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# Mexico's National Anti-Corruption System: Reaching the Finish Line?

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# Mexico's National Anti-Corruption System: Reaching the Finish Line?

Dr. Roberto Carlos Fonseca\*

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## I. INTRODUCTION

The Mexican State has not managed to reduce the problem of corruption in the country. After two decades of policies without visible outcomes, Enrique Peña Nieto's Government prompted the creation of the National Anti-Corruption System (*Sistema Nacional Anticorrupción*, hereinafter SNA). The legal reforms to create this new system, hailed as the ultimate solution to overcome the problem, began in 2015. Three years later, close to the ending of Peña Nieto's period, the system has not been put into full operation. This omission is due to the lack of consensus among the government, the legislature, and civil society.

The creation of an anti-corruption agency, such as the SNA, responded to international organizations' recommendations. Also, Mexican civil society groups gave significant support to the proposal. For these reasons, the incoming government should consider the convenience of giving continuity to this agency. Andrés Manuel López Obrador comes to Presidency with considerable political support, which will let him achieve the political consensus required to complete the SNA's implementation. The next government's grand challenge will be to overcome the previous Mexican reformers' fault, which has been to assume that the creation of institutions is the only goal, without worrying about providing the necessary resources to get results.

In this transition context, this article reviews the Mexican SNA's principal characteristics and discusses its foreseeable future. Section II briefly describes the serious panorama of corruption that led to the creation of the SNA. This article refers to examples of the types of corruption that have been identified in recent times in the country, among others: great political corruption; small bureaucratic corruption; and corruption in both the criminal justice system and in the police force, which in some cases has been captured by the organized crime.

The following section reviews the SNA's creation process. The agency's legal framework consists of seven laws enacted in 2016 that develops the constitutional reforms promulgated in 2014 and 2015. The main objective of this legal and institutional framework is to bring together anti-corruption related institutions in a central coordination committee. Four anti-corruption institutions run the main branches of the SNA: internal control of the administration;

auditing process; investigation; prosecution; and sanction of administrative responsibilities as well as criminal.

Section IV discusses the SNA's immediate future with the incoming government on the horizon. Some of the reforms that may be promoted by López Obrador's administration, according to the public agenda of its party, the National Regeneration Movement (*Movimiento Regeneración Nacional*, hereinafter MORENA), are mentioned. This paper also highlights some legislative measures that the next government should carry out to fulfill the implementation of international conventions against corruption, which Mexico signed.

The article argues the SNA should not be considered the ultimate solution to Mexico's corruption problem. Most likely, the agency will not give results if its job is unaccompanied by policies promoting a cultural shift in the country. The current organizational culture, which allows corruption practices both in public and private fields, should be replaced by a culture based on integrity and values. Also, a culture of denouncement and punishment of corrupt practices should replace the customary impunity.

## II. CORRUPTION'S PICTURE IN RECENT MEXICO

Corruption has been a hot topic in Mexico's recent history with great media coverage.<sup>1</sup> The beginning of the 21st century was markedly bad for Mexican society in this matter because the hopes of change generated by the rotation of political power never materialized. In 2000, society believed that the defeat of the Institutional Revolutionary Party (*Partido Revolucionario Institucional*, hereinafter PRI) and the National Action Party's (*Partido Acción Nacional*, hereinafter PAN) arrival to power would transform the conditions that allowed corruption and impunity. Before long, the new administration disappointed society because the expected institutional transformation never happened.<sup>2</sup>

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<sup>1</sup> See Ernesto Garzón Valdés, *Acerca de la calificación moral de la corrupción: Tan solo una propuesta*, 21 ISONOMÍA 9, 16 (2004) (stating that political corruption in democratic systems "is in vogue" because the amount of journalistic writings and TV programs on this issue is immense).

<sup>2</sup> See Mathieu Tromme & Miguel Angel Lara Otaola, *Enrique Peña Nieto's National Anti Corruption Commission and the Challenges of Waging War against*

Corruption, instead of decreasing, increased during the last three presidential periods. Continual “soap-opera-like scandals”<sup>3</sup> revealed “grand corruption”<sup>4</sup> cases, one after another. Presidents themselves were involved in accusations of corruption related to the granting of multimillionaire public contracts, such as the Fox issue and *Oceanografía*,<sup>5</sup> Calderón and the Odebrecht case,<sup>6</sup> and Peña Nieto’s white house.<sup>7</sup> The situation was similar on the local government level. In recent years, at least 42 former governors were mentioned by the press as suspects of acts of corruption.<sup>8</sup> Only 17 were officially investigated.<sup>9</sup>

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*Corruption in Mexico*, 30 MEXICAN STUDIES/ESTUDIOS MEXICANOS 557, 561 (2014) (“[T]he transition from PRI to PAN in many ways has continued the status quo. Instead of taking the opportunity to truly change the democratic foundations and to eradicate opportunities for clientelism, politics remains highly personalized.”).

<sup>3</sup> Stephen D. Morris, *Corruption and Mexican Political Culture*, 45 JOURNAL OF THE SOUTHWEST 671, 671 (2003).

<sup>4</sup> Susan Rose-Ackerman & Rory Truex, *Corruption and Policy Reform* (Yale Law & Economics Research Paper No. 444, 2012) (stating that the “grand corruption” involves “high-level officials” involved on the granting of large public contracts); see also CASAR, MÉXICO: ANATOMÍA DE LA CORRUPCIÓN 32 (2015) (stating that grand corruption occurs in the higher political stairs).

<sup>5</sup> See J. Jesús Esquivel, *El enriquecimiento de Oceanografía (y de los hermanos Bribiesca), bajo investigación*, PROCESO (Nov. 23, 2013), formato HTML, <https://www.proceso.com.mx/358940/el-enriquecimiento-de-oceanografia-y-de-los-hermanos-bribiesca-bajo-investigacion-2>.

<sup>6</sup> See Jesusa Cervantes, *Caso Odebrecht: Los escandalosos silencios de Felipe Calderón*, PROCESO (Nov. 4, 2017), formato HTML, <https://www.proceso.com.mx/509851/caso-odebrecht-los-escandalosos-silencios-felipe-calderon>.

<sup>7</sup> In 2014, a journalistic investigation revealed that President Peña Nieto has a 7-million-dollar residence in Mexico City. This mansion was built to President’s wife liking by *Grupo Higa*, a construction company that earned millions in the State of Mexico when Peña Nieto was governor. See *La casa blanca de Enrique Peña Nieto (investigación especial)*, ARISTEGUI NOTICIAS (Nov. 9, 2014), <https://aristeginoticias.com/0911/mexico/la-casa-blanca-de-enrique-pena-nieto/>.

<sup>8</sup> Elisabeth Malkin, *En México se acumulan los gobernadores corruptos, e impunes*, N.Y. TIMES (Apr. 19, 2017), <https://www.nytimes.com/es/2017/04/19/mexico-gobernadores-corrupcion-impunidad-duarte/>.

<sup>9</sup> *Id.*

Since 2000, documented cases of political corruption have included bribes and kickback payments from both national and foreign<sup>10</sup> companies to medium-high level public officials for the awarding of public contracts.<sup>11</sup> This generalized practice has become one of the “vices”<sup>12</sup> in the procurement and bidding for public works. Another usual form of corruption has been embezzlement, which occurs through diversion of public funds to ghost companies’ networks. The recently discovered “master scam”<sup>13</sup> is an example of this large-scale treasury diversion.

The request of unlawful payments in exchange for granting of permits and administrative licenses has been an ordinary “petty corruption” practice.<sup>14</sup> Bribery has turned into a “standardized” activity for many companies that have included it within their daily operation processes.<sup>15</sup> For professionals who negotiate legal matters with the administration,<sup>16</sup> corruption has been inevitable too. The same is

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<sup>10</sup> Tromme & Lara Otaola, *supra* note 2 (referring that some U.S. companies as Lindsey Manufacturing Co., Wal-Mart and Orthofix International were involved in corruption practices in Mexico).

<sup>11</sup> See Alejandro Faya Rodríguez, *La triste realidad en las contrataciones públicas*, NEXOS (Dec. 1, 2016), formato HTML, <https://www.nexos.com.mx/?p=30458>.

<sup>12</sup> Jorge Fernández Ruiz, *Los vicios de la contratación pública en México*, 66 DERECHO PUCP. REVISTA DE LA FACULTAD DE DERECHO 469 (2011) (noting that public sector contracts award is carried out without rectitude because the vices are incubated in the legal regulation itself, which allows corruption).

<sup>13</sup> See *La Estafa maestra. Graduados en desaparecer dinero público*, ANIMAL POLÍTICO (Sept. 5, 2017), <https://www.animalpolitico.com/estafa-maestra/> (discussing that during Peña Nieto’s administration, several Federal government’s agencies diverted 7 billion pesos (USD 45 million), giving them to 128 ghost companies through illegal contracts).

<sup>14</sup> ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, CONSEQUENCES OF CORRUPTION AT THE SECTOR LEVEL AND IMPLICATIONS FOR ECONOMIC GROWTH AND DEVELOPMENT 86 (2015) (stating that “petty corruption refers to minor payments for services that should have been offered free of charge or extra payments for services formally offered at a set price”).

<sup>15</sup> David Arellano Gault, *Corrupción ¿calle de una sola vía? La internalización del soborno en empresas en México*, 84 IZTAPALAPA. REVISTA DE CIENCIAS SOCIALES Y HUMANIDADES 163, 163 (2018) (stating that “companies build routines and internal solutions that allow them to meet the demand of bribery from public officials [ . . . ] companies create stable and organized internal processes to pay bribes as a normalized act”).

<sup>16</sup> José C. García González et al., *Public Sector Corruption in Mexico: Social Representations Among the Legal Community of the Federal District*, 37 U.

true for counselors that litigate before judicial bodies.<sup>17</sup> Day after day, citizens have participated in acts of corruption<sup>18</sup> either voluntarily to obtain undue benefits<sup>19</sup> and avoid sanctions or compulsorily, when illegal exactions are required in exchange for the provision of public services.<sup>20</sup>

The most serious corruption has occurred inside security and law enforcement institutions. Citizens have seen police as a corrupt institution that, instead of acting against crime, has allowed crime to increase.<sup>21</sup> Participation of policemen in crimes like extortion<sup>22</sup> and kidnapping<sup>23</sup> has shown the closeness between police forces and

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MIAMI INTER-AM. L. REV. 231, 258 (2006) (stating that corruption practices are habitual in Mexico's public administration, so "involvement in situations requiring bribery has become unavoidable for the lawyers who want to successfully negotiate government matters").

<sup>17</sup> See Alberto M. Binder, *Corrupción y sistemas judiciales*, 10 REFORMA JUDICIAL. REVISTA MEXICANA DE JUSTICIA 135, 138 (2007) (referring to the types of corruption inside judicial organizations and the participation of lawyers in acts of corruption).

<sup>18</sup> See CASAR, *supra* note 4, at 33 (citing polls that report the commission of more than 4 million annual acts of petty corruption in the contact of citizens with the authorities).

<sup>19</sup> See Bernardo Jiménez & María García, *Corrupción y caos urbano en Guadalajara, Jalisco México*, in COMO DISMINUIR LA CORRUPCIÓN Y MEJORAR LA GOBERNABILIDAD EN PAÍSES DE DESARROLLO 69 (María Ramos et al. eds., 2014) (citing evidence of acts of corruption related to the granting of licenses and permits in Guadalajara, which has caused urban chaos in that city).

<sup>20</sup> See Jassel Córdova Guzmán & Aldo F. Ponce, *Los tipos de corrupción y la satisfacción con los servicios públicos. Evidencia del caso mexicano*, 70 REGIÓN Y SOCIEDAD 231 (2017) (noting that corruption related to public services has a negative impact in the citizens' satisfaction level with the provision of those services).

<sup>21</sup> See Daniel M. Sabet, *Corruption or Insecurity? Understanding Dissatisfaction with Mexico's Police*, 55 LATIN AMERICAN POLITICS AND SOCIETY 22, 24–7 (2013) (referring to evidence on corrupt police and stating that corruption is seen as a "normality in relations between police and citizens").

<sup>22</sup> See Alberto Díaz-Cayeros et al., *Caught in the Crossfire: The Geography of Extortion and Police Corruption in Mexico* (Stanford Center for International Development Working Paper No. 545, Feb. 2015), [https://globalpoverty.stanford.edu/sites/default/files/publications/545wp\\_0.pdf](https://globalpoverty.stanford.edu/sites/default/files/publications/545wp_0.pdf).

<sup>23</sup> See Miquel À. Ruiz Torres y Elena Azaola Garrido, *Cuadrar el delito. Corrupción institucional y participación de policías en el secuestro en México*, 44 PERFILES LATINOAMERICANOS 91 (2014).

criminal groups and institutional reproduction of corruption inside police bodies.<sup>24</sup>

Acts of corruption by the public prosecutor agents have included the request of “gifts” to negotiate the liberation of arrested delinquents<sup>25</sup> and illicit grabbing of narcotics and other confiscated objects related to crimes.<sup>26</sup> Filling up the picture, the administration of justice has not been exempted from the commission of acts of corruption.<sup>27</sup>

The ceaseless rise of organized crime has worsened the consequences of the close relationship between corruption, delinquency, and impunity, which was a legacy of 20th century PRI’s regime<sup>28</sup> that following governments could not eliminate. For decades, drug cartels have corrupted policemen and politicians<sup>29</sup> by “using *plata o plomo* (bribe or bullet) techniques.”<sup>30</sup> Facing cartels’ power, officers have had two options: to be corrupted or to be killed.<sup>31</sup>

Previous governments have failed to cope with the double trouble of corruption and criminality. In a vicious circle, criminal organ-

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<sup>24</sup> *Id.*

<sup>25</sup> See Sánchez, Pablo Guerrero & Álvarez, Luis Pérez, “México, corrupción organizacional institucionalizada: un estudio de caso,” *Revista Iberoamericana de las Ciencias Sociales y Humanísticas [RICSH]*, vol. 5, núm. 9, June 2016.

<sup>26</sup> *Id.*

<sup>27</sup> See Binder, *supra* note 17.

<sup>28</sup> See Louise Shelley, *Corruption and Organized Crime in Mexico in the Post-PRI Transition*, 17 *JOURNAL OF CONTEMPORARY CRIMINAL JUSTICE* 213, 213-14 (2001) (stating that in 2000 President Fox faced the legacy of PRI that includes “institutionalized grand corruption and the political-criminal nexus of the drug traffickers with the state apparatus”).

<sup>29</sup> See *id.*; see also Imtiaz Hussain, *Mexico at bay? Corrupt cross-roads*, *COMO DISMINUIR LA CORRUPCIÓN Y MEJORAR LA GOBERNABILIDAD EN PAÍSES DE DESARROLLO* 41, 50 (María Ramos et al. eds., 2014) (stating that by the 1990s the cartels “penetrated every segment of public life at all levels of policy-making”).

<sup>30</sup> Susan Rose-Ackerman, *Corruption, Organized Crime, and Money Laundering*, World Bank Roundtable on Institutions, Governance and Corruption, Montevideo, (2016).

<sup>31</sup> See Justin B. Shapiro, *What Are They Smoking?! Mexico’s Decriminalization of Small-Scale Drug Possession in the Wake of a Law Enforcement Failure*, 42 *U. MIAMI INTER-AM. L. REV.* 115, 121 (2010) (stating that “those honorable officers who wish to maintain order and integrity will almost certainly be murdered by traffickers”).



izations have generated more corruption which, in turn, has promoted the proliferation of criminality and an increase in violence.<sup>32</sup> The firm hand strategy, which has been tackling delinquency since 2000, has produced paradoxical results.<sup>33</sup> The greater public force deployed by the State has produced more corruption and criminal violence,<sup>34</sup> rather than neutralize delinquency.

Scandals of corruption that involve high-level politicians, daily citizens' experience with bureaucratic corruption, and capture of police by organized crime have progressively darkened Mexico's corruption picture. In addition, mass media has spread the idea that corruption is an uncontrollable "cancer" endangering the nation.<sup>35</sup> Society's bad perception about the topic reflects this darkened picture. Nowadays, corruption is one of the main concerns for Mexicans.<sup>36</sup> It is recognized as a serious and frequent problem, which virtually occurs in almost all institutions.<sup>37</sup> In parallel, Mexico's evaluation

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<sup>32</sup> See Stephen D. Morris, *Corruption, Drug Trafficking, and Violence in Mexico*, 18 THE BROWN JOURNAL OF WORLD AFFAIRS 29 (2012) (stating that corruption facilitates the organized crime and at the same time drug trafficking cannot operate without corruption; also proposing a "paradox": that corruption once coexisted and facilitated peaceful operation of drug trafficking, but now coexists and facilitates a more violent crime).

<sup>33</sup> See Edgardo Buscaglia, *La Paradoja Mexicana de la Delincuencia Organizada: Policías, violencia y corrupción*, REVISTA POLICÍA Y SEGURIDAD PÚBLICA 275, 279 (2012) (noting the "paradox" that occurs when the State assigns more public force for repression of criminal groups; however, the same criminal groups generate more violence and corruption because they are always willing to buy officials).

<sup>34</sup> *Id.*

<sup>35</sup> See Fernando Gil Villa, *Discursos sobre corrupción en México*, 5 REV. SOCIEDAD & EQUIDAD 259, 261 (2013) (stating that media transmit a "catastrophic message": corruption is so widespread in the social body and is so lethal that it threatens democracy and social order).

<sup>36</sup> Instituto Nacional de Estadística y Geografía, *Resultados de la Encuesta Nacional de Calidad e Impacto Gubernamental 2017*, formato PDF, [http://www.beta.inegi.org.mx/contenidos/saladeprensa/boletines/2018/EstSegPub/encig2018\\_03.pdf](http://www.beta.inegi.org.mx/contenidos/saladeprensa/boletines/2018/EstSegPub/encig2018_03.pdf) (Comunicado de prensa No. 136/18, Mar. 22, 2018) (stating that in 2017 corruption was the second most worrying problem for Mexicans).

<sup>37</sup> CASAR, *supra* note 4, at 19–22 (citing polls that indicate that corruption is a serious problem for almost 80% of the citizens and is frequent or very frequent for 88%; also noting that the level of perception of corruption is high practically in all the analyzed institutions).

in the main international assessments, such as World Bank's Governance Indicators<sup>38</sup> and Transparency International's Corruption Perceptions Index,<sup>39</sup> has deteriorated in the last two years.

A part of the population has assumed the belief that corruption is a Mexican cultural problem.<sup>40</sup> Scholars have investigated the thesis of the relationship between Mexican culture and corruption,<sup>41</sup> even suggesting that corruption is "normal"<sup>42</sup> inside Mexican culture.<sup>43</sup> Rather than an open approval of corruption, several factors, among others, that have favored the spread of corruption to systemic levels<sup>44</sup> are presented in Mexican society: great citizen distrust in

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<sup>38</sup> Mexico's Percentile Rank in the Control of Corruption Indicator has gone down to 23.0769 in 2016, the lowest number since 2000. *See Worldwide Governance Indicators*, THE WORLD BANK GROUP (last visited Aug. 1, 2018), <http://info.worldbank.org/governance/WGI/#reports>.

<sup>39</sup> Mexico's score fell to 29 points in 2017, ranking in 135th place out of 180 countries. It is the lowest score since 2000. Mexico's score had remained stable during previous years: 3.3 in 2000, at the beginning of Vicente Fox's term; 3.3 in 2006, at the beginning of Calderón's term; and 34 in 2012, at the beginning of Peña Nieto's term. *See Corruption Perceptions Index*, TRANSPARENCY INTERNATIONAL (last visited Aug. 1, 2018), <https://www.transparency.org/research/cpi>.

<sup>40</sup> *See* Arturo Rodríguez García, "Me sostengo" en lo dicho, "la corrupción es cultural": Peña Nieto, PROCESO (Sept. 8, 2014), formato HTML, <https://www.proceso.com.mx/381646/me-sostengo-en-lo-dicho-la-corrupcion-es-cultural-pena> (explaining that President Peña Nieto himself pointed out that corruption is a "cultural issue" in Mexico).

<sup>41</sup> *See* Morris, *supra* note 3, at 676 (stating that "[c]orruption, in many ways, is deeply ingrained in the Mexican culture").

<sup>42</sup> Hussain, *supra* note 29, at 44 (stating that "Mexican corruption extends far beyond institutional settings into cultural confines, and routine daily activities that perpetrators take to be normal when, in fact, they remain part and parcel of what constitutes corruption").

<sup>43</sup> *Contra* Issa Luna Pla, *La corrupción no es un problema cultural*, HECHOS Y DERECHOS (Jan. 18, 2018) (stating that corruption is not a cultural problem but an educative and judicial problem).

<sup>44</sup> CASAR, *supra* note 4, at 22; *see also* Arellano Gault, *supra* note 15.

the government,<sup>45</sup> weak culture of legality,<sup>46</sup> institutional deficiencies that hinder prosecution and punishment, and wrong organizational behavior that induces corrupt practices.<sup>47</sup> Because of this combination of factors,<sup>48</sup> corruption in Mexico is not only a matter of individuals but a “dense social phenomenon.”<sup>49</sup>

### III. NATIONAL ANTI-CORRUPTION SYSTEM’S ORIGIN AND STRUCTURE

#### A. *Constitutional and Legal Reform Process*

The fight against corruption has been a hot issue in the Mexican governments agenda for several decades.<sup>50</sup> Since the 1980s, each administration has pushed a big solution for the big problem in a succession of “almost-ritualistic anti-corruption campaigns”<sup>51</sup> that have predominantly been useless.<sup>52</sup> Institutional actions have not

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<sup>45</sup> See Stephen D. Morris, *Mexico’s Political Culture: the Unrule of Law and Corruption as a Form of Resistance*, 3 MEXICAN LAW REVIEW 327 (2011) (stating that Mexicans neither trust the law nor its rulers and consider that sometimes breaking the law is legitimate).

<sup>46</sup> CASAR, *supra* note 4, at 34 (stating that Mexican citizens do not know the laws but thinks that disobeying unfair or unfavorable laws is valid); *see also* Cecilia Güemes, *La corrupción y la (des)confianza como normas sociales; Cambio de enfoque, nuevas perspectivas*, REVISTA INTERNACIONAL TRANSPARENCIA E INTEGRIDAD (Jan./Apr. 2018) (noting that people who fall into corruption think that others in the same situation would do the same).

<sup>47</sup> See David Arellano Gault, *Corrupción como proceso organizacional: comprendiendo la lógica de la desnormalización de la corrupción*, 62 CONTADURÍA Y ADMINISTRACIÓN 810, 813–14 (2017) (stating that organizations normalize practices and behaviors that induce corruption often as an unexpected or undesired consequence of the action).

<sup>48</sup> See Víctor Mauricio Castañeda Rodríguez, *Una investigación sobre la corrupción pública y sus determinantes*, 227 REVISTA MEXICANA DE CIENCIAS POLÍTICAS Y SOCIALES 103 (2016) (noting that corruption is the result of a combination of factors).

<sup>49</sup> Arellano Gault, *supra* note 47.

<sup>50</sup> See Daniel Márquez, *Mexican Administrative Law Against Corruption: Scope and Future*, 8 MEXICAN L. REV. 75, 81–82 (2015); Tromme & Lara Otaola, *supra* note 2, at 561–62; CASAR, *supra* note 4, at 49–50.

<sup>51</sup> Morris, *supra* note 3.

<sup>52</sup> See Jaime Talancón Martínez & Sofía Ramírez Aguilar, *Sistema Nacional Anticorrupción: Voluntad política y exigencia ciudadana*, NEXOS (Apr. 1, 2017),

produced results in the prevention and punishment fields. These failures have been associated with the “lack of political will”<sup>53</sup> of the ruling classes, who have avoided confronting the corrupt gangs’ power.<sup>54</sup>

With that record of failed solutions<sup>55</sup> behind him, Enrique Peña Nieto proposed his own plan against corruption focusing on two central axes: strengthening access to public information and creating an independent oversight body named National Anti-Corruption Commission.<sup>56</sup> The transparency and anti-corruption constitutional reform initiatives were presented to the Senate by the PRI’s parliamentary group in September and November 2012, even before Peña Nieto took office.<sup>57</sup>

During the following two years, the drafts were discussed in the legislature along with seven other initiatives presented by opposition parties. Also, congressmen heard civil society groups.<sup>58</sup> The constitutional reform on transparency was approved and published in 2014, followed by the constitutional reform on corruption in 2015.<sup>59</sup>

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formato HTML, <https://www.nexos.com.mx/?p=31917> (stating that anti-corruption institutions of the last decades have been very expensive for the taxpayers and have offered very few results in very long terms).

<sup>53</sup> *Id.*

<sup>54</sup> See Márquez, *supra* note 50, at 75 (stating that Mexican anticorruption model “has repeatedly designed administrative rules and structures that are unable to rise above the political and social spheres”).

<sup>55</sup> *Id.*

<sup>56</sup> See Tromme & Lara Otaola, *supra* note 2, at 559 (stating that Peña Nieto proposed “a) empowering the Federal Institute for the Access to Information and Data Protection [ . . . ] b) creating an independent body to oversee the purchase of governmental publicity, as well as c) a National Anti-Corruption Commission”).

<sup>57</sup> *Presentan en el Senado iniciativa anticorrupción de EPN*, ARISTEGUI NOTICIAS (Nov. 15, 2012), formato HTML, <https://aristeginoticias.com/1511/mexico/presentan-en-el-senado-iniciativa-anticorrupcion-de-epn/>.

<sup>58</sup> See María Marván Laborde, *Siete leyes y un elefante en la sala*, HECHOS Y DERECHOS (July 9, 2016), formato HTML, <https://revistas.juridicas.unam.mx/index.php/hechos-y-derechos/article/view/10549/12714>; see also CASAR, *supra* note 4, at 52.

<sup>59</sup> See generally *Decreto por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de transparencia. Proceso legislativo* (Feb. 7, 2014), formato PDF [http://www.diputados.gob.mx/LeyesBiblio/proceso/docleg/62/215\\_DOEF\\_07feb14.pdf](http://www.diputados.gob.mx/LeyesBiblio/proceso/docleg/62/215_DOEF_07feb14.pdf); see also *Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de combate a la corrupción. Proceso legislativo* (May 27, 2015), formato PDF,

These two reforms, which modified around twenty constitutional articles, establish the bases of two coordination agencies: the National Transparency System (*Sistema Nacional de Transparencia*, hereinafter SNT) and the SNA.

The SNT began to work in 2015 after the transparency law was enacted.<sup>60</sup> The system integrates an autonomous national body in charge of policies on transparency, access to information and personal data protection (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*, hereinafter INAI), and local institutes with reinforced attributes.<sup>61</sup> Other institutions such as the Chief Audit Office of the Federation (*Auditoría Superior de la Federación*, hereinafter ASF), the General Archive of the Nation (*Archivo General de la Nación*), and the National Institute of Statistics and Geography (*Instituto Nacional de Estadística y Geografía*) are also included.<sup>62</sup> The SNT's objectives are coordinating the elaboration and implementation of a comprehensive public policy on transparency, access to information, data protection, and strengthening oversight and effective accountability.<sup>63</sup>

The creation of the SNT reinforces an open government model in which transparency is a key action in the anti-corruption strategy.<sup>64</sup> As is known, open access to public information for the press and the citizenship contributes to discovering corruption practices

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[http://www.diputados.gob.mx/LeyesBiblio/proceso/docleg/62/223\\_DOF\\_27may15.pdf](http://www.diputados.gob.mx/LeyesBiblio/proceso/docleg/62/223_DOF_27may15.pdf).

<sup>60</sup> See generally Ley General de Transparencia y Acceso a la Información Pública [LGTAIP], Diario Oficial de la Federación [DOF], May 4, 2015.

<sup>61</sup> See Gobierno Federal, *Reforma en Materia de Transparencia. Resumen Ejecutivo* (Sept. 9, 2016), formato HTML, <https://www.gob.mx/sfp/acciones-y-programas/reforma-en-materia-de-transparencia-64474>.

<sup>62</sup> See LGTAIP, *supra* note 60, art. 30.

<sup>63</sup> SISTEMA NACIONAL DE TRANSPARENCIA, formato HTML, <http://www.snt.org.mx/> (consultada Sept. 9, 2018).

<sup>64</sup> See Martín Cutberto Vera Martínez et al., *El modelo de Gobierno Abierto en América Latina. Paralelismo de las políticas públicas de transparencia y la corrupción*, in 53 ÍCONOS. REVISTA DE CIENCIAS SOCIALES 85 (Pedro Salazar et al. cords., 2017) (noting that access to public information is a democratic instrument for combating corruption).

and produces a deterrent effect.<sup>65</sup> In addition, the start-up of the National Transparency Platform (*Plataforma Nacional de Transparencia*)<sup>66</sup> links the transparency policies with the e-government model.<sup>67</sup>

The 2015 constitutional reform laid the foundations of the SNA, whose legal framework was developed by the seven secondary laws enacted in 2016, four of which were new laws<sup>68</sup> and three of which were amendments to already existing laws.<sup>69</sup> The system was created to coordinate efforts of federal and local authorities in charge of administration control, oversight and auditing, and detection and sanctioning of acts of corruption. The SNA's main task will be the design and putting public policies into practices in these matters.<sup>70</sup>

Other agents, in addition to the government, pushed for the creation of the SNA. On the one hand, civil society supported the project of an independent anti-corruption agency with citizen members.<sup>71</sup> Since Vicente Fox's term, the involvement of civil society in

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<sup>65</sup> See Ximena Puente de la Mora, *La transparencia y el acceso a la información como herramientas contra la corrupción*, *CÓMO COMBATIR LA CORRUPCIÓN*, 107 (2017).

<sup>66</sup> PLATAFORMA NACIONAL DE TRANSPARENCIA, formato HTML, <https://www.plataformadetransparencia.org.mx/> (consultada July 10, 2018).

<sup>67</sup> See generally Laura Sour Vargas, *Gobierno electrónico y corrupción en México (2005-2010)*, 27 *REVISTA INNOVAR* 123 (2017) (stating that e-government promotes transparency in relations between public officials and citizens and reduces the chances of committing corruption acts).

<sup>68</sup> See generally Ley General del Sistema Nacional Anticorrupción [LGSNA], Diario Oficial de la Federación [DOF], July 18, 2016; Ley General de Responsabilidades Administrativas [LGRA], Diario Oficial de la Federación [DOF], July 18, 2016; Ley Orgánica del Tribunal Federal de Justicia Administrativa [LOTFJA], Diario Oficial de la Federación [DOF], July 18, 2016; Ley de Fiscalización y Rendición de Cuentas de la Federación [LFRCF], Diario Oficial de la Federación [DOF], July 18, 2016.

<sup>69</sup> See Ley Orgánica de la Administración Pública Federal [LOAPF], as amended, Diario Oficial de la Federación [DOF], Dec. 29, 1976; Ley Orgánica de la Procuraduría General de la República [LOPGR], Diario Oficial de la Federación [DOF], May 29, 2009; Código Penal Federal [CPF], Diario Oficial de la Federación [DOF], Aug. 14, 1934.

<sup>70</sup> See SISTEMA NACIONAL ANTICORRUPCIÓN, formato HTML, <http://sna.org.mx/> (consultada July 10, 2018).

<sup>71</sup> See Marván Laborde, *supra* note 58.

the fight against corruption commenced to grow.<sup>72</sup> This process was fueled by the idea that civil society is uncontaminated,<sup>73</sup> unlike politicians. Therefore, it can achieve better results in government control.<sup>74</sup> In recent years, non-governmental organizations and scholars have asked in public forums about the “citizenisation” (*ciudadanización*)<sup>75</sup> of anti-corruption institutions. Citizen pressure finally led to the incorporation of the Citizen Participation Committee within the SNA. This Committee will be a permanent link between the new agency and civil society.

On the other hand, international actors’ advice was a relevant factor in the SNA’s origin. To a large extent, the legal reforms and structural changes to combat corruption complied with global market guidelines<sup>76</sup> by the book.<sup>77</sup> In the last few decades, world institutions like the World Bank and the Organisation for Economic Co-

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<sup>72</sup> See Morris, *supra* note 3, at 678 (noting the unique situation of “growing involvement and empowering of civil society in the fight” against corruption that took place at the beginning of the century).

<sup>73</sup> See Morris, *supra* note 45, at 334 (stating that in Mexico there is a “pro-society bias” and a sense that “civil society [is] not contaminated” because citizens are “purer” than politicians).

<sup>74</sup> See *id.*

<sup>75</sup> See *id.*; see also Puente de la Mora, *supra* note 65, at 113.

<sup>76</sup> See Barry Hindess, *Introduction: How should we think about corruption?*, CORRUPTION: EXPANDING THE FOCUS 1 (2012) (stating that in the dominant contemporary discussion, “corruption is primarily an economic issue, both in its content [ . . . ] and in its most important effects”). This is an “economistic, market-based view of corruption” promoted by scholars like Susan Rose-Ackerman, who associates corruption with “dysfunctional public and private institutions” and suggests as remedy “major institutional reforms of the kind promoted by the ‘good governance’ programs of the World Bank and other international agencies.” *Id.*; see also Barry Hindess, *Good Government and Corruption*, CORRUPTION AND ANTI-CORRUPTION 1 (2012) (stating that corruption is “a predominantly economic issue” in “the modern understanding” that can be exemplified by Susan Rose-Ackerman’s account, whose ideas have been accepted by international financial institutions and many aid agencies).

<sup>77</sup> See Rose-Ackerman & Truex, *supra* note 4 (explaining that Mexico has adopted many provisions tending to “good governance,” including “improving top-down monitoring and punishment, fostering transparency and citizen involvement [ . . . ] improving the competitiveness of government asset sales and large purchases, and privatizing certain government services”).

Operation and Development (hereinafter OECD) have strongly recommended the creation of Anti-Corruption Agencies.<sup>78</sup> In the case of Mexico, the signing of the Inter-American Convention Against Corruption (hereinafter IACAC)<sup>79</sup> and of the United Nations Convention against Corruption (hereinafter UNCAC)<sup>80</sup> compelled the Mexican State to “create, maintain and strengthen”<sup>81</sup> an “[o]versight [body for] preventing, detecting, punishing and eradicating corrupt acts”<sup>82</sup> that shall be granted with “the necessary independence”<sup>83</sup> and provided with “[t]he necessary material resources and specialized staff.”<sup>84</sup>

At first, the Office of the Attorney General (*Procuraduría General de la República*, hereinafter PGR), with mandate for investigating and prosecuting corruption-related crimes in federal matters, assumed the role of competent Anti-Corruption Authority.<sup>85</sup> However, the PGR, hierarchically dependent upon the president, lacked the specialization and independence required by international standards.<sup>86</sup> Along with the PGR, the Inter-Secretarial Commission for

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<sup>78</sup> See Luis de Sousa, *Anti-Corruption Agencies: Between Empowerment and Irrelevance*, RSCAS 2008/09 European University Institute Working Paper, 1 (2009) (stating that “the Bretton Woods financial institutions, international donor agencies and nongovernmental organizations such as Transparency International” expected the creation of Anti-Corruption Agencies as a part of a response against corruption from transition and developing countries). Particularly, “[t]he OECD was probably a pioneer in suggesting the creation of this type of independent and specialized units to member states as an integral part of their ‘ethics infrastructures.’” *Id.*

<sup>79</sup> Signed by Mexico on March 29, 1996. Ratified by the Senate of the Republic on October 30, 1996.

<sup>80</sup> Signed by Mexico on December 9, 2003. Ratified by the Senate of the Republic on April 29, 2004.

<sup>81</sup> Inter-American Convention Against Corruption, art. III, Mar. 29, 1996, 35 I.L.M. 724 [hereinafter IACAC].

<sup>82</sup> *Id.* art. III. at 9.

<sup>83</sup> United Nations Convention against Corruption, art. 6.2, 43 I.L.M. 37 [hereinafter UNCAC].

<sup>84</sup> *Id.*; see also *id.* art 36.

<sup>85</sup> ANTI-CORRUPTION AUTHORITIES, formato HTML, <https://www.acauthorities.org/country/mx> (consultada Sept. 10, 2018).

<sup>86</sup> See *Specialized Anti-Corruption Institutions: Review of models*, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, 1 (2008) (stating that the criteria for effective specialized anti-corruption bodies required by the UNCAC includes independence, specialization, adequate training, and resources).



Transparency and Combat of Corruption in the Public Federal Administration (*Comisión Intersecretarial para la Transparencia y el Combate a la Corrupción en la Administración Pública Federal*), created by Vicente Fox, was the first agency in charge of coordinating anti-corruption efforts across federal government bodies.<sup>87</sup> However, this Commission lacked administrative and financial independence too.

The SNA follows the model of a “multi-purpose”<sup>88</sup> agency with faculties of prevention, investigation, repression of corruption, and policy design and evaluation.<sup>89</sup> On paper, Mexico’s SNA has some similarities with the Hong Kong’s agency,<sup>90</sup> which is considered one of the most successful examples of an anti-corruption institution in the world.<sup>91</sup>

### B. Central Committees

Three committees integrate the SNA: the Coordinating Committee, the Citizen Participation Committee, and the Steering Committee of the National Oversight System (*Sistema Nacional de Fiscalización*, hereinafter SNF). The Executive Secretariat, which is a technical body, also integrates the SNA jointly with the 32 local anti-corruption systems that attend through representatives.<sup>92</sup>

Five Federal institutions converge on the SNA: the ASF, the Public Function Secretariat of the Federal Executive (*Secretaría de la Función Pública*, hereinafter SFP), the Office of the Prosecutor

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<sup>87</sup> See Acuerdo por el que se crea la Comisión para la Transparencia y el Combate a la Corrupción en la Administración Pública Federal, como una comisión intersecretarial de carácter permanente, Diario Oficial de la Federación [DOF], Dec. 4, 2000, últimas reformas DOF Dec. 19, 2011 (Mex.).

<sup>88</sup> *Specialized Anti-Corruption Institutions: Review of models*, *supra* note 86, at 11.

<sup>89</sup> *Id.* (stating that a “multi-purpose” agency is based “on key pillars of repression and prevention of corruption: policy, analysis and technical assistance in prevention, public outreach and information, monitoring, investigation”).

<sup>90</sup> See Tromme & Lara Otaola, *supra* note 2, at 569 (stating that “Mexico’s Anti-Corruption Commission comes close to the Hong Kong model, in that it would include investigative, prosecutorial, and awareness-raising powers (El Universal, 2013)”).

<sup>91</sup> CASAR, *supra* note 4, at 47 (stating that the best examples of this model are the Hong Kong’s and Singapore’s agencies).

<sup>92</sup> See LGSNA, *supra* note 68, art. 7.

Specialized in Combating Corruption of the PGR (*Fiscalía Especializada en Combate a la Corrupción de la PGR*, hereinafter FECC), the Federal Court of Administrative Justice (*Tribunal Federal de Justicia Administrativa*, hereinafter TFJA), and the INAI. These five institutions' heads, together with a representative of the Citizen Participation Committee and a representative of the Council of the Federal Judiciary (*Consejo de la Judicatura Federal*), shape the Coordinating Committee.<sup>93</sup>

The SNA has the mission of “coordinating the fight against corruption among local and federal authorities [as well as] designing and implementing the anti-corruption policy.”<sup>94</sup> The Coordinating Committee, SNA's head, is the system's “fundamental piece”<sup>95</sup> that seeks to overcome defects of previous institutional projects, such as “fragmentation in policies”<sup>96</sup> and “implementation gaps”<sup>97</sup> because of lack of coordination. In addition to its main coordination functions, the Committee has power to issue non-binding public recommendations on the adoption of measures for preventing acts of corruption and improving internal control bodies' performance.<sup>98</sup> It also has authority to participate in the international cooperation mechanisms related to conventions.<sup>99</sup>

The Citizen Participation Committee is composed of five citizens with “probity and prestige,”<sup>100</sup> who “have stood out for their contribution to transparency, accountability or fight against corruption.”<sup>101</sup> The Committee's purpose is to contribute to fulfillment of

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<sup>93</sup> See Constitución Política de los Estados Unidos Mexicanos [CPEUM], art. 113, Diario Oficial de la Federación [DOF], Feb. 5, 1917, últimas reformas DOF Feb. 10, 2014 (Mex.).

<sup>94</sup> SISTEMA NACIONAL ANTICORRUPCIÓN, *supra* note 70.

<sup>95</sup> Miguel Ángel Gutiérrez Salazar, *La Auditoría Superior de la Federación y la conformación del Sistema Nacional Anticorrupción*, 37 CUESTIONES CONSTITUCIONALES. REVISTA MEXICANA DE DERECHO CONSTITUCIONAL 51, 56 (2017).

<sup>96</sup> *OECD Integrity Review of Mexico: Taking A Stronger Stance Against Corruption*, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, 13 (2017).

<sup>97</sup> *Id.*

<sup>98</sup> LGSNA, *supra* note 68, art. 9.IX.

<sup>99</sup> See *id.* art. 9.XVII.

<sup>100</sup> *Id.* art. 16.

<sup>101</sup> CPEUM, *supra* note 93, art. 113.II.

SNA's objectives by being a link with social and scholar organizations.<sup>102</sup> Among other functions, the Committee can give opinions on the design of policies,<sup>103</sup> propose projects,<sup>104</sup> and build a citizen participation network based on a voluntary registry of civil society organizations.<sup>105</sup> Citizen Committee's president, as a representative before the Coordinating Committee, also chairs the SNA.<sup>106</sup>

The SFP and the ASF, together with the federal states', audit bodies and the local secretariats responsible for administrative internal control form the SNF.<sup>107</sup> The SNF's purpose is to establish actions and coordination mechanisms in the matters of internal control, oversight, and auditing of public funds.<sup>108</sup> The two federal agencies' holders, along with seven rotating members of the local bodies, shape the SNF's Steering Committee.<sup>109</sup>

The SNA's Executive Secretariat has the nature of a decentralized organism with its own assets and technical and management autonomy.<sup>110</sup> It provides technical support and assistance as well as the necessary inputs for the functioning of the Coordinating Committee.<sup>111</sup> This body will have the fundamental task of warranting the availability of resources and financial viability of the Committee. The annual Expenditure Budget will allocate the public funds for this body and for the whole SNA.<sup>112</sup>

While central committees perform the coordinating and planning desk job, the field job is carried out by the various institutions

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<sup>102</sup> LGSNA, *supra* note 68, art. 15.

<sup>103</sup> *Id.* art. 21.VI.

<sup>104</sup> *Id.* art. 21.VII.

<sup>105</sup> *Id.* art. 21.IX.

<sup>106</sup> LGSNA, *supra* note 68, art. 10.I.

<sup>107</sup> *Id.* art. 37.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* art. 39.

<sup>110</sup> *Id.* art. 24.

<sup>111</sup> LGSNA, *supra* note 68, art. 25.

<sup>112</sup> *See id.* art. 25.II. (explaining that in 2018, the federal institutions member of the SNA received jointly Mexican pesos 3,981 million (around USD 205 million)). The 56% went to the ASF. *Id.* The 4% (almost USD 9 million) went to the Executive Secretariat and central committees. *Id.*; *see also* Presupuesto de Egresos de la Federación para el Ejercicio Fiscal 2018, Diario Oficial de la Federación [DOF] Nov. 19, 2017 (Mex.).

that converge in the SNA. Each of these bodies performs tasks related to control of public officials, audit of public funds, and determination of responsibilities and punishment of illegal acts.

*C. Internal Control Bodies*

The SFP commands the internal control of the administration. The SFP is a non-autonomous organ, part of the federal centralized administration, and is dependent on the Executive. Its holder is designated by the president and ratified by the Senate.<sup>113</sup> The SFP performs internal control tasks by itself by carrying out the expenditure inspection and evaluation of administrative management or through the internal control bodies of each of the federal departments and agencies, which it coordinates.<sup>114</sup> The SFP issues the rules of internal control<sup>115</sup> and audit procedures,<sup>116</sup> as well as the mechanisms for the prevention of unlawful acts and the surveillance of public officials.<sup>117</sup> Both the SFP and the internal control bodies of the different agencies oversee the planning and implementation of general mechanisms for the prevention of acts of corruption.<sup>118</sup>

The SFP also fights corruption through keeping track of public servants' declarations of assets and interests.<sup>119</sup> It creates and oversees the general policies on public procurement<sup>120</sup> and issues the Code of Ethics and Rules of Integrity for the exercise of public functions.<sup>121</sup> Likewise, it has authority for investigating and sanctioning non-serious administrative misdemeanors.<sup>122</sup>

*D. Audit Bodies*

Oversight tasks are carried out by the SFP in conjunction with the ASF. The SFP is responsible for auditing and monitoring the

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<sup>113</sup> See LOAPF, *supra* note 69, art. 37.

<sup>114</sup> See *id.* art. 37.I.

<sup>115</sup> See *id.* art. 37.II.

<sup>116</sup> See *id.* art. 37.IV.

<sup>117</sup> See *id.* art. 37.XIX.

<sup>118</sup> See LGRA, *supra* note 68, art. 15.

<sup>119</sup> See LOAPF, *supra* note 69, art. 37.XVI.

<sup>120</sup> See *id.* art. 37.XXI.

<sup>121</sup> See *id.* art. 37.XXVIII.

<sup>122</sup> See *id.* art. 37.XVIII.

expenditure of federal funds from within as part of the federal administration's internal control bodies functions.<sup>123</sup> The ASF performs an external control over all government bodies. Both control procedures are independent and autonomous.<sup>124</sup>

Unlike the SFP, the ASF is autonomous. The ASF belongs to the Chamber of Deputies to the Congress of the Union, but it regulates as a technical oversight organism<sup>125</sup> with management<sup>126</sup> and technical<sup>127</sup> autonomy. The ASF oversees the State's treasury use in all State areas: the three Powers of the Union, the autonomous constitutional bodies, and the state governments and municipalities.<sup>128</sup> Likewise, it may audit any individual or private entity that collects, manages, or expends federal funds.<sup>129</sup>

The ASF audits the public account after the financial year ends,<sup>130</sup> in accordance with the principle of annuity. However, in special cases, when well-founded complaints are filed, the ASF may carry out reviews during the current financial year for the current or previous annual periods.<sup>131</sup> Among the institutions that form the SNA, the ASF is recognized as the most effective because of its transparent and objective outcomes in the past.<sup>132</sup> In this idea, the ASF constitutes as the SNA's "substantive pillar"<sup>133</sup> in oversight matters.

#### *E. Administrative Responsibilities Subsystem*

The SNA's other central axis is the new public officials' responsibilities regime. These reforms have strengthened the two areas of

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<sup>123</sup> See *id.* art. 37.XXIV.

<sup>124</sup> See LFRCF, *supra* note 68, art. 6.

<sup>125</sup> See *id.* art. 4.I; see also CPEUM, *supra* note 93, art. 74.II, 79.

<sup>126</sup> Management autonomy refers to the decisions on the internal organization, structure and functioning, as well as the administration of its human, material and financial resources. See LFRCF, *supra* note 68, art. 4.III.

<sup>127</sup> Technical autonomy consists in the power to decide on the planning, programming, execution, reporting, and monitoring of the audit process. See *id.* art. 4.IV.

<sup>128</sup> *Id.* art. 4.XI.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* art. 6.

<sup>131</sup> See *id.* arts. 59–66; see also CPEUM, *supra* note 93, art. 79.I.

<sup>132</sup> See Gutiérrez Salazar, *supra* note 95, at 52.

<sup>133</sup> *Id.* at 53.

responsibility for lack of integrity and acts of corruption: administrative and criminal.<sup>134</sup>

The administrative liability procedure begins when an irregularity that may constitute an administrative misdemeanor is detected by the control and oversight bodies. An investigation may also begin when a complaint is filed.<sup>135</sup> According to the new rules established in 2016, administrative misdemeanors are classified into two classes: non-serious and serious. Non-serious infringements consist of service duty breaches committed by public officials.<sup>136</sup> These non-serious infringements are substantiated and if necessary, sanctioned by the authorities in charge of internal control (the SFP) and external control (the ASF). Serious misdemeanors are acts of corruption comparable to criminal offenses (such as bribery, embezzlement, treasury diversion, information misuse, action under conflict of interest, and trading in influence).<sup>137</sup> These serious misdemeanors will be substantiated and sanctioned by the TFJA, an independent jurisdictional body.<sup>138</sup>

A big innovation is that the TFJA may also punish private agents for acts linked to serious administrative misdemeanors. These sanctions will be independent of other types of responsibilities, such as criminal ones. In addition to economic punishments, disqualification to participate in services or public works hiring may be imposed as well as compensation for damages.<sup>139</sup> The legal entities may also be sanctioned with an activities suspension or even dissolution. To do that, the acts related to serious administrative infringements must be done by individuals acting on behalf of the legal entity and for its

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<sup>134</sup> See ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *supra* note 14, at 96 (stating that the SNA has as one of its objectives: “strengthening enforcement mechanisms for investigating and sanctioning integrity breaches by public officials and firms under both administrative and criminal jurisdictions”).

<sup>135</sup> See LGRA, *supra* note 68, arts. 90–99.

<sup>136</sup> See *id.* art. 49.

<sup>137</sup> See *id.* arts. 51–64.

<sup>138</sup> See LOTFJA, *supra* note 68, arts. 1, 4.

<sup>139</sup> See *id.* art. 20.XI.

benefit.<sup>140</sup> This is a great first step in the fight against corruption in the private sector.<sup>141</sup>

As a part of SNA's reforms, a third section was created within the TFJA's Superior Chamber in addition to five Specialized Chambers in the matter of Administrative Responsibilities.<sup>142</sup> These bodies will have exclusive competence to resolve and sanction administrative misdemeanors related to corruption. Until September 2018, because of the lack of political agreements, the appointments of these magistrates have not been ratified, which means that this SNA's branch has not started to work.<sup>143</sup>

#### F. *Criminal Responsibilities Subsystem*

When the control and oversight bodies in exercise of their faculties identify acts of corruption that may be criminal offenses, they should submit the corresponding denouncement to the FECC.<sup>144</sup> The FECC is a body with technical and operational autonomy, which is responsible for investigating the acts that the law considers criminal offenses of corruption on the federal level. The prosecutor will be responsible for presenting charges before the judicial authority where appropriate.<sup>145</sup> So, the explicit<sup>146</sup> powers (i.e. the fight against corruption) of this new law enforcement body refer to criminal offenses established in the Tenth Title of the Federal Penal Code.<sup>147</sup>

<sup>140</sup> See *id.* art. 20.XII.

<sup>141</sup> See Francisco Ibarra Palafox, *Corrupción y poderes privados*, in *CÓMO COMBATIR LA CORRUPCIÓN* 187 (Pedro Salazar et al. coords., 2017).

<sup>142</sup> See LOTFJA, *supra* note 68, arts. 20, 37–39.

<sup>143</sup> See Luis Pérez de Acha y Denise Tron Zuccher, *¿Y los magistrados anti-corrupción?*, EL MUNDO DEL ABOGADO (Aug. 31, 2018), <https://elmundodelabogado.com/revista/item/y-los-magistrados-anticorrupcion> (referring to the fact that in April 2017, President Enrique Peña Nieto appointed the 18 anti-corruption magistrates). According to the law, the appointment had to be ratified by the Senate, which never happened. *Id.* As a result, in September 2018, the system of administrative responsibilities is not integrated yet. *Id.*

<sup>144</sup> See LGRA, *supra* note 68, arts. 10–11.

<sup>145</sup> See LOPGR, *supra* note 69, art. 10 Bis.

<sup>146</sup> Alberto Herrera Pérez, *Fiscalía Especializada en Combate a la Corrupción (breves comentarios jurídicos a su creación)*, 34 CUESTIONES CONSTITUCIONALES. REVISTA MEXICANA DE DERECHO CONSTITUCIONAL 225, 227 (2016).

<sup>147</sup> Before the 2016 reform, these offenses were called “crimes committed by public officials.” Currently the offenses are the following: illicit exercise of public

The FECC was created in 2014<sup>148</sup> after a constitutional political reform that changed the PGR's organic framework. This constitutional reform granted the PGR the nature of an autonomous body.<sup>149</sup> The promulgation of a new Organic Law and the appointment of a new Attorney General, which took place in December 2018, was necessary to finish the transformation process.<sup>150</sup> The lack of political consensus between political forces and the disagreement between various civil groups with the procedure envisaged<sup>151</sup> have caused this delay of four years.

These disagreements have impacted the start-up of the FECC. Since its creation in 2014, the body has had no holder because its initial appointment also has corresponded to the Senate. Thus, in the absence of a prosecutor, this SNA branch has not been put into full operation.

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service, abuse of authority, forced disappearance of person, coalition of public officials, illicit use of powers and faculties, extortion, intimidation, abuse of functions, trading in influence, bribery, bribery of foreign public officials, embezzlement, and illicit enrichment. *See* CPF, *supra* note 69, arts. 212–24.

<sup>148</sup> *See* Acuerdo A/011/14 por el que se crea la Fiscalía Especializada en materia de Delitos relacionados con Hechos de Corrupción y se establecen sus atribuciones, Diario Oficial de la Federación [DOF] 03-12-2014 (Mex.).

<sup>149</sup> The reform also changed the Attorney General's Office's name: instead of "*Procuraduría*" it becomes "*Fiscalía*". *See* Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia política-electoral, art. 102.A, Diario Oficial de la Federación [DOF] 02-10-2014 (Mex.).

<sup>150</sup> The entry into force of these reforms was conditioned on the issuance of secondary rules, after which an "express declaration" by the Congress of the "coming into force of the constitutional autonomy of the Republic Attorney General's Office" should be done. *See id.* art. Sixteenth Transitory.

<sup>151</sup> The 2014 reform provides that the Attorney General in office (appointed by the president) at the time which Congress issues the autonomy declaration will keep as a holder of the new office and will last nine years in chair. This is the central point of the debate because several civil society organizations claim that this procedure will not guarantee the independence of the Attorney. *See* Arturo Angel, *¿Cómo elegir al fiscal general? Lo que quiere AMLO vs. la propuesta de #FiscalíaQueSirva*, ANIMAL POLÍTICO (July 10, 2018), <https://www.animalpolitico.com/2018/07/fiscal-general-amlo-propuesta/>.



### G. *Local Anti-Corruption Systems*

Finally, the coordination between the 32 federal states and the Federation is another part of SNA's axis. According to the constitutional model, federal entities must create local anti-corruption systems that should replicate the federal system's structure and institutions, which are central committees; control and oversight bodies; prosecutor's office; and specialized courts with jurisdiction for imposing sanctions on individuals and private companies.<sup>152</sup>

Local systems' representatives will join the SNA, completing the complex model. This means that states must also harmonize their legislation with the federal sphere by enacting these seven laws at the local level. Likewise, they must proceed with the integration of the instances and the appointment of the bodies' holders. Until September 2018, twenty-one states have completed and implemented the legislative's harmonization. However, only sixteen states have fully established the whole system.<sup>153</sup>

## IV. NATIONAL ANTI-CORRUPTION SYSTEM'S IMMEDIATE FUTURE

### A. *New Government: New Legal Reforms?*

Corruption was one of the main issues during the 2018 electoral process. Mutual accusations of acts of corruption dominated the presidential campaign, instead of public policies and proposals. Finally, the PRI's defeat was associated with the great corruption scandals unleashed during Peña Nieto's term,<sup>154</sup> in which the same president was involved.

The winning candidate made the fight against corruption one of his main flagship issues. In his rhetoric speeches, López Obrador

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<sup>152</sup> See CPEUM, *supra* note 93, art. 113.

<sup>153</sup> See Sistema Nacional Anticorrupción, *Seguimiento. Sistemas Locales Anticorrupción de las Entidades Federativas* (Sept. 17, 2018), formato PDF, [http://sna.org.mx/wpcontent/uploads/2018/09/Seguimiento\\_32SLA-17.09.2018-Tablas.pdf](http://sna.org.mx/wpcontent/uploads/2018/09/Seguimiento_32SLA-17.09.2018-Tablas.pdf).

<sup>154</sup> See Sonia Corona, *El PRI se derrumba tras las elecciones en México*, EL PAÍS (July 3, 2018), formato HTML, [https://elpais.com/internacional/2018/07/02/mexico/1530556371\\_889535.html](https://elpais.com/internacional/2018/07/02/mexico/1530556371_889535.html).

talked about an authentic “crusade” or a “social movement” to combating corruption.<sup>155</sup> However, among his proposals, he did not present a clear position about the SNA’s future.<sup>156</sup> The document, “50 points to fight corruption,” which was made public after its triumph, indicates various measures of austerity, transparency, and control of public officials but does not mention the SNA.<sup>157</sup> Regarding institutional framework, this document only mentions the issue of the anticorruption prosecutor’s autonomy.<sup>158</sup>

After July 1st, this silence about the SNA provoked uncertainty. It is unclear whether the new government intends to continue the agency<sup>159</sup> or plans to replace it with another institutional project. Considering the lack of continuity of public policies across presidential periods that are usual in Mexico, the main fear is that López Obrador’s government will turn the rudder and abandon the SNA to make a fresh start. On the other hand, some “bad signals” after López Obrador’s triumph have also contributed to the uncertainty. For example, he has been tolerant with the incorporation into MORENA of politicians with records of corruption.<sup>160</sup> Fronting López Obrador’s silence, the SNA’s Citizen Committee has delivered the results of a public consultation about the integration of the national anti-corruption policy that has been carried out in the last

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<sup>155</sup> See Alejandro Medina, *La cruzada de AMLO contra la corrupción*, FORBES (May 18, 2018), formato HTML, <https://www.forbes.com.mx/la-cruzada-de-amlo-contra-la-corrupcion/>.

<sup>156</sup> See Palmira Tapia, *El Sistema Anticorrupción y el nuevo gobierno*, FORBES (July 25, 2018), formato HTML, <https://www.forbes.com.mx/el-sistema-anticorruptcion-y-el-nuevo-gobierno/>.

<sup>157</sup> See *Los 50 puntos del plan anticorrupción y de austeridad de AMLO*, FORBES (July 15, 2018), formato HTML, <https://www.forbes.com.mx/estos-son-los-50-puntos-del-plan-anticorruptcion-y-de-austeridad-de-amlo/>.

<sup>158</sup> *Id.*

<sup>159</sup> See Robert Clark, *AMLO’s Election and the Future of Mexico’s National Anti-Corruption System*, FCPAMÉRICAS (July 30, 2018), <https://fcpamerica.com/english/enforcement/amlos-election-futuremexicos-national-anti-corruption-system/>.

<sup>160</sup> See Leo Zuckerman, *Las malas señales de AMLO en combate a la corrupción*, EXCÉLSIOR (July 10, 2018), formato HTML, <https://www.excelsior.com.mx/opinion/leo-zuckermann/las-malas-senales-de-amlo-en-combate-a-la-corruptcion/1251311>.

months of 2018.<sup>161</sup> This is a way to say – here we are, and we will continue working.

As the inauguration approached, the picture begins to clear. Irma Eréndira Sandoval (López Obrador’s proposal for SFP’s head) has indicated that the SNA will be maintained, adjusting the designation processes of the SNA’s dependencies’ heads and incorporating the bodies in charge of electoral matters: National Electoral Institute (*Instituto Nacional Electoral*) and Office of the Prosecutor Specialized in Electoral Crimes (*Fiscalía Especializada para la Atención de Delitos Electorales*).<sup>162</sup> Besides, the team in transition has not expressly proposed the creation of new institutions.

Instead of starting from zero, the incoming government has a great opportunity to give continuity to the SNA. The new administration should recognize that it was an initiative supported by a coalition of civil society actors<sup>163</sup> and not an exclusive idea of Peña Nieto’s group. López Obrador comes to power with enough political backup to promote the consensus required to complete the SNA’s starting-up in the critical areas of prosecution and punishment of corruption offenses.

Additionally, the promulgation of new legislation mentions the specific matters of conflicts of interest, witnesses, and whistleblowers protection.<sup>164</sup> Senators of MORENA have already presented in-

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<sup>161</sup> See Héctor Molina, *Presentarán a AMLO propuesta de política anticorrupción a finales de año*, EL ECONOMISTA (Aug. 29, 2018), formato HTML, <https://www.eleconomista.com.mx/politica/Presentaran-a-AMLO-propuesta-de-politica-anticorrupcion-a-finales-de-ano-20180829-0048.html>; see also Sistema Nacional Anticorrupción, *Propuesta de la Política Nacional Anticorrupción* (Dec. 14, 2018), formato PDF, <http://www.gob.mx/sesna/articulos/propuesta-de-politica-nacional-anticorrupcion-185184>.

<sup>162</sup> See Ariadna Ortega, *¿Qué ‘ajustes’ quiere hacer el equipo de AMLO al SNA?*, ADNPOLÍTICO (Oct. 3, 2018), <https://adnpolitico.com/presidencia/2018/10/03/que-ajustes-quiere-hacer-el-equipo-de-amlo-al-sna>.

<sup>163</sup> See Clark, *supra* note 159 (stating that López Obrador, recognizing the “value of continuity and stability[,] . . . can find a way to build on the work Mexico’s civil society has performed in codifying the National Anti-Corruption System, instead of letting this potentially durable tool turn to rust”).

<sup>164</sup> See Ortega, *supra* note 162.

initiatives before the Chamber of Senators to elevate the acts of corruption to the category of serious criminal offenses.<sup>165</sup> As a consequence, this measure would result in the preventive imprisonment of the accused during the prosecution. This proposal was formulated by López Obrador himself during his campaign.<sup>166</sup>

In general, the adjustments are positively expected. Analysts acknowledge that, after two years of half operations, the SNA has not yielded visible results beyond showing that Mexico still lacks a national and articulated anti-corruption public policy.<sup>167</sup> Consequently, it is conveniently updating to an SNA “version 2.0”<sup>168</sup> that consolidates the coordination and articulation of public policy. Firstly, the debate on whether maintaining the current specialized prosecutor appointment process or reforming it should be resolved.<sup>169</sup>

For adjusting, it is necessary to have clarity about the SNA’s nature. The big innovation introduced by 2016 legal reforms was the SNA’s central coordination body, which was formed by the central committees. However, these reforms did not create new institutions for the tasks of control and oversight. These tasks belonged to institutions that already existed and performed their functions with greater or lesser effectiveness. In the case of the tasks of prosecution and sanction of responsibilities, the new specialized institutions are still not working, as it has been mentioned.

In this way, the current lack of results in the prevention and punishment of acts of corruption should not be understood as a direct failure of the SNA’s coordination head, but rather, because of deficiencies of the bodies that converge on the system. In this manner,

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<sup>165</sup> See Senado de la República, *Elevar a delitos graves corrupción, robo de hidrocarburos, portación de armas y fraudes electorales, propone Ricardo Monreal* (Sept. 20, 2018), formato HTML <http://comunicacion.senado.gob.mx/index.php/informacion/boletines/41774-elevar-a-delitos-graves-corrupcion-robo-de-hidrocarburos-portacion-de-armas-y-fraudes-electorales-propone-ricardo-monreal.html>.

<sup>166</sup> See *Trabaja el presidente electo de México, Andrés Manuel López Obrador en dos paquetes de iniciativas de reformas* (Aug. 10, 2018), formato HTML, <https://lopezobrador.org.mx/temas/combate-a-la-corrupcion/>.

<sup>167</sup> See Eduardo Bohórquez, *Por un Sistema Nacional Anticorrupción 2.0*, LETRAS LIBRES (Jan. 2, 2018), <https://www.letraslibres.com/mexico/revista/por-un-sistema-nacional-anticorrupcion-20-0>.

<sup>168</sup> *Id.*

<sup>169</sup> See Angel, *supra* note 151.

the adjustments must begin from a diagnosis of each institution's weaknesses to refine the necessary details for improving. The creation of new bureaucratic bodies should not be the option if it leads to the fragmentation of efforts.<sup>170</sup>

On the other hand, linking the SNA with other administration bodies is proposed. For example, the Ministry of Education must promote integrity and ethics through educational policies.<sup>171</sup> Likewise, the Ministry of Finance will provide the necessary resources for the system operation.<sup>172</sup> As a coordination agency, SNA should direct and draw the route, but not work isolated from the rest of the State.<sup>173</sup> Anti-corruption actions should be carried out in a transversal way by many governmental actors.

Politicians and administrators should have in mind that the establishment of the SNA is only the starting point of a long road. Its mere creation is not a guarantee of anything.<sup>174</sup> There is a long list of anti-corruption institutions that have failed in both Mexico<sup>175</sup> and in the world.<sup>176</sup> Besides being provided with the necessary resources, the SNA's success depends on the government granting the

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<sup>170</sup> See Tromme & Lara Otaola, *supra* note 2, at 578 (stating that in Mexico's institutional reforms "[t]here is a fragmentation of efforts resulting in more bureaucracy . . . [as] [e]ach project . . . is added on to the previous one, resulting in a patchwork system (*instituciones 'chipotle'*)").

<sup>171</sup> See ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *supra* note 96, at 35–36.

<sup>172</sup> See *id.*

<sup>173</sup> *Id.* (stating that "[a]nti-corruption is a cross-cutting issue that involves all of government"). "A typical failure of anti-corruption strategies is that implementation is assigned to a single anti-corruption body . . . without acknowledging that these bodies usually lack the authority to demand action from other public institutions." *Id.*

<sup>174</sup> See CASAR, *supra* note 4, at 53.

<sup>175</sup> See Márquez, *supra* note 50, at 75, 92 (stating that the new mechanisms "will not eliminate corruption in the country because they replicate the same model established for reforming legal institutions"). The Mexican anticorruption model has a "dysfunctional nature": "it has the laws and the institutions, but little or no effectiveness." *Id.*

<sup>176</sup> See de Sousa, *supra* note 78, at 1 (stating that Anti-Corruption Agencies "are often regarded by governments, donors and international governmental organizations . . . as the ultimate institutional response to corruption. Most [agencies] have been set up in a context of systemic corruption and a considerable number of them have fallen short of the expectations raised").

political backup required to directly confront the interests of the corrupt groups entrenched in power. If the government does not show the will to challenge these factions, anti-corruption institutions' mission will fail as soon as it meets the wall of those interests.<sup>177</sup>

*B. International Anti-Corruption Conventions Implementation Gaps*

Full compliance of recommendations derived from international conventions still is a pending issue to be addressed in the immediate future of anti-corruption institutions. In 2012, the country had only complied with the implementation of 23% of the measures contained in the UNCAC or Merida's Convention.<sup>178</sup> The Report on compliance derived from the visit of the Intergovernmental Review Mechanism in 2013 recommended specific legislative adjustments, such as the harmonization of the criminal offenses provided in Mexican legislation with the corruption conduct listed in the UNCAC.<sup>179</sup>

The 2016 reforms met most of those recommendations for the federal level. However, some issues remain pending, such as the criminalization of transnational passive bribery,<sup>180</sup> as well as the possibility of criminalizing bribery<sup>181</sup> and embezzlement<sup>182</sup> in the private sector. Similarly, the Mexican legislation on illicit enrichment has some issues that should be removed, including the requirement of connection with the individual's employment, which does not appear in the UNCAC.<sup>183</sup> At the local level, the differences between the 32 penal codes of states and the Convention's corruption

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<sup>177</sup> See Tromme & Lara Otaola, *supra* note 2, at 578 (stating that “[a]lthough some [agencies] have been successful in fighting corruption, in most cases, they falter whenever they uncover the dirty linen of those in power (c.f. the Icarus Paradox)”).

<sup>178</sup> See Edgardo Buscaglia, *supra* note 33, at 276.

<sup>179</sup> See United Nations Office on Drugs and Crime, *Informe sobre el examen de México. Examen por Azerbaiyán y Perú sobre la aplicación por parte de México de los artículos 15 – 42 del Capítulo III. “Penalización y aplicación de la ley” y artículos 44-50 del Capítulo IV. “Cooperación Internacional” de la Convención de las Naciones Unidas contra la Corrupción para el ciclo de examen 2010 – 2015*, 1, 21 (Nov. 3-4, 2015).

<sup>180</sup> See UNCAC, *supra* note 83, art. 16.

<sup>181</sup> See *id.* art. 21.

<sup>182</sup> See *id.* art. 22.

<sup>183</sup> See *id.* art. 20.

offenses are extensive. It is very important to move towards the homogenization of the states' penal codes regarding corruption.

In addition to the substantive adjustments, the UNCAC's Review Mechanism recommended several procedural changes, such as extending the protection of witnesses, whistleblowers, and their relatives and close persons,<sup>184</sup> which Mexican law provides for cases of serious offenses and organized crime, to cases regarding corruption offenses.<sup>185</sup> The 2016 reforms addressed this issue by stating the possibility of anonymous complaints as well as identity protection measures for whistleblowers and witnesses in administrative liability proceedings for acts of corruption.<sup>186</sup> Likewise, since 2014, the criminal proceedings law contemplates protection measures for witnesses and whistleblowers in criminal proceedings.<sup>187</sup>

However, these protections are not enough because Mexican law does not include clear safeguarding mechanisms post-intervention in the criminal process. For example, there are not legal protections in labor matters for cases in which the informant or witness suffer negative consequences, such as removal.<sup>188</sup> The insufficient protection of whistleblowers and witnesses is also an aspect that has been highlighted by the Follow-up Mechanism on the implementation of IACAC, suggesting the adoption of a better regulation in the matter.<sup>189</sup>

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<sup>184</sup> See *id.* art. 32–33.

<sup>185</sup> See United Nations Office on Drugs and Crime, *supra* note 179, at 6.

<sup>186</sup> See LGRA, *supra* note 68, arts. 64, 91.

<sup>187</sup> See Código Nacional de Procedimientos Penales [National Code of Criminal Proceedings], *as amended*, arts. 367, 370, Diario Oficial de la Federación [DOF], Mar. 5, 2014 (Mex.) [hereinafter CNPP].

<sup>188</sup> See ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *supra* note 96, at 127 (stating that “[c]omprehensive whistleblower protection includes a number of mechanisms that seek to compensate whistleblowers experiencing reprisals in the workplace, such as dismissal, demotion or suspension; transfer or reassignment; or change in duties”).

<sup>189</sup> See *Organization of American States, Mechanism for Follow-Up on Implementation of the Inter-American Convention Against Corruption [MESISIC]. Mexico: Final Report*, 77 (Sept. 15, 2016), [http://www.oas.org/juridico/pdfs/mesisic5\\_inf\\_mex\\_eng.pdf](http://www.oas.org/juridico/pdfs/mesisic5_inf_mex_eng.pdf) (recommending, in order of the implementation of IACAC art. III.8, the adoption of a “comprehensive regulation on the protection of public servants and private citizens who in good faith report acts of corruption, including protecting their identity, in accordance with the CPEUM and the fundamental principles of its domestic legal order, bearing in mind the criteria set forth

Regarding the benefits for the participants in corruption offenses who later collaborate with the justice as witnesses or informants,<sup>190</sup> the Mexican procedural law contemplates some privileged treatments, for example: the reduction of punishment, subject to the admission of responsibility in an abbreviated trial;<sup>191</sup> or the exemption of judicial process by application of an opportunity criterion, which is subjected to the provision of information for the prosecution of a more serious crime.<sup>192</sup> However, these general measures neither refer specifically to corruption offenses nor do they reach the level of “judicial immunity” recommended by the UNCAC.<sup>193</sup>

Mexico also has some pending adjustments related to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The last implementation report of 2014 pointed out several recommendations that still have not been attended, such as amendments in the legislation on liability of legal entities for foreign bribery (particularly in the case of companies owned and controlled by the State) and in the topics of sanctions and confiscation of property against legal entities.<sup>194</sup>

In this context, the SNA’s Coordinating Committee should undertake the task of reviewing compliance with the commitments established in the treaties signed by Mexico and promoting those that remain unattended. Likewise, within the objectives of the anti-corruption policy, the SNA should promote in all levels of government a greater public officials’ knowledge on the treaties. The agreements should be understood as a “model law” that guides the normative construction of the national system.<sup>195</sup>

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in the ‘Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses,’” which was endorsed by the MESICIC Committee of Experts in 2013).

<sup>190</sup> See UNCAC, *supra* note 83, art. 37.

<sup>191</sup> See CNPP, *supra* note 187, arts. 201–02.

<sup>192</sup> See *id.* art. 256.V.

<sup>193</sup> See UNCAC, *supra* note 83, art. 37.3.

<sup>194</sup> See generally Organisation for Economic Co-Operation and Development, Mexico: Follow-up to the Phase 3 Report & Recommendations (Mexico, 2014).

<sup>195</sup> See Issa Luna Pla, *El papel de los Tratados Internacionales en el Sistema Nacional Anticorrupción*, in *CÓMO COMBATIR LA CORRUPCIÓN* 199 (Pedro Salazar et al. coords., 2017).



C. *Required Cultural Shifts*

The sole creation of the SNA will not reduce corruption. The examples in the world show that anti-corruption agencies like the SNA are not the panacea.<sup>196</sup> In addition, corruption is not only an economic phenomenon<sup>197</sup> but multifactorial. To that extent, institutional work should promote different strategies that include actions in the educational and cultural spheres. Policy should promote a new organizational culture within the government and companies, implement a culture of denouncement and punishment, and strengthen prevention by improving the effectiveness of sanctions. Corruption is the result of a combination of factors; so, its elimination requires a change of that combination.<sup>198</sup>

As mentioned before, Mexico's cultural situation facilitates corruption. In a vicious circle, culture appears both as a corruption's cause and effect.<sup>199</sup> Hence, as a priority, institutions must promote changes in the Mexican value systems by educational policies.<sup>200</sup> Besides new generations' formation in schools, an authentic "social pedagogy"<sup>201</sup> is required for educating the population in the "conscience of corruption."<sup>202</sup> These cultural and educational policies must have an impact on social conventions so that people themselves will reject corrupt practices.<sup>203</sup>

López Obrador's government expectations are based on the generation of this new culture of values, which will extend to the administration and government fields. López Obrador has insisted his government will not be only a political change but a "Fourth Social

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<sup>196</sup> See de Sousa, *supra* note 78, at 5.

<sup>197</sup> See Hindess, *supra* note 76, at 11.

<sup>198</sup> See Castañeda Rodríguez, *supra* note 48, at 131.

<sup>199</sup> See generally Morris, *supra* note 3.

<sup>200</sup> See García González et al., *supra* note 16, at 255 (stating that the legal or institutional perspectives "will surely be insufficient if they are not joined by a complementary strategy which includes a fundamental change in the system of values of Mexican society"). "Only this type of approach, aimed at familiarizing the Mexican public with and indoctrinating it in a more ethical political culture, will truly allow for new anti-corruption measures and regulations to be accepted by Mexican society." *Id.*

<sup>201</sup> Gil Villa, *supra* note 35, at 273.

<sup>202</sup> *Id.*

<sup>203</sup> See Márquez, *supra* note 50, at 100 (stating that "[c]orruption is not eliminated by creating 'laws' and 'agencies,' but by generating an important impact on the political-social conventions so as to reject this practice").

Transformation of Mexico”<sup>204</sup> that will drive profound changes. According to him, this transformation will be based on a “republican austerity”<sup>205</sup> policy that will eliminate the privileges and excesses of the political class and will allow Mexico to rebuild the confidence of the citizens in the rulers. For this cultural change, the president will be the first to set the example.<sup>206</sup>

Beyond rhetoric, it is clear that a mandate will not eliminate the corruption. The beginning of cultural change requires specific actions, such as the spread of a public service culture based in moderation, ethics, and responsibility. For cultivating this “culture of integrity”<sup>207</sup> within public bodies, generalizing the adoption of codes of ethics and conduct has been recommended.<sup>208</sup> These codes of ethics and conduct in all government levels should follow the new guidelines established by the SNA.

In 2002, the SFP issued a code of ethics, which established the principles that should govern the behavior of public servants, among others. The code of ethics called for the following: promotion of the common good, integrity, honesty, impartiality, justice, transparency, accountability, and generosity.<sup>209</sup> A new code of ethics enacted in 2015 defines the constitutional principles of legality, honesty, loyalty, impartiality, and efficiency.<sup>210</sup> This code also refers to

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<sup>204</sup> See *Declaración de Principios de Morena*, <https://lopezobrador.org.mx/wp-content/uploads/2013/02/Declaracion-de-Principios-MORENA.pdf> (consultada Feb. 20, 2019).

<sup>204</sup> See *Los 50 puntos del plan anticorrupción y de austeridad de AMLO*, *supra* note 157.

<sup>205</sup> *Id.*

<sup>206</sup> See *id.* (stating that among other austerity measures, President of the Republic’s and senior officials’ salaries reduction is proposed as well as the elimination of new vehicles and other non essentials goods purchasing).

<sup>207</sup> ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *supra* note 96, at 53.

<sup>208</sup> See *id.* at 53–56.

<sup>209</sup> See *Oficio-Circular por el que se da a conocer el Código de Ética de los Servidores Públicos de la Administración Pública Federal*, *Diario Oficial de la Federación* [DOF], July 31, 2002 (Mex.) [http://dof.gob.mx/nota\\_detalle.php?codigo=727307&fecha=31/07/2002](http://dof.gob.mx/nota_detalle.php?codigo=727307&fecha=31/07/2002).

<sup>210</sup> See *Acuerdo que tiene por objeto emitir el Código de Ética de los servidores públicos del Gobierno Federal, las Reglas de Integridad para el ejercicio de la función pública, y los Lineamientos generales para propiciar la integridad de los servidores públicos y para implementar acciones permanentes que favorezcan su comportamiento ético, a través de los Comités de Ética y de Prevención de*

some values, such as public interest, respect for human rights, equality and non-discrimination, gender equity, integrity, transparency, and accountability.<sup>211</sup> Also, it establishes integrity rules in twelve areas, including public behavior, public contracting, licensing, permissions, authorizations and concessions, internal control, and co-operation with integrity.<sup>212</sup> In this way, the 2015 extensive code of ethics includes a wide range of principles and values that make it complex. Due to the codes' complexity, the streamlining of the document and the elaboration of more comprehensive manuals or guides in plain language has been recommended.<sup>213</sup>

Ethics policies must also target the organizational culture of the private sector. In Mexico today, as mentioned, corruption is not only a state issue but is also internalized within companies. The normalization of corruption provokes a "slide effect":<sup>214</sup> own organizations' practices lead individuals to fall into dishonest acts.<sup>215</sup> In this way, companies and employers must be considered a central part of both the problem and the solution. The SNA should have powers to require them to establish integrity policies and make them public.<sup>216</sup>

Therefore, the integration of private economy sector representatives into the SNA is necessary. The participation of civil society organizations that occurred with the creation of the Citizens Committee in 2016 was a great step forward, but the move towards the business organizations, which also have responsibility in the issue and must coordinate efforts with the State, is pending.<sup>217</sup>

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Conflictos de Interés, Diario Oficial de la Federación [DOF], Aug. 20, 2015 (Mex.).

<sup>211</sup> *See id.*

<sup>212</sup> *See id.*

<sup>213</sup> *See* ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *supra* note 96, at 85 (stating that "[t]he SFP could consider removing the Integrity Rules from the Ethics Code and developing, based and building on these rules, a more comprehensive manual or guide in plain language and with sets of examples for the federal public administration for public officials at all levels").

<sup>214</sup> Arellano Gault, *supra* note 15, at 171.

<sup>215</sup> *Id.*; *see also* Arellano Gault, *supra* note 47.

<sup>216</sup> *See* María Marván Laborde, *500 empresas frente a la corrupción*, HECHOS Y DERECHOS (Nov. 6, 2017), <https://revistas.juridicas.unam.mx/index.php/hechos-y-derechos/article/view/11747/13574>.

<sup>217</sup> *See* ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *supra* note 96, at 36 (recommending that "[t]o ensure a whole-of-society approach, the [SNA] Citizen Participation Committee should establish a specific

Besides the promotion of moral values of honesty and integrity as a part of a cultural shift, more pragmatic changes should be pushed for the prevention of corruption. Citizens should adopt a permanent watchdog attitude and normalize the reporting of corruption acts. Transparency policies, whistleblowers protection measures, and even the strengthening of free press<sup>218</sup> and working rights<sup>219</sup> are aspects that can encourage the generation of that denouncement culture.

However, the denunciation is of little use if judicial processes fail, which it has up to now. An adequate criminal policy<sup>220</sup> and strong judicial institutions are fundamental,<sup>221</sup> but political will is crucial. Political will, reflected in the decision of impartially applying the law to all cases, is indispensable to have success on imposing sanctions.<sup>222</sup> The application of the law should not wane to a random

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working group comprised of private sector representatives in order to reflect private sector anti-corruption initiatives in the national action plan”).

<sup>218</sup> See Piero Stanig, *Regulation of Speech and Media Coverage of Corruption: An Empirical Analysis of the Mexican Press*, 59 AM. J. OF POL. SCI. 175, 175 (2015) (stating the importance of reducing legal barriers for free press to strengthening the corruption fight).

<sup>219</sup> See Castañeda Rodríguez, *supra* note 48, at 113 (stating that it will be more likely that a citizen chooses to remain in silent after witnessing an act of corruption if unemployment prevails in the economy). In this scenario, the expected cost of reporting would be high, given the risk of losing job because of the retaliation of those involved. *Id.*

<sup>220</sup> See Joan J. Queralt, *Reflexiones marginales sobre la corrupción*, 2 REVISTA CRÍTICA PENAL Y PODER 18, 20 (2012) (stating that an adequate criminal policy must be based “on four central elements: correct definition of the criminal types, adequate penalties, effective execution that strengthens both general and special prevention, and a procedural system that, without diminishing the guarantees, does not suppose a source of impunity or . . . a source of random punishment”).

<sup>221</sup> See Castañeda Rodríguez, *supra* note 48, at 117 (stating that “there is a consensus that a strong judicial system with a favorable image reduces the chances of corruption”).

<sup>222</sup> See Jon S.T. Quah, *Minimizing Corruption in Singapore: Lessons for Latin American Countries*, in COMO DISMINUIR LA CORRUPCIÓN Y MEJORAR LA GOBERNABILIDAD EN PAÍSES DE DESARROLLO 132, 133 (2014) (“Latin American countries can learn these five lessons from Singapore’s effective anti-corruption strategy: (1) political will is critical for success in curbing corruption; (2) rely on a single anti-corruption agency [ . . . ] instead of multiple [agencies] to combat corruption; (3) enforce the anti-corruption laws impartially, not selectively; (4)

or selective<sup>223</sup> imposition of punishments. Law enforcement institutions should proceed against all responsible parties for their acts of corruption, regardless of the political group to which they belong.<sup>224</sup> So far, anti-corruption policies and measures have failed in really facing powerful corrupt forces. As long as Mexican anti-corruption forces do not confront the abusive exercise of political power to tame it and impose limitations on it, they will continue to be a simulation.<sup>225</sup>

Application of justice is fundamental to spread the idea that impunity will no longer be the rule. To the extent that these sanctions begin to occur, the deterrent effect of the sanctions will be generated, and more importantly, the citizens will regain confidence in the institutions.<sup>226</sup> Ultimately, if this does not happen, and the government again fails to meet the expectation for change, as happened with Fox in 2000, it will be up to civil society to push towards change. The involvement of the citizens should keep growing as it has done up to now.

## V. CONCLUSION

Corruption is one of many problems that López Obrador's government will face, alongside the dramatic situation on issues of criminality and the violence crisis. To tackle corruption, incoming

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cut red tape to reduce the opportunities for corruption; and (5) enhance public trust in politicians and civil servants by curbing corruption.”).

<sup>223</sup> *Id.*

<sup>224</sup> Recently, Javier Duarte, former governor of the State of Veracruz, accused of multiple acts of corruption, was sentenced to nine years in prison. The sentence caused controversy as the punishment was considered insufficient. This condemnation of Duarte occurred in an abbreviated procedure, which allows the attenuation of punishment in exchange for the accused's admission of responsibility. See Gonzalo Sánchez de Tagle & Alejandro Hernández Oseguera, *La sentencia de Javier Duarte. Un análisis legal*, NEXOS (Oct. 1, 2018), formato HTML, <https://eljuegodelacorte.nexos.com.mx/?p=9034>.

<sup>225</sup> See Jaime Cárdenas, *Causas de la corrupción y soluciones para enfrentarla*, in *CÓMO COMBATIR LA CORRUPCIÓN* 223 (Pedro Salazar et al. coords., 2017) (“[A]nti-corruption laws constitute a simulation because the institutional scaffolding that they create is controlled by the Executive's head and by the three major parties. These laws do not face the power in Mexico that is the producer of corruption in the country.”).

<sup>226</sup> See Quah, *supra* note 222.

government must define its tools and make a starting decision: whether to endorse or abandon the scaffolding of the SNA. López Obrador has already shown he can abandon without doubting projects associated with the previous government, whether institutional (as the educational reform and energetic reform) or even contracts for public works (as the new international airport). Thus, some weeks after his inauguration, the question remains in the air.

In my opinion, the SNA should not be left out of the fourth transformation. The creation of new institutions would be a bad idea because Mexico does not need new institutions for its same old problems. Adjusting the ones already existing and taking advantage of their experience even if it is minimal would be a better decision. Thus, the most reasonable option is to keep the SNA and refine it on the points that should be defined in the public debate in the coming days. Besides the aspects indicated on this paper, one of the main shortcomings of the SNA is its unnecessary complexity: so many coordinating committees and subsystems can decay into a new form of bureaucracy. Simplification of structures and clarification of functions will be useful.

With or without the SNA, López Obrador's true challenge will be to bring institutions to life. To accomplish this, new government's intention is crucial. They must decide to act right now and show the public that tolerance is over. Let me end with this image: the fight against corruption could be seen as a car race. In Mexico we have not even left the grid. The SNA is the greatest car that we have ever had, but it remains stopped. It will hinge on López Obrador's administration whether the car remains stopped or finally starts its engine and moves towards the finish line.