

POLITICAL PARTIES AND THE DEMAND FOR TRANSPARENCY

Jacqueline Peschard

Budget Control as Background

In Mexico, the demand for transparency and accountability of political parties is framed within the context of a transition to electoral democracy, starting with the 1977 constitutional reform, which defined them as “public interest entities”. However, it was not until 1993 when, for the first time, legislation considered two approaches designed to encourage oversight over both the election process and over one of its main protagonists; political parties. The inclusion of citizens’ right to observe elections (Article 5 of the Federal Code for Electoral Institutions and Procedures or Cofipe in Spanish), legally recognized their right to verify that elections were carried out legally. When political parties were obliged to present reports about their income and expenditures to the electoral authorities, this was a first step towards applying the principle of accountability to political organizations.

While this first legal mandate for oversight was based on general ideas—not well-translated into implementing legislation—involving the specific obligations for the parties and the Federal Electoral Institute’s (IFE in Spanish) powers to have control over their resources, the measure was useful to clearly show the disparity of resources between the PRI and the rest of the parties—the PRI concentrated 80% of campaign spending in 1994—and also helped to set the stage for the next electoral reform in 1996.¹

The 1996 political reform prioritized equality as an essential requirement for competitive elections, and this was the basis for the new (predominantly public) political party financing model, which set limits and conditions on private financing while also granting oversight powers to the IFE—an agency that was already fully autonomous and “citizenized”.² The law gave the IFE legal tools that include the capacity for regular auditing; the capacity to regulate budget oversight and the power to adjudicate complaints presented by parties against their adversaries for violations to the campaign finance law (Cofipe’s Articles 49 B and C), known as “self-monitoring”, a formula that has proven effective for identifying when resources are diverted or hidden; finally, the IFE gained the power to sanction political parties’ illegal activities.

¹ Dictamen de la Comisión de Consejeros del Consejo General del IFE sobre los Informes de Gasto de Campaña de los Partidos Políticos, April 7, 1995.

² Ricardo Becerra, Pedro Salazar and José Woldenberg, *La Mecánica del Cambio Político en México. Elecciones partidos y Reformas* (Mexico: Ed. Cal y Arena, 2000).

For political parties, the greatest requirements in terms of accountability were centered on financial issues, but their obligation to disclose their resources referred only to the electoral authority, because the law did not confer its citizens any role in budget oversight, nor a right to be informed about it. In fact, the electoral code indicates that only the proposed and final rulings involving oversight of party finances should be presented in the IFE's General Council public sessions. It was the IFE's General Council itself that decided to disseminate the results of their budgetary oversight efforts.

The 1996 reform also included the approval of the General Law for Contestation, which in addition to organizing the process used to resolve challenges regarding IFE actions or decisions before the Federal Electoral Court (TEPJF in Spanish), also introduced a trial process to protect citizens' political/electoral rights. This mechanism, which began by guaranteeing citizens the right to be registered to vote, later produced an ideal legal instrument for political parties' members to claim their right— when aspiring to a candidacy or a party leadership position— for internal rules to be respected (such as party statutes and regulations); thus, it became a control mechanism for militants vis-à-vis their political party's leadership, which would improve their internal democracy.³

The Drive Toward Transparency and Accountability: Beyond Legal Changes

At first, increased political competition started provoking new demands for party budget oversight, as well as citizen demands for transparency and access to financial information; later, demands also focused on internal decisions such as candidate and leadership selection. Members' complaints with the IFE because of irregularities in their parties' internal processes were sanctioned with monetary fines, but when they appealed to the Electoral Court using the *trial system for protection of citizen political/electoral rights*, the IFE General Council's jurisdictional authority allowed it to reverse decisions that violated party procedures, in defense of members' rights (TEPJF's S3EL 007/2001).

In spite of the fact that a new party in the presidency underscored the need for a second generation of electoral reform, in order to respond to society's concern about party spending of huge sums of public funding, to strengthen financial oversight and to make accountability more effective; none of the initiatives on these issues made forward progress during President Fox's government.

³ Electoral authorities and the rights of political parties in Mexico, 2005.

The lack of agreement among the parties for approval of the new electoral reform drove electoral authorities to make use of their regulatory (IFE) and jurisdictional (TEPJF) powers, in order to advance towards more effective party accountability and a better response to transparency demands, with the understanding that it is a mechanism which reduces margins of discretion in public organizations and, in this case, those of “public interest”.

A first objective was to certify the information reported by parties. Given that, on average, 56% of parties’ campaign spending pays for radio and television time, in 1999 IFE’s General Council approved an agreement to monitor campaign advertisements and to compare the data with what the parties volunteered in their campaign reports. Later, the IFE reformed its Budget Control Rules in order to oblige parties to report details, one by one, regarding the costs of advertisements to verify the parties’ effective expenditures on different channels and at different broadcast times.

On the other hand, in 2002, the IFE’s General Council decided to publicly divulge, along with its rulings and resolutions to control the parties’ budgets, the constituencies’ lists of donations, because although the law prohibits anonymous donations it does not set up the obligation for them to be made public; however, since the norm does not protect the identity of donors, the data should be disclosed so that citizens could expand their knowledge about the life of the parties (ratified by the TEPJF on June 20, 2002).

Without a doubt, the debate over complaints about illicit campaign financing during the 2000 presidential election (as in the cases of the *Pemexgate* and “Amigos de Fox” controversies) demonstrated the limitations in the existing law’s capacity to hold parties accountable, but at the same time, it showed the electoral authority’s room for maneuver to address the issues in a context of increasing societal demands for transparency.

In the *Pemexgate case*, in face of prosecutorial confidentiality, which prevented electoral oversight officials from using data from a legal investigation, the IFE relied on a collaboration agreement with the Federal Attorney General (PGR in Spanish) in order to obtain the necessary information to document the transfer of resources from the PEMEX Union to the PRI (Institutional Revolutionary Party) presidential campaign (the TEPJF ratified the decision in March, 2003).

In the “Amigos de Fox” case, given that the banking secrecy law prevented the IFE from identifying the flow of illegal donations made to the candidate for *Alianza por el Cambio*, the TEPJF resolved that in financial oversight issues, the IFE could supercede banking and tax secrecy provisions. This court decision became a jurisprudence thesis and in 2005, the

Supreme Court ratified that bank secrecy does not apply to the IFE when it is performing tasks of political parties' budgetary oversight.

Restraints on Transparency and Accountability

The commitment of political parties to transparency, both in relation to their finances and in regards to their internal decision-making procedures, is still severely limited. In the first place, citizens who require information about parties have to seek it through the IFE, which is the entity with the power to request it from them; that is, there is no direct access for citizens to become active subjects of parties' transparency.

Although the number of information requests about parties has grown, there are some issues that remain off-limits for outsiders. I am referring, for example, to the procedures used to determine the criteria with which resources are distributed within the parties to their various structures, delegations or groups. Parties report to the IFE as national organizations, from their central offices, and although they need to disaggregate and document their financial reports, they are not obligated to specify the way in which they divide the resources among their branches, both in geographic and functional areas. This is one of the regulatory gaps that allow discretionary room for maneuver, which are not subject to public scrutiny, even by the parties' own members.

An additional kind of information which should be included in the open list involves entities or private companies that have economic connections with political parties, whether because they offer certain services or because they carry out joint activities. Due to their relation with the parties, these private entities would have the obligation to collaborate to make the parties' expenditures more transparent.

Although some state transparency laws cover parties as obligated subjects, the federal law does not, surely because it refers to institutions that straddle the public and private spheres. However, to this day parties have the exclusive right to run candidates for elected office, which is a public function of the first order; this is why the demand for greater transparency is fully justified.

In my opinion, the transparency obligation, for political parties, should be incorporated as a specific chapter in electoral laws, which are the ones that regulate their internal and external lives. If a law for political parties is to be approved, it should cover this issue, with the understanding that it is necessary to avoid triangulation by the IFE between the

citizen and the party, something which dilutes the citizens' right to information. The IFE controls parties and monitors their compliance to electoral law and to their own internal regulations, but in matters of transparency, it should exercise the functions that the IFAI has in relation to government agencies. Thanks to its nature of authority over the parties, the IFE could guarantee that citizens' information requests directed to political parties would be promptly answered.

Even though the virtues of transparency are widely accepted by society, the demand to make public what parties have and spend, as well as the way they make decisions about their various activities and strategies, is still of interest mainly to experts, the press, and their own members. If we can agree that transparency and accountability are tools used to limit arbitrary action and to extend participation to a larger number of social groups, a response to this call, through more speedy and effective institutional mechanisms, could contribute to improving the failing grade that citizens today continue to give to political parties.⁴

⁴ See Mitofsky public opinion survey, February 2006.