

## TRANSPARENCY IN MEXICO'S SPECIAL PROSECUTOR FOR ELECTORAL CRIMES (FEPADE)\*

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During the last 20 years, Mexico's electoral system has undergone a series of fundamental reforms, to ensure that elections will be impartial, credible and legitimate in the eyes of the public. These reforms included the creation of the Federal Special Prosecutor's Office for Electoral Crimes (Fepade in Spanish). The Fepade's main function is to receive and thoroughly investigate citizen allegations of electoral violations, and it is housed within the Federal Attorney General's office (PGR in Spanish). If Fepade's investigations into these allegations find that the case merits criminal prosecution, Fepade then turns it over to the appropriate judicial or electoral authority, which then decides whether or not to sanction those responsible.

Several recent studies have highlighted the ways in which government social programs are at risk of manipulation for electoral purposes—a subject that received a good deal of international attention during the recent 2006 presidential elections.<sup>2</sup> These studies underscore the need for Mexico to have specialized institutions capable of investigating and prosecuting the misuse of social programs (as well as other types of electoral infractions). Fepade's powers are currently limited, as it can only investigate allegations of electoral fraud or manipulation, and must rely on the judicial system to impose sanctions on the guilty.<sup>3</sup>

Fepade is also tasked with working to *prevent* electoral crimes. Much of their activity in the area of prevention involves distributing outreach materials and holding training courses, so that citizens are aware of their rights in electoral contexts. The goal is to inform citizens about what constitutes an electoral crime so that they might denounce

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<sup>2</sup> UNDP, "Proyecto de Protección de Programas Sociales Federales," available at: <http://www.undp.org.mx/programassociales/>; Fundar, Centro de Análisis e Investigación, A.C., CIESAS, Probalística et. al., "Monitoreo de programas sociales en contextos electorales," available at: <http://www.fundar.org.mx/programassociales/programassociales.htm>, and Alianza Cívica, "Monitoreo Ciudadano de Programas Sociales," *La Jornada*, June 21st, 2006.

<sup>3</sup> Not only is Fepade constrained by its reliance on the judicial system to sanction anyone proven responsible for an electoral violation, it cannot choose which judicial authority is ultimately responsible for making sanctioning decisions, as the nature of the legal system determines the corresponding judicial authority based on the nature and location of the alleged crime. As a result, Fepade has little control over whether or not their recommendations for criminal action are followed. While it is true that the *quality* of their investigation is likely to influence a judge's decision, and therefore constitutes their most important role in the sanctioning process, they must rely, to a large extent, on the "good will" of an individual judge who may or may not be personally committed to the goal of prosecuting electoral crimes.

any suspicious activity should it occur. This is particularly important because the Fepade cannot investigate any alleged electoral crime unless they receive a formal complaint from a citizen (and in some cases from local electoral authorities). All of this implies that Fepade's role is essentially to act as a link between the citizenry and the government in the fight to prevent electoral crime.

Given this crucial role, it is essential to assess the level of transparency with which Fepade operates, above all from the perspective of the citizen. As Fepade operates in direct contact with citizens, it is vital that information offered to the public be useful and substantive. Above all, the information should enable an interested citizen, who is not necessarily an expert on the subject, to comprehend the results of Fepade's main activities. Using this premise, the following analysis will evaluate the information publicly available on Fepade's website and its Annual Reports, in order to determine whether or not a citizen would be able to find answers to basic questions they may have concerning Fepade's scope and performance.

## Progress and Achievements

Fepade's website outlines its principal activities and functions.<sup>4</sup> For example, basic information is available about programs designed to prevent electoral violations and offer electoral assistance at the local level. Information on electoral legislation and new reform proposals is also available online, along with a general overview of the institutional structure of the Prosecutor's Office. This briefly describes the scope of activities of each office within the agency, and provides the public with the necessary details should they wish to contact the different departments.

Perhaps the most important element of Fepade's current website is the inclusion of clear and detailed definitions of activities that constitute electoral crimes. Alongside this, the homepage offers an ample range of options for filing allegations of misconduct, including the possibility of sending an anonymous report through an electronic system called "PREDEF", the Pre-denunciation System of Federal Electoral Infractions.<sup>5</sup> This information is presented using highly accessible language (many outreach materials are also available in indigenous languages), and shows how the website can serve as a practical guide to

<sup>4</sup> <http://www.pgr.gob.mx/FEPADE> and <http://www.pgr.gob.mx/FEPADE/FEPADE/ANTECEDENTES.htm>. As of September 6, 2007, this website had drastically changed since the original Spanish publication of this article in June, 2007 (following the presidential elections and change of officials in Fepade). These changes have made the website much less user-friendly than the 2006 version analyzed here.

<sup>5</sup> <http://www.pgr.gob.mx/FEPADE/def/def.asp>. Here the public can also find a telephone number, "FEPADEtel" and an email address "FEPADEnet".

citizen action because it offers a range of different ways and means to detect and report infractions in different spheres of daily life.

The importance of being able to easily find and understand this information is compounded by the fact that, as the civil society organization Alianza Cívica has demonstrated, the majority of citizens are unaware of their electoral rights, or are aware but do not trust the system through which they would report a violation of these rights.<sup>6</sup> In spite of the fact that the internet is not a media widely available to a large part of the population, the inclusion of information about electoral violations on Fepade's website, together with the options for making anonymous complaints, represents, at the very least, an effort to tackle the problem of electoral crime in Mexico.

**Limitations**

Despite the large quantity of information available on the Fepade website, it is largely descriptive, which limits citizens' ability to gain an in-depth understanding of the agency's activities and results. In other words, Fepade's website does not effectively disclose what it actually does in practice.

To begin, the website does not deal with the subject of transparency as such. In order to find the mandatory disclosure requirements of Article 7 of the Federal Law of Transparency and Access to Information (LFTAIPG in Spanish), which Fepade must follow, one has to redirect oneself to the website of the PGR. There, one will find information specifically concerning the PGR and its different specialized prosecuting offices. Fepade's own website does not direct the public to search for this information on the PGR's website, nor does it instruct the citizen on how to submit an information request for information related to the Fepade (and that requests to obtain information about Fepade must be submitted to the PGR).

Furthermore, it is both likely and recommendable that anyone interested in the activities of Fepade would want more detailed information about the agency than the mandatory disclosure requirements of Article 7 tend to provide. It would therefore be useful if the

<sup>6</sup> Beatriz Adriana Camacho Carrasco and Silvia Alfonso Félix, Alianza Cívica, A.C., *Modelo para la participación ciudadana en el monitoreo de los programas sociales* (December, 2005), p.3 available at: <http://www.alianzacivica.org/mx/pdfs/modelomonitoreo.pdf>. The same authors, in another of their publications, *Observación del Proceso Electoral 2006*, conducted a study by interviewing beneficiaries of social programs which showed, of those interviewed, that 63.7% were unaware of how to file a complaint against operational irregularities in social programs, 10.1% had seen these programs used for the purposes of solely benefiting sympathizers of certain electoral goals, 6% had experienced attempts to have their vote "bought", 7% had experienced attempts to coerce their votes and 3.5% of those interviewed believed that using social programs for electoral gain was not against the law. These results can be found on pgs. 16,20,21,23 and 25.

website were to include material on the most significant aspects of Fepade's work. Examples could include the results of its investigations into prominent cases of alleged violations of electoral law during the 2000 presidential elections, such as the cases of "Pemexgate" and "Friends of Fox". It would also be interesting to know which of Mexico's states had the highest incidence of infractions; what those infractions were, and how they were they dealt with. Even more importantly, it would also be useful to know how many cases of violations presented to Fepade resulted in sanctions of public officials, as well as the nature of these cases.

Fepade's website does indeed offer a clear definition of what constitutes an electoral infraction. However, the course of action undertaken when investigating these electoral infractions, and the possible subsequent pursuit of those responsible, is not explained on the website. For clarification on this, it is necessary to consult the Fepade's Annual Reports. Combining the information from the website and the Annual Reports, one can still only get a partial picture of investigative process that is supposed to take place following the receipt of a formal complaint, and Fepade's specific role in the process. However, even after reviewing the Annual Reports, one must gather information from a variety of sources, in order to get a full understanding of the process and practices that *should* apply in each case.

Moreover, it is also quite complicated to find specific data about alleged infractions that resulted in sanctions, what the sanctions were, where they took place, etc. A small amount of related information is available in the website's section on statistics. This section contains nine graphs, allowing for a vague statistical overview of cases received, investigated, recommendations for punitive action, and sanctions. For example, one graph depicts the "Rate of Occurrence of Electoral Infractions by State" or "Historical Registry of Penal Action by Year."<sup>7</sup> However, the graphs and data presented in this section are too general and not self-explanatory.

These statistics are presented out of context and there is no clearly established relationship between one graph and another; furthermore they only cover one aspect of the government's process for addressing alleged electoral crimes. For example, it is impossible, even when comparing the statistics with information found in the Annual Reports, to ascertain the outcome of cases where social programs were used for electoral purposes at the state level.

<sup>7</sup> The web navigation necessary in order to find these graphs is intricate. One must firstly use the link for the statistical section found on the left-hand side of the homepage. The link leads to a map of Mexico and all its states, one must click on a state in order to get a list showing the total number of crimes for that particular state which have been reported to the PGR. Within the table, different types of crimes are listed, where electoral infractions is the only type to have a hyperlink, and it is this link which leads to the nine graphical representations, however the nine graphs do not specifically relate to the State which one clicked on in the first place. The final address for finding the statistical graphs is: [http://www.pgr.gob.mx/estadistica/FEPADE/graf\\_FEPADE.htm](http://www.pgr.gob.mx/estadistica/FEPADE/graf_FEPADE.htm).

Fepade’s Annual Reports, which can also be found on its website, are more thorough and detailed than the website’s statistical section.<sup>8</sup> Nevertheless, the Annual Reports need to be reviewed in their entirety in order to obtain a rather superficial understanding of the Fepade’s effort in dealing with allegations of electoral violations and subsequent proceedings, i.e. data broken down by month or by state showing how many investigated cases resulted in indictments.

By gathering together the information available in various sections of the 2005 Annual Report, the following table demonstrates the relationship between investigations opened, carried out, Fepade’s recommendations for criminal charges, and first-level sentences handed down by the Public Prosecutor. This allows a broad comparison to attempt to find out how many formal complaints of electoral violations have resulted in sanctions. However, the table only presents a partial overview, and further information is required to know how many sanctions were actually applied.

**Table 1**  
**Cases Opened, FEPADE Recommendations and**  
**Subsequent First-Level Indictments 2002-2006**

	2002	2003	2004	2005
<b>Cases received</b>				
Investigations Opened	942	1472	1151	981
Investigations Carried Out	823	1117	905	851
Recommendations for Criminal Charges (indictments, by case file)	82	100	82	106
<b>First-level indictments</b>				
<b>Totals</b>	43	57	60	64
<i>Sanctions Determined</i>	40	57	59	61
<b>Not-guilty</b>	3	0	1	3

\* Source: *Informe Anual de Actividades 2005*, Fiscalía Especializada para la Atención de Delitos Electorales, Procuraduría General de la Republica.

The Annual Reports do not mention specific cases in which the Fepade has played a crucial role in the prosecution of electoral crimes. In the section dedicated to describing Fepade’s activities in relation to recommendations for criminal charges in any given case, two tables are presented that disaggregate recommendations by state, and later recommendations by electoral crime. However, one cannot compare the two tables to know *which* cases were the ones that resulted in a recommendation in each state. In other words, the Annual

<sup>8</sup> <http://www.pgr.gob.mx/FEPADE/actividades/actividades.htm>.

Reports do not provide the necessary information to know *which exact crimes resulted in punitive sentences, nor in which state they occurred.*

None of the sections on the website allow the user to access information in the case files of complaints that resulted in decisions, nor does it indicate how one could request them if interested. It is therefore necessary to seek information from various sources, in order to begin the process of requesting information about Fepade from the PGR.

## Conclusions

It would be reasonable to expect that Fepade should publish information that would highlight some of the more important results of their work, in terms of both statistics and concrete examples of cases where their investigations contributed to the prosecution of electoral crimes. Even more ideal would be for Fepade to publish the results of their actions, both aggregated and disaggregated, in a specific section of their website. A good deal of this information is already available in the Annual Reports, just not in a reader-friendly format. This implies that, with relatively little effort, Fepade could clearly demonstrate their commitment to informing citizens about their actions, while making it easier to understand their operations without having to gather information from diverse, complex sources.

At the same time, it would be desirable for Fepade (despite its institutional dependence on the PGR) to publish its own “transparency portal” on their website to facilitate access to the information that they are obligated to publish through Article 7 of the LFTAIPG, and to indicate how to submit an information request—or at the very least, to clearly indicate on their website that this information is available through the PGR.

Public access to cases that have already been resolved should be a higher priority, and, if possible, allow direct on-line access (with the appropriate protection of the personal data they contain). This could include a simple classification system that makes it easy to find a particular case (or type of case). A section dedicated to publishing the results of the most high profile cases would be an especially relevant contribution to inform public debate over how to improve the electoral process.