The New Electoral Reform in Mexico

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Nature of the New Reform

Between September and December 2007, the Mexican Congress approved a package of important constitutional and legal reforms on electoral matters. The reform process revisited two important attributions which are worth emphasizing.

Firstly, it was the result of a wide negotiation and process of agreement between the different political forces represented in Congress. This agreement considered mechanisms to incorporate the input of interested civil society groups. From this perspective, the reform had an inclusive, plural and participative nature.

On the other hand, as a consequence of the reform, it was possible to provide answers to demands and expectations related to the electoral system as a whole, thus endowing the reform with an integral character. The reform modified nine articles in the Constitution, but it also derived in a totally

renewed electoral law which kept the same name, but completely substituted the law promulgated in 1990, entitled Federal Code of Electoral Institutions and Procedures.

Background

It is worth emphasizing the integral nature of this reform because in spite of the introduction of some important changes and innovations introduced to the electoral law in the last decade (like the gender quota in 2002 or the voting abroad program in 2005), since the last reform of November 1996, there was no systematic and exhaustive modification in the legal framework ruling federal elections in Mexico.

The reform of 1996 marks the peak of a transcendental cycle of reforms during which the fundamental components of the electoral system were revisited and adjusted. This reform replies to the strong exigencies and expectations of democratic change that would guarantee the autonomy and impartiality of the institution in charge of carrying out federal elections, the Federal Electoral Institute of Mexico; to guarantee the transparency and trust

in electoral procedures; and to strengthen a plural and competitive system of political parties.

Under those regulations, four federal elections were carried out: the presidential and legislative of 2000 and 2006, and the midterm legislative (only for the Lower Chamber) of 1997 and 2003. As mentioned above, even when the dynamics of the organization and the electoral contest had revealed existing omissions and limitations in the law, and consequently some changes were required in order to adapt it to the new terms of the electoral race, since 1996 the framework had not been reviewed and integrally adjusted.

In fact, the agenda started to gradually broaden with these new topics. After some approved reforms, especially in 1993 and 1996, the federal Mexican electoral legislation included important innovations to face the new challenges of the electoral contest, such as the control and oversight of the financing of the parties and campaigns, and an equitable access of parties to the mass media, but reality soon showed shortcomings such as the need to regulate and control the contest in a more effective manner.

Moreover, the vicissitudes of the July 2006 federal election and especially the very tight margin by which the presidential election was decided,

intensified demands to review and adapt the legal framework. All legislators, political forces, the electoral authority, and electoral experts were open to the new changes required to adjust the electoral law.

Hence, the new legislature that was sworn in September 2006 promised to carry out a new reform before the federal midterm elections of July 2009. With the constitutional reforms approved by both chambers in September 2007 and promulgated by the Federal Executive Branch in November of the same year, and with the approval of the reforms to the Federal Code of Electoral Institutions and Procedures by a wide majority in December and promulgated by the Executive Branch in January 2008, this obligation was met.

General Overview of the Main Changes and Innovations

Here is a general overview of the main changes and innovations derived from the new constitutional and legal reform, structured under five topics:

1. Organization and Functioning of the Political Parties
2. Financing and Oversight of Parties and Campaigns
3. The Regulation of the Electoral Contest and Conditions of Equity
4. The Organization and Attributions of the Federal Electoral Institute
5. Tallying of the Votes

1. Organization and Functioning of the Political Parties

The 1977 electoral reform was a radical breakthrough in the juridical nature of political parties, since regulations related to the political party system were introduced in the Constitution as public interest entities. Therefore, political parties were acknowledged as subjects of public rights, and consequently the Mexican State acquired the obligaction to protect them and ensure adequate conditions for their development.

This basis has enabled the systematic promotion and broadening of a series of special rights for the parties (prerogatives), which were first established in 1963. These rights have configured and strengthened a competitive political party system as a genuine expression of democratic pluralism in the Mexican society.

With the most recent reform the political parties system has been strengthened, particularly by

establishing a constitutional prohibition for the intervention of special interest organizations such as unions, in the creation or affiliation of parties. It also adds obligations to the parties in matters of transparency, information access, and mechanisms for candidacies. The reform is also aimed at contributing to the revaluation of political parties' public perception.

Possibility for Civil Organizations to Apply for Registration as a National Political Party

During the brief period between 2004 and 2007 the faculty to become a political party was reserved exclusively to the national political groups. Now, once again, any civil organization meeting legal requirements may apply and achieve registration as a national political party.

Moreover, restrictions preventing a political party to re-apply after having lost its registration have been removed for the next federal election. Previously, an ordinary federal electoral process had to finish in order for an organization to re-apply for registration.

Guarantee of Gender Parity in the Integration of the Directive Organs and in the Candidacies to Elective Posts.

With the 2002 legal reform, a gender quota of 30% was included for the candidacies to the Senate and the Chamber of Deputies, with special emphasis on the proportional representation lists.

The new law has confirmed the obligation of political parties to guarantee gender equity and secure equal access to their directive organs and candidacies to elective posts. At the same time, the gender quota was raised from 30 to 40 percent for candidacies to the Upper and Lower Chambers.

Obligations in Transparency Matters

Public access to the information of political parties is guaranteed through the Federal Electoral Institute by means of specific requests presented to political parties. Information considered public includes their basic documents, faculties of their directive organs, regulation of internal affairs, obligations and rights of their members, and election of their leaders and candidacies.

Public information may also include amounts of public financing obtained by any of the party organs in the last five years, annual or partial ordinary, pre-campaign and campaign income and expenses reports, their property and the names and the amounts of contributions made by donors.

Information considered as private is related to the deliberative processes of their internal organs, political and campaign strategies, any kind of survey they have requested, and information on private, personal or family activities of their members, leaders, nominees and candidates to elective posts.

Internal Resolution of Controversies

The new regulation compels political parties to include in their statutes a maximum of two permanent organs in charge of the substantiation and resolution of their internal controversies, so that they can process decisions expeditiously.

The new judicial framework establishes that the members of a political party will only have the right to ask for the intervention of the Electoral Tribunal when all the previous instances have been used up.

2. Financing and Oversight of Parties and Campaigns

In 1987 the right of political parties to obtain permanent public financing was included in the law for the first time. On this basis, an integral public financing scheme was structured and developed following the principle of equity. A constitutional reform in 1996 included a mandate like no other in the world, which stated that public financing should prevail over private funding for any party activity.

Additionally, since 1993 a series of dispositions to punctually and strictly oversee the origin, handling and spending of the public and private financing allocated to political parties for ordinary activities and electoral campaigns were incorporated in the law.

The new reform shows changes and innovations of great transcendence in these two fields.

Reduction of Public Financing

One of the most generous schemes of public financing to parties and campaigns was developed in Mexico in few years, contributing without a doubt, to the strengthening of a competitive and plural party system. However, at the same time some doubts aroused due to its high costs. The new reform reviewed the public financing and included adjustments representing an important reduction in the amounts alloted to parties.

The formula to determine the total amount of annual public financing for ordinary permanent activities of the parties is now simpler and clearer: it results from multiplying the total number of citizens in the electoral roll (as of July of each year) by 65 percent of the daily minimum wage in the capital city.

Likewise, allocation criteria are 30 percent of the global amount, and 70 percent according to the number of votes obtained in the previous election. The new parties maintaining their registration but with no parliamentary representation still have guarantee of access to public financing.

It is on the public campaign financing where the subsidizing cut is more evident. Prior to the reform, each party received the same amount as for permanent ordinary activities on election year. Furthermore, that amount was allocated in every ordinary federal electoral process.

Now, when all the federal elections concur, each party receives an equivalent amount to 50 percent of the financing obtained for ordinary expenses, and in the case of a by-election, the allocation is equal to only to 30 percent of the amount for ordinary expenses.

Public financing for specific activities of political parties as public interest entities is maintained in the new reform, in order to allow parties to continue performing activities related to political and civic education, socio-economic and political research, and editorial work. However, it is no longer determined according to the reported expenses of each party, but to the annual amount equivalent to 3 percent corresponding to ordinary activities, which is allocated 30 percent equally, and 70 percent according to the percentage of votes received by the party.

Strengthening of the Oversight System

As a result of the reform, a new specialized autonomous administrative unit was created within the IFE with responsibilities related to the reception and the integral revision of the reports presented by political parties regarding the origin, amount and destination of the financing resources.

Such is the Oversight Unit for the Resources of Political Parties, which will not be limited in its performance by the banking, fiscal or fiduciary secrets established by other laws. In this regard, the parties are not only compelled to present annual financial and campaign reports, but also must present the following:

- Quarterly advance reports of their exercise in non-electoral years.
- A consolidated annual statement of their assets and property.
- Pre-campaign reports for each of their pre-candidates to elective posts, within the following 30 days of the conclusion of the pre-campaign.
- Report of the expenses of organization of the intern and pre-campaign processes for the

selection of candidates included in the annual financial report.

- A preliminary report of campaign expenses, with updated data as of May 30 on election year.

3. Regulation of the Electoral Contest and Conditions of Equity

The new dynamics and conditions in which federal elections have developed in the last years have forced us to adopt additional measures in two fields of particular relevance: the electoral contest and the conditions of equity.

The adopted formulas for the allocation of public financing and free time on radio and TV, as well as limits to campaign expenses are proof of the efforts to achieve equity. Nonetheless, the new dynamics and the conditions in which the last election took place made necessary new measures of special importance.

Regulation of Pre-Campaigns

In order to balance out the contest within parties for the internal processes of the selection of their

candidates to elective posts, and in order to offer security and judicial certainty to these processes, the new law specifically regulates the periods and acts of the so-called pre-campaigns.

The political parties are free to choose the procedures by which their candidates will be elected, but they must inform the General Council of the IFE within 72 hours of their approval. The parties must also establish an internal office responsible for the organization of the selection processes and of the pre-campaigns.

During the federal electoral processes to renew the Federal Executive Branch and the Upper and Lower Chambers, pre-campaigns must start in the third week of December of the year prior to the election and cannot last longer than sixty days. Likewise, when only the Lower Chamber is renewed, pre-campaigns must start in the fourth week of January on election year and cannot last over 40 days.

Pre-campaigns of all the parties must be carried out during the same period of time and if a direct survey among their members is planned in order to select their candidates, this must be carried out on the same day for all of the parties. The pre-campaign expenses for every pre-candidate are

subject to a limit equivalent to 20% established for the immediate previous campaigns, depending of the type of election.

The Reduction of Campaign Periods

Besides regulating the duration and activities of the pre-campaign, the new reforms have significantly shortened the periods for electoral campaigning. Now, when the presidential elections concur with those for senators and deputies, the campaigns will last 90 days. The duration of the presidential campaign was reduced almost in half, since it used to last over 160 days. The campaigns for the election of deputies will last 60 days.

Prohibition on Hiring or Purchasing Radio or TV Air-time for Electoral Advertisement

It is prohibited for political parties, pre-candidates, candidates, leaders or members of a political party, and for any individual or corporation to hire radio or TV airtime with the purpose of influencing the electoral preferences of the citizens. Similarly, the

broadcasting of electoral advertisement hired in a foreign country is forbidden in Mexico.

From now on, the political parties, pre-candidates, and candidates will only be able to broadcast advertisements aimed at obtaining votes on radio and TV, by making use of the free air-time assigned by the State through the Federal Electoral Institute. The guarantee of free and now exclusive access remains permanent.

The law states that for the periods of electoral pre-campaigning and campaigning, the parties have certain amount of daily time on each radio station and TV channel. During pre-campaigns the daily time would be 18 minutes and during campaigns 41. The time should be distributed between 6 am and midnight and with a duration of three minutes every hour, in the form of 30-second, one or two-minute spots.

The times are distributed between the parties following a proportional formula: 30 percent equally and 70 percent according to the number of votes received in the previous election for deputies by the principle of relative majority. The newly-registered parties have guarantee of access to free air-time for advertisements on radio and TV, although they only participate in the 30 percent distribution.

Reduction of the Limits for Campaign Expenses

As a result of the prohibition of acquiring media time, which represented the main component of the campaign expenditure, a limit was established for campaign spending.

For the presidential election, the ceiling for the expenses is equivalent to 20 percent of the public global financing amount determined by the IFE for this kind of expenses on election year. For the election of deputies by the principle of relative majority, the ceiling results from dividing the established limit of the presidential election by 300, which represents the number of districts in which the national territory is divided for electoral purposes. For the senatorial election by the principle of relative majority, the ceiling is the result of multiplying the limit of campaign expenses in the deputy election by the number of districts in each state, as in the previous formula, but in no case can the number of districts be more than 20.

Presidential Debates

Even though debates were agreed and celebrated between presidential candidates since the federal elections of 1994, the organization of these events was left to the negotiation of political forces, to the contenders' will, and to the collaboration of the mass media, because such proceedings were not included and regulated by the law.

Now the law states that on occasion of the presidential elections, the IFE should coordinate two debates between the registered candidates, in accordance with regulations determined by the General Council. The debates will be carried out on the day and time determined by the General Council, following a previous survey with the political parties. The first debate will take place on the first week of May, and the second, on the second week of June of election year at the latest. The debates will be broadcasted live on radio and TV channels with both open and restricted transmissions.

Suspension of Governmental Advertisement During Election Periods

In order to avoid the use of any governmental advertisement with electoral purposes, now the law establishes that during federal and local electoral campaigns and until the end of polling day, all broadcasting of governmental advertisement in the media must be halted. The only exception is advertisement related to education, or health and civil protection in case of an emergency situation.

Regulations for the Formation of Coalitions

The formation of a coalition between two or more political parties for practical effects and for the casting of the vote for the common nomination of a candidate used to imply the grouping of parties under one symbol or common logo, and the votes received were distributed according to the regulations in the coalition agreement.

A coalition with a common candidate for the Presidency had automatic effects on all the other disputed federal posts, that is, the deputies and

senators both of relative majority and proportional representation.

The partial coalitions, those which did not automatically extend to other federal election posts, were limited to the elections of senators and deputies by the principle of relative majority, as long as they included the corresponding formulas with a minimum of six and a maximum of 20 of the 32 federal states in the case of the senators of majority, and with a minimum of 33 and a maximum of 100 of the 300 single-member districts for the election of majority deputies.

As a result of the new reform, notwithstanding the terms and types of election for which they are joined, each of the parties will appear under its own logo and separate position in the electoral ballot, in such a way that if the votes were counted as a coalition, the percentage of voting that each of the joint parties received can also be accurately determined with precision.

In addition, the figure of total coalition has disappeared, at least in its previous terms; currently no coalition agreement will be extended and will not automatically take effect over all the other federal elections. Moreover, the parties will only be able to jointly name candidates exclusively for the principle

of relative majority for president, senators and deputies.

Under this new reform, a coalition is the union of two or more political parties with a common candidate to the presidency, as well as Senate and Deputy seats, but only by the principle of relative majority. The joint parties can also have a common candidate for the presidency but not for the legislative election, if the coalition is registered for the two formulas that enclose the election for majority senators in a maximum of 10 of the 32 federal states or up to 200 of the 300 candidacies in the election for relative majority deputies.

The coalition is limited only to the election of senators and deputies by the principle of relative majority when it is under either of the two possibilities just described above, that is, the two formulas of senators of majority in ten states or up to 200 of 300 majority deputies.

Since now no coalition may comprehend or have effects on the election of senators or deputies by the principle of proportional representation. The Parties must register their own listings for these elections.

4. Organization and Attributions of the Federal Electoral Institute

Some of the constitutional and legal reforms have strengthened and widened the range of attributions of the institution responsible for organizing elections, and simultaneously they have introduced some changes in its organization and performance.

Single Authority for Administering the State Airtime on Radio and TV for Electoral Purposes

According to the new reform, one of the duties of the IFE specifically established in the law is to be the only authority empowered to administer the time that corresponds to the State on radio and TV, and to distribute it according to the objectives of the Institute, other electoral authorities' and political parties', following their constitutional rights.

In fact, the attributions of the IFE to allocate the State airtimes on radio and TV have an integral dimension on electoral matter. The Institute not only administers and allocates the time corresponding to the political parties both permanently and during federal electoral periods, but it also manages and distributes the time for local elections, including the required airtime for local electoral authorities.

During the periods of federal campaign and pre-campaign, it is the duty of the IFE to allocate airtime on radio and television for the Federal Electoral Tribunal when required.

Staggered Renewal of the General Council and the New Criteria for the Integration of its Commissions

The nine members with right to speak and to vote at the General Council (main steering body of the Institute, the President Councilor and the eight Electoral Councilors) will continue to be elected by a two thirds vote of the present members of the Lower Chamber, from a list of proposed names presented by the parliamentary groups. Nonetheless, now

their election must be conducted after an extensive open call to society.

The President Councilor will remain in charge for six years, not seven as it used to be, and he may be reelected once. The Electoral Councilors will remain in charge for nine years, instead of seven, they will be gradually renewed and may not be reelected.
According to these regulations, the President Councilor of the IFE and two Electoral Councilors were renewed in February 2008. The President Councilor for the 2008-2013 period is Leonardo Valdes Zurita and the two new electoral councilors for 2008-2016 are Marco Antonio Baños Martinez and Benito Nacif Hernandez. Other three electoral councilors will be renewed in August 2008 and the remaining three in October 2010.

Whereas the permanent character of certain commissions is ratified, now it is stated that all commissions shall be integrated with a maximum of three electoral councilors; moreover, the councilors of the legislative branch and the representatives of political parties may participate in the discussions but without the right to vote, with the sole exception of the Electoral Professional Service Commission.

Creation of the Oversight Unit for the Resources of Political Parties and a General Comptroller

As stated before, for the exercise of the oversight duties, a new technical body of the General Council of the IFE was created, with autonomous performance and a hierarchy similar to that of the Executive Directorate: such is the Oversight Unit for the Resources of Political Parties, which was created by an agreement approved by the General Council in its ordinary session of January 18, 2008 and started operating immediately.

The Unit is in charge of the reception and the integral reviewing of the reports presented by the political parties on the origin, amount, and destination of the allocated resources. In its performance, this Unit will not be limited by banking, fiscal or fiduciary secrets, therefore, it will be able to demand from any citizen or corporation any information related to the activities of political parties

In this sense, the new law also establishes that the electoral bodies of the states responsible for the oversight of the resources of the political parties in the performance of their attributions override the

limitations imposed by the banking, fiscal or fiduciary secrets, and thus can ask for the intervention of the Oversight Unit of the IFE so it can act before the competent authorities.

In addition, a General Comptroller as an internal control body of the IFE was created. This new office will be in charge of the oversight of the income and expenses of the Institute. For the exercise of its attributions, the General Comptroller is granted with technical and administrative autonomy to make decisions and resolutions. The law determines that in its performance, the General Comptroller is subject to the principles of impartiality, legality, objectivity, certainty, honesty, exhaustiveness and transparency.

The General Comptroller is responsible for establishing the criteria for the auditing procedures, methods and required systems for the reviewing and oversight of the resources of the areas and bodies of the Institute, and also for investigating any irregularity or illicit conduct regarding the income, spending, handling, custody or application of resources of the Institute.

Detailing the Sanction System

Even when the law included a chapter for administrative faults and sanctions, with the new legislation this topic was structured and developed in further detail. In this sense it is worth emphasizing that the new law specifies the subjects of responsibility for violations of electoral dispositions (including political parties, pre-candidates and candidates to elective posts, citizens and any other individuals and corporations, authorities or public servants and radio and TV concessionaries), and lists the nature of faults in which any of them may incur as well as the penalty applicable in each case.

The procedure for penalties is detailed, pointing out the organs of the IFE in charge of establishing the penalties in practice and the resolution of controversies, emphasizing a special procedure in the case of a violation to the constitutional regulations related to the rights of the parties to have permanent access to the mass media, or to the broadcasting of governmental advertisement; when the regulations of political or electoral advertisement fixed for the parties are violated or when activities constituting an anticipated campaigning are carried out.

5. Tallying of the Votes

In order to offer more security, trust and transparency to the results of the elections, the new legislation states the following measures at the time of district tallying:

New Tallying and Counting of Polling Station Specific Proceedings for the Election of Deputies.

In this sense, the possibility of carrying out again the tallying and counting of the votes in any given district is contemplated when:

- There are mistakes or evident inconsistencies in the different elements of the proceedings, unless these may be corrected or clarified with other elements and totally satisfy the plaintiff.

- The number of blank votes is larger than the difference between the winner and the first runner-up.
- When all the cast votes favor one single party.

Total Recount of the Voting for Deputies, Senators and President in All Polling Sites of a District.

This situation may happen when there is a close difference of one percent or less between the winner and the first runner-up, and also if there is a request of the representative of the runner-up party for a recount at the beginning of the tallying session.

In no case can the Electoral Tribunal be asked to recount the votes of any polling site that has been subject to this procedure during district tallying.