

Control over Party and Campaign Finance in Mexico

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This article offers a detailed description of how electoral laws have developed a legal framework to make Mexican political parties accountable, and how electoral authorities, both administrative (the Instituto Federal Electoral—IFE) and judicial (the Tribunal Electoral del Poder Judicial de la Federación—TEPJF), have contributed to enhancement of public control over party resources through a series of regulatory mandates and judicial resolutions they have issued. The two famous cases of illegal campaign financing in 2000 showed that the legal instruments at IFE's disposal are still insufficient to keep track of irregularities and to avoid illegal funding. A second generation of electoral reforms is necessary to overcome such legal obstacles.

El artículo presenta una descripción detallada de cómo ha evolucionado la legislación electoral en México para lograr una adecuada rendición de cuentas de los partidos políticos, así como una relación de los acuerdos y resoluciones que ha dictado la autoridad electoral tanto administrativa (el Instituto Federal Electoral—IFE), como jurisdiccional (el Tribunal Electoral del Poder Judicial de la Federación—TEPJF) para reforzar el control sobre las finanzas de los partidos políticos. Los dos casos de financiamiento ilegal de la campaña del 2000 mostraron las limitaciones de los instrumentos legales para evitar el financiamiento ilícito. Una reforma electoral de segunda generación es necesaria para superar dichos obstáculos.

The Need for an Autonomous Electoral Authority

In 1987, electoral law established, for the first time, specific rules for direct public funding in Mexico to support both current party operations and campaign activities. Before that time, direct party financing was not regulated at all, although the electoral code had addressed it

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since 1977.¹ Actually, nobody knew where the money used in campaigns came from or how much was spent, particularly by the ruling party. Although it was never fully documented, academics and journalists, as well as opposition-party leaders, presumed that the executive branch at its different levels—federal, local, and municipal—offered the Partido Revolucionario Institucional (PRI) and its candidates important governmental resources, as it was in their own interests to make sure that campaigns were carried out successfully and that citizens attended the polls in order to give the electoral process a credible basis.²

In 1987, the electoral code established public financing to cover both ordinary and campaign activities, although the Partido Acción Nacional (PAN) opposed regulating direct public funding because it considered such funding to be a way to hide the government resources that the PRI regularly received, as well as a means of control over opposition parties. It was understood that public money would be only complementary to the regular contributions of party members and supporting organizations (Art. 61, Código Federal Electoral 1987:99).

In 1993, in the context of increasing opposition-party victories in important capitals, electoral reform stipulated that political parties must submit income and expense reports to the electoral authority at the end of each year and after every federal election. The idea was that the electoral authority was to monitor the financial administration of each political party because, since 1977, parties had been constitutionally classified as public-interest entities. However, at that time, the Instituto Federal Electoral (IFE) did not have the auditing capacity to assure that what the parties reported was true. Further, a different body—the Tribunal Federal Electoral (TRIFE)—had the authority to impose penalties on the parties if their reports were irregular or incomplete. The IFE's control over party finances was basically formal, but it was the first step towards making parties accountable for their funding.

The 1994 presidential election was held in a critical political context. Although the North American Free Trade Agreement (NAFTA) had been a great success for the Salinas government, the Zapatista rebellion

1. Since the electoral reform of 1963, there has been indirect public financing through tax exemption. In 1973, the electoral code added postal and telegraphic franchises, as well as access to electronic media. In 1977, direct financing was contemplated by the law, but there was not a formula to determine the amount of public financing or a mechanism to distribute it among the different parties; therefore, it was a discretionary prerogative. It was not until 1987 that such rules were clearly established (Lujambio 2003: 368–377).

2. Although elections were not competitive, the PRI presidential candidates campaigned all around the country in order to acquaint themselves with different social groups and problems (Adler-Lomnitz et al. 2004: 63).

and the murder of the PRI presidential candidate forced Salinas to pass, in the middle of the electoral process, an additional electoral reform to assure that IFE was considered trustworthy and the election legitimate. The government could not ignore this issue if it wished to retain the reputation it had acquired abroad, and to relieve the political uncertainty that the two internal events had caused among political elites and the general Mexican population. Free and credible elections would play a stabilizing role in such a politically charged environment.

The modifications introduced in the 1994 electoral code had to do mainly with the selection of the electoral officials. The independent members of the Consejo General (the chief directive board of IFE, called magistrate councilors and elected by the Chamber of Deputies from a list of presidential nominees) were dismissed, and a new group, named citizen councilors, was appointed. The new councilors were proposed by the different parties represented in the Chamber of Deputies and elected by a two-thirds vote of the deputies; the presidency no longer took part in the selection. The six new citizen councilors were well-respected professionals, and all but one had not held any government post before.³ Under this reform, only the citizen councilors and the legislative councilors (*Consejeros del Poder Legislativo*) of IFE kept the right to vote, assuring that the decisions taken by the Consejo General were truly independent from party and governmental interests.

Although opposition parties demanded full autonomy for IFE, the government was not willing to withdraw from the organization of elections, particularly in such a conflictive context. However, in order to make the electoral authority more reliable, President Salinas appointed a well-known academic and politician, Jorge Carpizo, as *Secretario de Gobernación*, and, consequently, as president of IFE's Consejo General.⁴

The Consejo General made a series of decisions to assure unbiased organization of the 1994 election. The complete operational structure of IFE throughout the states and electoral districts was submitted for the approval of the various parties, and those public servants who were not considered reliable were dismissed. Additionally, the most important newscasts—mainly, those transmitted from Mexico City—were moni-

3. The title of citizen councilor (*consejero ciudadano*) was intended to emphasize the independence of such electoral officials. Appointed were two well-known academics, José Woldenberg and Ricardo Pozas; a famous journalist, Miguel Angel Granados Chapa; an independent lawyer, Santiago Creel; and a member of a well-known NGO, José Agustín Ortiz Pinchetti. The only appointee who had been a former public official was Fernando Zertuche.

4. Jorge Carpizo was a former rector of the Universidad Nacional Autónoma de México, a former president of the Comisión Nacional de los Derechos Humanos, and a former attorney general.

tored to verify that the media regularly reported all of the different presidential campaigns. The results of the monitoring itself were widely reported, so that people might know how different broadcasters treated the electoral campaigns.⁵

The 1994 presidential election proved to be free, legal, transparent, and fully supervised,⁶ which meant that what the electoral code had regulated so far was enough to produce a valid election—as long as there was the political will to do so, as had been the case in that convulsive year. The voter turnout (78 percent of registered voters) was the highest in contemporary Mexican history, which was additional proof of the citizens' approval of the electoral process. Additionally, the PRI candidate, Zedillo, won the election by a margin of 23 percent over the closest competitor, the PAN candidate Diego Fernández de Cevallos. However, after analyzing the campaign finance reports, the electoral authority declared that the election had been an unequal contest because PRI had spent 71.4 percent of the total campaign resources.⁷

Still, very different from his predecessor Carlos Salinas, Ernesto Zedillo came to power as a president with a legitimate origin; moreover, his party, the PRI, had a majority in Congress. These factors allowed him to call for new electoral reform, which he promised would be definitive; that is, it would address the remaining demands that opposition parties had been making since 1988, such as a fully autonomous electoral authority and effective competitive conditions for all parties.

Zedillo was determined to focus his political capital and the power of the presidency to foster the political reform that, in the long run, became his most important legacy. Electoral reform was intended to be the first part of a broader political project, the so-called *La Reforma del Estado*,⁸ and, upon taking charge of the presidency, Zedillo presented it publicly as his most important political program. It was hoped that such a proposition would compensate for the severe economic crisis (“el error

5. The publicity given to such monitoring proved successful, as the principal newscasters in Mexico City covered the three most important presidential campaigns at similar levels. This was a great contrast with coverage in the 1988 presidential election (Trejo Delarbre 1995:59–86).

6. This was the first election in which national and international observers were officially recognized in Mexico. More than 80,000 national and 900 international observers monitored the 1994 election (Morales 1995: 87–98).

7. On April 7, 1995, IFE's Consejo General publicly presented its evaluation of the 1994 campaign finance reports submitted by the parties. The most important finding was that most of the resources received by parties were concentrated in PRI (Dictamen de la Comisión 1995).

8. The reform included topics such as federalism, judicial power, the relations between the executive and legislative powers, and justice administration.

de diciembre”) that Mexico faced during the first months of the Zedillo administration.

It took the Zedillo government more than eighteen months to negotiate the electoral reform, not only with the two main opposition parties, but with the president’s own party, the PRI. Zedillo and his staff were convinced that it was necessary to advance electoral democratization because both the national and international contexts demanded such a move. But the most conservative and traditional PRI groups thought that relinquishing control of the electoral organization would lead to their political failure—as it did.⁹

The Zedillo group, part of the modern and technological branch of the PRI, had been politically trained in the state bureaucracy—Zedillo had never before held a party post or candidacy. Their more rational perspective was that fair elections could be won fairly by their party apparatus, as had happened in 1994. But subsequent events proved that free and competitive elections actually led to PRI’s defeat, just as opposition parties prevailed in the first democratic elections held in other Latin American countries during the third wave of democratization (Huntington 1991:57).

The traditional discipline of the PRI around the presidency explains why the government could negotiate electoral reform that responded mainly to the demands of opposition parties.¹⁰ For the regime, concluding the process of democratic transition meant gaining entrance to the community of modern nations. The timing seemed right because, although opposition parties had been winning important political positions during the previous two years, most national and local political power was still concentrated in PRI (Lujambio 2000: 43–78), and such an advantage would allow the government to negotiate the reform.

In 1996, for the first time in contemporary Mexican history, constitutional electoral reform was approved by all of the parliamentary groups (PRI, PAN, the Partido de la Revolución Democrática—PRD, and the Partido del Trabajo—PT) in the Chamber of Deputies at the time.¹¹ That is, the reform was the result of an agreement between the government, represented by the Secretario de Gobernación, and all the par-

9. Fidel Velázquez, leader of the most important union corporation in Mexico and, therefore, a member of the Executive Committee of the PRI, explained that the party had conquered power through the use of arms and would only give it up in the same way.

10. Porfirio Muñoz Ledo, president of the PRD, played a leading role in the negotiations that led to the 1996 electoral reform (Becerra, Salazar and Woldenberg 1997).

11. From 1977, the electoral reforms were approved mainly by PRI votes. But in 1989–1990, the reform was passed by a sector of PAN and PRI; in 1993, by PRI and PAN; and in 1994, by PRI, PAN, and a fraction of PRD (Lujambio 2003: 368).

ties with congressional representatives. However, two specific modifications to the electoral code were supported only by the PRI. Opposition parties opposed the limits imposed on electoral coalitions, which they considered essential to become really competitive, and disagreed with the legal formula for public financing which assured that the party with the strongest electoral support—the governing party—would receive sufficient resources to carry out its traditional clientelistic campaign.

In three main chapters, the constitutional reform introduced important changes that became the strongest pillars of the electoral system: autonomous electoral authorities; equity in the distribution of party resources and prerogatives as the basis for competitiveness; and a specialized judicial body responsible for resolving electoral controversies.

In order to give full autonomy to IFE's directive board, the Consejo General, the citizen councilors became electoral councilors, appointed through the same process as their predecessors—that is, proposed by the parliamentary groups in the Chamber of Deputies and elected by a two-thirds vote of the deputies. The most important change introduced in 1996 was that the Consejo General of IFE would be headed by another electoral councilor—the Councilor President—, which meant that the government would no longer be part of the electoral authority. Additionally, wider functions were granted to the electoral councilors who, from then on, were to be the only enfranchised members of the Consejo General. The legislative councilors retained only the right to speak, as had the party representatives since the 1994 reform. The electoral councilors became full-time public officials, permanently in charge of supervising the electoral staff through the Consejo General commissions. That is, the independent members of the Consejo General became responsible for the work carried out by the executive branch of IFE (chiefs of staff at the central level, as well as in state and district delegations). Such a structure guaranteed autonomy from government and independence from political party interests (Becerra, Salazar, and Woldenberg 1997:23–47).

Another important chapter introduced by the 1996 electoral reform was the establishment, as part of the judicial power, of an electoral court, which would solve any electoral controversies that might arise among political parties, as well as between a party and the electoral administrative authority. The new electoral court (the TEPJF) became the final authority in any electoral conflict, federal or local. Such a specialized body was particularly innovative because, for the first time in Mexican history, the judiciary would take part in electoral affairs. On the other hand, such a tribunal would be not only a federal, but a national authority, as it had the right to overturn the resolutions dictated by the state-level electoral courts. Such an intrusion of federal authority in lo-

cal affairs was something really new in the context of Mexican electoral federalism.¹²

Giving a judicial body the power to solve electoral controversies introduced legal certainty and political confidence in Mexican electoral processes. During the first half of the 1990s, electoral conflicts had been solved through political negotiation directed by the federal government. Although such processes had been politically effective, they had been perceived to be illegal and illegitimate and, in any case, they had resulted in extraordinary solutions that could not be permanently used.¹³

The Claim for Equitable, Competitive Conditions

The 1996 constitutional reform established that elections should be guided by the principle of equality (Art. 41). In order to fulfill such a principle, reforms were necessary in two areas: party financing and access of political parties to mass media.

The big difference introduced by the constitutional reform was that public funding should dominate private financing—a major reversal. The purpose was to disclose the origin of campaign funds and to make sure that resources were distributed among the parties on an equitable basis.¹⁴ Public funding, it was believed, should be sufficient to support the permanent operations of political parties. Hidden governmental funding, which had been very common during the PRI hegemonic period, was to be avoided, as was any private financing coming from illegal sources, such as drug trafficking or money laundering. That is why no anonymous donations were allowed by this reform (in the previous electoral code, 10% of private financing could be kept anonymous).

To estimate the annual amount of public funding needed, the constitutional formula stated that IFE was to define a minimal campaign budget, considering the different items necessary to conduct a successful campaign (headquarters, electronic equipment, employees, television and radio spots, etc.). Such an amount would then be multiplied by the

12. The principle that was used to pass this law was the federal supremacy of the Constitution, which made it possible to disregard the particular elements of local legislation (Merino 2003: 152).

13. In 1991, two gubernatorial elections, in Guanajuato and San Luis Potosí, had been won by the PRI candidates but had been considered to be illegitimate by opposition parties, which had generated mass mobilizations to stop the elected governors from taking office. The problems were solved by the president, who asked the elected governors to take leave. Provisional governors were appointed.

14. Under the formula to distribute public funding, 70 percent is given proportional to the electoral support of each party; and 30 percent is distributed equally (COFIPE 1996: 46–47).

number of seats in Congress and the number of political parties with legislative representatives (the latter was a new multiplier introduced in the electoral law). Given the fact that every three years the party system is opened to new political organizations that fulfill the requisites to become political parties, such a multiplier could rise periodically if the newly registered parties receive 2 percent of the vote, which is the legal threshold needed to maintain legal registration and to gain seats in Congress.

Compared with the previous public financing, the new formula introduced in 1996 implied a considerable increase in public resources to be dedicated to political parties. In addition, in every election year the parties would receive an augmentation for campaign activities—equal to the one given annually for current operations. The Constitution contemplated yet another financing category: a reimbursement for education, political training, and editorial activities.¹⁵

Indirect financing through unlimited free postage continued, as established in the 1973 electoral reform. Legislators ignored how expensive this prerogative would be for the state, as it had been scarcely used during the non-competitive period. In the 2000 election, the postal franchise used by political parties amounted to twenty million dollars.

The PAN and the PRD agreed with the idea of dominant public funding over private financing, but at first rejected the very expensive public financing formula put forward by PRI. Soon, however, both parties abandoned their arguments as they realized that such public funding would allow them to build better party structures and strengthen their media presence.

To illustrate the impact of the campaign-funding formula, let us take the example of the 2003 election year. IFE received a budget of 1.1 billion dollars, 52 percent of which was used for IFE's operation, and 48 percent for party financing. Half of the money received by IFE is dedicated to the updating of the electoral register and the issuing of the electoral card, which carries a series of security features to guarantee that it is unalterable. Such measures have allowed the electoral card to be considered the official identification in Mexico.

The 520 million dollars that IFE gave to the parties in 2003 covered the regular operations and campaign activities of eight parties with legislative representatives and three newly registered parties. The fund is distributed through the so-called "equitable formula" (70 percent pro-

15. Actually, the PAN declared that they would return the money IFE gave them, and the PRD decided to use the resources to buy books for poor schools and to support the widows from PRD's "disappeared" leaders. In the end, the PAN returned only the first check it received, and the PRD did as promised for only a short time.

portionally and 30% equally).¹⁶ The recently registered parties are entitled to only 2 percent of the general fund, both for regular operations and for campaign activities.

If one compares the 2003 budget with the amount that was given by IFE to the political parties in 2000, it is clear that the formula is absurd. Just as in 2003, eleven parties participated in the 2000 election, but only five of them had legislative representatives, while the remaining six were new parties. The amount of public financing in the 2000 presidential election was 322 million dollars, much less than what was provided three years later for a mid-term election. How can this be explained?

First, in terms of campaign financing, the electoral code does not distinguish between general and mid-term elections. In either case, the same amount is given for current operating expenses. Second, in 2000, three of the six newly registered parties participated in an electoral coalition organized by the PRD around Cuauhtémoc Cárdenas's presidential candidacy. The electoral code establishes that any coalition is considered to be a single party; therefore, the votes received by the coalition do not go to the specific parties involved, but to the coalition as a whole. Through the coalition agreement, the parties determine what percentage of the total votes received will go to each of them for the purpose of calculating their corresponding seats in Congress and their future public funds, once the coalition is dissolved. Therefore, it is the members of the coalition, and not the voters, who determine the distribution of votes associated with a multi-party alliance for a presidential candidate. This is obviously a mistake in the electoral code, because the spirit of the electoral chapter in the Constitution is that voters should decide how strong a party is and whether it deserves to have representatives in the power structure.

The three new parties involved in the Cuauhtémoc Cárdenas coalition did not have to prove that they were supported by the requisite 2 percent of the voters. Instead, they received the necessary percentage from among the total votes for Cárdenas. Neither the candidate nor PRD had to pay any political cost for that, except for a very few seats in the Chamber of Deputies that were distributed among the parties in the coalition. But the fact that three new parties confirmed their legal registration increased the public financing amount, because the multiplier of the number of parties with legislative representatives rose from five to eight. Therefore, forming an electoral coalition has become an in-

16. The 1996 electoral reform introduced such a criterion for the first time. From 1987, when public funding first was established, it had been distributed proportional to the electoral force of each party. In 1993, an additional 10 percent was granted equally (Art. 49.7.VIII.b, COFIPE 1993: 39).

centive not only to collect more votes, but to increase the amount of public funding for party functions.

For two reasons, it is clear that the formula needs revision. First, the amount of public financing should be stabilized from one year to another. Second, campaign finance should not represent such a burden for the public treasury, because it is hard to defend it in the eyes of the public, which already distrusts political parties.¹⁷

An alternative formula might dedicate a fixed percentage of the federal budget to elections, or link the amount of public funding with the number of registered voters, as provided in several state electoral codes. In any event, the public financing allocated for campaign activities in a mid-term election should be only half of that provided in a presidential election year.¹⁸

Originally, opposition parties regarded the so-called “equitable distribution formula” as the correct one. However, after alternation in power in the year 2000, larger parties have claimed that the formula artificially favors the smaller parties; they propose that the base funding should be reduced to 20 percent and that the proportional funding should be increased to 80 percent.

Free access to both public and privately owned media is gained through so-called “state time” (half an hour daily). The privately owned media must allocate this time for state entities in exchange for the right to transmit through public space.¹⁹ The state entities (the federal government, Congress, and judiciary) use the transmission time to promote their official programs, but part of it is given permanently to political parties and is equally distributed.²⁰ During electoral campaigns, parties receive additional media access, which is regulated by the law (200 hours on television and 250 hours in radio during a presidential campaign and half of that in a mid-term election). This resource is distributed according to the equitable formula (30 percent equally and 70 percent pro-

17. According to the data of a national survey about political culture, carried out by the Instituto Nacional de Estadística Geografía y Informática and financed by the Secretaría de Gobernación in 2003, political parties are among the institutions considered to be least qualified. Only the police received a lower ranking (6.2) than the political parties (6.4) on the survey (Segunda encuesta 2003).

18. Only this last recommendation has been accepted by the political parties. Actually, there is already an electoral reform initiative in the Senate that includes the reduction of campaign financing in mid-term elections.

19. Additionally, “fiscal time” is an in-kind tax paid by the media owners; until 2002, it represented 12.5 percent of transmission time and was distributed among the state entities. The federal government in October 2002 reduced the amount to 1.25 percent, and only the federal government now can profit from it (Decreto que reforma 2002).

20. Each political party receives fifteen minutes each month, in addition to a half-hour discussion program in which all the parties participate (COFIPE 1996: 37).

portionally). The recently registered parties are entitled to only 4 percent of the time given to the parties that already have seats in Congress (Art. 47 of the COFIPE).

The 1996 electoral reform introduced an additional campaign prerogative consisting of 400 television spots and 10,000 radio spots that IFE must purchase and distribute among the parties through the same equitable formula.²¹

Additionally, each party may contract directly with the mass media for any spots it can afford. There is no legal specific limit, except that of the overall ceiling for campaign expenses. Although the different media concessionaires must submit to the electoral authority an updated list of their prices in order to assure fair treatment of all parties, the fact that such a deal is a commercial one allows the parties with more resources to get better offers, and, consequently, better prices.

Parties are allowed to receive private financing, but it is strictly regulated. It must be less than the allocated public funding; there are fixed ceilings on individual contributions (0.05 percent of public funding for ordinary activities); no anonymous donations are allowed; parties cannot receive any contributions from foreign individuals or companies, or even from Mexicans living or working abroad; parties cannot receive any money from government or any public administration offices; and no donations are allowed from commercial enterprises or from church organizations.²²

Since 1987, when political parties first received direct public funding, the electoral code stated that parties should inform the electoral authority about how such resources had been expended; however, there were no specific procedures nor any fixed penalties if a party did not comply (Art. 61, VIII, Código Federal Electoral 1987: 99–101). The 1993 electoral reform established that parties were required to submit to IFE a full report of their annual incomes and both ordinary and campaign expenses, and the TRIFE was empowered to fine parties whose reports were found by IFE to be incomplete or badly documented (Art. 49–A, COFIPE 1996: 44–47).

The financing regulation introduced by the 1996 electoral reform included mechanisms to control political party income and expenses and to assure compliance with the legal requirements. IFE, and particularly its supervisory commission, the Comisión de Fiscalización, received full ongoing authority to audit party bank accounts and to investigate alle-

21. There is a legal limit to the cost of the spots IFE procures for the parties: 20 percent of the public funds for campaign activities in a presidential election, and 12 percent in a mid-term one. In 2003, the expense represented \$29 million. (COFIPE 1996: 39).

22. Some of these limitations on private financing (the fourth, fifth, and sixth) had already been settled in Art. 49 of the 1993 electoral code (COFIPE 1996: 36–37).

gations of irregularities. Further, the commission has the authority to fix rules to specify how the parties are to comply with reporting obligations.

The law establishes penalties that may be imposed on a political party that violates the regulations; sanctions range from a small fine (\$200) to a severe one (partial or total reduction of the monthly allowance), or, most extreme, the cancellation of the party's legal registration (Art. 269, COFIPE 1993).

With these legal instruments at hand, IFE has implemented regulatory manuals, campaign monitoring, and collaborative agreements with electoral institutes at the state level in order to reinforce its control over party financing and expenses.

Actions of the IFE

The electoral code empowers IFE's supervisory commission, the Comisión de Fiscalización, to elaborate specific regulations. Two different manuals have been prepared and applied. One determines precisely the way annual and campaign reports should be submitted to the electoral authority (forms and documents concerning income and expenses), and a second establishes the commission's procedures and timetable for investigations of alleged irregularities. The second manual has been useful in resolving public allegations of illegal party financial activities presented to IFE by political adversaries or anonymous internal enemies of the parties.

What both regulations provide is legal certainty about the way the electoral authority will behave regarding party obligations, and clear warnings of the risks parties will face for non-compliance.

In the past three elections, the parties have concentrated campaign spending on media spots. According to their campaign reports, in 1997 parties spent 56 percent of total campaign resources to buy spots on radio and television; in 2000 and 2003, the percentages were similar (54 and 53.5 percent, respectively) (Resoluciones del Consejo General del IFE July 1998; July 2001; July 2004).

To verify the parties' reports, IFE contracted in 2000 and 2003 a sample monitoring of the most important television and radio outlets throughout the electoral campaign. In 2000, IFE compared the data of party reports with its own spot monitoring and found little variance.

Additionally, as part of the auditing process, IFE consults the different party contractors, as well as their official registrations, to certify that the information parties give to the electoral authority is correct. This type of monitoring helped IFE to learn that the most important contractor of the small Partido de la Sociedad Nacionalista (PSN) was owned by the president of the party's national executive committee. That meant that

public funding was being used for private purposes. As a result, in March 2000, the IFE Consejo General levied a fine of \$18 million against PSN (equivalent to nearly two years of PSN public funding). However, the party vanished after the 2003 election, when it lost its legal registration, and the fine was only partially paid.

This is a loophole that should be closed, because political parties receive public funding to carry out specific activities derived from their legal status. If such status is lost, then there should be a legal mechanism to assure that no former party leaders keep the party's public funding for themselves and to guarantee that all the fines imposed on a party during its official life are paid to the electoral authority.²³

Despite its power and authority, there are important limits to IFE's supervisory function. In the nine years that IFE has had full auditing capacity, the agency has identified several limitations that cannot be resolved administratively, and where further electoral reform is needed in the form of legislation.

As previously discussed, IFE can audit political parties; however, it cannot investigate private individuals or companies that become party contractors and who may eventually handle party accounts, or who may help to convey illegal resources to secretly finance certain party activities. That is, parties may have parallel bank accounts, under private names, that a regular auditing exercise cannot detect. Banking regulations protect people from government interference, except in the case of judicial or prosecutorial investigations, in which such information must be disclosed if the investigations require it.

Such limitations forced IFE to close the investigation of the famous "Amigos de Fox" case in 2001, because most of the presumed irregularities were related to banking transfers, which the electoral authority could not analyze due to bank secrecy. However, when the PRI appealed the resolution, the TEPJF declared that IFE was an actual prosecutor that could investigate private bank accounts if they had any links with political party activities. However, this judicial resolution referred exclusively to the case in question, "Amigos de Fox"; therefore, the IFE's limitations regarding banking and fiscal secrecy remain, and only electoral reform can turn the electoral court's decision into a general rule.²⁴

In its investigations, IFE cannot compel the cooperation of private individuals or companies. An important example of the results of this

23. The electoral authority could charge only \$1.8 million, because after the 2003 election, the PSN lost its electoral registration since it did not receive the necessary 2 percent of the votes. Legally speaking, the PSN no longer exists (COFIPE 1996: 224).

24. Such a reform would have to deal not only with the electoral code, but also with the fiscal code and the laws governing credit institutions.

limitation is the traditional reluctance of mass media concessionaires to provide detailed information about advertisement purchases made by the different parties during political campaigns. IFE does not have legal authority to subpoena purchasing records, and media concessionaires find it profitable to keep the information secret.

Another weakness of the current electoral code has to do with the expenses of primary elections. In 1999, a year before the 2000 presidential elections, the three most important parties called for open and direct candidate selection processes. Large amounts of money were spent, and television and radio spots were purchased by the different candidates. However, these expenses were not reported to the electoral authority because candidate selection processes are not legally regulated.²⁵As a reaction to this phenomenon, IFE prepared a new chapter in its finance regulation manual to require that parties inform the electoral authority about so-called pre-campaign expenses, reasoning that if IFE has jurisdiction over party activities, then party internal selection processes may be regulated by the electoral authority. In order to account for the entire range of time—running from the moment the party calls for candidates, to the time the party nomination is made—, IFE determined that the parties should report the expenses per applicant as part of the party's ordinary activities in 2003, but by 2005 it passed a new administrative resolution in order to force parties to submit a report with the specific internal selection expenses.

But IFE cannot regulate any campaign spending that is carried out before political parties initiate their internal selection processes—that is, when independent people promote their candidacies beyond the party organization. Although Mexican law has established that only political parties can nominate candidates for elective posts, parties cannot be responsible for what their members do to promote their candidacies well before the internal selection has started. Of course, such expenses may actually introduce inequality into the electoral contest, just as happened with the civil organization, “Amigos de Fox,” which began to promote Vicente Fox's presidential candidacy two years before the official campaign began.

Electoral reform should not inhibit citizens' access to political participation; however, for the sake of transparency and equality, if such a

25. In 1999, opposition parties prepared an initiative to reform the electoral code in order to regulate primary elections, the right to vote of Mexicans living abroad, and the limitation of federal and local executives to promote their public works one month before the election. The initiative also intended to extend party access to mass media and to make party coalitions more accessible.

citizen becomes a party candidate, he should inform the party that nominates him about his previous campaign expenses. This appears to be an issue that needs to be specifically regulated by the electoral code.

Finally, although IFE supervises national political parties that have state delegations, it cannot interfere in local finance matters unless they have to do with money coming from the party's central or national organizations. The electoral institutes in the different states (Institutos Estatales Electorales, or IEEs) have at the local level the same authority over party income and expenses that IFE has at the federal level (Art. 116 of the federal Constitution). Therefore, if IFE seeks a complete picture of party income and expenditures, it needs the cooperation of the state authorities. Such cooperation depends on every IEE's willingness to share its information with IFE in return for IFE's information about the specific state. This has not always been possible, however, because some of the local electoral authorities view such collaboration as a challenge to their independence. So far, IFE has been able to sign cooperation agreements about party financing with only twenty-one of the thirty-two state and Distrito Federal electoral institutes (Peschard 2003: 19).

If the cooperation of inter-electoral authorities were to be established constitutionally, control over party finances would become truly national. The different electoral codes, both federal and local, would be compelled to reflect the constitutional mandate, and the responsibility of the various electoral authorities over party spending would be strengthened.

While most political parties are not enthusiastic about the reforms that are needed to reinforce control over party financing, the "Pemexgate" and "Amigos de Fox" cases have heightened the sensitivity of the public and the mass media toward such matters.²⁶ After the 2000 election that unseated the PRI, more than twenty-five electoral initiatives have been introduced in Congress, and some of them have dealt with this particular topic.

IFE's Two Greatest Challenges

After the 2000 presidential election that brought alternation in power, IFE had to investigate two important campaign-financing scandals: the popularly called "Pemexgate," and the "Amigos de Fox" cases.

The first case was brought forward by the PRD in January 2002, stemming from the federal auditor's public complaint that the state-owned

26. A list of the topics that should be found in a new electoral reform can be found in Peschard (2004).

oil company, PEMEX, had lent \$110 million to the company's trade union (Sindicato de Trabajadores Petroleros de la República Mexicana), which had, in turn, transferred it to the PRI presidential campaign. While the federal auditor was interested in finding out whether any major public officials had been involved in such presumably illegal acts, IFE wanted to know whether there had been any hidden financing for the PRI presidential campaign and, if so, whether the origin of such resources had been the public oil enterprise or the trade union, which is an organization openly and legally linked to the PRI.

According to the electoral code, parties are not allowed to receive any money from government or public-administration entities, but they are entitled to certain contributions from their individual or collective supporters (*organizaciones adberentes*) and the PEMEX trade union is an example of the latter.²⁷ The penal code establishes that transferring money from public entities to political parties is an electoral crime, committed by the public officials involved. Therefore, IFE had to carry out its administrative investigation and to present a formal accusation before the special prosecutor for electoral crimes (Fiscalía Especializada para Delitos Electorales, or FEPADE), which is part of the Attorney General's office, which then had to develop its own criminal investigation.

The second case, "Amigos de Fox," was brought forward by the PRI three weeks before the July 2, 2000 election day. The leader of the PRI deputies declared that he had received from an anonymous source copies of several checks and bank statements establishing that Vicente Fox had received parallel financing, run through two main civic organizations: Amigos de Fox and Fideicomiso para el Desarrollo y la Democracia.

The two civil organizations had been formed in 1998 and 1999, respectively, to openly support Vicente Fox's application to become, first, the PAN presidential candidate, and second, to win the constitutional election.

In this case, IFE did not present an accusation before FEPADE because it is not an electoral crime to receive money from individuals or civil organizations. Hiding such resources from the electoral authority is an administrative fault, but not an electoral crime. Nonetheless, the PRD and an individual electoral councilor did present such an accusation, claiming that there might be money laundering behind the unreported resources.

Criminal investigations ensued in both cases, although the "Pemex-

27. Article 49.11.a of the COFIPE establishes that parties can receive money from their rank and file as well as from their joint social organizations. Each party is allowed to fix freely the amounts of its member quotas. In 2000, the ceiling for such contributions was \$5 million.

gate” case was carried out much more efficiently than the “Amigos de Fox” one. Undoubtedly, the fact that FEPADE is not autonomous from the federal government, but rather a part of the Attorney General’s office, explains the different timetables for resolution of the two cases. The federal government was particularly interested in hindering or, at least, delaying the “Amigos de Fox” investigation; however, it was eager to see the president’s adversary punished in the context of the 2003 midterm election.

The “Pemexgate” case was easier for the electoral authority to handle, because even if IFE could not overcome the obstacle of bank and fiscal secrecy, in a relatively short time the special prosecutor analyzed the corresponding bank accounts, together with a series of investments and expenses registered in them. The special prosecutor shared the information with IFE, in accordance with a collaborative agreement between the two federal entities. The criminal investigation included declarations of some of the PRI financing officers involved in the cash transfers from the bank to PRI headquarters, who had been considered protected witnesses.

By the time IFE received the PRD complaint, it was clear that only \$50 million had come out of PEMEX trade-union bank accounts; the remaining \$60 million had been kept by the trade union’s chief officers. The \$50 million had been used to open a special bank account a month before the election, and only six persons were allowed to withdraw money from it. Five of the six were PRI finance or electoral officers at the time, and the sixth later became a PRI officer. They had withdrawn the entire \$50 million in eleven consecutive days during June, the month prior to the election.

Although there was no trace of the money’s destination, the Comisión de Fiscalización argued that behind the money transfer there had been a well-designed plan in which PRI officers had participated, with the clear intention to leave no trace of the movements of the funds. While there was not concrete proof that the money had been used by PRI in the presidential campaign, there were enough elements (the network organization, the time during which the bank account had been opened and the money had been withdrawn, and the identity of those involved with the money transfer) to assume that the PRI had received the money for campaign purposes.

In order to find out whether the hidden resources had come illegally from PEMEX or had lawfully reached the trade union, IFE required information from both the Secretaría de Hacienda and the chief auditor of the Chamber of Deputies, who determined that the \$110 million had been a legal loan from PEMEX to its trade union. However, the IFE Comisión de Fiscalización decided that PRI had behaved illegally by not

reporting the \$50 million that had been donated by the trade union, and because such an amount exceeded the contribution ceilings established for party supporters.²⁸ Due to the fact that IFE could not identify which of the campaigns (presidential, senatorial, or deputies) had benefited from the unreported money, the penalty did not consider exceeding the presidential campaign expense limit as an additional violation.

The IFE Consejo General determined that PRI's administrative violations had to be punished very severely in order to inhibit future similar acts. The fine of \$100 million was deducted in installments from the party's monthly public funding for current operations.²⁹

The "Pemexgate" investigation revealed two more irregularities. First, there was alleged unreported private financing of \$35 million collected by two civil organizations, Nuevo Impulso and Impulso Democrático, dedicated to the promotion of democratization in Mexico. These two civil organizations were headed by some of PRI's leading officers, including some closely linked to the presidential candidate, Francisco Labastida, and the two organizations were physically located very close to Labastida's campaign headquarters. However, because IFE could not analyze the civic organizations' bank accounts and money transfers, it was unable to pursue charges against the PRI in these instances.

The second case had to do with a raffle organized by the PRI as part of its fund-raising program. The PRI had reported to IFE that it had sold all the raffle tickets and, after paying the prizes to the winners, it had earned \$15 million. However, there were no receipts or books of tickets to prove that the raffle had really been held and that there had been legitimate winners (the winners' list included several PRI chief officers and others who had, surprisingly, donated their prizes to the party). But once again, it was impossible for the electoral authority to prove that the raffle had been used to hide illegal resources (Resoluciones del Consejo General del IFE, March 14, 2003).

In these two specific cases, there were no criminal investigations that might have helped IFE to come to a clear and definite resolution. As IFE was unable to determine that the money collected had reached PRI or its candidate, the investigation was closed.

The "Amigos de Fox" case was the most complicated; 291 individuals and fifty-four companies were involved, and the investigation was

28. In 2000, \$5 million was the contribution ceiling fixed by PRI for its joint organizations (Resoluciones del Consejo General del IFE, March 14, 2003).

29. The Comisión de Fiscalización established a discount mechanism: during 2003, which was an election year, PRI would receive only campaign public funding. In 2004, not an election year, it would receive only 50% of current operation funding (Resoluciones del Consejo General del IFE, March 14, 2003).

complex. While resolution of “Pemexgate” took a little over a year, “Amigos de Fox” took three years. In fact, IFE concluded it twice. The first conclusion came in 2001, after IFE had tried and failed to secure the relevant financial documents. At that point, IFE knew that “Amigos de Fox” had been founded in February 1998 to promote Vicente Fox’s presidential candidacy; that, through Carlota Robinson, it had purchased television spots from Televisión Azteca in June 2000; and that these spots had been broadcast before the official campaign had started. That kind of political proselytizing is not regulated, and IFE closed the investigation. The PRI appealed before the TEPJF, however, claiming that there had not been a complete investigation and that the alleged illegal activities should not be left unpunished.

In May 2002, the Tribunal Electoral issued a resolution that asserted IFE’s authority to breach bank secrecy when investigating political party financing irregularities. As a result, IFE had to reopen the “Amigos de Fox” case and demand from the Comisión Nacional Bancaria y de Valores copies of the bank records of the individuals and companies allegedly involved in the illegal campaign funding. Soon after IFE began to receive the information, those being investigated sought the protection of the law through habeas corpus trials that automatically stopped the information stream from the different banks to IFE. A legal and a media fight followed. IFE profited from its moral authority to call on the judges to resolve the habeas corpus trials quickly, as the 2003 mid-term electoral campaign was underway and the case might have an impact on the voters’ spirit.

Finally, in April 2003, the habeas corpus lawsuits were withdrawn by the plaintiffs (including Lino Korrodi, Carlos Rojas Magnon, and leaders of the two civil organizations, among others) just as one of the cases reached the Supreme Court; it was feared the court would determine that in electoral matters, there is no room for habeas corpus trials. Immediately afterward, the bank information started to flow again to IFE.

After analyzing all the records of bank accounts and money transfers, the electoral authority learned that the Coalition Alianza por el Cambio, supported by the PAN and Partido Verde Ecologista de México (PVEM) that had nominated Vicente Fox for the presidency in 2000, had received \$9.1 million that had not been reported to the electoral authority as part of its campaign expenses. The funds came principally from the two civil organizations, Amigos de Fox and the Fundación para el Desarrollo y la Democracia, which had, in turn, received various donations from individuals and enterprises.

The objective of the organizations had been to support a particular candidate, Vicente Fox, and not a political party or coalition. However, because parties are the only entities allowed to collect and spend money

during an electoral campaign, they are responsible for any illegal funding that may have reached any of their candidates.

In the end, IFE found that the Amigos de Fox financing scheme had violated a number of regulations. Contributions had not been reported, funds had been procured from illegal sources (foreigners and commercial enterprises), and the limits for presidential campaign expenses, as well as for private financing, had been exceeded. Each violation was individually sanctioned,³⁰ and the fine amounted to \$54.5 million. PAN was ordered to cover two thirds and PVEM the remaining one third, in accordance with their coalition agreement. According to the Tribunal Electoral's relevant theses, political parties that are members of an electoral coalition must be punished individually (Tribunal Electoral, SUP/RAP 019/2001) for the illegal acts committed by their leaders, candidates, or rank and file, a legal concept known as *culpa in vigilando* (Tribunal Electoral SUP/RAP 018/2003).

Because it meant that alien interests had interfered with relevant domestic affairs, it was widely discussed whether foreign financing merited the most severe penalty (even so much as cancellation of the offender's legal status as a national political party). The actual amount coming from abroad was \$1100, donated to the presidential campaign by an individual living in the United States. While such an offense was seen to be very serious, canceling a legal registration should be reserved for particularly grave cases. Therefore, the fine imposed for this violation was \$33,000, that is, 300 percent of the illegal donation.

Finally, there was broad speculation about how IFE's resolution would affect Vicente Fox himself, because his election had been tainted by a series of illegal acts that had been fully documented. Although IFE's Consejo General discussed this issue, federal electoral law does not consider such acts as cause for election annulment.³¹ The resolution may undermine Vicente Fox's authority, but only on a moral basis; it has no effect on the legality of his post.

It is difficult to say whether the two resolutions affected the PRI and PAN electoral outcomes in 2003, because while PRI increased its national votes, the PAN suffered a significant decrease. This may have to do with Mexicans' ambiguous perception of public corruption, as they reject it at one level but at the same time consider some corruption to be acceptable if it enhances public efficiency (*Latinobarometro* 2002).

30. The greatest penalty derived from having exceeded the presidential campaign ceilings. The complete data from the "Amigos de Fox" case can be found in the Resoluciones del Consejo General del IFE, Oct. 10, 2003.

31. Several state electoral laws provide that an election may be annulled if the authority discerns that campaign expense ceilings were surpassed. This is the case, for example, in the Código Electoral del Distrito Federal.

Conclusion

The 1996 electoral reform gave IFE full autonomy and broad authority over political parties' income and expenditures. The Comisión de Fiscalización can audit parties at any time and can keep close track of the routes followed by public funding. However, IFE is limited in its investigative power because it cannot access private bank accounts, due to the banking privacy rules that protect individuals from arbitrary interference from the authorities.

After the 2000 presidential election, which brought alternation in power, IFE faced the two most important challenges of its ten-year life. With limited capacities, and with very different levels of collaboration from governmental entities (strong cooperation in the "Pemexgate" case and weak cooperation in the "Amigos de Fox" case), IFE had to demonstrate its legal and moral strength to impartially resolve the two campaign finance scandals. These events made it clear that additional reform is necessary to strengthen IFE's abilities to oversee political party financing, for several reasons: in Mexico, parties are constitutionally considered to be entities of public interest; they are the only organizations entitled to nominate candidates for elective posts; and, not least, because society demands that parties become accountable if Mexican democracy is to be sustainable.

In October 2003, IFE faced some of the consequences of the two financing scandals, as the legal terms of the electoral councilors came to an end. While the PRD and PAN proposed reelection of some of the incumbents in order to profit from their experience and prestige, the PRI rejected the idea. PRI claimed that reelection is illegal, citing a transitory article in the 1996 electoral reform that banned reelection of the former citizen councilors. It was a temporary norm, established for a different body, but the argument was used to make it clear that the PRI wanted to punish those who had severely fined the party.

The most far-reaching problem arose, however, when the PRI and the PAN shut out from the selection process the third most important party, the PRD. Together representing some 75 percent of the seats in the Chamber of Deputies, the PAN and PRI coalition had no difficulty in achieving the two-thirds vote needed to appoint electoral councilors. While lawful, their action was not politically smart. The IFE's board, which had been appointed in 1996 with support of all the parties, was replaced in 2003 without political consensus. This action undermines the legitimacy of the electoral council's resolutions and may pose risk to the 2006 election. At the very least, the IFE's Consejo General will have to work very hard to overcome its disputed origin.

Moreover, the fact that the PRI decided to pick as electoral coun-

cilors some individuals who were personally linked with PRI leaders has undoubtedly jeopardized IFE's autonomy. Nevertheless, the IFE's seven years of full autonomy from government and effective independence from political party interests have trained the executive branch in those two principles. Furthermore, the Mexican public is now aware of the importance of such guiding principles in the electoral authority, and this knowledge will play a key role in IFE's future behavior. I am convinced that, despite the politically inconvenient selection process, the recently named electoral councilors will adhere to the IFE's guiding principles, because there are important incentives to do so: public opinion, and an internal civil service structure that has worked to consolidate its autonomy.

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