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### Authors

Alberto Ibañez, José  
Hernández, Yessika

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## The role of regulatory improvement program in the strengthening of rule of law in Mexico

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### ABSTRACT:

This paper attempts to identify the role that regulatory improvement program play in the building of liberal democracy in Mexico. It argues that the use of regulatory improvement tools has strengthened the "rule of law" principle. The use of instruments such as Regulatory Impact Analysis or Public Consultation help to build an accountable government that informs and explains about their decisions. This article is divided into three main sections. The first part introduces the analytical framework to evaluate a liberal democracy. The second section explains how the regulatory reform program maintains and encourages the rule of law. Likewise, it analyzes some of the mechanisms or instruments the Mexican government has envisioned to ensure the succes of the regulatory reform program. The final section evaluates this public policy from the Mexican experience.

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# The Role of Regulatory Improvement Programs in the Strengthening of the Rule of Law in Mexico

José Alberto Ibañez\* and Yessika Hernández\*

## INTRODUCTION

At the beginning of 1980, with the weakening of protectionist state model, most of countries carried out structural reforms inside of its economic and social apparatus. In Mexico, the political side of reform allowed a transition from a system of hegemonic party to competitive electoral democracy. Furthermore, the Mexican state implemented a system of checks and balances to strength its republican regime. In the economic aspect, the Mexican reform helps to build a state that becomes market forces regulator. In order to lower the poverty, marginalization and unemployment, social reform in Mexico designed diverse social programs. Administrative aspect of reform also was important, during the last years; it has designed some mechanisms to increase public administration efficiency.

The debate around reform of State in Mexico has introduced in the public agenda the need to strength the institutions of the new democracy. Currently, efforts go beyond of simple construction of an open and fair electoral system. Nowadays, in Mexico is necessary to build an institutional arrangement to strength rule of law and to elevate the quality of life of his citizens. In this sense, the public policies implemented have been varied: from the creation of rules to help the integration of impartial courts and to the implementation of mechanisms that force accountability inside the government.

In Mexico, accountability has demonstrated its effectiveness in the construction of a polity tied to rule of law principle. Accountability begins to be a tool of common use inside Mexican government. An accountable government not only implies to inform on the policy actions implemented or the possibility of impose punishments after a bad performance of the public agencies, but also implies the citizen's inclusion to obtain the acceptance and compliance with the new public policies.

In Mexico, one of the public policies implemented to favor accountability and to strength rule of law has been the regulatory improvement program. This policy began to implement in 1989, as result of the privatization and opening of the economy. Nowadays, with some exceptions it has been extended, to any type of regulation that imposes compliance costs to the private parties.

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\* Executive Office or the Governor. State Government of Nuevo Leon

\* Ministry of Finance and Public Credit. State Government of Nuevo Leon

This paper attempts to identify the role that regulatory improvement program plays in the building of liberal democracy in Mexico. It argues that the use of regulatory improvement tools has strengthened the “rule of law” principle, in other words, the use of instruments such as Regulatory Impact Analysis help to build an accountable government that informs and explains about their decisions. Thus, this article is divided into three main parts. The first introduces the analytical framework for evaluating a liberal democracy. The second explains how the regulatory reform program maintains and encourages the rule of law. The final section makes an evaluation of this public policy from the Mexican experience. Likewise, it analyzes some of the mechanisms or instruments that Mexican government designed to ensure the success of regulatory reform program.

## **1. THE CONSTRUCTION OF LIBERAL DEMOCRACIES, A CHALLENGE IN THE MODERN POLITICAL SYSTEMS.**

### ***A. Democracy. It's Concept.***

In recent years, some scholars have suggested that a democratic political system is one that, without establish political differences between citizens, it is able to add in greater measurement people preferences. In words of the American political scientist Robert Dahl “the democracy term designates the political system between whose characteristic is counted the disposition to satisfy whole or almost whole to its citizens” (Dahl, 2002: 13).

This definition constitutes an ideal model even for the nations located in the north-occidental quadrant of the planet. In 1971, Robert Dahl suggested that a political system could be considered democratic in the measurement in which it's able to guarantee the following clauses:

- Freedom of association.
- Freedom of expression.
- Freedom of vote.
- Eligibility for the public service.
- Right of the political leaders to compete in support search.
- Diversity of information sources.
- Free and impartial elections.
- Institutions that guarantee that the public policies depend on the votes and other forms of express the people preferences. (Dahl, 2002: 15)

The indicators that Dahl proposes allow evaluating the democracy under parameters of representation and political participation in a society. Nevertheless, it is a mistake to suppose that the existence of free elections is a sufficient condition to

catalogue a regime as democratic. In other words, to conceive a democracy such a political system based on open and free elections, it is to offer a minimalist definition leaving out other important issues. (Zakaria, 1997)

At the first moment, the goal of most of the countries with authoritarian pasts was focused on the construction of institutions that guaranteed the existence of elected governments through the citizen suffrage. Some scholars suggest this fact allows observing the transit of an authoritarian government to a democratic polity. Juan J. Linz and Alfred Stepan indicate that:

A democratic transition is complete when sufficient agreement has been reached about political procedures to produce an elected government, when a government comes to power that is the direct result of a free and popular vote, when this government *de facto* has the authority to generate new policies, and when the executive, legislative and judicial power generated by the new democracy does not have to share power with other bodies *de jure*. (Linz y Stepan, 1996: p. 3)

Once the political system has institutionalized subsystems and mechanisms that allow it to decide the government through free and competitive elections, it becomes necessary the design other rules for the game to secure that democracy is “the only game in town”.

### ***B. The Institutionalization of Democracy.***

When channels to choose the government are respected by people, it arises the necessity to make the democracy efficient, to achieve it, will be essential conceive this phenomenon like one of the most urgent problems of the contemporary political science, which suppose the construction of legal norms and formal institutions based on a social and political rationality able to go beyond pure economic encounter of interests. (Cerroni, 1991).

The design and implementation of certain institutions in consolidated democracies allow the construction of a kind of representation, which goes beyond the transference of power from population to political elite. Cerroni suggests that this kind of representation, “is not reduced to representation of interests, although consist of making one *lex generalis omnium* able to order social coexistence, like analysis of tendencies of long run, which whole society can recognize itself”. (Cerroni, 1991: 122)

In a modern democratic regime, the political representation must rest in general interests of society and be translated in institutions admitted by majority and it must be linked with permanent social interests in the long run. For it, the democracy is conceived like a political system that goes beyond a pure technical mechanism designed to select an elite to make government.

The challenge of new democracies, the Mexican case is not the exception, consists in eliminate inside of its political systems, its clientelistic practices that could still survive. However, it is not easy task due the system refuses to internalize a set of

Instrumental Freedoms that guarantee a basic catalogue of social, political and economic rights. On this type of freedoms, Amartya Sen suggests that "instrumental freedoms contribute, directly or indirectly, to the overall freedom that people have to live the way they would like to live." (Sen, 1999: 38)

The construction of a democratic institutional framework supposes the establishment of a consolidated democracy, in which this five following arenas cohabit:

- a) The possibility of stand by a free and operating civil society.
- b) An independent political society able to participate in decisions.
- c) The guarantee of a rule of law that ensures basic citizen liberties.
- d) A state bureaucracy under the orders of the democratic governments.
- e) The possibility of creating the institutions that mediate the relations between the state and the markets.

### **C. Rule of Law, Accountability and Quality of Democracy.**

Guillermo O'Donnell (1996) affirms that in the Latin American regimes, these arenas do not manage in a proper way because of the existence of clientelistic institutions such as nepotism or corruption, which inhibit, in greater or smaller measurement, the profit of the public good. Nevertheless, the rule of law principle allows equipping the political system with a level of governability able to subsist without the existence of clientelistic institutions.

The rule of law principle allows government to solve, by means of pacific routes, most of the public problems. Through these channels, it is possible that the new democracies carry out the institutional reforms necessary to obtain that the cohabitation of these five arenas is translated in the well-being of the society.

Rule of law is not only to create laws so that the citizen respects them or to establish the mechanisms so that the government works, but also implies to develop an institutional framework, in where the population is considered like the central factor that explains the governmental action. For it, it is necessary to equip the new institutions with acceptable levels of legitimacy.

Mexican political system has transited from an authoritarian government to a consolidated democracy. Currently, the challenge goes beyond of existence of open and fair elections, it refers to integral transformation of political system. In order to obtain such fact, federal government has designed a set of public policies directed to redefine the relationship between government and society.

The creation of an effective, transparent and accountable government requires of rule of law compliance inside government. The following section contains an analysis on the role the government carries out to develop and maintain the social life, as well as the necessity to impose a system of checks and balances to regulate the relationships between political, economic and social actors, doing special emphasis in

the virtues of the regulatory improvement policy, such as an element that favours the reach of the best choices of public policy in benefit of the society and the economy.

## **2. THE REGULATORY IMPROVEMENT. AN EFFICIENT INSTRUMENT IN THE FORTIFICATION OF THE RULE OF LAW.**

### **A. The Modern State. Autonomy versus Control**

The political philosophy suggests that governments have been created by the human need to create an arena that guarantees pacific interaction between individuals. In order to fulfil this function, the citizens who compose the state delegate in governments part of their sovereignty, accepting to be under its imperium in the belief that decisions that this one takes they will be adapted to the general well-being.

Like all human creation, the government is perfectible. In addition, at being managed by other individuals, these can use the power conferred in own benefit either, in damage of the most vulnerable groups of the society. In century XVIII, the founding fathers gave account of it, when indicating that:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. (Madison *et al.*, 1994: 220-221)

Facing these problems, it becomes necessary to design an institutional arrangement that allows submit governmental choices to needs of society. Due to need to maintain the power under control, political systems have been designed checks and balances that supervise and restrict the exercise of the political power.

To guarantee the harmonic coexistence between individuals exists the imperative of establish institutions, legal and behaviour norms that force the government to regulate itself. The modern political regimes find in the rule of law principle an important tool in establishment of institutions that delimit the participation of social agents.

The trust in governmental institutions is obtained in the moment at which the state is confined to rule of law, in other words, it is possible in the measurement in which the daily life develops in a scene in where the economic, social and political

relations are made of predictable way, due to the transparency of public actions and decisions. Also, the respect by the institutions is obtained establishing perfectly delimited arenas for the development of each one of the activities of the individuals and, in case of differences among them, by means of the establishment of rights and perfectly delimited obligations, for, in case of controversy, to make be worth them in previously established courts. (Serbinson *et al.*, 2002)

In countries with an authoritarian past, the respect to rule of law allows the transformation of the political institutions and the economic structures. In order to obtain these aims, rule of law is developed in two arenas. First, it refers to existence of a limited government through the creation of checks and balances system. The second element, talks about the correct application of a body of rules and rights, which regulate the relationship between state and individuals in a society and between the individuals themselves. In other words, rule of law means the mechanisms by which political power is checked and subordinated to pre-set rules of the game. At another level, it refers to the effective protection and advancement of rights entitlements, defined in the constitution. (Domingo, 1997)

## **B. The Accountability, an Efficient Tool to Support Democratic Governance**

A reliable indicator to evaluate the degree in which a political system is put under rule of law turns out to be the capacity of government to answer to citizen demands. Accountability is not only one tool of the contemporary democracies that forces the governments to inform decisions that already have been taken, but also it is an instrument that forces to public servants to explain their decisions. In words of Andreas Schedler: "accountability continues the project of the European illustration of oppress the power not only to the rule of law, but also to rule of reason." (Schedler, 2004: 14) In other words, the main goal of accountability is tie the political power to legal restrictions, but also looks for submit it to the collective well-being logic.

The efficiency of accountability is based on the existence of two basic elements: First, answerability that means the obligation in charge of elected politicians and government officials to inform and justify their decisions in public; second, enforcement which refers to the capacity of the political system to sanction agents when incurring on violation or failure of their public duties. (Schedler, 2004). Therefore, it is possible to suggest that accountability includes three different ways to prevent and to correct the abuses of power:

1. It forces to the government to open itself to the public inspection;
2. It forces to the governmental apparatus to explain and to justify its acts, and;
3. It oppresses to the government to the threat of sanctions.

For aims of analysis and given the complexity of governments, there is the necessity of establishing accountability with "adjectives", Lopez-Ayllón and Haddou-Ruíz (2005) suggests that there exist at least five types of accountability:



- Political accountability (in a narrow sense) assesses the appropriateness of both substantive policies and policymaking processes, but also judges the personal qualities of political actors;
- Administrative accountability reviews the expediency and procedural correctness of bureaucratic acts;
- Professional accountability watches over ethical standards of conduct, such as judicial, legal or media professionalism;
- Budgetary accountability subjects the use of public money by public officials to rules of efficiency, austerity or propriety;
- Legal and constitutional accountability monitors the observance of legal rules and evaluates whether acts and decisions are in accordance with constitutional rules. (López-Ayllón and Haddou-Ruíz, 2005: 4)

Answerability and enforcement is present in each one of these types of accountability. Nevertheless, the agents in charge of their exercise and application vary of clear form. Whereas administrative and financial accountability is trusted to specialized agencies, the judicial systems are responsible to exert legal and constitutional accountability. On the other hand, the citizens find in the expression of their voting preferences one of the diverse mechanisms to exercise the political accountability.

The citizen's demand of an accountable government does not begin and finishes in an electoral process. On the contrary, in order to build an accountable government it is required the existence of a civil society that participates daily in the policymaking process. Accountability not only consists in a unilateral act of the government, but also it has to be based on a critic dialogue between social actors, where government inform and justify their actions and decisions (past or future), to get a feedback when new public policies are been designed.

Accountability is a subject that goes beyond the obligation of the governments to expose regular information, which often are irrelevant or incomprehensible or, to explain their decisions after these have been taken from secret and isolated way of the public pressures. A true accountable government is one who establishes a true system of control that, without submit the authority to a "regulatory strait jacket", it limits the uncertainty spaces, forcing to the government to hold a dialogue with the society when new public policies are been implemented and evaluated.

The topic of accountability is a subject that acquired singular importance from the process of administrative reform carried out by the national governments during the last quarter of century XX. The administrative reform consisted in the design and implementation of public policies that go from the reduction of government apparatus to the creation of programs that favour the ample deregulation in important economic sectors. (Vilas, 2000)

### ***C. Why Is Necessary a Regulatory Improvement Program Inside Governments?***

In order to fulfil with the new tasks that were entrusted to governments, its agents were equipped with a greater level of autonomy in the policymaking process. The empowerment of the administrative apparatus could have caused opacity in its daily act, reason why also becomes necessary design new mechanisms of accountability that were translated in the maximization of the social benefits of the new public policies.

Attach of rule of law can caused resistances to change, which are caused by the existence of a clientelistic culture and illiberal habits. Nevertheless, when new institutions are designed under modernization parameters is possible affect social and cultural values, attitudes and identities in agents of political change to consolidate a democratic rule of law system. (Domingo, 1997)

In order to obtain an accountable government in an effective way, policymakers has designed a set of isolated agencies from the pressures and special interest groups to which public servants and politicians are inevitable exposed. (Jacobzone, 2005; Lopez-Ayllon and Haddou-Ruiz, 2005) Like it happened in the formation of the states, those who created this type of regulatory agencies were also forced to design a set of mechanisms to control the granted power.

When the new institutions are endowment of some degree of independence or autonomy, can occur a government failure: regulator capture. As a result of this, arose the necessity to submit these agencies to the public control, for which it became necessary to design a new institutional arrangement that gave it by fact that the work of the regulators is a human task that is characterized by elements of freedom and indetermination.

In the countries members of the Organization for Economic Cooperation and Development (OECD), the policies to control the power and to make it accountable have been varied. The regulatory improvement constitutes an important tool in this process, which persecutes to make transparent the administrative action, to evaluate the costs and benefits of the regulations, at the same time, looks for to elevate the level of predictability of the governmental actions. In summary, the regulatory improvement is based on the analysis, the transparency and the public consultation, to impulse the built of competitive firms, to assist the plenty democratic development, for the creation of employs and to favour investment and economic growth of long run. (Cofemer, 2001)

Often, deregulation and regulatory improvement are terms confused. However, the deregulation is only a component of the regulatory improvement, the first talks about to the partial or total elimination of regulation in some economic sector or specific regulatory area. On the other hand, regulatory improvement is a policy implemented with the intention of promote an institutional framework that goes beyond the simple establishment of a legality state, in other words, the attachment of the legal norms, without concerning if they are efficient or inefficient. This public policy

fortifies the rule of law, because it allows obtaining superior benefits with the reduction of compliance costs. (Cofemer, 2001)

In countries like Mexico, this public policy has been implemented with the support of ample public and private sectors. The main goal of this public policy is cause better conditions for the economic, administrative and social development, inside of state through the use of the following mechanisms:

- Elimination or modification of obsolete, excessive or troublesome regulations that constitute an obstacle for the correct operation of markets, the suitable implementation of the social policy or, the efficient work of the administrative apparatus.
- Creation of efficient regulation that is translated in the reduction of the compliance costs for the individuals.
- Improvement of processes through new regulation is elaborated and the existing ones are applied already. (Cofemer, 2001)

This public policy is not an end in itself, but an element that allows to the government to protect the public interest in an effective and efficient way, through the establishment of mechanisms of coordination between the public agencies with attributions on a same regulated matter. On the other hand, the regulatory improvement constitutes a pillar of the good government in all the spheres of public action and a central element in the concept of rule of law.

The last section focuses in the topic of the implementation of the policy of regulatory improvement inside of Mexican government. For it, besides the analysis the normative frame from as political happiness develops, it contains an evaluation of the tools designed by the government to fulfill the objectives drawn up for reach the regulatory improvement.

### **3. REGULATORY IMPROVEMENT AND RULE OF LAW. THE MEXICAN EXPERIENCE**

#### **A. Why Regulatory Improvement in Mexico?**

At the end of the decade of 1980, Mexico counted with a regulated and excessively protected economy. In political terms, the scene was not more encouraging, combined with the existence of a hegemonic party system and an absolute presidentialism, the policymaking process had in transparency and accountability the exception to the rule. Nevertheless, internal and international pressures have forced to Mexican government to implement new public policies to increase competitiveness of the economy in accordance with rule of law.

Before such situation, at the beginning of presidential period of Carlos Salinas de Gortari, inside Mexican government was designed a program of regulatory reform, which tried to respond some demands of national and foreign agents which struggled by the establishment of efficient and legitimate mechanisms to elevate the competitiveness of the Mexican economy. The process of regulatory reform was designed with the purpose of establishing an atmosphere with clear institutions where economic actors interact.

In Mexico, throughout the last quarter of century, the implementation of the regulatory reform has included four stages. First them begun in 1989, with the creation of the Economic Deregulation Unit (EDU) inside former Ministry of Trade and Industrial Promotion. In its creation, the functions of this agency concentrated in the deregulation or design of suitable regulation to specific economic sectors.

The second stage of reform initiated in 1992, with the extension of the program of economic deregulation to include the revision of obsolete and inadequate regulations, and settlement of macroeconomic conditions to increase the efficiency and to lower the costs in the markets. (OECD, 1999) As result of these efforts, the UDE design three bills:

- *Federal Metrology and Standards Law*, which establish a formal process for the elaboration of standars (NOM's), with procedures of public consultation detailed and to the presentation of a cost-benefit analysis.
- *Federal Consumer Protection Law*, whose purpose is promote and protect the rights of consumers and try the legal security in relationship between suppliers and consumers.
- *Federal Competition Law*, which establishes antimonopolistic regulations and creates the Federal Competition Commission.

The third stage of the program of regulatory reform was carried out in the presidential period of Ernesto Zedillo, in this stage the faculties of the EDU in matter of revision of legislative and administrative drafts are extended to include another type of regulations, like the related with environmental and social matter. Also, the program began to implement in states and municipalities. (OECD, 1999)

The first step in this stage occurred with promulgation of *Business Activity Deregulation Agreement* (BADA), which extended EDU's faculties. Further, it created the Council of Economic Deregulation and, most important, it established a process of analysis and systematic revision of formalities and regulatory drafts applicated and elaborated by the federal public administration.

This process was designed from the recommendations of the OECD (1995), which its main purpose was the stablishment of good regulation parameters. The indicated criteria were the following ones:

- A justification for governmental intervention must exist;

- The regulations must stay or be promulgated only if evidence exists of which its potential benefits are superior to their costs;
- It does not have to exist an alternative way to regulation that can obtain the same objective with lower cost;
- The regulations must diminish the negative impact that they have in the firms, especially in small and medium ones, and;
- The regulations must be supported by sufficient budgetary and administrative resources for their application and monitoring. (ADAE, 1995)

With the intention of begin to translate regulatory improvement program in a long term policy, in 1996 was passed an amendment to Federal Administrative Procedure Law (FAPL), creating the obligation to elaborate a Regulatory Impact Assesment (RIA) for all regulatory drafts elaborated by federal public administration. In this sense, also Federal Metrology and Standards Law has an amendment, it replacing the obligation in charge of authorities to present an cost-benefit analysis previous to expedition of standars, by the presentation of the RIA. Likewise, standars must be reviewed every five years in order to ensure their effectiveness. (OECD, 1999)

During the last stage of reform the most important advances are observed. This fourth stage begins in 2001 with the institutionalization of the public policy through an amendment to the FAPL, that besides to include a specific title on regulatory improvement matter, creates, in substitution of EDU, the Federal Commission of Regulatory Improvement (Cofemer), as technical and administratively independent agency to coordinate and supervise the efforts of the Mexican government to obtain high quality regulations.

The FAPL establishes that the agencies forced to regulatory improvement discipline are Ministries and Decentralized Organisms of federal public administration. In this Law is established an exception regime for Ministries of Defense and Navy, as well as, it exclude matters related with fiscal regulation, responsibilities of public servants, agrarian and labor justice and to the public prosecutor in exercise of his constitutional functions.

In addition to the new obligations contained in FAPL, the President Fox administration promulgated in 2001 a Program of Regulatory Improvement (PRI). In this program was established the following strategies to strength the reform:

- Obligation in charge of Ministries and Decentralized Organisms to submit Cofemer a two-year improvement regulation program.
- Creation of a Federal Registry of Formalities and Services.
- Revision and improvement of the regulatory drafts that generate compliance costs for private parties.
- Obligation in charge of Cofemer to elaborate diagnoses and to propose projects about specific regulations.
- Coordination with States and Municipalities to implement the regulatory improvement program in its spaces of government.

## **B. The Regulatory Improvement Tools**

From the mandate contained in FAPL and PRI, during the present administration has been designed and fortified the following tools of regulatory improvement: 1) the RIA; 2) the Federal Registry of Formalities and Services (FRFS); 3) the Register of Accredited Persons; 4) Elaboration of two-year improvement regulation programs, and; 5) the design of Rapid Business Start-up System.

The success of reform depends on the coordinated use of all tools of regulatory improvement. The correct use of each one strengthens the others. In other words, it is an obligation in charge of public agencies elaborate and submit every two years a program where planning and identifying those regulation to create, as well as, the identification of those formalities and services that apply, designing mechanisms for its simplification and, when it is possible, its elimination. On the other hand, the objective of RIA is to bases public policy decisions on rational grounds. To obtain this objective, between other aspects, corresponds to Ministries and Decentralized Organisms the identification of formalities or services that are created with the new regulation, to after that register them in the FRFS. A tool of electronic government (e-government) which makes easy and reduces costs originated by the application of formalities turns out to be Register of Accredited Persons, which simplifies to the individuals the request or delivery of information before the authorities. This tool give them a number of identification without the need to provide identification data or documentation. Finally, Rapid Business Start-up System is a effort that, supports in the previous tools, persecutes to elevate the competitiveness of the Mexican economy reducing terms for the opening of a business.

## **C. The Importance of RIA.**

Besides to favor the efficient use of the resources public, RIA functions like an instrument that increase the understanding of the impact of public policies, improve public governance, strengtning transparency and credibility of democratically elected governments. This instrument of regulatory policy allows determine probable consequences and side-effects of new draft regulation to after consultation with affected groups.

The rationale for RIA is often considered in terms of its potential to reduces excessive burdens, particularly in the private sector. Organisms as the World Bank suggests that this instrument provide considerable advantages that help to the construction of liberal democracies. (Jacobs, 2005) the benefits of the MIR are translated in the following points.

- It simplify the understanding of impacts of regulatory actions.
- It helps in the multiple integration of policy objectives.
- It improves transparency and consultation.

- It improves accountability of governments and regulators.

In broad terms, the use of RIA is an effective tool to favor democratic governance. In words of Jacobs:

RIA's support legal government which observe the rule of law with proportionate and equitable law. An accountable government is promoted through assessing direct costs and benefits that citizens will incur and selecting policies on the basis of best value for money, taking into account redistribution effects. Consultation with consumers, business and civil society also help build legitimacy and promote issues of equity and fairness among citizens. (Jacobs, 2005: 3)

In Mexico, the introduction of the RIA has helped to improve trust in government and to extending the citizen influence in the policymaking process. The RIA has become an important tool in the construction of legal, transparent, accountable and representative polity.

Given the history of Mexican state, characterized by a high level of opacity, the elaboration of RIA has been seen by some regulating agencies like a barrier to implementation of new governmental programs. With the purpose to break down these resistances, Mexican government has designed other policy instruments to improve quality of RIA and regulation. In this sense, during 2004, the President of the Republic presented a decree by means of which a regulatory moratorium settles down, which persecutes:

- The strengthening of suitable elaboration of the RIA, this fact has been translated in an increase in the quality of the legislative and administrative drafts promoted by federal government
- The diminishing the regulation emission that originates compliance costs of private parties.

#### **D. Federal Registry of Formalities and Services**

In Mexico, improvement of formalities that private parties do before government also has been object of process of regulatory reform. Formalities are defined as regulation that imply the exchange of information between the government and private parties. In order to assure that this exchange of information occur in a transparent way and low cost to individuals, from 2003, Mexican government has integrated a registry of all formalities and services of the federal government, with exception of the fiscal formalities and those that apply to Ministries of Defense and Navy.

Federal Registry of Formalities and Services (FRFS) has shown its effectiveness like a tool of regulatory improvement, becoming an instrument that allows monitoring the modifications and the quality of formalities and services to identify the effects that the regulation has on tramitology. The objective of the FRFS not only include

compilation of formalities and services, but also it has become a tool that promotes economic development in the country, therefore it is necessary to carry out a systematic process of improvement and elimination of the obligations and requirements that the authorities impose to the individuals in the occasion of development of their productive activities. (Cofemer, 2004)

Integration of FRFS helps to the process of regulatory reform to stablish a instrument of strategic planning in the elimination and simplification of formalities and services, specially those that represent high compliance costs for citizens and firms. By law mandate, only those federal formalities and services enrolled in the registry can be applied. The following figure shows the evolution of this registry from December of 2001 to the 30 of June of 2004. Although the formalities and services have increased in considerable way, it does not imply that the Mexican economy is regulated highly, but on the contrary, this fact shows the will of the Mexican government to compile in a single place that regulation that forces to the exchange of information between government and private parties.

**Figure I**  
**Formalities and Services registered in FRFS 2001-2004**

|                                     | DECEMBER 31, 2001 | JUNE 30, 2002 | JUNE 30, 2003 | JUNE 30, 2004 |
|-------------------------------------|-------------------|---------------|---------------|---------------|
| FORMALITIES AND SERVICES REGISTERED | 1,172             | 1,793         | 2,537         | 2,886         |

SOURCE: COFEMER, 2004.

The process of identification and improvement of formalities has been taken of joint way by the Mexican government and the enterprise organisms. In this effort, the role of Federal Council of Regulatory Improvement has been crucial, inside of this political body, the private sector has presented a set of proposals to improve those formalities that influence of important way economic activity.

**E. The Register of Accredited Persons**

Use of the new technologies has been of vital importance since the beginning of reform. A concrete example of it constitutes the Register of Accredited Persons (RAP), it claims control, uniform and provide a unique and optional instrument, that simplifies the accreditation of personality of those privates who regularly doing formalities before government. This tool looks for promote the productive activity of private parties through a deregulation process and administrative simplification oriented to efficiency of regulation.



The use of the RAP benefits mainly to the individuals who regularly carry out commercial or industrial because this exempting them of the obligation to display information and documentation relative to the accreditation of the personality when this doing a formalitie before public agencies. This system grants a unique and confidential identification to individuals that can be used in all formalities that them doing. In the first semester of 2005, 29 Ministries and Decentralized Organisms have been gotten up. (V Informe de Gobierno, 2005)

## **F. The Two-Year Improvement Regulation Programs**

In Mexico, the two-year improvement regulation programmes have become an instrument of effective planning in the process of regulatory reform. Furthermore to favor transparency, public consultation and accountability, this tool describes of schematic way the actions of regulatory improvement that the agencies of the federal public administration will make in a certain period.

Through of this instrument of internal planning, Ministries and Decentralized Organisms is forced to present the regulatory actions with dates and defined goals strenghtening transparency and public management inside of Mexican public administration, this fact is translated in a diminution of corruption acts inside of Mexican state, to internalize a regulatory culture based on principles of transparency, accountability and to consumer welfare. (Salas and Kikeri, 2005)

## **G. The Rapid Business Start-Up System.**

The Rapid Business Start-up System (SARE) was designed due to the high costs that represented initiate a new business in Mexico. Although in theory, the efforts of firms must be oriented to creating jobs and the increase of its productivity. In the Mexican case the reality was that this effort was diluted due to the existence of expensive interactions with the federal government. Some studies suggest that at the beginning of 2001, the procedure that private parties carried out to put in operation a company required, at least, of 112 days and a multitude of troublesome formalities, which was translated in a cost average of 2,200 USD. (CCE, 2000; Cofemer, 2001; Lopez de Silanes *et al.*, 2001)

SARE was created such as a permanent program of Mexican government, whose objective is to identify and deregulate federal, state, and municipal formalities for the establishment and beginning of operations of the firms. (Cofemer, 2006) The first step for implementation of SARE occur in federal order.

In 2001, the Cofemer put under consideration of the President of Republic a diagnosis on formalities, requirements and terms of high impact in the establishment and beginning of operations of the firms. In this sense, mexican government began a

simplification process that comprised the diminution of applicable terms and the elimination of the discretion of authorities to solve the procedures related to economic activities of low public risk. (Cofemer, 2001)

Implementation of SARE also requires of the coordinated effort with States and Municipalities, because most formalities for start-up business are concentrated in state and municipal order. This public policy has counted with good welcome insider of Mexican local governments. Figure II shows three cases of success:

**Figure II**  
**Successful Cases in Municipal SARE**

| SAN LUIS POTOSÍ            |                               | AGUASCALIENTES             |                           | GUADALAJARA                |                               |
|----------------------------|-------------------------------|----------------------------|---------------------------|----------------------------|-------------------------------|
| Before SARE                | After SARE                    | Before SARE                | After SARE                | Before SARE                | Alter SARE                    |
| 14 days to open a business | 15 minutes to open a business | 29 days to open a business | 1 day to open a business  | 2 days to open a business  | 15 minutes to open a business |
| 2 formalities              | 2 formalities                 | 7 formalities              | 2 formalities             | 3 formalities              | 2 formalities                 |
| 4 governmental inspections | 1 governmental inspection     | 6 governmental inspections | 1 governmental inspection | 2 governmental inspections | 1 governmental inspection     |

SOURCE: COFEMER, 2006.

Thanks to SARE, simplification and deregulation of the state and municipal formalities have translated in a mechanism that promotes the investment and jobs creation. At the begining of 2006, in Mexico 100 important cities counted or are in process to implement this tool. (Cofemer, 2006)

The systematic use of the tools of regulatory improvement has allowed that the Cofemer carries out of efficient way and is transparent the following activities:

1. Eliminate and simplify formalities that must fulfill the firms and citizens;
2. Revision of regulatory drafts and RIA;
3. Elaborate diagnoses and display specific proposals of reform to existing legislation and regulation in specific economic sectors, and;
4. Support programs of regulatory improvement at state and municipal order. (OECD, 2004: p. 15)

The development of these activities has been translated in the establishment of an agreed climate of businesses in accord with exigency of a global economy. Likewise, SARE helps to implementation of an accountability culture based on transparency and co-participation of public and private sectors.

## FINAL THOUGHTS

In contemporary democracies, the first challenge consists in the improvement of the quality of life of its citizens. A high quality regulation allows to improve the relations between government and society and it give trust to private parties about the actions of policy of its government.

The regulatory reform in Mexico is not a finished process, currently there are a lot way to cross. The bad habits of an authoritarian past, marked by the opacity in the decision making, have caused that the regulatory improvement has followed an incremental way. In the coming years the consolidation of the reform will have to require the extension of the discipline of regulatory improvement towards other bodies of government such as the legislative power.

Inside of Mexican public administration also there are a lot way to cross. The attributions of the supervisor organ of the process of regulatory improvement must be extended. At the present time, the recommendations that the Cofemer emits on the regulatory drafts that considers are not obligatory, with which becomes necessary to promote a reform to the Federal Administrative Procedure Law to strength the mechanisms of enforcement of this agency.

On the other hand, Federal Administrative Procedure Law must be amendment to include within the administrative procedure matters until today excluded. For instance, it does make sense that fiscal matter is excluded when discipline of regulatory improvement follows elevate the competitiveness of mexican economic sector.

By last, SARE requires a greater institutionalization inside of states and municipalities, it due most of administrative simplification process has been made without modifying applicable regulatory frame. Before this, it does not exist the sufficient trust that this policy maintains through the time.

## BIBLIOGRAPHY

- ADAE (1995), *Acuerdo para la Desregulación de la Actividad Empresarial*, Presidencia de la República, México.
- CCE (2000), *Calidad del marco regulatorio en las entidades federativas mexicanas. Estudio comparativo*, Consejo Coordinador Empresarial, México.
- Cerroni, Umberto (1991), *Reglas y Valores en la Democracia. Estado de Derecho, Estado Social, Estado de Cultura*, Alianza Editorial, México.
- Cofemer (2001), *Informe Anual 2001*, Comisión Federal de Mejora Regulatoria, México.
- Cofemer (2004), *Informe Anual 2004*, Comisión Federal de Mejora Regulatoria, México.
- Cofemer (2006), *Sistema de Apertura Rápida de Empresas*, Comisión Federal de Mejora Regulatoria, México.
- Dahl, Robert A. (2002), *La poliarquía. Participación y oposición*, Editorial Tecnos, Madrid.
- Domingo, Pilar (1997), *Rule of Law, Citizenship and Access to Justice in Mexico*, Centro de Investigación y Docencia Económicas, A.C., México.
- Jacobs, Colin (2005), *The Role of Regulatory Impact Assessment in Democratisation: Selected Cases from the Transition States of Central and Eastern Europe*, Centre on Regulation and Competition, United Kingdom.
- Jacobzone, Stéphane (2005), *Independent Regulatory Authorities in OECD countries: an overview*, Organization for Economic Cooperation and Development, United Kingdom.
- Linz, Juan J. and Alfred Stepan (1996), *Problems of Democratic Transition and Consolidation. Southern Europe, South America, and Post-Comunist Europe*, The Johns Hopkins University Press, Baltimore.
- López Ayllón, Sergio and Alí Haddou Ruíz (2005), *Regulatory quality and accountability of regulatory authorities: the mexican experience*, Consejo Latinoamericano para la Administración y el Desarrollo, Chile.
- López de Silanes, Florencio et al. (2001), *The Regulation of Entry*, National Bureau of Economic Research, Cambridge.
- Madison, James et al. (1994), *El Federalista*, Fondo de Cultura Económica, México.
- O'Donnell, Guillermo (1996), Otra institucionalización, in *Política y Gobierno*, Vol. III, Num. 2, Second Semester 1996, México
- OECD (1995), *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation*, Organization for Economic Cooperation and Development, Paris.
- OECD (1999), *Regulatory Reform in Mexico*, Organization for Economic Cooperation and Development, Paris.
- OECD (2004), *Revisión de la OCDE sobre reforma regulatoria: avances de la implementación en México*, Organization for Economic Cooperation and Development, Paris.
- Salas, Fernando and Sunita Kikeri (2005), Regulatory Reform. Institution Building: Lessons from Mexico, in *Public Policy for the Private Sector*, World Bank, Washington.
- Schedler, Andreas (2004), *¿Qué es la rendición de cuentas?*, Instituto Federal de Acceso a la Información, México.
- Sen, Amartya (1999), *Development as a Freedom*, Oxford University Press, England.

- Serbinson, Miomir et al. (2002) *Strengthening the rule of law in Lao PDR 1992-2000*, Organization for Economic Cooperation and Development, Paris.
- Stuart Mill, John (1984), *Sobre la Libertad*, Alianza Editorial, México.
- V Informe de Gobierno (2005), Presidencia de la República, México.
- Vilas, Carlos M. (2000), Más allá del “Consenso de Washington”. Un enfoque desde la política de algunas propuestas del Banco Mundial sobre reforma institucional, in *Reforma y Democracia*, Consejo Latinoamericano para la Administración y el Desarrollo, Venezuela.
- Zakaria, Fareed (1997), The rise of illiberal democracy, in *Foreign Affairs*, November/December 1997.