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REPORT



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THE FUTURE OF MEXICO'S NATIONAL ANTI-CORRUPTION SYTEM

The anti-corruption fight under President López Obrador

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López Obrador made combating corruption a centerpiece of his campaign platform, and since taking office last December, he has continued to highlight this effort as a fundamental precondition for reducing the violence and inequality at the heart of many of Mexico's struggles.

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INTRODUCTION

While Mexico has struggled with systemic corruption for decades, public concern for this issue has risen substantially in recent years. During former President Enrique Peña Nieto's term (December 2012-December 2018), Mexico fell 32 places on Transparency International's Corruption Perceptions Index, reaching the 138th position among 180 countries in 2018.¹ With this ranking, Mexico again placed last in the Index among OECD countries last year, falling at least 71 places behind all other member governments. In Latin America, only Guatemala, Nicaragua, and Venezuela ranked lower, all of which are facing serious democratic governance crises.²

According to exit polls by the firm Parametría, corruption surpassed crime and the economy for the first time as the most important issue for voters in Mexico's July 2018 elections,³ suggesting winning presidential candidate Andrés Manuel López Obrador was elected on a clear mandate to begin rooting out the culture of corruption that embroiled his predecessor's administration.⁴ Indeed, López Obrador made combating corruption a centerpiece of his campaign platform, and since taking office last December, he has continued to highlight this effort as a fundamental precondition for reducing the inequality and criminal violence at the heart of many of Mexico's struggles.⁵

The new government finds itself in a unique position to begin tackling this enormous challenge. It is the first administration to come to power since Mexico passed sweeping anti-corruption legislation in 2015 and 2016 that created the **National Anti-Corruption System** (*Sistema Nacional Anticorrupción*, SNA) and set the framework for a tougher and more comprehensive approach to combating corruption. If the López Obrador administration is serious about getting tough on government misconduct, guaranteeing the full implementation of the National Anti-Corruption System is an important part of the equation.

According to the reforms, the System was supposed to be fully implemented by July 2017. However, the Peña Nieto administration stalled the appointment of several key actors and blocked important anti-corruption probes from moving forward, rendering many aspects of the System ineffective.⁶ As detailed in this report, since López Obrador took office, some progress has been made, but other aspects remain at a standstill. While the new president's pledge to crack down on corruption has sparked hope for a new era in Mexico, his approach so far has focused largely on leading by example with a frugal lifestyle and slashing bureaucratic expenditures in an effort to create a more "austere" government and curb political greed.⁷

While such political will is important, it can only go so far without the institutional backing the National Anti-Corruption System can provide. Tough messaging and strict corruption laws will be rendered useless if the institutions that form part of the System at all levels of government lack the power and autonomy to enforce them. Strengthening the institutional capacity of these institutions to comprehensively prevent, detect, investigate, and sanction corruption is critical to Mexico's anti-corruption fight. In this report, we assess the importance of the System's efforts in each of these areas as well as where these efforts stand under the López Obrador administration.

BOX 1

WHAT IS THE NATIONAL ANTI-CORRUPTION SYSTEM?*

Historically, Mexico's anti-corruption efforts have been scattered and unsystematized, and laws and institutions designed to combat corruption have largely lacked teeth. In May 2015—in response to intense pressure from Mexico's impressively organized anti-corruption movement—Congress passed a series of constitutional reforms to address these shortcomings.⁸ The reforms expanded the power of the federal government's auditing agency and established clearer and stricter sanctions for corruption offenses. The reforms also created the National Anti-Corruption System, a mechanism for coordinating the myriad anti-corruption institutions at all levels of government that had previously been operating without clear methods of collaboration.⁹

In July 2016, Mexico passed or reformed several secondary laws necessary for properly implementing the National Anti-Corruption System and strengthening the institutions that form part of it.¹⁰ The laws established the framework for creating an autonomous Special Prosecutor's Office for Combating Corruption, expanded the autonomy of the Federal Tribunal of Administrative Justice, and called for adding 18 anti-corruption magistrates to the Tribunal. They also strengthened the role of the Ministry of Public Administration in combating corruption within the federal government and reformed the Federal Penal Code to include a specific section on corruption offenses.

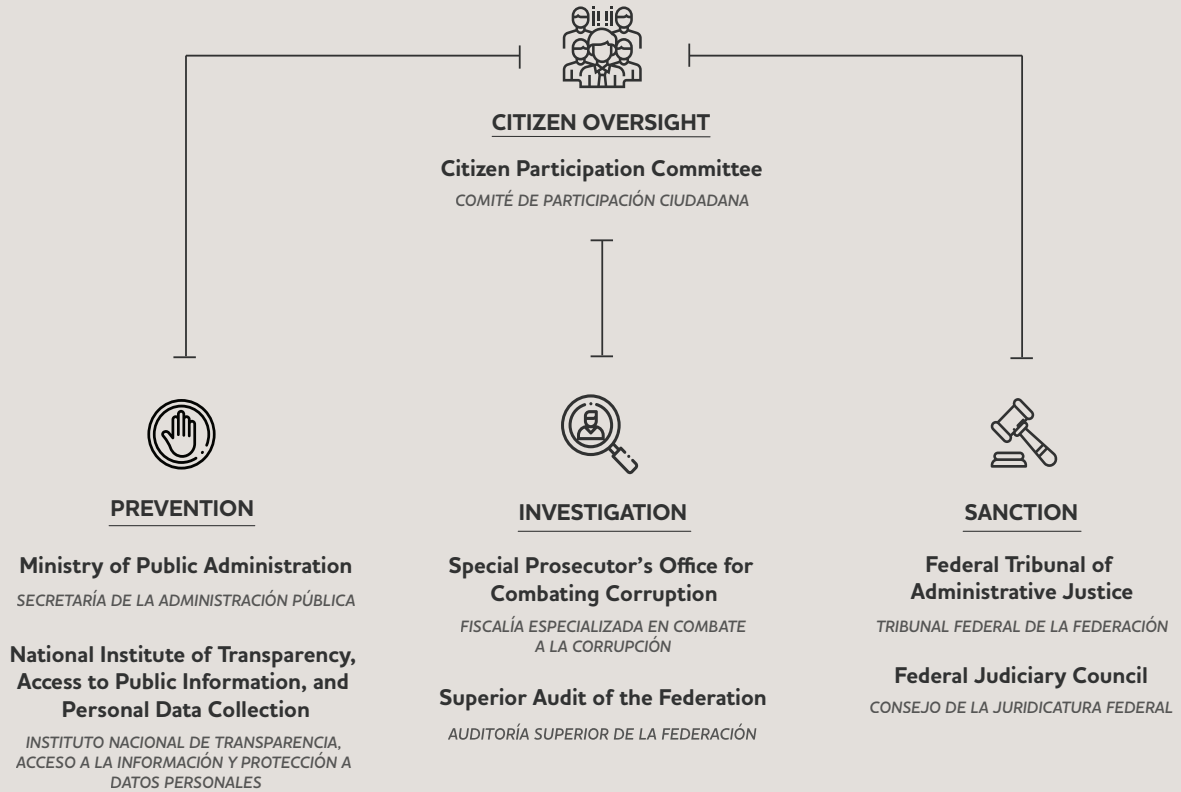
An important aspect of the System is that it is not led by just one head, but rather a board-like entity called the **Coordinating Committee**. Made up of representatives from seven key anti-corruption institutions, the Committee is responsible for coordinating the bodies that form part of the System as well as designing, implementing, and evaluating anti-corruption policies (see Figure 1). Perhaps what is most unique about this model is that the president of the System's **Citizen Participation Committee**—a civilian oversight body meant to serve as a bridge between anti-corruption institutions and civil society—serves as the president of the Coordinating Committee (and therefore the System as a whole). This structure gives citizens a lead role in the anti-corruption fight.¹¹

In an effort to harmonize Mexico's anti-corruption laws and strengthen coordination between federal and state entities, the reforms require each of Mexico's 32 states to establish similar mechanisms and institutions in order to create their own state-level systems.¹²

* For more on the structure of the National Anti-Corruption System, see WOLA's 2018 report, *Mexico's National Anti-Corruption System: A Historic Opportunity in the Fight against Corruption*: <https://bit.ly/2KjnEmW>.

FIGURE 1

THE COORDINATING COMMITTEE OF THE NATIONAL ANTI-CORRUPTION SYSTEM



IMPLEMENTING THE NATIONAL ANTI-CORRUPTION SYSTEM

PREVENTION AND DETECTION

Mexico's Ministry of Public Administration plays a key role in the System's prevention and detection efforts. It is tasked with overseeing federal public servants and the federal government's procurement process, auditing federal funds, and coordinating internal affairs bodies within each of Mexico's federal government agencies. The current Minister of Public Administration, Irma Eréndira Sandoval, announced in May that she is relaunching the Ministry's work to focus on "citizenizing the fight against corruption," an effort central to the spirit of the National Anti-Corruption System. According to Sandoval, this will include strengthening protections for whistleblowers and developing technologies that make it easier for citizens to access public information, among other efforts.¹³

In a meeting with WOLA staff in June 2019, members of the Ministry's Unit on Regional Operations and Social Oversight reported that this initiative will also include forming citizen-led Honesty Councils (*Consejos de Honestidad*) to provide oversight over the López Obrador administration's 25 priority infrastructure projects.¹⁴ This includes the "Mayan Train" the administration plans to build to connect popular tourist attractions in southern Mexico, a new oil refinery in the state of Tabasco, and the Santa Lucia airport in Mexico City, all of which have garnered concern about possible corruption in connection to the projects.¹⁵ According to Unit officials, these Honesty Councils are meant to complement the work of the state-level citizen participation committees, serving to provide oversight at a more local level.¹⁶

Beyond working to expand spaces for citizen participation, the System's Coordinating Committee has also made important headway in increasing government transparency. Since 2017, the Committee has been working to modify Mexico's

asset declaration process. While many public officials across the country were exempt from declaring their assets and interests under the old system, the law outlining the modifications now requires all officials at all levels of government to do so.¹⁷ With this change, 280,000 officials will be required to declare their assets and interests using the new format.¹⁸ Once the new process is fully and officially established, the Coordinating Committee must ensure effective compliance measures.

INVESTIGATION

Mexico's ongoing transition to an independent **National Prosecutor's Office** (*Fiscalía General de la República*, FGR)—which is replacing its former Attorney General's Office (*Procuraduría General de la República*, PGR) based on 2014 constitutional reforms—may be paramount in enhancing the System's ability to combat impunity for corruption offenses.¹⁹ Unlike the PGR, the new institution is autonomous from the Executive Branch and arguably less vulnerable to political influence over corruption investigations.²⁰ Under this new structure, federal corruption cases are handled by the **Special Prosecutor's Office for Combating Corruption** that was established as part of the reforms that created the National Prosecutor's Office and whose functions are central to the National Anti-Corruption System.

Recent legislation and key appointments have brought Mexico closer to completing this transition. In December, Mexico's Congress passed the Implementing Law (*Ley Orgánica*) defining the structure and function of the National Prosecutor's Office,²¹ and in January, the Senate selected Alejandro Gertz Manero as the first national prosecutor.²² In March, when the Senate approved Gertz's nominee for anti-corruption prosecutor, María de la Luz Mijangos Borja, the Special Prosecutor's Office for Combating Corruption officially began its work.²³

According to Gertz, while the National Prosecutor's Office inherited a major backlog of cases from the PGR, it is prioritizing five emblematic, high-profile cases that stalled under previous attorney generals.²⁴ This includes the corruption case known as "Estafa Maestra", involving the diversion of more than USD\$192 million (MXN\$3.4 billion) worth of government funds through shell companies and public universities during the Peña Nieto administration.²⁵

It also includes the scandal involving the Brazilian construction conglomerate Odebrecht, which has admitted to paying nearly USD\$800 million in bribes to secure public works contracts in countries across Latin America, including some USD\$10.5 million to Mexican officials.²⁶ While prosecutors across the region have brought charges against a slew of public officials implicated in the Odebrecht scandal, including former presidents, the *New York Times* reported last year that the PGR had yet to bring charges against a single official, despite having enough evidence to do so.²⁷

Whether or not these cases result in sanctions for implicated authorities will serve as an important testament to whether Mexico is indeed turning the page on the widespread impunity that corrupt officials have historically enjoyed in the country.

In a May 2019 interview, Gertz affirmed that both the Odebrecht and Estafa Maestra cases will be prosecuted as cases of organized crime and crimes against the state, given their scale and the numerous public institutions involved. He also disclosed that prosecutors are investigating the cases' possible connection to other corruption schemes, including a case involving the alleged use of public money to fuel political campaigns for Institutional Revolutionary Party (*Partido Revolucionario Institucional*, PRI) candidates in various states across the country in Mexico's 2016 midterm elections.²⁸

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the page on the widespread impunity that corrupt officials have historically enjoyed in the country. In recent months, there has been progress in investigating at least one official implicated in the Odebrecht scandal. The Financial Intelligence Unit (*Unidad de Inteligencia Financiera*) within Mexico's Ministry of Finance and Public Credit—an office charged with combating money laundering and other financial crimes—has presented the National Prosecutor's Office with three charges against former government official Emilio Lozoya.²⁹ Lozoya directed Mexico's state-owned oil company PEMEX between 2012 and 2016 and was one of former President Peña Nieto's closest aides.

According to Santiago Nieto, who heads the Financial Intelligence Unit, one of the charges is related to bribes Lozoya allegedly received from the steel company Altos Hornos de México (AHMSA) in exchange for PEMEX's purchase of an inoperative fertilizer plant in 2014. The bribes were supposedly channeled through an Odebrecht subsidiary, and then to Lozoya's relatives.³⁰

This isn't the first time Lozoya has been investigated in relation to Odebrecht. In 2017, three former Odebrecht executives testified in a Brazilian court saying that Lozoya accepted USD\$10 million in bribes from the company between 2012 and 2014.³¹ Santiago Nieto, who directed the Special Prosecutor's Office for Electoral Crimes within the PGR at the time, opened an investigation into the case, but he says he was stifled every step of the way by the PGR.³² After Santiago Nieto was controversially fired in October 2017, the case against Lozoya came to halt.³³

On May 26, 2019, the Mexican government issued an arrest warrant against Lozoya in response to the bribery charges related to AHMSA. While a federal judge issued an injunction temporarily suspending the arrest warrant, the same judge revoked the suspension in June after Lozoya failed to comply with the conditions of the injunction, including by failing to appear before the criminal court where he faces prosecution.³⁴ Lozoya is now considered a fugitive, giving the National Prosecutor's Office free reign to arrest him. On July 4, a federal judge issued a second arrest warrant against Lozoya on additional corruption charges.³⁵

SANCTION

One area where the implementation of the National Anti-Corruption System has stalled concerns the addition of **18 anti-corruption magistrates** to the **Federal Tribunal of Administrative Justice**. The General Law on Administrative Responsibilities—one of the anti-corruption laws passed in July 2016—calls for adding a new “Third Section” to the Tribunal’s Superior Chamber as well as five new regional, specialized chambers. The five specialized chambers and the Third Section should be headed by three magistrates each.³⁶

These magistrates will play a critical role in the anti-corruption fight. While the Ministry of Public Administration and other internal control bodies have the power to sanction officials for negligence and misconduct, the anti-corruption magistrates will have exclusive jurisdiction over “grave” administrative offenses such as bribery, embezzlement, and money laundering. The magistrates will have the power to remove officials who commit such crimes from their posts, ban them from holding public office for up to 20 years, and fine them up to two times the amount of embezzled public funds.

The new magistrates were supposed to be named by July 2017; however, while then-President Peña Nieto submitted 18 names to the Senate for approval in April 2017, the Senate did not move to vote on the candidates for more than two years. In April 2019, the president of the System’s Citizen Participation Committee is delaying the sanction of between 30 and 40 grave administrative offenses.³⁷

In May 2018, the Citizen Participation Committee submitted a constitutional complaint against the Senate and the Permanent Commission of the Mexican Congress (which has the power to decide on these appointments while the Senate is in recess), citing the failure of these bodies to consider the magistrate nominations.³⁸ The complaint also denounced the failure of Peña Nieto to properly justify why the 18 proposed candidates are suitable for the magistrate seats. (The General Law on Administrative Responsibilities requires that the president make public the merits, backgrounds, and qualifications of each candidate.)

A court upheld the Citizen Participation Committee’s complaint.³⁹ While the Senate challenged the ruling, another court struck down this challenge in April 2019, noting that by not making public and transparent the candidates’ merits and qualifications, the Senate and the president were “failing to comply with their constitutional obligation to fully implement the National Anti-Corruption System.”⁴⁰

On July 31, 2019, the Permanent Commission finally voted on the five remaining candidates proposed by the Peña Nieto administration, deciding to reject them (13 had already withdrawn their candidacy by that time).⁴¹ Now it is up to López Obrador to propose 18 new candidates for the magistrate seats. However, the president has previously stated that, as a way to reduce government expenditures, his administration is looking to reduce the number of magistrates by eliminating some or all of the new specialized chambers within the Federal Tribunal of Administrative Justice.⁴² It is not clear whether or how this proposal would move forward, given that the number of magistrates is mandated by constitutional reform. But a reduction in magistrates would negatively impact the sanctioning functions of the National Anti-Corruption System.

In order to move forward with fully implementing the System, the López Obrador administration should promptly propose 18 new candidates that are suitable for the position, and the Senate should decide on the candidates through a public process allowing for civil society participation.

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At the same time, Ricardo Monreal—the leader of López Obrador’s party (the National Regeneration Movement, MORENA) in the Senate—has presented multiple proposals that would profoundly threaten the authority of the anti-corruption magistrates. In April 2019, Monreal presented an initiative to add an “anti-corruption chamber” made up of five new justices to the Supreme Court, raising the number of Supreme Court justices from 11 to 16.⁴³ Not only did this

raise concerns about a possible attempt to stack the Supreme Court, but, if implemented, it would threaten the autonomy of the **Federal Judiciary Council**, which forms part of the National Anti-Corruption System and is responsible for naming and removing circuit magistrates and district judges. The proposed anti-corruption chamber would have the power to resolve appeals against the Council's decisions, giving MORENA increased control over who holds federal court positions.⁴⁴ López Obrador and Minister of the Interior Olga Sánchez Cordero both publicly rejected the proposal to create this anti-corruption chamber.⁴⁵

In July, MORENA senators presented another proposal to create an entirely new Federal Anti-Corruption Tribunal made up of three magistrates, which would also leave in limbo the powers of the anti-corruption magistrates that are supposed to form part of the National Anti-Corruption System.⁴⁶ Implementing the proposal would require changing 10 articles of the Constitution and would completely alter the sanctioning procedures outlined in the 2015 and 2016 reforms that created the System.⁴⁷ It is not clear whether MORENA will take up any of these initiatives in the next legislative session which begins in September.

IMPLEMENTING THE STATE-LEVEL ANTI-CORRUPTION SYSTEMS

Corruption at the state and local level in Mexico has broad social costs. According to Mexico's National Victimization Survey, over 65 percent of citizens perceive state and local police, prosecutors, and judges to be corrupt, taking a heavy toll on communities' sense of security and trust in public institutions.⁴⁸ In the past decade, over 22 current or former governors have been investigated for corruption offenses,⁴⁹ many of whom have been accused of diverting millions, sometimes billions, of dollars' worth of public funds destined for vital education, health, and social programs.⁵⁰

Corruption in public works projects has sometimes had fatal consequences: in the aftermath of the earthquake that devastated Central Mexico in September 2017, investigative journalists at the organization Mexicans against Corruption and Impunity (*Mexicanos contra la Corrupción y la Impunidad*) found that faulty contracts and government negligence led to the collapse of dozens of buildings during the earthquake, leaving hundreds dead and thousands without homes.⁵¹

Despite this context, several states have delayed the implementation of their anti-corruption systems. As of July 2019, four states—Baja California, Chihuahua, Nuevo León, and Campeche—had yet to approve one or more of the state-level laws that needed to be

passed or reformed to ensure they were in compliance with the federal anti-corruption reforms. Additionally, the states of Campeche, Chiapas, and Mexico City still lacked key appointments needed to make their state-level systems fully operational. Mexico City was furthest behind in implementation, having yet to appoint an anti-corruption prosecutor; any of the five members that should form part of the local system's citizen participation committee, or key members of five other offices central to the local system's functioning.⁵²

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Even in states where the anti-corruption systems are up and running, the systems are suffering from a severe lack of funding to carry out their functions. The federal-level Citizen Participation Committee highlighted this concern in a constitutional complaint (*juicio de amparo*) against various state congresses for failing to allocate resources for the systems in their state budgets.⁵³ Indeed, an OECD analysis

found that only 50 percent of state budgets in 2018 included funds for their system's executive secretariat, which is responsible for executing and overseeing all of the Coordinating Committee's agreements.⁵⁴ It is important to note that in each state, resources allocated to the system's executive secretariat not only fund that entity's operations, but are also used to pay the salaries of each member of the state-level citizen participation committee, whose president presides over the entire state-level anti-corruption system. This means that in 2018, only half of the state-level systems' presidents received a salary. In an important sign of progress, 75 percent of

states included funds for their executive secretariats in their 2019 budgets. However, eight states—Chiapas, Mexico City, San Luis Potosí, Campeche, Guerrero, Morelos, Sinaloa, and Tlaxcala—are still lagging behind in this area.⁵⁵

Additionally, state-level anti-corruption prosecutors have raised concerns about their lack of autonomy to set their own priorities and conduct serious investigations. They have also called attention to Mexico's lack of a criminal prosecution plan for corruption cases, which they say has fragmented the country's investigative and prosecutorial framework.⁵⁶

MOVING FORWARD

Without the administration's full support, the National Anti-Corruption System remains vulnerable to the threat of being deprived of the resources it needs to be successful. The first seven months of the administration have raised questions about how committed the new government will be to properly implementing the System and following through on the work of the Coordinating Committee. For instance, while the structure and organization of the System is based largely on the premise that anti-corruption organizations and experts have an important role to play in monitoring and evaluating its work, the president has frequently criticized that sector of society, discrediting its role in providing analysis and evaluating the effectiveness of policies.⁵⁷

Nevertheless, recent strides by the institutions that form part of the System leave room to be hopeful. The aforementioned improvements to Mexico's asset declaration requirements and progress in investigating past corruption cases both serve as important signs of headway. Moreover, the citizen participation committees at the national and state level continue with various efforts to promote ethical standards and solidify strong anti-corruption policies. In December 2018, the federal-level Citizen Participation Committee presented a proposal for a National Anti-Corruption Policy, defining 60 priority strategies for combating corruption.⁵⁸ The proposal was developed through a series of public consultations across the country and outlines four key objectives:

1) combating impunity by improving mechanisms to denounce, investigate, and sanction administrative offenses, 2) reducing arbitrariness in government by developing a professional civil service and strengthening internal controls and auditing mechanisms, 3) creating spaces for civil society involvement, and 4) building bridges between citizens and government institutions by increasing transparency and reducing barriers to public services.⁵⁹ Positively, the annex of the López Obrador administration's National Development Plan highlights implementing the National Anti-Corruption Policy as a key strategy to improve the country's capacity to prevent and combat corruption and impunity.⁶⁰

While López Obrador's presidency has yet to give the National Anti-Corruption System the full political backing that was also lacking during Peña Nieto's term, the System still may yield results in the country's efforts to combat corruption. The coming months will be key for monitoring the naming of the anti-corruption magistrates, progress in investigating past corruption cases (and perhaps more importantly, new cases under the new administration, including those that may involve members of MORENA), and any steps taken to adopt the National Anti-Corruption Policy. All of these actions will be clear signs as to whether the López Obrador administration will be able to make good on its campaign promise to fight corruption in the country.

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