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SOCIETY

Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

CIVIL SOCIETY REPORT

on the implementation of

Chapter II (Prevention) & Chapter V (Asset Recovery) of the

UNITED NATIONS CONVENTION AGAINST CORRUPTION

IN MEXICO

by Derechos Humanos y Litigio Estratégico Mexicano and
Sociedad Mexicana de Litigio de Interés Público

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The findings in this report are those of the authors, but do not necessarily reflect the views of the UNCAC Coalition and the donors who made this report possible. Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of August 8, 2022.

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Derechos Humanos y Litigio Estratégico Mexicano, A.C. (DLM) is a non-profit organization founded in 2015 as a civil society response to the complex political scenario resulting from the impact of corruption in public institutions and the weakening of democracy. Since then, DLM has been working for accountability and the strengthening of the rule of law in Mexico from a human rights perspective, through the participation of civil society in the country's public sphere and in the strengthening of institutions, with the objective of identifying common problems and proposing solutions that impact the authorities, the private sector, and the fight against corruption and impunity in Mexico.

Sociedad Mexicana de Litigio de Interés Público, S.C. is an organization whose corporate purpose, among others, is the practice of law and the defense of human rights.

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Abbreviations

While the abbreviations are provided in both Spanish and English in the following table, they are used in their original Spanish version throughout the report for institutions and laws and in their English version for names of international institutions or initiatives.

Abbr.	Spanish	English
APF	Administración Pública Federal	Federal Public Administration
ASF	Auditoría Superior de la Federación	Superior Audit Office of the Federation
CC	Comité Coordinador del Sistema Nacional Anticorrupción	Coordinating Committee of the National Anticorruption System
CE	Comisión Ejecutiva de la Secretaría Ejecutiva del Sistema Nacional Anticorrupción	Executive Committee of the Executive Secretariat of the National Anticorruption System
CEAPF	Código de Ética de la Administración Pública Federal	Code of Ethics of the Federal Public Administration
CEPCI	Comité de Ética y Prevención de Conflictos de Interés	Ethics and Conflict of Interest Prevention Committee
CELAC	Comunidad de Estados Latinoamericanos y Caribeños	Community of Latin American and Caribbean States
CFE	Comisión Federal de Electricidad	Federal Electricity Commission
CICM	Catálogo de Información sobre Corrupción en México	Catalog of Information on Corruption in Mexico
CJF	Consejo de la Judicatura Federal	Federal Judiciary Council
CNVB	Comisión Nacional Bancaria y de Valores	National Banking and Securities Commission
UNCAC	United Nations Convention against Corruption	
CNPP	Código Nacional de Procedimientos Penales	National Code of Criminal Procedures
COFECE	Comisión Federal de Competencia Económica	Federal Economic Competition Commission
CPEUM	Constitución Política de los Estados Unidos Mexicanos	Political Constitution of the United Mexican States
CPF	Código Penal Federal	Federal Criminal Code
CPC	Comité de Participación Ciudadana del Sistema Nacional Anticorrupción	Citizen Participation Committee of the National Anticorruption System
DOF	Diario Oficial de la Federación	Official Journal of the Federation
FGR	Fiscalía General de la República	Attorney General's Office
FECC	Fiscalía Especializada en el Combate a la Corrupción	Specialized Prosecutor's Office for Combating Corruption
FATF	Financial Action Task Force	
GAFILAT	Grupo de Acción Financiera de Latinoamérica	Latin American Financial Action Task Force
IRC	Índice de Riesgos de Corrupción	Corruption Risk Index
IPAB	Instituto de Protección al Ahorro Bancario	Bank Savings Protection Institute
IF	Instituciones Financieras	Financial Institutions

INAI	Instituto Nacional de Transparencia, Acceso a la información Pública y Protección de Datos Personales	National Institute of Transparency, Access to Public Information and Protection of Personal Data
INE	Instituto Nacional Electoral	National Electoral Institute
INEGI	Instituto Nacional de Estadística y Geografía	National Institute of Statistics and Geography
LAASSP	Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público	Public Sector Acquisitions, Leasing and Services Law
LD/FT	Lavado de dinero / Financiamiento al terrorismo	Money Laundering / Terrorist Financing
LFAEBSP	Ley Federal de Administración y Enajenación de Bienes y Servicios Públicos	Federal Law for the Administration and Disposal of Public Goods and Services
LFAR	Ley Federal de Austeridad Republicana	Federal Republican Austerity Law
LFGR	Ley de la Fiscalía General de la República	Law of the Attorney General's Office of the Republic
LFPIORPI	Ley Federal para la Prevención de Identificación de Operaciones con Recurso de Procedencia Ilícita	Federal Law for the Prevention of Identification of Operations with Illicit Proceedings
LFPRH	Ley Federal de Presupuesto y Responsabilidad Hacendaria	Federal Budget and Fiscal Responsibility Law
LFRRCF	Ley de Fiscalización y Rendición de Cuentas de la Federación	Law of Audit and Accountability of the Federation
LFTAIP	Ley Federal de Transparencia y Acceso a la Información Pública	Federal Law of Transparency and Access to Public Information
LIC	Ley de las Instituciones de Crédito	Law of Credit Institutions
LGIFE	Ley General de Instituciones y Procedimientos Electorales	General Law of Electoral Institutions and Procedures
LGPP	Ley General de Partidos Políticos	General Law of Political Parties
LGRA	Ley General de Responsabilidades Administrativas	General Law of Administrative Responsibilities
LGSNA	Ley General del Sistema Nacional Anticorrupción	General Law of the National Anti-corruption System
LGTAIP	Ley General de Transparencia y Acceso a la Información Pública	General Law of Transparency and Access to Public Information
LNED	Ley Nacional de Extinción de Dominio	National Law of Extinction of Ownership
LOAPF	Ley Orgánica de la Administración Pública Federal	Organic Law of the Federal Public Administration
LOPSRM	Ley de Obras Públicas y Servicios Relacionados con las Mismas	Public Works and Related Services Law
LOPJF	Ley Orgánica del Poder Judicial de la Federación	Organic Law of the Federal Judiciary
LSPCAPF	Ley del Servicio Profesional de Carrera de la Administración Pública	Law of the Professional Career Service of the Civil Service
MDA	Mercado Digital Anticorrupción	Anti-Corruption Digital Marketplace
MESAI	Modelo de Evaluación y Seguimiento de la Anticorrupción y la Integridad	Anticorruption and Integrity Evaluation and Follow-up Model

MCCI	Mexicanos Contra la Corrupción y la Impunidad	Mexicans Against Corruption and Impunity
OECD	Organization for Economic Cooperation and Development	
OIC	Organismo Interno de Control	Internal Control Organism
CSO	Civil Society Organization	
PAF	Plan Anual de Fiscalización	Annual Audit Plan
PI-PNA	Programa de implementación de la Política Nacional Anticorrupción	Implementation Program of the National Anticorruption Policy
PDN	Plataforma Digital de Transparencia	Digital Transparency Platform
PEP	Persona Expuesta Políticamente	Politically Exposed Person
PJF	Poder Judicial de la Federación	Federal Judiciary
PND	Plan Nacional de Desarrollo	National Development Plan
PNA	Política Nacional Anticorrupción	National Anticorruption Policy
PNT	Plataforma Nacional de Transparencia	National Transparency Platform
UNDP	United Nations Development Programme	
SAT	Servicio de Administración Tributaria	Tax Administration Service
SCJN	Suprema Corte de Justicia de la Nación	Supreme Court of Justice of the Nation
SEA	Sistema Estatal Anticorrupción	State Anticorruption System
SESNA	Secretaría Ejecutiva del Sistema Nacional Anticorrupción	Executive Secretariat of the National Anticorruption System
SFP	Secretaría de la Función Pública	Civil Service Secretariat
SHCP	Secretaría de Hacienda y Crédito Público	Ministry of Finance and Public Credit
SICAVISP	Sistema de Capacitación Virtual para los Servidores Públicos	Virtual Training System for Public Servants
SIRA	Sistema Integral de Responsabilidades Administrativas	Integral System of Administrative Responsibilities
SNA	Sistema Nacional Anticorrupción	National Anticorruption System
SNF	Sistema Nacional de Fiscalización	National Auditing System
SNT	Sistema Nacional de Transparencia	National Transparency System
SRE	Secretaría de Relaciones Exteriores	Ministry of Foreign Affairs
TESOFE	Tesorería de la Federación	Treasury of the Federation
TFJA	Tribunal Federal de Justicia Administrativa	Federal Court of Administrative Justice
UNODC	United Nations Office on Drugs and Crime	
USAID	United States Agency for International Development	
UT	Unidad de Transparencia	Transparency Unit

List of Persons Consulted

Name	Job Title	Organization or institution	Date of interview
Luis E. Pereda Trejo	Director General of International Corruption Perceptions	Secretariat of the Public Function of the Federal Public Administration	July 11, 2022
Valentina Valdez Jasso	Director of Conventions and Anti-Corruption Mechanisms	Secretariat of the Public Function of the Federal Public Administration	July 11, 2022
Mariana Yáñez López	Deputy Director of Implementation of the National Anticorruption System	Secretary of the Civil Service of the Federal Public Administration	July 11, 2022
Mauricio Iván Zapata Zaldívar	Subdirector for Drugs and Corruption	Ministry of Foreign Affairs of the Federal Public Administration	July 4, 2022
Gerardo Isaac Morales Tenorio	Directorate General for the United Nations Organization	Ministry of Foreign Affairs of the Federal Public Administration	July 4, 2022
Martha Catalina Vázquez Vázquez	Multidimensional Security Subdirector	Ministry of Foreign Affairs of the Federal Public Administration	July 4, 2022
Magdalena Verónica Rodríguez Castillo	Member	Citizen Participation Committee of the National Anticorruption System	July 7, 2022
Adrián Alcalá Méndez	Secretary of Transparency	National Institute for Transparency, Access to Public Information and Data Protection (Instituto Nacional de Transparencia, Acceso a la Información Pública y Protección de Datos).	August 2, 2022
Fernanda Avendaño Meouchi	Anti-Corruption Coordinator	Mexican Institute for Competitiveness	Written contributions, in addition to a virtual meeting on May 19, 2022
María de los Ángeles Estrada González	Executive Director	Transparency and Anticorruption Initiative of Tecnológico de Monterrey	Written contributions, in addition to a virtual meeting on May 19, 2022
Sarahí Valtierra	Researcher and Coordinator	Fundar	Written contributions, in addition to a

			virtual meeting May 19, 2022
Adriana Greaves Muñoz	Co-founder and Co- director	TOJIL	Written contributions, in addition to a virtual meeting May 19, 2022
Estefania Medina Ruvalcaba	Co-founder and Director	TOJIL	Written contributions, in addition to a virtual meeting May 19, 2022
María Fernanda Galicia Pacheco	Chief Executive Officer	Mexiro A.C.	Written contributions, and input from the 5C Methodology ¹ to analyze Anti- Corruption Policies, as well as a virtual meeting May 19, 2022
Gabriela López Bernal	Project Coordinator	Mexiro A.C.	Written Contributions, plus a virtual meeting May 19, 2022
Itzel Jimenez Rios	Research Assistant	Zero Impunity	Written contributions, in addition to a virtual meeting May 19, 2022
Irene Tello Arista	Executive Director	Zero Impunity	Written contributions
Paola Palacios	Program and International Affairs Coordinator	Transparencia Mexicana	Written contributions, in addition to a virtual meeting May 19, 2022

¹ Available at: <https://mexiro.org/proyecto/metodologia-5c>.

I. Introduction

The Mexican State signed the United Nations Convention Against Corruption on December 9, 2003, the Senate ratified it on April 29, 2004, it entered into force on December 14, 2005 and was published in the Official Gazette of the Federation on the same date.

Mexico was selected by the UNCAC Implementation Review Group in 2017 through a drawing of lots for review in the first year of the second cycle.

This parallel report examines the Mexican State's implementation of Chapter II (Preventive Measures) and Chapter V (Asset Recovery) of the UNCAC and is intended as a contribution to the UNCAC implementation review process that is currently underway and covers these two chapters. It also compiles, from a citizen's perspective, the positive aspects and those requiring improvement regarding the implementation of the National Anticorruption System, as well as the measures taken by the federal government to combat and mitigate corruption.

In recent years, Mexico has undergone a transformation with its anti-corruption triad -prevent, deter and punish- as a result of the constitutional reform that created the National Anticorruption System as the coordinating body between the authorities of all government bodies in the fight against corruption. Since then, important changes and efforts have been made in the fight against corruption at the regulatory level.

However, anti-corruption efforts have not been sufficient. Transparency International's Corruption Perceptions Index ranked Mexico 138th with 28 points out of 100 in 2018.² In the 2021 edition, Mexico maintained a rating of 31 points³, the same as in 2020.⁴ With this rating, Mexico ranks 124th out of the 180 countries evaluated by Transparency International. Mexico continues to be the worst evaluated country of the 38 countries that make up the Organization for Economic Cooperation and Development (OECD).

The Global Impunity Index 2020 published by the Universidad de las Américas Puebla places Mexico in 65th place out of 67 countries with a total value of 49.67, among the countries with the greatest impunity problems worldwide; and the Hallazgos 2020 report by México Evalúa points out that impunity in Mexico as of 2020 is at 94.8%.⁵

The results of the World Justice Project's Mexico Rule of Law Index 2021-2022 show a deterioration in the rule of law in most of the country's states (Mexico is a Republic divided into 32 states), which can be explained by three trends: the weakening of institutional counterweights to state governments and a contraction of civic space, the deterioration of criminal justice systems and the lack of progress in the fight against corruption.

Moreover, the Anti-Corruption Assessment in Latin America 2020, conducted by the Cyrus R. Vance Center for International Justice and the Lawyers Council for Civil and Economic Rights⁶, focuses on measuring corruption or the perception of corruption, from the legal practice to

² Transparency International, (2018), Corruption Perceptions Index 2018, Available at: <https://www.transparency.org/en/cpi/2018>, accessed: 1 July 2022.

³ Transparency International, (2021), Corruption Perceptions Index 2021, Available at: <https://www.transparency.org/en/cpi/2021>, accessed: 1 July 2022.

⁴ Transparency International, (2020), Corruption Perceptions Index 2020, Available at: <https://www.transparency.org/en/cpi/2020>, accessed: 1 July 2022.

⁵ Le Clerq Ortega and Rodríguez Sánchez, Universidad de las Américas Puebla, (2020), Global Impunity Index 2020 (IGI-2020), Impunity Scales, available at: <https://www.udlap.mx/cesij/files/indices-globales/0-IGI-2020-UDLAP.pdf>, accessed: July 1, 2022.

⁶ Cyrus R. Vance Center for International Justice and Lawyers Council for Civil and Economic Rights, (2020), Anti-Corruption Assessment in Latin America 2020, available at: <https://www.vancecenter.org/wp-content/uploads/2021/05/Evaluacion-Anticorruptcion-Latinoamerica-2020.pdf>.

analyze the legislative and regulatory efforts and the institutional framework to prevent, punish and combat corruption. This evaluation placed Mexico sixth out of eight with a final score of 5.5 out of 10, which implies a current reflection of the deficient management of the situation.

The development and implementation process of the National Anticorruption System and the implementation of the National Anticorruption Policy (PNA) has been progressive and gradual. However, it is important to highlight that adequate legislation is indispensable but insufficient for the National Anticorruption System to be able to abate the practice of corruption in the country. The results to date have not shown a high efficiency in the enforcement of established anti-corruption policies; high impunity in turn reflects the obstacles still faced by the disparity between the practical reality and the legal reality in the fight against corruption in the country.

During 2019, the perception of the frequency of acts of corruption in government institutions decreased from 91.1% in 2017 to 87% in 2019. However, the prevalence of such acts increased from 14,635 victims of corruption per 100,000 inhabitants in 2017 to 15,732 in 2019; while the rate of new cases increased from 25,541 acts of corruption per 100,000 inhabitants in 2017 to 30,456 in 2019, and decreased to 29,662 in 2021.⁷

In 2021, 14,701 per 100,000 inhabitants nationwide had contact with a public servant and experienced at least one act of corruption – in 2019 this rate was 15,732 per 100,000 inhabitants.⁸ The above does not imply that the fight against corruption has been efficient, as it is crucial to consider the context of the Covid-19 emergency situation, which means that there has not necessarily been a decrease in acts of corruption.

According to the National Institute of Statistics and Geography (INEGI), increases in reported acts of corruption went hand in hand with an increase in the total cost of corruption by 64.1%. In 2019, the sum of illicit payments, procedures or requests for public services and other contacts with authorities was 12,770 million pesos (approximately \$653,844 USD), equivalent to an average of 3,822 pesos (approximately \$196 USD) per person affected. In 2017, this sum was 7.78 billion (approx. \$361,637,476 USD) and 2.45 billion (approx. \$125.421.625 USD), respectively. In 2021, it is estimated that the total cost derived from acts of corruption when making payments, procedures or requests for public services and other contacts with authorities amounted to 9.5 billion pesos (approx. \$486.328.750 USD). This figure is equivalent to an average of 3,044 pesos (approx. \$156 USD) per person affected.⁹

Controlling corruption has been a priority for Mexican society in recent years and one of the factors that defined the 2018 federal election. The fight against corruption has been the main axis of the 2018-2024 federal administration, with broad public support to move forward with this agenda. However, emblematic corruption cases such as the ones known as *Estafa maestra*, *Odebrecht*, *Agronitrogenados*, *General Cienfuegos*, *the White House and the Gray House*, Pío and Felipa Obrador, Gertz case, SEGALMEX, among so many others, have not yet been brought to justice. Nor has there been any recovery of the assets diverted by these and other cases of grand corruption, and reparations of damages to the victims in these cases is practically non-existent.¹⁰

⁷ Instituto Nacional de Estadística y Geografía, (2019), Encuesta Nacional de Calidad e Impacto Gubernamental 2019 (ENCIG), available at:

https://www.inegi.org.mx/contenidos/programas/encig/2019/doc/encig2019_principales_resultados.pdf

⁸ Instituto Nacional de Estadística y Geografía, (2021), Encuesta Nacional de Calidad e Impacto Gubernamental 2021 (ENCIG), available at:

https://www.inegi.org.mx/contenidos/programas/encig/2021/doc/encig2021_principales_resultados.pdf

⁹ *Idem*.

¹⁰ Transparencia Mexicana, (January, 2022), México, sin avance en Índice de Percepción de la Corrupción, Available at: <https://www.tm.org.mx/ipc2021/>, accessed: July 1, 2022.

There is a growing concern about the lack of independence of the Mexican prosecutors' offices, both the Attorney General's Office and the specialized prosecutors' offices, which despite constitutionally enjoying formal independence and autonomy, enjoy a high level of discretion in their appointment processes, and have been heavily influenced by political-electoral interests and pressure from the different powers. The latter undermine the trust in and the role of such authorities in the fight against corruption. Their performance presents favorable or negative biases depending on the political group under investigation.

The stagnation in perception ratings and the social recognition of corruption as a relevant problem indicate the need to make greater efforts that lead to tangible changes in public management and generate greater trust and legitimacy among citizens. Resolving the impunity crisis in Mexico is a priority.

This report is based on the review of Mexican regulations and the implementation in practice of anti-corruption actions, according to the elements highlighted in Chapters II and V of the United Nations Convention Against Corruption (UNCAC), which are fundamental to achieve real changes in society and the Mexican State.

1.1 Scope. Mexico is a federal State and this review refers only to laws of federal application. The constitutional reform regarding the National Anticorruption System took place on May 27, 2015 and, at the time of the on-site visit by the reviewing States was in transition to this system and in the process of the entry into force/implementation of the secondary laws in this regard. The review refers to the laws in force as of August 2022.

The articles and topics of the UNCAC that receive special attention in this report are those covering preventive anti-corruption policies and practices (Art. 5), preventive anti-corruption bodies (Art. 6), public sector employment (Art. 7.1), codes of conduct, conflicts of interest and asset declarations (Articles 7, 8 and 12), reporting mechanisms and whistleblower protection (Articles 8.1 and 8.4 and 13.2), political financing (Art. 7.3), public procurement (Art. 9.1), the management of public finances (Art. 9), judiciary and prosecution service (Art. 11), private sector transparency (Art. 12), access to information and participation of society (Articles 10 and 13.1) and measures to prevent money laundering (Art. 14).

Under Chapter V, the report addresses the articles covering the anti-money laundering (Articles 52 and 58), measures for the direct recovery of assets (Articles 53 and 56), confiscation tools (Art. 54), international cooperation for purposes of confiscation (Articles 51, 54, 55, 56, 59) and the return and disposal of confiscated property (Art. 57).

1.2 Structure. The report begins with an executive summary, including the main findings, conclusions and recommendations on the review process, the availability of information, as well as the implementation and enforcement of selected UNCAC articles. The following part covers the findings of the review process in Mexico as well as access to information issues in more detail. Subsequently, the implementation of the Convention is reviewed and examples of good practices and deficiencies are provided. This is followed by a discussion of recent developments and, finally, recommendations for priority actions to improve UNCAC implementation are given.

1.3 Methodology. The report was prepared by Derechos Humanos y Litigio Estratégico Mexicano, A.C. and Sociedad Mexicana de Litigio de Interés Público, S.C. with the technical and financial support of the UNCAC Coalition.

The report was prepared using guidelines and a reporting template designed by the UNCAC Coalition and Transparency International for use by civil society organizations (CSOs). These tools reflected, but simplified, the United Nations Office on Drugs and Crime (UNODC) checklist and called for relatively short assessments compared to the detailed official self-

assessment checklist. The report template included a series of questions on the review process and, in the section on implementation, asked for examples of good practices and areas in need of improvement in articles of UNCAC Chapter II on the prevention of corruption and Chapter V on asset recovery.

The supporting information for this report consisted of a review of Mexican legislation, as well as research documents on the topics evaluated. Likewise, interviews were conducted with public officials and experts on the subject; several public information requests were made through the National Transparency Platform; evaluation questionnaires were handed out to academia, law firms, civil society and citizens; and documents and reports were used from different CSOs, State entities and international organizations. The research team made efforts to obtain information from government offices and to engage in dialogue with government officials.

A gender-based analysis was sought, which examines the potential impacts of the policies and actions implemented on various groups. It identifies the different roles played. These different roles usually result in less control and access to resources and decision-making processes for women compared to men, as well as potentiate the effects of corruption on them as victims.

This report has been prepared prior to the publication of the country's official report for the second UNCAC review cycle.

II. Executive Summary

This report examines Mexico's implementation and enforcement of Chapter II (Preventive Measures) and Chapter V (Asset Recovery) of the United Nations Convention against Corruption (UNCAC) and is intended as a contribution to the UNCAC implementation review process of the second review cycle that is currently underway and covers these two chapters. The recommendations contained in the report seek to support the Mexican government achieving the successful implementation of the UNCAC, the National Anti-Corruption System, and to effectively fight against corruption and impunity.

2.1 Description of the Official Review Process

The UNCAC Implementation Review Group selected Mexico through a drawing of lots for its review in the first year of the second cycle. The on-site visit of Guatemala and São Tomé and Príncipe for the peer review of Mexico's second cycle review took place from May 9-11, 2017. Five years after the visit, authorities reported that the country review report is still being finalized and has not been approved, which is why it has not yet been published by the United Nations Office on Drugs and Crime (UNODC). At the time of writing this parallel report, it was not possible to obtain information on the content of the report or on the review process of the implementation of the second review cycle of the UNCAC in Mexico.

2.2 Availability of Information

This parallel report is based on a review of Mexican federal legislation, research documents on the evaluated topics and activity reports of public entities. The authors of this report identified that there is little clear information published proactively in relation to the implementation of policies and regulations, compliance with indicators, as well as information on investigation processes, recovery and sanction of seized assets and the results of international cooperation exercises. To supplement the information required for this report, the authors of this report sent several freedom of information requests to public entities based on Article 122 of the General Law on Transparency and Access to Public Information (not all were answered in full, and for some, there was a lack of the requested information), conducted interviews, perception and evaluation questionnaires with law firms, civil society and citizens, reviewed press and academic articles, as well as research previously conducted by other civil society organizations.

2.3 Implementation in Law and Practice

In general, Mexico has a comprehensive constitutional, legal and regulatory framework¹¹ that addresses most of the dynamics addressed in Chapters II and V of the Convention. As mentioned later in the report, there are still pending issues to be legislated, such as measures for the protection of corruption whistleblowers, incentives for whistleblowing, management of conflicts of interest, reparation for damage caused by acts of corruption and asset recovery.

¹¹ Political Constitution of the United Mexican States; Federal Criminal Code; National Code of Criminal Procedures; General Law of Administrative Responsibilities; Law of the Office of the Attorney General of the Republic; Federal Law of Republican Austerity; General Law of the National Anticorruption System; Law of Audit and Accountability of the Federation; Organic Law of the Federal Court of Administrative Justice; National Law of Extinction of Ownership; Federal Law for the Prevention of Identification of Operations with Illicit Proceeds; Agreement that aims to issue the Code of Ethics for Public Servants of the Federal Government, the Integrity Rules for the exercise of the public function and the General Guidelines to promote the integrity of public servants; Agreement that establishes the Guidelines for the Promotion and Operation of the System of Internal and External Citizen Corruption Alerters; Model of the Business Integrity Program of the Ministry of Public Function.

The **preventive anti-corruption policies and practices** regime in Mexico consists of the General Law of the National Anticorruption System, the National Program to Combat Corruption and Impunity, and to Improve Public Management 2019-2024¹², the National Development Plan 2018-2022, the Policy on Transparency, Open Government and Open Data of the Federal Public Administration 2021-2024¹³, the National Anticorruption Policy (PNA)¹⁴ and the Implementation Program of the National Anticorruption Policy.

Since the 2015 anti-corruption reform, several tools have been developed to improve the administrative measures of public entities, strengthen access to information, promote citizen participation, combat bribery and smuggling, and promote anti-corruption strategies. Implementation has been slow but progressive. It is clear that the main problem in Mexico is not the lack of anti-corruption policies, while it is true that the legislative development of some issues is pending, as well as the strengthening and consolidation of the National Anti-Corruption System. However, impunity and the lack of compliance and enforcement of the law in practice are the reasons why the results of the fight against corruption in Mexico do not reflect the existing policies, nor have they proven to be efficient to date.

Beyond the existence of such policies, it is important that they generate real changes. Usually, there are no implementation indicators, or the ones included in these documents are high, as they refer to procedural aspects, so it is not possible to clearly and accurately identify the impact of these policies.

Regarding **prevention bodies**, the National Anticorruption System (SNA) is integrated and coordinated by different federal authorities¹⁵, and plays a leading role in the prevention and fight against corruption. However, it has not achieved the set-up of a solid institutional framework to fully comply with its legal functions. The establishment of the different authorities has been gradual and their results and efficiency differ greatly. Most of the authorities of the National Anticorruption System face obstacles to make their activities, strategies and results more efficient due to the budget cuts they have faced in recent years and the political interference and interests that have arisen.

Public sector employment is mainly regulated by the Organic Law of the Federal Public Administration and by the Law of the Professional Career Service in the Federal Public Administration. These norms regulate all institutions of the federal civil service and standardize entry through public competition and merit. However, their standards of transparency and access to information must be reinforced in order to strengthen the social control of citizens. Likewise, it is necessary to strengthen the requirements for access to and evaluation of senior officials, currently freely appointed and removed, and to reduce the high level of interpretation and arbitrary powers that the respective law foresees. Moreover, international standards should be adopted and maximum levels of publicity, transparency and citizen participation should be applied in the appointment of high positions in autonomous institutions such as the Special Prosecutor's Office for Combating Corruption.

With respect to **political financing**, the Mexican State constitutionally grants public financing to political parties in accordance with a series of requirements.¹⁶ However, the transparency,

¹² Special program derived from the national development plan 2019-2024, published in the Official Gazette of the Federation on September 30, 2019.

¹³ Published in the DOF on June 30, 2021.

¹⁴ Approved on January 29, 2020 by the Coordinating Committee of the National Anticorruption System, it defines the strategic direction to combat the problem of corruption in Mexico.

¹⁵ The Citizen Participation Committee; the Federal Superior Audit Office; the Specialized Prosecutor's Office for Combating Corruption; the Civil Service Secretariat; the Federal Judiciary Council; the National Institute for Transparency, Access to Information and Protection of Personal Data; and the Federal Court of Administrative Justice.

¹⁶ Article 41, section II of the CPEUM.

accountability and financial management of political organizations is inefficient as many of them omit indicating expenses, and the reports submitted by political parties are opaque and deficient, besides hiding information and containing an endless number of irregularities in the obtaining, verification and use of resources. The amount of budget allocated to political parties is extremely high, and the lack of verification of the exercise and allocation of resources is equally high. Even so, the schemes of donations and contributions from militants prevent the financing from being efficiently audited. Oversight, accountability and auditing measures need to be strengthened, and the functional and budgetary autonomy of the National Electoral Institute (INE) must be guaranteed as well as respected.

Regarding **declarations of assets and interests, codes of conduct and conflicts of interest**, Mexico has the General Law of Administrative Responsibility and the Law of the Professional Career Service of the Public Administration. Also noteworthy is the development of the National Digital Platform¹⁷ for the registration and tracking of asset and interest declarations, as well as the asset evolution system and the declaration forms. Nonetheless, there is a need to strengthen transparency and broaden the scope, both regarding the declared content and the obliged actors, based on international standards, which would allow the constitution of effective control tools. Regarding codes of conduct for public officials of all State functions, the publication and mandatory nature of the Code of Ethics of the Federal Public Administration is noteworthy. Due to its recent publication, it is not possible to evaluate its application yet; however, Ethics and Conflict of Interest Prevention Committees have been established to this effect. More must be done to ensure adequate monitoring of their compliance and the harmonization of the Codes of Ethics of public entities and States. Furthermore, it is necessary for the country to adopt efficient regulations aimed at preventing and managing conflicts of interest, and to establish mechanisms for identifying, evaluating and acting upon the existence of such conflicts, whether in the process of appointing officials or in the event of a conflict during their term of office. The General Law of Administrative Responsibilities defines conflicts of interest and the duty to report them. A Guide for the Identification and Management of Conflicts of Interest was recently published; however, it is necessary to elevate the mechanisms and procedures for identification and management of conflicts of interest to the rank of law.

Regarding **whistleblower reporting and protection mechanisms**, there is no specific law on the matter and at the moment there are bills pending to be discussed in the Mexican Congress (the above, in administrative matters). However, at the end of 2020, the Protocol for the Protection of Whistleblowers¹⁸ was published and the platform of the Internal and External Citizen Whistleblowers System¹⁹ was enabled, which complements the Integral System of Citizen Complaints of the Federal Public Administration (SIDECA). The whistleblower platform allows for anonymous complaints and requests for protection measures to be made, which, according to the respective authority, have already been granted in the past. The current framework does not consider incentives for whistleblowers, actions to prevent retaliation, or reparation of damages for acts of corruption, so a solid reform is required on whistleblower protection - Mexico's approach to protection measures is focused on internal whistleblowers. The context of insecurity and violence in Mexico exacerbates the urgent need for regulation on the reporting of corruption with inter-institutional coordination processes oriented to achieving their effective implementation in practice, granting whistleblowers the necessary protection and guaranteeing their safety.

In the area of **public procurement**, the bases for procurement systems in Mexico are provided for in Article 134 of the Constitution. Mexico uses an electronic public procurement system called *CompraNet*. It has made an important qualitative leap in recent years, adopting

¹⁷ Available at: <https://www.plataformadigitalnacional.org>

¹⁸ Published in the DOF on October 19, 2020.

¹⁹ Available on the website: <https://alertadores.funcionpublica.gob.mx/>

international standards in procurement policies and open government. In 2017, Mexico implemented the government's Open Procurement Platform.²⁰ Notwithstanding the technical advances, the *Compranet* platform has registered technical and operational failures, and schemes of possible corruption in its operation have been reported.²¹ Opacity, direct awards, and triangulation with ghost companies continue to be the main scheme that fosters corruption in public procurement. The unjustified increase in direct awards during the current administration and as a result of the Covid-19 emergency is exorbitant. Efforts to achieve sustainable changes in the system that has been involved in multiple scandals of grand corruption are urgently needed. The e-procurement strategy needs to be aligned with a comprehensive and coordinated reform program, work towards a more efficient, effective and transparent process, and ensure integrity in public procurement processes. This highlights the need to improve the technological advances that Mexico has achieved through *Compranet*, especially since it has shown advances and results as an anti-corruption measure.

In terms of **public finance management**, issues related to the General State Budget are mainly regulated by the Constitution and the Federal Budget and Fiscal Responsibility Law. However, it is necessary to strengthen the National Auditing System to make the results of the public accounts' audit more efficient and to fight corruption in budget management. To date, the 2020 public account has revealed millions of dollars in irregularities in key works and programs of the current government.²² Likewise, it is necessary to promote and facilitate spaces for real civic participation in the design and management of the budget. Despite the fact that anti-corruption was publicized as a priority of the Federal Government, the amount of resources allocated to mega-projects and social programs that have reported irregularities has increased and the budget of the main entities in charge of preventing and fighting corruption has been cut, preventing the efficient exercise of their different functions.²³

Regarding the **independence of the judiciary and the prosecution services**, the mechanisms for sanctioning judges who have incurred in acts of corruption are not very transparent and there is a dependence of the body in charge of investigations on the Supreme Court, as the presidency of the Supreme Court and the Federal Judiciary Council reside in the same person. The external control mechanisms of the Federal Judiciary Council (CJF) need to be strengthened. The lack of integration of the specialized anti-corruption chambers of the Federal Administrative Court of Justice contributes to the backlog and administrative impunity. Furthermore, the actions and lack of independence of the Attorney General's Office have been socially and politically called into question, which has delegitimized the institution. The delay in the establishment of the Specialized Prosecutor's Office for Combating Corruption (FECC), its insufficient resources and lack of independence are an additional cause for its substandard results and inefficient fight against corruption. The worst consequence of the corruption of Mexico's law enforcement agencies is the high levels of impunity that exist. To a large extent, impunity is generated and protected by the corruption of the different agents involved in the judicial system: police, public ministries or prosecutors, judges and those in charge of prisons.

Access to information is regulated by the Constitution, the General Law of Transparency, Access to Public Information and Protection of Personal Data (LGTAIP) and the Federal Law on the matter. The constitutional reform on transparency of February 7, 2014 renewed and allowed for the strengthening of the mechanisms of access to public information and protection

²⁰ Available at: <https://www.gob.mx/contratacionesabiertas/home#!/>

²¹ See: https://politica.expansion.mx/mexico/2022/07/20/compranet-suspension-temporal-fallas-tecnicas-hacienda?_amp=true

²² Animal Político, (February, 2022), ASF detecta irregularidades en la Cuenta Pública 2020 por 63 mil 10 mdp, <https://www.animalpolitico.com/2022/02/cuenta-publica-2020-asf-detecta-irregularidades-63-mil-10-mdp/>, accessed: August 1, 2022.

²³ El País, (November, 2021), El presupuesto consume recortes al INE y al Poder Judicial y favorece a los programas sociales, <https://elpais.com/mexico/2021-11-14/los-diputados-consuman-el-recorte-millonario-al-ine-y-al-poder-judicial-en-el-presupuesto-de-egresos-del-proximo-ano.html>, accessed: August 1, 2022.

of personal data in the country. In addition, the LGTAIP provides for appeals procedures in matters of access to public information.²⁴ The National Digital Platform and the National Transparency Platform have been a milestone in Mexico in terms of access to information by digital means; however, it is necessary to strengthen technological progress in order to avoid and prevent the multiple cyber-attacks²⁵ and "hacks" that have been registered²⁶ and have caused the suspension of delivery of public information.

For its part, **civil society participation** in Mexico is regulated both constitutionally and legally. The Citizen Participation Committee of the National Anticorruption System (SNA) is the basis for citizen participation within the SNA structure. Progress has been made in defining mechanisms and instances of civil society participation. However, in practice, providing legal certainty and effective recourse to social organizations has not been a priority. The current situation has fostered a restrictive and intimidating context for civil society organizations, journalists and human rights defenders. It must be noted that Mexican legislation contains legal figures for citizen participation that constitute good practices in the region, but that in their practical application, they do not materialize effectively and therefore need to be improved. The participation of civil society in the appointment of high-level officials has not been guaranteed, nor has public debate been encouraged in this regard.

Regarding **private sector transparency** and the regulation of private sector companies²⁷, the law confers powers to the Ministry of Public Administration to collaborate with them in the establishment of self-regulatory mechanisms for the implementation of internal controls and integrity programs, in which effective whistleblower tools must be considered.²⁸ In general, private sector anti-corruption strategies are closely associated with corporate social responsibility (CSR) practices that focus on internal measures implemented by individual companies. It should be noted that, in order to strengthen transparency in the private sector, the Ministry of Economy has established the Mexican Digital Business Information System (SIEM Digital)²⁹, the Integral Registry Management System (SIGER) of the Public Registry of Commerce (RPC)³⁰, the National Registry of Foreign Investments (RNIE)³¹, the System of Publications of Mercantile Corporations (PSM), among other registries.³²

When it comes to **the prevention of money laundering and anti-money laundering measures**, in Mexico, the Federal Law for the Prevention and Identification of Operations with Resources of Illicit Origin (LFPIORPI) covers preventive aspects of money laundering. Mexico

²⁴ Title VIII, LGTAIP.

²⁵ Latinus, (July, 2022), Victim of countless attacks, reports INAI, <https://latinus.us/2022/07/13/plataforma-nacional-transparencia-tres-dias-fallas-victima-ataques-inai/>, accessed: August 1, 2022.

²⁶ Forbes, (September, 2021), INAI reports hacking of national transparency platform, <https://www.forbes.com.mx/inai-reporta-hackeo-a-la-plataforma-nacional-de-transparencia/> access: August 1, 2022.

²⁷ See Article 22 of the General Law of Administrative Responsibilities, <https://www.diputados.gob.mx/LeyesBiblio/pdf/LGRA.pdf>.

²⁸ It has even been introduced as a factor for sanctioning companies more or less severely, whether they have an integrity and internal compliance program. In other words, the pre-existence of such programs can act as a moderating factor in the imposition of sanctions for corrupt conduct in the private sector (Organization for Economic Cooperation and Development, 2015).

²⁹ It is a directory where you will be able to consult commercial information and location of the companies that operate in our Mexico. Available at: <https://siem.economia.gob.mx>

³⁰ Here you can consult the existing companies in the country, information and the legal acts that the regulations establish as mandatory for them, such as: meetings, capital, shareholders, powers of attorney, among others. Available at: <https://rpc.economia.gob.mx/siger2/xhtml/login/login.xhtml;jsessionid=sZKJIWVHrx7u3RehbkqfP4vXpF8YJzxNlnD7-uDQSTGWMCIHv02W!1668337665>

³¹ Companies with foreign investment in their capital are registered in this registry. Available at: <https://rnies.economia.gob.mx/RNIE/faces/inicio.xhtml>

³² In the PSM, some activities of the companies are available for consultation in accordance with commercial obligations (notices of meetings, contracts, balance sheets, financial statements, etc.). Available at: <https://psm.economia.gob.mx/PSM/>

applies a risk-based approach. There are no identification mechanisms or any registry of beneficial owners to verify the data declared by clients. A serious concern is that beneficial ownership is identified only to a limited extent, systematically influencing the effectiveness of entities in assessing and managing the risks of money launderers. Largely due to deficiencies in the legal framework, Financial Institutions (FIs) seek to identify beneficial owners only in certain limited circumstances.

An issue to be considered in the analysis of this phenomenon in Mexico is the lack of sanctions for corruption cases and networks that have been discovered. This is due to the fact that the National Anti-Corruption System only considers crimes for acts of corruption, so it does not include the crimes of concealment and operations with resources of illicit origin or money laundering. Thus, when we refer to the National Anti-Corruption System and the fight against corruption in Mexico, there is a distinction between unlawful conduct, administrative offenses (non-serious and serious) and crimes for acts of corruption, which, as mentioned, do not refer to all conduct committed by public servants to the detriment of the proper administration of public affairs and does not include or link the crime of money laundering.

With regard to **measures for the recovery, restitution and disposal of assets, confiscation tools and international cooperation**, national regulations must be adapted and a draft law needs to be strategically developed, based on indicators, to comply with international obligations in the area of asset recovery. Finally, the legal assistance provided by the Mexican State and an array of international cooperation conventions and agreements on different matters can be mentioned.

Table 1: Implementation and enforcement summary

UNCAC Articles	Status of implementation in law	Status of implementation and enforcement in practice
Art. 5 - Preventive anti-corruption policies and practices	Fully implemented	Poor
Art. 6 – Preventive anti-corruption body or bodies	Fully implemented	Moderate
Art. 7.1 - Public sector employment	Largely implemented	Moderate
Art. 7.3 - Political financing	Largely implemented	Moderate
Art. 7, 8 and 12 - Codes of Conduct, conflicts of interest and asset declarations	Fully implemented	Poor
Art. 8.4 and 13.2 – Reporting mechanism and whistleblowers protection	Partially implemented	Poor
Art. 9.1 - Public procurement	Fully implemented	Poor
Art. 9.2 - Management of public finances	Fully implemented	Poor
Art. 10 and 13.1 - Access to information and the participation of society	Fully implemented	Moderate
Art. 11 - Judiciary and prosecution services	Largely implemented	Moderate
Art. 12 - Private sector transparency	Largely implemented	Moderate

Art. 14 - Measures to prevent money laundering	Largely implemented	Moderate
Art. 52 and 58 - Anti-money laundering	Largely implemented	Poor
Art. 53 and 56 - Measures for direct recovery of property	Not implemented	Poor
Art. 54 - Confiscation tools	Largely implemented	Moderate
Art. 51, 54, 55, 56 and 59 - International cooperation for the purpose of confiscation	Partially implemented	Poor
Art. 57 – Return and disposal of assets	Partially implemented	Poor

Table 2: Performance of selected key Institutions

Name of institution	Performance in relation to responsibilities covered by the report	Brief comment on performance (e.g., <i>inadequate resources, lack of independence, strong expertise</i>)
Coordinating Committee of the National Anticorruption System	Moderate	Lack of coordination.
Citizen Participation Committee of the National Anticorruption System	Moderate	Lack of resources.
Executive Secretariat of the National Anticorruption System	Moderate	Lack of resources, non-compliance with parameters recommended to the authorities of the National Anti-Corruption System.
Ministry of Foreign Affairs	Good	Coordination of international cooperation efforts in the fight against corruption and arms trafficking.
Civil Service Secretariat	Poor	Lack of clarity in the investigation of corruption cases and irregularities. Lack of autonomy.
Attorney General's Office	Poor	Low legitimacy, social and political questioning. Lack of independence and discriminatory and selective exercise of powers.
Specialized Prosecutor's Office for Combating Corruption	Poor	Lack of independence: lack of resources, delay in establishment. Poor results.
Superior Audit Office of the Federation	Good	Relevant analysis of the annual public account.
Federal Judiciary Council	Moderate	In the process of implementing reforms to prevent acts of corruption.
National Institute for Transparency, Access to Public Information and Protection of Personal Data	Good	Good technological developments in the design and operation of the National Transparency Platform.
National Electoral Institute	Good	Good technical knowledge.

Federal Court of Administrative Justice	Poor	Pending processes for the appointment of Anti-Corruption Magistrates. Lack of specialization.
Financial Intelligence Unit	Moderate	Political use of the institution.
Institute to return to the People what has been stolen	Poor	Resignation of authorities and complaints under investigation for alleged cases of corruption.

2.4 Recommendations for priority actions

1. Eradicate impunity and corruption in order to contribute to the trust of citizens in the legitimacy of their institutions.
2. Ensure the application of the law to guarantee the effective implementation of the National Anti-corruption Policy.
3. Strengthen the structural and inter-institutional coordination of the National Anticorruption System as an institutional guarantee for the implementation of the anticorruption policy and an effective fight against corruption.
4. Conduct an exhaustive analysis of what the institutions in charge of the fight against corruption are currently doing in contrast to what they should be doing to optimize results, based on indicators and risk assessment and monitoring models.
5. Legislatively harmonize the processes for the appointment of high-level public officials to establish standards of transparency, citizen participation, conflict of interest analysis and accountability; and amend the suitability requirements/characteristics for these positions, giving priority to merit.
6. Guarantee and undertake initiatives to promote and ensure the independence and autonomy of preventive bodies, control bodies, oversight bodies and law enforcement agencies, and protect them from political interference.
7. Develop cooperation instruments with other national agencies, private sector entities and civil society for the implementation and enforcement of the National Anti-corruption Policy and the National Auditing Plan.
8. Stop the stigmatization of civil society, the press and human rights defenders and guarantee efficient protection measures.
9. Implement a sound regulatory framework on whistleblower protection mechanisms and measures, conflict of interest management, asset recovery and identification of beneficial owners.
10. Limit and regulate contracting through direct awards; streamline and strengthen mechanisms and digital tools for tracking, supervision and oversight of public contracting processes.
11. Guarantee sufficient budgetary means for the authorities that make up the National Anti-corruption System so that they can carry out their functions in an effective and efficient manner.
12. Legislatively harmonize the professional career service and reform it to reduce the high degree of discretion that still exists in the appointment of public positions.
13. Improve the interoperability of databases and information generated by institutions such as the National Institute of Transparency, Access to Public Information and Protection of Personal Data, Tax Administrative Service and the Attorney General's Office in order to detect and punish in a timely manner when acts of corruption related to bribery, money laundering and the like occur.
14. Develop and legislatively harmonize the responsibility of the State for acts of corruption, compensation for corruption damages and strengthen legislative, administrative and jurisdictional actions to recognize the victims of corruption.

While it could be even better, Mexico has one of the most comprehensive anti-corruption regimes in the region. Its deficiency, however, lies in its implementation. The written law must now be translated into extensive institutional, behavioral and cultural change to effectively combat corruption and impunity in Mexico.

III. Assessment of Review Process for Mexico

This shadow report has been written prior to the completion and publication of Mexico's UNCAC review report, which has been delayed for a variety of reasons, including the COVID-19 pandemic. The research team was unable to identify published information on the process so this section is based on available information and interviews.

3.1 Report on the Review Process

Information on Mexico's second cycle review has been reserved and endorsed by the Transparency Committee, whose term is still in force, under the grounds issued through official letter number CTA-316/2021.³³ According to the Ministry of Foreign Affairs and the Ministry of Public Administration,³⁴ UNODC, governmental experts and Mexico are currently in the process of drafting and reviewing Chapter II on Preventive Measures, which is why it has not yet been published by UNODC. As of the date of this parallel report, neither the self-assessment checklist nor the full report of Mexico's UNCAC review have been published; only the executive summary has been published.³⁵

Mexico reiterated its commitment to the UNCAC and is a signatory to the Transparency Pledge.³⁶ However, this Pledge has not been fully complied with, particularly with regard to the principle of publicly supporting civil society participation, publishing updated schedules of the review and civil society briefings. Although an official letter sent by the Mexican Government refers to the commitment to announce and publish the final report of the country review, it states that it has not been concluded, the date of conclusion is unknown and the publication of the final report of the review is postponed to an uncertain date.

As part of the terms of reference of the review mechanism, Mexico designated the Ministry of Foreign Affairs (General Directorate for the United Nations Organization) as the focal point and together with UNODC, completed the questionnaire and subsequently conducted the *on-site* visit.

The authors of this parallel report asked authorities about the participation of civil society in the review mechanism and their contributions, but no record, document, call or invitation was found. It is not known if there was any selected invitation. In summary, the extent of the government's active transparency on the review process, as well as of the participation of non-state actors, have not been clear to date, despite the fact that the country profile on the UNODC platform affirms the involvement of other actors.³⁷

In the framework of the Strategy for Strengthening Capacities to Prevent Corruption in Mexico, the National Peer Review Mechanism for the implementation of the UNCAC in Mexico was launched in 2020, funded by USAID. The UNODC in Mexico carried out the drawing of lots for the second cycle of the mechanism on April 21, 2021³⁸ and on October 8, 2021 concluded the

³³ Information obtained from the response to the public information request submitted to the transparency unit of the Ministry of Foreign Affairs on May 20, 2022.

³⁴ At meetings held on July 4 and 11, 2022.

³⁵ UNODC, Country profile page: Mexico, <https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fmex.html>, accessed: 22 August 2022.

³⁶ Transparency Pledge, <https://uncaccoalition.org/uncac-review/transparency-pledge/>, accessed: 10 November 2022.

³⁷ See: <https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fmex.html>

³⁸ During the drawing of lots, public sector actors participated, such as the National Institute for Transparency, Access to Information and Protection of Personal Data (INAI), the Executive Secretariat of the National

third cycle of the mechanism. Mexico is the first country in the world that is replicating this review mechanism at the state level, with the objective of strengthening the regulatory framework, programs and operation of state institutions in anti-corruption matters.³⁹ As of the date of this report, neither the evaluation nor the final reports have been published; however, during the draws of lots and the review process, the participation of civil society was actively promoted and guaranteed.

Regarding the National Peer Review Mechanism, in the National Council of the National Transparency System's first ordinary session of 2021, the progress of the implementation of the national mechanism was presented, which consisted of evaluating the way in which the States of the Republic have implemented articles 9, 10 and 33 of the UNCAC, related to Public Procurement, Public Information and Whistleblower Protection, respectively.⁴⁰ The evaluation of the States has already taken place, the publication of the results and the report of the National Peer Review Mechanism is pending.

In order to obtain information on the second cycle review process, 21 requests for information were sent to various public entities throughout the national transparency platform, the focal point being the Ministry of Public Function, the Ministry of Foreign Affairs, the Federal Superior Audit Office, the Financial Intelligence Unit, the Federal Judiciary Council, the Specialized Prosecutor's Office for Combating Corruption, National Institute of Transparency, Access to Public Information and Protection of Personal Data, and the Executive Secretariat of the National Anticorruption System.

Table 3: Transparency of the government and CSO participation in the UNCAC review process

Did the government disclose information about the country's focal point?	Yes	The Ministry of Foreign Affairs disclosed the contact details as the country's focal point.
Was the review schedule published somewhere/publicly known?	No	The review began in 2017, the announcement of the start of the <i>on-site</i> visit was published, but no updates on the timing of the review process were published.
Was civil society consulted in the preparation of the self-assessment checklist?	Unknown	The authorities do not have a record of participation, nor were any information or calls for participation found. To date, the participation and involvement of civil society in the preparation of the self-assessment checklist is unknown.
Was the self-assessment published online or provided to civil society?	No	According to authorities, the process of preparation and review of the full report has not been completed, so it has not been published, nor has it been made available to civil society.

Anticorruption System (SESNA), the National Citizen Participation Committee (CPC), the Superior Audit Office of the Federation (ASF) and their state counterparts. The British Embassy in Mexico, USAID, representatives of civil society organizations, academia, and the general public were also part of the dialogue.

³⁹ UNODC, (2020), UNODC conducts draw for the second cycle of the national peer review mechanism in Mexico, https://www.unodc.org/mexicoandcentralamerica/es/webstories/2020/21_04_21unodc-realiza-el-sorteo-del-segundo-ciclo-del-mecanismo-nacional-de-revisin-entre-pares-en-mxico.html, accessed: July 1, 2022.

⁴⁰ INAI, (May, 2021), Avanza aplicación de mecanismo de UNODC México, para fortalecer combate a corrupción a nivel estatal, Available at: <https://home.inai.org.mx/wp-content/documentos/SalaDePrensa/Comunicados/Comunicado%20INAI-147-21.pdf>, accessed: July 1, 2022.

Did the government agree to a visit to the country?	Yes	The on-site visit was conducted by Guatemala and São Tomé and Príncipe.
Was a country visit undertaken?	Yes	The visit took place from May 9 to 11, 2017.
Was civil society invited to provide input to the official reviewers?	No	No invitation, call or record of civil society participation was found.
Was the private sector invited to provide input to the official reviewers?	No	No information or records were found on the participation of the private sector.
Has the government committed to publishing the full country report?	Yes	The executive summary has been published. However, according to the authorities, as of August 8, 2022, Mexico's full official country report was still in the drafting and approval process, and the information has been classified as reserved for 3 years. ⁴¹

3.2 Access to information

The following is a summary of the main points regarding access to information for the preparation of this report:

- a. **Laws and norms** – The authors of this report accessed the national regulatory bodies in force (Constitution, laws, regulations and other norms) through the web page of the Chamber of Deputies of the Congress of the Union⁴², which provides citizens with free access to national legislation.
- b. **Institutional pages** - As part of the preparation of the report, websites of federal institutions were reviewed to access public documents containing public policies, reports, projects, statistics and information. The annual work program, work reports and state anti-corruption policies of the National Anticorruption System are available on its website.⁴³ Similarly, the implementation program of the National Anticorruption Platform (PNA) is available online for public consultation. However, it should be noted that the information related to plans and their follow-up, with some exceptions, is not published on the institutional web pages. Statistical data related to the implementation of the UNCAC articles analyzed in this report is not published either, with some exceptions. Not counting statistical data from the National Institute of Statistics and Geography (INEGI), in general, much of the statistical information on corruption that is actively published is unclear, scarce, confusing or deficient.
- c. **Requests for public information** - Through the National Transparency Platform (PNT), the research team was able to make 21 requests for access to information based on Article 122 of the General Law on Transparency and Access to Public Information. Not all of them were answered in their entirety, the non-existence of information, the absence of information collection or incompetence to attend the request was stated as reasons.
- d. **Interviews** - For the preparation of this report, 5 interviews were conducted, of which 4 were conducted with public servants, and 1 was conducted with an expert in anti-

⁴¹ Information obtained from the response to the public information request submitted to the transparency unit of the Ministry of Foreign Affairs on May 20, 2022.

⁴² Available at: <https://www.diputados.gob.mx/LeyesBiblio/index.htm>

⁴³ Available at: <https://www.sna.org.mx/en-que-estamos-trabajando/>

corruption policies. The authors of the report approached key institutions in the implementation of the UNCAC and the National Anticorruption System, as the focal point for the review process in Mexico, via phone and e-mails. A total of 8 interview requests were made to public institutions, of which 4 were accepted and 4 did not respond to the request.

In addition, surveys were conducted, information was exchanged and compiled, and a virtual meeting was held with various Mexican civil society organizations, including TOJIL, Fundar, Transparencia Mexicana, Impunidad Cero and Mexicanos contra la Corrupción y la Impunidad (MCCI). During the meeting, the review mechanism was discussed, and findings, research, perspectives and best practices were shared from the different approaches of the multiple CSOs in the areas of anti-corruption, transparency, accountability, impunity and gender.

- e. **Press releases** - Press releases were used as a reference for the preparation of some sections of the report.
- f. **Civil society reports** - The documentation, recommendations and assessments of the civil society organizations that collaborated in the preparation of this report, and of national and international anti-corruption organizations in general, were also taken into account.
- g. **Questionnaires** - Information was collected from two questionnaires, the first one technical and evaluative, which was sent to law firms, specialists, academics and anti-corruption organizations, and the second one perceptive, in relation to the implementation and operation of the National Anti-Corruption System and the National Anti-Corruption Plan, which was sent to lawyers, civil society organizations and citizens.

The main obstacle to obtaining the necessary information was related to the classification of reserved information, the lack of government compilation or the simple unwillingness of the government to allow access to the required information due to alleged incompetence or lack of internal coordination to identify, locate and provide the information. In addition, much of the public information is incomplete, unclear or not easily understood by citizens. For these reasons, apart from the information that was available online, it was difficult to obtain statistical information on UNCAC implementation and compliance.

IV. Assessment of Implementation of Chapter II and Chapter V Provisions

This chapter analyzes the implementation of the provisions of UNCAC Chapter II on preventive measures and Chapter V on asset recovery in Mexico through the application of laws, regulations and practices, highlighting both good practices and areas for improvement.

4.1 Chapter II

4.1.1 Art. 5 – Preventive anti-corruption policies and practices

The Mexican State has a broad regulatory framework⁴⁴ aimed at preventing and mitigating acts of corruption in public and private entities. In addition, the legislation seeks to ensure transparency, and that civil society organizations and citizens in general can exercise control over public resources and public management. However, the enforcement and implementation of regulations is still lacking and needs to be strengthened.

In Mexico, two key reasons characterize corruption: illegality and social norms. Both are linked to several causes such as: impunity, arbitrariness, a distortion of government-society contact points and a lack of social and private sector involvement in the fight against corruption.⁴⁵

The creation of the National Anticorruption System (SNA) through the constitutional reform on the fight against corruption⁴⁶ marked a turning point in the approach of public policies to combat corruption, through the establishment of coordination mechanisms to address the causes of this problem in Mexico. Thus, Article 113 of the Mexican Constitution was reformed to consolidate the National Anticorruption System.⁴⁷

This constitutional reform resulted in the drafting of various regulations and thus led to the creation of a space for those institutions in charge of combating and controlling corruption in

⁴⁴ Political Constitution of the United Mexican States; Federal Criminal Code; National Code of Criminal Procedures; General Law of Administrative Responsibilities; Law of the Office of the Attorney General of the Republic; Federal Law of Republican Austerity; General Law of the National Anticorruption System; Law of Audit and Accountability of the Federation; Organic Law of the Federal Court of Administrative Justice; National Law of Extinction of Ownership; Federal Law for the Prevention of Identification of Operations with Illicit Proceeds; Agreement that aims to issue the Code of Ethics for Public Servants of the Federal Government, the Integrity Rules for the exercise of the public function and the General Guidelines to promote the integrity of public servants; Agreement that establishes the Guidelines for the Promotion and Operation of the System of Internal and External Citizen Corruption Alerters; Model of the Business Integrity Program of the Ministry of Public Function.

⁴⁵ The definition of corruption as a public problem is based on the position and analysis made in the National Anticorruption Policy, the basic document of the Mexican government's public policy to combat corruption.

⁴⁶ Decree amending, adding and repealing several provisions of the Political Constitution of the United Mexican States Published in the Official Gazette of the Federation (DOF) on May 27, 2015.

⁴⁷ The purpose of the National System is to establish principles, general bases, public policies and procedures for coordination among the authorities of all levels of government in the prevention, detection and punishment of administrative offenses and acts of corruption, as well as in the oversight and control of public resources. It is an instance whose purpose is to establish, articulate and evaluate the policy on the matter.

the country to come up with new ways of organizing, operationalizing and coordinating between themselves. Equally important was the reform to section XXIV of Article 73, which empowered the Congress of the Union to issue the general law establishing the bases for coordination of the SNA. Consequently, on July 18, 2016, the General Law of the National Anticorruption System (LGSNA) was published.⁴⁸

In view of this, the main axis of the National Development Plan (PND) 2019-2024⁴⁹ is to eradicate corruption and reactivate the administration of justice, recover the rule of law and separate political power from economic power. It highlights the need to improve the use of public resources by promoting both efficiency and effectiveness in public management as well as the use of human and material resources orienting them to the general welfare of the population in the most direct, effective and forceful way, through the frontal fight against corruption and impunity.⁵⁰ The PND foresees the strengthening of coordination mechanisms, the promotion of transparency, and the implementation, consolidation and strengthening of the SNA for the fight against corruption and impunity.

The Mexican State is also conducting a national consultation for the development of its anti-corruption policy based on the Policy of Transparency, Open Government and Open Data of the Federal Public Administration 2021-2024.⁵¹ This policy establishes the set of administrative provisions that will allow the Ministry of Public Administration to conduct the federal government's actions in the areas of transparency, open government and open data in a holistic, comprehensive, differential and interdependent manner, in order to contribute to accountability and the fight against corruption and impunity, in accordance with Article 37, sections XXII and XXIII of the Organic Law of the Federal Public Administration.

To this effect, the National Program to Combat Corruption and Impunity and Improve Public Management 2019-2024⁵² proposes addressing the causes and effects of corruption, through the fight against the high levels of administrative impunity in the federal government, the promotion of efficiency and effectiveness of public management and of the Mexican State's assets. In the same sense, some local governments - 26 out of 32⁵³ - have placed the fight against corruption as a priority strategy in their state development programs.

Mexico established a national public consultation mechanism for the development of the proposed National Anti-Corruption Policy (PNA), in which dialogue was sought with civil society organizations, businessmen, businesswomen, academics and academics⁵⁴, which defines the strategic direction to combat the problem of corruption in Mexico.

The PNA⁵⁵ consists of a general part⁵⁶ divided into ten themes, which were articulated around four strategic axes: 1. Combating corruption and impunity, 2. Combating arbitrariness and abuse of power, 3. Promote the improvement of public management and government-society

⁴⁸ Available at: https://www.diputados.gob.mx/LeyesBiblio/pdf/LGSNA_200521.pdf

⁴⁹ Available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5565599&fecha=12/07/2019#gsc.tab=0

⁵⁰ General Axis 1.- Policy and Government of the National Development Plan 2019-2024

⁵¹ Published in the DOF on June 30, 2021 and available at: https://funcionpublica.gob.mx/web/transparencia/Politica_de_Transparencia_Gobierno_Abierto_y_Datos_Abiertos_de_la_APF_2021-2024.pdf

⁵² Special program derived from the National Development Plan 2019-2024, published in the Official Gazette of the Federation on September 30, 2019.

⁵³ Data from Statistics on the occasion of the international day against corruption, INEGI, December 9, 2019. Available at: https://www.inegi.org.mx/contenidos/saladeprensa/aproposito/2019/corrupcion2019_Nal.pdf, accessed July 1, 2022.

⁵⁴ On January 29, during the 1st Ordinary Session of the Coordinating Committee, the National Anti-Corruption Policy was unanimously approved. Published in the DOF on February 25, it defines the strategic direction to combat the problem of corruption in Mexico.

⁵⁵ Available at: <https://www.dof.gob.mx/2020/SESNA/PNA.pdf>

⁵⁶ Information identified in a meeting held on July 11, 2022 with the SFP.

contact points, 4. Involve society and the private sector, and 10 specific objectives. In relation to these axes and objectives, 40 PNA priorities were defined. In addition, four cross-cutting principles were defined for the implementation of these strategic axes: coordination, human rights, open government and social participation, and intelligence and technologies. It is important to note that the PNA priorities do not present specific projects or actions, i.e., this instrument should not be confused with a program or a guide containing programmatic elements. For this purpose, an Implementation Program was prepared and published.

The Implementation Program of the National Anticorruption Policy⁵⁷ (PI-PNA), which is valid for 3 years⁵⁸, establishes the elements that comprise it - Axes, Specific Objectives, Priorities, Strategies, Lines of Action and Performance Indicators - as well as the assigning of responsibilities in the implementation process through the figures of implementation leaders and executors of the PNA. The bridge between the implementation process and those corresponding to monitoring and evaluation is presented in two sections, as well as an explanation of the timing and general contents of the annual execution reports and the tri-annual report on PNA implementation follow-up.

The Executive Secretariat of the National Anticorruption System, in its role of technical support to the Coordinating Committee of the SNA, conducted a research exercise to make visible good practices and actions of various governments to combat corruption, through which it developed the website called Databank of International Good Practices in the Fight against Corruption.⁵⁹ The initiative seeks to showcase innovative and successful experiences in preventing, detecting, controlling, sanctioning, deterring and combating corruption, as well as in the proper oversight of public resources.

On June 15, 2020, the Ministry of Public Administration (SFP) chaired the Establishment Session and First Ordinary Meeting of the Specialized Technical Committee on Corruption Information (CTEICO), which led to the establishment of said committee⁶⁰, and whose purpose is to generate scientific data and measurements on corruption, in order to make concrete decisions that will transform the government and empower the population.

Among the expected products of this Committee are a Model for Measuring Impunity, a Corruption Risk Map of Public Procedures and Services, as well as a Compilation of information on the National Anticorruption System and the State Anticorruption Systems.

On the other hand, the Executive Commission (EC) of the Executive Secretariat of the National Anticorruption System (SESNA),⁶¹ approved the "Criteria for the Execution and Follow-up of the Implementation Program of the National Anticorruption Policy". Its objective is to establish the necessary elements for the execution of the Strategies and Lines of Action established in the PI-PNA, as well as for the preparation of the annual reports on its execution, in addition to providing guidance materials for the institutions responsible for the execution and follow-up of the PI-PNA.⁶²

⁵⁷ Available at: https://www.dof.gob.mx/2022/SESNA/Programa_Implementacion_PNA.pdf

⁵⁸ It became effective on the date of its publication in the Official Gazette of the Federation, February 21, 2022.

⁵⁹ Available at: <https://banco.sesna.gob.mx/>, accessed July 1, 2022.

⁶⁰ Se instala Comité Técnico Especializado en Información sobre Corrupción, SNA, June 15, 2020, <https://www.sna.org.mx/2020/06/15/se-instala-comite-tecnico-especializado-en-informacion-sobre-corrupcion/>, accessed: August 2, 2022.

⁶¹ At its Second Extraordinary Session 2022, held on May 23, 2022.

⁶² Information identified from the response to the request for access to public information submitted to the Transparency Unit of the Executive Secretariat of the National Anticorruption System (SESNA) on May 20, 2022.

With this, a preliminary draft of the Monitoring and Evaluation Model for the PNA, the Model for Evaluation and Monitoring of Anti-Corruption and Integrity (MESAI), was approved.⁶³ This model was proposed as a repository of indicators and data through which it will seek to collect, systematize, use and provide periodic and continuous monitoring of a set of indicators to evaluate the progress and challenges observed at the level of impact, results and processes, and which are related both to the phenomenon of corruption in aggregate terms, as well as to the strategies and actions established in the PNA.⁶⁴ To date, the final project has not been approved or published.

The Citizen Participation Committee (CPC) of the National Anticorruption System (SNA), in collaboration with UNDP Mexico, USAID, GESOC, SESNA, Ciudadanxs por la Transparencia, Transparency and Anticorruption Initiative of the Tec de Monterrey, presented the Corruption Risk Self-diagnosis Tool⁶⁵ and launched the Public Challenge "Anticipating Corruption Risks, application of the Corruption Risk Self-diagnosis Tool".⁶⁶

As part of the design and construction of the PNA evaluation and follow-up model, the Catalogue of Information on Corruption in Mexico (CICM) was created.⁶⁷ The variables compiled and systematized in the CICM⁶⁸ are intended to provide citizens, decision makers, policy makers, researchers in the field and the general public with simple and systematized information for consultation.⁶⁹

After being launched on March 29, 2022, the CICM's current portal (<https://cicm.sesna.gob.mx/>) is a repository with 2828 variables on the phenomenon of corruption.

Regarding the public sector, in 2014 the Self-Assessment Guide for Integrity Risks in the Public Sector was published, a document prepared by the Federal Supreme Audit Office to prevent irregular practices and contribute to good governance, as well as to be a key player in strengthening public policies, institutions and the proper use of federal resources.⁷⁰

⁶³ It was presented for knowledge and discussion before the Executive Commission of the SESNA at its First Extraordinary Session, which took place on November 19, 2021, being recorded in the AGREEMENT SE-CE-SESNA/19/11/2021.05. The agreement can be consulted at:

https://www.sesna.gob.mx/download.php?file=%2Fwp-content%2Fuploads%2F2021%2F11%2FActa_Aprobada_1a_SE_2021_CE_19Nov2021-04Abr2022.pdf (El Preliminary draft of the Model for Evaluation and Monitoring of Anticorruption and Integrity can be consulted at: https://www.sesna.gob.mx/download.php?file=%2Fwp-content%2Fuploads%2F2021%2F11%2FAnexoIII_Acta_Aprobada_1a_SE_2021_CE_19Nov2021-04Abr2022.pdf).

⁶⁴ Information identified from the response to the request for access to public information submitted to the Transparency Unit of SESNA on May 20, 2022.

⁶⁵ Available at: <https://anticorruptionmx.org/riesgos-de-corruption#:~:text=Know%20the%20tool%20self%20diagnosis%20of,the%20tool%20is%20totally%20an%20an%C3%B3nimo>.

⁶⁶ Information obtained at the meeting held on July 7, 2022 with the Citizen Participation Committee of the National Anticorruption System.

⁶⁷ The Corruption Information Catalog (CICM) is the first step towards the foundations of a model for monitoring and evaluation of corruption, as it is an input and source of consultation, in turn, an independent tool on data on the phenomenon of corruption in Mexico. In addition, it is the technical foundation for the construction of the basic systems that will constitute the MESAI, for which the SESNA began work in the second half of 2019.

⁶⁸ The first version 1.0 of the CICM was launched on April 6, 2020, with 600 variables. Subsequently the CICM v1.1 version, with 1681 variables all classified according to the four processes of the LGSNA (Prevention, Detection, Sanction and Control and monitoring of public resources) as well as the four axes and ten thematic areas of the PNA.

⁶⁹ Information identified from the response to the request for access to public information submitted to the Transparency Unit of SESNA on May 20, 2022.

⁷⁰ Available at: https://www.asf.gob.mx/uploads/177_Guias_Tecnicas/Guia_de_Autoevaluacion_a_la_Integridad_en_el_Sector_Publico.pdf

On October 19, 2020, the Protocol for the Protection of Whistleblowers was published in the Official Gazette of the Federation (DOF), which seeks to provide certainty to people who are at risk for reporting and obliges all public servants of the Federal Public Administration (APF) to adhere to it. The protocol is insufficient to efficiently guarantee the necessary protection measures, in addition to the fact that it does not contemplate incentives for whistleblowing, reparation of damages for corruption and measures to guarantee the discretion of whistleblowers, as discussed in the respective chapter.

Mexico currently chairs the Transparency and Open Government Network of the Community of Latin American and Caribbean States (CELAC) and signed the Joint Declaration of the Ministers and High Authorities of the CELAC member countries on the Prevention and Fight against Corruption on November 25, 2020, on the fight against corruption and impunity in the region.⁷¹

For its part, the Ministry of Public Administration has planned, integrated and systematized the Annual Audit Plan (PAF) 2021⁷², which consists of 723 audit actions focused on the areas most susceptible to corruption and on priority projects of the Federal Government (619 are audits; 90 visits; 6 evaluations, and 8 quality checks). This plan has been implemented by all Civil Service Secretariat audit units, which have sought to identify areas of opportunity, promote probity and efficiency in the public sector, and strengthen the performance of the State. Between September 2020 and June 2021, 684 audit actions were carried out, resulting in 1,890 observations.

The Civil Service Secretariat has entered into several agreements with international organizations in the prevention and fight against corruption⁷³, which are listed below:

Agreement	Agency
Framework Cooperation Agreement between the Secretariat of Public Administration of the United Mexican States and the Latin American Center of Administration for Development ⁷⁴ (CLAD)	CLAD
Memorandum of Understanding between the Ministry of Public Administration of the United Mexican States and the United Nations Development Programme ⁷⁵ (UNDP)	UNDP
Memorandum of Understanding between the United Nations Entity for Gender Equality and the Empowerment of Women and the Ministry of the Civil Service of the United Mexican States ⁷⁶	UN Women
Memorandum of Understanding between the Ministry of Public Administration of the United Mexican States and the Liaison and Partnership Office in Mexico of the United Nations Office on Drugs and Crime ⁷⁷ (UNODC)	UNODC

⁷¹ Available at: <https://ppt-celac.sre.gob.mx/es/comunicados-especiales-e-intervenciones/declaraciones-especiales/25-declaracion-conjunta-de-la-iv-reunion-de-ministras-ministros-y-altas-autoridades-de-prevencion-y-lucha-contra-la-corrupcion>

⁷² SFP, (2021), Informe de labores de la SFP 2020-2021, available at: https://www.gob.mx/cms/uploads/attachment/file/665450/3_Informe_de_Labores_de_la_Secretar_a_de_la_Funci_P_blica_2020-2021.pdf, accessed: 4 July 2022.

⁷³ Information gathered from the response to the Request for access to public information submitted to the Transparency Unit of the SFP on May 20, 2022.

⁷⁴ Available at: https://www.gob.mx/cms/uploads/attachment/file/638196/Convenio_marco_de_colaboraci_n_entre_la_SFP_de_l_os_Estados_Unidos_Mexicanos_y_el_Centro_Latinoamericano_de_Administraci_n_para_el_Desarrollo.pdf

⁷⁵ Available at: https://www.gob.mx/cms/uploads/attachment/file/542095/MEMORANDO_SFP-PNUD.pdf

⁷⁶ Available at: <https://www.gob.mx/sfp/documentos/memorando-de-entendimiento-entre-la-entidad-de-la-onu-para-la-igualdad-de-genero-y-el-empoderamiento-de-las-mujeres-y-la-funcion-publica>

⁷⁷ Available at: <https://www.gob.mx/sfp/documentos/memorando-de-entendimiento-entre-la-sfp-y-la-oficina-de-enlace-y-partenariado-en-mexico-de-la-oficina-de-la-onu-contra-la-droga-y-el-delito?state=draft>

As a result of the memorandum of understanding signed in 2019 with UNODC, in coordination with the SFP, cooperation work has been carried out in relation to the career service, conflicts of interest, whistleblowers and surveillance.⁷⁸ However, in general, the Civil Service Secretariat has identified the lack of international technical assistance as an obstacle to implementation.⁷⁹

For its part, the Ministry of Foreign Affairs (SRE) has identified the matrix for following up on the international commitments of the Mexican State⁸⁰ through the implementation of the System for Follow-up and Attention to International Human Rights Recommendations (SERIDH) as a good practice.⁸¹

Regarding the implementation of anti-corruption regulations, each of the laws and decrees establishes the entities responsible for the regulation and leadership of the actions. There are different levels of responsibility for the implementation of anti-corruption measures, which are set by the normative scheme and its consequent regulation.

A challenge in the implementation of reforms at all levels of government has been to ensure that the new legislation translates into real institutional, cultural and behavioral change among economic actors and society in general.

Undoubtedly, one of the great achievements of the SESNA and the Coordinating Committee of the National Anticorruption System (CC) was the development of the PNA, a tool of the Mexican State to establish lines of action to combat corruption and, at the same time, disseminate information about this problem in the country.

Unfortunately, in practice not all citizens are aware of the anti-corruption legislation and the vast majority of citizens are unaware of the participatory institutional framework and consequently miss opportunities to get involved in collective decisions and citizen control.

The National Anti-Corruption Policy chooses to understand the formal institutional problem of corruption as a matter of non-compliance with formal rules; the solutions proposed in this policy are aimed at reducing the margins of impunity and arbitrariness prevailing in the Mexican State through the establishment of controls (internal and external), the adaptation of processes, the strengthening of transparency and accountability schemes, and the strengthening of professionalism and integrity in public service.

The SNA model is inclined to act as a *reaction* to the phenomenon of corruption, but does not give due importance to *prevention*. This explains the current prevailing lack of public ethics and the weaknesses in the practical application of the existing ethical instruments. As long as the causes of corruption and impunity are not targeted as a preventive measure, they will continue to multiply.⁸²

Mexico is taking firm steps in the fight against corruption, but still faces enormous challenges in this field. The country needs to capitalize on reforms, new measures and decisions with concrete actions aimed at reducing irregular behavior in both government and the private

⁷⁸ Information identified in a meeting held on July 11, 2022 with the SFP.

⁷⁹ Information gathered at a meeting held on July 11, 2022 with the SFP.

⁸⁰ Information obtained at the meeting held on July 4, 2022.

⁸¹ Accessible at: <https://seridh.sre.gob.mx/publico>.

⁸² Oscar Diego Bautista, COMECSO, ¿Qué le falta al Sistema Nacional Anticorrupción de México, <https://www.comecso.com/ciencias-sociales-agenda-nacional/cs/article/view/974/616>, accessed: August 2, 2022.

sector, as this type of behavior has a negative effect on the economy and society, says the OECD's *Mexico Integrity Survey: Adopting a firm policy against corruption*.⁸³

In turn, the authors of this report identified that a main obstacle in relation to corruption prevention policies and practices, and in general in the fight against corruption, does not lie in the communication of information, but in the way in which it is communicated, essentially taking into account the social, educational and real context of Mexico, and the need to communicate it in a simplified, harmonious and civic manner.⁸⁴

Even so, there are still issues to be legislated, such as a solid framework for the protection of whistleblowers, reparation of damages caused by corruption, recovery of assets, improvements to the country's public contracting processes, better methods for the selection of directors of oversight, prevention and sanctioning bodies, among others.

Good practices

- Mexico enshrines the prevention and fight against corruption and the establishment of a National Anticorruption System (SNA) at the constitutional level. Therefore, the Mexican State has a broad regulatory framework of laws to prevent and combat corruption.
- There is a diversity of actors and issues involved in the country's anti-corruption regulatory framework. Among them are the authorities that make up the Coordinating Committee, the Executive Commission, and the Citizen Participation Committee of the National Anticorruption System, and the investigation and sanctioning bodies, among others.
- The development of the National Anticorruption Policy (PNA) and the PI-PNA, and its strengthening through the Transparency, Open Government and Open Data Policy for the Public Administration, the National Program to Combat Corruption and Impunity, and to Improve Public Management, and the Open Government Partnership.
- The preliminary draft of the Model for Evaluation and Monitoring of Anticorruption and Integrity.
- The initiative of the Databank of International Good Practices in the Fight against Corruption, created by SESNA.
- The development of the State Anticorruption Policy.

Deficiencies

- The implementation of the PNA has been slow, and to date shows inefficient and insufficient results in the fight against corruption.
- A large part of the public is unaware of anti-corruption legislation and the participatory spaces that legally exist, which leads to a lack of citizen involvement in public affairs.
- The lack of cross-cutting coordination in the implementation and execution of actions to combat corruption among the public entities that are members of the SNA.
- To date, there is no measurement of the actual implementation and practical effect of anti-corruption regulations in Mexico.
- Due to the recent adoption of the PI-PNA, no efficiency evaluations or progress reports on the PNA have been found.
- The delay in the harmonization and homologation of the policy of the State Systems with the SNA.
- The discordance between the national discourse and the state's actions with the PNA. The establishment and promotion of practices aimed at combating corruption has not been the most efficient.

⁸³ OECD, (2018), Mexico Integrity Study, Available at: <https://www.oecd.org/gov/ethics/estudio-integridad-mexico.htm>, accessed: 2 August 2022.

⁸⁴ Information identified in a meeting held on July 11, 2022 with the Ministry of Public Administration.

- The PNA lacks the necessary instruments to transform the strategies and policy actions into specific lines of action that can be implemented with clear responsibilities.

4.1.2 Art. 6 – Preventive anti-corruption body or bodies

Article 113 of the *Decree on Combating Corruption*, which amended the Mexican Constitution in 2015, defines the SNA as "the coordinating body between the authorities of all levels of government competent in the prevention, detection and punishment of administrative responsibilities and acts of corruption, as well as in the oversight and control of public resources".⁸⁵

The SNA is made up of the Coordinating Committee, the Citizen Participation Committee, and the Steering Committee of the National Auditing System and the Local Systems. Article 36 of the LGSNA⁸⁶ from 2021 establishes the make-up, attributions, bases and operation of the local systems. With the entry into force of the SNA, the Coordinating Committee of the System became the body responsible for public policies to fight corruption.

Article 8 of the LGSNA establishes that the Coordinating Committee is made up of the following entities: the Citizen Participation Committee; the Superior Audit Office of the Federation; the Specialized Prosecutor's Office for Combating Corruption; the Ministry of Public Function; the Federal Judiciary Council; the National Institute for Transparency, Access to Information and Protection of Personal Data; and the Federal Court of Administrative Justice. The attributions of the different agencies in charge of preventing and combating corruption that make up the National Anticorruption System are established in the LGSNA.

Moreover, with regard to Article 6, paragraph 3 of the Convention, Mexico informed the Secretary General of the United Nations that the Civil Service Secretariat is the competent authority.

The establishment of state anti-corruption systems was carried out gradually, with important differences in technical and financial capacities, and according to the priority that each state gave to the fight against corruption. This was reflected in unequal progress in the fulfillment of the objective established in Article 113 of the Constitution.

The Coordinating Committee is responsible for establishing coordination mechanisms among the members of the National System and is in charge of developing, promoting and evaluating public policies to combat corruption.⁸⁷ The SESNA is also responsible for monitoring the implementation of the Anti-Corruption Policy.⁸⁸

Furthermore, the Citizen Participation Committee (CPC), through its participation in the SNA's Executive Commission and Coordinating Committee, has the power to express its opinion and make the proposals it deems relevant for the development of the PNA, as well as to propose mechanisms for coordination with civil society organizations, academia and citizens in general.⁸⁹ The CPC keeps a record of the agreements and letters of intent signed by the CPC

⁸⁵ Decree reforming, adding and repealing various provisions of the Political Constitution of the United Mexican States, regarding the fight against corruption, published on May 27, 2015 in the D.O.F. and available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5394003&fecha=27/05/2015#gsc.tab=0

⁸⁶ Available at: https://www.diputados.gob.mx/LeyesBiblio/pdf/LGSNA_200521.pdf

⁸⁷ Article 8, LGSNA.

⁸⁸ Article 6, LGSNA.

⁸⁹ Article 21, LGSNA.

with different institutions, business groups, academia and civil society organizations⁹⁰, which are available on its website.⁹¹

In accordance with the institutional framework established in the LGSNA, the SESNA Commission is responsible for generating the technical inputs for the SNA Coordinating Committee to perform its functions.⁹² Among such inputs, this Commission is responsible for preparing the proposal of comprehensive policies on the matter, which are submitted to the Coordinating Committee for discussion and eventual approval.

In turn, the Steering Committee of the National Auditing System is made up of the Federal Supreme Audit Office, the Ministry of Public Administration and seven rotating members from among the local supreme audit institutions and the secretariats or counterpart agencies in charge of internal control in the states. It will execute the actions corresponding to the design, approval and promotion of integral policies on the matter, as well as the implementation of coordination mechanisms among all the members of the System, and the integration and implementation of mechanisms for the supply, exchange, systematization and updating of information on the auditing and control of public resources generated by the competent institutions in such matters.

On the other hand, the investigation and sanction entities in Mexico are the Ministry of Public Administration, the Federal Superior Audit Office, the Federal Court of Administrative Justice; the Financial Intelligence Unit and the Tax Administration Service; the National Electoral Institute and the Electoral Tribunal of the Judiciary of the Federation, in electoral matters; the Attorney General's Office and the Specialized Prosecutor's Office to Combat Corruption.

On June 17, 2020, the Executive Secretariat of the National Anticorruption System presented the Institutional Program 2020 - 2024⁹³ which was developed in adherence to the criteria for preparing, ruling, approving and following up on the programs derived from the National Development Plan 2019 - 2024, as well as the Guide for the preparation of programs derived from the National Development Plan.

Thus, in January 2022, the Coordinating Committee approved the PI-PNA, which is the technical instrument that includes the Strategies and Lines of Action that various public institutions will carry out to implement the elements defined in the PNA. The Coordinating Committee's agreement instructs the SESNA to follow up on the implementation of the PI-PNA as of its entry into force, as well as to coordinate the necessary actions for its evaluation. This evaluation will be carried out through the presentation of annual progress reports, based on the Evaluation and Follow-up Model for Anticorruption and Integrity (MESAI) and through the preparation of an execution report of the PI-PNA that will be completed every three years and from which the members of the Coordinating Committee may make the adjustments they deem appropriate. Therefore, to date there is still no effective evaluation of the implementation of the PNA.

In the efforts of inter-institutional coordination with the State Anticorruption Systems, 82 non-binding agreements were unanimously adopted, of which 95% were fulfilled as of March 31, 2022. Of the agreements adopted, 18.3% corresponded to issues related to the National Development Plan, digital platforms and state IT systems, such as: asset and interest

⁹⁰ Information obtained from the response to the request for access to public information submitted to the Transparency Unit of the Citizen Participation Committee on May 20, 2022.

⁹¹ Available at: <https://cpc.org.mx/cartas-de-intervencion-y-mecanismos-de-colaboracion/>

⁹² Article 31, LGSNA.

⁹³ Available at: <https://www.sesna.gob.mx/2020/06/17/programa-institucional-2020-2024-de-la-secretaria-ejecutiva-del-sistema-nacional-anticorrupcion/>

declaration systems, the establishment of the Anti-Corruption Digital Marketplace (MDA), data standards and information security mechanisms, among others.⁹⁴

The Internal Control Bodies of government agencies, the Superior Audit Office of the Federation, the Specialized Prosecutor's Office for Combating Corruption, the portal of Internal and External Citizen Whistleblowers of Corruption and the Integral System of Citizen Complaints (SIDECE) of the Ministry of Public Function and the national transparency platform of the National Transparency System, are part of the structures to handle complaints and claims from citizens. The SIDECE as a technical whistleblower platform seeks to guarantee anonymity and as of June 14, 2022, the Civil Service Secretariat reported that the platform had registered 6,203 complaints.⁹⁵

In the exercise of their auditing capacity provided for in section XXIV of Article 37 of the Organic Law of the Federal Public Administration⁹⁶, the internal control bodies are governed by the laws and provisions on procurement, public works, budget, accounting, administrative procedure, transparency and access to information, responsibilities, and by the bases and principles of coordination issued by the Coordinating Committee of the National Anticorruption System and the Ministry of Public Administration with respect to such matters, as well as on the organization, operation and supervision of internal control systems, management improvement in the agencies and entities of the Federal Public Administration and reporting by such bodies.

In order to prevent the commission of administrative misconduct and acts of corruption, the Secretariats and the Internal Control Bodies⁹⁷, considering the functions that correspond to each one of them and prior determination thereof, may implement actions to guide the criteria that in specific situations should be observed by Public Servants in the performance of their jobs, positions or commissions, in coordination with the National Anticorruption System.⁹⁸

In this regard, at the First Plenary Assembly 2022 of the Permanent Commission of State-Federation Comptrollers (CPCE-F), the country's comptrollers committed to consolidating the auditing and evaluation of public management to combat corruption.⁹⁹

The LGSNA establishes the procedure to guarantee the allocation of the material resources and assets of the institutions that make up the National Anti-Corruption System, and is composed of the assets transferred to them by the Federal Government, the resources allocated to them by the Federal Expenditure Budget and the other assets transferred to them under any other title.¹⁰⁰ As will be discussed, the SNA's member institutions, the National Electoral Institute (INE), the Judiciary and the National Institute for Transparency, Access to Public Information and Protection of Personal Data (INAI), have suffered budget cuts that have affected the efficiency of their performance in the exercise of their functions, which shows that

⁹⁴ SESNA, (2022), Major Accomplishments Report 2017-2022, page 42, Accessed at: https://www.sesna.gob.mx/wp-content/uploads/2022/05/Informe_Gdes_Logros_SESNA.pdf, accessed: 1 July 2022.

⁹⁵ Information gathered at a meeting held on July 11, 2022 with the Ministry of Public Administration.

⁹⁶ Available at: <https://www.diputados.gob.mx/LeyesBiblio/pdf/LOAPF.pdf>

⁹⁷ The internal control bodies shall evaluate the recommendations made by the Coordinating Committee of the National Anticorruption System to the authorities, in order to adopt the necessary measures for the institutional strengthening of their performance and internal control and thus prevent administrative misconduct and acts of corruption. They must inform said body of the attention given to them and, if applicable, their progress and results.

⁹⁸ Article 15, LGRA.

⁹⁹ SFP, (January, 2022), Contralores del país se comprometen a consolidar la fiscalización y la evaluación de la gestión pública para combatir la corrupción, <https://www.gob.mx/sfp/articulos/contralores-del-pais-se-comprometen-a-consolidar-la-fiscalizacion-y-la-evaluacion-de-la-gestion-publica-para-combatir-la-corrupcion-293211>, accessed: July 5, 2022.

¹⁰⁰ Articles 24 and 26 of the LGSNA.

the bodies that prevent corruption do not have sufficient financial resources and independence to carry out their tasks.

According to the Mexican legal framework, the bodies that prevent corruption have legal independence and autonomy, but in practice the situation is different. One of the main obstacles is not the lack of legislation, but the abuse of the law or the lack of enforcement, the interference, pressure or interests of other state agents or powers, and the relationship of hierarchy and dependence between entities.

In addition, in general, the designations and appointments of the heads of autonomous bodies and those in charge of preventing and combating corruption, such as INAI, the Specialized Prosecutor's Office for Combating Corruption (FECC), and others, depend on and are defined directly by the head of the executive and/or by the majority parties in the Senate, and not through a true analysis of the suitability of the candidates' profile, their capabilities or the absence of conflicts of interest of those who are nominated.

Another obstacle is that the Superior Audit Office of the Federation (ASF)'s does not hold the power to sanction, since Article 74, Section VI of the Political Constitution of the United Mexican States¹⁰¹ (CPEUM) regarding the review of public accounts, states that "In the case of the review on the fulfillment of the objectives established in the programs, said authority (i.e., the ASF) may only issue recommendations." The ASF refrains from imposing sanctions, i.e., it does not proceed to punish those responsible for negligence in the programs' objectives. This legal lock prevents the direct punishment of corruption, guaranteeing the perpetuation of impunity.

Although the Coordinating Committee is the leading body in the definition of actions to prevent corruption, as mentioned above, several of its actions have had a focus on assistance, awareness and advice, rather than on the leadership of anti-corruption actions. It is necessary to strengthen the inter-institutional coordination mechanism, guarantee the participation of all authorities pushing in the same direction, and consolidate the independence of the Coordinating Committee as the main body of the National Anti-Corruption System.

The importance of the National Anti-Corruption System lies in the possibility of implementing comprehensive actions designed to prevent, control and punish acts of corruption through the coordination of different institutions at the three levels of government. Coordination with the competent local authorities requires the federal entities to standardize the National Anti-Corruption System through the establishment of local anti-corruption systems in order to conduct homogeneous actions throughout the country.

Good practices

- The existence of the National Anti-Corruption System as the coordinating body between the authorities of all levels of government in charge of preventing, detecting and punishing administrative responsibilities and acts of corruption, as well as the National Auditing System in relation to the auditing and control of public resources.
- The regulatory framework of the National Anti-Corruption System and the National Anti-Corruption Plan contemplates the powers and attributions of the public entities involved, the procedures for their appointment, suspension and dismissal.
- The National Anti-Corruption System continues to work on the development and implementation of new national anti-corruption strategies, as well as on coordination mechanisms between authorities and tools to improve the management of information on corruption.

¹⁰¹ Available at: <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPEUM.pdf>

- The operation, training and strengthening of internal control bodies, responsible for oversight and disciplinary mechanisms, to minimize misconduct and abuse of power by the bodies.

Deficiencias

- Despite having qualified personnel to carry out their tasks, the SESNA, the Civil Service Secretariat and the Coordinating Committee of the National Anti-Corruption System do not have sufficient autonomy and capacity that a body that prevents corruption should have. The same applied to the FECO and its dependence on the Attorney General's Office.
- There is a lack of coordination of anti-corruption actions of the National Government under the leadership of the Coordinating Committee and the Civil Service Secretariat. The SESNA, and the Committee itself, lack the capacity to support the inter-institutional coordination mechanisms, which the investigation, prevention and sanctioning bodies are part of.
- The National Government's anti-corruption actions are dispersed, although the central axes, strategies, lines of action, priorities and objectives of the National Anti-Corruption Plan have been defined. There is still no clarity on the specific actions corresponding to the administrative departments and public entities that make up the National Anti-Corruption System.
- In practice, the legal safeguards for the independence of the bodies, designed to enable them to perform their functions effectively and protect them from undue influence, either in the process of their appointment or in the exercise of their functions, are not applied.
- There is an absence and omission of inter-institutional and inter-sectorial coordination in the actions of implementation and instrumentation of the PNA by the entities in charge. The authorities are devoid of specific actions to make their actions more efficient in a coordinated manner in order to objectively materialize the anti-corruption policy, which is a joint responsibility of the authorities, bodies and other instrumentalists of the SNA and the PNA.

4.1.3 Art. 7.1 – Employment in the public sector

Employment in the public sector is regulated by the Constitution, the General Law of Administrative Responsibilities¹⁰², the Law of the Professional Career Service of the Federal Public Administration¹⁰³, the Code of Ethics of the Federal Public Administration¹⁰⁴, the Integrity Rules for the exercise of the public function¹⁰⁵, the General Guidelines to promote the integrity of public servants¹⁰⁶, and other additional regulations.

The General Law of Administrative Responsibilities (LGRA) establishes that all public entities are obliged to create and maintain structural and regulatory conditions that allow the proper functioning of the State as a whole, and the ethical and responsible performance of each public servant (art. 6). To this end, public servants shall observe in the performance of their employment, position or commission, the principles of discipline, legality, objectivity, professionalism, honesty, loyalty, impartiality, integrity, accountability, effectiveness and efficiency that govern public service (art. 7). These normative precepts are also established in Article 5 of the General Law of the National Anti-corruption System (LGSNA).

¹⁰² Available at: <https://www.diputados.gob.mx/LeyesBiblio/pdf/LGRA.pdf>

¹⁰³ Available at: <https://www.diputados.gob.mx/LeyesBiblio/pdf/260.pdf>

¹⁰⁴ Available at: https://www.gob.mx/cms/uploads/attachment/file/704623/Co_digo_de_E_tica_de_la_APF.pdf

¹⁰⁵ Available at: <https://www.gob.mx/cms/uploads/attachment/file/167646/Reglas-Integridad.pdf>

¹⁰⁶ Available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5608925&fecha=28/12/2020#gsc.tab=0

Public servants are considered to be generally elected representatives, members of the judiciary of the federation, officials and employees and, in general, any person who holds a job, position or commission of any nature in the Congress of the Union or in the Federal Public Administration, as well as public servants of the agencies to which this Constitution grants autonomy, who will be responsible for the acts or omissions they incur in the performance of their respective functions.¹⁰⁷

The responsibilities of public servants linked to serious administrative misconduct or acts of corruption and the State's financial responsibility are regulated in Title Four of the Political Constitution of the United Mexican States (CPEUM). This liability may be: political, criminal, administrative, civil or patrimonial, depending on the fact or act committed or omitted.

The purpose of the Law of the Professional Career Service in the Federal Public Administration (LSPCAPF) is to establish the bases for the organization, operation and development of the Professional Career Service System in the agencies of the Centralized Federal Public Administration. The entities of the parastatal sector provided for in the Organic Law of the Federal Public Administration may establish their own professional career service systems based on the principles of this Law.¹⁰⁸ The reality is that not all institutions have a professional career service.

The LSPCAPF establishes that career public servants enter through a competitive selection process and "may only be appointed and removed in the cases and under the procedures provided for in this Law" (Art. 4). This system includes levels from General Director to Liaison Officer (Art. 5 LSPCAPF); in addition, there are freely appointed officials. According to the law, recruitment must be carried out through open public announcements (arts. 23, 29 to 31 LSPCAPF). The performance of the career public service is incompatible with the exercise of any other position, profession or activity that prevents or impairs the strict fulfillment of the duties of the career public servant (art. 9 LSPCAPF).

The legal framework for the hiring and promotion of public and other non-elected officials does not clearly define the public examinations that may be administered as part of the process, nor the specific criteria applicable to evaluate the merit, fairness and aptitude, as well as the integrity of the candidates. In this sense, few entities, such as the Federal Judiciary, INE, SAT, COFEC, INAI, among others, have such mechanisms in place.

One of the central axes of the Ministry of Public Administration is to have an inclusive professional career service that integrates a gender perspective, is respectful of human rights, puts the general interest above the private interest and serves as an instrument to fight corruption and impunity. In the 2020-2021 period, 3149 competitions were issued, of which a total of 1813 people passed and became career public servants. In terms of gender, there were two competitions exclusively conducted for women. In the first, 1,996 positions were put open to be filled; and in the second, 724.¹⁰⁹

However, in practice, not all calls are always published, there have been several cases of omission to publish public and accessible calls in several cases of appointments of senior officials, or heads of agencies responsible for combating corruption, such as the appointment of the Citizen Council of the Attorney General's Office, anti-corruption judges of the Federal Court of Administrative Justice (TFJA), and others. Additionally, information on the

¹⁰⁷ Article 108 CPEUM.

¹⁰⁸ Article 1, LSPCAPF.

¹⁰⁹ Data obtained from the SFP's 2020-2021 work report, p. 16, available at: https://www.gob.mx/cms/uploads/attachment/file/665450/3_Informe_de_Labores_de_la_Secretaria_de_la_Funcion_Publica_2020-2021.pdf, accessed: July 4, 2022.

appointment processes, the use of interview panels, the qualifications of the candidates, or suitability analyses have not been accessible to society in most cases.

Mexican regulations do not identify the positions susceptible to corruption. However, the Ministry of Finance and Public Credit (SHCP), through the open data format, released the list of public positions that will be considered to define national politically exposed persons in terms of prevention of money laundering and terrorist financing.¹¹⁰

Furthermore, through the Integral System of Citizen Complaints, the portal of Internal and External Citizen Whistleblowers of Corruption and the Attorney General's Office, individuals and public servants can report administrative offenses under the General Law of Administrative Responsibilities and acts of corruption under the Federal Criminal Code. However, there is insufficient evidence to suggest that sanctions are applied in a fair and transparent manner, or that reporting channels are effectively used according to practical reality.

Information on the selection and hiring of non-elected officials is public and the procedures provided by law are applied. In addition, contracts, salaries, the directory of officials, and the registry of sanctioned public servants¹¹¹ is accessible through the thematic search engine of the National Transparency Platform.¹¹² In turn, the development of the National Digital Platform configured six systems that integrate strategic data for the fight against corruption, contemplated in the LGSNA.

With regard to the training and professionalization of public servants, as part of the international agreements and conventions signed, the SFP taught the course "Elements for combating international bribery"¹¹³ from March 17 to 22, 2022¹¹⁴, with the purpose of raising awareness among public servants of their obligation to report acts of corruption that they detect in the performance of their duties, as well as to promote the implementation of the Anti-Bribery Protocol.¹¹⁵

In February 2018, the Civil Service Secretariat presented the Integral System of Administrative Responsibilities (SIRA), a new management system that brings together information relating to administrative proceedings instituted against public servants, and now also individuals, and the record of sanctions imposed for the commission of administrative misconduct or acts of corruption.¹¹⁶

¹¹⁰ List of National Politically Exposed Persons, Undersecretariat of Finance and Public Credit, Banking, Securities and Savings Unit, 2020, Available at: https://www.gob.mx/cms/uploads/attachment/data/file/532306/Documento_de_Acrobat.pdf, accessed: July 6, 2022.

¹¹¹ Information identified in a meeting held on July 11, 2022 with the SFP.

¹¹² Available at: <https://www.plataformadetransparencia.org.mx/en/web/quest/home>

¹¹³ The course, which was developed by the FGR with the collaboration of the SRE, and was adapted by the SFP to be given throughout the APF, has among its objectives that public servants acquire general knowledge about the fight against corruption and identify the crime of international bribery, its detection and prevention and the means to report it, as well as the responsibilities they would incur in case of knowing or participating in acts defined by law.

¹¹⁴ See SFP Comunicado 003/2022, available at: <https://www.gob.mx/sfp/prensa/secretaria-de-la-funcion-publica-imparte-curso-para-combatir-el-cohecho-internacional?idiom=es>, accessed: August 1, 2022.

¹¹⁵ The agreement by which the SNA Coordinating Committee approved the dissemination and released the protocol to prevent, detect, investigate, prosecute and punish international bribery in any of its modalities was published on October 22, 2018 in the DOF.

¹¹⁶ Platform available at: <http://sira.funcionpublica.gob.mx/Sir-web/>

The SIRA is interconnected with the Integral System of Citizen Complaints and Denunciations (SIDECE)¹¹⁷ and is inter-linked with the National Population Registry (RENAPO)¹¹⁸ and the Single Registry of Public Servants (RUSP).¹¹⁹

Internal control organs and the responsibility units have received more than nine thousand files through the SIRA from 2020 to September 2021, of which almost six thousand have been concluded.¹²⁰ These include proceedings against high-level officials of the past administration, as well as definitive sanctions.

However, the inefficiency of the system generates more impunity and continues to be one of the main problems in Mexico for the effective eradication and fight against corruption. According to a study by Impunidad Cero¹²¹, the overall administrative impunity at the federal level from 2014 to 2019 was 80.69% - from among the executive, legislative, judicial and Attorney General's Office branches. The judicial branch of the Federation is the one that best sanctions its public servants (14.56% impunity), while the federal entity with the highest administrative impunity is the Attorney General's Office (100% impunity). Administrative impunity in the federal executive branch decreased from 92.25% in 2018 to 84.80% in 2019, although in that same period complaints also dropped considerably in the context of the sanitary contingency and in view of the lockdown that were being enforced.

Civil society, analysts and politicians have repeatedly pointed out the nepotism, corruption and clientelism of the federal public administration, and even more so of the social policy implemented by the administration of Andrés Manuel López Obrador and the federal public administration under his charge.¹²² Proof of this are the unpunished cases of Felipa Obrador, Pío Obrador, Bartlett, Sandoval and Robledo, which are irrefutable evidence of corruption in Mexico.¹²³

Good practices

- In spite of the difficulties in the implementation of public employment regulations, they recognize equality, merit, morality, efficiency, economy, impartiality, transparency, speed and publicity in the selection processes.
- The training processes of the Code of Ethics, administrative responsibilities, and the General Provisions for the performance of Auditing Processes by the Civil Service Secretariat.
- Training and professionalization of public servants through the electronic platform of the Virtual Training System for Public Servants (SICAVIS).
- The development of the Integral System of Administrative Responsibilities.
- The implementation of the Public Employment Information and Management System.
- Strengthening of Internal Control Organs.

Deficiencies

¹¹⁷ The SIDECE platform is available at: <https://sidec.funcionpublica.gob.mx>

¹¹⁸ The RENAPO platform is available at: <https://www.gob.mx/segob/renapo>

¹¹⁹ The RUSP platform is available at: <http://usp.funcionpublica.gob.mx//RUSP/>

¹²⁰ Data obtained from the SFP's 2020-2021 work report, p. 14, available at: https://www.gob.mx/cms/uploads/attachment/file/665450/3_Informe_de_Labores_de_la_Secretaria_de_la_Funcion_Publica_2020-2021.pdf, accessed: July 4, 2022.

¹²¹ Impunidad Cero, (2021), Impunidad Administrativa en México: la ineficiencia en el sistema que genera impunidad, available at: <https://www.impunidadcero.org/articulo.php?id=154&t=la-impunidad-administrativa-en-mexico-la-ineficiencia-del-sistema-que-genera-impunidad>, accessed: July 4, 2022.

¹²² María Amparo Casar, Nexos y Ciudadanos por México, (February, 2021), El Gran Benefactor, available at: <https://ciudadanospermexico.org/el-gran-benefactor/>, accessed: July 5, 2022.

¹²³ Washington Post, (December, 2020), The unpunished cases of Felipa, Pío, Bartlett, Sandoval and Robledo show corruption in Mexico, Carlos Loret de Mola, available: <https://www.washingtonpost.com/es/post-opinion/2020/12/13/corrupcion-amlo-bartlett-pio-felipa-sandoval-robledo/>, accessed: July 5, 2022.

- Administrative impunity continues to be one of the main problems in Mexico with respect to the fight against corruption.
- The fight against nepotism and clientelism in the institutions has not been the most efficient.
- There are few positive incentives for the promotion of public servants within the institutions.
- Consultancy contracts are commonly used to meet the staffing needs of the entities. They do not require the same conditions of merit and objective selection and encourage discretionary decision-making and clientelism.
- There are budgetary and administrative limitations to increasing the number of personnel and therefore the number of people selected based on merit.

4.1.4 Art. 7.3 – Political financing

Candidacy and election to public office are regulated by the Constitution (articles 55, 58, 82, 95 and 102) and the General Law of Electoral Institutions and Procedures¹²⁴ (LGIPE, art. 10). Convictions for certain crimes that "seriously harm the good reputation in the public opinion" disqualify a person from being elected as a minister of the Supreme Court of Justice of the Nation (SCJN) (art. 95, section IV CPEUM). Such disqualification also applies to certain other positions (Art. 60, section A, subsection VIII; 79, subsection IV; 99, subsection X; 100, third paragraph and 116, subsection III CPEUM).

Candidates for elected office may not accept cash donations from legal entities or political parties, among others (art. 380, paragraphs c), d) iv) and vi) LGIPE). The National Electoral Institute (INE) and the public electoral bodies of the Federal Entities must make available to the public and update the amounts of public financing granted to political parties and other political associations, as well as the authorized amounts of private financing and campaign expenditure ceilings (art. 74, section I f) LGTAIP), however, such amounts are not always updated, are inaccurate or incomplete. Additionally, the INE's Audit Regulations indicate that entities are not allowed to make contributions to candidates and political parties (Art. 121).

The Mexican State constitutionally grants public financing to political parties.¹²⁵ Access to these resources must be given under compliance with a series of requirements in an equitable manner with elements to carry out their activities. The regulation¹²⁶ indicates the rules the parties themselves and their electoral campaigns are subject to, and must guarantee that public resources prevail over those of private origin. The National Electoral Institute is responsible for auditing the income and expenditures of political parties and candidates under the terms established by the Constitution and the laws of the matter.

According to the General Law of Political Parties¹²⁷ (LGPP), political parties may receive financing that does not come from the public treasury, with the following modalities:¹²⁸ a) Financing by militancy; b) Financing from sympathizers; c) Self-financing; and d) Financing from financial yields, funds and trusts. No public entity, autonomous organism, individual or foreign legal entity may make contributions or donations to any candidate or political party (Art. 53). Political parties may not receive contributions from unidentified persons (Art. 52).

¹²⁴ Available at: https://www.diputados.gob.mx/LeyesBiblio/pdf/LGIPE_130420.pdf

¹²⁵ Article 41, section II of the CPEUM.

¹²⁶ The General Law of Electoral Institutions and Procedures, the General Law of the System of Electoral Appeals, the General Law of Political Parties, and the General Law on Electoral Offenses.

¹²⁷ Available at: <https://www.diputados.gob.mx/LeyesBiblio/pdf/LGPP.pdf>

¹²⁸ Art. 53 and 56 LGPP.

A punishable offense according to the law¹²⁹ is to allow the financing of political parties and/or electoral campaigns with prohibited sources of financing or in amounts exceeding those permitted by law, with a special focus on funds or assets of illicit origin, an issue especially for Mexico given the possibility and ease of use of money from illicit activities such as drug trafficking for political financing.

The General Law of Electoral Institutions and Procedures contemplates transparency and coordination measures for the auditing of the financing of political parties and their candidates.¹³⁰ The Audit Regulations of the National Electoral Institute¹³¹ require political parties and candidates to keep records of all their income and expenditures, including loans and in-kind donations. The Ministry of Finance and Public Credit, through the Financial Intelligence Unit, is in charge of coordinating with the other supervisory authorities in matters of prevention and detection of crimes with resources of illicit origin.¹³²

According to Article 90 of the General Law of Transparency and Access to Information, parties have 30 transparency obligations that they must publish on the National Transparency Platform.

Political parties must submit periodic reports¹³³ on the origin and destination of the resources they receive by any means to the National Electoral Institute within sixty days following the last day of December of the year to which the report refers.¹³⁴ The information of the Political Parties is considered public.¹³⁵ For its part, the Technical Auditing Unit of the National Electoral Institute's Auditing Commission has sixty days to review them and request the documents that prove their content, as well as the clarifications or rectifications to the errors or technical omissions that it identifies in them from these organizations.

Article 31 of the LGPP establishes that information related to the allocation and exercise of campaign and pre-campaign expenses and expenses in general of the political party with account to the public budget, as well as contributions of any type or kind made by individuals, regardless of the destination of the resources contributed, may not be reserved.

Citizens can access this information through the National Electoral Institute Portal, which allows them to know the ordinary annual financing of political parties,¹³⁶ and consult the reports submitted; however, the information contained in the reports is not always in an open data format for facilitated use, or it is published partially, in a complex way, with delays or with non-existent links, and it is impossible to verify the actual amounts of funding received and disbursed.

Moreover, regarding statistical information on the opening of investigations for irregularities or illegalities of political candidates, political parties and their members, it should be noted that in terms of the provisions of Book Eight, Title One, Chapter IV, of the General Law of Electoral Institutions and Procedures (LGIPE), which empowers the national electoral body to institute disciplinary proceedings through the Technical Unit for Electoral Disputes (Unidad Técnica de lo Contencioso Electoral), attached to the Executive Secretariat, it is specifically article 443, paragraphs a), b), i), j), n) and 449, paragraphs c) to g), of the LGIPE, which establishes the

¹²⁹ Article 15, LGPP.

¹³⁰ Articles 75, 76, 398-410.

¹³¹ Published in the DOF on February 9, 2018, Available at: <https://www.diputados.gob.mx/LeyesBiblio/regla/n298.pdf>

¹³² Art. 223 LGIPE.

¹³³ Article 22, paragraphs 7 and 8, Article 25, section 1, subsection V.

¹³⁴ Article 77-80 LGPP.

¹³⁵ Article 30 LGPP.

¹³⁶ Portal INE, Available at: <https://portal.ine.mx/actores-politicos/partidos-politicos-nacionales/financiamiento-publico/>, accessed: July 7, 2022.

infractions of political parties, authorities or public servants, as the case may be, of any of the powers of the union, local powers, municipal government bodies, government bodies of Mexico City, autonomous bodies and any other entity that may be involved in the electoral process, as well as any other entity that may be involved in the electoral process; autonomous bodies and any other public entity. Therefore, this technical unit may have information related to what was requested.¹³⁷

This does not necessarily imply that it is effective in preventing corruption in the irregular financing of political parties. One example of this is the emblematic case of Pio Obrador's corruption surrounding the financing of Andrés Manuel López Obrador's political campaign as a presidential candidate. Although López Obrador continues to deny that the money collected by his brother was for his political campaign¹³⁸ and continues to discredit and attack the journalist who revealed the case¹³⁹, Pio Obrador was captured on video receiving up to two million pesos (\$100,000 USD¹⁴⁰) and in a recording he affirmed that the money was for his brother.¹⁴¹ To date, the case remains unpunished.

As an autonomous constitutional body and highest electoral authority of the Mexican State, the National Electoral Institute has sanctioned political parties for misuse of resources. In 2018, it approved sanctions for 586 million Mexican pesos (equivalent to \$29,300,000 USD) to political parties for irregularities in 2018 ordinary income and expenditure reports.¹⁴² In 2020, the fine for irregularities to political parties was 689 mdp (\$34,450,000 USD). Civil society organizations such as Mexicanos contra la Corrupción y la Impunidad have carried out studies reflecting illegal financing and spending in political campaigns in Mexico.¹⁴³

In 2021, the General Council of the National Electoral Institute sanctioned the political parties of Labor with 119 million 870 thousand 694.18 pesos (\$6'115,851 USD) and Morena with four million 529 thousand 225.06 pesos (\$217,307 USD), upon accrediting irregular financing schemes.¹⁴⁴ The National Electoral Institute keeps a clear record of sanctions imposed derived from administrative sanctioning procedures in matters of auditing from 2017 to 2022.¹⁴⁵

The electoral authority determined that during the administration of Delfina Gómez Álvarez as municipal president of Texcoco (2013-2015), a parallel financing system was implemented, which resulted in resources that benefited Morena for two million 114 thousand 612.5 pesos

¹³⁷ Information obtained from the response to the request for access to public information submitted to the transparency unit of the National Electoral Institute on May 20, 2022.

¹³⁸ López Obrador denies that the money collected by his brother was for his campaign: "It is a personal matter that is being turned into a political one", *el País*, September 7, 2021, <https://elpais.com/mexico/2021-07-09/lopez-obrador-niega-que-el-dinero-que-recoge-su-hermano-para-su-campana-es-un-asunto-personal-que-lo-estan-convirtiendo-en-politico.html>, accessed: July 8, 2022.

¹³⁹ Washington Post, (October, 2020), Pío López Obrador asks to jail me for 12 years, Carlos Loret de Mola, <https://www.washingtonpost.com/es/post-opinion/2020/10/18/pio-lopez-obrador-carcel-loret/>, accessed: July 8, 2022; and Washington Post, (February, 2022) Another Mexican journalist is murdered and López Obrador responds by attacking the media, Kevin Sieff, <https://www.washingtonpost.com/es/world/2022/02/11/amlo-ataca-medios-carlos-loret-de-mola-sueldo-periodistas/>, accessed: July 8, 2022.

¹⁴⁰ Amounts shown in U.S. dollars are at the exchange rate as of August 14, 2022.

¹⁴¹ Latinus, (August, 2020), Los videos de Pío López Obrador recibiendo dinero para campana de su hermano, Loret de Mola, <https://latinus.us/2020/08/20/videos-pio-lopez-obrador-recibiendo-dinero-para-campana-de-su-hermano/>, accessed: July 8, 2022.

¹⁴² See: <https://centralelectoral.ine.mx/2019/11/06/aprueba-ine-sanciones-586-mdp-partidos-politicos-irregularidades-informes-ingresos-gastos-ordinarios-2018/>

¹⁴³ María Amparo Casar, MCCI, (2018), Dinero Bajo la Mesa: Financiamiento y Gasto Ilegal De Campañas Políticas en México, Available at: <https://Dinerobajolamesa.Org/Report/>

¹⁴⁴ INE, (September, 2021), INE applies the law with impartiality, without looking at who is involved and regardless of who governs: Lorenzo Córdova, <https://centralelectoral.ine.mx/2021/09/03/sanciona-ine-a-pt-y-morena-por-financiamiento-irregular/>, accessed: July 11, 2022.

¹⁴⁵ Document obtained through the request for access to public information submitted to the Transparency Unit of this National Electoral Institute on May 20, 2022, and can be consulted in the corresponding hyperlink at the end of this report.

(\$197,888 USD) and that were not reported. The National Electoral Institute's investigation found sufficient evidence to sustain the hypothesis of guilt regarding the existence of a mechanism to collect resources coming from salary withholdings made to workers of the City Hall and DIF of Texcoco in the State of Mexico, which were for which checks were delivered from the City Hall for a total amount of 13 million 890 thousand 47 pesos (\$708,675 USD).¹⁴⁶ Notwithstanding the sanction, Delfina Gómez is currently Senator for Morena in the State of Mexico, and served as Secretary of Public Education from 2021 to 2022.

The irregular financing schemes that have been identified and sanctioned, such as the one mentioned above, are conducted through operations between individuals, the illegal withholding of salaries, electronic transfers to political party leaders¹⁴⁷ and financing by legal entities.¹⁴⁸

Another such mechanism that was identified was the so-called "carousel operation", where the private secretary of the President of Mexico, together with a subordinate and four other people, were captured on video when they made "carousel" deposits in a bank. They lined up, deposited 50 thousand pesos and then lined up again. They did this for 20 minutes, until they made a total of 1.4 million pesos of deposits in cash. Such a large amount should have been reported, as mandated by the anti-money laundering law, but they evaded supervision by fragmenting it into "ant" or smaller deposits. This singular operation occurred in 2017, and the money that was supposed to be destined to help earthquake victims, went to Morena politicians, among them a nephew of Bartlett. Three years ago, the National Electoral Institute denounced this maneuver, but the identity of the operators had never been revealed. Until now.¹⁴⁹

The oversight of political campaigns is one of the means of sanctioning illegal financing and spending above the legal limits. Mexico has one of the most complex systems in the world in this area. However, the mechanism is insufficient and sometimes even irrelevant to combat the enormous problem of illegal campaign financing, as exemplified by the cases described above. Furthermore, there is no mechanism that allows civil society to become involved in the oversight of political party financing.

When reviewing the income and expenditure reports of political campaigns, it is striking that in all electoral processes held since 2011, the largest source of income has been from private sources.¹⁵⁰ This situation opens the possibility that candidates who have been financed or have debts with private financiers, once they are elected and enter into office, may be influenced to reward those who contributed to their campaigns¹⁵¹, which limits their ability to exercise their mandate independently and make decisions that represent the general interest.

The first problem lies in the fact that the auditing process is triggered by the expenditure reports that the audited entities (parties and candidates) submit to the National Electoral Institute. Although the authority has independent mechanisms to audit expenses, for example, billboards, campaign events, advertising in social networks or insertions in the written press, it

¹⁴⁶ *Idem.*

¹⁴⁷ *Idem.*

¹⁴⁸ In 2022, the Superior Chamber of the Electoral Tribunal confirmed the fine imposed by the General Council of INE to Movimiento Ciudadano of 28 million 53 thousand pesos for obtaining resources for the benefit of the candidacy of the then candidate for the position of Governor of Nuevo León, Samuel García, by the legal entities: Firma Jurídica y Fiscal Abogados S.C; Firma Contable y Fiscal Contadores y Financieros S.C; and, SAGA Tierras y Bienes Inmuebles, S.A. de C.V.

¹⁴⁹ MCCI, (December, 2021), El carrusel de dinero del secretario de López Obrador, <https://contralacorrupcion.mx/el-carrusel-de-dinero-del-secretario-de-lopez-obrador/> accessed: July 12, 2022.

¹⁵⁰ Income and expenditure reports 2011-2018, available at INE's website: <https://portal.ine.mx/voto-y-elecciones/fiscalizacion/>, in this space you will find all the information related to the auditing of parties, candidates, candidates and independent candidates during the Electoral Processes, access: July 11, 2022.

¹⁵¹ See: <https://ine.mx/voto-y-elecciones/fiscalizacion/>

often lacks the infrastructure and financial intelligence to detect the total flow of cash resources flowing into the campaigns and the expenses incurred in mobilizing, buying or inhibiting the vote, as well as in paying for news coverage, to mention some of the most common items.

Other problems associated with the illicit financing of campaigns are the outsourcing of resources through foundations or other actors or legal simulations that allow circumventing legal restrictions through legal or natural personages different from the real origin of the resources; and the lack of clarity with respect to loans from natural or legal persons, other than financial entities, which could be donations posing as credits on behalf of the candidates and that would exceed the donation ceilings established by law.

Nevertheless, the audit has given some partial results that help to show that parties and campaigns underestimate the registration of their real expenses. In 2017, for example, the National Electoral Institute detected 276 million pesos that were spent, but not reported, that is, 26.5% of the total spending detected had not been reported to the authorities. However, the problem is bigger than the data provided by the National Electoral Institute, because many expenses are in cash and even disbursed by third parties and a real overview of the size of the problem does not exist.¹⁵²

Good practices

- The Law obliges political parties and movements to render accounts of income and campaign expenses before the National Electoral Institute, in order to guarantee transparency in the management of financial resources, both of the resources destined to their operation, as well as those destined to financing the campaigns of their candidates during electoral periods.
- Political parties must have bylaws that regulate all actions to be conducted by the political organization, internally or externally, and must submit reports on the collection, destination and exercise of their budget.
- The auditing and imposition of sanctions is carried out in an equal manner and without distinction of political party.

Deficiencies

- Although political parties are obliged to account for their campaign income and expenses, there are no means of verifying the veracity of the reports submitted or whether they have been manipulated in any way. This limits the possibility of identifying possible irregularities in the origin of the resources or in the exceeding of campaign ceilings.
- The procedures for auditing and certifying information on income and expenses are carried out by the National Electoral Institute. However, the review concentrates on formally verifying the coincidence and support of income and expenses, but it is not possible to know in depth if the information is complete.
- Although investigations have been opened in cases of illicit financing, they are not always conclusive or end in acquittals due to the difficulties involved in investigating the origin of the resources.¹⁵³

4.1.5 Art. 7, 8 and 12 – Codes of conduct, conflicts of interest and asset declarations

The Specialized Unit for Ethics and Prevention of Conflicts of Interest in the Ministry of Public Administration (SFP) is in charge of designing policies, rules and instruments to promote

¹⁵² *Idem.*

¹⁵³ An example of this is the case of Pío López Obrador, brother of Mexican President Andrés Manuel López Obrador (2018-2024).

actions in favor of ethics and integrity and to prevent conflicts of interest. The General Law of Administrative Responsibilities (LGRA) defines "conflict of interest"¹⁵⁴ and establishes the normative framework for its implementation (art. 58, 60). All public servants have the duty to avoid and account for interests that may conflict with the responsible and objective performance of the powers and duties of public servants. However, the procedure in law to report the existence of a conflict of interest is too brief, inefficient and insufficient.

In March 2021, the Civil Service Secretariat published the Guide for the Identification and Management of Conflicts of Interest, in order to support public servants in identifying the different types of interests that exist, assess the risks involved and manage them appropriately, ethically and in accordance with the law.¹⁵⁵

In addition, on May 11, 2021, a Framework Cooperation Agreement was signed with the Latin American Center for Development Administration (CLAD) for the professionalization and training of the public service and the Professional Career Service in the areas of ethics, public integrity and prevention of conflicts of interest; raising awareness on the fight against corruption and impunity among citizens; democratization of technologies and auditing.¹⁵⁶

The Constitution establishes the obligation of all public servants to provide a declaration of assets (art. 108). This is regulated in the LGRA (art. 32) in the same vein. Additionally, the terms in which all public servants must submit their annual tax returns are established. In 2021, the Civil Service Secretariat implemented the new asset declaration formats in the Federal Public Administration.¹⁵⁷

The Executive Secretariat of the National Anticorruption System is in charge of the system for the evolution of assets, declaration of interests and proof of submission of tax returns, through the National Digital Platform (art. 26 LGRA).

In terms of access to information, the National Digital Platform (PDN) compiles and allows for access to the information of the system for the evolution of assets, declaration of interests and tax returns. In turn, the PDN contains the information generated for the National Anticorruption System by public entities with the capacities for oversight and control of public resources and prevention, as well as those in charge of detection, punishment and deterrence of administrative offenses and acts of corruption generate (art. 27 LGRA).

In relation to asset declarations, due to the health emergency caused by Covid-19, the deadlines for submitting asset and interest declarations for the year 2022 were extended. In 2021, 1,354,000 public servants voluntarily submitted their asset and interest declarations during May, the month established by the LGRA.¹⁵⁸ In 2020, there were 1,308,017 compliances with respect to the obligation to file the declaration of assets and interests in its modified modality.¹⁵⁹

¹⁵⁴ The possible impairment of the impartial and objective performance of the functions of Public Servants due to personal, family or business interests (art. 3 fr. VI).

¹⁵⁵ Available at:

https://www.gob.mx/cms/uploads/attachment/file/722721/GU_A_PARA_LA_IDENTIFICACION_Y_GESTION_DE_CONFLICTOS_DE_INTERESES.PDF

¹⁵⁶ Available at:

https://www.gob.mx/cms/uploads/attachment/file/638196/Convenio_marco_de_colaboracion_entre_la_SFP_de_los_Estados_Unidos_Mexicanos_y_el_Centro_Latinoamericano_de_Administracion_para_el_Desarrollo.pdf

¹⁵⁷ SFP, (2021), La Secretaría de la Función Pública implementa nueva metodología de verificación aleatoria de declaraciones patrimoniales, <https://www.gob.mx/sfp/prensa/secretaria-de-la-funcion-publica-implementa-nueva-metodologia-de-verificacion-aleatoria-de-declaraciones-patrimoniales?idiom=es>, accessed: August 1, 2022.

¹⁵⁸ Information identified from the response to the request for access to public information submitted to the transparency unit of the SFP on May 20, 2022.

¹⁵⁹ SFP, (2021), 3 Performance Report 2020-2021, SFP, September 2021, p. 9, https://www.gob.mx/cms/uploads/attachment/file/665450/3_Informe_de_Labores_de_la_Secretaria_de_la_Funci

Non-compliance with the obligation of submitting declarations of assets and interests in due time and form is a non-serious administrative offense. Even so, in 2022, the SFP sanctioned more than one thousand public servants in the first semester of 2022: 45.5% of them for not submitting their asset declarations. The Civil Service Secretariat imposed 1,136 sanctions for administrative offenses - 1097 of them against federal officials during the first six months of 2022. Of the 1,136 sanctions, 496 originated from non-compliance with the declaration of asset declarations, and the sanctions included 464 disqualifications, 362 suspensions, 204 public and private reprimands, 80 dismissals and 26 economic sanctions, with an accumulated amount of 81 million pesos (\$4,050,000 USD).¹⁶⁰

However, the evidence does not demonstrate that the body in charge of receiving and supervising asset declarations has the independence and resources necessary to fulfill its mandate.

The obligation of public servants to refrain from receiving gifts is derived from articles 7, section II, 40, 52 and 66 of the LGRA. In turn, the Code of Ethics of the Federal Public Administration establishes that public servants must commit to "refuse all types of gifts, presents, compensations, benefits, gifts, services or similar, on the occasion of the exercise of their function, employment, position or commission, that benefit themselves or their relatives up to the fourth degree by consanguinity or affinity". In the event that public servants, without having requested it, receive by any means or person, any of the assets mentioned in the preceding paragraph, they must immediately inform the Internal Control Organ of the agency or entity to which they are assigned. Likewise, they shall proceed to place them at the disposal of the competent authority in matters of administration and disposal of public property, pursuant to Article 40 of the General Law of Administrative Responsibilities".¹⁶¹

The existence of codes of ethics is included in the LGRA, which establishes that public servants must observe the code of ethics issued for this purpose by the ministries or internal control bodies, in accordance with the guidelines issued by the National Anticorruption System, so that their actions are conducted in accordance with the needs of society (art. 16).

On February 8, 2022, the Code of Ethics of the Federal Public Administration¹⁶² was published in the DOF, which is mandatory and applicable to all persons holding a job, position or commission in the agencies and entities of the Federal Public Administration.¹⁶³ It is an institutional obligation of the agencies and entities to establish an Ethics Committee and issue a Code of Conduct.¹⁶⁴ The Ethics and Conflict of Interest Prevention Committees (CEPCI), which must be established in each agency or entity, are responsible for ensuring their implementation; however, figures on the number of agencies that actually have such committees are unknown.¹⁶⁵

[P blica 2020-2021.pdf](#); Dissemination strategy for the presentation of the Declaration of Modification of Asset and Interest Situation - May 2022, SFP, March 2022, <https://www.gob.mx/sfp/acciones-y-programas/estrategia-de-difusion-para-la-presentacion-de-la-declaracion-de-modificacion-de-situacion-patrimonial-y-de-intereses-mayo-2022>, accessed: August 1, 2022.

¹⁶⁰ Latinus, (July, 2022), SFP sanctioned more than a thousand public servants in the first semester of 2022: 45.5%, for not presenting their patrimonial declaration, <https://latinus.us/2022/07/26/sfp-emite-mil-sanciones-contra-funcionarios-faltas-administrativas-primer-semester-2022/>, accessed: July 28, 2022.

¹⁶¹ Article 18 section IV.

¹⁶² Available here: https://www.dof.gob.mx/nota_detalle.php?codigo=5642176&fecha=08/02/2022#gsc.tab=0

¹⁶³ As a result of its enactment, the Code of Ethics for Public Servants of the Federal Government of February 2019 was repealed.

¹⁶⁴ Art. 20 Code of Ethics of the Federal Public Administration.

¹⁶⁵ The CEPICs of each agency or entity are also responsible for developing codes of conduct for public servants working in these institutions (arts. 16 and 19 LGRA).

With the enactment of the General Guidelines for the Integration and Operation of Ethics Committees, a reinforced integration of such bodies was mandated in all agencies and entities of the Federal Public Administration. Likewise, a database of 800 substantive processes prone to ethical risks corresponding to almost 200 public entities was created. The purpose of this was to initiate a process of implementing controls to prevent acts of corruption. Likewise, 17,293 actions were carried out to disseminate issues related to public ethics in the various institutions and a total of 32,131 public servants were trained virtually in this area, of whom 14,527 were women and 17,604 men.¹⁶⁶

In response to the gender perspective, the Civil Service Secretariat designed the Model of Attention to Cases of Sexual Harassment and Sexual Misconduct in order to provide a comprehensive response to victims of sexual harassment and stop this structural problem. In December 2020, the second conference entitled "Women Comptrollers of the Public Function against Corruption and Gender Violence" was held, where virtual meetings were held to address sexual harassment, sexual misconduct, labor violence and actions against corruption in a total of five sessions where 399 people were involved.¹⁶⁷

In the framework of the Commemoration of International Women's Day, on March 8, 2021, the Network of Women Comptrollers against Corruption and Impunity was launched as a meeting space for the empowerment and participation of women heads of Control Bodies of the Federal Government and state governments, committed to promoting the implementation of mechanisms for control, verification and evaluation of public management, monitoring the management and application of public resources with probity, transparency and accountability to the public; as well as the application of sanctions to persons in public service who incur in administrative responsibilities, with a focus on human rights and a gender perspective, in order to eradicate corruption and impunity suffered by women in a differentiated manner.¹⁶⁸

To date, it is reported that the network is made up of 74 women heads of Internal Control Bodies, three commissioners, three deputy commissioners and 16 state comptrollers, who jointly issued the Declaration of the Network of Women Comptrollers against Corruption and Impunity.¹⁶⁹

In addition, in the area of training, the Civil Service Secretariat developed the courses "Implementation of the Protocol for the Prevention, Attention and Punishment of Sexual Harassment and Sexual Misconduct" and "Introduction to the Gender Perspective for the Transformation of the Federal Public Administration with Equality", and "Construction of Spaces Free of Violence in the Federal Public Administration", which are taught through the Virtual Training System for Public Servants (SICAVISP), for all public servants of the Federal Public Administration.¹⁷⁰

Notwithstanding the foregoing, the problem of conflicts of interest and the concealment of information in asset declarations has not been resolved. It is enough to know the conflicts of interest surrounding the cabinet of the current president and his family¹⁷¹, and all the hidden information about the assets of his government secretaries, as is the case of Rocío Nahle as

¹⁶⁶ Data obtained from the SFP's 2020-2021 work report, p. 53, available at: https://www.gob.mx/cms/uploads/attachment/file/665450/3_Informe_de_Labores_de_la_Secretar_a_de_la_Funci_P_blica_2020-2021.pdf, accessed: July 13, 2022.

¹⁶⁷ *Idem*, p. 64.

¹⁶⁸ *Idem*.

¹⁶⁹ *Ibid*.

¹⁷⁰ Information identified from the response to the request for access to public information submitted to the Transparency unit of the SFPn on May 20, 2022.

¹⁷¹ Emmanuel Carrillo, Forbes, (February, 2022), AMLO sees coup in attacks; denies conflict of interest with Grupo Vidanta, <https://www.forbes.com.mx/politica-amlo-dice-hay-golpismo-en-ataques-al-gobierno-y-niega-conflicto-de-interes-con-grupo-vidanta/>, accessed July 13, 2022.

Secretary of Energy, Josefa González Blanco Ortiz Mena, former Secretary of Environment and Natural Resources. As a result, almost the entire cabinet ended up disclosing in their asset declarations the amounts, co-ownerships, conflicts of interest and even unfinished careers, through clarifying notes to what was already published in DeclaraNet.¹⁷² Thus, the conflicts of interest have been the main problem in López Obrador's administration.¹⁷³ Different non-state agents, civil society and specialists agree on the urgency of regulating conflicts of interest in Mexico..

Good practices

- The regulations include specific provisions to regulate the public function, including the framework for disqualifications, incompatibilities and conflicts of interest, based on principles and values, the pursuit of the public interest and the prevention of corruption.
- The enactment of the Federal Public Administration's Code of Ethics and the establishment and coordination of the Ethics and Conflict of Interest Prevention Committees. Public entities in Mexico have general guidelines and standards for the implementation of ethical values in the public service.
- In the implementation of ethical principles and values in public service and the fight against workplace violence, lines of action have been considered with a gender perspective.
- The implementation of the Guide for the Identification and Management of Conflicts of Interest promotes the prevention of practices such as conflicts of interest within public entities, despite the fact that the law and implementation mechanisms still have certain weaknesses and gaps.
- Mexico has a solid regime of administrative responsibilities, disqualification and punishment of public servants.
- The design of the format for the declaration of assets and interests of public servants, and the follow-up of the evolution of assets established by the General Law of Administrative Responsibilities.

Deficiencies

- Various recently appointed high-ranking officials, cabinet members and relatives of the president have been involved in conflicts of interest, which has called the efficiency of the mechanisms for identifying and preventing conflicts of interest in question. No concrete actions or evaluation processes have been defined to obtain better results.
- The absence of a harmonious and complete regulation and legislative development on conflicts of interest.
- Information on conflicts of interest of public servants is not available in open data, which makes it difficult for public consultation and institutional and citizen control.
- Again, in practice, the main deficiency is administrative impunity for misconduct and serious acts of corruption by public servants.

4.1.6 Art. 8.4 and 13.2 – Reporting mechanisms and whistleblower protection

In the area of whistleblowing, Mexico has regulated a system for reporting acts of corruption in the administrative sphere and another with respect to the commission of crimes in the criminal sphere.

¹⁷² Animal Político, (February, 2019), Relatives in companies, an unfinished career: what AMLO's secretaries had forgotten to declare, <https://www.animalpolitico.com/2019/02/familiar-conflicto-interes-gabinete-amlo/>, accessed: 13 July 2022.

¹⁷³ Política Expansión, (February, 2022), Possible conflict of interest: the figure that cimbra AMLO's management, https://politica.expansion.mx/mexico/2022/02/16/posible-conflicto-de-interes-cimbra-gestion-de-amlo_, accessed: July 13, 2022.

In terms of the General Law of Administrative Responsibilities (LGRA)¹⁷⁴, whistleblowers are those persons who report facts of public officials of the Public Administration or of individuals related to the same, which may constitute administrative offenses (serious or not serious), provided that the report contains data or indications that warn of the act of corruption.

In addition to establishing the possibility of anonymous complaints, the law provides for the obligation of the investigating authorities to keep the identity of the whistleblowers confidential (for those that are not submitted anonymously). Regarding the mechanisms through which whistleblowers may report acts of corruption, the law provides that complaints may be submitted in physical format, on the digital platform determined by the National Anticorruption System¹⁷⁵ or electronically to the investigating authority (Ministry of Public Administration).

Mexico has a developing regulatory framework for the reporting and protection of whistleblowers or reporters of acts of corruption. To this end, on September 6, 2019, the Ministry of Public Function (SFP) published the agreement establishing the Guidelines for the Promotion and Operation of the System of Internal and External Citizen Corruption Whistleblowers.¹⁷⁶

Mexico is a country that is still in the midst of finding functional tools to sanction acts of corruption. It is noteworthy that since the 2015 anti-corruption reform, whose political objective was to strengthen citizens' trust in institutions within a framework of promoting legality, good practices, transparency and accountability, efforts have been made to develop tools to safeguard the identity of whistleblowers, facilitate anonymity and provide protection to the whistleblower if necessary.

The LGRA distributes competencies among the levels of government, and defines the administrative responsibilities of public servants and individuals, as well as their obligations and sanctions for acts or omissions related to acts of corruption. Likewise, within this Law, mechanisms for the prevention, denunciation, investigation and sanction of administrative responsibilities were determined (art. 64 and 91).

In the Senate of the Republic there is a draft initiative of the General Law for the Protection of Witnesses and Whistleblowers of Acts of Corruption that has not received been debated yet and the status of the project is unknown. Moreover, in 2020 the Civil Service Secretariat formed a drafting committee composed of representatives of citizens, civil society organizations and public servants for the development of the draft General Law on Whistleblowers. Neither of the two projects has been approved or published.

In order to provide greater certainty to whistleblowers, on October 19, 2020, the Protection Protocol for Corruption Whistleblowers was published in the Official Gazette of the Federation.¹⁷⁷ This protocol established the methodology for risk assessment and determination of protection measures to safeguard the integrity of whistleblowers. In an enunciative but not limiting manner, the protection measures that can be provided in favor of whistleblowers are: preventive, individual, psychosocial, labor-related, collective and security measures.

¹⁷⁴ For further reference, see Articles 91 to 93 of the General Law of Administrative Responsibilities.

¹⁷⁵ Currently, at the federal level there are a number of ways to report irregular acts, improper practices, unlawful conduct or acts of corruption by individuals and public officials of the Public Administration or the Attorney General's Office (agents of the Public Ministry, Federal Ministerial Police, among others), such as mobile applications, hotlines, emergency lines, electronic platforms, e-mails, chat service, as well as through face-to-face procedures. Such means are part of the "Sistema Integral de Denuncias Ciudadanas" (Integral System of Citizen Complaints), whose information is available at: <https://sidec.funcionpublica.gob.mx/#/>.

¹⁷⁶ Available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5571543&fecha=06/09/2019#gsc.tab=0

¹⁷⁷ The agreement issuing the Protocol for the Protection of Corruption Alerting Persons is available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5603032&fecha=19/10/2020#gsc.tab=0

However, in 2021 the Civil Service Secretariat has sought to facilitate the reporting of acts of corruption through the platform of the System of Internal and External Citizen Corruption Whistleblowers,¹⁷⁸ and encourage citizen participation in the fight against corruption. In accordance with the Guidelines for the Promotion and Operation of the System of Citizen Corruption Whistleblowers in force, the system now covers bribery, embezzlement and diversion of public resources.

The Internal and External Citizen Corruption Whistleblower Platform allows any citizen or public servant to report acts of corruption with the guarantee of confidentiality, anonymity and the possibility of following up on the report to strengthen the investigation files. In 2021, 5395 reports were registered.¹⁷⁹

From September 1, 2020 to September 2021, 874 reports were recorded, of which 259 were determined to be incompetent; 566 are in the process of elaboration with the alerting persons or requesting information from other areas of the Secretariat and/or Federal Public Administration agencies; 47 are under investigation and two were concluded by the investigating authorities. The health, labor and social security and national security sectors have the highest number of reports. The diversion of public resources and bribery accounted for 68% of the alerts, embezzlement for 13% and abuse of functions for 19%.¹⁸⁰

From 2020 to 2021, the Civil Service Secretariat has implemented protective measures in 13 cases, which have sought to ensure the labor and psychosocial integrity of whistleblowers; in nine cases protective measures have been requested and three are in the process of implementation.¹⁸¹ It is clear that the numbers do not reflect the situation and the context of violence, insecurity, intimidation and retaliation that whistleblowers and reporters currently experience, and therefore the efficiency of the granting of protection measures is still questionable.

In practice, however, the effectiveness of this channel to detect and mitigate acts of corruption is unknown. In order to have an effective whistleblower culture, the approval of a law to protect victims and whistleblowers on possible corruption cases is still lacking. Although there are guidelines by agreement of the Civil Service Secretariat to ensure safe reporting (confidentiality, anonymity, non-retaliation) through its mechanisms, these are not enshrined in legislation.

The Internal Control Bodies of government agencies, the Federal Superior Audit Office, the Special Prosecutor's Office for Combating Corruption (FECC), the portal of Internal and External Citizen Corruption Whistleblowers and the Integral System of Citizen Complaints (SIDECC) of the Ministry of Public Administration, as well as the National Transparency System (SNT)'s National Transparency Platform are all part of the framework in place to address citizens' complaints and reports.

Likewise, citizens who wish to file a complaint or report related to irregularities committed by federal public servants in the performance of their duties may contact the Internal Control Organ of the agency or entity to which they are assigned. If the complaint or report is against a public servant assigned to the Civil Service Secretariat, or against the heads of the Internal Control Organs, it is the Internal Comptroller of the Civil Service Secretariat who handles such complaints and reports.

¹⁷⁸ Available on the website: <https://alertadores.funcionpublica.gob.mx/>

¹⁷⁹ Data obtained from the SFP's 2020-2021 work report, p. 17.

¹⁸⁰ *Idem*, p. 79-80.

¹⁸¹ *Ibid*.

In terms of the legislation on criminal matters (National Code of Criminal Procedures)¹⁸², whistleblowers are considered to be those persons who, as victims or offended parties, report facts of public officials of the Public Administration or of individuals related to the same, which may constitute crimes¹⁸³, as long as the report contains evidence of the facts and proof. Reports or complaints can be made anonymously or under reserve of identity. Regarding the mechanisms through which whistleblowers may report acts of corruption, the code provides that reports may be presented orally or "by any means" before the competent authority, the FECC.

In addition, the Federal Law for the Protection of Persons Involved in Criminal Proceedings provides for assistance and security measures to guarantee the protection and care of whistleblowers in a situation of risk or danger, such as psychological, medical or health treatment, free legal advice (including for the management of procedures), economic support, safeguarding of physical, psychological, patrimonial or family integrity, surveillance, transfer, custody, temporary housing and relocation.¹⁸⁴

For its part, in 2018, the FGR created the portal of the Centro de Denuncia y Atención Ciudadana¹⁸⁵ (CEDAC) for citizen attention, through suitable mechanisms to file complaints, complaints, request guidance and information both at the federal level and advice in the area of the common law.¹⁸⁶ In practice, the effectiveness and results of the portal are unknown.

It was reported that during the National Peer Review Mechanism in Mexico, by USAID and UNODC, through the Citizen Participation Committee (CPC) of the SNA, the Citizen Participation Committees of the Local Anti-Corruption Systems that are evaluating Article 33 of the United Nations Convention against Corruption (UNCAC) on whistleblower protection were reviewed, in order to get to know the work of each institution, as well as the progress, good practices and recommendations.¹⁸⁷ The results of the reports of this mechanism have not been published.

The regulation on whistleblower protection in Mexico is deficient in relation to the content of international treaties and recommendations (particularly in administrative matters), as it does not allow whistleblowers to have sufficient incentives to report such conduct, nor are effective protection measures available to protect them against acts of intimidation or retaliation. At the same time, there is no provision for reparation of damages for acts of corruption.

In particular, there is a violation of Article 36 of the United Nations Convention against Corruption, since neither the administrative nor the criminal regime provides for an independent body to handle complaints and protect whistleblowers against acts of intimidation and retaliation.

¹⁸² For further reference, see articles 105, 108 and 221 to 223 of this code.

¹⁸³ The crimes typified in Title Ten of the Federal Criminal Code are: unlawful exercise of public service (article 214), abuse of authority (article 215), coalition of public servants (article 217), unlawful use of attributions and powers (article 218), extortion (article 218), intimidation (article 219), abusive exercise of functions (article 220), influence peddling (article 221), bribery (article 222), bribery of foreign public servants (article 222 bis), embezzlement (article 223) and illicit enrichment (article 224).

¹⁸⁴ The purpose of protection measures in criminal matters is to provide care, security and integrity to the persons involved in the event that is being denounced, since sometimes during the investigation there may be situations of risk for the persons involved. See:

https://www.gob.mx/cms/uploads/attachment/file/501428/Medidas_de_proteccion.pdf

¹⁸⁵ The CEDAC platform is available at: <https://cedac.fgr.org.mx/ATENCION/PENDENUNCIA>

¹⁸⁶ The Attorney General's Office of the Republic, concerned with providing due attention to citizens, created the Citizen's Complaint and Attention Center, CEDAC, FGR, <https://www.gob.mx/fgr/acciones-y-programas/centro-de-denuncia-y-atencion-ciudadana-cedac-25530>

¹⁸⁷ Information obtained at the meeting held on July 7, 2022 with the Citizen Participation Committee of the National Anticorruption System.

Although the Protocol for the Protection of Persons who Report Corruption and the Guidelines for the Promotion and Operation of the System of Internal and External Citizen Corruption Whistleblowers have been developed, the main conflict is that there is no reliable, effective and efficient protection for whistleblowers, journalists or persons investigating corruption cases.

It is sufficient to recognize that Mexico has become the second most dangerous country in the world¹⁸⁸ for journalists, whistleblowers and human rights defenders, as pointed out by the Special Rapporteur on Human Rights Defenders, Michel Forst, in the presentation of his annual report to the Human Rights Council.¹⁸⁹ Forst also recognized that Mexico is the most violent country in Mesoamerica for women human rights defenders. Mexico has registered 18 murders of journalists in 2022 alone¹⁹⁰, making it the deadliest year for press workers, and during the government of López Obrador, since 2018, 97 human rights defenders have been killed.¹⁹¹

Although the efforts of developing the Internal and External Citizen Corruption Whistleblower System, the Protocol and the Guidelines mentioned above must be recognized, they are insufficient to effectively address the problem, and they do not have the status of a law or regulation.

It is necessary for the Mexican Congress to discuss and approve laws and regulations that provide the Mexican legal system with international standards on whistleblowing and whistleblower protection, as well as specialized and independent agencies that guarantee and encourage the reporting of acts of corruption.

Good practices

- The issuance of the Protocol for the Protection of Corruption Whistleblowers.
- Consolidation and implementation of the System of Internal and External Citizen Corruption Whistleblowers and Guidelines for its Promotion and Operation.
- Some reporting channels are anonymous, and digital tools allow for the attachment of documents as proof of corruption cases.

Deficiencies

- The lack of discussion and approval of a special law providing, in administrative matters, for the reporting and protection of whistleblowers of acts of corruption.
- Mexico is one of the most dangerous countries with the highest number of deaths of journalists and human rights defenders. Protection measures have been insufficient and inefficient for the current context of violence.
- Incentives for whistleblowing are neither contemplated nor regulated, and a system of rewards for whistleblowers in Mexico is prohibited.
- There are no positive incentives to file complaints because the processes are slow, corruption is not necessarily sanctioned, the lack of security conditions and labor stability, and the legal costs that the legal process may entail.

¹⁸⁸ Expansión, (September, 2021), Colombia and Mexico are the countries where most environmental defenders are murdered, https://expansion.mx/mundo/2021/09/13/colombia-mexico-paises-mas-asesinan-defensores-ambiente?_amp=true, accessed: July 14, 2022.

¹⁸⁹ See: <https://www.ohchr.org/es/hr-bodies/hrc/home>

¹⁹⁰ Forbes, (August, 2022), Mexico records deadliest year for journalists with 18 murders in first half of 2022 alone, <https://www.forbes.com.mx/mexico-registra-el-ano-mas-lethal-para-periodistas-con-18-asesinatos-solo-en-primer-semester-de-2022/> accessed: August 29, 2022.

¹⁹¹ Eduardo Ruiz-Healy, el Economista, (March, 2022), 97 human rights defenders assassinated during AMLO's government, <https://www.eleconomista.com.mx/opinion/97-defensores-de-derechos-humanos-asesinados-durante-el-gobierno-de-AMLO-20220324-0034.html>, accessed August 29, 2022.

- There are no ordinary appeals against the granting or revocation of protection measures.
- The constitutional framework does not contemplate the patrimonial responsibility of the State for the omission of the public administration to protect informants or victims who report acts of corruption, in the event that damages are caused.
- Most entities do not have mechanisms in place to ensure the security of whistleblower data, anonymity and whistleblower protection.
- There is a lack of standardization of the forms and procedures for receiving complaints depending on the type of entity in which they are filed.
- Citizens do not have full trust in the complaint mechanisms in place and fear future reprisals after reporting.

4.1.7 Art. 9.1 – Public Procurement

The bases for Mexico's procurement systems are set forth in Article 134 of the Constitution. According to this instrument, available financial resources shall be administered with efficiency, effectiveness, austerity, transparency and honesty in order to comply with the purposes for which they are intended. These requirements must be translated into adequate budgetary planning, which will be evaluated by the corresponding technical bodies of the Federation, the States and Mexico City.

The legal regulation of public procurement is not reserved to the Federation by constitutional mandate, so it is carried out concurrently by the Federation and the states. There is no explicit prohibition in the Constitution that prevents a local government from regulating public procurement, so there is a wide range of policies in Mexico. Not only federal norms regulate public procurement, but also 32 state laws establish the rules on acquisitions, leasing, sector services and public works.

The Mexican constitutional norm complies with the principles on public procurement established by the UNCAC (transparency, competition, objective criteria for decision-making, effectiveness, publicity, prior formulation of the conditions for participation, evaluation or verification procedures, non-conformity mechanisms, etc.), as can be seen from the legislative review. It even adds other principles that are not included in the Convention: efficiency, economy, good budget planning.

For public procurement, a control mechanism is foreseen to help monitor that the processes have been carried out in accordance with the Public Sector Procurement, Leasing and Services Law¹⁹² (LAASSP) and the Public Works and Related Services Law¹⁹³ (LOPSRM), as well as state laws. At the federal level, the Ministry of Finance and Public Credit (SHCP), the Ministry of Economy and the Civil Service Secretariat are in charge of verification. Each of these organizations has been granted the authority to perform verification within their respective competencies.

Acquisitions, leases and disposals of all types of goods, services and works shall be awarded through public bids by means of a public tender (art. 134 CPEUM). The LAASSP and the LOPSRM regulate the federal public procurement system. Public works may be carried out through contracts (art. 27 LOPSRM) or by direct award (art. 26 LOPSRM).

Mexico established three procurement procedures: public bidding, invitation to at least three persons and direct award (art. 26 LAASSP, art. 27 LOPSRM). Public bidding is the procurement procedure by which acquisitions, leases and services, as well as public works

¹⁹² Available at: https://www.diputados.gob.mx/LeyesBiblio/pdf/14_200521.pdf

¹⁹³ Available at: https://www.diputados.gob.mx/LeyesBiblio/pdf/56_200521.pdf

contracts and services related thereto, must be awarded as a general rule (art. 26 LAASSP, art. 27 LOPSRM). The same laws regulate the exceptions to the general rule (arts. 40 to 42 LAASSP, arts. 41 to 43 LOPSRM). They also provide for the requirement to establish deadlines for the submission of proposals and criteria for their evaluation (arts. 29 (sections III and XIII), 32, 36 LAASSP; arts. 31 (XXII) and 33 LOPSRM).

In addition, Mexico has a Protocol for Action on Public Procurement and the Granting and Extension of Licenses, Permits, Authorizations and Concessions¹⁹⁴, among other measures, with the aim of preventing corruption in public procurement and in the granting of licenses, permits, authorizations and concessions.

It should be noted that these procedures may be carried out in person or electronically. In this way, the intention has been to ensure greater transparency in the processes, to avoid personal contact between public servants and suppliers as much as possible, and at the same time to facilitate the possibility for the latter to participate in various processes.

Mexico uses an electronic Governmental Public Information System called "*CompraNet*"¹⁹⁵ (arts. 30 and 43 LAASSP, 32 and 44 LOPSRM). The Civil Service Secretariat hears complaints against acts of public bidding procedures or invitations to at least three persons (arts. 65 LAASSP, 83 LOPSRM).

However, the electronic system has not been fully functional, so much so that on January 9, 2018, a plural group (including the Mexican government through the SFP, the OECD, business chambers and INAI) presented the "Study of the Electronic Public Procurement System in Mexico", through which a diagnosis of *CompraNet* was developed. The study includes recommendations, such as adjusting the e-procurement strategy to a comprehensive and coordinated reform program; working towards a more efficient, effective and transparent process; guaranteeing integrity in public procurement processes; training officials in the necessary skills to work with the fundamental tools and implementing solid open data practices, in order to standardize public procurement data and improve accountability mechanisms.¹⁹⁶

On December 1, 2018, the Executive Secretariat of the National Anticorruption System (SESNA) conducted the Evaluation of Mexico's Public Procurement and Contracting System implementing the Methodology for the Evaluation of the Public Procurement System (MAPS), and analyzed the design and operation of the system in comparison to international best practices in a final report.¹⁹⁷ The report highlights that *CompraNet* complies or has minor gaps in 37 of the 55 indicators measured by the MAPS methodology. However, 18 major gaps - or negative indicators - were detected that generate limitations to obtaining better results in terms of efficiency, effectiveness and transparency, even creating a public perception of the system that is more negative than its objective data.¹⁹⁸

Additionally, on July 19, 2022, the *Compranet* portal was temporarily suspended due to technical failures in the infrastructure of the platform¹⁹⁹ representing a serious risk to

¹⁹⁴ <https://reniresp.funcionpublica.gob.mx>

¹⁹⁵ The *CompraNet* portal is available at: <https://compranet.hacienda.gob.mx/web/login.html>

¹⁹⁶ Instituto Mexicano para la Competitividad, A. C., Índice de Riesgos de Corrupción: El sistema mexicano de contrataciones públicas, available at: https://imco.org.mx/articulo_es/indice-riesgoscorrupcion-sistema-mexicano-contrataciones-publicas

¹⁹⁷ See: https://www.sesna.gob.mx/wp-content/uploads/2019/08/166.urpp_informe_final_maps_mexico_2018.pdf.pdf

¹⁹⁸ Final Report available at: https://www.sesna.gob.mx/wp-content/uploads/2019/08/166.urpp_informe_final_maps_mexico_2018.pdf.pdf, accessed: July 1, 2022.

¹⁹⁹ Technical Opinion and Temporary Suspension of the Public Procurement Policy Unit, Available at: https://compranetinfo.hacienda.gob.mx/descargas/MX-M5071_20220718_180313.pdf

transparency and access to information. Although the authorities denied a "*hacking*", a private company filed a complaint to the Attorney General's Office (FGR) stating that it was the victim of a new corruption scheme in public procurement.²⁰⁰ The complaint states that the main operators of this new scheme are the public servants who administer the *Compranet* system, who allegedly receive bribes from companies in exchange for modifying or "*hacking*" the electronic files of public bids in their favor.²⁰¹

This highlights the need to improve the technological advances available in Mexico through *Compranet*, especially since it has not shown any progress as an anti-corruption measure, since there is still a lack of transparency and exacerbated arbitrary decision-making, a disproportionate increase in direct awards, which was facilitated as a result of the Covid-19 situation, as well as evident conflicts of interest in various public contracts assigned by the Federal Public Administration. During the Covid-19 emergency situation, information on public works was reserved invoking "national security reasons" to avoid public bids, so the budget was invested with total opacity²⁰², the same fate that has accompanied the contracts for the Covid-19 vaccines signed by the current government, agreeing with the pharmaceutical companies to hide the information through confidentiality clauses.²⁰³

Furthermore, in 2017 the Federal Government launched the Open Procurement Platform of the Government of the Republic²⁰⁴, which includes data and visualizations of all stages of the procurement processes of the Centralized Public Administration. In addition, under this scheme, the data of the Accounting and Budget System (SICOP) and the Integral Module of Investment Programs and Projects (MIPPI) of the SHCP have been integrated and structured.

Articles 26 Ter of the LAASSP, 60 to 70 of its Regulations; 27 Bis of the LOPSRM, 49 to 58 of its Regulations; 43 of the Private Public Partnerships Law, 62 and 63 of its Regulations, establish the figure of the social witness to participate in public procurement processes. The social witnesses are appointed by the SFP, in accordance with the aforementioned provisions.

As of the date of this report, the registry of social witnesses is made up of 75 individuals and 7 legal entities.²⁰⁵ The forms and requirements to apply for registration as a Social Witness are available on the Civil Service Secretariat website.

Some of the actions and strategies of the SFP²⁰⁶ to improve contracting in the implementation of the General Policy on Public Contracting²⁰⁷, are: monitoring of indicators on public contracting and *Compranet*; training of public servants in charge of contracting; advice to

²⁰⁰ Política Expansión, (July, 2022) Compranet, Suspensión temporal por fallas técnicas reporta Hacienda, https://politica.expansion.mx/mexico/2022/07/20/compranet-suspension-temporal-fallas-tecnicas-hacienda?_amp=true, accessed: July 19, 2022.

²⁰¹ See: Excelsior, (June, 2022), Denuncian empleados de SHCP por hackear Compranet, <https://www.excelsior.com.mx/nacional/denuncian-empleados-shcp-por-hackear-compranet/1519476?amp>

²⁰² El Economista, (February, 2022), Los otros contratos de la "4ta transformación", Diego Badillo, <https://www.eleconomista.com.mx/politica/Los-otros-contratos-de-la-Cuarta-Transformacion-20220218-0061.html>, accessed: July 20, 2022.

²⁰³ Raúl Olmos, MCCI, (April, 2021), México pide vacunarse, pero oculta hasta por cinco años contratos de las vacunas, Raúl Olmos, MCCI, <https://contralacorrupcion.mx/mexico-oculta-contenido-contratos-vacunas-covid/>, accessed: July 20, 2022.

²⁰⁴ Available at: <https://www.gob.mx/contratacionesabiertas/home#!/>

²⁰⁵ Available at:

https://www.gob.mx/cms/uploads/attachment/file/751030/Padr_n_P_blico_de_Testigos_Sociales.pdf

²⁰⁶ Through its various units: Public Procurement Policy Unit, Public Procurement Regulations Unit, General Directorate of Disputes and Sanctions in Public Procurement, Public Works Control and Audit Unit, and Unit Specialized in Ethics and Prevention of Conflict of Interest.

²⁰⁷ Pursuant to the provisions of Article 37 section XXI of the Organic Law of the Federal Public Administration, among other duties, the Ministry of Public Administration is responsible for: "Establishing and conducting the general policy of public procurement regulated by the Law on Public Sector Procurement, Leasing and Services and the Law on Public Works and Related Services, promoting the best contracting conditions in accordance with the principles of efficiency, effectiveness, economy, transparency, impartiality and honesty; ...".

bidders, suppliers and contractors; the design and promotion of various contracting strategies; the promotion of integrity and prevention of conflicts of interest in public contracting; and the audit of public works and services related to the same.²⁰⁸

There is still no study that makes reference to the legal causes that motivate the assignment of contracts by direct award and invitation to three persons, therefore, there is no clear evidence that all direct awards have a valid legal basis.

However, government procurement and contracting has historically been one of the areas with the greatest risk for waste, irregular use of resources and corruption. One of the windows through which this can happen more easily is precisely the intensive use of the figure of direct awards as the favored method to deliver contracts. Between 2010 and 2018, on average 79.6% of federal government contracts were awarded directly.²⁰⁹

Public data, as well as monitoring by civil society organizations has shown that the government of President Andrés Manuel López Obrador continued and intensified the use of this practice during his administration for the 2018-2024 period.²¹⁰ According to data from the Mexican Institute for Competitiveness²¹¹ and Mexicanos Contra la Corrupción y la Impunidad²¹², in 2020, for the first time in history, direct awards delivered more resources than any other mechanism, with 43.8% of the total. Thus, in the first half of 2021, 80.6% of total government contracts were made by direct award for a total of 74,639 million pesos (\$3'731,950 USD). Among Covid-19-related contracts in 2020 and 2021, 96% were made by direct award and 91.5% of contracts related to drugs and pharmaceuticals have been delivered by direct award in 2021. The figures are alarming for transparency and oversight of public procurement.

When analyzing the purchases available on the *Compranet* platform, an excessive use of direct awards has been identified (8 out of 10 contracts have been awarded in this way)²¹³, as has the presence of ghost companies, as well as the identification of companies that systematically benefit from direct allocations.

The Civil Service Secretariat has the authority to initiate, substantiate and resolve the sanctioning procedures that, if applicable, may be instructed to individuals and legal entities when they violate the provisions regarding acquisitions, leasing and services, as well as public works and services related thereto, and to impose, if applicable, the respective sanctions (fine and/or disqualification).

The main objective of the administrative sanctioning procedure instructed by the Ministry of Public Administration in the area of public contracting is to inhibit violations to the provisions governing such contracting and practices that violate the guiding principles of legality, honesty, transparency, impartiality and efficiency. From September 1, 2020 to June 30, 2021, 209 resolutions were issued, of which 155 were determined as punitive, equivalent to 74.2%, and 17 were determined as acquittals, representing 8.1%. Finally, 37 resolutions were issued in

²⁰⁸ See: <https://www.gob.mx/sfp/acciones-y-programas/contrataciones-publicas-que-garantizan-las-mejores-condiciones-para-el-estado>

²⁰⁹ Política Expansión, (July, 2022), MCCI: by direct award, 80% of federal contracts, <https://politica.expansion.mx/mexico/2021/07/05/por-adjudicacion-directa-80-de-los-contratos-federales-mcci>, accessed: July 21, 2022.

²¹⁰ MCCI, (February, 2022), Adjudicaciones Directas, El Método Preferido Para Contrataciones Durante El Gobierno De AMLO, MCCI, Available at: <https://contralacorrupcion.mx/adjudicaciones-directas-el-metodo-preferido-del-gobierno-de-amlo/>, accessed: July 22, 2022.

²¹¹ IMCO, (October, 2020), Public Procurement in Mexico. Competencia, la gran ausente, IMCO, Available at: <https://imco.org.mx/compras-publicas-en-mexico-competencia-la-gran-ausente/>, accessed: July 22, 2022.

²¹² MCCI, (July, 2021), Promesas incumplidas de la 4T: 80.6% de los contratos de 2021 han sido entregados por adjudicación directa, MCCI, Available at: <https://contralacorrupcion.mx/promesas-incumplidas-de-la-4t-80-6-de-los-contratos-de-2021-han-sido-entregados-por-adjudicacion-directa/>, accessed: July 22, 2022.

²¹³ *Op. cit.*

another sense, which is equivalent to 17.7% (inadmissibility and incompetence). Of the 155 sanctioning resolutions, 26 were fines and 129 were fines and disqualifications. In total, fines were imposed for a total amount of 154 million 360 thousand pesos (\$7,700'018,000 USD).²¹⁴

Information on all those companies that have been sanctioned with fines exclusively and disqualifications and fined is available in the SFP's Directory of Sanctioned Suppliers and Contractors.²¹⁵ It is not known if the data provided in the directory coincide and cover the total number of sanctions and companies that commit illegal practices or infractions in public procurement processes.

Regarding specific corruption risks in the public procurement system, IMCO has developed a Corruption Risk Index²¹⁶ that rates the level of risk in each of the 1,537 Purchasing Units they analyzed to evaluate their competition, transparency and integrity practices. The Index uses the indicators used in public procurement conducted by ADP from 2018 to 2021.

Government spending on advertising has been one of the main areas in which the discretion with which resources and contracts can be allocated can have negative effects on democracy, either due to the direct control that this money can have on the operation of the media or in the self-censorship that it can encourage to avoid bothering those in power and thus not lose the possibility of obtaining resources. In 2021, 688 million pesos (\$34'400,000 USD), that is, 95% of the resources of government advertising contracts, were delivered directly and without a bidding process, the highest figure since the start of record-keeping.²¹⁷

The results of the audit of public contracting related to public works and acquisitions have made it possible to identify relevant irregularities in the use of public resources. An example is the audit of the Mexico-Toluca Interurban Train, which was carried out through three supervision visits, in which 22 findings were determined, from which 44 corrective observations and preventive recommendations were derived, with an amount to be clarified or recovered of 2 billion 222 million pesos (\$110'100,000 USD).²¹⁸

For the acquisition of any product or public good, the Mexican State must comply with strict processes to ensure the best available conditions in terms of price, quality, financing and opportunity. This also implies the right of citizens to have their officials manage public resources efficiently, effectively, economically, transparently and honestly. The increase in direct awards and the safeguarding of information on public procurement, both for the pandemic response and for the development of works and mega-projects of the current federal administration, has highlighted the critical importance of this aspect in the fight against corruption.

In the same vein, in order to demand accountability, transparency and the fight against corruption in public procurement, on March 14, 2022, the judgment issued by the Eighteenth Collegiate Court in Administrative Matters in the First Circuit was final, which granted DLM the appeal on grounds of unconstitutionality under file 637/2019 on the irregular purchase of pipes for the transportation of gasoline. Initiated in 2019, the appeals trial derived from the nullity lawsuit filed against the opaque and irregular participation of the head of the Ministry of Public Administration of the federal government in the purchase of 500 60,000-liter pipelines for the

²¹⁴ See the SFP's 2020-2021 work report.

²¹⁵ The directory of sanctioned contractors and suppliers is available at: https://directoriosancionados.funcionpublica.gob.mx/SanFicTec/jsp/Ficha_Tecnica/SancionadosN.htm

²¹⁶ Available at: <https://imco.org.mx/riesgosdecorrupcion/>

²¹⁷ See: Promesas incumplidas de la 4T, MCCI.

²¹⁸ Work Report 2021, SFP. *Op. cit.*

normalization of the distribution of gasoline in Mexico in 2019, as well as the invasion of powers of such Ministry over various authorities and entities of the Mexican State.²¹⁹

The need to monitor government contracting, especially direct awards, is fundamental, not only because by continuing to use them indiscriminately, the government is breaking its own promises, but also because it leaves the door open for corruption and waste of public resources.

Precisely because of this, many of the corruption scandals of this government involve the use of direct awards: the fans that the son of the director of the Federal Electricity Commission (CFE) wanted to sell to the government²²⁰; the contracts of the companies of a former superdelegate in Jalisco²²¹; the newly created companies that quickly became government contractors²²²; the contracts of the president's cousin-sister²²³; the overpriced Covid tests acquired by the Civil Service Secretariat from a company without employees²²⁴; the construction company of "ghost works" that in 2020 was contracted by the federal government and the State of Mexico²²⁵, among others.²²⁶

As can be seen, in most cases the media and civil society can track and monitor what goods or services state agencies purchase, although historically the government has used complex mechanisms of resource triangulation and fraudulent corporate structures that include shell companies to divert resources through public procurement, such as in the case of *the Master Scam*.

The *Master Scam* is the name of a journalistic investigation conducted by the Mexican news portal Animal Político in association with the civil society organization Mexicanos Contra la Corrupción y la Impunidad (MCCI), which unraveled a system of 128 shell companies through which the Mexican Federal Government diverted more than 400 million dollars through a network of money diversions involving 11 government agencies, eight public universities, several private companies and more than 50 public servants from different levels of government.²²⁷

Derived from the publication of the article, the Superior Audit Office of the Federation (ASF), the country's highest auditing body, called the diversion network a "fraud" and qualified it as "corruption".²²⁸ Precisely the origin of the investigation was the ASF's report on the public

²¹⁹ The lawsuit filed before the Specialized Chamber for Online Lawsuits of the Federal Court of Administrative Justice was filed under file number 19/778-24-01-01-04-OL.

²²⁰ MCCI, (May, 2020) Bartlett's son beat government fan COVID-19 more expensive, MCCI, <https://contralacorrupcion.mx/hijo-bartlett-ventilador-covid-19/>, accessed: July 21, 2022.

²²¹ MCCI, (April, 2021), Farmacéutica ligada a exsuperdelegado de Jalisco recibe nuevo contrato de gobierno de AMLO, MCCI, <https://contralacorrupcion.mx/lomeli-jalisco-contrato-amlo/>, accessed: July 21, 2022.

²²² 5º Elemento, (March, 2020), Crean negocios al vapor para ganar contratos con el gobierno de AMLO, <https://quintoelab.org/project/crean-negocios-al-vapor-para-ganar-contratos-con-el-gobierno-de-amlo>, accessed: July 21, 2022.

²²³ Animal Político, (December, 2020), AMLO's cousin has won contracts with Pemex for \$365 million pesos; government offers to investigate, <https://www.animalpolitico.com/2020/12/gobierno-investigara-contratos-pemex-prima-amlo/>, accessed: July 21, 2022.

²²⁴ MCCI, (September, 2020), Irma Eréndira's SFP paid expensive covid tests to company with no employees, MCCI, <https://contralacorrupcion.mx/la-sfp-de-irma-erendira-pago-pruebas-covid-caras-a-empresa-sin-empleados/>, accessed: July 21, 2022.

²²⁵ MCCI, (June, 2021), Gobierno federal y del Edomex contratan a constructora acusada de cobrar 'obras fantasma', MCCI, <https://contralacorrupcion.mx/gobierno-federal-y-del-edomex-contratan-a-constructora-acusada-de-cobrar-obras-fantasma/>, accessed: July 22, 2022.

²²⁶ See: <https://contralacorrupcion.mx/promesas-incumplidas-de-la-4t-80-6-de-los-contratos-de-2021-han-sido-entregados-por-adjudicacion-directa/>

²²⁷ See MCCI's investigation at: <https://contralacorrupcion.mx/web/estafamaestra/>

²²⁸ Animal Político, (November, 2017), "Sí, es un fraude", <https://www.animalpolitico.com/estafa-maestra/auditor-si-es-fraude.html>, accessed: 22 July 2022.

accounts of the federal government in 2013-2014 and involved an unprecedented political scandal, which to date has not had any individual criminal charges and continues in impunity.

The growing trend of direct awards is a red hotspot for competition and also represents a risk of corruption, since the absence of objective criteria for selecting contractors opens the door to the possibility that the decision could be influenced by illicit agreements.

In this regard, and although it is true that these corruption cases have not yet been effectively investigated and sanctioned by the authorities, and impunity persists, it is crucial that the SNA pay specific attention to the issue of public contracting, given that it is considered to be an important bastion of this type of practices, regardless of the procedure used for this purpose.

Good practices

- The country's contractual information is publicly available for consultation and download in open formats.
- The development and inclusion of social witnesses and their registration in public procurement procedures to promote transparency and citizen participation.
- The National Transparency Platform allows for consultation of procurement processes at the federal level.
- The Open Contracting Platform and *CompraNet* are available not only as tools for publication, consultation and visualization of information, but also as a transactional tool for carrying out online contractual processes.
- Mexico participates in the Open Government Partnership and has adhered to the principles of the International Open Data Charter. The OGP seeks to ensure the implementation of the Open Data Procurement Standard (EDCA).

Deficiencies

- Allocation, verification and oversight mechanisms have not prevented overpriced public procurement and contracting.
- There are no robust and efficient mechanisms to follow up on irregularities in contracts awarded through public bidding or direct award.
- The impossibility to challenge or object to direct awards.
- The potential for corruption and opacity in public procurement due to the Covid-19 health situation.
- The increasing lack of transparency and direct awards in contracting and public works of the current federal administration.
- Although there are regulations that establish procedures for objective selection based on competitive criteria, they also facilitate direct contracting for certain types of contracts.

4.1.8 Art. 9.2 – Management of public finances

The Chamber of Deputies approves the budget (art. 74, fraction IV CPEUM, art 42, Federal Budget and Fiscal Responsibility Law²²⁹ (LFPRH)). The Ministry of Finance and Public Credit (SHCP) provides monthly and quarterly reports on revenues obtained and the execution of the Expenditure Budget to Congress (107 LFPRH). The General Law of Governmental Accounting²³⁰ (LGCG) establishes the governmental accounting system (arts. 16 to 22), the obligation to maintain accounting records and to keep original supporting documentation (arts. 33 to 43), and provides for penalties for noncompliance with the obligations set forth in the LGCG, such as omissions and alterations to records (arts. 56 and 57).

²²⁹ Available at: <https://www.diputados.gob.mx/LeyesBiblio/pdf/LFPRH.pdf>

²³⁰ Available at: https://www.diputados.gob.mx/LeyesBiblio/pdf/LGCG_300118.pdf

The Superior Audit Office of the Federation and the Civil Service Secretariat audit the execution of the budget (arts. 1 and 6 LFPRH). In terms of articles 74, section VI, and 79 of the CPEUM, the Federal Superior Audit Office (ASF) is responsible for reviewing the Public Account of previous years, in order to evaluate the results of financial management, verify whether it has complied with the criteria set forth in the budget and verify compliance with the objectives contained in the programs. The result of such reviews is included in the individual audit reports, which are delivered to the Chamber of Deputies. All reports are published periodically.²³¹

The Public Account is the report prepared by the Ministry of Finance and Public Credit and submitted to the Chamber of Deputies for review and audit. It contains accounting, budgetary, programmatic and complementary information of the Executive, Legislative and Judicial Branches, of the Autonomous Bodies and of each public entity of the Parastatal Sector, in compliance with the provisions of Article 74, Section VI of the CPEUM and Articles 46 and 53 of the LGCG.²³²

As part of the superior audit of the 2018 Public Account, the ASF conducted audit 88-GB called "Audit of the Institutional Framework for the Fight against Corruption" to the Executive Secretariat of the National Anticorruption System.²³³

The ASF's reports on the exercise, destination and expenditure of the Federal Expenditure Budget can be consulted online.²³⁴ In the "Annual Audit Program for the Superior Audit of the Public Account" of the corresponding year, the list of audits corresponding to that agency can be consulted.

In terms of budget transparency, Mexico has the Performance Evaluation System, which can be consulted through the portal "Transparencia Presupuestaria: Observatorio del gasto"²³⁵; however, it only includes information on certain programs and is not particularly detailed.

In August 2017, the creation of a "Transversal Annex on Anti-Corruption" was announced in order to identify who and how much budget is allocated to fighting corruption. Thus, for the 2018 Federal Expenditure Budget, the Transversal Annex on Anti-Corruption was included with a total amount of \$10,399.2 million pesos (mdp)²³⁶ (\$519'960,000 USD).

The incorporation of this Annex marked an important step forward for the transparency and accountability of the National Anticorruption System and was widely recognized by various civil society organizations. However, in the 2019 budget year, it was not incorporated. Subsequently, for fiscal years 2021, 2022 and 2023, the Anticorruption Transversal Annex (ATA) was included.²³⁷ The Annex is identified as a good practice aimed at budget efficiency.²³⁸

However, according to the budget approved in 2021, five out of the seven agencies that make up the SNA will have fewer resources in 2022, in real terms, than they exercised years ago,

²³¹ The audit reports of the Public Account are published in the following hyperlink: https://www.asf.gob.mx/Section/58/Informes_de_auditoria

²³² The public account report can be consulted in its annual versions at the following website: <https://www.cuentapublica.hacienda.gob.mx/es/CP/2021>

²³³ The report is available at the following hyperlink: https://www.asf.gob.mx/Trans/Informes/IR2018c/Documentos/Auditorias/2018_0088_a.pdf.

²³⁴ Available at: <https://www.asf.gob.mx/Section/357>

²³⁵ Available at: <https://www.transparenciapresupuestaria.gob.mx/es/PTP/Seguimiento#Seguimiento>

²³⁶ Data obtained from the Transversal Anticorruption Annex, available at: <https://www.sesna.gob.mx/2022/07/22/anexo-transversal-anticorrupcion-ejercicio-fiscal-2021/>

²³⁷ Available at: <https://www.sesna.gob.mx/2022/07/22/anexo-transversal-anticorrupcion-ejercicio-fiscal-2021/>

²³⁸ Information and best practices identified at a meeting held on July 11, 2022 with officials from the Civil Service Secretariat.

in 2018.²³⁹ These are the SESNA, the INAI, the SFP, the ASF and the TFJA, the latter with a decrease of 10.9% with respect to its budget in 2018.

The budget of the Specialized Prosecutor's Office for Combating Corruption, which is also part of the SNA, was not cut, but has insufficient resources, nonetheless, and only the Federal Judiciary Council has 6.5% more resources in the aforementioned period. In addition, the anti-corruption budget has decreased by 13% in real terms between 2018 and 2022.²⁴⁰

While not the entire budget of the seven SNA institutions is allocated to actions to combat corruption, as in the case of the CJF, and not all of the resources that seek to address corruption are exercised through the SNA institutions, according to an analysis conducted by the organization Mexicanos contra la Corrupción y la Impunidad²⁴¹, there was a 13% decrease in resources allocated to the fight against corruption in Mexico from 2018 to 2022. By 2022, five of the seven SNA institutions would have fewer resources, in real terms, than in 2018. In addition, agencies such as the FECC, formally constituted until 2020, still have insufficient allocations for the fulfillment of their investigative functions.

The anti-corruption budget is susceptible to changes in the resources allocated to the Federal Judiciary Council. Moreover, between 2018 and 2022 the resources allocated to the institutions responsible for the prevention, investigation and punishment of acts of corruption and administrative responsibilities systematically decreased by up to 30.7%.²⁴²

This implies that the bodies do not have access to timely, planned, reliable, sufficient and adequate resources for the gradual development of capacity and improvement of their operations and the fulfillment of their mandate.

There are aspects of the budget that are not disclosed (e.g., for security and defense purposes there is classified information because its publication would harm the public interest or national security).

The Budget and Public Account Committee of the Chamber of Deputies has entered into various agreements to promote the formation of working groups and the participation of civil society in the analysis of the 2021 Expenditure Budget Bill.

The 2020 Public Account revealed irregularities of millions of pesos in key works and programs of the government of Andrés Manuel López Obrador, such as the *Santa Lucía* airport, the *Dos Bocas* refinery, the *Mayan Train* and *Sembrando Vida*.²⁴³ Together, the anomalies detected represent an amount of 63.10 billion pesos (\$3'150,500,000 USD). Of this total, 2,181.1 billion pesos (\$109,055,000 USD) have been clarified, but the destination of 60,229 million pesos (\$3,011,450,000 USD) remains to be clarified.

In 2021, the financial and compliance audits determined an observed amount of 17 billion 19 million pesos (\$850'950,000 USD) for alleged irregularities related to the lack of supporting

²³⁹ Política Expansión, (February, 2022), López Obrador seeks his own anti-corruption system, <https://politica.expansion.mx/congreso/2022/02/23/lopez-obrador-busca-su-propio-sistema-anticorrupcion>, accessed: July 22, 2022.

²⁴⁰ MCCI, (June, 2022), El presupuesto anticorrupción y su anexo transversal: última llamada (II), MCCI, <https://anticorrupcion.nexos.com.mx/el-presupuesto-anticorrupcion-y-su-anexo-transversal-ultima-llamada-ii/>, accessed: July 23, 2022.

²⁴¹ Available at: <https://contralacorrupcion.mx/el-presupuesto-anticorrupcion-y-su-anexo-transversal-ultima-llamada-ii/>

²⁴² Nexos, (June, 2022), The anti-corruption budget and its cross-cutting annex, last call. Nexos. <https://anticorrupcion.nexos.com.mx/el-presupuesto-anticorrupcion-y-su-anexo-transversal-ultima-llamada/>, accessed: 25 July, 2022.

²⁴³ Animal Político, (February, 2022), <https://www.animalpolitico.com/2022/02/cuenta-publica-2020-asf-detecta-irregularidades-63-mil-10-mdp/>, accessed: July 25, 2022.

documentation and justification of the expenditure; collection of income not concentrated in the Treasury of the Federation; lack of accreditation of accounting records; unjustified compensation payments to security elements, as well as the acquisition of medicines at overpriced prices. These observations are in the process of being clarified.²⁴⁴

Of the irregularities found in government works, the case of the construction of the Santa Lucía or Felipe Ángeles International Airport (AIFA) stands out. There, the Ministry of National Defense did not report the use of 20 billion pesos (\$1'000,000,000,000 USD) from the trust fund used to pay for the work.²⁴⁵

The ASF also submitted reports on social programs such as *Sembrando Vida*, *Pensión para el Bienestar de las Personas Adultas Mayores* and *Jóvenes Construyendo el Futuro*. In these cases, anomalies were also found. In *Sembrando Vida*, a program with which President Andrés Manuel López Obrador promises to boost development in rural areas, irregularities for 900 million pesos (\$45'000,000 USD) were detected.²⁴⁶

Similarly, in the pension for senior citizens, there were problems with 22 million pesos (\$1'100,000 USD) given to 1,567 people who did not meet the requirements to be beneficiaries of the program and 10 million pesos (\$500,000 USD) given to 2,000 people who had already died.²⁴⁷

It is necessary to consolidate the strategies and action plans of the National Auditing System, strengthen auditing actions and auditing of the Public Account, guarantee the investigation, follow-up and sanctioning of irregularities in public management - again highlighting the high rates of administrative impunity -, and guarantee effective mechanisms for social participation in the design and allocation of the budget.

Good practices

- The National Expenditure Budget is published annually and the budgets of each public entity are also published.
- There are standardized norms for the preparation of budgets in the country.
- The planning, development and systematization of the Annual Audit Plan.
- There are regulations that require accountability of budgetary information of public entities.
- The issuance of agreements by the Chamber of Deputies for the participation of civil society in the discussion of the proposed budget.

Deficiencies

- Despite efforts, there is still opacity in the management of public resources, and information is not always presented in open data format or is not clear.
- There is no obligation to involve citizens in the preparation, execution and monitoring of public budgets, as this is a discretionary power of the Chamber of Deputies.

4.1.9 Art. 10 and 13.1 – Access to Information and Participation of Society

²⁴⁴ *Op. cit.* Work Report 2021, SFP.

²⁴⁵ Animal Político, (February, 2022), La ASF encuentra irregularidades millonarias en obras clave de AMLO: Santa Lucía, Dos Bocas, Tren Maya, <https://www.animalpolitico.com/2022/02/cuenta-publica-2020-asf-detecta-irregularidades-63-mil-10-mdp/>, accessed: July 26, 2022.

²⁴⁶ *Idem.*

²⁴⁷ Information obtained from the Public Account 2021 report, ASF.

Access to information is regulated by the Constitution (art. 6), the General Law on Transparency and Access to Public Information²⁴⁸ (art. 122)²⁴⁹ and the Federal Law on Transparency and Access to Public Information²⁵⁰ (LFTAIP).²⁵¹

In Mexico, Articles 6 and 8 of the Political Constitution of the United Mexican States and Article 122 of the General Law of Transparency and Access to Information guarantee the right of every person to request, free of charge, information generated, administered or in possession of public authorities, who are obliged to deliver it without the person needing to prove any interest or justify its use.

Article 6, paragraph A, clause VIII of the Constitution regulates the National Institute for Transparency, Access to Information and Protection of Personal Data (INAI) as an autonomous constitutional body²⁵² that protects the rights of access to information and protection of personal data held by regulated entities and individuals. It also coordinates the National Transparency System, is part of the National Anticorruption System and the National Archives System.

According to the Global RTI Rating (the global ranking of the right of access to information), Mexico has the second-best legislative framework for access to information in force worldwide, with a total score of 136 from an analysis of different categories, only after Brazil, which has 139 points.²⁵³

The exercise and guarantee of the right of access to information is regulated under the principles of maximum disclosure, proactive dissemination of information of public interest, promotion of the culture of transparency and strengthening of accountability, while encouraging citizen participation and distributing competencies among guarantor agencies. These regulations established the principles, general bases and procedures to homogenize the exercise of the right of access to public information at the national level, and established the creation of a National Transparency Platform (PNT).

Any person may file a request for access to information before a Transparency Unit (art. 122 LGTAIP; art. 123 LFTAIP) and file an appeal for review before the corresponding guarantor agency, or before the Transparency Unit that has heard the request (art. 142 LGTAIP; art. 147 LFTAIP). Individuals may challenge the resolutions of the guarantor agencies before the Federal Judiciary (art. 158 of the LGTAIP). Only the Government's Legal Counsel may file an appeal for review before the SCJN in cases of national security (art. 157 LGTAIP).

The entities and regulated entities shall create Transparency Committees and Transparency Units (art. 24 LGTAIP). The Transparency Units are in charge of receiving and processing requests for access to information (arts. 24 and 45 LGTAIP). Transparency Committees have access to information to determine its classification (arts. 43 and 44 LGTAIP, 61 LFTAIP). Mexico promotes the simplification of administrative procedures of the Federal Public Administration through the measures established in the Agreement that aims to issue general

²⁴⁸ Available at: https://www.diputados.gob.mx/LeyesBiblio/pdf/LGTAIP_200521.pdf

²⁴⁹ The General Law of Transparency and Access to Public Information establishes principles, bases and procedures to guarantee the right of access to information of any authority, entity of the Powers of the Union, autonomous bodies, political parties, unions, trusts and public funds.

²⁵⁰ Available at: https://www.diputados.gob.mx/LeyesBiblio/pdf/LFTAIP_200521.pdf

²⁵¹ The Federal Law of Transparency and Access to Public Information guarantees the access of any person to the information held by the Powers of the Union, the Autonomous Constitutional bodies or those with legal autonomy and any other federal entity.

²⁵² Article 6 of the Political Constitution of the United States of Mexico

²⁵³ *Global RTI Rating* scores, data and reports are available at: <https://www.rti-rating.org/country-data/>, accessed: August 1, 2022.

provisions in the matters of archives and transparency for the federal public administration and its annex published in the DOF on March 3, 2016.

In positive terms, as of the constitutional reform on transparency and the publication of the LGTAIP on May 4, 2015, the National Transparency System was created to guarantee and strengthen the exercise of the right of access to information at the service of all citizens, making it a fundamental element to promote their participation in public affairs. In addition, the LGTAIP provides for an appeals procedures in matters of access to public information.²⁵⁴

The National Transparency Platform²⁵⁵ allows for the making of requests for access to information to the different public entities online, where it is coordinated through the SNT and the Transparency Units to attend and follow up on online requests. The growing use of the National Transparency Platform by the public has been evidenced by the fact that in the period from October 2020 to September 2021, 1,283,32 queries were made in the national search engine.²⁵⁶

Since the launch of the National Transparency Platform on May 5, 2016, it has been consolidated as one of the IT tools through which the rights of access to information and protection of personal data in possession of the obligated subjects are exercised. Moreover, the platform has enabled the provision of information in electronic form, which has facilitated its use and ensure uniformity irrespective of obligated subject. It also serves as the repository of mandatory information of national transparency.

The PNT guarantees access to the directory of public servants, salaries, contracts, list of beneficiaries, list of sanctioned public servants, annual allocated budget, budget execution and transparency resolutions and data. The ease of submitting requests through virtual means and the access to information guaranteed by the PNT is noteworthy.

In 2017, Mexico was the first country to implement the Anti-Corruption Open Data Guide²⁵⁷ as part of its Open Data Policy. As a result of the implementation of the Guide, the government managed to identify 72 strategic databases, and publish 47 databases that include more than 13 million records and more than 350 million individual data.²⁵⁸

Since 2018, the SESNA had been working on the development of the National Digital Platform (PDN) of the National Anticorruption System. By July 2022, the PDN has four of six functional²⁵⁹ systems (systems 1, 2, 3 and 6) that allow the consultation of data from around 17 state, federation and INAI anti-corruption executive secretariats. It also has an Anti-Corruption Digital Marketplace.²⁶⁰ In addition, a remediation plan is expected to be developed by the end of 2022 to reduce the risk of cyberattacks.

²⁵⁴ Title VIII, LGTAIP.

²⁵⁵ Available at: <https://www.plataformadetransparencia.org.mx/en/web/guest/home>

²⁵⁶ Data obtained from the 2021 work report of the National Institute of Transparency, Access to Information and Protection of Personal Data, [https://infosen.senado.gob.mx/sqsp/gaceta/65/1/2022-02-01-1/assets/documentos/Informe de Labores INAI 2021.pdf](https://infosen.senado.gob.mx/sqsp/gaceta/65/1/2022-02-01-1/assets/documentos/Informe%20de%20Labores%20INAI%202021.pdf)

²⁵⁷ Available at: <https://datos.gob.mx/busca/group/guia-de-datos-abiertos-anticorrupcion>

²⁵⁸ Pablo Villareal and Hugo Rivera, National Digital Platform, (September, 2018) What is the Anti-Corruption Openness Guide, <https://www.plataformadigitalnacional.org/blog/que-es-la-guia-de-apertura-anticorrupcion/>, accessed: 27 July 2022.

²⁵⁹ The National Digital Platform of the SNA must have (art. 49 LGSNA), at least, the following electronic systems:

- I. System for the evolution of net worth, declaration of interests and proof of filing a tax return;
- II. System for public servants involved in public contracting procedures;
- III. National system of sanctioned public servants and individuals;
- IV. Information and communication system of the National System and the National Auditing System;
- V. Public reporting system for administrative misconduct and acts of corruption, and
- VI. Public Procurement Information System.

²⁶⁰ The Anti-Corruption Digital Marketplace (MDA) is a space where free use tools are available to facilitate the development and connection with the systems that make up the National Digital Platform.

As part of the design and development of the Evaluation and Monitoring Model of the National Anti-Corruption Policy, the Catalogue of Information on Corruption in Mexico (CICM) was created. The CICM²⁶¹ currently has a portal²⁶², which in its current version and after its presentation on March 29, 2022 constitutes a repository with 2828 variables on the phenomenon of corruption.²⁶³

All information generated, obtained, acquired, transformed or in possession of the regulated entities (art. 23 LGTAIP) is public and may only be classified exceptionally for reasons of public interest and national security (arts. 4, 11, 12, 113 to 120 LGTAIP, arts. 3, 110 to 117 LFTAIP).

Even so, there are several documented cases²⁶⁴, such as Odebrecht, *Casa Gris*, *the Master Scam*²⁶⁵, *Cienfuegos*, and others, in which journalists and representatives of civil society or citizens have been denied access to politically sensitive information or documents. The constant strategy to deny access to information or documents relevant to the prevention, fight or punishment of corruption has been under the classification of reserved information for alleged reasons of national security.

Part of this strategy has been reflected in the denial of access to relevant information on priority projects and key cases like the *Mayan Train*, the *Santa Lucia* airport²⁶⁶, contracts for the purchase of vaccines, Covid-19 death data, and others,²⁶⁷ of the Federal Public Administration, which consequently implies the impossibility of supervising, preventing, and combating corruption and guaranteeing transparency and access to information.

Section II of Article 115 of the LGTAIP and Article 112 of the LFTAIP establish that the character of reserve may not be invoked when "it is information related to acts of corruption in accordance with the applicable laws". Although there are a series of conditions that Article 110 of the Federal Law of Transparency and Access to Public Information makes explicit for some data to be classified as "reserved information", aspects that have nothing to do with national security or a presumable damage to the public interest have been reserved.

Moreover, articles 113 of the LGTAIP and 110 of the LFTAIP, in both cases frac. XII, indicate that the information that "is contained within the investigations of facts that the law indicates

²⁶¹ The first version 1.0 of the CICM was launched on April 6, 2020, with 600 variables. Subsequently the CICM v1.1 version, with 1681 variables all classified according to the four processes of the LGSNA (Prevention, Detection, Sanction and Control and monitoring of public resources) as well as the four axes and ten thematic areas of the PNA.

²⁶² Available at: <https://cicm.sesna.gob.mx/>

²⁶³ AMEXCID, (April, 2022), "Presentan SESNA, AMEXCID y GIZ el Catálogo de Información sobre la Corrupción en México, Agencia Mexicana de Cooperación Internacional para el Desarrollo", <https://www.gob.mx/amexcid/articulos/presentan-sesna-amexcid-y-giz-el-catalogo-de-informacion-sobre-la-corrupcion-en-mexico-298324>, accessed: July 27, 2022.

²⁶⁴ See: "Pemex Niega acceso externo a datos personales en Refinería Deer Park", Milenio <https://www.milenio.com/negocios/pemex-niega-acceso-externo-datos-personales-deer-park> ; "Tren Maya declarada como obra de seguridad nacional afirma director de Fonatur, Segob y SSPC se harán cargo", Zeta Tijuana, <https://zetatijuana.com/2022/07/tren-maya-declarada-como-obra-de-seguridad-nacional-afirma-director-de-fonatur-segob-y-sspc-se-haran-cargo/> and "Ordena INAI a Fonatur entregar información sobre contratos de 7 tramos del tren maya", Crónica, <https://www.cronica.com.mx/nacional/ordena-inai-fonatur-entregar-informacion-sobre-contratos-7-tramos-tren-maya.html>, accessed: July 27, 2022.

²⁶⁵ Rendición de cuentas, (January, 2018), "Gobierno federal niega al SNA información sobre 'La Estafa Maestra', Rendición de cuentas, <https://www.rendiciondecuentas.org.mx/gobierno-federal-niega-al-sna-informacion-sobre-la-estafa-maestra/>, accessed: 27 July 2022.

²⁶⁶ The Ministry of National Defense decided in 2019 to reserve for 5 years information on the construction of the Santa Lucia airport, in response to repeated requests for documents such as airworthiness studies, economic feasibility, social impact, connectivity and logistics studies, its master plan, etc.

²⁶⁷ Animal Político, (January, 2021), Información bajo llave: Gobierno de AMLO reserva documentos de proyectos y casos clave. Animal Político, <https://www.animalpolitico.com/elsabueso/gobierno-amlo-reserva-documentos-casos-proyectos-clave/>, accessed July 27, 2022.

as crimes and are processed before the Public Ministry" may be classified as reserved. In the same sense, article 218 of the CNPP states that "the records of the investigation [...] are strictly reserved". The aforementioned norms are not aimed at a regulatory debate. Mexican society demands transparency with the same force with which it demands a good performance from prosecutors and ministerial authorities.

This lack of harmonization facilitates the classification of many high-profile corruption cases and impedes effective access to information, transparency and accountability in cases related to acts of corruption.

In the first three years of President Andrés Manuel López Obrador, refusals to provide public information doubled compared to those during the same period of Felipe Calderón's six-year term, going from 6,938 between 2007-2009 to 14,128 in 2019-2021, according to information obtained through the PNT.²⁶⁸

During the current public administration, the Presidency of the Republic has disqualified, attacked²⁶⁹, and misused the personal data of journalists²⁷⁰ and representatives of civil society²⁷¹, in addition to disseminating information and data discordant with public information through daily press conferences broadcast nationally.²⁷²

In 2015, journalist Carmen Aristegui was dismissed for investigating and denouncing the "*La Casa Blanca*" case, which exposed the abuse of power, corruption and influence peddling by Enrique Peña Nieto, the former president of Mexico.²⁷³

These cases and the President's recent attacks against Carlos Loret de Mola after the publication of the journalistic investigation by MCCI and Latinus "*Así vive en Houston el hijo mayor de AMLO*"²⁷⁴ are a bad sign for the security context for whistleblowers, civil society and the press. This at the same time reflects the context of opacity and difficulty to have access to information regarding corruption scandals, and the context of insecurity and violence it generates.²⁷⁵

²⁶⁸ As also recorded in the article "Con AMLO se disparan las negativas a dar dar información por estar "reservada" o "clasificada" by Santiago Alamilla for Eme Equis, Available in: <https://www.m-x.com.mx/investigaciones/con-amlo-se-disparan-las-negativas-a-dar-informacion-por-estar-reservada-o-clasificada>

²⁶⁹ Animal Político (April, 2022) "Con AMLO incrementan 85% los ataques contra la prensa: Artículo 19", <https://www.animalpolitico.com/2022/04/amlo-incrementan-ataques-prensa-articulo-19/>, accessed: July 28, 2022.

²⁷⁰ Forbes, (February, 2022), AMLO's attacks on the press are political irresponsibility: Article 19 on Loret de Mola, <https://www.forbes.com.mx/noticias-ataques-de-amlo-a-prensa-son-irresponsabilidad-politica-articulo-19-sobre-loret-de-mola/>, accessed: July 28, 2022.

²⁷¹ MCCI, (February, 2022), As of February 22, 2022, Mexicans Against Corruption and Impunity had been attacked 112 times from the presidential megaphone. WHY DOES AMLO ATTACK THE PRESS IN THE CONTEXT OF GREATER VIOLENCE AGAINST THE PRESS? Available at: <https://contralacorrupcion.mx/por-que-amlo-ataca-a-la-prensa-en-el-contexto-de-mayor-violencia-contra-la-prensa/>, accessed: July 28, 2022.

²⁷² The statements have been condemned by organizations such as the Inter-American Commission on Human Rights (IACHR), Human Rights Watch, Reporters Without Borders, the Inter-American Press Association and the Committee to Protect Journalists, which have even accused the president of abusing his power by slandering and insulting the press and civil society from his position.

²⁷³ BBC, (March, 2015), The scandal that led to the dismissal of prominent Mexican journalist Carmen Aristegui, BBC, https://www.bbc.com/mundo/ultimas_noticias/2015/03/150315_ultnot_mexico_mvs_radio_despide_aristegui_az, accessed: 29 July, 2022.

²⁷⁴ Raúl Olmos, Verónica Ayala and Mario Gutiérrez Vega, MCCI and Latinus, (January, 2022), *Así vive en Houston el hijo mayor de AMLO*, <https://contralacorrupcion.mx/asi-vive-en-houston-el-hijo-mayor-de-amlo/>, accessed: July 29, 2022.

²⁷⁵ Journalist Raúl Olmos recounts his experience with the opacity of information regarding a corruption scandal of the Morena political party in his book "*La Casa Gris. Todo lo que revela el mayor escándalo obradorista*", available at https://www.penguinlibros.com/mx/economia-politica-y-actualidad/302464-libro-la-casa-gris-9786073815758?gclid=CjwKCAjwoMSWBhAdEiwAVJ2ndu-1uBqhB8ESfz45Nzlt9_xM2EM3glpyJ7-EDWAWAajvXaKwy1QYxoCUwIQAvD_BwE, accessed: 1 August 2022.

In practice, the exercise of the freedom to seek, receive and disseminate public information is restricted through the non-publication of all the information required from the obligated entities, the sending of information not in open data format by the institutions, declarations of incompetence and expired deadlines.

For its part, citizen participation is guaranteed in the Mexican Constitution (art. 6, 8, 26, 113), the General Law of the National Anticorruption System, the Federal Law for the Promotion of Activities Carried out by Civil Organizations²⁷⁶ (art. 6), the LGTAIP and the LFTAIP.

Within the National Anticorruption System, citizen participation is constitutionally guaranteed in Article 113 through the Citizen Participation Committees (CPC) (art. 18 LGSNA) and through the integration of the Selection Committees for the CPC appointment processes, and by promoting the participation of civil society.

In turn, the CPC is empowered to collaborate in a coordinated manner with civil society organizations to establish a network of citizen participation, and to propose to the Coordinating Committee, through its participation in the Executive Committee, mechanisms for society to participate in the prevention and reporting of administrative misconduct and acts of corruption (art. 21 LGSNA).

Although the CPC is a formal space for citizens to contribute to the follow-up of policies, programs and actions formulated and implemented to fight corruption, it has encountered funding difficulties and a lack of capacity vis-à-vis government agencies to carry out the tasks assigned to it by law.

The Constitution and the Law of the Attorney General's Office provide for citizen participation in the procedure for the appointment of its head (art. 18), and through the Citizen Council of the Attorney General's Office with the powers established by law. However, the opinions and recommendations issued by the Citizen Council are not binding (art. 100 LFGR). To date, the Citizen Council has not been established.

Furthermore, the participation of society is also promoted through various mechanisms, including: citizen initiatives, plebiscites, referendums and independent candidacies, public consultations, social witnesses in contracting (arts. 27 (IV) LOPSRM and 26 (IV) LAASSP).

The Ministry of Public Administration promotes mechanisms for citizen participation in the fight against corruption, such as the Internal and External Citizen Corruption Whistleblower System, which can be consulted on its website.²⁷⁷

From the responses received to the information requests sent for the production of this report, none of the authorities were able to provide information on which or how many organizations participated in the second cycle of the UNCAC implementation mechanism initiated in 2017, nor is there any information on documents generated by civil society during the review. There is no registry, nor was there any public invitation or any information published on official websites or by digital media.

From August 2020 to July 2021, the piloting of six citizen oversight mechanisms (CSM) was developed in which five civil society organizations (CSOs) monitored five social programs operated by the federal government of Mexico. This work was carried out with the support of the United States Agency for International Development (USAID), the accompaniment of the

²⁷⁶ Available at: <https://www.diputados.gob.mx/LeyesBiblio/pdf/LFFAOSC.pdf>

²⁷⁷ Available at: <https://alertadores.funcionpublica.gob.mx/>

United Nations Development Program in Mexico (UNDP) in Mexico and the technical advice of GESOC Agencia para el Desarrollo AC.²⁷⁸

In negative terms, the process of designation of the citizen council of the FGR was irregular and the approval of the criminal prosecution plan was given without its validation²⁷⁹, since it was not designated and established. The illegalities of the process were claimed through multiple channels by several civil society organizations -including DLM-, human rights defenders²⁸⁰ and even Senators.²⁸¹

Civil society groups have requested recognition as victims of corruption crimes, and the recognition of standing to file unconstitutionality proceedings in cases of human rights violations derived from acts of corruption. The result has been that in the majority of cases, judges have refused to recognize them as victims.

In one of these cases, organizations such as TOJIL have succeeded in placing the human rights agenda and the legal recognition of "victims of corruption" in the context of economic crimes such as bribery and corruption.

The newly appointed head of SESNA²⁸² intends to advance the anti-corruption framework in this regard by recognizing the existence of "pink collar crimes", dishonest acts in which women are involved when they reach public office and encounter an environment of threats against them if they refuse to act in a certain way. In these cases, women are particularly vulnerable to structures of gender inequality intersecting with existing networks of corruption in public institutions.²⁸³

Regarding the legitimate interest of civil society organizations to resort to the unconstitutionality trial, as a human rights remedy in Mexico, a high standard of accreditation has been established, and although judicial precedents have been set²⁸⁴ that recognize the standing of CSOs in the fight against corruption, there are contradictory and restrictive theses, which facilitate the inclination of the resolutions to declare the inadmissibility and dismissal of the lawsuits.

²⁷⁸ AnticorrupciónMX, Civil Society Watchdog, <https://anticorrupcionmx.org/sociedad-civil-vigilante>

²⁷⁹ FJEDD; (January, 2020), "1 año de Justicia y autonomía de la FGR?", Balance ciudadano a un año de gestión del Fiscal General de la República, Dr. Alejandro Gertz Manero, Fundación para la justicia y el Estado Democrático, https://www.fundacionjusticia.org/wp-content/uploads/2020/01/FINAL_DIGITAL_A-UN-ANO-DE-JUSTICIA-Y-AUTONOMIA.pdf, accessed: July 29, 2022.

²⁸⁰ **Amparo** lawsuit **1496/2019-V** before the Tenth District Court on administrative matters in Mexico City, filed by DLM and the Mexican Commission for the Defense and Promotion of Human Rights, and **amparo** lawsuit **1617/2019** before the First District Court on administrative matters in Mexico City, both against the omission to integrate the Citizen Council of the Attorney General's Office and the approval of the Criminal Prosecution Plan.

²⁸¹ Plan de Persecución Penal presentado por la FGR es ilegal y sin participación ciudadana: Julien Rementería, Comunicado, PAN, February 06, 2020, <https://www.pan.senado.gob.mx/2020/02/plan-de-persecucion-penal-presentado-por-la-fgr-es-ilegal-y-sin-participacion-ciudadana-julien-rementeria/>, accessed: July 29, 2022.

²⁸² SESNA, (June, 2022) SESNA governing body appoints Roberto Moreno Herrera as new technical secretary, SESNA, <https://www.sesna.gob.mx/2022/06/27/designa-organo-de-gobierno-de-la-sesna-a-roberto-moreno-herrera-como-nuevo-secretario-tecnico/>, accessed: August 1, 2022.

²⁸³ UNODC, UNODC, *Abu Dhabi*, (December, 2019), Corruption and Gender, *Women and men are affected differently by corruption, but there is no evidence that women or men are less likely to be corrupted*, <https://www.unodc.org/mexicoandcentralamerica/es/webstories/2019/corruptin-y-gnero.html>

²⁸⁴ Aprender Primero Case, Article 19 Case, Juicio de Amparo Indirecto 570/2020 Juzgado Segundo de Distrito en el Estado de Chihuahua, J.A 959/2021 Juez Quinto de Distrito del Estado de Aguascalientes (2021), and others.

DLM, the organization that drafted this report, has carried out work on litigation and academic efforts²⁸⁵ in relation to the recognition that the Mexican State should give to CSOs and human rights defenders in the fight against corruption, defense of the right to good public administration and, in general, defense of individual and collective human rights.

The recognition by judges of the victim status and legitimate interest of CSOs would be a great input for both organized civil society and collectives seeking to protect, promote and guarantee progress in the fight against corruption and impunity, and access to justice.

Good practices

- There is a solid and robust framework for access to public information at the global level, and mechanisms and platforms have been developed to facilitate access to the general public, such as the National Transparency Platform (PNT) and the National Digital Platform (PDN).
- In addition, the third edition of the National Plan for the Socialization of the Right of Access to Information (DAI Plan), the PNT improvements and projects, the progress in the implementation of the Communication Systems between Guarantor Bodies and Obligated Entities (SICOM) and the Management of Challenges (SIGEMI) -18 states already have them and 15 are about to start implementation.
- The strategy for the socialization of the "Open Infrastructure" platform; the Agreement to reform the Guidelines for the Organization, Coordination and Operation of the SNT's Bodies; the Status of the implementation of PROTAI and PRONADATOS and their progress charts; the "National Transparency System Bulletin, the Budgetary Evolution of the Guarantor Bodies of the Federal Entities", and the National Diagnosis of Open Justice: routes and challenges for its implementation.

Deficiencies

- The good practices of civil society participation in Mexico have been recognized, although in real terms, mechanisms for direct, real and effective participation are still pending.
- Although Mexico has one of the best legislative frameworks on access to information, the common and constant concealment and classification of essential information by the federal government demonstrates the clear practical obstacles and lack of implementation, and the lack of political will to guarantee access to information and civil society participation under the López Obrador administration.
- Journalists, human rights defenders and organized civil society have been stigmatized and subjected to institutional violence for their involvement and commitment to social and political life in Mexico. The standards of protection of all these actors have been violated.
- Although the regulatory framework for citizen participation is broad, there is still a need for awareness-raising in public entities and more institutional support to generate effective conditions for participation.

²⁸⁵ DLM, (2020), El Interés legítimo de las Organizaciones civiles en el amparo mexicano, <http://dlmex.org/storage/services/el-interes-legitimo-de-las-organizaciones-civiles-en-el-amparo-mexicano.pdf>; El acceso a la justicia en México durante la pandemia de Covid-19, Análisis sobre la actuación del Poder Judicial de la Federación, <http://dlmex.org/storage/services/el-acceso-a-la-justicia-en-mexico-durante-la-pandemia-de-covid-19.pdf>; Reforma Judicial: un análisis desde una perspectiva de corrupción y derechos humanos, DLM, <http://dlmex.org/storage/services/reforma-judicial-en-mexico-un-analisis-desde-una-perspectiva-de-corrupcion-y-derechos-humanos.pdf>; Corrupción y derechos humanos en tiempos de covid-19, un informe ejecutivo sobre México, DLM, <http://dlmex.org/storage/services/corrupcion-y-derechos-humanos-en-tiempos-de-covid-19-informe-ejecutivo-sobre-mexico.pdf>, accessed: August 1, 2022.

²⁸⁶ Such as indirect J.A. 801/2021 Juzgado Sexto de Distrito en Materia Administrativa en Materia Administrativa en la Ciudad de México, indirect J.A. 630/2019-I before the Juzgado Décimo de Distrito en Materia Administrativa en la Ciudad de México, indirect J. A. 1204/2019 before the Juzgado Primero de Distrito en Materia Administrativa en la Ciudad de México, and others.

4.1.10 Art. 11 – Judiciary and prosecution services

Judicial independence is constitutionally regulated (arts. 17, 100, 116 (III) and 122 (IV) CPEUM). The Organic Law of the Federal Judiciary²⁸⁷ (LOPJF) provides that the administration, oversight, discipline and judicial career of the Judiciary shall be under the responsibility of the Council of the Federal Judiciary (CJF), with the exception of the Supreme Court of Justice of the Nation (SCJN) (under its president, arts. 73 and 13 LOPJF) and the Electoral Tribunal (under the responsibility of the Tribunal's Administration Commission, also under its president (arts. 113 f. V, 186 and 190 LOPJF). In addition, there is a Code of Ethics of the Federal Judiciary.

In negative terms, despite the fact that the CJF has "technical and managerial independence and independence to issue its resolutions" recognized at the constitutional level (art. 100), and that at the regulatory level it is established that the councilors "do not represent the person who appoints them", there is a direct link between the CJF and the federal judiciary: the president of the Supreme Court of Justice also holds the presidency of this administrative and control body. In this sense, and as of the judicial reform of 2021, the CJF has become a controlling body "without controls".

In order to establish a regulatory framework that would enable the creation of a new judicial career, as a result of the constitutional reform on judicial matters of March 11, 2021, the internal regulations were reformed and the new Judicial Career Law was promoted, which articulates all the positions that make up the judicial career.²⁸⁸ However, the reform eliminated the SCJN's power of review over the CJF's appointments of judges and magistrates.

With the new Judicial Career Law of the Judicial Branch of the Federation²⁸⁹, published on June 7, 2021, entry and promotion in the judicial career are only through competitive examinations - educational or non-educational, internal or open -- and, in the case of project secretaries, based on the accreditation of the questionnaire applied after their appointment.

Judges and prosecutors are also included in the list of parties required to file their asset and interest declarations, in accordance with the last paragraph of Article 108 of the Constitution, as well as with the provisions of Section XXV of Article 3, and Articles 32 and 46 of the LGRA. However, in practice, these officials' declarations of assets and interests, like with others, are not always complete.

The Judicial Branch has implemented measures to improve the judicial career, improve the selection of judges and magistrates and eliminate problems such as nepotism.²⁹⁰ However, there is evidence that shows that the Judicial Branch is still one of the institutions with the most nepotism.²⁹¹ In 2018, of the total number of heads of jurisdictional bodies, i.e., Circuit Magistrates and District Judges, 51% have at least one family member working in the Judicial Branch.²⁹²

²⁸⁷ Available at: <https://www.diputados.gob.mx/LeyesBiblio/pdf/LOPJF.pdf>

²⁸⁸ The main modifications of the reform have to do with the procedure and purging of the constitutional controversy, the modification of the precedent system, the declaration of unconstitutionality, the direct amparo in review, as well as the modification of the powers of the Federal Judiciary Council and the organization of the federal courts.

²⁸⁹ Available at: <https://www.diputados.gob.mx/LeyesBiblio/pdf/LCJPJF.pdf>

²⁹⁰ On December 4, 2019, the Agreement establishing the Comprehensive Plan to Combat Nepotism was approved.

²⁹¹ Nexos, (August, 2018), "El déficit meritocrático, nepotismo y redes familiares en el poder judicial de la federación", Nexos, <https://anticorruptcion.nexos.com.mx/el-deficit-meritocratico-nepotismo-y-redes-familiares-en-el-poder-judicial-de-la-federacion/>, accessed: 2 August 2022.

²⁹² *Idem*.

On December 4, 2019, the first comprehensive policy to prevent and combat nepotism and guarantee meritocratic access to the jurisdictional function was issued. The strategy included the creation of the electronic Mailbox for Complaints and Reports²⁹³ where it is possible to report cases of nepotism and corruption. From October 13, 2020 to June 30, 2022, the electronic mailbox received a total of 3,920 complaints.²⁹⁴

The CJF, by means of a General Agreement dated November 25, 2020²⁹⁵ within the framework of the SNA, implemented the Institutional Internal Control System and established the basis for the integration, organization and operation of its Committee.

At the same time, the technological system of the PJF's Online Services Portal was developed. This portal, allows online access to the District Courts and Circuit Courts throughout the Mexican Republic, as well as to the administrative areas of the Federal Judicial Branch, facilitating access to justice through the online trial provided for in the Amparo Law. Mainly, it represented an efficient tool for access to justice through digital means during the Covid-19 health emergency situation.

The changes in the Constitution to control corruption were aimed, among others, at the issuance of new laws to organically regulate the national system to combat corruption and the definition of a catalog of serious and non-serious administrative offenses. The Federal Court of Administrative Justice (which, however, is not part of the Federal Judicial Branch) was given new powers²⁹⁶ to definitively resolve serious administrative offenses, ordering the creation of Specialized Chambers to combat corruption. In short, the scope and procedures inherent to the auditing and accountability of the respective control bodies would have been defined.

Precisely the Federal Court of Administrative Justice (TFJA) is the administrative body of the Mexican State that, according to the new anti-corruption laws, has the power to establish sanctions to public servants, individuals and companies, for serious administrative misconduct or misconduct of individuals that have been substantiated by the ASF or Internal Control Bodies. The Plenary of the TFJA adhered to the Model Code of Judicial Ethics for Grantors of Justice of the United States of Mexico (Model Code of Judicial Ethics for Impartidores de Justicia of the United Mexican States)²⁹⁷ in 2007.

There is also a lack of independence and autonomy of the Federal Court of Administrative Justice, the body responsible for imposing sanctions on public servants and individuals. The decree establishes that the magistrates that compose it will be appointed by the President of the Republic. In this way, the appointment removes impartiality or neutrality from the Tribunal to impose sanctions and reduces the autonomy of its deliberations, as was the case with the appointment of the anti-corruption magistrates. Under this mechanism, the schemes of party functioning are strengthened, that is to say, the opponents are sanctioned and the members of the governing party are protected. However, to date, not all of the anti-corruption magistrates that make up the 5 specialized chambers of the TFJA have been appointed.

Regarding the Public Prosecutors' Offices, on February 10, 2014, the constitutional reform on political-electoral matters was published in the DOF. These reforms included those related to Article 102, Section A, of the aforementioned law. The Office of the Attorney General of the

²⁹³ Available at the following hyperlink: <https://www.cjf.gob.mx/quejas.htm>

²⁹⁴ Data obtained from the CJF platform in the chapter on combating corruption in the jurisdictional sphere, available at: <https://apps.cjf.gob.mx/NuevoPJF/?vw=CC/combatePlanoJurisdiccional>

²⁹⁵ Available at: <https://www.cjf.gob.mx/resources/index/infoRelevante/2020/pdf/AcuerdoGeneral0201222.pdf>

²⁹⁶ The now TFJA was a Court that only had jurisdiction over tax and administrative matters, but its nature was modified and it was given the power to impose sanctions in cases of corruption to public servants of the Federation and, in the cases provided for in the Constitution, to public servants of the states, municipalities, Mexico City and its districts, as well as to individuals involved in serious administrative offenses.

²⁹⁷ Available at: https://www.dof.gob.mx/nota_detalle.php?codigo=4967389&fecha=04/04/2007#gsc.tab=0

Republic was created as an autonomous public body (replacing the former Attorney General's Office) and it was established that there would be at least two specialized prosecutors' offices, one for electoral crimes and the other for combating corruption.

On May 20, 2021, the Organic Law of the Attorney General's Office²⁹⁸ was repealed and the new Law of the Attorney General's Office was published.²⁹⁹ The abrogation of the Organic Law of the FGR eliminated the specificity and progressiveness of the legal framework, and represented new barriers to citizen participation, to the attention of victims, and to its independence as a law enforcement body. The FGR and the FECC are not part of the Federal Judicial Branch.

For its part, the LFGR regulates the requirements for entry and permanence of substantive personnel and career service personnel (arts. 56, 57, 58), evaluation and certification processes for public servants (art. 54), responsibilities (art. 70), and administrative offenses and penalties (arts. 71 to 77).

The head of the FGR is in charge of designing and establishing the Statute of the Professional Career Service, and the bases and procedures to implement the professional career service, which shall operate based on the principle of merit, gender perspective and parity and equal opportunities, according to the needs of the Attorney General's Office (arts. 50. and 51).

The Special Prosecutor's Office for Combating Corruption (originally created under the name of Special Prosecutor's Office for Crimes Related to Acts of Corruption³⁰⁰), according to Article 13, Section V of the LFGR, is an administrative unit that, being an integral part of the Attorney General's Office, has the power to investigate and prosecute crimes related to acts of corruption, typified in Book Two, Title Ten of the Federal Criminal Code.

From the date of its establishment to March 2022, the FECC has received 2,264 complaints.³⁰¹ It should be noted that no record is kept of how many or which of these complaints have resulted in the initiation of investigation files; however, 1,171 investigation files have been determined and 1,620 investigation files are being processed. Of these, only three sentences have been handed down, all of them convictions.³⁰² These results reflect the high levels of impunity and evidence the lack of efficiency in the actions and results of this entity.

Despite the fact that the Constitution and the LFGR provide for the appointment and dismissal procedures of the head of the FECC, in the appointment of the most recent head, there was no guarantee of a process that would ensure the apolitical stance of the incumbent, citizen participation, transparency, impartiality, neutrality, integrity and competence of the incumbent.³⁰³ At the same time, in the case of the appointment of the head of the Specialized Human Rights Prosecutor's Office, there was no publication of a public and open call and no analysis of the suitability of the profile and conflicts of interest of the candidates.³⁰⁴

²⁹⁸ Repealed law available at: <https://igualdad.ine.mx/wp-content/uploads/2020/05/Ley-Orgánica-de-la-Fiscal%C3%ADa-General-de-la-República-versión-INE-UTIGyND.pdf>

²⁹⁹ Available at: https://www.diputados.gob.mx/LeyesBiblio/pdf/LFGR_200521.pdf

³⁰⁰ Provisionally, and until the Attorney General's Office was formally created, it was established that its head was to be appointed by the Senate of the Republic and that the federal executive could object to such appointment. However, during that period, no head of the Specialized Prosecutor's Office was ever appointed.

³⁰¹ Information obtained from the response to the public information request submitted to the transparency unit of the Specialized Prosecutor's Office for Combating Corruption on May 20, 2022.

³⁰² *Idem*.

³⁰³ El Financiero, (mayo, 2019), Impugnan designación de María de la Luz Mijangos como fiscal anticorrupción, El Financiero: <https://www.elfinanciero.com.mx/nacional/impugnan-designacion-de-maria-de-la-luz-mijangos-como-fiscal-anticorrupcion/>, acceso: 7 de agosto de 2022.

³⁰⁴ Juicio de amparo indirecto 639/2019, Juzgado Décimo de Distrito en Materia Administrativa en la Ciudad de México, promovido por DLM.

In contrast to the number of complaints of acts of corruption registered through the different mechanisms, the numbers and results of the FECC make evident the lack of solidity of the structure of this Prosecutor's Office, the lack of human and economic resources, its inefficiency in investigating and sanctioning corruption, and its lack of independence.

Good practices

- Mexican regulations provide for codes of integrity and conduct, access to the career service, and the obligation of judges and prosecutors to file declarations of assets and interests.
- Plans have been developed to improve ethics, combat nepotism and fight corruption in the judicial branch.
- The system of judicial precedents adopted as a result of the 2021 judicial reform.
- The development and implementation of the Online Services platform of the Federal Judiciary for the processing of online lawsuits.

Deficiencies

- Since the judicial reform of 2021, the Federal Judiciary Council (CJF) has been consolidated as a controller without controls. There are no external control mechanisms for the acts issued by the CJF.
- Since the judicial reform, the power of the CJF to designate *ad hoc* jurisdictional bodies is a direct violation of the principle of the *natural judge*.
- The performance evaluation, ratification and reinstatement mechanisms of the Judicial Career Law are not in accordance with international standards on guarantees of irremovability.
- To date, the specialized corruption chambers of the TFJA have not been fully integrated, nor have the corresponding appointments of anti-corruption magistrates been made. This, in addition to the lack of independence in the appointment of anti-corruption magistrates.
- The TFJA, as one of the main sanctioning bodies, lacks the human resources to address the problem of corruption and to effectively operate its specialized chambers.
- The Attorney General is in charge of the appointment process of the head of the FECC. This increases the risk of possible lack of independence and conflicts of interest between the Executive Branch, the FGR and the FECC, in cases in which a person close to the president is chosen, as has happened in the last appointment and other recent ones.
- Regarding the FECC and the FGR, the lack of transparency and citizen participation in appointments, the questioning of their actions, the various cases of corruption³⁰⁵ and the criminal proceedings initiated at the discretion of their heads and the executive, have deepened the crisis of legitimacy of the institution and trust in the fight against corruption and impunity.

El Universal, (agosto, 2019), La organización civil Derechos Humanos y Litigio Estratégico Mexicano, A. C., presentó la demanda contra Sara Irene Herrerías Guerra misma que fue admitida por un juez federal, <https://www.eluniversal.com.mx/nacion/juez-admite-tramite-amparo-contranombramiento-de-fiscal-de-derechos-humanos-de-la-fgr> acceso: 7 de agosto de 2022

El Heraldo de México, (agosto, 2019), Se amparan contra nombramiento de Fiscal de Derechos Humanos, <https://heraldodemexico.com.mx/nacional/2019/8/28/se-amparan-contranombramiento-de-fiscal-de-derechos-humanos-114330.html>, acceso: 7 de agosto de 2022.

El Universal, (agosto, 2019), Ratifican a Sara Irene Herrerías como Fiscal de Derechos Humanos, <https://www.eluniversal.com.mx/nacion/seguridad/ratifican-sara-irene-herrerias-como-fiscal-de-derechos-humanos>, acceso: 7 de agosto de 2022.

³⁰⁵ These are discussed in the chapter on recent events in this report.

- Legal³⁰⁶, political and social questions³⁰⁷ on the independence and conflict of interest in the appointment of the head of the FECC.³⁰⁸
- Documentation on the head of the FGR's lack of independence³⁰⁹, abuse in the exercise of functions, influence peddling, and the use of the institution for personal purposes.³¹⁰
- The existence of a code of ethics does not guarantee its application, as mentioned above. Nepotism in the judiciary is one of its main problems.
- As for the FGR, the Statute of the Career Service and the conditions for access are subject to discretion and to the legal instruments issued by the incumbent in office, and therefore the objectivity of the criteria is not guaranteed since they are not regulated in a regulatory law.

4.1.11 Art. 12 – Transparency of the private sector

With regard to the regulation of private sector companies³¹¹, the law confers powers to the Ministry of Public Administration to collaborate with them in the establishment of self-regulation mechanisms for the implementation of internal controls and integrity programs, in which effective whistleblower tools must be considered.³¹²

In general, private sector anti-corruption strategies are closely associated with corporate social responsibility (CSR) practices that focus on internal measures implemented by individual companies.

³⁰⁶ J.A. indirecto 630/2019-I before the Tenth District Court on Administrative Matters in Mexico City promoted by DLM; MVS Noticias, Itzel Castillo, (May, 2019), "Asociación civil impugna designación de Fiscal Anticorrupción", <https://mvsnoticias.com/nacional/2019/5/3/asociacion-civil-impugna-designacion-de-fiscal-anticorrupcion-407887.html>;

El Financiero, David Vela, (May, 2019), "Impugnan designation of María de la Luz Mijangos as anti-corruption prosecutor." <https://www.elfinanciero.com.mx/nacional/impugnan-designacion-de-maria-de-la-luz-mijangos-como-fiscal-anticorrupcion/>, accessed August 1, 2022.

³⁰⁷ Carlos Guerrero Orozco, MCCI, (January, 2020), "Omisiones alrededor del nombramiento de la fiscal anticorrupción", <https://contralacorrupcion.mx/omisiones-alrededor-del-nombramiento-de-la-fiscal-anticorrupcion/>, accessed: August 1, 2022.

³⁰⁸ Alberto Aguirre, El Economista, (January, 2020), "Una fiscal bajo asedio," <https://www.eleconomista.com.mx/opinion/Una-fiscal-bajo-asedio-20200101-0058.html>, accessed July 27, 2022.

³⁰⁹ See: Animal Político, (January, 2021), "Las deudas de Gertz: 2 años sin resultados", Christel Rosales, <https://www.animalpolitico.com/lo-que-mexico-evalua/las-deudas-de-gertz-dos-anos-sin-resultados/>; FJJEDD, (February, 2022), 3 años de retrocesos y falta de rendición de cuentas en la gestión de Gertz Manero al frente de la FGR", Comunicación Fundación, <https://www.fundacionjusticia.org/3-anos-de-retrocesos-y-falta-de-rendicion-de-cuentas-en-la-gestion-de-gertz-manero-al-frente-de-la-fgr/>; Carlos Guerrero, DLM, (2021), "Fiscales a modo. Segunda parte", <http://www.dlmex.org/blog/14>, Mexico Evalúa, (February, 2022), "Tres años de retrocesos y falta de rendición de cuentas en la gestión de Gertz Manero al frente de la FGR", <https://www.mexicoevalua.org/3-anos-de-retrocesos-y-falta-de-rendicion-de-cuentas-en-la-gestion-de-gertz-manero-al-frente-de-la-fgr/>; Pablo Herrera, DLM, (2022), "Gertz: a 3 años sin independencia en la designación de Fiscales especializados"; Ana Elena Fierro, MC, (2022), "Gertz: a 3 años sin independencia en la designación de Fiscales especializados". <https://www.dlmex.org/blog/54>; Ana Elena Fierro, MCCI, (March, 2022) "El caso Gertz: impedimentos, excusas y conflictos de interés", <https://anticorrupcion.nexos.com.mx/el-caso-gertz-impedimentos-excusas-y-conflictos-de-interes/>, Citizen's balance of the 2nd year of the Attorney General's administration: "Pending debts with justice" Due Process Foundation, March 2021, <https://www.dplf.org/es/resources/balance-ciudadano-del-2deg-ano-de-gestion-del-fiscal-general-de-la-republica-deudas>, accessed: August 1, 2022.

³¹⁰ See: Loret de Mola, Washington Post, (September, 2021), "Gertz Manero uses Mexican Attorney General's Office for his vendettas," <https://www.washingtonpost.com/es/post-opinion/2021/09/26/gertz-manero-fgr-cientificos-acusados-conacyt-udla-sni/>, accessed: August 1, 2022.

³¹¹ See Article 22 of the General Law of Administrative Responsibilities, available at: <https://www.diputados.gob.mx/LeyesBiblio/pdf/LGRA.pdf>

³¹² It has even been introduced as a factor for sanctioning companies more or less severely, whether they have an integrity and internal compliance program. In other words, the pre-existence of such programs can act as a moderating factor in the imposition of sanctions for corrupt conduct in the private sector (Organization for Economic Cooperation and Development, 2015).

The private sector has the responsibility to promote the fight against corruption in its sphere of action as a result of the anti-corruption commitment.³¹³ By 2020, 354 companies of the 500 most important companies in Mexico, have made public their anti-corruption program. However, progress from 2019 to 2020 was less significant compared to previous years: there were 7 new companies that included an anti-corruption program as part of their public Corporate Integrity Policies. This contrasts with the progress reported in previous periods.³¹⁴

Accountants and auditors have codes of ethics and auditing standards issued by the organized accounting profession. Merchants are required to keep and maintain an adequate accounting system satisfying, at least, a series of minimum requirements (art. 33, Commercial Code). The Federal Tax Code establishes offenses related to the obligation to keep accounting records (art. 83).

The Civil Service Secretariat may request any document it requires for its auditing actions from individuals or legal entities related to the management, exercise and verification of public resources (art. 26 section XII bis Internal Regulations of the SFP).

The tax deduction with respect to gifts, presents, hospitality and other expenses of a similar nature is prohibited (Article 28, Section III of the Income Tax Law, and regulatory criterion 24/ISR/N).

The responsibilities and penalties for acts of private parties related to serious administrative offenses are established in the LGRA (art. 66 to 77). Corruption risks in the private sector can be mitigated with the controls established in Article 25 of the General Law of Administrative Responsibilities.

In determining the liability of legal entities contemplated in the LGRA, an assessment is made as to whether they have an integrity policy. Such an integrity policy must have at least: 1) A clear and complete organization and procedures manual; 2) A code of conduct duly published and disseminated; 3) Adequate and effective control, surveillance and auditing systems that constantly and periodically examine compliance with integrity standards; 4) Adequate whistleblower systems, both within the organization and to the competent authorities, as well as disciplinary processes; 5) Adequate training and qualification systems and processes; 6) Human resources policies; and 7) Transparency and publicity mechanisms (art. 25 LGRA).

In 2018, the corporate integrity policy in Mexico was consolidated with the implementation of the SFP's Program for Integrity. The program model contains 6 tools that support companies in implementing a business integrity policy, which are outlined below:

1. Glossary of terms;
2. Mapping Document and Report on Best Practices for Preventing and Combating Corruption and Promoting Integrity in Small, Medium and Large Enterprises in Mexico 2017-2018³¹⁵;
3. Model Code of Conduct³¹⁶;
4. Code of Conduct Implementation Manual³¹⁷;
5. Protocol for Risk Analysis³¹⁸;

³¹³ According to the UNDP Handbook for Corporate Governance and Integrity (2020).

³¹⁴ Corporate Integrity 2020, MCCI

<https://drive.google.com/file/d/1UwRtOA1ueZmt0OVdEkyRTZmJYBj8NPnm/view>

³¹⁵ Available at: <https://www.gob.mx/cms/uploads/attachment/file/398037/CompendioBuenasPracticas.pdf>

³¹⁶ Available at: <https://www.gob.mx/cms/uploads/attachment/file/398041/ModeloCodigoConducta.pdf>

³¹⁷ Available at:

<https://www.gob.mx/cms/uploads/attachment/file/398044/ManualImplementacionCodigoConducta.pdf>

³¹⁸ Available at: <https://www.gob.mx/cms/uploads/attachment/file/398048/ProtocoloAnalisisRiesgos.pdf>

6. Self-diagnosis tool.³¹⁹

In 2019, in order to establish a better relationship and synergy with the private sector, the Civil Service Secretariat launched the Business Integrity Padron platform.³²⁰ This platform seeks to promote ethics, honesty and equality among companies that have contractual relationships with the government. In this way, it encourages the adoption of best corporate practices such as the creation, implementation and validation of codes of conduct, organizational manuals, systems to encourage whistleblowing and transparency mechanisms. In addition, courses have been given to share the Padron's operating mechanisms and ethical standards. By 2021, more than 6,000 people had been trained on the registration process.³²¹

On March 11, 2021, the "Working Group for Mexico and Colombia on Gender and Business Integrity" was established under the leadership of the *Alliance for Integrity*, in order to address issues related to the *Integrity Coffee* initiative.³²²

In August 2021, INEGI published the results of the National Survey of Regulatory Quality and Governmental Impact on Companies³²³ (ENCRIGE), which allows us to know the perception of companies about corruption, their experiences when receiving government services and the trust they have in institutions. In addition, we can compare this year's results with those of 2016 to determine the evolution of these aspects over the last four years.³²⁴

This survey was conducted between November and December 2020 with the participation of 34,919 companies. As with the ENCIG³²⁵, the National Survey of Government Quality and Impact, the ENCRIGE includes information on corruption that we call extractive, i.e., that which occurs in the interaction with a public official.

At the national level, companies' perception of corruption with respect to the frequency of acts of corruption carried out by public servants decreased with respect to 2016, from 82.2% to 71.5% in 2020. The survey not only measures perception, but also the experience of corruption. In this item, there are no statistically significant differences between 2016 and 2020. 561 out of every 10 000 companies experienced an act of corruption in 2016 and 510 out of every 10 000 by 2020. INEGI estimates that there are around 4.1 million private sector economic units, and according to the ENCRIGE 2020, the cost of companies for incurring in acts of corruption at the national level amounted to 887 million pesos (\$44'350,000 USD) in 2020.³²⁶

For their part, the Corporate Integrity 500 study³²⁷ (IC500) from Mexicanos Contra la Corrupción y la Impunidad (MCCI), records the growing importance and commitment of the private sector to the fight against corruption. Their study of 500 companies shows that barely 59% of them, i.e., only 298, had a public code of conduct on their corporate websites in 2017. In 2021, 82.4%, i.e., 412 of the 500 most important companies in Mexico have a code of conduct published on their websites. By 2021, of those 500 companies, 73.6% will have an anti-corruption program published on their websites. In 2017, only 43.6% of companies, it is to say less than half, had such a mechanism in place. The above shows that there is an

³¹⁹ Available at: <https://www.gob.mx/cms/uploads/attachment/file/398054/HerramientasAutodiagnostico.pdf>

³²⁰ Available at: <https://padron.apps.funcionpublica.gob.mx/>

³²¹ *Op. cit.* Work Report 2021 SFP, p. 18.

³²² *Idem*, p. 76.

³²³ Available at: <https://www.inegi.org.mx/programas/encrige/2020/#Documentacion>

³²⁴ Information identified from the response to the request for access to public information submitted to the Transparency Unit of INEGI on May 20, 2022.

³²⁵ Available at: <https://www.inegi.org.mx/programas/encig/2021/>

³²⁶ Information identified from the response to the request for access to public information submitted to the Transparency Unit of INEGI on May 20, 2022.

³²⁷ MCCI, (2021), IC500 2021, Available at: <https://contralacorrupcion.mx/wp-content/uploads/2021/12/ic500-2021.pdf>

increasing commitment on the part of companies to promote transparency, integrity and accountability. On the other hand, 26.4% of companies do not publish an anti-corruption program, so there is still an area of opportunity in this variable.

Compliance with anti-corruption commitments and codes of ethics or conduct assumed by the private sector is undoubtedly one of the greatest challenges of any corporate integrity program.

An essential part of any corporate integrity program is the whistleblowing system. Whistleblowing presents the opportunity for a useful mechanism for receiving information from the people who make up the organization. Of the 500 largest companies in Mexico, 4 out of 5 had a whistleblowing system in place in 2021.³²⁸ The IC500 verifies that reporting systems have at least two alternatives: an email and a telephone number to make a report. By 2021, 286 firms have both reporting mechanisms in place. Overall, of the 405 companies that have a reporting system, 376 offer either an email or a phone line as reporting mechanisms (75%).

To strengthen transparency in the private sector, the Ministry of Economy has consolidated and developed the Mexican Digital Business Information System (SIEM Digital)³²⁹, the Integral Registry Management System (SIGER) of the Public Registry of Commerce (RPC)³³⁰, the National Registry of Foreign Investments (RNIE)³³¹, the System of Publications of Mercantile Corporations (PSM).³³²

Good practices

- The consolidation of the integrity policy, and the availability of the documents and models that comprise it.
- The development of the Integrity Register platform.
- The progress of the private sector's anti-corruption commitment, including transparency tools, the implementation of best practices, codes of ethics and whistleblower mechanisms.
- The Ministry of Economy's Mexican Digital Business Information System and its other platforms.

Deficiencies

- There are still no easily accessible complaint mechanisms and channels that guarantee security conditions in the private sector.
- Although there is a debate on whistleblower protection, most companies do not have comprehensive protection for whistleblowers of corruption offenses, which can lead to retaliation and affect the whistleblower.
- There are no regulations or judicial precedents that allow companies to obtain reparations for damages caused by other companies as a result of acts of corruption.

4.1.12 Art. 14 – Measures to prevent money laundering

³²⁸ See Corporate Integrity Index 500, 2021, MCCI.

³²⁹ It is a directory where you will be able to consult commercial information and location of the companies that operate in our Mexico. Available at: <https://siem.economia.gob.mx>

³³⁰ Here you can consult the existing companies in the country, information and the legal acts that the regulations establish as mandatory for them, such as: meetings, capital, shareholders, powers of attorney, among others. Available at: <https://rpc.economia.gob.mx/siger2/xhtml/login/login.xhtml?jsessionid=sZKJIWVHrx7u3RehbkqfP4vXpF8YJzxNlnD7-uDQSTGWMCIHv02W!1668337665>

³³¹ Companies with foreign investment in their capital are registered in this registry. Available at: <https://rnle.economia.gob.mx/RNIE/faces/inicio.xhtml>

³³² In the PSM, some activities of the companies are available for consultation in accordance with commercial obligations (notices of meetings, contracts, balance sheets, financial statements, etc.). Available at: <https://psm.economia.gob.mx/PSM/>

The Federal Law for the Prevention and Identification of Operations with Illicit Proceeds³³³ (LFPIORPI) covers preventive aspects of money laundering. Mexico applies a risk-based approach (Chapter II bis, General Provisions referred to in Articles 115 of the Law of Credit Institutions (DCG LIC)).

Regarding the identification of beneficial owners, there are no identification mechanisms or any records to verify what is declared by clients. A serious concern is that beneficial ownership is identified only to a limited extent, systematically influencing the effectiveness of the entities in relation to the assessment and management of money laundering risks. Largely due to deficiencies in the legal framework, Financial Institutions (FIs) seek to identify beneficial owners only in limited circumstances.

Among the relevant agreements that have been approved and worked on by the Coordinating Committee with the support of SESNA, throughout the management period³³⁴, are the following: "Analysis for the identification and transparency of the beneficial owner in Mexico"; and the "Principles for the identification and transparency of the beneficial owner to combat corruption in Mexico".³³⁵

Amendments to legislation to strengthen due diligence and identification requirements for beneficial owners, and identification requirements for other financial service providers are pending.

Mexico has a Financial Intelligence Unit (UIF, arts. 2 and 15, SHCP Internal Regulations, see infra, art. 58). The UIF coordinated the preparation of the National Risk Assessment of Money Laundering and Financing of Terrorism 2019-2020³³⁶, which presents a sectoral risk assessment of the financial system, the risks arising from the vulnerabilities of the prevention and money laundering (PLD) regime.

The supervisory agencies for financial institutions or vulnerable activities are: the National Banking and Securities Commission (CNBV), the National Insurance and Bonding Commission, the National Commission of the Retirement Savings System and the Tax Administration Service (art. 16 LFPIORPI). Reporting is required for cross-border cash transfers in excess of US\$10,000 (art. 9, Ley Aduanera).

It must be ensured that the information submitted for wire transfers includes, among others, the name of the person requesting the transfer and his or her address, and this information must be retained.³³⁷ Wire transfers are carried out in accordance with the requirements and guidelines of Banco de México's Interbank Electronic Payment System (SPEI).

In 2009, the internal regulations of the CNBV created the Vice-Presidency of Supervision of Preventive Processes as an attached unit whose objectives are to participate in the preventive

³³³ Available at: https://www.diputados.gob.mx/LeyesBiblio/pdf/LFPIORPI_200521.pdf

³³⁴ SESNA, (2022), SESNA Major Accomplishments Report 2017-2022, Available at: https://www.sesna.gob.mx/wp-content/uploads/2022/05/Informe_Gdes_Logros_SESNA.pdf, accessed: 1 July 2022.

³³⁵ Analysis for the identification and transparency of the Beneficial Owner in Mexico. Agreement published in the D.O.F. on October 23, 2018.

³³⁶ Available at: <https://www.pld.hacienda.gob.mx/work/models/PLD/documentos/enr2020.pdf>

³³⁷ Among others, 4a, 16a and 51a DCG LIC; 4a, 17a and 55a of the DCG referred to in articles 71 and 72 of the Law to Regulate the Activities of Savings and Loan Cooperative Societies; 4a, 14a and 52a of the DCG referred to in article 212 of the Securities Market Law; 4a and 40a of the DCG referred to in Article 95 Bis of the General Law of Credit Organizations and Auxiliary Activities applicable to money transmitters referred to in Article 81-A Bis of the same law; 4a, 10a and 42a of the DCG referred to in Article 95 of the General Law of Credit Organizations and Auxiliary Activities applicable to exchange houses and 4a, 18a and 54a of the DCG referred to in Article 124 of the Law of Savings and Popular Credit.

regime of crimes of operations with resources of illicit origin and financing of terrorism, through the exercise of its supervisory powers (inspection and surveillance) to the parties obliged to comply with the applicable regulations, as well as the attention of requirements of authority, the monitoring of compliance and the automation of processes.

The CNBV, through the Information Portfolio³³⁸, periodically publishes financial and operating information on the different entities under supervision, in accordance with the provisions in force.

In addition, the SHCP, through the Tax Administration Service (SAT), developed the Money Laundering Prevention Portal System (SPPLD) in coordination with the UIF, for the registration of vulnerable activities and the submission of notices and reports.³³⁹ Additionally, the UIF coordinated the preparation of the National Risk Assessment of Money Laundering and Terrorist Financing³⁴⁰ 2019-2020, which identifies the risks of structural threats and vulnerabilities and the recommendations of the Financial Action Task Force (FATF).³⁴¹

On the occasion of the audit of the 2019 Public Account, audit number 34-GB "Prevention and Identification of Operations with Resources of Illicit Origin in Financial Institutions" was carried out by the Financial Intelligence Unit, the SHCP, the CNVB, the National Commission of the Retirement Savings System (CONSAR), the National Insurance and Bonding Commission (CNSF) and the SAT, which addressed the topic of risks and progress in the prevention and identification of operations with resources of illicit origin (money laundering or asset laundering).³⁴²

On March 13, 2020, the Resolution that modifies the General Provisions applicable to credit institutions was published in the DOF. With this Resolution, the accounting criteria applicable to credit institutions were updated to make them consistent with national and international financial reporting standards. It allows for transparent financial information, comparable with other countries, due to the international financial reporting standard 9³⁴³ "Financial Instruments". On December 4, 2020, the effective date of the resolution was extended to January 1, 2022.

On February 25, 2021, at the invitation of the FACTI Panel³⁴⁴ and on behalf of the Mexican State, the Ministry of Public Administration participated in the presentation of the Final Report on Accountability, Transparency and International Financial Integrity to Achieve the 2030 Agenda.³⁴⁵ This report identifies the main gaps in the implementation and systemic weaknesses of existing international frameworks for tax cooperation, anti-corruption and anti-money laundering.

Since the 2018 Financial Action Task Force (FATF) Mutual Evaluation Report (MER)³⁴⁶, Mexico has modified money laundering prevention measures by requiring financial institutions

³³⁸ Available at: <https://www.cnbv.gob.mx/Paginas/PortafolioDeInformacion.aspx>

³³⁹ The portal is available at: <https://sppld.sat.gob.mx/pld/interiores/sppld.html>

³⁴⁰ Available at: <https://www.pld.hacienda.gob.mx/work/models/PLD/documentos/enr2020.pdf>

³⁴¹ Information obtained from the response to the request for access to information submitted to the transparency unit of the UIF on May 20, 2022.

³⁴² The report is a public document available at: https://www.asf.gob.mx/Trans/Informes/IR2019c/Documentos/Auditorias/2019_0034_a.pdf.

³⁴³ Available at: <http://www.facpce.org.ar:8080/miniportal/archivos/2011/NIIF/NIIF9.pdf>

³⁴⁴ High Level Panel on Accountability, Transparency and International Financial Integrity (FACTI) of the Economic and Social Council (ECOSOC).

³⁴⁵ *Op. cit.* Informe de labores 2021, SFP, p. 76.

³⁴⁶ The FATF Mutual Evaluation Report of Mexico is available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/IEM-Mexico-2018-Spanish.pdf>, accessed: August 1, 2022.

to assess their risks before offering new services or products through new technologies.³⁴⁷ The Law to Regulate Financial Technology Institutions³⁴⁸ (LRITF) defines the activity of virtual assets and establishes the regulatory framework, including registration requirements. The regulatory framework covers all activities covered by the FATF definition of Virtual Asset Service Providers and extends to legal entities and individuals.

In this regard, a lack of due application of the follow-up mechanisms and reports derived from the different mechanisms and international organizations has been identified, such as the aforementioned FATF mechanism, or the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC) and the UNCAC's own mechanism.³⁴⁹ In view of this, the SRE has recommended generating common models or templates for the different mechanisms in the fight against corruption in order to facilitate their implementation, the collection of information and the optimization of their results, in addition to recognizing and highlighting the added value of the participation of non-state actors in the review mechanisms, such as the present one.³⁵⁰

Mexico has taken steps to identify persons carrying out activities of unauthorized Virtual Asset Service Providers (VASPs) and has seen several VASPs cease to operate due to the requirements of the registration regime.³⁵¹ Reporting mechanisms, reporting obligations and reporting monitoring requirements, reporting obligations and monitoring requirements for persons subject to targeted financial sanctions apply to PSAVs.³⁵²

There is a clear consensus among financial institutions that associated vulnerabilities and high risk factors include: cash transactions, international money transfers, and specific geographic regions in Mexico (especially the northern states bordering the United States). In this regard, financial institutions appear to focus more on risks associated with U.S.-Mexico cross-border activities than with potential illicit cross-border flows to/from Central or South American countries.³⁵³

Mexico currently complies with 10 of the 40 FATF recommendations and is largely compliant with 22 of them. It remains partially compliant with 7 recommendations and non-compliant with 1 recommendation.³⁵⁴

However, there is a lack of resources available for the adequate and efficient operation of the UIF. In 2022, the Financial Intelligence Unit was allocated a budget for a total amount of 157 million 712 thousand 373 pesos (\$7'885,618.65 USD).³⁵⁵ However, this amount was reduced

³⁴⁷ FATF, (2020), Mexico's Third Enhanced Monitoring Report to the FATF, Communiqué No. 16-2020, Financial Intelligence Unit, https://uif.gob.mx/work/models/uif/comunicados/UIF_016.pdf.

³⁴⁸ Available at: https://www.diputados.gob.mx/LeyesBiblio/pdf/LRITF_200521.pdf

³⁴⁹ Information identified in a meeting held on July 4, 2022 with the SRE.

³⁵⁰ *Idem*.

³⁵¹ Circular 4/2019 addressed to Credit Institutions and Financial Technology Institutions regarding the General Provisions applicable to Credit Institutions and Financial Technology Institutions in the Transactions they carry out with Virtual Assets, available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5552303&fecha=08/03/2019#gsc.tab=0

³⁵² Banco de México, Regulation on operations with virtual assets by financial technology institutions and credit institutions, <https://www.banxico.org.mx/sistemas-de-pago/6--acciones-regulatorias-po.html>

³⁵³ FATF, GAFILAT, (2018), Anti-money laundering and anti-terrorist financing measures Mexico, Mutual Evaluation Report, Available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/IEM-Mexico-2018-Spanish.pdf>

³⁵⁴ FATF, (2021), Anti-Money Laundering and Combating Terrorism Measures, 3rd follow-up report and technical compliance in Mexico. Available at: <http://www.fatf-gafi.org/media/fatf/content/images/FUR-Mexico-2021.pdf>

³⁵⁵ Federal Expenditure Budget for fiscal year 2022, https://www.diputados.gob.mx/LeyesBiblio/pdf/PEF_2022.pdf,

by 10.5% compared to what was allocated in 2021. For 2021, the Financial Intelligence Unit had 170 million 010 thousand 527 pesos³⁵⁶ (\$8'500,526.35 USD) at its disposal.

The feedback reports, as well as the guides and best practices are reserved documents, since they were prepared with information contained in the UIF's databases, derived from the operation reports and notices submitted by the regulated entities. The issuance of such documents is part of the measures carried out by the UIF to cooperate with supervisory bodies and regulated entities, in order to prevent ML/FT operations. In this sense, the documents are not public since they could affect the supervisory powers of the authorities, by misusing the information to modify their actions, in order to avoid sanctions.

An issue to consider in the analysis of this phenomenon in Mexico is the lack of sanctions for corruption cases and networks that have been uncovered. According to Transparency International, from 2016 to 2019, none of the corruption cases involving companies and public officials were sanctioned in Mexico.³⁵⁷ In fact, a journalistic investigation conducted by Mexicanos Contra la Corrupción y la Impunidad in 2020, with official figures from the FGR, indicates that the possibility of a person being punished for money laundering in Mexico is only 2%.³⁵⁸

This statement can also be contrasted with the corruption scandals that in recent years have affected the country and are directly related to the diversion of public resources, fraud and money laundering³⁵⁹ in triangulation schemes and shell companies involving both the public and private sector - such as the *Master Scam*, *Operation Safiro*, where 7 States diverted hundreds of millions of pesos of public funds for electoral campaigns³⁶⁰, the *Black Widow* case³⁶¹, the Duarte case, the *Panama Papers*, or the money laundering in the real estate scandal of the Benito Juárez City Hall in Mexico City³⁶², and the impunity of the same.

The *Viuda Negra* case was a journalistic investigation behind the murder of Isaac Gamboa Lozano, a close collaborator of former Secretary of State Luis Videgaray at the Ministry of Finance and Public Credit³⁶³, which occurred just in May 2020. Behind the murder there is a

³⁵⁶ Presupuesto de egresos de la Federación para el ejercicio fiscal 2021, <https://www.pef.hacienda.gob.mx/es/PEF2021>; Fernando Gutiérrez, *El Economista*, (September, 2022), "Contrastes en el presupuesto antilavado: UIF gana; unidades de FGR pierden", <https://www.eleconomista.com.mx/sectorfinanciero/Contrastes-en-el-presupuesto-antilavado-UIF-gana-unidades-de-FGR-pierden-20220912-0038.html>; Rafael Montez, *Milenio*, (September, 2022), "Para 2022 recortan gasto anticorrupción a UIF y SAT; duplican el del TFJA", <https://www.milenio.com/politica/recortan-gasto-anticorrupcion-uif-sat-duplican-tfja-2022>

³⁵⁷ Transparencia Mexicana, (2020), *Mejora percepción de corrupción en México 2020; riesgo de impunidad, latente*, <https://www.tm.org.mx/ipc2020/>, accessed: August 1, 2022.

³⁵⁸ Laura Sánchez Ley, Miriam Castillo and Daniel Melchor, MCCI, (September, 2020), *Lavar dinero en México: un delito del que se sale fácil*, available at: <https://contralacorrupcion.mx/fincen-files/lavar-dinero-en-mexico.html>, accessed: August 1, 2022.

³⁵⁹ *Idem*.

³⁶⁰ MCCI, (June, 2022), "Operación Safiro: 7 estados derivaron \$650 millones de pesos a campañas políticas, MCCI", <https://contralacorrupcion.mx/operacionsafiro/>; Operación Safiro: el presunto desvío millonario de César Duarte que estaría conectado a José Antonio Meade, infobae, June 2022, <https://www.infobae.com/america/mexico/2022/06/02/operacion-safiro-la-presunta-relacion-entre-un-desvio-multi-millonario-de-cesar-duarte-en-favor-de-meade/>, accessed: August 4, 2022.

³⁶¹ Anna Lagos, *el País*, (June, 2022), "El caso Viuda Negra: el asesinato que pone al descubierto una de las mayores redes de lavado de dinero en México", <https://elpais.com/mexico/2022-06-11/el-caso-viuda-negra-el-asesinato-que-pone-al-descubierto-una-de-las-mayores-redes-de-lavado-de-dinero-en-mexico.html>, accessed: August 4, 2022.

³⁶² Israel Zamarrón, *Forbes*, (August, 2022), "Investigan presunto lavado de dinero en escándalo inmobiliario de Benito Juárez", <https://www.forbes.com.mx/investigan-presunto-lavado-de-dinero-en-escandalo-inmobiliario-de-benito-juarez/>, accessed: August 19, 2022.

³⁶³ David Pérez, *el País*, (November, 2021), "Lozoya's imprisonment complicates investigations into Peña Nieto and Videgaray", <https://elpais.com/mexico/2021-11-07/el-encarcelamiento-de-lozoya-complica-las-investigaciones-sobre-pena-nieto-y-videgaray.html>, accessed August 4, 2022.

much more complex political plot that connects with *Operation Safiro*³⁶⁴, one of the most relevant corruption cases of the six-year term of Enrique Peña Nieto³⁶⁵: a huge network of shell companies with which around 5.8 billion pesos (\$295'918,367 USD) were laundered - money that, in part, went into the pockets of Gamboa himself and his wife, Bethzabee Brito. The other, to finance PRI political campaigns.³⁶⁶

In consideration of the above, in 2021 Mexico is in position 61 out of 110 countries in the Basel AML Index ranking, with position 1 being the lowest risk. This index has been conducted since 2017 by the Basel Institute of Governance and measures the risk per country of incurring in acts of money laundering and terrorist financing.³⁶⁷

Good practices

- There are robust regulations in place, subject to international commitments such as the FATF, which allow public entities to work together to fight money laundering and terrorist financing.
- The adoption of International Financial Reporting Standard 9 and the harmonization of general provisions applicable to credit institutions.

Deficiencies

- The lack of solid regulations that provide mechanisms for identifying final beneficiaries, and of a public registry for such purposes.
- Lack of sufficient resources for the adequate and efficient operation of the Financial Intelligence Unit.

4.2 Chapter V

4.2.1 Art. 52 and 58 – Anti-money laundering

The Federal Law for the Prevention and Identification of Operations with Illicit Proceeds³⁶⁸ (LFPIORPI) covers aspects of identification, prevention and combating money laundering.

In terms of crimes, the National Anticorruption System (SNA) only considers crimes for acts of corruption, so it does not include the crimes of concealment and operations with resources of illicit origin or Money Laundering (ML). Therefore, when we refer to the SNA and the fight against corruption in Mexico, there are two groups of unlawful conducts, administrative offenses (not serious and serious) and crimes for acts of corruption, which as mentioned, do not refer to the totality of conducts committed by public servants to the detriment of the good administration of public affairs and does not include or link the crime of money laundering.

Mexico established the obligation to identify clients and verify the identity of clients (General Provisions referred to in articles 115 of the Law of Credit Institutions (DCG LIC) 3a, 4a and 7a) according to the risk level the client represents.

Similarly, obligations were established to identify the real owners (DCG LIC 2a, section XVIII) of the funds used by clients (DCG LIC 31a and 32a). Pursuant to the fifth transitory provision of the DCG LIC, entities that are operating at the time of the entry into force of the DCG LIC

³⁶⁴ MCCI, (November, 2018), Operación Safiro: 7 estados desviaron \$650 millones a empresas fantasmas ligadas al PRI, <https://contralacorrupcion.mx/operacionsafiro/>, accessed: 4 August 2022.

³⁶⁵ El País (May, 2022), former Mexican President Enrique Peña Nieto settles in Spain on a golden visa, <https://elpais.com/mexico/2022-05-29/el-expresidente-mexicano-enrique-pena-nieto-se-instala-en-espana-con-un-visado-dorado.html>, access: August 4, 2022.

³⁶⁶ *Idem*.

³⁶⁷ See Basel AML Index: <https://index.baselgovernance.org/ranking>

³⁶⁸ Available at: https://www.diputados.gob.mx/LeyesBiblio/pdf/LFPIORPI_200521.pdf

are obliged to start collecting the corresponding information in accordance with the obligations established in the DCG LIC no later than within two hundred and seventy calendar days following the entry into force of the resolution establishing such obligations (i.e., no later than November 22, 2017).

The establishment of anonymous accounts is prohibited (DCG LIC 10a). Foreign politically exposed persons (PEPs, DCG LIC 2a XVII) are considered high risk customers, but there is no categorical qualification with respect to domestic PEPs. Entities must develop mechanisms to establish the degree of risk of the transactions they carry out with domestic PEPs and must determine whether the transactional behavior reasonably corresponds to their functions, level and responsibility, according to the knowledge and information available to them (DCG LIC 28a). The approval of the entity's hierarchy is required to establish or maintain business relationships with domestic PEPs considered as high risk (DCG LIC 26a).

Through the DCG, the Ministry of Finance and Public Credit obliges entities to consider certain categories of persons (for example, foreign PEPs) as high-risk clients, which must be subject to greater scrutiny (DCG 25a to 25a quater and 28a). In addition, the SHCP makes available to regulated entities a list of blocked persons and a list of related persons, including persons whose operations must be suspended (DCG 70a, 72a). The SHCP has not notified financial institutions of the identity of the persons whose accounts should be subject to increased scrutiny.

Entities are obliged to keep the data and documents that make up the customer identification files for the entire term of the account or contract and, once these are terminated, for a period of not less than ten years, counted from their conclusion. The same applies to the data and documents to be collected from users, starting from the date of the transaction, as well as, among other things, copies of reports on relevant, unusual, internal transactions of concern (DCG 59a).

Banking and credit services may only be provided by multiple banking institutions and development banking institutions (art. 2, LIC). One of the criteria for authorization as a commercial bank is that the company must have its registered office in the national territory (art. 9, LIC). Financial institutions must refrain from carrying out correspondent operations with financial institutions or intermediaries that do not have a physical presence in any jurisdiction (DCG 30a).

There is no specific obligation for public officials to declare rights or powers of signature or otherwise over financial accounts abroad. The Civil Service Secretariat may investigate or verify the evolution of the assets of public officials (art. 41 LFRASP), and does so when the official is suspected of having committed the crime of illicit enrichment, but no random verifications are conducted (art. 30 LGRA).

The freezing or blocking of resources by the Financial Intelligence Unit (UIF) is a precautionary measure intended to prevent and detect acts, omissions or transactions that may lead to money laundering or terrorist financing. The Law empowers the UIF to freeze clients' accounts without a court order (art. 115 LIC).

Banco de México makes available the sanctions imposed on financial intermediaries in accordance with the different applicable laws.³⁶⁹

³⁶⁹ See:

<https://www.banxico.org.mx/ServiciosFinancieros/sanciones/publicacionesInter.xhtml?idTipoDisposicion=2&idDisposicion=0>

The UIF in Mexico conducted information exchange with different Intelligence Agencies worldwide and as part of the Egmont Secure Network. The details of their information exchange during 2021 are available in its activity report.³⁷⁰

On January 31, 2022, the UNODC Mexico office and the UIF signed a Cooperation Framework with the purpose of promoting the exchange of experiences and best practices of technical assistance and training in anti-corruption, prevention of money laundering, cybercrime, environmental crimes and development of public policies. During 2021, 15 UIF collaboration agreements were signed with other institutions, bodies or agencies.³⁷¹

The scheme for preventing and combating crimes involving operations with resources of illicit origin, as well as the financing of terrorism must be observed by financial institutions and entities, and those that carry out vulnerable activities in accordance with the provisions of the LFPIORPI. Currently, the UIF receives through its regulatory bodies eight types of reports: Reports of Relevant Operations (ROR); Reports of Unusual Operations (ROI); Reports of Internal Operations of Concern (ROIP); Report of Operations with U.S. Dollars in Cash; Reports of International Transfers of Funds (FTI); Format of Total Amounts (MT); Cashier's Checks (CHC); and Notices of Vulnerable Activities. Since 2004 and until June 2022, the UIF had received 292'942,524 reports and notices.³⁷²

Mexico has been criticized for its deficient fight against money laundering. Its ineffectiveness even provoked international governments to keep a record of the federal administration on this issue, including obstacles in the laws themselves³⁷³ (for example, the Supreme Court of Justice of the Nation determined that the freezing of accounts carried out by the Financial Intelligence Unit violates constitutional protections and due process rights).³⁷⁴

In 2019, the UIF reached a record number of complaints since its creation, with 164 complaints for money laundering. Additionally, the number of resources blocked to persons accused of carrying out operations with resources of illicit origin was also historic: in 2019, more than 4,600 million pesos (\$230'000,000 USD), 52 million dollars and 1,875 euros were blocked.³⁷⁵

In 2021, the Mexican regulatory authority Comisión Nacional Bancaria y de Valores (CNBV) issued fines to banks and financial institutions for \$136,973,257 MXN (\$6'848,662 USD) due to non-compliance with regulations on the prevention of money laundering and combating the financing of terrorism (PLD/CFT), representing an increase of 35% with respect to the penalties applied in 2020 for \$101,734,219.60 MXN (\$5'086,710 USD).³⁷⁶

³⁷⁰ Available at: https://www.gob.mx/cms/uploads/attachment/file/693405/Informe_Diciembre_2021.pdf

³⁷¹ Activity Report 2021, Financial Intelligence Unit, p. 29, https://www.gob.mx/cms/uploads/attachment/file/693405/Informe_Diciembre_2021.pdf, accessed August 4, 2022.

³⁷² IMCP, (July, 2022), Boletín de la Comisión de Prevención de Lavado de Dinero y Anticorrupción, La UIF puso a disposición del público su Informe de actividades correspondiente a enero-junio 2022, Mexican Institute of Public Accountants, https://imcp.org.mx/wp-content/uploads/2022/07/Boletin_PLD_25_julio_22-1.pdf, accessed: August 4, 2022.

³⁷³ Infobae, (March, 2022), What are the Mexican government's weaknesses in combating money laundering, <https://www.infobae.com/america/mexico/2022/03/02/cuales-son-las-debilidades-del-gobierno-mexicano-para-combatir-el-lavado-de-dinero/>, accessed: August 4, 2022.

³⁷⁴ This was determined by the Second Chamber of the Supreme Court in its jurisprudence number 2a./J. 46 /2018 (10a.), and in the same sense resolved in Amparo en Revisión 1214/2016 by the First Chamber of the Supreme Court of Justice of the Nation.

³⁷⁵ El economista, (February, 2020), La UIF más visible y su talón de Aquiles, Fernando Gutiérrez, <https://www.eleconomista.com.mx/revistamef/La-UIF-mas-visible-y-su-talon-de-Aquiles-20200209-0032.html>, accessed: August 4, 2022.

³⁷⁶ Fenergo Limited, PR Newswire, (June, 2022), "Regulators in Mexico issued \$137 million Mexican pesos in penalties to banks for anti-money laundering violations in 2021," <https://www.prnewswire.com/news-releases/los-reguladores-en-mexico-emitieron-137-millones-de-pesos-mexicanos-en-sanciones-a-los-bancos-por-infracciones-contra-el-lavado-de-dinero-en-2021-871826450.html>, accessed: 4 August 2022.

Figures from the think-tank Global Financial Integrity (GFI) estimate that between USD \$18 and \$44 billion of illicit funds are laundered in Mexico each year³⁷⁷, which has led to an increased regulatory effort to address money laundering.

Dissuasive sanctions for non-compliance with anti-money laundering obligations are applied in some cases, but impunity prevails in operations with resources of illicit origin, especially those related to drug trafficking and organized crime.

The United Nations published a report in March 2022 stating that drug cartels launder some \$25 billion a year in Mexico alone.³⁷⁸ Organized crime groups in Mexico have shown that they are using increasingly sophisticated systems, such as cryptocurrencies³⁷⁹, to launder money from drug trafficking or kidnapping of migrants, an activity with which they have profited in the midst of a migration crisis.

Good practices

- Periodic publication of financial and operating information of the entities through the CNVB's information portfolio.³⁸⁰
- The use of digital tools, such as the Money Laundering Prevention Portal System.³⁸¹

Deficiencies

- There are still deficiencies in the money laundering laws and policies of financial institutions that affect the adoption of proactive measures to secure assets.
- The crimes of operations with resources of illicit proceeds and organized crime are not considered as accessory crimes to the criminal offenses related to acts of corruption.
- There is a high propensity for money laundering and asset laundering, considering that they are a link in a chain of illegal acts in which the country is immersed and that permeates different spheres of power and the public and private sector, in addition to refinancing illicit activities such as drug trafficking.
- The participation of illegal actors such as money laundering networks, organized crime groups, drug trafficking, etc., in complex corruption networks ends up affecting actors that make up the different entities, control bodies, public prosecutors' offices and private entities, which promote the occurrence of acts of corruption from their sphere of influence.
- The lack of effective measures to identify, prevent, sanction and combat money laundering activities of organized crime and high-level public officials.
- The main problem again lies in impunity and the lack of sanctions.

4.2.2 Art. 53 and 56 – Measures for direct recovery of property

Confiscation tools; International cooperation for confiscation purposes

³⁷⁷ Julia Yansura, Channing Mavrellis, Lakshmi Kumar & Claudia Helms, Global Financial Integrity, (October, 2021) *"Financial crime in Latin America and the Caribbean, Understanding Country Challenges and designing effective technical responses"*, <https://secureservercdn.net/50.62.198.97/34n.8bd.myftpupload.com/wp-content/uploads/2021/10/GFI-LAC-Financial-Crime-Report.pdf>, accessed: August 4, 2022.

³⁷⁸ UN, (March, 2022) Report 2021, International Narcotics Control Board, https://www.incb.org/documents/Publications/AnnualReports/AR2021/Annual_Report/E_INCB_2021_1_eng.pdf, accessed: 4 August 2022.

³⁷⁹ Georgina Zerega, el País, (March, 2022), "UN warns that Mexican cartels launder money through cryptocurrencies." <https://elpais.com/mexico/2022-03-10/la-onu-advierte-de-que-los-carteles-mexicanos-lavan-millones-de-dolares-a-traves-de-criptomonedas.html>, accessed: August 5, 2022.

³⁸⁰ Available at: <https://www.cnbv.gob.mx/Paginas/PortafolioDeInformacion.aspx>

³⁸¹ Available at: <https://sppld.sat.gob.mx>

In the absence of an asset recovery law, Mexico uses criminal confiscation and asset forfeiture, as well as mutual legal assistance for asset recovery at the international level. Regarding the offenses established under the Convention, the National Law of Asset Forfeiture³⁸² ("LNED") applies to offenses committed by public servants and corruption offenses. To date, there is no information or official record available that Mexico has received or sent asset recovery requests for such offenses.

The National Law of Asset Forfeiture is regulatory of article 22 of the Constitution and the UNCAC. It establishes the tools and mechanisms for the disposition, use, enjoyment, disposal and monetization of the assets subject to the process of asset forfeiture, (Art. 1). The LNED also provides for the procedure of international cooperation and international legal assistance for the request of forfeiture actions in Articles 244 to 251.

In terms of asset recovery, Mexican legislation contemplates 3 procedures by which the State may acquire assets that are related to the commission of any criminal conduct, these being the confiscation³⁸³, the abandonment³⁸⁴ and the asset forfeiture.³⁸⁵ Thus, the SRE has highlighted the functionality of the application of legislation in extension, in view of the lack of specific regulation of the matter.³⁸⁶

By virtue of the foregoing and with respect to crimes related to acts of corruption, the State only has the abandonment and forfeiture as a way to recover the assets resulting from these illicit acts. In this regard, it is important to point out that Article 222 of the Federal Criminal Code (CPF), which contemplates the crime of bribery (domestic or national), establishes that in no case will the money or gift given to those responsible for the crime be returned to them, since these will be applied for the benefit of the State.

Article 224 of the CPF, which contains the typical description of illicit enrichment, stipulates the confiscation for the benefit of the State of those assets whose origin cannot be proven by the public servant as a sanction for such conduct.

In this regard, it is important to mention that Article 194 of the Federal Code of Criminal Procedures (CFPP) establishes as a serious crime the crime of operations with resources of illicit origin (money laundering or "laundering of the proceeds of crime"; therefore, the subjects who are prosecuted and, if applicable, sentenced for the commission of this crime, cannot be granted provisional release on bail, preparatory release or conditional sentence, as provided in the Mexican criminal legislation.

³⁸² Available at: <https://www.diputados.gob.mx/LeyesBiblio/pdf/LNED.pdf>

³⁸³ It is the adjudication of the assets in favor of the state, of the instruments or objects of the crime, as well as the products of the same decreed by the judicial authority and proceeds with respect to all the instruments, objects or products of the crime that are secured and are of prohibited use, however, with respect to those that are of licit use, the forfeiture will only proceed when the crime is intentional and can only be decreed by the judicial authority (articles 40 of the Federal Criminal Code (CPF) and 182 Q and 182 R of the Federal Code of Criminal Procedures (CFPP)).

³⁸⁴ It is the loss of the right of ownership or of a real right and proceeds with respect to all property that is secured and has not been confiscated and that is not picked up by whoever is entitled to it. Abandonment may be decreed by the Agent of the Public Prosecutor's Office or by the judicial authority (articles 41 of the CPF and 182 A and 182 N of the CFPP).

³⁸⁵ It is the loss of the rights over the goods, instruments, objects or product of the crime or those that have been used to hide or mix goods product of the crime, without any consideration or compensation for its owner or for whoever is ostensibly or behaves as such and proceeds with respect to the goods that are subject to investigations initiated for the crimes of organized crime, crimes against health, kidnapping, vehicle theft, human trafficking, and crimes committed by public servants, and may only be decreed by the Extinction of Domain Judge and according to the procedure established in the National Law of Extinction of Domain, Regulatory of Article 22 of the Political Constitution of the United Mexican States.

³⁸⁶ Information obtained at a meeting held on July 4, 2022 with the Ministry of Foreign Affairs.

Although it is the responsibility of the Attorney General's Office (FGR) to identify, locate and recover stolen assets, the Tax Administration Service (SAT) has the authority to support the FGR in this task. As stipulated in Article 19 Section LV and 25 Section LVII of the Internal Regulations of the SAT (RISAT) the General Customs Administration (AGA) and the General Administration of the Foreign Trade Audit (AGACE) have the power to "order and practice the precautionary seizure or securing of goods or merchandise in cases where there is a danger that the obligor is absent, disposal or concealment of goods or any maneuver tending to evade compliance with tax obligations or in any other case indicated by the laws."

Also, according to the RISAT, it is the responsibility of the AGA (Art. 19 section LXXIV) and the General Administration of Foreign Trade Auditing (Art. 25 Bis section LXXVI) to "apply customs legislation and international agreements for the return of foreign vehicles, vessels or aircraft subject to theft or illicit disposition, by means of surveillance and verification acts in transit and the return of foreign vehicles, vessels or aircraft subject to theft or illicit disposition; LXXVI) "to apply the customs legislation and international agreements for the return of foreign vehicles, vessels or aircraft subject to theft or unlawful disposition, by means of surveillance and verification in transit and physical review in the respective fiscal precincts; to notify the authorities of the country of origin of the location of the stolen vehicles, vessels or aircraft or subject to unlawful disposition, as well as to decide on their return and the collection of expenses that may have been authorized". To comply with the provisions of this resolution, the RISAT stipulates that the General Administration of Federal Tax Audit (Art. 22 fraction XXVI), the AGACE (Art. 25 fraction LVI) and the AGA (Art. 19 fraction LXI) have the authority to "determine the location of the stolen or illicitly disposed vehicles, vessels or aircrafts, as well as to decide on their return and the collection of the authorized expenses". LXI) have the authority to "order and practice the retention, pursuit, seizure or forfeiture of goods, including vehicles, or their means of transportation, in terms of the Customs Law, including international commitments, public order requirements or any other non-tariff regulation or restriction; notify the seizure or forfeiture of goods for which there is no evidence of their legal entry, stay or possession in the country".

Mexico concluded financial and economic cooperation agreements that contemplate cooperation measures in relation to the insurance and recovery of assets with Spain³⁸⁷, United States³⁸⁸ and Canada.³⁸⁹ In addition, by 2014, according to information provided by the Government of Mexico in compliance with UNCAC resolution 5/3: "facilitating international cooperation in asset recovery", Mexico had signed 12 agreements for the exchange of information with: the Netherlands Antilles, Bahamas, Belize, Bermuda, Canada, Costa Rica, USA, Cayman Islands, Cook Islands, Guernsey Islands, Jersey Islands and Samoa.³⁹⁰ In addition, Mexico is a member of the Ibero-American Network for International Legal Cooperation (IberRed) and the GAFILAT Regional Asset Recovery Network (RRAG).

In 2019, Mexico ratified the Trade Agreement between Mexico, the United States and Canada³⁹¹, which was ratified in 2020 by the latter countries. Said treaty includes a chapter called "Anti-Corruption" (Chapter 27), by virtue of which the parties commit to effectively apply their anti-corruption laws, to coordinate and cooperate to combat corruption, as well as to incentivize the adoption of compliance programs by the private sector through their country's

³⁸⁷ Available at: https://aplicaciones.sre.gob.mx/tratados/ARCHIVOS/ESPANA-COOP_ECONOMICA.pdf

³⁸⁸ Agreement between Mexico, United States and Canada, T-MEC- USMCA, CUSMA, Available at: http://www.sice.oas.org/Trade/USMCA/USMCA_ToC_PDF_s.asp

³⁸⁹ Information provided by the SRE at a meeting held on July 4, 2022.

³⁹⁰ UNODC (2014), Information provided by the Government of Mexico in compliance with resolution 5/3: "facilitating international cooperation in asset recovery" UNCAC, Mexico. Available at: https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2014-September-11-12/Responses_NV/Mexico_SP.pdf

³⁹¹ *Op. cit.*

companies; however, it does not contemplate asset recovery or cooperation for purposes of forfeiture.

Mexico may provide information spontaneously on the basis of some bilateral treaties on mutual legal assistance, such as the treaties with Switzerland (arts. 30 and 31), Spain (art. 14), Brazil (art. 22) and India (art. 1, section 4, para. (k)), among others, and on the basis of the Convention in the absence of a bilateral treaty.

It should be noted that since 2010, Mexico has been a party to the Convention on Mutual Administrative Assistance in Tax Matters of the OECD and the Council of Europe³⁹², which allows it access to a broad network of international cooperation for the exchange of information on tax matters.

There are no measures that allow other States Parties to bring civil actions in Mexican courts to determine title or ownership of property acquired through the commission of a crime or administrative offense. Consequently, the courts or competent authorities cannot recognize the legitimate right of another State of ownership over property acquired through the commission of a crime when making a decision with respect to confiscation. Pursuant to the provisions established for compensation or damages (arts. 29 and 30 CPF), courts may order perpetrators of offenses to compensate other States that have been harmed by such offenses. Mexico cannot give effect to forfeiture orders issued by foreign courts.

Mexico may submit a request for assistance with respect to a foreign forfeiture order to its competent authorities to obtain a domestic forfeiture order (arts. 244 and 245 LNED). The same applies to foreign forfeiture orders that are submitted to the competent authorities to obtain a domestic forfeiture order (arts. 248 and 249 LNED). The competent authorities may, if they have jurisdiction, order the confiscation of property of foreign origin in a judgment related to a money laundering offense or any other offense over which they may have jurisdiction.

At the federal level, asset forfeiture was established, among other things, with respect to illicit enrichment (Art. 22, section II, CPEUM), but by judgment of the SCJN of the Action of Unconstitutionality 100/2019, article 1 section V of the LNED was amended to add subparagraphs f, h, i and j as of its publication in the DOF on January 6, 2020, and thus include in the criteria for the asset forfeiture, the crimes for acts of corruption, crimes committed by public servants, extortion and resources of illicit origin under the Convention. Mexico cannot provide assistance with respect to requests based on a foreign judgment of forfeiture of ownership for conduct to which forfeiture of ownership does not apply in Mexico.

Mexico may, by court order, proceed to the seizure of property to guarantee the reparation of damages (art. 138 CNPP), as well as the seizure of property, instruments, objects or proceeds of crime (art. 229 CNPP), and of property subject to the action of forfeiture of ownership (art. 73 and 249 LNED). It is up to the judge to determine, on a case-by-case basis, whether a freezing or seizure order issued by a court or competent authority of another State, a request by another State in this regard, or other grounds are sufficient for the issuance of a freezing or seizure order. Assets may be confiscated and the ownership of illicitly derived resources may be extinguished by the mere fact that there is an open investigation file, without the need for a criminal conviction.

Due to the lack of relevant cases involving corruption offenses, it is not possible to assess compliance with article 55, paragraphs 1 and 2, of the Convention.

³⁹² Available at: <https://www.oecd.org/ctp/exchange-of-tax-information/ESP-Amended-Convention.pdf>, accessed: August 4, 2022.

The authorities interviewed have identified the need for the Mexican State to receive legal assistance in the face of conflicts of prosecution and sanction related to the recovery of assets in view of the scarcity of specialized resources, as well as the need to unify the typology in anti-corruption matters in the application of Mexican legislation due to its extended functionality, in contrast to the terms of the Convention.³⁹³

Good practices

- Although there is no specific law, Mexico, through the National Law on Asset Forfeiture, regulates the UNCAC and other treaties, and gives rise to judicial assistance and international cooperation for purposes of confiscation, if required.
- The National Law of Asset Forfeiture contemplates crimes committed by public servants and corruption offenses as subject to forfeiture of ownership.
- The criteria for forfeiture of ownership have been reformed to include the crimes of corruption, crimes committed by public servants, extortion and illicit resources.

Deficiencies

- There are numerous multilateral treaties and instruments related to asset forfeiture and international judicial cooperation, which makes the application of the rule complex.
- The freezing of accounts by the Financial Intelligence Unit without a court order may be detrimental to the client or owner in the event that the legality of the origin of the funds is proven.
- There is no clear and updated data available on asset recovery.
- The impossibility of providing legal assistance with respect to requests based on a foreign judgment for asset forfeiture for conduct to which the asset forfeiture does not apply in Mexico.

4.2.3 Art. 57 – Return and disposal of assets

Mexico, pursuant to instructions received from the competent authorities, has already returned assets to foreign companies and individuals through the procedure established in the Federal Law for the Administration and Disposal of Public Sector Assets (LFAEBSP) and its Regulations.³⁹⁴

The National Law of Asset Forfeiture regulates Article 22 of the Constitution and the UNCAC, and establishes the tools and mechanisms for the disposition, use, enjoyment, disposal and monetization of the assets subject to the process of asset forfeiture (art. 1).

The Institute to Return to the Robbed People (Indep) has the power to manage, dispose of, monetize and allocate the assets transferred to it, in accordance with the Federal Law for the Administration and Disposal of Public Sector Assets, its Regulations and other applicable provisions. None of its powers are based on the right to full reparation of damages. On September 30, 2019, the Indep published the Inventory of Real Estate Assets of the Institute for Property and Asset Management³⁹⁵ (formerly SAE); however, there is no record of audits of the auctions and disposals it carries out, nor is there a record of the final beneficiaries of Indep's restitution and disposition actions.

³⁹³ Information identified in meetings held on July 4 and 11, 2022 with the SFP and the SRE.

³⁹⁴ CAC/COSP/IRG/2018/CRP.17, 8 November 2018, Review of the implementation of the Convention. United Nations Convention against Corruption. Implementation Review Group. Summary of Mexico.

³⁹⁵ Available at: <https://www.gob.mx/indep/documentos/inventario-de-bienes-inmuebles-del-instituto-de-administracion-de-bienes-y-activos-antes-sae>

In 2021, as a result of the seizures made against members of drug trafficking and organized crime, the Attorney General's Office handed over 2,139 million pesos (\$109,650,000 USD) and 67 real estate assets to the Indep.³⁹⁶

Indep was also in charge of the September 15, 2021 presidential plane raffle. It raffled luxurious land, a box at the Azteca Stadium and residences of former organized crime leaders³⁹⁷ that were seized by the authorities. To date, there is no record of the delivery of the prizes, the destination of the resources obtained, nor any record of the destination of the assets³⁹⁸, and the "air scam"³⁹⁹ is accused of a fraud of 2 billion pesos (\$100,000,000 USD).⁴⁰⁰ None of the resources obtained are based on the integral reparation of the damage, but the State is the only beneficiary.

In the 2020 Public Account, there were no audit of Indep related to the disposal of assets and the auctions it carries out, nor was there any planned in the Annual Audit Program for the Superior Audit of the 2021 Public Account.⁴⁰¹ This represents a turning point both for the management and disposal of assets, as well as for transparency, prevention and fight against corruption, due to the vulnerability of the activities carried out by said institute and the resources it has at its disposal.

The records of auctions and disposition of assets published on Indep's official web page are not clear or complete, the final beneficiaries are not identified or recorded, nor is the amount of assets or specific information.⁴⁰²

Indep has been the center of corruption scandals and alleged crimes.⁴⁰³ The ASF found that the administrative and criminal complaints filed in 2020 by the former director of Indep, Jaime Cárdenas, before the Internal Control Organ and the Attorney General's Office (FGR), for acts of corruption, were in the investigation stage until last year.⁴⁰⁴ This is corruption that as of the date of the report has not been clarified.

The ASF claims that the Indep's Integral Asset Management System, where the inventory of transferred assets is managed, contains outdated information, since 4,717,224 movable assets and 1,050 real estate properties did not have a reception date; 946 properties did not

³⁹⁶ This is from the Third Government Report of President Andrés Manuel López Obrador (AMLO), in which the Attorney General's Office details that, as a strategy to weaken criminal structures, the federal government seeks to affect their assets, for which it made several transfers to Indep through figures such as confiscation, abandonment or extinction of ownership.

³⁹⁷ Emmanuel Carrillo, Forbes, (September, 2021), Not just the box at the Azteca: presidential raffle includes houses of 'Chapo' and 'El Señor de los Cielos', <https://www.forbes.com.mx/no-solo-el-palco-en-el-azteca-la-rifa-presidencial-incluye-casas-del-chapo-y-el-senor-de-los-cielos/>, accessed: August 7, 2022.

³⁹⁸ Eduardo Ortega, el Financiero, (February, 2022), ¿Y el dinero de la rafa del avión presidencial? PAN accuses fraud to the treasury for 1,823 million pesos, <https://www.elfinanciero.com.mx/nacional/2022/02/09/y-el-dinero-de-la-rifa-del-avion-presidencial-pan-acusa-fraude-al-erario-por-1823-mdp/>, accessed: August 7, 2022.

³⁹⁹ PAN, (February, 2022), Rifa del avión presidencial, "la estafa aérea": Julen Rementería, Comunicado, <https://www.pan.senado.gob.mx/2022/02/rifa-del-avion-presidencial-la-estafa-aerea-julen-rementeria/>, accessed: August 7, 2022.

⁴⁰⁰ Victor Ballinas, La Jornada, (February, 2022), Rifa del avión presidencial, un fraude de 2 mil mdp, afirma Rementería, <https://www.jornada.com.mx/notas/2022/02/09/politica/rifa-del-avion-presidencial-un-fraude-de-2-mil-mdp-acusa-rementeria/>, accessed: August 8, 2022.

⁴⁰¹ Information obtained from the response to the request for public information submitted to the Transparency Unit of the Federal Superior Audit Office.

⁴⁰² Registrations are available on the Indep's official website at: <https://subastas.indep.gob.mx/Paginas/default.aspx>

⁴⁰³ Latinus, (September, 2020), Jaime Cardenas exposes corruption at the Institute to Return to the People what was Stolen in his resignation letter to AMLO, Available at: <https://latinus.us/2020/09/22/jaime-cardenas-expone-actos-corrupcion-indep-carta-renuncia-amlo/>, accessed: August 8, 2022.

⁴⁰⁴ El Economista, (February, 2022), "Sin actualizar datos del Indep, ASF", <https://www.eleconomista.com.mx/politica/Sin-actualizar-datos-del-Indep-ASF-20220221-0140.html>, accessed: August 8, 2022.

indicate the coordination entity responsible for their safekeeping, and 18,094 movable assets are registered in five inactive warehouses.⁴⁰⁵

Despite the opacity, lack of auditing, and the corruption reported, Indep obtained 23.4 million pesos (\$1'170,000 USD) from auctions in September 2022 alone.⁴⁰⁶

Furthermore, historical information and records regarding the disposal and sale of assets are available on the Bank Savings Protection Institute's platform; however, the information is not updated and corresponds to fiscal years prior to 2000.⁴⁰⁷

The LNED contemplates international cooperation in matters of forfeiture of ownership in accordance with the provisions of international legal instruments to which Mexico is a party or by virtue of international reciprocity, the purpose of which is the recovery of assets located in national territory or subject to the jurisdiction of the Mexican State. In these cases, the judicial authority may order the delivery of the assets or the proceeds of their sale to the competent foreign authority; however, this only applies when there is no agreement on the sharing of assets, in which case the corresponding part would be delivered (art. 250 and 251 LNED).

As for the asset forfeiture, the deduction of expenses is provided for prior to the delivery of the assets (art. 250 LNED).

The LFAEBSP (art. 17) and the LNED (art. 12) provide for the protection of the rights of third parties. Mexico has not entered into arrangements or agreements on the final disposition of forfeited assets.

The authorities interviewed for this report have identified the need for the Mexican State to receive legal assistance in the face of conflicts of prosecution and sanction related to the recovery of assets due to the scarcity of specialized resources, as well as the need to unify the typology in anti-corruption matters in view of the application of Mexican legislation, due to its extended functionality, in contrast to the terms of the Convention.⁴⁰⁸

Good practices

- The National Law of Asset Forfeiture by its extended functionality establishes the measures and mechanisms of disposition, use, enjoyment and restitution of the assets subject to asset forfeiture.
- Any action limiting human rights must be carried out with a prior court order.

Deficiencies

- Indep's management and its administration and disposition of assets has been surrounded and marked by irregularities.
- The lack of audits and oversight of Indep facilitates the disposal of assets without any control mechanism.
- There are no criteria in place related to the full reparation of damages with respect to persons or communities affected by the commission of acts of corruption.

⁴⁰⁵ *Idem*.

⁴⁰⁶ Indep, (September, 2022), The Institute to Return to the People what was Stolen obtained by auctions in September: 23.4 million pesos, <https://www.gob.mx/indep/prensa/el-instituto-para-devolver-al-pueblo-lo-robado-obtuvo-por-subastas-en-septiembre-23-4-mdp>, accessed: August 5, 2022.

⁴⁰⁷ Information available at the following hyperlink: <https://www.gob.mx/ipab/acciones-y-programas/recuperacion-de-activos>

⁴⁰⁸ Information identified in meetings held on July 4 and 11, 2022 with the SFP and the SRE.

4.3 Statistics⁴⁰⁹

Although the authors of this report requested the information through access to information requests, it was not possible to obtain all the statistical information to identify the numbers by category and year, or the information collected by the Mexican authorities is not classified in statistical terms as referred to in the tables below. The information provided by the Financial Intelligence Unit does not include sufficient and relevant data to be filled out, the same applies in terms of the judicial phase, and in terms of asset recovery.

Out of the 21 requests for access to information submitted by the investigation team, 4 requests required information related to asset recovery addressed to the Financial Intelligence Unit, the Ministry of Finance and Public Credit, the Federal Judiciary Council and the Attorney General's Office. Specifically, although no response or access to the information indicated in the requests was obtained, part of the requests included the following:

- 1) Information or documents stating whether the secretariat is a member of any forum for the exchange of information as international cooperation for purposes of confiscation.
- 2) Information or documents containing the record of recovery of assets of illicit origin or derived from acts of corruption corresponding to the period 2017-2022.
- 3) Information or documents containing the actions, measures or policies that have been adopted for the recovery of assets for the period from 2015 to 2017.
- 4) Information or documents stating whether the secretariat is a member of any forum for the exchange of information as international cooperation for purposes of confiscation.
- 5) Information or documents containing the record of recovery of assets of illicit origin or derived from acts of corruption corresponding to the period 2017-2022.
- 6) Information or documents containing the actions, measures or policies that have been adopted for the recovery of assets for the period from 2015 to 2017.

Money laundering

Reporting/intelligence phase	Year: 2019	Year: 2020	Year: 2021
Number of Suspicious Transaction Reports (STRs) filed by each category of obliged entities: - Banks and financial institutions - Non-Financial Businesses and Professions (NFBP)	29,219,175	25,233,549	31,125,640
Number of postponement orders adopted on reported transactions	N/I	N/I	N/I
Number of money laundering investigations carried out independently by law enforcement agencies (without a prior STR)	N/I	N/I	N/I
Number of suspicious cash activities at the border reported to the FIU (including those based on	N/I	N/I	N/I

⁴⁰⁹ The following tables follow the format of this Eurostat report: <http://ec.europa.eu/eurostat/documents/3888793/5856465/KS-TC-13-007-EN.PDF/69cde077-3bd9-4d0d-8c19-a6fe3608c2cd>

declarations and smuggling)			
Number of STRs sent to law enforcement agencies and on which further analysis was made	N/I	N/I	N/I
Number of staff dedicated full time (or full-time equivalent) to money laundering in the FIU	N/I	N/I	N/I

4.4 Information about asset recovery cases

It was not possible to obtain information regarding ongoing and past asset recovery cases since the entry into force of the UNCAC from the authorities or on websites. However, through the StAR initiative it was possible to identify information on the following cases⁴¹⁰:

Tomas Yarrington, former mayor of Matamoros, and Pablo Zarate Juárez, former governor of Tamaulipas; Jurisdiction of origin: Mexico, Jurisdiction of asset recovery: USA, initiated in 2014, in process and in process of tracing the assets. Mutual legal assistance is coordinated between the USA and Mexico. The assets frozen were in the amount of \$640,000 USD.

Héctor Javier Villareal Hernández, Former Secretary of Finance of the State of Coahuila, Jurisdiction of origin of public officials involved: Mexico, Jurisdiction of asset recovery: USA. Initiated in 2012, pending and in process of tracing assets, no conviction; Mutual legal assistance is coordinated between USA and Mexico. Total assets awarded -not yet delivered- is \$2,275,544.41 USD, no assets have been frozen.

Jorge Juan Torres (2), Former president and former interim governor of the State of Coahuila; Jurisdiction of origin of the public officials involved: Mexico, Jurisdiction of asset recovery: USA (1) and Bermuda (2); initiated in 2013, in process, in process of locating the assets. In the case of Bermuda, an arrest warrant was issued; Mutual legal assistance is being coordinated between the USA and Mexico, and Bermuda and Mexico; The amount frozen and the amount of assets is unknown.

Vladimiro Montesinos, Former presidential advisor, Jurisdiction of origin of the official involved: Peru, Jurisdiction of asset recovery: Mexico. The amount frozen and the amount of assets are unknown.

⁴¹⁰ StAR Initiative: StAR Asset Recovery Surveillance, <https://star.worldbank.org/asset-recovery-watch-database>

V. Recent Developments

The Mexican State, through the Civil Service Secretariat (SFP), ratified the commitment to prevent and combat corruption for the implementation of the UNCAC at the United Nations General Assembly Special Session against Corruption on June 2, 2021, held in New York, United States. Similarly, Mexico adopted the commitments of the Summit for Democracy, held in December 2021 and of the Summit of the Americas, held in June 2022. In addition, the Mexican State signed the Transparency Pledge of the UNCAC Coalition.

From June 6 to 10, 2022, the IX Summit of the Americas was held in Los Angeles, California, where one of the main topics in discussions between civil society actors and governments, as well as in speeches by delegations and government representatives, was the fight against corruption. The previous VIII Summit of the Americas, held in Peru, had already set a benchmark with the Lima Commitment on Democratic Governance in the Face of Corruption.⁴¹¹ However, in the Latin American and Caribbean region, the reported acts of corruption and the investigations initiated by governments to sanction it generated a loss of public trust in their own governments.

The IX Summit of the Americas was a great opportunity to highlight the lack of progress on commitments and to renew efforts to demand governments to make progress in this regard, through judicial or extrajudicial means. DLM's intervention in a thematic discussion at the Summit highlighted the beginning of a new process for the actors involved, aimed at demanding accountability and compliance with the commitments made by the States of the Americas to combat corruption in terms of final beneficiaries, denouncing acts of corruption, digitalization, social participation, emergency measures and a gender perspective.⁴¹²

Regarding Mexico's commitments, information was requested on the specific actions undertaken as a result of these commitments, but outside of the National Anticorruption Policy, the authorities did not provide a specific response on actions and measures in this regard.

It must be noted that the COVID-19 pandemic acted as a catalyst for corruption in recent years, creating the conditions for increased opacity in the management of resources, direct awards, lack of transparency, and overburdening of institutions, in addition to the levels of insecurity, violence and impunity in Mexico which have not decreased.

The data contradict the narrative that the policy of combating corruption and impunity is a priority, in concrete terms, even with control mechanisms: there has been a disproportionate increase in contracts awarded directly, and with it, their irregularities. The reserved classification of contracts for the acquisition of Covid-19 vaccines reflects one of the practices to hinder transparency, accountability and the fight against corruption; the budget for the fight against corruption has been reduced and increased for social programs with a record of irregularities; the institutions that should apply the strategy are limited, on the one hand, by a lack of resources and on the other, by omission in the designations and by the notoriety of the lack of independence of some of them. The lack of political will to implement the prevention, fight and sanction of corruption in practice is congruent with the indexes and results that represent the reality lived in Mexico. The discrepancy between the anti-corruption policy and the results of the current administration are undeniable.

The Attorney General's Office, under its current head, is a highly criticized and questioned institution, with low legitimacy, whose actions have been at the center of many corruption

⁴¹¹ Available at: http://www.summit-americas.org/LIMA_COMMITMENT/LimaCommitment_es.pdf

⁴¹² Carlos G. Guerrero Orozco, Animal Político, (2022), Anticorrupción en la reciente cumbre de las Américas, <https://www.animalpolitico.com/blog-invitado/anticorrupcion-en-la-reciente-cumbre-de-las-americas/>, accessed: August 4, 2022.

scandals and conflicts of interest⁴¹³, and the use of the institution for personal purposes,⁴¹⁴ its lack of independence⁴¹⁵ and its influence in the other branches of government⁴¹⁶ have been documented and are publicly known.

In addition to impunity, lack of transparency and accountability, the closing of spaces for citizen participation, the direct appointment of specialized prosecutors without convening the public competitions required by law or without following the processes provided by law, has been one of the aspects that have characterized the Attorney General's Office under the leadership of prosecutor Alejandro Gertz⁴¹⁷, as evidenced in the case of the appointment of the specialized prosecutor in the fight against corruption and the appointed head of the Specialized Prosecutor's Office for Human Rights.

The appointment of the Specialized Prosecutor's Office for Combating Corruption (FECC) was challenged by DLM⁴¹⁸, individuals and civil society organizations.⁴¹⁹ The courts ruled that it was impossible to submit a discretionary power of the head of the Attorney General's Office, such as the appointment to jurisdictional control, and that the analysis of conflicts of interest, the suitability of the profile, citizen participation and independence in the appointment processes of specialized prosecutors and senior officials were left aside.

Likewise, the repeal of the Decree issuing the Law of the Attorney General of the Republic and the Organic Law of the Attorney General of the Republic, published in the DOF on May 20, 2021, constitutes an impairment to the progressiveness in the harmonization, development and implementation of the applicable regulations to guarantee the independence of the prosecutor's offices and the fight against corruption. This has represented an obstacle to guarantee the independence, transparency and citizen participation in the appointment procedure of the head of the FECC, as the main body of the country's prosecution of justice in the fight against corruption.

Almost four years have passed since the current administration has focused its discourse on the fight against corruption, and the National Anticorruption System created for that purpose in 2015 remains inadequate. There is a constant and conscious omission in the appointment of anti-corruption magistrates. To date, the specialized corruption chambers of the Federal Court of Administrative Justice (TFJA), the body in charge of sanctioning serious acts of corruption by officials and individuals, remain incomplete. It is urgent to strengthen the organs

⁴¹³ MCCI, (March, 2022), El caso Gertz: impedimentos excusas y conflictos de interés, Nexos in collaboration with MCCI, <https://anticorrupcion.nexos.com.mx/el-caso-gertz-impedimentos-excusas-y-conflictos-de-interes/>, accessed: August 7, 2022.

⁴¹⁴ Infobae, (August, 2022), Silvia Pinal, Alejandra Cuevas, García Luna or Alemán Magnani, the vendettas of Prosecutor Gertz Manero, <https://www.infobae.com/america/mexico/2022/08/05/silvia-pinal-alejandra-cuevas-garcia-luna-o-aleman-magnani-las-venganzas-del-fiscal-gertz-manero/>; Aristegui Noticias, (August, 2022) Gertz Utiliza a la FGR "como su despacho personal", Aristegui Noticias: <https://aristeginoticias.com/1108/mexico/gertz-utiliza-a-la-fgr-como-su-despacho-personal-acusa-alonso-castillo/>, accessed: August 7, 2022.

⁴¹⁵ Animal político, (June, 2022), Jugadas!": filtran audios de supuesta negociación entre Gertz y padre de Lozoya, <https://www.animalpolitico.com/2022/06/filtran-audios-gertz-padre-emilio-lozoya/>; La Jornada, (March, 2022), El Fiscal Gertz y la frágil promesa de un Poder Judicial Autónomo, <https://www.jornada.com.mx/notas/2022/03/24/politica/el-fiscal-gertz-y-la-fragil-promesa-de-un-poder-judicial-autonomo/>, accessed: August 7, 2022.

⁴¹⁶ Aristegui Noticias, (March, 2022), Audios de Gertz Comprometen la independencia del Poder Judicial, <https://aristeginoticias.com/0703/mexico/audios-de-gertz-comprometen-independencia-del-poder-judicial-abogado/>, accessed: August 7, 2022.

⁴¹⁷ Pablo Herrera, DLM, (March, 2022) Gertz: 3 years away without independence in the appointment of specialized Prosecutors, <http://dlmex.org/blog/54>, accessed: 7 August 2022.

⁴¹⁸ Amparo Indirecto 639/2019, Tenth District Court on Administrative Matters in Mexico City.

⁴¹⁹ El Financiero, (May, 2019), Impugnan designación de María de la Luz Mijangos como fiscal anticorrupción, El Financiero: <https://www.elfinanciero.com.mx/nacional/impugnan-designacion-de-maria-de-la-luz-mijangos-como-fiscal-anticorrupcion/>, accessed: 7 August 2022.

of justice in this matter, which will hardly happen without the 5 specialized chambers provided for by law.

In matters of political financing, the National Electoral Institute (INE) and the Federal Electoral Tribunal have imposed a series of sanctions on the different political parties, mainly Morena⁴²⁰, the party founded by the current president, and which currently holds the political majority. However, INE, as an autonomous constitutional body, has been subject to recent attacks against its independence and autonomy,⁴²¹ which undermine the exercise of democracy in Mexico. In addition, in 2021 its budget was modified and cut by 26%, hindering the efficient exercise of its functions.⁴²²

In relation to the recent judicial reform of March 11, 2022, one of the changes, without any congruent motivation, was the concentration of matters related to facts that constitute serious human rights violations in the jurisdictional bodies in charge of the Federal Judiciary Council. This implies the concentration of a certain type of judicial cases in a limited number of justice operators, which will not necessarily have the effect of obtaining more expeditious resolutions, especially in a country where human rights violations are massive and impunity rates are high. It has been pointed out that such concentration will not in itself guarantee consistency in decisions, which could be promoted or achieved through other mechanisms. What the "concentration of cases" would generate is a concentration of the power to judge matters of great social impact and high public interest in a small number of judges whose careers are administered by the CJF, a controller without controls.

Thus, it is highlighted that the agreement and the figure of concentration will only facilitate the control of the high organs of the federal judiciary, on cases of high public interest, through the possibility of creating ad hoc courts, in full contravention of the essential elements of due process, the principle of equality before the law and the natural judge.

Moreover, the latest reform of 2021 to the Penal Code of Mexico City is the most recent attempt of the legal and political scaffolding coordinated by the Presidency of the Republic that has intensified the policy of criminalization and persecution of CSOs⁴²³, as are the recent false accusations, attacks and defamation of Mexicanos contra la Corrupción y la Impunidad and Animal Político⁴²⁴ for obtaining funds from international governments to fight corruption as commitments for the development goals of the 2030 Agenda and the UNCAC. Undoubtedly,

⁴²⁰ Forbes, (May, 2022), Tribunal electoral confirma sanción de 4.5 mdp a Morena por 'diezmós' en Texcoco, <https://www.forbes.com.mx/politica-tribunal-electoral-confirma-sancion-de-4-5-mdp-a-morena-por-diezmos-en-texcoco/>; El Financiero, (May, 2022), Tribunal Electoral sanciona a Mario Delgado y Morena por violar veda en consulta de revocación, <https://www.elfinanciero.com.mx/nacional/2022/05/13/tribunal-electoral-sanciona-a-mario-delgado-y-morena-por-violar-veda-en-consulta-de-revocacion/>; El Universal, (May, 2022), INE sanciona a Morena por omisión de facturas: <https://www.eluniversal.com.mx/nacion/ine-sanciona-morena-por-omitir-formatos-de-gastos>, accessed: August 8, 2022.

⁴²¹ El Economista, (January, 2022), Ataques contra el INE atentan contra el sistema democrático de México, coinciden expertos de EU y Lorenzo Córdova, <https://www.eleconomista.com.mx/politica/Ataques-contra-el-INE-atentan-contra-el-sistema-democratico-de-Mexico-coinciden-expertos-de-EU-y-Lorenzo-Cordova-20220124-0137.html>, accessed: August 8, 2022.

⁴²² Central Electoral INE, (December, 2021), Modifica INE presupuesto 2022 derivado de las reducciones efectuadas por la Cámara de Diputados, <https://centralectoral.ine.mx/2021/12/10/modifica-ine-presupuesto-2022-derivado-de-las-reducciones-efectuadas-por-la-camara-de-diputados/>, accessed: August 8, 2022.

⁴²³ On June 7, 2021, a decree was published in the official gazette of Mexico City amending various articles of the Penal Code for the Federal District, including Article 256, which criminalizes CSOs by considering their administrators and directors as public servants for purposes of liability for crimes against good administration committed by public servants.

⁴²⁴ Animal Político, (May, 2021), Mexicanos Contra la Corrupción denuncia intimidación de AMLO por mostrar datos fiscales, <https://www.animalpolitico.com/2021/05/mexicanos-contra-corrupcion-intimidacion-amlo-datos-fiscales/>, accessed: August 8, 2022.

both the President's discourse towards CSOs and this latest reform stigmatize and criminalize the work of the organizations in the defense of human rights and the fight against corruption.⁴²⁵

The social and security context for journalists, human rights defenders and civil society is not simple. Only from January to March 2022, the country registered the murder of eight journalists, according to Human Rights Watch.⁴²⁶ Today, Mexico is the second most dangerous place for journalists only after Ukraine.⁴²⁷ In the classification of Reporters without Borders, Mexico is listed as the most dangerous country without armed conflict for the practice of journalism⁴²⁸, and makes it clear that President López Obrador, in power since 2018, has not yet undertaken the necessary reforms to stop the spiral of violence against the press.

The fight against corruption in Mexico must crucially be accompanied by a social and structural change in state institutions, the private sector and civil society. The fight against impunity is essential for the recovery of trust in the institutions and in the discourse of the fight against corruption. The development of anti-corruption policies is not enough if in practice there is a lack of enforcement, and non-compliance with the law is the first obstacle.

⁴²⁵ Animal Político, (August, 2020), OSC exigen a gobierno disculpa pública por acusación sobre financiamiento a medios y organizaciones, <https://www.animalpolitico.com/2020/08/osc-exigen-gobierno-disculpa-medios-organizaciones/>, accessed: August 8, 2022.

⁴²⁶ Human Rights Watch, (May, 2022), "Mexico should address relentless violence against journalists, Killings approach unforeseen levels in 2022," <https://www.hrw.org/es/news/2022/05/03/mexico-debe-abordar-la-violencia-incesante-contra-periodistas>, accessed: August 8, 2022.

⁴²⁷ Latinus, (May, 2022), Mexico is second most dangerous country to practice journalism after Ukraine: Human Rights Watch, <https://latinus.us/2022/05/03/mexico-segundo-pais-mas-peligroso-periodismo-despues-ucrania-human-rights-watch/>, accessed: August 8, 2022.

⁴²⁸ Reporters Without Borders, (2022), Reporters Without Borders Ranking, Mexico, <https://rsf.org/es/pais/méxico>, accessed: 8 August 2022.

VI. Recommendations

Corruption prevention policies and practices

1. Improve and strengthen anti-corruption policies and strategies to provide emergency preparedness and address corruption as a top priority. In addition, with respect to the health sector, promote ethical conduct to prevent corruption in both the public and private sectors.
2. Strategically address systemic deficiencies as a way to improve public governance, while incorporating anti-corruption policies into other key national strategies, such as open government, security and education.
3. Promote a gender perspective, equity and equality in anti-corruption measures, from the planning process to the implementation and evaluation of policies.
4. Improve communication strategies to combat corruption in citizen-friendly language, taking into account the particularity of the phenomenon of corruption and impunity in Mexico.

Corruption prevention bodies

5. Support the effectiveness of the National Anticorruption System, ensuring the participation of all authorities in the same direction, and strengthening the institutional coordination mechanism constantly, solidly and progressively in an inter-sectorial, inter-secretariat and cross-cutting manner. Authorities must be evaluated in terms of their individual and collective performance, with a focus on results and not only on processes, while strengthening the intervention of the UIF, SAT and INAI.

Public sector employment

6. Proactively guarantee standards of transparency and free access to information in public competitions for entering the public service. Eliminate arbitrary decision-making and strengthen the appointment processes of senior officials.
7. Identify and train officials whose public office is most vulnerable to corruption, including SNA authorities, in accordance with Article 7.1.b. of the UNCAC.

Political financing

8. Strengthen audit mechanisms and tools to enable the checking of financial records to determine whether transactions, operations and financial records are reliable, timely and justifiable.
9. Strengthen the coordination of the INE, the UIF and the ASF for the effective oversight of political party financing.

Codes of conduct, conflicts of interest and asset declarations

10. Ensure that Ethics Committees in public sector institutions and agencies have permanent staff and clear mandates, aimed at prevention rather than compliance mechanisms.
11. Seek harmonization of the Codes of Ethics of the institutions, the States and all public entities.
12. Design and approve a law that contemplates mechanisms, measures, clear policies, and legal processes for managing conflict of interest situations.
13. Strengthen the document management capabilities of the obliged persons.

Reporting mechanisms and whistleblower protection

14. Discuss and approve a law that regulates the protection of whistleblowers of acts of corruption, which defines who whistleblowers are, which the protection measures that benefit them are, as well as incentives for whistleblowing, and the means of effective defense available to them in the event that, if the protection measures are not complied with, damages are caused.

15. Reform the Federal Law of Patrimonial Responsibility of the State, and include patrimonial responsibility for the omission of the public administration to protect whistleblowers.
16. Strengthen complaint mechanisms to ensure follow-up, tailored responses and effective protection measures, addressing the problem of violence, insecurity and inefficiency of protection measures for journalists and human rights defenders.
17. Establish measures and public advocacy systems to generate incentives to improve the conditions for reporting irregularities and acts of corruption, including money laundering.

Public Procurement

18. Regulate the cases in which direct awarding of contracts is allowed, reducing the possibilities to a minimum, except in justified emergency cases, and establishing stricter control and verification mechanisms.
19. Make digital mechanisms and tools for tracking, supervision and oversight of public procurement processes effective.

Management of Public Finances

20. Improve the systems for consulting audit reports.
21. Guarantee sufficient budgetary means for the authorities that make up the National Anticorruption System so that they can carry out their functions in an effective and efficient manner.
22. Establish stricter and more efficient mechanisms for monitoring the management, destination and use of public resources.
23. Guarantee public spaces for public participation and discussion in the design of the budget and the definition of priorities for the management of public finances.
24. Align actions and strengthen the coordination of the National Auditing System.
25. Promote the strategic use of new technologies, such as *blockchain*, to create an immutable record of contracts, transactions, management, destination and use of public resources.

Access to information and participation of society

26. Maximize the value of data as a strategic tool in the fight against corruption by using data from traditional sources with big data and smart data, as well as data collected from PNA risk indicators and monitoring models.
27. Strengthen anti-corruption awareness and sensitization throughout society. Build an informed, participatory and active citizenry, and guarantee effective spaces for social participation in the exercise of democratic development and design of public life and the fight against corruption.
28. Guarantee spaces and the involvement of key actors and non-state agents to promote and strengthen the actions of the National Anticorruption System.

Judiciary and Prosecution Services

29. Address the root of the impunity crisis in Mexico, both in the criminal and administrative spheres. Effectively combat impunity and simulation. The mechanisms of investigation, oversight and sanction will fulfill their function of dissuading the practice of acts of corruption, as long as the sanctions established by law are applied.
30. Strengthen the administrative justice system to combat the high levels of corruption and impunity in the country, which will be difficult to achieve without the 5 Specialized Chambers and the delay in their full integration.
31. Establish mechanisms for external control of the Federal Judiciary Council, or discuss the ownership of the CJF and the need for independence in relation to the Supreme Court of Justice and its head.
32. Ensure that the Attorney General's Office and the Special Prosecutor's Office for Combating Corruption are independent and autonomous in real and effective terms.

33. Include sexual bribery in the crime of bribery, since it is only limited to requesting or offering money. Public servants, in cases of gender violence, usually ask female interlocutors for sexual favors in order to perform their functions or provide them with some service or supply that they are entitled to by law. Sexual bribery should be regulated as an aggravated criminal offense.
34. Modify the minimum punishability in all crimes under Title X of Book Two of the CPF, since this directly affects the statute of limitations. There are crimes that have minimum penalties of 3 months imprisonment.

Private sector transparency

35. Strengthen the implementation and linkage of the private sector with the Anti-Corruption Commitment, and promote the incorporation of compliance and anti-bribery programs.

Measures to prevent and combat money laundering

36. Develop and implement regulations and measures to collect and exchange information on the beneficial ownership of legal persons, and legal arrangements to facilitate the investigation and prosecution of corruption, in accordance with national legislation.
37. Develop a publicly accessible database to facilitate the identification of corporate beneficial owners in real time.

Measures for the direct recovery of assets, confiscation tools, and return and disposal of assets

38. Address asset recovery as one of the weakest links in Mexico's anti-corruption policy. Promote the discussion and approval of legislation on asset recovery, and adapt the national regulatory framework to the standards of asset recovery, disposal and restitution.
39. Increase control and surveillance actions over the operations of the National Institute in order to return to the people what was stolen.
39. Keep and publish a complete, clear, updated and real record on the administration, disposition, restitution and disposal of assets and property.

VII. Annex

This annex details the requests for access to public information that were sent in the framework of the information gathering process for the preparation of this report.

7.1 Table on access to information requests

File nr.	Institution	Sending date	Date of response	Subject of the Request	Hyperlink
3300301220 00555	Superior Audit Office of the Federation	20/05/2022	16/06/2022	Money laundering risk assessment statistics, record of Indep audits, evidence of actions and measures to prevent money laundering.	https://drive.google.com/file/d/18gyGUSghclK9nBTKfcsyADZeSxVMAI8r/view?usp=share_link
3300302220 00658	Chamber of Deputies	20/05/2022	14/06/2022	Parliamentary actions on the implementation of the UNCAC, Social Participation in the Budget and Public Account Committee	https://drive.google.com/file/d/17C8EU8eqTO2GcuidUAe2jp5nMPZOeBaR/view?usp=share_link
3300303220 00476	Senate of the Republic	20/05/2022	16/06/2022	Parliamentary actions on commitments to combat corruption	https://drive.google.com/file/d/1SMn6EmPkZwsXZhGdzhJFAXLEvP6fCy2x/view?usp=share_link
3300304220 02780	Federal Judiciary Council	20/05/2022	17/06/2022	Statistics of the Integral System for Case Follow- up, Legal Assistance and Asset Recovery	https://drive.google.com/file/d/1favRLHI_qlW6sl3_3LaiQwE2qEyY_rlw/view?usp=share_link
3324598220 00030	Citizen Participation Committee	20/05/2022	14/06/2022	Indicator statistics and implementation actions	https://drive.google.com/file/d/1P3_tS1DFDjb5GFQ8wZNAh8ErWPK8nl_a/view?usp=share_link
3300246220 01849	Attorney General's Office	20/05/2022	30/06/2022	Statistics on the reporting of corruption offenses, number of investigation files	https://drive.google.com/file/d/1C-sQ7JVLJ5AIRyQuouv9d2iGJA7NIRYE/view?usp=share_link
3300246220 01852	Attorney General's Office	20/05/2022	30/06/2022	Whistleblower protection mechanisms	https://drive.google.com/file/d/1C-sQ7JVLJ5AIRyQuouv9d2iGJA7NIRYE/view?usp=share_link
3300246220 01853	Specialized Prosecutor's Office for Combating Corruption	20/05/2022	30/06/2022	Strategic indicators for measuring corruption, statistics on complaints, meaning of resolutions, UNCAC implementation actions.	https://drive.google.com/file/d/1BXswEbOa1uJ2iadqP73kVsRVF2AL86gL/view?usp=share_link
3300314220 01417	National Electoral Institute	20/05/2022	14/06/2022	Statistics, policies and political party oversight, statistics of sanctions imposed	https://drive.google.com/file/d/1_7l3pcbtPA7jAF7LSVQYg9zlt1I7GXuj/view?usp=share_link

3300312220 00451	National Institute of Statistics and Geography	20/05/2022	24/06/2022	Corruption statistics and indicators, statistics on the sanctioning of public officials and the implementation of the SNA.	https://drive.google.com/file/d/1i7aletxDajoGdE9de18KMdhfAlxYydlT/view?usp=share_link
3310001220 00779	Office of the President	20/05/2022	30/06/2022	Actions and measures on the "Commitment to transparency" and the implementation of the UNCAC	https://drive.google.com/file/d/1CkQIC38Nd oFPhdBpvmjlq8TBxNqK2ZOI/view?usp=share_link
3316370220 00138	Executive Secretariat of the National Anticorruption System	20/05/2022	15/06/2022	Indicator statistics and implementation actions	https://drive.google.com/file/d/1D-Zzs356JtdlJQ3D4LqFPbpW8f6h1w/view?usp=share_link
3300262220 00964	Ministry of the Interior	20/05/2022	01/07/2022	Implementation of the commitment to transparency and the fight against corruption	https://drive.google.com/file/d/1ihzeatGIN6A8XMNawcRA5zjvVDo kWseT/view?usp=share_link
3300265220 01295	Civil Service Secretariat	20/05/2022	21/06/2022	Mechanisms for reporting and protection of whistleblowers, UNCAC implementation mechanism	https://drive.google.com/file/d/13oTHdgWP AR_zpHORPHjzHWI TPraBJBnY/view?usp=share_link
3300263220 01704	Ministry of Finance and Public Credit	20/05/2022	13/06/2022	International cooperation, asset recovery	https://drive.google.com/file/d/18gyGUSghcl K9nBTKfcsyADZeSx VMIA8r/view?usp=share_link
3300263220 01705	Ministry of Finance and Public Credit	20/05/2022	13/06/2022	Registration and use of proceeds from the presidential plane raffle	https://drive.google.com/file/d/18gyGUSghcl K9nBTKfcsyADZeSx VMIA8r/view?usp=share_link
3300268220 01116	Ministry of Foreign Affairs	20/05/2022	11/07/2022	Information on the enforcement mechanism and implementation of the UNCAC	https://drive.google.com/file/d/1ofCXF59cWt RyW3lvsIh- lIXqilQ_pO4r/view?usp=share_link
3300263220 01703	Financial Intelligence Unit	20/05/2022	08/06/2022	Asset forfeiture registry, anti-money laundering prevention and countermeasures	https://drive.google.com/file/d/1LGCg2VfZrd LzlL3kebZ6vL9Sqt_qr3p5/view?usp=share_link
3300304220 03278	Federal Judiciary Council	15/06/2022	24/06/2022	Statistics of the Integral System of Follow-up of files related to crimes committed by public servants	https://drive.google.com/file/d/1wRmitBuQ oZfs2q6tpKHdvpz24k ZSe_0/view?usp=share_link
3300278220 00263	National Institute for Returning the Stolen to the People	15/06/2022	13/07/2022	Beneficial Ownership Identification Record, Disposal of Assets	https://drive.google.com/file/d/1RyK1HeuJO 0nT0lxUgJHGdrp9G7 mRrRLx/view?usp=share_link
3300223220 00107	National Lottery	15/06/2022	13/07/2022	Disposal of assets	https://drive.google.com/file/d/1xQPQcqiT7 OobwkiCd0U1LyNoZ

					bhr66/view?usp=share_link
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