Legislators in the Labyrinth: Discretion and Opacity in the Policy Debate over Mexico's Budget

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Introduction

In general terms, the Federal Law for Transparency and Access to Information (LFTAIPG in Spanish) has had a positive effect on how legislative information is presented. Today, not only is important information available that previously did not exist, but there is now a specific office to which one can appeal if necessary information cannot be found on Congress' website. This in itself represents a huge step forward. However, the transparency law does not include mechanisms that would oblige individual congressional committees, including the Budget and Public Accounts Commission, to make their deliberative processes more transparent. Once a legislative proposal reaches a commission, it is practically impossible for the common citizen to monitor the discussion and decision-making process through existing legislative information access mechanisms. The Mexican Congress' commissions work under a legal framework that does not establish deadlines or guidelines for the presentation of planning or work reports. The lack of public consultations and public hearings makes access to information and interaction with representatives even more difficult. As a consequence, and, in spite of the approval of a new Federal Budget and Fiscal Responsibility Law (LFPRH in Spanish), which mandates the Budget Commission to establish mechanisms for consultation with the other Congressional commissions, opacity prevails in the discussion and approval of public budgets in Mexico.

This article focuses on the advances and limitations in the transparency of budget negotiations, defined as the set of conditions necessary for citizen access to and knowledge of congressional decisions made in the process of discussing and approving the federal budget. This would include access to the priorities, motivations and justifications behind proposals to reallocate resources, the criteria used to choose among different spending proposals, as well as the write-up process of the final document.

Advances

Mexico's recent transparency reforms have improved access to general information about Congress, which is important, yet insufficient. The Legislative Branch is one of the

institutions mandated by the LFTAIPG (Article 4, fraction 14, section b) and Congress has established a Liaison Unit under the guidelines of Articles 7 and 61. Because of these legal requirements, we can now know how much legislators spend and, to a greater or lesser degree, what they spend it on. If one needs more specific information, not available through the mandatory disclosure requirements of Article 7, there is now someone to go to with information requests, and the mechanisms established are functional and efficient. At the same time, there has been an overall improvement in the legislative information available. The Congress' website now presents new, better-organized information than previous legislatures. From each commission's web page, one can access information regarding initiatives under discussion, find out who submitted them, and have access to the text of the initiative in the *Gaceta Parlamentaria (Parliamentary Gazette)*—none of which require familiarity with the website or how information is organized.

In spite of clear deficiencies in the new Budget Law (described below), its approval represents important advances. First, it established mechanisms for consultation so that all commissions may participate in budget discussions (coordinated by the Budget Commission). The LFPRH also created medium term goals and parameters for spending, and gave greater certainty to public finance by limiting budget reallocations to specific income indicators. Additionally, it established a strict zero-deficit policy, which can only be set aside under justified emergency conditions.[1]

In addition, the reforms generated by the current budget oversight system have revitalized the function of Congress' external auditing office. The National Superior Auditor's Office (ASF in Spanish) has played a major role through their review of the Public Accounts, and in turn, provided legislators with better inputs for discussion of the federal budget.

Finally, the political dynamics of a Congress without a majority party have created new information requirements, increasing the flow of information requests from the Legislative to the Executive. Many of these requests demand more detailed financial information about executive agencies, as well as information about how resources are spent and the performance results of public policies. Based on this, legislators have been able to implement fundamental changes in public budgets, reallocating spending in the areas of health, agriculture, education, social development and federal grants to state and local governments.

[1] For an in-depth discussion of the advantages (and disadvantages) of the Law, see: Mariana Pérez Argüelles and Jorge Romero León, *Transparencia en el Presupuesto Público: Los Desafíos de la Rendición de Cuentas* (Mexico: Fundar: Centro de Análisis e Investigación, 2006.), pp. 23-26. Available online at: http://www.fundar.org.mx/PDF%20Avances%20y%20Retrocesos/01.pdf, (Viewed March, 2007).

The main problem, however, stems from the fact that *the most substantial aspects of these reallocations, which are the justifications and criteria employed to choose between different alternatives, continue to be part of a black box to outside observers.* Legislators from other commissions, as well as civil society, do not have access to information related to the key discussions that take place inside the Budget Commission. It is impossible to know the criteria employed to allocate resources, much less the justification for these decisions, with few exceptions. This brings us to a discussion of existing limitations.

Limitations: the Budget Discussion Labyrinth

With the existing legal framework, and in spite of the LFPRH reforms, the Budget Commission monopolizes discussion and reporting of the budget. Contrary to what happens in the United States, where the budget discussions are brought to other committees, in Mexico, members of other commissions can *attend* but cannot *vote* in the Budget Commission's meetings—and this is only when they are public, whereas many of the discussions in recent years have taken place behind closed doors.[2]

In addition, much of the information that legislators have requested, or that could be considered "budgetary information", is never formally discussed in the budget approval process. This happens for two main reasons. First, ordinary congressional commissions lack the legal mandate to participate in budgetary analysis. In practice, the legal framework constrains them: both the LFPRH and Congress' Organic Law give budget oversight authority to the Budget Commission, while assigning the task of evaluation to Superior Fiscal Auditor's Office.[3] Secondly, commissions have yet to take full advantage of the (limited) margin they have to debate the President's budget proposal, and tend to focus instead on discussing the President's annual report, which is presented to Congress at the same time.[4] In addition, when it comes to an evaluation of how money was *actually*

[2] For a more detailed discussion about this opaque process, see: Juan Antonio Cepeda, *et al*., *Diagnóstico de Negociación Presupuestaria: Propuestas para Fortalecer la Transparencia y la Rendición de Cuentas* (Mexico: Fundar: Centro de Análisis e Investigación, 2004). Available online at: http://www.fundar.org.mx/secciones/publicaciones/PDF/negociacion.pdf. (Viewed March, 2007), and: Juan Antonio Cepeda, David Dávila, and Jorge Romero, *¿Cómo Fortalecer la Participación de la Cámara de Diputados en el gasto Público? Agenda de Reformas Presupuestarias que Modifican el Papel del Legislativo en las Finanzas Públicas* (Mexico: Fundar: Centro de Análisis e Investigación, 2005). Available online at: http://www.fundar.org.mx/secciones/publicaciones/PDF/gastopublico.pdf (Viewed March, 2007).

[3] See Gerónimo Gutiérrez, Alonso Lujambio and Diego Valadés, *et al., El Proceso Presupuestario y las Relaciones entre los Órganos de Poder. El Caso Mexicano en Perspectiva Histórica y Comparada* (Mexico: IIJ/UNAM, 2001). This could change with approval of the new Budget Law, but not until the fiscal year 2008, if, and only if commissions take advantage of the prerogative set up by Transitory Article 6, which establishes that the Performance Evaluation System, "should include participation mechanisms for Congress, *through their Ordinary Commissions*, coordinated by the Budget and Public Accounts Commission," (LFPRH, Transitory Article 6). Although it is true that (once again) the budget Commission coordinates this, the margin to involve ordinary commissions is more explicit than in any other norm.

[4] See Gutiérrez, Lujambio and Valadés,. *El Proceso Presupuestario y las Relaciones entre los Órganos de Poder. El Caso Mexicano en Perspectiva Histórica y Comparada* (2001).

spent by the Executive Branch, there is a Congressional Commission for Monitoring the Public Accounts Report that is tasked with producing a report on Executive expenditures, especially in relation to the information provided in the Public Accounts Report produced by the ASF. However, this report continues to depend on agreements among political parties in the legislature, such that one of Congress' most important functions for the control and evaluation of Executive spending has been left unattended. In the last four years, legislators have simply decided *not* to produce this Public Accounts Audit.[5]

Finally, it is worth noting the *total lack* of citizen participation mechanisms in the various stages of the budget approval process. This is especially important in the discussion that takes place in Congress which should, in theory, be the most open and inclusive stage for citizens. Citizen participation promotes horizontal accountability, which is something the Legislative Branch should seek, also with a *vertical* dimension, broadly defined.[6] Such participation is not only required to inform the discussion of programs and resource allocation, but also adds value to the entire process.[7] Citizen participation in budgetary decisions allows for broader public discussion of highly technical information, helps decision-makers be more sensitive to the population's needs, and allows them to weigh difficult alternatives as they allocate scarce resources.[8] In addition, the presence of participation mechanisms can boost horizontal accountability, because it generates mechanisms for oversight and evaluation, and helps to energize those that already exist, through direct pressure and by bolstering the vertical accountability on which democratic institutions depend.[9]

[5] This adds up, as the time between the presentation of the Pubic Account (by the Treasury Ministry), which is presented six months following the end of the fiscal year, and the presentation of the ASF's audit of the Public Account, which is presented 15 months after the end of the fiscal year in question. Even if these time periods were adjusted to international standards, the disconnect for the Legislature is evident. Once the ASF presents their audit of the Public Account, it is not discussed again and no report is generated regarding compliance with ASF recommendations.

[6] Guillermo O'Donnell was the first to highlight the difference between horizontal and vertical accountability. *Vertical* accountability usually refers to the electoral ratification of authorities, but it can include other aspects of the relationship between governments and the governed, including direct citizen participation mechanisms for governmental decision-making. *Horizontal* accountability occurs in the relationship between branches and agencies of government (Executive, Legislative and Judicial), when there are institutions capable of exercising an *oversight and evaluation* function vis-a-vis the other powers. (See: Guillermo O'Donnell, "Rendición de Cuentas Horizontal y Nuevas Poliarquías," *Nueva Sociedad*, No. 152: November-December, 1997, pp. 143-167). "In order for [accountability] to be *efficient*, there must be state institutions that are authorized and willing to oversee, control, correct and/or sanction illicit acts in other state institutions," (p. 152).

[7] See: John M. Ackerman, "State-Society Synergy in Favor of Accountability: Lessons for the World Bank," *Working Paper* No. 31, Washington, World Bank, 2004. The document highlights the importance of, "fully institutionalizing participatory mechanisms, as well as achieving the participation of actors that represent society from the very beginning of the process design stage," in order to make accountability more effective, decision-making more sensitive, and citizen participation more responsible.

[8] See *Ibid*. Also: Isaac Shapiro (ed.), *Guía Ciudadana para el Trabajo Presupuestario* (Mexico: International Budget Project, 2002). Available at: http://www.fundar.org.mx/secciones/publicaciones/PDF/Gu%EDa%20IBP.pdf. (Viewed March, 2007).

[9] See: Jonathan Fox, "Sociedad civil y políticas de rendición de cuentas," *Perfiles Latinoamericanos*, No. 27, January, 2006.

Perspectives and Recommendations

Although we are far from formally incorporating the key mechanisms of public participation and hearings into the budgetary process, it does not mean that public participation does not exist. A wide range of civil society organizations have found the way to open up the spaces needed to promote a more informed discussion in the Congress, and to encourage public accountability and oversight agencies to fulfill their missions.[10] Such was the case, for example, of the social audit performed on the *Provida* organization between 2002 and 2006, in a process that started with a discussion about allocating more resources for women's health care, and ended up with sanctioning and barring those responsible for the wrongful use of some of these resources.[11] [12] In the *Provida* case, civil society pressure led authorities to react, encouraging internal and external oversight agencies to make accountability effective. There are other examples, such as the creation of the LFTAIPG itself, which was promoted by civil society against the wishes of many political actors. It is essential, however, to find the way to formalize these mechanisms in order to guarantee their continuity and most effective use.

There have already been reactions within the legislature itself. Legislators are seeking changes in the Budget Law, and are unhappy with the opacity that has kept them marginalized. This context favors change, which must be broad. Given the legislative discontent because of the especially opaque and discretional budget discussion in 2006— its report was not even published in the *Gaceta Parlamentaria*— many legislators have taken it upon themselves to propose reforms and amendments intended to improve the Congress' evaluation and discussion of the budget. During just the first year of the 60th Legislature, 33 bills were presented to the Budget Commission, some in joint commissions, and almost all were seeking to reform various provisions in the recently approved Federal Budget and Fiscal Responsibility Law. Many seek to establish *new* mechanisms for assessment and oversight of public spending at all levels of government, as well as reforms to inform citizens about the use of these resources (see Table 1 on the next page). The problem is that none of these proposals correct the weaknesses in the system of congressional commissions, question the monopoly of the Budgetary Commission, or formalize citizen participation. It is necessary to push for this from civil society.

[10] Civil society organizations are the main interlocutors – although other organizations, especially agricultural producers and some Unions, have managed to become involved in the discussion – through parliamentary fractions and their relationship with state governments, which acquire more preponderance and command a lot of representatives. Again, since discussions take place *behind closed doors*, the terms of discussion among these groups are not very clear.

[11] Editor's note: Provida is a civil association that promotes the value and dignity of life from the moment of conception.

[12] The organizations involved were: Consorcio para el Diálogo Parlamentario y la Equidad; Equidad de Género; Ciudadanía, Trabajo y Familia; Fundar, Centro de Análisis e Investigación; Grupo de Información en Preproducción Elegida (GIRE); Letra S: Salud, Sexualidad, Sida; and Salud Integral Para la Mujer (SIPAM). For a description of the process, its implications and effects see: Gaia Gozzo, *El Caso Provida. Cuentas Pendientes en la Transparencia y la Justicia* (Mexico: Fundar, 2006). Available online at: http://www.fundar.org.mx/PDF/CasoProvida.pdf. (Viewed March, 2007).

Table 1
Budgetary Negotiations for Fiscal Year 2007[13]

Negotiations for the 2007 budget took place in a rushed climate, as legislators had only 25 days for its approval. The process started on September 6, with the presentation of proposals for points of agreement to request resources for different areas. In addition, the Budget and Public Accounts Commission's effort to restrict the margin for negotiation was evident. In accordance with the LFPRH, the Budget Commission issued an agreement on December 12, stating that any commission interested in reallocating resources had to present their proposals no later than December 18: six days later! Only these budget proposals would be considered.

Therefore, the Budget Commission demanded an analysis of any proposals for reforming the proposed budget from the various commissions, and a full justification of the proposed changes within less than a week. The agreement was a filter for many proposals that had been presented individually by representatives, which up until December 12, added up to some 90 points of agreement.

Representative Points of Agreement During Budget Negotiations, 2007	Votes
Others*	67
Education	24
Highways and Communications	19
Environment and Water	18
Programs*	14
Health	11
Rural Areas and Agriculture	10
Social Development	7
Pensions	4
Tourism	4
Science and Technology	3
Gender	3
Security	3
Culture	2
Oil Surplus	1
Autonomous Agencies	1
Total	**191**

*Resources for purchasing fertilizers, subsidies for diesel and gasoline for agriculture/livestock and fishing sectors, to solve problems of neighboring communal lands in the Tuxtlas Reserve, a compensation fund for the agriculture/livestock sector to deal with NAFTA-related losses. Budgetary resources for agriculture/livestock, forestry and mining sectors in Chihuahua, resources to organize the 8th National Agricultural and Livestock Production Census, resources to strengthen the *agave mezcal* industry, efficiency and transparency criteria to avoid under-using resources destined to rural areas, resources for sustainable rural development in Guerrero.
Source: *Cámara de Diputados, Gaceta Parlamentaria.*

[13] Adapted from: Lila Caballero, *et al.*, *La Negociación Presupuestaria para el Ejercicio Fiscal 2007* (Mexico: Fundar, Working Document, 2007).

However, *the proposals presented in compliance with the points of agreement had the same outcome*. As in previous legislatures, the debate was based on top-down decisions by the congressional leadership. The points of agreement were reported in a closed process, many were rejected, and in many cases the changes made were not labeled based on what was requested by those who submitted proposals. The proposed budget report, besides lacking a clear justification for selection criteria among various alternatives, was not even clear in making budget allocations explicit at the program level, which allowed the Treasury Ministry to decide where to cut agency budgets.

The illegitimate report was not even published in the *Gaceta Parlamentaria*, so that congress people and citizens could find out about adjustments made, just like the Congress' legal framework sets up. It took Fundar, Center for Analysis and Research, a month to find the report which was, on top of everything, not disclosed by the Liaison Unit as mandated by the Transparency Law. This was because *they did not know where to find it*. It was never submitted to the *Gaceta Parlamentaria*. It was distributed in photocopies, to the *plenary*, on the day of the congressional vote.

This was, in short, the first budget process of the 60th legislature: a bad omen. Aside from reproducing longstanding patterns, the Budget Commission's actions represent a step backward in terms of legislative transparency. There were errors in the Congress' compliance with its own rules, and they were not justified either by the short time period for negotiations, nor by the inexperience of newly elected legislators, which underscored the flaws in the current law. Although the budget proposal was requested twice, the Liaison Unit never released it.

There have already been reactions from legislators: a good omen. The moment is ripe to push for openness in the process, once and for all.