one of the states, and the share of the votes for each party.

The number of political parties changes from election to election. An average number of parties could be nine, but only five can compete consistently. Three major political parties concentrate the larger share of the votes: National Action Party (since July 2000, the new official party), Democratic Revolution Party (which controls Mexico City and other states) and Institutional Revolutionary Party (the party that stayed as Federal Government for 71 years).

The Mexican Republic is composed of 31 states and a Federal District, i.e. Mexico City. Despite being a Federal Republic, centralization of power and economic resources was typical until the 1970's. Federalization has been a major trend since then.

Since the foundation of the National Revolutionary Party in 1929, a cohesive hegemonic party system was formed. This system was based on a collaborative scheme composed of two major actors: the official party and the president of Mexico. The President had enormous legal attributions and informal powers including the possibility of participating directly in the definition of his successor, through a party nomination. The hegemonic participation of one political party and the enormous political force of the President (governing the country without the possibility of being re-elected for another six years period) derived in a strong Executive Power with almost no "checks or balances" in the Congress or the Judiciary. It was not until the early sixties, when non official unions and organizations started social movements that resulted in a greater openness of the political arena. During the seventies this political liberalization reached the political parties. Their inclusion in the Legislative Branch was central to its future development.

Under these circumstances, the first opposition Governor was elected in 1989. Major decentralization agreements have been undertaken since 1988. The process of political liberalization brought a significant growth of opposition governments at the state and local level (Municipalities).

The first opposition Congress was elected in 1997. The first mayor of Mexico City was also elected in 1997, and represented a center-left party. As a final conclusion of this process, in July 2000, the recently negotiated political conditions resulted in the election of an opposition presidential candidate, for the first time since 1929.

Mexico has two major television companies, Televisa and TV Azteca. Televisa is the most important Spanish language broadcaster in the world. TV Azteca is a 7 years old company, created after the privatization of the State Owned Mexican Television Institute (IMEVISION) in 1993. Other companies have lesser control of the open television system. They include Channel 40, and channels 11 and 22, which are part of the Public Television System. There are close to 20 national newspapers. Since 1993, competition in the printed Media has grown enormously, with national newspapers that include: Reforma, Universal, Milenio, Crónica, La Prensa, Esto, among others.

During the past 30 years Mexico has changed dramatically. The best example of this political and economic transformation is the 2000 electoral process, when a former opposition governor became the first opposition president in more than 50 years. As in many other political liberalization processes, the opportunity of retaining power became a direct incentive for making concessions to opposition political parties, negotiating better conditions for them and becoming more aware of giving results to the public. In that sense, Mexico is no exception. What was peculiar about the political system in Mexico, in contrast with other hegemonic party systems, was its capacity to maintain the political control without involving the military forces or generalized repression.

This “spirit of change” has been more dramatic in the past few years and this document will only reflect a limited part of this change. It has been a challenge to answer questions when some of the possible answers are things that are being transformed on a daily basis. Unfortunately, this changing system also conditions the possibility of describing some of the possible drawbacks of these transformations. These are inevitably out of the document.

In terms of the development of a National Integrity System, a good general trend is the noticeable political will (in the Executive branch, the Congress and the State level governments) to start simultaneous programs (with different levels of technical capacities) in order to fight against corruption and promote transparency. Despite the common political will, at this point it is easy to establish a contrast with the previous administration. The new presidential strategy is an open strategy, well discussed in the Media, that recognizes its legal and structural limits in the realm of the Public Federal Administration --APF--, but that encourages civic organizations and private sector leaders to participate as well. In contrast, the previous strategy, a highly technical strategy, full with intelligent programs but with relatively low levels of citizen participation --Compranet, Declaranet, Tramitanet, Social Comptrollership, Audits and Controls--, was skeptic to the use the Media and other resources that come naturally with a freely-elected government. This contrast could be very easily related to the political capital of clear and stated legitimacy.

An important challenge for the new government would be to take further a well established anti-corruption strategy based on structural reform and technical programs and to strengthen it with:

- a better coordination scheme within the Federal Public Administration (Comisión Intersecretarial) and state level governments
- a new social alliance against corruption with the general public and the Congress (Acuerdo Nacional contra la Corrupción). The new administration has to be successful in bringing the best of the former administration anti-corruption strategy (continuity) and bring innovation and openness (Access to Information Laws, “Shoppers” Programs, Media Campaign) to guarantee success.

This trend perfectly matches with recent major changes in the Congress. Since 1997, when an opposition majority was built, the Congress, and specially the House of Representatives initiated drastic changes to strengthen its own independence from the Executive branch and to guarantee a more impartial role in its auditing and overseeing functions. The apparition in 2000 of Entidad Superior of Fiscalización is a significant result of these efforts. This Auditing Institution, dependant of the Congress, also has to extend its autonomous character to the position of not being vulnerable to the political changes and composition of the Legislative Branch. At the present time, with no majority party, this seems possible to be achieved. Besides the importance of some of this important transformation, ESF remains a technical audit institution with the limits that this kind of activity might have. Only in 2000, there were more that 1200 audits in the federal government; perception of corruption problems did not changed proportionally.

The combination of both actors, rather than the isolated capacities of each one of them, would be a key development for the next years. The ability of these and other participants to collaborate in a common effort to reduce overlapping faculties and encourage other institutions and organizations to join in a collective action effort will be critical for the success of the strategy and for the possibility of having noticeable results for the general public.

At the highly sensitive area of party finance, the Federal Electoral Institute, IFE, an autonomous institution with high levels of public approval, would play an strategic role in restoring the citizen's trust in political parties and politicians. Its major challenge is to extend its autonomous and impartial capacity to monitor electoral expenses to

- pre-electoral political campaigns and
- state-level campaigns organized by local authorities¹.

These considerations seem to show that an holistic approach, a National Integrity System, could be working with relatively good levels of coordination in the next few years. In the next pages a detailed overview of the components of the system are presented in a very general way.

National Integrity System

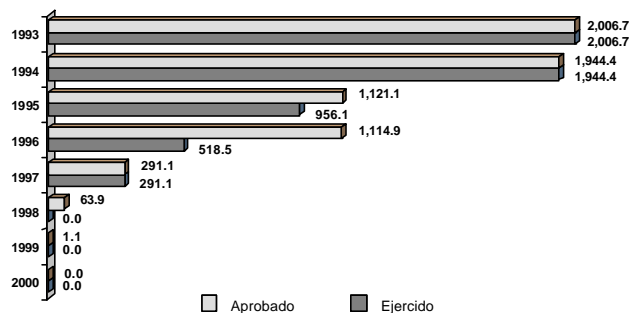
Legislature

Budget approval

The budget is submitted annually by the executive (Department of Treasury) within the first 15 days of November and approved by the House of Representatives² before December 31. The House must approve everything in the budget; there are no public funds that can escape this control. However, there is a provision in Article 25 of the Budget and Accountancy Law³ that allows the president and the Department of Treasury to modify, if necessary, the destination of the public resources. Article 126 of the Constitution determines that government expenses must be in the budget or in an ex post facto law.

During the past six years, the Deputy Secretary of the Treasury for Budget (Undersecretary for the Budget), after severe allegations from civic organizations of a possible political use of a reserved fund for the office of the President⁴, and by direct instructions from the President, reduced its size significantly. In the 2000 budget, the “secret fund” finally disappeared. The 2001 budget continued progress in this area and did not include any similar fund for the newly elected President.

Figure 1 The “Secret Fund”
(2000 adjusted millions of pesos)



Source: Treasury Department of México. Deputy secretary for the Budget.

Conflict of Interest Rules

Conflict of interest rules for parliamentarians and public servants are found in article 88 of the Federal Public Servants' Responsibilities Law⁵, which strictly forbids any public servant (still in office or within one year after he left office) from accepting, demanding or receiving (personally or by another person) money, post, services, employment or gifts for him or his family, that come from any person whose commercial, professional or industrial activities is directly related to his functions in office⁶ or those she used to perform when in office, and directly establishes a conflict of interest if the provision is not observed. The prison penalties that apply to the offenders range from 3 months to 2 years of jail in case the bribe is equal or inferior to 500 times the minimum wage.

There is also a fine equal to several times the minimum wage. In case the bribe exceeds the amount mentioned above, the sanction increases (prison time can go from 2 up to 14 years) and the fine can go from 300 up to 500 times the minimum wage. The sanction also includes the destitution and disqualification to serve as a public official for a period that can go from 2 up to 14 years⁷.

Regarding rules concerning gifts and hospitality, any public servant can receive gifts and hospitality from the same person or company, one or several times, for a period of one year when the amount of the gifts or hospitality is equal or inferior to ten times the minimum wage in Mexico City. If the total values of the gifts are superior to the maximum amount, the public servant is compelled to denounce it and to give the gifts to the Secretariat of Comptrollership and Administrative Development

(SECODAM)⁸ Then an authority (assigned by SECODAM) is supposed to register and store these gifts. These considerations apply only for the Executive Branch of Government.

Electoral Commission

The Federal Electoral Institute (Instituto Federal Electoral) is a constitutionally independent organism with technical and administrative autonomy and a budget of its own that is charged with the duty of organizing the electoral process⁹. The head of this organism is elected by the House of Representatives for 7 years (to ensure his autonomy and independence his term is longer than that of congressmen or the president). The General Council of the Institute, composed by select members of the Mexican society (a legacy of a previous Citizen's Council), which are also appointed for a similar period, has the responsibility of oversee the activities of the executive directorates of the Institute as a whole.

During the 1997 and 2000 elections in Mexico, the Institute's actions proved to be capable of generating confidence on the part of the general public. In a country with a tradition of electoral fraud (not always proved in legal terms) and post-electoral conflicts, no major allegations of electoral fraud were received since the creation of the IFE in 1994, and, in part as a result of the general trust, the 2000 electoral process allowed for a peaceful political transition. In July 2000, an opposition candidate won the presidential elections. The Institute played a key role in the efficient organization of the elections and the publication of the results.

Judiciary System

Review and Judiciary Independence

The federal courts are empowered to review the actions of the President or any public servant in the Public Administration and the Ministers in case those actions lead to a constitutional or legal violation¹⁰. Recently, a very important decision of the Supreme Court obliged the President to deliver to the Congress information regarding the administration of a bank that had been intervened by the Department of Treasure just after it went into bankruptcy. This decision, however, does not directly affect the existence of the "banking secrecy", preserved by law.

The decisions of a judge can only be reviewed by a superior ranking judge (nothing else can overrule a judiciary sentence). For example a sentence of a District Judge can be examined by a Circuit Court of Appeal, whose determination in turn can be appealed before the Supreme Court. The judges are separated from the prosecutors (that depend on the executive) The judiciary is an independent branch of power. Despite the formal considerations, it was until very recently (10 years or so), when the Judiciary System reached a publicly known control of its own independence.

During the 1995 financial crisis, for example, the role of the Judiciary System in the approval of severe measures for reducing the impact of the crisis in the banking system was seriously questioned. For many critics, the Judiciary System simply followed Presidential instructions. The general trend now points to a major independence, including strong opinions against the presidential will (see above) and highly sensible political decisions, like those taken through the Tribunal Electoral del Poder Judicial de la Federación¹¹ with regard to state level electoral conflicts (Tabasco and Yucatán, southern states in Mexico).

Judge appointments

In order to guarantee their independence, Supreme Court justices are appointed by the president and ratified by the Senate. To be appointed, they must comply with the following requirements (article 95 of the Constitution):

- Have the Mexican citizenship by birth.
- Be at least 35 years old.
- Possess a lawyer degree at least for 10 years prior to the designation.
- Have a good reputation and never have been condemned for the commission of a felony.
- Reside in the country at least 2 years prior to the designation.
- To have left office (any public post that requires a public election) at least one year prior to the designation.

In order to become a magistrate of a Court of Appeal or become a District Judge it is necessary to win a public contest (that is, a practical oral and written exam) The requirements needed to obtain these charges are the same of those needed to be a Supreme Court justice. The administration, monitoring and discipline of the judiciary and the career development within it (except for the Supreme Court) is charged to the Consejo de la Judicatura Federal¹² (CJF). At the local level each state of the federation has their own Consejo de la Judicatura (CJ) that has the same duties and responsibilities of administrating the local judiciary (determining the entry and career development of local judges).

Still a very young institution, created in 1995, the Consejo de la Judicatura Federal has to prove the effectiveness of its actions. At the very beginning of its mandate, the general public knew little about its actions.

In this sense, the Judiciary System enjoys a differentiated perception from the general public: the closer a citizen is to the Supreme Court, the better the image of effectiveness of its results. It is clear to everyone that the amount of justice being done by the higher levels of the Judiciary System is amazingly reduced.

Removal

The appointee¹³ can only be removed following the procedures established in Title Four chapter of the Constitution (these procedures are called “juicio politico” and “juicio de procedencia” and are the only procedures for removing a public servant’s immunity)

The juicio politico (political trial) applies to any public servant¹⁴ that has allegedly:

- Attacked the democratic institutions of the country.
- Attacked the republican and democratic form of government.
- Repeatedly violated civil or human rights.
- Attacked freedom to vote.
- Usurped functions.
- Repeatedly violated plans, programs and budgets of the Federation or Local Administration.

In this trial, the House of Representatives acts as the Prosecutor and the Senate as a court (whose final decision can’t be appealed). The outcome of this procedure is the removal of the public servant from his or her post and barring him from being a public servant again.

The same procedure applies to governors of the states, local deputies, magistrates of the Supreme Court of Justice of the State and members of the councils of the local judiciary corps, but the resolution is handled by the local chamber of deputies to proceed.

During the period 1998-1999, according to the data provided by the Consejo de la Judicatura Federal, 3 judges were removed, and 8 were suspended for 1 year.

Table 1 Sanctions promoted by “Consejo de la Judicatura Federal”

Kind of sanction	1998	1999	1998 y 1999
Suspension	4	4	8
Destitution	1	2	3
Inhabilitation	2	2	4
Total number of sanctions by the Federal Judiciary Council	63	43	106

Source: Consejo de la Judicatura Federal, Statistical Record

The juicio de procedencia (which can be translated as a trial that cancels immunity) is applied when a public official¹⁵ commits a crime. The case is presented before the House of Representatives, acting as a court, which has to vote¹⁶ in order to remove the immunity granted to these civil servants¹⁷. Once the House has voted and revoked the immunity, the officials can be prosecuted for having committed a felony.

Local Government

Meetings of City Councils

It is necessary to review the legislation and rules of each city council¹⁸ to determine if a city council must be held in public. However public access to the meetings of a city council is a widespread practice in almost all the different states.

A good example is the City Council of Monterrey (a major city in the northern state of Nuevo Leon), which allows the entrance (not participation) of any person that wishes to do so. But the meetings are never scheduled and are not organized so the public can seldom attend one of them. The city council can restrict the publicity of a meeting if it considers that the nature of the matters discussed must be treated in private or when there is disorder in the room¹⁹ where the meeting is taking place.

Furthermore, even when the right for public hearings²⁰ is openly acknowledged and could be used, some experience in Latin America shows that holding these meetings could be counterproductive if not specifically designed and well conducted for at least two reasons.²¹ First, as a negative incentive for public servants, who are not interested in involving large parts of the population in the decision making process. The public servant then tries to avoid any kind of direct contact with their constituencies. Secondly, and more important, because the defined interests of the groups are not effectively promoted during these hearings, lacking in many cases the technical information required for improving the quality of the decision making process or changing it in the community's favor. A good example of functional public hearings could be found in the work of Poder Ciudadano, an Argentinian non governmental organization.²²

Ombudsman

The National Commission for Human Rights (CNDH) is a constitutionally autonomous institution²³ empowered to receive any complaint regarding misadministration or infringement of human rights by a Federal or Local authority. There are no special requirements in order to become a member of the commission or head of this organism. In order to become consultant or president of the Commission, each one of the ten members of its board and its president has to be elected through the vote of two thirds of the present members of the Senate (Cámara de Senadores).

Petitioners can complain anonymously if they fear possible reprisals. The Commission issues an annual report of its activities which is a compilation of all the recommendations given during the year. The report is then presented to the Congress. The Human Rights Commission has broad powers, with the only exceptions of electoral, labour or jurisdictional affairs. The president and the consultants can only be removed by the procedures provided in title IV of the Constitution (political trial).

However, in August 1999, through a Constitutional amendment, former president Ernesto Zedillo promoted the replacement of the President of the Commission, Mireille Roccatti. The president's constitutional amendment considered only the replacement of the head master of the Commission, while preserving the 10 members of the Consultative Board of the Human Rights Commission. The new head of the Human Rights Commission was elected, as defined by the Constitution, through the vote of two thirds of the present members of the Senate. While the autonomous character of the Commission has not been challenged, the possibility of removal of its head has been clearly stated. The current President of Mexico, Vicente Fox, has not taken any action in order to promote the designation of a new president for the Commission.

Recommendations

This Commission has a voice but no coercive power²⁴; therefore it can only give recommendations to try to change the decision of any authority. The authority will listen to the recommendations, but mostly they will not include it in their decisions. In 1999 the CNDH received 3,830 complaints and decided to issue 104 recommendations (only 33 of them were followed partially, the rest were ignored). During

2000, 26 recommendations were issued. From these, only 4 were carried out totally and 15 of them, were carried out partially.

Table 2 National Human Rights Commission (Ombudsman)

Executive Summary of Recommendations, Nov. 16, 1999 – Nov. 15, 2000

Total number of recommendations:	26
Non accepted recommendations:	4
Accepted, totally followed:	4
Accepted, partially followed:	15
Accepted, with no proof of being followed:	2
Accepted, still on time for presenting proofs of being followed:	2
Still on time for official response:	7
Total (including more than one offense in the same recommendation):	34

Source: Human Rights Commission Annual Report 2000

Despite the fact that powers to investigate corrupt activity are within the scope of the Secretariat of Comptrollership and Administrative Development (SECODAM), citizens frequently use the National Human Rights Commission for administrative acts that, in a broad interpretation of the law, could damage their rights and also constitute a form of corruption.

Political Party Funding

Rules on political party funding

All the rules regarding political parties' funding are found in the Federal Code of Electoral Institutions and Procedures (articles 49 and 49-A) The financial regime for political parties is composed of:

- Public Funding, given by the Federal Electoral Institute²⁵
- Militancy funding²⁶
- Self funding
- Utilities from funds, trusts and interest rates

Financial donations coming from the Executive Power and the Public Administration, Congress, Judiciary, States of the Union, Local governments, Foreign political parties, International Organizations, Mexicans that live or work outside Mexico or any Mexican companies are strictly forbidden. Political parties cannot demand credits from State Development Banks such as Nafin, Banobras and Bancomext. Financial donations to political parties are not tax deductible. The maximum amount of spending allowed during last year's election was \$491, 816, 870 pesos for President, \$404, 660, 348 pesos for senators and \$738, 737 pesos for congressmen.²⁷

Accounts checking

The Federal Electoral institute has a regulatory commission (called Comisión de Fiscalización de los Recursos de los Partidos y Agrupaciones Políticas) that is specialized in monitoring and checking political parties funding and expenses. Every political party must submit to the commission:

- An annual financial report (January to December) in which all income and expenses must be explained in detail. The commission has 60 days to review the report. In case of abnormalities or omissions in the report, the commission gives to the political party 10 days to rectify its report. If the irregularities persist, the final resolution²⁸ of the commission is submitted to the Federal Electoral Court²⁹, which will determine the sanctions and fines which will be imposed on the political party.
- After an elections period the political parties must submit a campaign funding and expenses report. The commission has 120 days to review the report. In case of abnormalities or omissions in the report, the commission gives the political party 10 days to rectify its report. If the irregularities subsist, the final resolution of the commission is submitted to the Federal Electoral Court, which will determine the sanctions and fines for the political party.

Publicity

All of the commission's resolutions (concerning the reports submitted by the political parties) are published in the Electoral Gazette (the Federal Electoral Institute newspaper) and in the media (television, newspapers, radio, internet). Nevertheless the rules of how and when the information is to be made public are determined by the Electoral Institute. Therefore there is room for discretionary decisions. There is a complaint for the 2000 presidential elections presented by the PRI³⁰ that accuses President Fox, of receiving funds from different foreign corporations. The commission has not yet decided about this case. Even if proved, the accusation was especially relevant during the political campaign itself, and the final determination will not change the result of the process.

Complaints

Any complaint about the origin or use of the political party's funds is to be received and analyzed by the Commission. In case of abnormalities the report is submitted to the Federal Electoral Court for further investigation.

From a broader perspective, Mexican legislation includes the provision for the creation of the Fiscalía Especial para la Atención de Delitos Electorales (Special Attorney for Electoral Crimes), a branch of the General Attorney's office in charge of addressing complaints during the electoral process. At these times, any citizen is entitled to present a complaint or to suggest an investigation, even during the electoral day itself. After the complaint is presented, this office starts an investigation immediately in order to present a case to the electoral authorities. A brief review of its recent actions is presented in table 3.

**Table 3 Executive Statistical Review from FEPADE
January 1997 – December 1999**

Year	New complaints and investigations per year	Accepted complaints	Resolutions	In progress
1997	453	453	191	262
1998	339	601*	367	234
1999	549	783*	449	334
Total	1,341		1,007	

*Include those without resolution during the previous year

**In aggregated numbers

Supreme Audit Institution

The Supreme Controlling or Auditing Institution³¹ (Auditoria Superior de Fiscalización) is an independent organism that belongs to the House of Representatives. This institute has technical and administrative autonomy and is entitled to determine its internal organization. This institution is also entitled to establish penal or administrative liabilities committed by public servants, damage to the Ministry of Finance³², and investigate any financial irregularity in the Federal Public Administration or Federal Funds.

Created in 2000 as a replacement of the Contaduría Mayor de Hacienda (General Accounting Office of the House of Representatives), the Supreme Controlling Institution seeks to:

- strengthen the autonomous character of the institution in terms of its organization and function
- improve its technical autonomy for conducting its annual review of the Public Accounts
- reduce the amount of time required for its final reporting
- contemplate the possibility of sanctioning the misconduct of public servants. The recently created organ is still under political negotiation within the Congress to legally guarantee these new faculties regarding budgetary considerations and legal mechanisms of action.

While the previous Contaduría Mayor de Hacienda was always law-abiding and legally operational, it was the object of two major criticisms. First, that the former levels of political independence in the Congress did not allow the Contaduría Mayor to adopt a critical approach, reducing its autonomous character to the political origin of the majority members of the House of Representatives. Second, that the technical complexities of the Mexican budget, in addition to those of the Contaduría Mayor, make it impossible to present a fully integrated report on time for assigning a political cost to those involved in any kind of irregularities. The average amount of time which elapsed before the final report was ready was 18 months.³³

Appointment of the Auditor General

The head of this organism is appointed by the House of Representatives (by the vote of two thirds of the attending congressmen) for a period of 8 years with the possibility of reelection for another term. There are no professional criteria but the person, in order to be appointed, must comply with the following requirements:

- Be 35 years old
- Have a good reputation and to never have been convicted of a felony that deserves more than one year in prison.

If s/he was previously a senator, congressman or congresswoman, General Attorney, or governor, s/he must have left his post at least one year before the nomination. The appointee can only be removed by the procedures established under the title four of the Constitution (these procedures are called “juicio político” and “juicio de procedencia” and are the only procedures available to removing a public servant’s immunity).

The juicio político (political trial) applies to any public servant³⁴ that allegedly has:

- Attacked the democratic institutions of the country.
- Attacked the republican, democratic form of government.
- Repeatedly violated civil or human rights.
- Attacked the citizens right to vote.
- Usurped functions.
- Repeatedly violated plans, programs and budgets of the Federation or Local Administration.

In this trial the House of Representatives acts as the Prosecutor and the Senate as a court (whose final decision can’t be appealed). The outcome of this procedure is the removal of the public servant from his or her post and the prohibition to be a public servant ever again. The same procedure can be used against the Auditor General in case he does not prosecute a proven misconduct, uses the information he handles for his personal benefit or for that of a third party, does not present the public account in time, hides or destroy valuable information or loses his impartiality.

The “juicio de procedencia” (which can be translated as a trial that is applied when a public official³⁵ commits a crime in order to remove his immunity). The case is presented to the House of Representatives, acting as a court, which has to vote³⁶ in order to remove the immunity granted to these functionaries³⁷. Once the House has voted and revoked the immunity, the officials can be prosecuted for the commission of a felony.

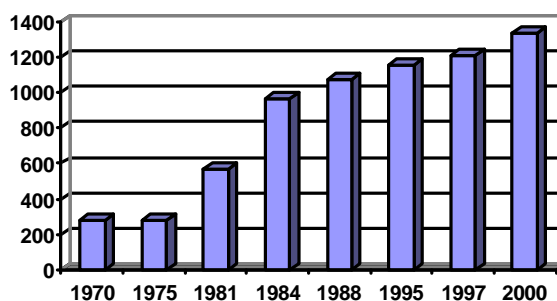
Public Controlling

According to article 74 of the Constitution the control of public expenditure is carried out annually by the Auditoría Superior de Fiscalización (see above). This control is presented before the House of Representatives (the Senate does not participate in this) within the first ten days of June. Until now there has not been any delay, the public account of 1999 has already been approved (consult the internet site www.shcp.gob.mx) The new organization and procedures of the Supreme Auditing Institution will try to reduce the time-delay in presenting the Public Accounts in six months.

Public Accounts must be reviewed and approved by the House of Representatives (article 74 of the Constitution). All the public expenses must be listed and detailed (the amount and the destination of those resources) in the budget that the House of Representatives has to approve. Under the recent constitutional reform, the Supreme Auditing Institution would be capable of starting a penal process against those responsible of misconduct regarding the use of public funds and its accounting.

In addition, the SAI/ASF has new legal faculties, which improve the coordination with the audited agencies and extend its participation to a consultative role in managerial issues related with the use and reporting of the use of public funds. Furthermore, the size of the Superior Auditing Institution has change dramatically in the past thirty years (figure 2).

**Figure 2 Number of Contaduría Employees
1970-2000 (Selected years)**



Source: Mexico Department of the Treasury, General Accounting office; and Leobardo Mendoza, “La Fiscalización de la administración pública en México” (Flasco, 1996). Quoted by: Luis Carlos Ugalde, “The Mexican Congress”, CSIS, 2000, p.36

Despite the importance of these changes, some challenges are still in place. On the one hand, the relative autonomy from the Congress itself, which allows for a political use of the information and discretionary emphasis on the record of the public expenses. In this field, it is important to notice that the SAI/ASF budget will be one of the critical aspects in defining its future agenda. On the other hand, some the project’s critics have raised the point of possible overlapping functions with the executive branch comptrollership, SECODAM, which brings up the issue of better coordination among the three branches of government.

Public Procurement

Rules for public procurement

There is a standard public bidding procedure³⁸ for all major procurements. Nonetheless, each department or ministry can also award public contracts directly³⁹ or by special invitation to 3 different persons, in the following cases:

- Specific work that can only be done by an expert (such as a work of art)
- Military supplies.
- After two public procurement procedures that had no bidders.
- Acquisition of commodities (i.e., grains, cocoa, milk)
- Special equipment (such as chemicals) required for research and development projects.
- The design and construction of prototypes.
- Special services (such as consulting, advising, research and investigation) that deal with confidential information for the government.
- Goods and services directed towards disaster situations.
- Cases of extreme urgency, where it is impossible to start a normal bidding process.

There is also the possibility for each department or ministry to directly award a public contract in case the amount of the purchase is less than 20% of the total budget granted annually to that department or ministry for public procurement. Any invitation to a public procurement process must be published in the official bulletin of the federation⁴⁰. All the rules and procedures for a specific public procurement or contract must be at the disposition of the bidding parties in the department or ministry that is organizing the process and in the media⁴¹ (newspapers, radio and television, and internet). The parties have up to 6 days before the presentation of the propositions to obtain rules and procedures.

Clear improvement in the Mexican federal procurement process is the recent creation of Compranet (see notes 41 and 42), which is an electronic procurement system that provides equal access to all the participants in a bidding process to the necessary information, it improves the secrecy of the offers through a highly secure electronic vault and allows for the use of the electronic firm. Among other objectives, the Mexican government included administrative simplification and transparency criteria in Compranet. Developed since 1995, its creation is a clear sign of the importance of controlling between 65 to 70 thousand biddings a year, and between 25 to 30% of the Federal budget.⁴² In August 1998, after 14 months of operating, Compranet had received a million visitors, which made it the most visited website of the Mexican government. An additional incentive for using the system is a discount of up to 30% discount in the price of the invitation to tender in a public sector procurement process.

Publicity of public procurement decisions

According to article 39 of the Ley de Obras Públicas y Servicios relacionados con las mismas and Article 35 of the Ley de Adquisiciones, Arrendamientos y Servicios Públicos all procurement decisions are to be made public (anyone can assist) and must be justified (why a particular proposition was preferred). The department or ministry must inform each one of the bidders that had lost and why their offer were turned down. The rules apply for most of the state-level procurement and bidding processes in the country.

Review of procurement decisions

As they compete for public contracts, the parties involved in the bidding can submit an incident report to SECODAM⁴³ if they believe some illicit act was committed during the process. The right to present this complaint only lasts for 10 working days, counted after the party had knowledge of the illicit act.

SECODAM, the executive branch comptrollership, has to start an investigation of the alleged irregularities and then decide if the contract is void or if it is valid. In case the ruling is not favorable, the plaintiff has a last chance of appeal, before the same department.

This action can only take place in the following 10 days after the verdict was made. In case one of the parties has a doubt about the legal or technical criteria that was applied in the resolution of the process or of its transparency, it is possible to appeal the authority's decision before the Tribunal de Justicia Fiscal y Administrativa (this is a jurisdictional organism that belongs to the Executive power) and then at a federal court of law⁴⁴.

During the period 1996-1998, SECODAM received complaints for an average of 8.9%⁴⁵ of the 18,512 average bidding procedures carried out annually (55,536 for the period⁴⁶). Since 1995, when the Mexican government started sanctioning its private sector counterparts during a contractual relationship⁴⁷, 84 administrative sanctions were reported.

Conflict of Interests and Blacklisting of Companies

Mexican legislation does not include a “black list” of companies. However, Article 77 of the Ley de Obras Públicas y Servicios relacionados con las mismas and article 60 of the Ley de Adquisiciones, discusses the selection, designation, employment, promotion, suspension or destitution of any person involved in the bidding process or the application of the contract when there is a personal interest (such as family or business) or a personal benefit. The penalties for committing such faults can be (depending on gravity of the fault):

- A public declaration of the public officers conduct.
- Fines (monetary)
- Destitution (temporary or final)

These sanctions are applied by the SECODAM.

Furthermore, and as we mentioned above, Article 88 of the Federal Public Servants Responsibilities Law strictly forbids any public servant (still in office or during one year after he left office) from accepting, demanding or receiving (personally or by another person) money, services, employment or gifts for himself or his family, that come from any person whose commercial, professional or industrial activities are directly related to his/her functions in office⁴⁸ and directly lead to the presumption of a conflict of interests. The prison penalties that apply to the offenders range from 3 months to 2 years of jail in case the bribe is equal or inferior to 500 times the minimum wage.

There is also a fine equal to a number of times the minimum wage. In case the bribe exceeds the amount mentioned above, the sanction increases (prison time can go from 2 and up to 14 years) and the fine can go from 300 and up to 500 times the minimum wage. The sanction also comprehends the destitution and disqualification to serve as a public officer for a period that goes from 2 and up to 14 years⁴⁹.

These legal considerations show a clear imbalance in the sanctioning system. As the figures provided by the government show, public servants are more frequently sanctioned than individuals or companies doing business with the government. In 2000, almost 7,000 public servants were the object of administrative sanctions⁵⁰ while only 11 came from the private sector. The fact that there is no legal responsibility for companies makes this trend more significant.

While there is some kind of blacklist of public servants, there is not a blacklist of companies. Criminal liability for Mexican companies is not considered by the law. However, the discussion about possible changes in the law has started recently, as part of the ratification of the OECD convention against corruption in international transactions. Other efforts include different international organizations. The World Bank, for instance, has a listing of Ineligible Firms⁵¹, but until February 2000, no Mexican company had been included on this listings.

Income and assets monitoring

There is a special procedure to control or monitor the assets of any member of the Public Administration, including ministers and other high level officials, regulated in Articles 79 to 90 of the Federal Public Servants Responsibilities Law. SECODAM must keep a register and monitor the evolution of the assets of the public officers. Every member of the Federal Public Administration must submit a formal declaration of their state to the SECODAM:

- 60 days after entering office.
- 30 days after leaving office.
- Every year in the month of May

In case a public officer displays or shows signs of wealth superior to his possibilities given his official income the SECODAM is authorized to conduct a special investigation.

Executive

Government Infringement of Civil Rights

There is a constitutional trial called “juicio de amparo”⁵² by which the citizen can prevent, suspend or retract any act of authority that violates his or her civil rights (constitutional rights) but the outcome of the resolution or sentence will only suspend the action or return the situation to its prior state (before

the act of authority). In a very strict legal interpretation the only monetary sanction that can proceed in case of a civil right violation by government is subjective civil liability⁵³. Concerning the civil liability, the Federal Civil Code comprises a provision called “responsibility of the state”⁵⁴ by which the state is obligated to compensate and pay damages for any tort caused by a public official in the exercise of his/her functions. In this particular case, if a person was directly damaged by an infringement of their civil rights, it is possible to sue the responsible part to obtain a compensation. The concept of civil liability in Mexico is not developed and therefore these rules that insure monetary compensation are seldom applied.

Income and Assets Monitoring

There is a special procedure to control or monitor the assets of the President or any member of the Public Administration, including ministers and other high level officials, regulated in Articles 79 to 90 of the Federal Law of Public Servants Responsibilities⁵⁵. The SECODAM⁵⁶ must keep a register and monitor the evolution of the assets of the public officers. Every member of the Federal Public Administration must submit a formal declaration of his or her patrimony to the SECODAM:

- 60 days after entering office.
- 30 days after leaving office.
- Every year in the month of May.

If a public official displays or shows signs of wealth beyond his/her possibilities according to his official known income, the SECODAM is authorized to conduct a special investigation and carry out an examination. A major improvement in keeping control of this information is the incorporation of an electronic system for presenting and filing the information from public servants, Declaranet. There is no obligation to publicize the declarations that are submitted. For the first time ever, in December 2000, two recently elected officials, president Vicente Fox, and the governor of Mexico City, Andres Manuel López Obrador, decided to publicize their assets.

Despite a major change in the origin of the sanctions, in August 1998, SECODAM reported that 27% of the sanctions (2,193) were related to changes in the assets of public servants (“Illegal acquisition of wealth”). In 1989, this reason accounted for 90.9% of the sanctions.

Conflict of interest rules

As mentioned before, Article 88 of the Federal Public Servants Responsibilities Law strictly forbids any public servant (still in office or during one year after he left office) from accepting, demanding or receiving (personally or by another person) money, post, services, employment or gifts for him or his family, that come from any person whose commercial, professional or industrial activities are directly related to his/her functions in office⁵⁷ and directly lead to the presumption of a conflict of interest. The prison penalties that apply to the offenders range from 3 months to 2 years of jail in case the bribe is equal or inferior to 500 times the minimum wage. There is also a fine equal to times the minimum wage. In case the bribe exceeds the amount mentioned above, the sanction increases (prison time can go from 2 up to 14 years) and the fine can go 300 and up to 500 times the minimum wage. The sanction also comprehends the destitution and disqualification to serve as a public functionary for a period that go from 2 up to 14 years⁵⁸.

Any public servant can receive gifts and hospitality from the same person or company, one or several times, during one year when the amount of the gifts or hospitality is equal or inferior to ten times the minimum wage⁵⁹ in Mexico City. In case the total value of the gifts is superior to the maximum amount, the public servant is compelled to declare it and turn the gifts over to SECODAM. Then an authority (designed by SECODAM) is supposed to register and to store these gifts.

Final Decisions in Ordinary Contract Award and Licensing Cases

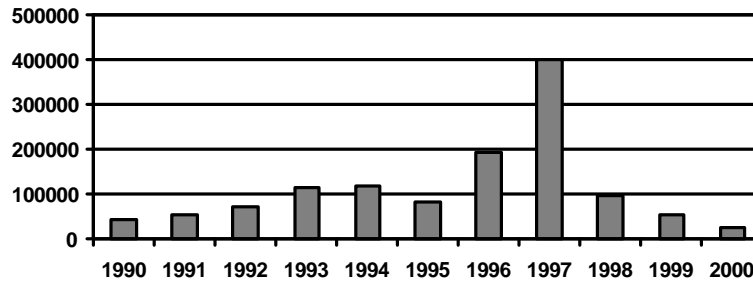
The law does not specify who is the person that finally consents or approves the awarding of public contracts or licensing, (the contract is supposed to be awarded to the person or company that can offer the lowest price and the best quality). Nevertheless, following the hierarchy principle within the Public Administration, the ministers decide (most of the time) the award of a public contract or license according to the rules established in the Ley de Adquisiciones, Arrendamientos⁶⁰ y Servicios del Sector Público and the Ley de Obras Públicas y Servicios relacionados con las mismas⁶¹ that are supposed to insure impartiality.

Administrative Checks and Balances

Article 73 of the Ley Orgánica de la Administración Pública Federal⁶² determines that the SECODAM has full authorization to determine the organization and coordination of the system of governmental evaluation and inspection of the Federal Public Administration (which includes an oversight of how the budget is exercised by high level officials). Control is exercised but there is no publicity of the work that is done. During the period 1994-1999, the average number of audits was 156,511 (see figure 3).

In the past four years, a major restructuring process took place in the National Control System. Historically, the Internal Control Organs (OIC)⁶³ of the departments and agencies of the Federal Public Administration, were designated by the head of each one of the departments or agencies, which give these organs poor independence. Since 1996, the OICs gained autonomy from the institutions they monitored, through a new scheme for designating their heads: SECODAM now is responsible for their selection and accountability. Under this reform, the total number of comptrollerships passed from 226 in 1994 to 290 in 2000.

Figure 3 Government of Mexico
Total number of audits in the Federal Public Administration, 1990-2000*



* Until August 2000

Source: SECODAM. Sixth State of the Nation

Investigative Agencies

Special Investigative Agencies

There are no special investigative agencies operating in Mexico. In some cases, there are Fiscalías especializadas contra servidores públicos (Special Attorney for Public Servants Affairs). However, President Vicente Fox, inaugurated his mandate with the creation of a new special commission called Comisión Intersecretarial para la Transparencia y el Combate a la Corrupción en la Administración Pública Federal (Commission for Transparency and Fight against Corruption within the Federal Public Administration).

This Commission is empowered to propose legal reforms that will help to prevent and fight corruption, design all types of actions that will improve the quality of public service, promote the participation of civil society in the fight against corruption, determine the actions of the National Plan Against Corruption and establish procedures to guarantee the access of all citizens to public information.⁶⁴

This Commission is an organism of the Federal Public Administration submitted to the President's authority (the President appoints the members of this Commission). The members of this Commission are:

- All the Ministers of the Public Administration
- The General Attorney
- Five delegates from the President's Office
- Delegates from unions and civil society

Publicity

The Commission has to publish, every four months, a special report that evaluates the consequences of the implementation of the national campaign against corruption. There is no constitutional or legal obligation to report to the Congress.

Complaints

Every citizen can present a complain before the Commission, which is authorized to attend public cases of corruption. It is intended to reduce the possibility of having any type of recrimination, so the complaints can be anonymous. Since this commission is new, no data of the advances that have been made is yet available. Up to this point the Commission has undertaken two relevant action: its formal installation and the official request of its Executive Secretary to respond to a special diagnostic questionnaire where vulnerable areas of corruption are identified. The results of this diagnostic are not public yet.

Since 1995, the National System for Complaints⁶⁵ has received 3.9 million entries (until August 2000), which represented a 62% growth in the total number of complaints received in the period 1990-1994⁶⁶.

Civil Service

Mexico has a selective civil service that includes the following institutions: Bank of Mexico, Ministry of Foreign Affairs, Treasury Secretariat, National Waters Commission, Federal Electoral Institute. Besides these and other specific agencies, other secretariats and agencies have developed their own administrative structures based on of the Federal Administration Law (Ley Orgánica de la Administración Pública Federal).

Criminal and Administrative Sanctions for Bribery

In the first place we have the administrative trial⁶⁷, by which the SECODAM⁶⁸ can prosecute congressmen, judges, and members of the public administration (including the President and Ministers) and those who handle federal resources if they do not respect the obligations contained in Article 47 of the Ley Federal de Responsabilidades de los Servidores Públicos. This article contains a disposition that forbids public officials from receiving any extra payment other than his/her salary. It also prohibits the participation in any business in which they could have a personal interest. The penalties for committing such faults can range from public punishment to destitution, pecuniary penalties and even prohibition to exercise public functions for a certain period⁶⁹. SECODAM is the agency in charge of applying these sanctions (see table 4).

The prison penalties that apply to public officers that accepted a bribe⁷⁰ range from 3 months to 2 years of jail in case the bribe is equal or inferior to 500 times the minimum wage. There is also a fine equal to several times the minimum wage. In case the bribe exceeds the amount mentioned above, the sanction increases (prison time can go from 2 up 14 to years) and the fine can range from 300 up to 500 times the minimum wage. The sanction also comprehends the destitution and disqualification to serve as a public official for a period that ranges from 2 up to 14 years.

Table 4 Total number of administrative sanctions for public servants (1990-2000)
(Includes all kinds of administrative violations)

Area of Government	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	May 2000
Executive Branch	10,326	18,392	18,614	13,944	15,503	7,133	8,605	10,966	9,462	8,685	5,634
State Owned Companies	n.a.	n.a.	n.a.	n.a.	174	673	831	1430	1477	1745	1336

Source: Sixth State of the Nation. Statistical Annex

Political Independence of the Civil Service

There is an formal absolute political independence within the civil service or the Federal Public Administration (APF). However, the traditional scheme included an exchange of political support from the bureaucrats to the former official political party, the Institutional Revolutionary Party. When the electoral machinery of the PRI started to slow down in the seventies (and political competition to grow), it was considerably more difficult to offer political support in exchange for political or economic privileges.

Career Development Rules

A bill was presented on October 26, 2000 with a draft for a Professional Civic Service Career in the Federal Public Administration Law⁷¹ (until now this proposition is still being studied by Congress) This law, if approved, will apply to all public officers (except Secretaries and undersecretaries) of the Federal Public Administration Catalog published annually by the Treasure Department⁷².

A special system will be designed in order to regulate the employment demand in any agency and the appointment of any public servant, the design of clear rules for promotions, the redesign of rules for evaluation of productivity and behavior. The results of the examinations will be the parameters for determining promotions and career development. Technical committees will be constituted inside each public agency in order to implement this system. The possibilities of having a complete Civil Service, such as the one described above, are very limited.

Rules to Prevent Nepotism or Cronyism

Article 46 (XVI) of the Federal Public Servants Responsibilities Law⁷³ provides for the strict forbidding of any public officer to participate (directly or indirectly) in the election, designation, employment, promotion, suspension or destitution of any person when there is a personal interest (such as family or business) or a personal benefit. The penalties for committing such faults can be (depending on the gravity of the fault):

- A public declaration of the public officers conduct.
- Fines (monetary)
- Destitution (temporary or final).

Any public servant can receive gifts and hospitality from the same person or company, one or several times, during one year when the amount of the gifts or hospitality is equal or inferior to ten times the minimum wage in Mexico City. If the total values of the gifts are superior to the maximum amount, the

public servant is obliged to declare it and to hand it over to SECODAM. Then an authority (designated by SECODAM) is supposed to register and to store up these gifts.⁷⁴

Post Public Employment

Article 88 of the Federal Law of Public Servants Responsibilities strictly forbids any public servant (still in office or during one year after leaving office) from accepting, demanding or receiving (personally or by another person) any type of employment for himself or his family, that came from any person whose commercial, professional or industrial activities is directly related to his functions in office⁷⁵ and directly leads to the presumption of a conflict of interest. The prison penalties that apply to the offenders range from 3 months to 2 years of jail in case the bribe is equal or less than 500 times the minimum wage. There is also a fine equal to several times the minimum wage. In case the bribe exceeds the amount mentioned above, the sanction increases (prison time can range from 2 up to 14 years) and the fine can range from 300 up to 500 times the minimum wage. The sanction also comprehends destitution and disqualification to serve as a public servant for a period that goes from 2 up to 14 years⁷⁶.

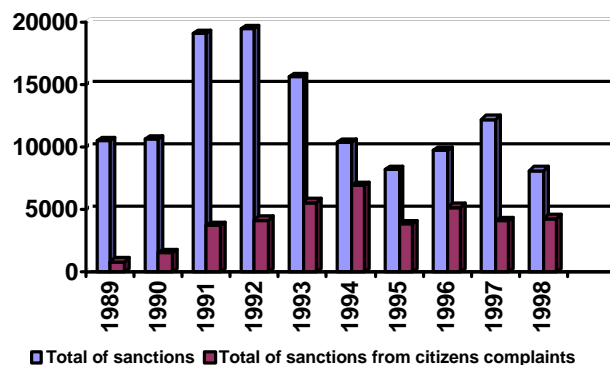
Complaint Mechanisms for Public Servants and Whistleblower Protection Measures

Public servants must complain directly to SECODAM but there are no special protections for whistleblowers, except that the complaint can be made anonymously. In a system where promotions are discretionary, "blowing the whistle" could become an extremely delicate task, which may become a non-official reason for being fired. Furthermore, if the case is not presented properly, a new case against the complainant could arise. These conditions might work as negative incentives for complaints and whistleblowing within the public sector.

Complaints By Members Of The Public

Any citizen can directly address the SECODAM in case they have a complaint against a public officer⁷⁷. As stated above, there is a national system for receiving complaints which has been in charge of almost 4 million entries. From this aggregated number, almost 1 million entries were related to possible administrative irregularities. 830 thousand were immediately solved. In addition, SECODAM's website (www.secodam.gob.mx) offers a service that receives any complaint (no anonymous complaints are allowed) and there is also the SACTEL a free telephone system that receives complaints and general information inquiries from citizens (24 hours a day / 365 days a year). Between September 1999 and August 2000, the average number of users was 8, 639. Yet, President Fox , announced along with his new anticorruption program, the future improvement of these systems (currently in progress) so change is soon expected. From 1994 to 2000 more than 4,003,231 complaints were presented, of which 978,118 were related with cases of alleged corruption of public officers and 85.5% of these were immediately attended by SECODAM.⁷⁸

Figure 3 Citizens complaints as origin of the sanction



Source: Elaborated by the authors. Data from SECODAM published by José Octavio López Presa, "Corrupción y cambio" (Corruption and Change). México, SECODAM - FCE, 1998.

Media

Freedom of expression

According to Article 6 of the Constitution there is a guarantee of freedom of speech that can only be restricted if the exercise of such freedom goes against public order, attacks the rights or the morality of other citizens or provokes a felony. The freedom of the press is also protected by a constitutional provision but the State can practice censorship (always after the publication).

Censorship

By law, all the information that is going to be broadcasted in radio or television has to undergo a previous censorship that is determined by the Secretaría de Gobernación (Department of State⁷⁹). The department has to watch over certain moral and political correctness criteria. In recent years, however, this practice has been used rarely as a mechanism of political control. The head of the Directorate for Radio, Cinema and Television of this Department of State (RTC) has very randomly exercised any kind of control over the contents since the mid-nineties. Even the official media of Mexican government have been privatized or disappeared. The Mexican Institute for Television (IMEVISION) was privatized seven years ago and El Nacional (an official newspaper) disappeared. This, however, might not be the case at the state or local level.

During the early nineties, a much more complex and sophisticated means of control took place. They were related to the advertisement scheme of the Mexican government. Operated through the discretionary powers of the "Social Communications Office" of each secretariat, the Media was selected for the payment of government advertisement in many cases under political criteria. More recently, this trend has been under continuously attack from the public opinion and severely punished by an empowered media with increased levels of economic and political independence.

The recent publication of Reforma, Milenio and Crónica, all of them national newspapers, has dramatically changed the informal rules of the game, and formerly semi-official newspapers are facing severe financial problems.

Additionally, the national radio stations grew in audience in such a proportion that became the best forum for advertisement. National television has increasingly opened its political perspectives, in part as a consequence of more strict electoral legislation (which guarantees more equity for political parties) and also as a response to a changing audience.

Criticism by Publicly Owned Media

Since 1997 there has been a notorious openness in publicly owned media. Even electronic media, such as TV Channels 11 and 22 are government owned television networks with very impartial coverage and governmental criticism. The coverage of these stations, however, represent an extremely small share of the national audience. The symbolic aspect of its political liberalization is nevertheless, a good indicator of its openness.

Media Articles On Corruption

The growing competition in the media has paved the road for a large number of investigative reporters committed to the public discussion of corruption issues. A broad coverage of misuse of public funds or political abuse has been a common trend since 1994. With low levels of direct censorship and an increased demand for impartial information, the media has covered to the detail corruption scandals like those involving former president Carlos Salinas' brother, Mr. Raúl Salinas. Since then, several cases of corrupt public officials have been followed by the media without any kind of publicly known repression. We have the examples of Oscar Espinosa Villarreal (former minister of the Tourism Department charged with illegal use of public funds) or Mario Villanueva (former governor of the southern state of Quintana Roo, currently charged with conspiracy for drug trafficking).

Media Licensing Authorities

Every permission for using a radio or television signal is granted directly by the state. The final decision is completely discretionary. Foreigners cannot participate in this process. The permission lasts 30 years with a possibility for renewal. Therefore the chances for the media to favor the government, in order to keep their licenses is very high. This is a subtle, but effective way of control, which has been very discreetly used by Mexican government. However, there are not public records of this practice.

Restrictions to Free Speech

According to an independent free-media civil organization, Fundación Manuel Buendía, during 1999 there were 202 aggressions to reporters that were investigating corruption or drug related cases (24 physical aggressions, 2 kidnappings, 8 attempted murders, 3 murders, 5 reporters that were banned from the media and 14 lawsuits). Most of these cases occurred at the state or local level of government, where, as we have stated before, the relationship between the government and the media is still shaped by more traditional ways of exercising political control.

There is also the legal aspect of repression. The Federal Civil Code (Articles 1916 and 1916 bis) determines that anyone that has been subject to libel or slander can sue for a compensation (monetary and moral). There have been several cases in which either civil or criminal lawsuits have been presented in order to deter the press or the media from investigating a case.

Civil Society

Access to Information and Documents from Public Authorities

Any person can request the government for any kind of information⁸⁰ but the authority can deny access to such information (as long as it gives any answer to the petitioner). The Supreme Court established in the case of Aguas Blancas⁸¹, that the state has the obligation to inform the society of every government action (based on Article 6 of the Constitution that determines the right to information for every citizen). Yet plenty of important or relevant information (such as data concerning the prosecution or investigation of corrupt officers) is not available, and probably will not be on the grounds of privacy, secrecy or national security. At the present time, only one "Freedom of Information Act" is under congressional discussion in Guanajuato⁸², a northern state of Mexico but several informal discussions are being held between the Executive and Legislative branches of the Federal Government, and possible initiatives may come out as a result.⁸³

Public Authority Cooperation with Civil Society

The past 28 of February, 2001 the presidential office for the coordination with the civil society (Coordinación Presidencial de Alianza Ciudadana, Gobierno y Sociedad Civil), in response to the extensive demands of various citizens groups, held a meeting with more than 4 00 civil organizations with the purpose of developing a coordination program where the citizens can discuss and propose ways of improving the area of government service delivery and public policy. This program stresses the importance of the following activities:

- Approve of projects to encourage civil society development and participation.
- Establish institutional instruments for civil society participation in the public area (monitoring, control, evaluation)
- Raise funds and determine financial instruments for the development of the projects of the various civil organizations.

There is also the Social Controlling Program (Programa de Contraloría Social) installed by the SECODAM which is a government program that incorporates civil society in the controlling and vigilance of the government expenditures and service delivery. Under this program, 129 000 community representatives were trained in preventive control and other administrative areas in the period 1995-1999. In 2000, the total number of community representatives trained under this program was 288 027.⁸⁴

Citizens participation in legislation is very limited. The Constitution only allows the president or the members of the Congress to propose and present new legislation, nevertheless there is the possibility to perform lobbying, hence an open possibility for influence change in legislation.

Some of the relevant groups in Mexico campaigning against corruption are Alianza Civica (Civic Alliance), a large grassroots based organization, Fundar, an organization working with public budget at the municipal level and different chambers of business and commerce (such as the National Chamber of Commerce) and Transparencia Mexicana, the National Chapter of Transparency International.

As part of the current strategy of the Mexican government against corruption, in February 26, 2001, the National Agreement Against Corruption and in favor of Transparency was also signed by representatives of the private sector, including businesspeople and leaders of unions. The agreement

represents an unilateral declaration of no-bribing from these companies, civil organizations and unions.⁸⁵ The president and members of the Executive branch of government also signed this agreement.

Police and Prosecutors

Commissioner of Police

All nominations of police commanders⁸⁶, at the federal level, are made by the Secretariat of Public Security (Secretaría de Seguridad Pública). This is a recently created Secretariat. The appointments at the local level are decided by the governor or the head of the municipal council. The General's Attorney's Office, appoints and removes the directors of the judiciary police. The rest of the personnel of the corporation is submitted to exams for entrance and promotion within the corporation. There is a civil service career in the institution.

Prosecutors

The General Attorney is appointed by the President and must be ratified by the Senate. He is responsible directly to the President and can be removed at any time. Accordingly, there is no real independence. At the local level the chief prosecutors are appointed by the governors. All prosecutors⁸⁷ (called Ministerio Publico) are legally bound to the General's Attorney's Office, therefore they have no real independence either. The final approval needed to prosecute is given by the general attorney or one of his deputies or delegates. There is a large discretionary margin in crime prosecution⁸⁸.

Special Anti-Corruption Crime Unit

By the decision of the General Attorney, special units can be created for the investigation and prosecution of certain crimes⁸⁹. Until now the General Attorney's Office has assembled two special units, one against electoral crimes and the other one against drug related crimes. There are no especial units for fighting corruption. As mentioned above, faculties for starting an investigation related to corruption are held by SECODAM. When there is a penal implication for the offender, SECODAM has to start a penal process by notifying the General Attorney's office.

Mechanism to Handle Complaints Against the Police

There is an internal control unit within the General Attorney's Office in charge of receiving and investigating complaints of corruption against the judiciary police. Sometimes, when it is necessary, this office will impose an administrative sanction and initiate the procedures for the exercise of penal action against public servants. There is also the possibility to denounce any abnormality or misbehavior to SECODAM, through the systems and mechanisms described above (Directorate for Public Attention and SACTEL, among others).

The complaints regarding corruption of public servants can be anonymous with the only restriction of giving the proper and sufficient documentation that constitutes a substantiated proof of corruption. A lack of credibility, the fear of possible retaliation of police officers and no transparency in the investigation procedure may account for the lack from citizens in denouncing corruption or abuses from the police.

This situation, however, varies from one police department to another. At the federal level, the recently created Policía Federal Preventiva (Preventive Federal Police, PFP) has worked increasingly in the promotion of a new image for police corps in Mexico. During 2000, for instance, PFP exercised severe penalties (including destitution) to those members of the corporation involved in the transit of illegal migrants in the Mexico City Airport. The case was widely known by the media, in part as a consequence of a top-level decision at PFP. Almost every involved member of PFP was sanctioned and publicly exposed.

Prosecution and Application of the Law

The instruments that are used for the investigation and prosecution of cases of corruption are the Constitution, the Federal Penal Code and the Federal Penal Procedures Code. Additionally, there are laws that are not strictly penal (such as the Internal Revenue Code or the Federal Law for Credit Institutions) that have a chapter on different crimes.

In 2000 the General Attorney informed that 594 corruption related crimes had been prosecuted. Only 14% of those prosecutions were dropped for different reasons such as lack of proof. The rest of the cases were sentenced and a criminal sanction was imposed. During the past six years the General Attorney office 903 public servants were ceased, from which 744 will not be able to re-incorporate in any other area of government.⁹⁰ Corruption is difficult to prove and most of the time the prosecutors do not have the sufficient technical preparation or equipment to build strong cases. The principal problem within police corporations is the lack of monetary and technical resources, specially the very low incomes of the policemen and prosecutors. All of the problems mentioned above encourage corruption (especially in drug related cases) and deter the effectiveness of police work. The application of the law is not yet a general rule.

References

- ¹ The annual accounting of a National Party is audited, but there is a clear need to strengthen the coordination with local authorities for preserving a general standard in the country.
- ² The senate has no participation in this procedure.
- ³ Ley de Presupuesto, Contabilidad y Cuenta Publica
- ⁴ The so-called “secret fund”
- ⁵ Ley Federal de Responsabilidades de los Funcionarios Públicos
- ⁶ Including family in law
- ⁷ Article 222 of the Federal Criminal Code.
- ⁸ SECODAM stands for Secretaría de la Contraloría y Desarrollo Administrativo
- ⁹ This includes the rights and funding of the political parties, electoral and civic education, vote counting, territorial organization of the electoral districts, organization of the electoral lists, control of media polls and also the power to declare the validity of the congressmen and senator’s elections.
- ¹⁰ This is a constitutional trial called *juicio de amparo*.
- ¹¹ Electoral Court of the Nation’s Judiciary Power.
- ¹² This Institution, along with the Supreme Court, are empowered to guarantee the autonomy and independence of the judiciary.
- ¹³ Federal judges (including Supreme Court Justices) and local judges.
- ¹⁴ According to article 110 of the Constitution this trial is reserved for the President, members of Congress, Federal Judges (including Supreme Court Justices), governors, members of autonomous organs such as the Electoral Institute or the National Human Rights Commission.
- ¹⁵ According to article 111 of the Mexican Constitution this procedure will only be applied to federal officials such as senators, congressman, judges, justices and the General Attorney.
- ¹⁶ A simple majority of the congressmen that is present in the session is needed.
- ¹⁷ This immunity protects the officials even from criminal prosecution. The immunity is attached to the public function so once they finish their official duties, there is no legal prohibition to prosecute.
- ¹⁸ Reglamentos de gobierno de los Ayuntamientos.
- ¹⁹ Articles 30 and 31 of the City Council Statute of the City of Monterrey, Nuevo Leon.
- ²⁰ Public hearings are a common historical right in the country. At the local level, “Sesiones de cabildo abierto” are common practice in several areas of the country.
- ²¹ We are referring to the work in public hearings promoted by civil organizations, which show that a public hearing without a concrete strategy or minimal coordination among the actors could be useless for their purposes and extremely discouraging for public servants to be used frequently. Extra information regarding “Public Hearings” can be found in www.tilac.org
- ²² www.poderciadano.org.ar
- ²³ According to article 102 of the Constitution this Commission has constitutional autonomy, this means it has its own resources determined in the budget, power of self-administration and is considered to be a legal person.
- ²⁴ Recommendations from the Ombudsman, as in other cases in the world, have no binding effect.
- ²⁵ This funding comes from the federal budget. The IFE determines the distribution of this amount according to some specific rules (such as the total number of votes in the last election).

²⁶ The amount given by a person cannot be superior to 1% of the total funding of the political party for that year. The amount given by a corporation cannot exceed 5% of the total funding of the political party for that year.

²⁷ Exchange rate in Mexico is \$1usd per \$9.50 pesos (average).

²⁸ In this resolution the commission must determine if there are irregularities in the report.

²⁹ Tribunal Federal Electoral del Poder Judicial de la Federación. This court belongs to the judiciary branch and is the only court that is empowered to resolve electoral matters.

³⁰ Partido Revolucionario Institucional. A major political party in México.

³¹ Regulated in article 79 of the Constitution and in *the Ley de Entidad Superior de Fiscalización de la Federación*.

³² Through the Mexican Tax Management System (SAT)

³³ This average time period made difficult to a newly elected congressman to keep track of the issues he or she was working on. As there is not legislative re-election in Mexico, most of the congressmen were always part of a delayed discussion as far as of the public accounts were concerned, enjoying poor incentives to include this information in their current debates.

³⁴ According to article 110 of the Constitution this trial is reserved for the President, members of Congress, Federal Judges (including Supreme Court Justices), governors, members of autonomous organs such as the Electoral Institute or the National Human Rights Commission.

³⁵ According to article 111 of the Mexican Constitution these procedure will only be applied to federal officials such as senators, congressman, judges, justices and the General Attorney.

³⁶ A majority of the congressman that are present in the session is needed.

³⁷ This immunity protects the public official even from criminal prosecution. The immunity is attached to the public function so once they're released from the official position there is no legal prohibition to prosecute.

³⁸ According to article 28 of the *Ley de Adquisiciones, Arrendamientos y Servicios Públicos* certain public contracts are reserved for Mexicans. International parties can participate only:

When there is a formal obligation in an international treaty.

If there is no Mexican company that can provide the services or goods required or cannot present a proposal.

When the public procurement is financed with external funds.

The standard procedure is competitive bidding, although in many cases a technical analysis is required to determine the winner. The provisions are set out in Articles 33, 34, 35, 36 and 37 of the *Ley de Adquisiciones, Arrendamientos y Servicios Públicos* and articles 37 and 38 of the *Ley de Obras Publicas y Servicios relacionados con las mismas*.

³⁹ Articles 40,41 and 42 of the *Ley de Adquisiciones, Arrendamientos y Servicios Públicos*

⁴⁰ Diario Oficial de la Federación. This is the official newspaper in which all laws, statutes and decrees are published.

⁴¹ The department or ministry is free to decide which media is to be used. There is a website (www.compranet.gob.mx), that belongs to SECODAM, with all the information concerning public procurements for all the Federal Public Administration.

⁴² Compranet was launched to the public in March 1996. From June 1997, all the information relative to a bidding process at the federal level of government must be uploaded to Compranet.

⁴³ *Secretaría de Control y Desarrollo Administrativo*. This is the Department of Administrative Control.

⁴⁴ The plaintiff has the opportunity of going into a constitutional trial (*juicio de amparo*)

⁴⁵ In 1996, 9.8%, in 1997, 8.8% and in 1998, a preliminary 8.2% of the public bidding procedures presented formal complaints to SECODAM.

⁴⁶ Preliminary figures for 1998.

- ⁴⁷ We are referring to administrative sanctions considered under the category “proveedores, contratistas y notarios”, as quoted in the “Sixth State of the Nation Address. Statistical Annex.”. The account runs from 1995 to 2000.
- ⁴⁸ Including in laws.
- ⁴⁹ Article 222 of the Federal Criminal Code.
- ⁵⁰ Not all of these sanctions were related with public procurement.
- ⁵¹ <http://www.worldbank.org/html/opr/procure/debarr.html>
- ⁵² Regulatory Law of Articles 103 and 107 of the Constitution (*Constitución Política de los Estados Unidos Mexicanos*).
- ⁵³ In Mexico this provision is similar to torts and liability law. See Article 1910 of the Federal Civil Code.
- ⁵⁴ *Responsabilidad del Estado*, Article 1927 of the Federal Civil Code.
- ⁵⁵ *Ley Federal de Responsabilidades de los Servidores Públicos*.
- ⁵⁶ *Secretaría de Contraloría y Desarrollo Administrativo* (Controlling Department)
- ⁵⁷ Including family in law
- ⁵⁸ Article 222 of the Federal Penal Code.
- ⁵⁹ The minimum wage in Mexico City is 34.5 pesos a day.
- ⁶⁰ Law of Acquisitions, Rentals and Services of the Public Sector.
- ⁶¹ Law of Public Procurement and Related Services.
- ⁶² Law that establishes the organization of the Federal Public Administration.
- ⁶³ *Organos Internos de Control*.
- ⁶⁴ A complete description of the strategy could be found at www.secodam.gob.mx
- ⁶⁵ “Sistema Nacional de Quejas, Denuncias y Atención a la Ciudadanía”
- ⁶⁶ Official Statistics from the Sixth State of the Nation (2000).
- ⁶⁷ Article 108 of the Constitution and the “Ley Federal de Responsabilidades para los Servidores Públicos” in articles 46 to 78.
- ⁶⁸ *Secretaria de Control y Desarrollo Administrativo*. This department is charged with the control and monitoring of the Federal Public Administration.
- ⁶⁹ The SECODAM publishes a list (in the internet and the Official Gazette) of all the public servants that are suspended or banned from the public service.
- ⁷⁰ Article 222 of the Federal Penal Code.
- ⁷¹ *Ley para el Servicio Profesional de Carrera en la Administración Pública*. Certain departments such as the Central Bank, the Treasury Department, The Foreign Affairs Department or the Judiciary have a civil service career that has proven to work.
- ⁷² *Secretaria de Hacienda y Crédito Público*.
- ⁷³ *Ley Federal de Responsabilidades de los Servidores Públicos*.
- ⁷⁴ Articles 88, 89 and 90 of the Federal Public Servants Responsibilities Law.
- ⁷⁵ Including family in law
- ⁷⁶ Article 222 of the Federal Penal Code.
- ⁷⁷ A National System for Complaints and Citizen Attention was implemented during president’s Zedillo term.
- ⁷⁸ Official Statistics from SECODAM.
- ⁷⁹ Article 10 of the Law for Radio and Televisión. *Ley de Radio y Televisión*.
- ⁸⁰ Article 8 of the Constitution guarantees the right of petition.

⁸¹ In this case the Supreme Court ordered an investigation of a collective murder perpetrated by the local police against a group of indigenous people.

⁸² Presented by an opposition party in 2001.

⁸³ On April 3rd, 2001, the Secretary of the Comptrollership and Administrative Development assured that a Freedom of Information Act would be ready in 90 days.

⁸⁴ Sixth State of the Nation (Ernesto Zedillo, Sexto Informe de Gobierno, 2000).

⁸⁵ The Agreement can be found in www.presidencia.gob.mx and www.secodam.gob.mx

⁸⁶ Federal Police. Policia Federal Preventiva.

⁸⁷ There is a civil service career for all the prosecuting offices.

⁸⁸ Nevertheless there is the possibility of appealing the General Attorney 's decision of not prosecuting a crime.

⁸⁹ According to article 14 of the *Ley Organica de la Procuraduría General de la Republica*.

⁹⁰ Sixth State of the Nation (2000), Presidential Address of Ernesto Zedillo.

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