

# ONE STEP FORWARD, TWO STEPS BACK? BUDGET TRANSPARENCY AND ACCESS TO INFORMATION IN MEXICO

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## Introduction

The approval of the Federal Law for Transparency and Access to Information (LFTAIPG in Spanish) set the foundations to develop an online information system that helps to make part of Mexico's budget information more accessible. The actions of the Federal Institute for Access to Information (IFAI in Spanish), the LFTAIPG itself, and the information mechanisms it created, have *revolutionized* the way in which institutions deliver information. Key information is now available through each government agency's website.

In spite of these advances, the conditions for transparent access to information about the budget are still lagging behind. Information presented by the Treasury Ministry (SHCP in Spanish) is incomplete or unclear, and sometimes late. Mexico *does not comply* with international standards for best practices in budgeting. Users of budget information in Mexico are unsatisfied, and there are no "checks and balances" in place to ensure effective accountability. Additionally, as though this were not enough, changes in the budget process introduced by the Fox Administration represent even further steps backward in this area.

## Advances

The wide range of definitions as to what constitutes budget transparency agree on several important points: transparency implies openness, as well as the possibility to be informed about the design, implementation, financing, budget control and evaluation of public policies.<sup>1</sup> It requires that, "*all governmental or administrative decisions, as well as the costs and resources committed as part of that decision, be accessible, clear and that*

<sup>1</sup> Definition adapted from: *OECD Best Practices for Budget Transparency*, available at: <http://www.oecd.org/dataoecd/33/13/1905258.pdf> and Juan Pablo Guerrero Amparán, *La Reforma a la Administración Pública Mexicana en el Nuevo Régimen Político. ¿Por Dónde Empezar? Ideas Para la Creación de un Gobierno Transparente, Responsable y Cercano a la Ciudadanía*. Available at: [http://www.presupuestoygastopublico.org/documentos/reforma\\_administrativa/DT%2089.pdf](http://www.presupuestoygastopublico.org/documentos/reforma_administrativa/DT%2089.pdf).

*they be communicated to the public at large.*<sup>2</sup> Budget transparency is essential because the budget is the most important public policy in a country. It is where the government's priorities are expressed, and where policy goals are reconciled with their implementation and impact. An indispensable component of budget transparency is its *timeliness*.<sup>3</sup> Budget information should be available *when it matters*, to guide the discussion, ground the debate, or justify choices between different alternatives in the allocation of scarce resources.

The LFTAIPG has made *some* budgetary information more accessible, but it has not necessarily made it more clear, complete or timely. Article 7 details the information that should be published by institutions to comply with mandatory disclosure requirements, including the salaries for public offices, information about the budget allocated to a program or agency and how it was spent, results from audits, and the design, execution, budget allocation and access criteria for subsidy programs. In addition to these requirements, agencies must create websites with easily accessible information, and contact information for Liaison Units. In practice, there is some budget information easily available through the internet.

Aside from the information published by each institution, the IFAI has created a general web portal for these mandatory disclosure requirements across all agencies, and each institution has a link to this site. Three clicks are enough to access information about the budget approved and spent. If someone wants to know what programs the Social Development Ministry has, and the resources that it uses, it is possible to follow the chain of links to their page, to the IFAI's page, and the Treasury Ministry's, without the need to know everything about the budget.

Additional advances are related to reforms to the budgetary system. Since 2004, the federal government has specified the resources associated with different programs and investment projects, and reports on them are clearer. Similarly, it has improved the information presented in budget projects and trimester reports.<sup>4</sup> Since 2003, the Executive presents a Management Progress Report, equivalent to the bi-annual reports recommended by international best practices.

<sup>2</sup> Definition adapted from: *OECD Best Practices for Budget Transparency*, available at: <http://www.oecd.org/dataoecd/33/13/1905258.pdf> and Juan Pablo Guerrero Amparán, *La Reforma a la Administración Pública Mexicana en el Nuevo Régimen Político. ¿Por Dónde Empezar? Ideas Para la Creación de un Gobierno Transparente, Responsable y Cercano a la Ciudadanía*. Available at: [http://www.presupuestoygastopublico.org/documentos/reforma\\_administrativa/DT%2089.pdf](http://www.presupuestoygastopublico.org/documentos/reforma_administrativa/DT%2089.pdf).

<sup>3</sup> *OECD Best Practices for Budget Transparency*, p. 3.

<sup>4</sup> This improvement is due to the ever clearer demands that legislators make in regards to information. The SHCP is *obligated* by the Legislative Branch to present more detailed and timely information. See: Mariana Pérez Argüelles and Jorge Romero León, *Transparencia en el Presupuesto Público: Los Desafíos de la Rendición de Cuentas* (Mexico: Fundar, 2006) pp. 27-31. Available at: <http://www.fundar.org.mx/PDF%20Avances%20y%20Retrososos/01.pdf>.

Finally, two legal reforms of broad scope have created better practices in terms of information and budgetary oversight: a reform that created the National Superior Auditor Office (ASF in Spanish), which has had an outstanding role; and the creation of the new Federal Budget and Fiscal Responsibility Law (LFPRH in Spanish), which established medium-term parameters, lists the information that the budget should contain, and gives greater certainty to the process of planning and programming.<sup>5</sup> In summary, there is information that is better presented and more accessible.

However, efforts to evaluate budget transparency have consistently reported that these advances are insufficient. The Latin American Budget Transparency Index, 2005, gives budget transparency in Mexico a **53.8**, where 0 is “not transparent” and 100 is “completely transparent”.<sup>6</sup> Although this grade represents an advance from the previous Index, it is still well below the “satisfactory” level. The variable of citizen participation only has positive answers in 11 percent of the indicators; oversight over public officials and information timeliness have 20 and 24 percent positive answers, respectively.

The *Questionnaire on Open Budgets*, from the International Budget Project, based on a specialized analysis and mechanisms corroborated by anonymous independent experts, also gives Mexico a low grade, ranking it 22<sup>nd</sup> out of 59 countries.<sup>7</sup> A recent OECD poll applied to *government officials* in charge of budgeting, places Mexico at an intermediate or low level in *all important variables*.<sup>8</sup>

Something is evidently wrong. Budgetary transparency conditions are far from ideal. Best practices are not carried out; the legal framework and budget process do not promote an enabling environment for participation, with real checks and balances, where information is complete, clear and timely.

## Limitations

The main defects in Mexico’s budget process are associated with its closed nature, since it lacks mechanisms for citizen participation. Information is often inaccessible or is not

<sup>5</sup> *Ibid.*, pp. 34-41.

<sup>6</sup> See: <http://www.fundar.org.mx/indice2005/index.html> and <http://www.fundar.org.mx/indice2005/docs/paises/ReporteMexico2005.pdf>.

<sup>7</sup> See: Mariana Pérez Argüelles, *Iniciativa de Presupuestos Abiertos 2006* (Mexico: Fundar, 2006). Available at: [http://www.fundar.org.mx/PDF/IPA%20Documento%20Final%20FINAL%20\\_MP\\_.pdf](http://www.fundar.org.mx/PDF/IPA%20Documento%20Final%20FINAL%20_MP_.pdf) and <http://www.openbudgetindex.org/>.

<sup>8</sup> Maria Bas and Teresa Curristine, *Resultados de la Encuesta de la OCDE, Procedimientos y Prácticas Presupuestarias en los Países de América Latina* (draft). Available at: <http://www.eclac.org/ilpes/noticias/paginas/2/27472/GOV-PGC-SBO%202007%203%20-%20Draft%20results%20of%20LA%20database%202007-SPANISH.doc> and

“Ideas para la creación de un gobierno transparente, responsable y cercano a la ciudadanía,” CIDE, Working Document No. 89, Public Administration Division.

presented in a *timely* manner. There is an absence of effective checks and balances to guarantee accountability and sensitivity in the management of public resources. The Treasury Ministry retains excessive power over the budget process and has become a “super-ministry” that dictates the parameters for allocating and negotiating expenditures, controls off-budget resources, and operates with opacity. Two kinds of limitations predominate: those associated with the legal framework and practices, and the political dynamics that dominate the budget process.

### 1. Legal Limitations

The LFTAIPG is not enough to guarantee budget transparency. The cited Article 7 establishes that information, “should be published in a way that facilitates its use and comprehension by people, and that ensures its quality, veracity, timeliness and reliability.” This precept is subject to interpretation and the only mechanisms set up to guarantee its fulfillment are IFAI recommendations to institutions. If the information that the Treasury (SHCP) presents is not *clear* or *timely*, there is no way to force it to clarify or to present the information quickly. The IFAI cannot (or has not attempted to) obligate the SHCP to present the information any other way. The Treasury, in turn, has taken advantage of the law’s margin for discretion

The budget’s legal framework is inadequate. The new Budget Law does not make the budget’s discussion process more transparent, and it limits legislators who must justify their spending proposals in great detail, according to a specific set of criteria established in the law. In addition, *it does not incorporate mechanisms for citizen participation*. Participation is notoriously absent, even in light of its importance to out the *right to know* into practice.

The ASF has a limited capacity to sanction, which is why the *oversight* of the public sector still depends excessively on the Executive’s good will. During the last four years, Congress’ Monitoring Commission *has not reviewed and ratified* the Auditor’s Report on Public Accounts. Added to this are a couple of Supreme Court resolutions that limit the ASF in two central issues for accountability: irregularities associated with the banking system rescue, and public trust funds.<sup>9</sup>

<sup>9</sup> Constitutional controversies 91/2003 and 84/2004, presented by the Executive. The Court’s resolution invalidates observations made by the ASF. Ruling 84/2004 is especially clear: the ASF is left unable to audit income made through trusteeships set up for customs procedures and observation notes already issued are left without effect. See: <http://www.scjn.gob.mx/moduloinformes/buscar.asp?nexp=20040008400&asunto=9> and <http://www.scjn.gob.mx/moduloinformes/buscar.asp?nexp=20030009100&asunto=9>.

## 2. Practical Limitations

Based on the legal limitations, a series of corrupt practices have developed that disregard transparency. The SHCP does not only impose terms and conditions on public institutions in regards to resource allocation and criteria for evaluation, but it has reaffirmed its power and control over budget information. This was made clear in 2003, when it eliminated the *analytical* volume from budget reports, and de-linked program performance evaluations. In one stroke, the SHCP considerably reduced the information available for program monitoring, and introduced changes that make it impossible to evaluate their impact.<sup>10</sup>

In addition, there is a lack of clarity in the information that the SHCP releases, especially in matters of tax collection. It does not publish databases with its forecasts of economic growth, income or tax base. This lack of clarity allows the Executive to use an extraordinary amount of over-budget (“surplus”) government income that is *not a result of oil sales*. In 2006 alone, the SHCP spent surplus tax resources that represented **16 per cent more** than what was originally projected (9.4 per cent in 2005). These amounts are larger than the amount that was projected to be generated by the proposed 2003 tax reform.<sup>11</sup> It is important to oblige the Executive to spend those resources with greater transparency, so as to reduce their margins for discretion.

This situation explains why users of budget information think that it is not presented in a timely manner, that it is not comprehensive, nor sufficiently clear: by the time that the Executive reports on these resources, it has already decided how to spend them without participation from Congress. By the time Congress is briefed, it cannot incorporate the information into their budget discussions for the following year. When the ASF makes observations, it lacks legal tools to act. And: what about the citizen? Missing—irremediably absent from procedures that are essential because of their importance in determining priorities.

## Perspectives and Recommendations

Perspectives for change are meager, but there is reason to be optimistic. So far, in the current legislature, two dozen bills have been introduced to reform and clarify the LFPRH.

<sup>10</sup> See: Alejandro Ortiz and Jorge Romero, *Información Transparencia y Rendición de Cuentas en el Presupuesto de Egresos de la Federación: Propuestas de Transparencia en el Gasto para la Convención Nacional Hacendaria* (Mexico: Fundar, 2003).

<sup>11</sup> See: SHCP, Public Accounts 2005, and the Informe Sobre la Situación Económica, las Finanzas Públicas y la Deuda, fourth trimester, 2006.

The pending reform to Article 6 of the Constitution, which would make the right to access information equivalent throughout the whole country, is a good start, but it does not change the deeper flaws in the budget process. As long as the Treasury maintains tight control, and other institutions as well as the legislature are not strengthened, opacity and discretionary control of resources will continue to be the norm.

It is important to strengthen horizontal accountability mechanisms, to further involve congressional commissions in the budget discussion and to improve transparency in the resource allocation and negotiation process. This can be achieved with modifications to the LFPRH, incorporating formal citizen participation mechanisms and clearly establishing what information the SHCP should present, including databases and a detailed explanation of tax exemptions. The analytical section of the budget report has to be restored, in order to know exactly *what* each program's resources are spent on. It would also be desirable to oblige the Executive to inform *before they spend* over-budget resources, or to set them aside in a fund for the following fiscal year. At the same time, the law governing the National Superior Auditor Office should be reformed to broaden the ASF's powers and create sanctioning mechanisms.

Even without legal changes, there are some actions that all actors involved can take: the Executive has limited the creation of opaque trust funds and has signed an agreement to speed up the ASF's recommendations. The SHCP can improve the quality of their information and inform society during formulation of the budget, in terms of the choices made and the criteria that sustain them. The IFAI itself could take on the cause of budget transparency and formulate specific recommendations in this direction. Legislators could open the discussion process up to society, review the ASF's reports properly and more quickly, and oblige the Executive, through their oversight and evaluation powers, to comply with their recommendations and observations. The problem with this avenue, however, is that it depends on the will of political actors. Society is still left aside. That is why it is desirable for civil society organizations involved in budget and public policy analysis to make an effort to close the gap between the information presented and that which is needed; for them to push for opening up closed processes. They should make the right to know *their own*, demanding more and more details and making them known. This demand has driven many of the reforms achieved so far, and the reforms to come will continue to depend on it.