

MEXICO'S NEW NATIONAL ANTI-CORRUPTION SYSTEM



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On 27 May 2015, after several corruption scandals and in a complicated social and political environment, President Peña Nieto announced the constitutional amendments that gave birth to the National Anti-Corruption System (NAS). The NAS was created as a coordinating agency between authorities at all levels of government involved in the prevention, detection, and prosecution of administrative and criminal offenses arising from corruption.

The NAS represents a change in the political and social paradigm of how power is exercised in Mexico because of the involvement of organized civil society. The General Law of Administrative Responsibilities entered into force on 19 July 2017. The entry into force of the General Law of Administrative Responsibilities marked the start of the NAS. However, there are several pending actions and appointments for the effective implementation of key aspects of the system. In the following lines, I will talk about a few of these issues.

Special Prosecutor's Office for Corruption Affairs

On 10 February 2014, the President published a Constitutional Amendment in political-electoral matters that ordered the evolution of the *Procuraduría General de República* into the *Fiscalía General de la República*.¹ This amendment granted constitutional autonomy to the *Fiscalía General de la República*, eliminating the *Procuraduría General de República*'s subordination to the Federal Executive Branch.

This Constitutional Amendment ordered the creation of the Special Prosecutor for Corruption Affairs (the "Special Prosecutor") as an administrative department of the *Fiscalía General de la República*. The Special Prosecutor will have technical and operative independence from the Attorney General. The 2014 Constitutional Amendment states that the Attorney General – *Procurador General de República* – in office at the time of the entry into force of the *Fiscalía General de la República* would automatically be appointed as Attorney General of the *Fiscalía General de la República* for a period of nine years.

Because of the close connection between the soon-to-be created Special Prosecutor and the *Fiscalía General de la República*, the legislators involved in the appointment of the Special Prosecutor² were unable to reach a political agreement as to who should be appointed. Three years have passed since the creation of the Special Prosecutor Office, and the Senate has failed in its task of appointing the Special Prosecutor.

State Anti-Corruption Systems

The implementation of the state anti-corruption systems is of the utmost importance for the success of the NAS. Under the General Law of the NAS, state governments had until 19 July 2017 to amend and create their anti-corruption legislation. This state legislation should be equivalent to the national laws that integrate the NAS.

The Mexican Institute for Competitiveness (Instituto Mexicano para la Competitividad) analyzed the status of the implementation of each state's anti-corruption system and concluded that only 21 out of the 32 states have satisfactory local anti-corruption regulations³.

Special Judges for Anti-Corruption matters of the Federal Court of Administrative Justice

The July 2016 secondary anti-corruption legislation includes amendments to the Organizational Law of the Federal Court of Administrative Justice to create a Third Section of the Superior Chamber and five Specialized Chambers in administrative responsibilities. These new Chambers will adjudicate sanctions under the General Law of Administrative Responsibilities. In this regard, the President has to appoint the specialized anti-corruption judges, which in turn have to be ratified by the Senate.

On 25 April 2017, President Peña Nieto sent his proposals for the specialized anti-corruption judges to the Senate. The Committee of Citizen Participation called on the Senate to reject the President's candidates⁴. As of December 2017, the Senate has not confirmed the President's proposed candidates.

On 7 July 2017, the Federal Court of Administrative Justice amended its internal organizational regulations and granted new authorities to an existent regional chamber enabling it to hear cases under the General Law of Administrative Responsibilities.

Committee of Citizen Participation

The General Law of the NAS also created the Committee of Citizen Participation. This Committee is the head of the NAS's Coordinating Committee, which leads the decision-making body of the NAS.

A selection commission, comprised of nine individuals and appointed by the Senate, selected the members of the Committee of Citizen Participation. The Committee of Citizen Participation was incorporated in February 2017. In recent months, some political adversaries of the NAS have been trying to undermine the legitimacy of the selection process of the members of the Committee of Citizen Participation. In response to these accusations, the Committee of Citizen Participation published "The White Book", in which it describes every part of the process for the selection of the members of the Committee of Citizen Participation⁵.

Organized civil society has urged legislators and relevant public officials for the appointment of the pending NAS members observing the principles of transparency, publicity and open government provided for under the Constitution.⁶ Moreover, organized civil society is constantly demanding political actors to address the pressing obstacles in the implementation of the state anti-corruption systems and of the NAS. Mexican organized civil society has vowed to continue pressuring the current administration until the administration's last days in office.⁷ Mexico's transition from being a country mainly driven by politics into becoming a country characterized by a predominant respect for the rule of law will arguably be the country's greatest challenge of its democratic history.

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- 1 A decree, by which various provisions of the Political Constitution of the United Mexican States are reformed, added and repealed, in political-electoral matters. Consulted at: http://www.dof.gob.mx/nota_detalle.php?codigo=5332025&fecha=10/02/2014, last visit on 2 August 2017.
- 2 According to the provisions that created the Special Prosecutor, the Senate has the power to appoint the Special Prosecutor. The appointing consists of: (i) an invitation delivered to organized civil society to appoint persons who comply with the requirements to become Special Prosecutor; (ii) the Political Coordination Board (JUCOPO) reviews the citizens' applications; (iii) the Senate's Anti-Corruption, Citizen Participation and Justice Commissions analyze each candidate and appoint the persons with the best qualifications to become Special Prosecutor; (iv) the Commissions send back the list of candidates to the JUCOPO; (v) the JUCOPO appoints a candidate for the approval of the plenary session of the Senate; and (vi) the plenary session of the Senate appoints the Special Prosecutor. As of today, on 8 December 2017, the Commissions sent back the list of candidates.
- 3 "Semáforo Anticorrupción. Monitoreo de los Sistemas Locales Anticorrupción", consulted at: <http://www.semaforoanticorrupcion.mx/#/>, last visit on 2 August 2017.
- 4 "Boletín sobre Magistrados del Tribunal Federal de Justicia Administrativa", consulted at <http://cpc.org.mx/2017/04/26/boletin-sobre-magistrados-del-tribunal-federal-de-justicia-administrativa/>, last visit on August 16th, 2017.
- 5 "Libro Blanco. Informe del proceso de designación del Comité de Participación ciudadana del Comité de Participación ciudadana." Consulted at <http://comisionsna.mx/2017/06/29/libro-blanco/>, August 11, 2017.
- 6 Political Constitution of the Mexican United States.
"Article 1:
(...) All authorities, in their areas of competence, are obliged to promote, respect, protect and guarantee Human Rights, in accordance with the principles of universality, interdependence, indivisibility and progressiveness. As a consequence, the State must prevent, investigate, penalize and rectify violations to Human Rights, according to the law.
Article 6:
(...) Every person shall be entitled to free access to plural and timely information, as well as to search for receive and distribute information and ideas of any kind, through any means of expression. (...) In order to exercise the right of access to information, the Federation, the States and the Federal District, according to their respective powers, shall act in accordance to the following basis and principles (...)"
- 7 "Ante las resistencias encontradas nos manifestamos más decididos que nunca a seguir construyendo un país de leyes e instituciones. Un país con plena vigencia del Estado de derecho. Vamos por Más" manifiesto. The manifiesto can be consulted at: <http://vamosporamas.org.mx/2017/07/20/conferenciadeprensa/>, last visit on August 9th, 2017.

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