

CALDERON & CORRUPTION

Irma E. Sandoval
Professor & Coordinator
Laboratory for the Documentation and Analysis of Corruption and Transparency
Institute for Social Research
National Autonomous University of Mexico
irma.sandoval@servidor.unam.mx

Prepared for presentation at:

THE STATE OF MEXICO'S DEMOCRACY: OBSTACLES TO CONSOLIDATION
Yale University/IIJ-UNAM
May 1st, 2007

A. Structural Corruption and Conflicts of Interest

Mexico is in crisis. Above and beyond the scandalous poverty, inequality and social exclusion which have characterized the country for decades, we are now faced with a new challenge: a profound decline of faith in the institutions of government. Despite its lack of progress in the arena of social justice, Mexico *had* made major strides forward in the construction of democratic institutions. The new and independent Supreme Federal Auditor and Federal Institute for Access to Information are both shining examples of this. The new *Ley de Servicio Civil de Carrera* (Civil Service Code) and the recent passage in Congress of a constitutional reform which institutionalizes access to information are also major steps forward.

Unfortunately, there is a gaping hole between institutional design and performance. It is not enough to simply create a new government agency. It must also be staffed with effective leaders who have sufficient vision and capacity to attack problems at their roots. Otherwise, the inertia of the operative structures of the old regime inevitably creeps in through the back door and we are left with white elephants who, if let loose, easily trample the seedlings of democracy.

In the previous panel my colleagues discussed and debated the problematic performance of the electoral authorities during the past elections. I turn my eye to an equally important area of democratic governance: corruption control.

The phenomenon of corruption is still a heavy weight on the country at almost all levels of government. Transparency International's most recent report indicates that almost half of all Mexicans (43%) profoundly distrust the government's anti-corruption strategies. These citizens not only believe that the official strategies are ineffective but are also convinced that the government and public authorities directly encourage corrupt activities. Bribery has reached alarming levels. In 2006 more than a quarter of all Mexicans (28%) were forced to pay some type of bribe. This number is far above the equivalent number for countries like Peru, Panama, Venezuela, Dominican Republic, Indonesia, Kenya and South Africa.

But these reports barely scratch the surface of the issue. The real problem is not so much low level bribery of innocent citizens by policemen, garbage collectors and bureaucrats, but the structural corruption which invades the central functions of the state. Conflicts of interest abound at the highest levels of government. Top officials are not required to divest from problematic investments nor are they required to make their assets declaration public. The law does prohibit public servants from being directly hired by interests they are supposed to regulate up through one year after leaving public service, but this is rarely enforced and violation is considered a minor administrative offence. The recent case of the former Secretary of the Treasury's, Francisco Gil Diaz, new job at HSBC is a shining example of how impunity continues to rule in this area.

In Mexico, the entire public education system is based on a network of payments and paybacks between the teachers union, individual teachers, school authorities and parents. Under Calderón, the Undersecretary of Primary Education, Fernando González, is the son-in-law of the leader of the corrupt teachers union. According to law, this family connection should prohibit him from participating in decisions related to the union. But in practice he operates freely and without restrictions.

The new president of the Federal Institute for Access to Information (IFAI), Alonso Lujambio, is a PAN militant and has publicly accepted that he is a close friend of president Calderón. He clearly arrived at his post to assure a cordial relationship between the access to information agency and the federal government. Nevertheless, he has adamantly refused to excuse himself from cases in which his personal commitments may come into conflict with his public decisions. An attempt by one of the other IFAI commissioners, Juan Pablo Guerrero, to promote a formal conflict of interest code within the IFAI was met with defeat at the end of last year.

Mexico's numerous "independent" regulatory agencies are mostly staffed by political appointments or commissioners who have long careers within the very sectors they are supposed to regulate. It is almost impossible to find civil society leaders or independent experts in these posts. The recent conformation of the new Federal Telecommunications Commission (COFETEL) is a case in point. The new President, Hector Osuna, was previously a PAN senator with almost no experience in the area of telecommunications, but who worked closely with the media giant Televisa to get the new highly problematic telecommunications law passed. The other new appointments included a PRI Senator who had also worked on the reform and others linked to both Televisa and the other media giant, TV Azteca.

B. The Secretary of the Public Function

The Secretary of the Public Function (SFP), the agency responsible for preventing and combating corruption in the federal government, is not at all independent from the executive branch and has been remarkably ineffective. The Secretary, now Germán Martínez Cázares, is directly appointed by and reports to the president, a fact which greatly limits his ability to combat malfeasance.

The budget of the SFP has grown significantly over the past ten years. In 2006, it reached 1,412,397,100.00 pesos (approximately 141 million dollars). The SFP plays an absolutely central role in the professionalization of public servants and the improvement of public service delivery. It is both in charge of running and enforcing the new civil service code and auditing the performance of government agencies.

Nevertheless, the SFP is a maze of different areas each carrying out similar activities in a less than entirely coordinated fashion. The *Unidad de Auditoría Gubernamental* is the location for the audits conducted by the SFP centralized

bureaucracy. It is the central control room for internal audits of the federal government. Over the last five years it has carried out a total of 548 audits.

Table 1: Performance indicators for the Unidad de Auditoría Gubernamental

	Auditorías al desempeño de dependencias	Auditorías rubros específicos	Auditorías al desempeño de OIC's	Total de auditorías	Otros actos de fiscalización (visitas de inspección, trabajos especiales, investigaciones directas, etc.)	Casos de presunta responsabilidad
2001	0	194	8	202	124	141
2002	0	44	10	54	5	35
2003	0	68	24	92	0	24
2004	0	83	21	104	0	30
2005	24	20	52	96	3	11
Total	24	409	115	548	132	241

Source: Informe de Rendición de Cuentas de la Secretaría de la Función Pública 2000-2005

The number of irregularities discovered is quite low and has come down in recent years. This could be good news or bad news. Either public servants are performing better or the SFP is performing worse. The corruption indicators make the former hypothesis unlikely. We should also note that only in 2005 did the *Unidad* start to implement performance audits. But even then it is still quite a marginal activity.

The vast majority of internal oversight is actually conducted by the *Organismos Internos de Control* (OICs), also dependent on the SFP but housed inside each one of the executive agencies. The SFP reports that from 2002 to 2005 the OICs in the federal government carried out 13,601 audits (approx. 3,300 per year), out of which emerged 23,703 “acciones de mejora” (approximated 5,500 per year). An initial series of freedom of information requests to the OIC of the Secretary of Social Development reveal that the vast majority of the reviews conducted by the OIC of the SEDESOL are also traditional audits based on the review of accounting practices and legal procedures. Performance audits are extremely rare here as well.

Table 2: Number and types of audits and “*intervenciones de control*” carried out by the OIC of the SEDESOL

	2003	2004	2005	2006
Auditorías (<i>legalidad y contable</i>)	168	163	99	90
Revisiones de control para el mejoramiento interno de los procesos	8	6	19	0
Revisiones de control para la evaluación de riesgos	2	4	1	0
Revisiones de control para el monitoreo de operaciones	0	1	0	3
Revisiones de control para la evaluación de control interno a la tecnología de información	2	1	4	0
Seguimiento de Acciones de Mejora	4	4	4	4

Evaluación y Seguimiento de Programas Gubernamentales	2	4	5	9
Evaluación de Indicadores de Desempeño	0	0	0	0
Adopción de Mejores Prácticas	0	0	5	0
Promoción de Ambiente Ético y Cultura de Control	2	2	0	0
Verificación de Metas Presidenciales	2	2	2	2
Evaluación y Seguimiento al Cumplimiento de la Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental	1	2	1	3
Control Interno (<i>Esta categoría no se incluye en los anexos "Lineamientos generales"</i>)	1	0	0	1
Total	192	189	140	112

Note: Numbers for 2006 exclude the final trimester. "*Intervenciones de control*" are preventative investigations which do not comply with formal audit procedures.

Source: Authors, based on information provided by the SFP to FOIA requests (on file with authors).

In general, enforcement is quite weak and punishment for wrongdoing is rare. The *Dirección General de Responsabilidades y Situación Patrimonial* is the area within the SFP which initially processes all alleged wrongdoing by public servants. It has had a relatively low case-load over the past five years. In recent years it has gone down significantly.

Year	Cases Received	Cases Concluded
2000 ^a	42	11
2001	296	351
2002	239	292
2003	106	142
2004	65	68
2005	90	65
Total	838	929

^a Los datos corresponden únicamente al mes de diciembre.

Source: Informe de Rendición de Cuentas de la Secretaría de la Función Pública 2000-2005

With regard to criminal charges against public servants the SFP has also been less than entirely successful. From December 2000 until December 2005 the SFP only presented 87 criminal charges (involving 462 people- 401 public servants and 61 private individuals). Although these charges involve accusations of the incorrect use of 500 million US dollars, the SFP has been notoriously ineffective in winning these cases.

In a recent review of the SFP, the Supreme Federal Auditor discovered that 54.5% of the 15,255 observations followed-up on by the OIC in 2004 were instances of repeat violations. This also reveals significant problems with the enforcement of the recommendations. Another discovery was that the number of citizen complaints against wrongdoing by public servants actually diminished at a rate of 11.8% per year between 2001 and 2004 (going from 16,189 in 2001 to 11,108 in 2004), revealing a lack of outreach to the population at large. Follow-up of complaints was also highly deficient, with at least 1,237 not receiving sufficient

attention. In general, the SFP does not have a system set up to follow-up each one of the complaints until its final resolution.

But perhaps the most worrisome results of the ASF audit have to do with the efficacy of the SFP investigations and sanctions. The agency was able to effectively charge only 0.03% of the total amount of monetary sanctions imposed during 2004. In addition, the sanctions imposed tended to be for minor offenses. 48.8% were for “administrative negligence”, 35.9% for violation of budget laws and norms, 8.8% for violation of procurement and hiring procedures; 5.0% for “abuse of authority”; and only 1.5% for extortion or corruption.

The recent passage of the reform to Article 73 of the Constitution by both houses of Congress is supposed to help fix some of these difficulties. The reform enables Congress to create administrative tribunals with the capacity to sanction public servants for wrongdoing, thereby removing this responsibility from the SFP. With this reform the SFP can dedicate its time exclusively to investigating wrongdoing and leave the responsibility for punishment to an independent court. This should reduce the workload for the SFP as well as allow it to investigate cases with more rigor and independence.

Nevertheless, the fact that the SFP will no longer be responsible for directing sanctioning public servants may have an adverse effect on its ability to deter wrongdoing. The reduction of its capacities may help it perform more efficiently, but in the end may lead to reduced effectiveness as audited agencies and public servants no longer hold it in the same esteem.

C. Calderón’s “new” strategy

The structural nature of corruption and the historic ineffectiveness of the Secretary of the Public Function leave Calderón with an important opportunity to radically overhaul Mexico’s public administration. Unfortunately, Germán Martínez’s “new” strategy is more of the same. His proposals follow the same minimalist anti-bribe strategy which has led to the mediocre results reflected in recent statistics. The central idea defended by Martínez and his predecessors is that corruption arises from a deficient “culture of legality” in Mexican society. Mexicans supposedly don’t know how to follow rules. They run red lights, disobey authorities and always look for a way to get around their responsibilities. This is contrasted to the “culture of legality” in countries like the United States, Germany or France where supposedly the trains run on time and no one offers bribes to policemen.

Such a moralistic program of misguided cultural transformation clearly does not attack the problem of corruption at its roots. Instead of educating elementary school children to “behave themselves” and “follow the law”, the government should make a concerted effort to catch and punish corruption at the highest level of government as well as address the structural issues which make corruption feasible and profitable.

Some strategic issues include a frontal combat of the opacity which reigns in government run private trusts like those that hold customs duties, the discretionary use of “benefits” in the payment of public officials, and the conflicts of interest which extend throughout government. The government also urgently needs to overhaul the functioning of the new civil service code, harmonize and improve oversight of its procurement practices, improve the salaries of street level bureaucrats and empower civil society to participate directly in the oversight of government spending.

The Calderón administration has not even made a clear break with the previous Fox administration. In recent weeks journalists have exposed a series of apparent misdealings in the building of Fox’s two major construction projects: the new wing of the international airport and a new super-library in the center of Mexico City. Neither Calderón nor Martínez have made efforts to demonstrate their willingness to get to the bottom of these or other scandals involving the Fox administration. Fox’s Secretary of the Treasury, Gil Díaz, and his wife Martha Sahagun, have both been entirely exonerated.

Corruption is not just a question of low level public servants lining their pockets at the expense of common citizens. Nor is the combat of corruption principally an issue of reeducation. Corruption is an institutional and political issue which requires structural solutions. Hopefully the new government will realize this soon and implement a truly “new” strategy which can confront the ominous network of complicity and impunity which today threatens the basic functions of the Mexican state.