

## THE ELECTORAL USE OF FEDERAL FUNDS IN THE 2004 OAXACAN ELECTIONS

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The public debate over the electoral use of government programs often assumes that the party in power invests public resources in support of its own candidates. Nevertheless, in an internal oversight effort within the federal government, days before Oaxaca's 2004 elections for governor, mid-level officials of the Social Development Ministry (Sedesol) documented the systematic diversion of federal funds in favor of the PRI (Institutional Revolutionary Party).<sup>1</sup> Sedesol officials commissioned a report, prepared by field staff from their Oaxacan Delegation [branch office], entitled, "The PRI's Partisan Political Use of Social Development Programs in Oaxaca, with the Collaboration of Sedesol Officials in the State." In excruciating detail, the staff reported that:

"[...] Over the past three years, the state government has consistently used Sedesol programs and funds for political purposes, favoring social organizations and municipal governments linked to the PRI to sustain and extend their captive social base. The diversion of federal public resources not only contributed to the rise of Murat to the governorship, it has also helped to elect state and federal congressmen, senators of the republic, as well as the election of municipal presidents, so that it is no surprise that they are currently being used to support the PRI's gubernatorial campaign to elect Ulises Ruiz [...]"

It is worrisome that Sedesol contributes to and facilitates this diversion of resources, directly and indirectly, under the pretext of budgetary under-disbursements, electoral protection programs and threats to take over government offices, a situation that is linked to the state government's network of collaborators embedded in Sedesol's Oaxaca Delegation, who have been operating for years with disloyalty and ever-greater impunity. In spite of the Ministry's actions to deal with this, including the dismissal of Delegates and Subdelegates, the efforts will continue to be insufficient until they get to the heart of the matter, with a central decision to clean

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<sup>1</sup> Editor's note: Although the PRI lost the presidency in the 2000 elections, it retained control of many governorships.

out the officials who have been complicit in the immorality and corruption, and for as long as internal practices that facilitate the state government's *modus operandi* are not corrected, and insofar as measures that would permit the resources to truly reach their final destination are not taken.

The elections for governor and state congress will be held in a few days, and we predict that, if the PRI's candidate wins the governorship, Oaxaca will be subjected to ongoing violence and socio-political instability in the coming years."

The report goes on to document in great detail the specific administrative tactics used by the governor's network of allies to divert public resources, including the full names and positions of the key operators, which even included officials who had been banned from federal employment because of past malfeasance, but continued to hold high level positions in the state government. According to one of the Sedesol staffers who wrote the report, it was submitted to their Mexico City headquarters, but was filed away without any follow-up action or response from their superiors.

A year later, this staffer shared a copy of the report with academic researchers, as part of a study of transparency and accountability, under conditions of anonymity.

The researchers used the document as a test case of the federal transparency law, requesting a copy from Sedesol and specifying its exact title (information request: 0002000016905). The Ministry claimed that the document did not exist, reporting in its official response that the report requested was not an "official document"—and could not be—because of the nature of its contents. They explained their logic as follows:

"[...] We inform you that the document mentioned in your request was not prepared in the Sedesol Delegation, because it was not part of the mission of this federal office, according to article 44 of the Internal Regulations of the Social Development Ministry. Moreover, the preparation of any document of that kind conflicts with article 53, fraction 1 of the 2005 Federal Spending Budget, which establishes that Sedesol's programs are of a public nature and prohibits their use for political-electoral or profit-making purposes. (Response of Sedesol to information request 0002000016905, April 26, 2005)."

In other words, Sedesol argued that it would be prohibited from preparing such a report because it documents illegal activities. According to Sedesol, it would never commission

a study that addresses the electoral use of social programs, because such activity is against the law.

Given this response, the researchers filed an appeal with the IFAI to challenge the Ministry's denial of the information request (Appeal file number 730/05). The appeal questioned the claim that the document did not exist, and rejected the argument that Sedesol could not have produced it.

During the review of the case, which was assigned to Lead Commissioner Alonso Lujambio, the appeal included a copy of the document requested as evidence of its existence. The requestor participated in a public hearing, where she showed that if one reviewed the document's electronic record in Word (under "properties"), one could see that it originated on a Sedesol computer. In order to protect the anonymity of the author of the report, the requestor did not present more specific details regarding its origin.

When the case was debated in the IFAI commissioners' plenary session, there was a consensus in favor of rejecting the logic behind Sedesol's response to the request. The Commissioners agreed that no Ministry would be prohibited from preparing such a document. They also agreed that it could possibly be an internal document commissioned by Sedesol.

However, in order to reject Sedesol's denial, the Lead Commissioner required proof that would demonstrate, beyond any doubt, that the report in question was prepared by Sedesol. Reviewing the document, official seals or letterhead were considered acceptable evidence. Since the document lacked these characteristics, the commissioners ended up confirming Sedesol's response.

Although the document entered the public domain in the IFAI commissioners' plenary session (it was included in the public case file as part of the evidence), and in spite of the media's presence at the session, the document was never disseminated by the national media. Some reporters and editors did not consider it to be newsworthy. Others, when they heard Sedesol's claim that the document did not exist, confirmed by the IFAI, doubted its credibility. The report was subsequently filed away as part of the IFAI appeals record, without drawing attention. Perhaps the significance of its content, its consequences for Oaxacan society and its newsworthiness only became clear after the recent crisis in Oaxaca.

respective efforts to encourage accountability. First, after honest public officials documented the systematic abuses of power with great precision, they delivered the results to their superiors and were ignored. “Internal transparency” failed. Next, academics put the new information access system to the test, calling for official recognition of the existence of the internal document. Yet, what at first seemed to be a major advantage (actually having a copy of the document to confirm its existence), was not enough to convince the IFAI Commissioners. The academics’ commitment to protect the anonymity of the author of the report undermined their case once the Commissioners required a standard of proof that was not possible to meet. However, the IFAI did not exercise its potential capacity to carry out its own independent investigation of the document’s origins. For example, it could have probed more deeply into the circulation of the report within Sedesol headquarters. “External transparency” also failed.

Three general lessons stand out. First, in the face of abuses of power, it is possible that honest public officials have documented them in internal reports. Second, in the current information access system, if an agency claims that a document does not exist, then the ‘burden of proof’ falls on the requestor. This leads to the third lesson: when an agency denies the existence of a document that a requestor claims does exist, the IFAI could make greater use of its independent investigative powers, to avoid the problem of “he said, she said”.