



MEXICO INSTITUTE

**MEXICO: THE FIGHT AGAINST CORRUPTION
(A review of ongoing reforms to promote
transparency and curtail corruption)**

Mauricio Merino

June 2015

Though neither of the two recent episodes that sparked Mexico's largest public-awareness movement since the beginning of this century were anything out of the ordinary, they marked a tipping point in Mexican politics. First off, the forced disappearance of 43 students in Iguala, Guerrero, on September 26, 2014, caused a wave of protests against human rights violations and impunity.¹ Soon after, leading journalist Carmen Aristegui published a report on First Lady Angélica Rivera's dubious acquisition of the "*Casa blanca*," a high-end residence in Mexico City. Aristegui pointed out that *Grupo Higa*, which built the residence for Rivera "according to her specifications," had been awarded several public-works concessions during Enrique Peña Nieto's governorship of the State of Mexico, as well as during his presidency, provoking widespread public discontent toward corruption in Mexico.² In less than 45 days, the social discontent that had accumulated over the course of almost 15 years came to the forefront, with collective outrage focusing on two main issues: impunity and corruption.

I use the term "movement" with a certain reserve—public resistance toward the scandals has not responded to a defined political organization, has no visible leadership, has not been reflected in party competition, has not sought representation, and has not orchestrated a common agenda. Nevertheless, the movement has clearly manifested in social and other non-traditional media outlets. People have taken to the streets, with a wide range of civil and academic

¹ On September 26th, 2014, students from the Normal Rural School "Raúl Isidro Burgos", in the town of Ayotzinapa, Guerrero, were attacked by municipal police forces from the municipalities of Iguala and Cocula, Guerrero. Mayor of Iguala José Luis Abarca ordered the police to detain the students and stop them from entering the municipality. During the attacks, six people died—three of whom were students—and 25 people were injured. The 43 disappeared students were detained by the police, who "turned them in" to a criminal organization known as "Guerreros Unidos". On October 6th, 11 days later, the federal government started investigations via the Attorney General's Office. The investigation concluded that the students had been murdered and cremated in a dump in the municipality of Cocula. The disappeared students' families, together with a number of activists, have disputed the investigation's findings. These parties have been protesting since the events took place.

² The report, which was supported by Connectas and the International Center for Journalists, is titled "*La casa blanca de Enrique Peña Nieto (investigación especial)*" ("Enrique Peña Nieto's White House [special investigation]"), and was originally published in the news outlet aristeguinoticias.com (<http://aristeguinoticias.com/0911/mexico/la-casa-blanca-de-enrique-pena-nieto/>).

In December 2014, after the Ayotzinapa and "*Casa blanca*" episodes, presidential approval reached its lowest point in two years, according to a poll by *El Universal*/Buendía & Laredo. Approval rates fell to 41 percent (Peña Nieto started his presidential term at 43 percent) and disapproval rates were at 50 percent. Just one year earlier, his approval rates were at 50 percent. According to Ulises Beltrán's telephone surveys, presidential approval dropped to 25 percent. Beltrán, Ulises, "*El desacuerdo con los presidentes (1994-2015)*," *Nexos*, March 2015. The newspaper *Reforma* registered polls for the last four months of 2014, with presidential approval at 39 percent and disapproval at 58 percent. According to another *Reforma* poll, conducted March 17th, 2015, 78 percent of university students (from public and private universities alike) disapprove of the president and his government.

organizations successfully putting forward their demands. Still, this form of resistance has none of the characteristics of a typical movement. Nevertheless, since the closing months of 2014, this movement has not only defied the Mexican political class' discourse and practices but has also signaled out impunity and corruption as the two nemeses of Mexican democracy. Thus, I would lean toward calling this an awareness movement, whose main contribution thus far has been to open a window of opportunity for proposing and promoting reforms to fight impunity and corruption.³

Impunity and corruption are nothing new for Mexico. In fact, they both exemplify the shortfalls of the democratic transition of the 1990s and are also among the main factors behind the previous regime's failure. The purpose of this text is not to narrate these historic processes, which have already been widely documented.⁴ However, it would be impossible to assess our "current history" of the constitutional and legal reforms that have followed the recent awareness movement without pointing out how the regime change's shortfalls contributed toward the accumulation of public discontent. In other texts, I have tried to show that corruption is not the cause but rather the consequence of shortcomings in Mexico's institutional design. Thus, in the fight against corruption, prosecuting and sanctioning corrupt individuals will not suffice: the regulations, processes, and institutional environments from which corruption stems need to be changed as well. Corruption and impunity are two mutually reinforcing historic phenomena.⁵ I use the word historic in the literal sense—both for the phenomena's antiquity and for the way they have taken root in Mexico's current political regime.

II

To cite *Transparency International*, corruption is conventionally understood as “the abuse of entrusted power for private gain.”⁶ Corruption's twofold historic dimension comes through both in its old roots in Mexican politics and in its

³ The “window of opportunity” concept pertains to the moments and conditions that instigate change in public agendas, especially when caused by circumstantial or inconstant environmental factors, even though these factors may be part of a larger and older problem. See John Kingdon's book, *Agendas, Alternatives and Public Policies*, Harper Collins, New York, 1995. To Kingdon, a “window” opens when three “streams” flow together—the problem, the policies, and politics. The window of opportunity opens after an issue has been established as a public problem and once there are options and incentives for politicians to implement change.

⁴ See Becerra, Ricardo, Pedro Salazar, and José Woldenberg, *La mecánica del cambio político en México*, Cal y Arena, Mexico, 2000; and Merino, Mauricio, *La transición votada. Crítica a la interpretación del cambio político en México*, Fondo de Cultura Económica, Mexico, 2003.

⁵ “The Second Democratic Transition in Mexico: Efforts, obstacles and challenges to Mexico in the quest for a comprehensive, coordinated, consistent form of accountability”, The Mexico Institute at the Woodrow Wilson Center and the Mexican Council of International Affairs (Comexi), 2013.

⁶ See <https://www.transparency.org/whatwedo>

consequent acceptance as an everyday practice.⁷ That is, corrupt acts are not only tolerated by society but are also systematically propagated. Corruption is not only practiced in isolated and exceptional episodes. Instead, it permeates everyday interactions. Likewise, culture—defined as the values and practices that define a given society's common references—is neither static nor spontaneously reproduced. What we know as culture is the result of a long chain of events, perceptions, and social information that adjusts and changes with every link.

At the same time, the acceptance and propagation of corrupt acts is also a result of impunity, that is, the institutional and regulatory inability to stop persons from abusing power for personal gain. The lack of effective vigilance and sanctioning has allowed the law to become negotiable and casuistic: the law is not applied universally or evenly. Rather, rule of law depends on the circumstances and individuals involved in each case of power abuse. In turn, the propagation of the law's casuistic nature has turned corruption into a systematic problem.

One of the most visible consequences of the law's negotiability can be observed in the allocation of public offices, both for elected and appointed positions. In general, candidates competing in Mexican elections are nominated due to their closeness to party leaders or to the advantages potential candidates could provide to said leaders. Given that parties have a near monopoly over candidacies—with the exception of independent candidates, which, in practice, are required to form de facto parties—candidatures are seldom obtained through proven merit, and elections can hardly be won without public resources. In fact, ever since Mexico's democratic transition, no elections have been won without public resources. The Mexican political class is an elite group that has been created through alliances, loyal sentiments, and trade-offs among groups that seek and maintain positions of power.⁸

Furthermore, even though elections are designed so that power will be distributed according to citizens' free will, the public actually knows very little about the candidates competing for public office. Only those competing for high-level positions—such as the Mexican presidency—face more or less in-depth scrutiny in terms of their careers and ideas. In contrast, the public knows very little about most other candidates: basically just the names and photographs on propaganda, with no substantial content or professional history made available⁹. There is also a lack of

⁷ These are the same arguments I developed in the article “La corrupción en diez proposiciones” (Corruption in Ten Propositions), *Tribuna Milenio*, milenio.com, 2014.

⁸ The approval of reelections in Mexico gave political and parliamentary groups the ability to accrue candidacies, straying from the concept of a true, vertical accountability mechanism by which citizens use the vote to evaluate public administration.

⁹ Hence the multiplicity of efforts to give citizens more information for elections. Recently, the National Electoral Institute created a platform called “*Candidatas y candidatos. ¡Conócelos!*” (“Get to know your candidates!”) to provide basic information on the candidates competing in the upcoming federal elections. In parallel, social organizations are backing the #3de3 initiative for popularly

satisfactory information about their spending of public resources, nor are there enough media reports comparing candidates' campaign promises with what they actually deliver. Rather than functioning as an opportunity to make an informed choice among various options, competition in Mexican elections is based on large-scale alliances and favors. In the best-case scenario, voters get to either make a somewhat blind choice among partisan promises or use the elections to express their disapproval.¹⁰

Once publicly elected posts are filled, the "spoils system" comes into place, by which elected officials rather freely allocate another set of public posts. In principle, bureaucratic power is measured by the amount of posts available for allocation, as well as by the public funds these posts will manage. For post allocations in Mexico, proximity, friendship, loyalty, and favors take precedence over merit and competence. While it is true that high-level positions cannot go to just anyone, being allocated a public post in Mexico mainly relies on the good favor of whoever is currently in power, rather than on the merits of a well-developed professional career. All of Mexico's governments depend on the spoils system, regardless of which party wins the elections.¹¹

As soon as elected and appointed positions are filled, public officials use all available means to remain among the political elite. The quickest means of doing so is to use public funds. While public spending is far more restricted than the allocation of public posts, regulations to guarantee that the allocation of public funds corresponds to objective societal needs are still insufficient. Most public funds are either assigned out of inertia, with past budgetary decisions being replicated regardless of their effectiveness; out of political convenience, so that powerful people can have something to show in order to remain in office; or, sadly enough, for previous commitments.¹² It is no coincidence that more than two-thirds of Mexico's public spending has been criticized, regardless of the public entity using these funds, nor is it a coincidence that the more public funds are used, the more unequal society becomes. The Superior Auditing Office, the System of Performance Evaluations and the independent evaluations of Mexican public funds (GESOC, for example) have coincided to signal that only a third of Mexico's presupposed programs are adequately completing their objectives; the rest have observations or deviations or,

elected officials to declare their assets, interests, and taxes (which is still not mandated for public officials in Mexico).

¹⁰ Cfr. Ugalde, Luis Carlos, "¿Por qué más democracia significa más corrupción?", *Nexos*, February 2015.

¹¹ See my work *Los desafíos del servicio profesional de carrera en México*, CIDE-Secretaría de la Función Pública, Mexico, 2006, and *La gestión profesional de los municipios en México. Diagnóstico, oportunidades y desafíos*, CIDE-Sedesol, Mexico, 2006. See also Raphael, Ricardo, *El Mirreynato. La otra desigualdad*, Temas de Hoy, Mexico, 2014.

¹² Ugalde, Luis Carlos (coordinator), *La negociación política del presupuesto en México, 1997-2012. El impacto sobre la composición y ejecución del gasto público*, Sitesa e Integralia, Mexico, 2014.

simply, are so obscure that they are impossible to evaluate.¹³ Public funds are, above all, an instrument of power.¹⁴

The processes by which public administrations make choices are usually jumbled, obscure, and confusing. It is a well-known fact that arbitrary and imprecisely regulated practices are diametrically opposed to honesty. It is also known that the multiplication and fragmentation of administrative regulations increase the chances of arbitrary practices taking place.¹⁵ Nevertheless, the institutions in charge of fighting corruption in Mexico are fragmented and have their own sets of regulations for public officials to follow. From this perspective, the smartest public officials are not those who focus their programs on public issues that need solutions, nor those who submit their decisions, resources and results to public scrutiny. Rather, the public officials on top are those who know how to adhere to the right bureaucratic procedures. Meanwhile, officials who make mistakes in procedures and cause irregularities in the system are punished.

Today, we have valuable information on which procedures generate the most irregularities. The five highest rates can be found in the following areas of management: 1) in the distribution of allocated posts and the reaping of their benefits, as well as in certain schemes to obtain millions of pesos in severance payments for unjustified lay-offs; 2) in the granting of public-works contracts for government purchases, which, at least on the surface, appear to follow impeccable bidding procedures; 3) in the authorities' granting of concessions, licenses, or permits of all kinds—for everything between housing-development to informal-business projects; 4) in the transfer of public funds via subsidies or aid programs, whose growth directly benefits public officials, both politically and financially; and 5) in face-to-face interactions with public officials providing services—especially, in interactions with officials who claim to serve in the name of justice and security. Despite the fact that more and more information on the corruption permeating these areas is coming to the fore, efforts against corruption remain fragmented and procedural. Instead of addressing the causes of corruption, public officials causing irregularities in the system are prosecuted on a case-by-case basis.¹⁶

Evidently, the Ayotzinapa and "*Casa blanca*" scandals were not exceptional in Mexico's long history of corruption and impunity. However, these events pushed society to the limit for their severity, coupled with the global interest they sparked. The Ayotzinapa scandal's international scope stems from the cruelty and cynicism

¹³ Merino, Mauricio, *La segunda transición democrática de México: Esfuerzos, tropiezos y desafíos de México en busca de un sistema completo, articulado y coherente de rendición de cuentas*, Wilson Center, 2012.

¹⁴ The UNDP, GESOC, Coneval, and *México Evalúa* studies are relevant to this point.

¹⁵ See Cass Sunstein's book *Simpler. The Future of Government*, Simon & Schuster, New York, 2013.

¹⁶ Cfr. "*Evaluación de la política de combate a la corrupción*", Superior Auditing Office. This document pertains to the Superior Auditing Office's 57th, 58th, and 59th amendments, as well as to the Report on Superior Auditing Results for Public Accounts.

with which the 43 students in Guerrero were massacred, as well as from the fact that the responsible criminals were acting under the orders of the mayor of Iguala (and his wife) with the collusion of local police—and the initial indifference of federal authorities. With Ayotzinapa in the backdrop, the disclosure of First Lady Angélica Rivera's tactics to increase her private wealth, coupled with the president and his wife's ambiguous and insufficient public response, which widely circulated in the media, only exacerbated public discontent—finally opening a window of opportunity to make in-depth modifications to Mexico's institutional design and fight corruption at its roots.



Over the course of the 21st century, several notable advances in terms of access to public information—namely, transparency—have already taken place. Both the Felipe Calderón and Enrique Peña Nieto administrations ascribed to the Open Government Partnership, with the creation and strengthening of pertinent legal regulations and transparency institutions on the rise since 2002. Thanks to these institutions and regulations, public information has undoubtedly multiplied, become increasingly accessible, and been continually put to better use. However, files and management records for decision-making processes in the public sphere are yet to be made available. Public finance accounts—including the promising concept of national accounting harmonization—are still insufficient and obscure. Meanwhile, budgetary allocations still rely on the arbitrary and ambiguously regulated trends mentioned above, and errors in financial-oversight processes are yet to be corrected. Transparency has helped find and report abuse, sparking scandals in turn. However, transparency can also function as an alibi for corruption: with more information published, better online portals, and increased propaganda, public officials can maintain the processes that propagate the abuse of power for personal gain.

This patchy diagnostic sparked the creation of an Accountability Network (*Red por la Rendición de Cuentas*) in May 2011. At the time, the network was under the oversight of the Center for Economic Research and Teaching (CIDE), a university research institution for the social sciences, which is part of the National Council of Science and Technology (Conacyt). The Accountability Network was created by a group of researchers that had undertaken the task of studying and documenting how Mexico's lack of a comprehensive, coherent, and articulated policy on accountability was directly behind corruption and impunity. After publishing several papers,¹⁷ the group decided to formalize their dialogue, which had already made an impact on public, civil, and academic organizations.

¹⁷ The studies published through the Accountability Network's initiative or mediation may be viewed here: www.rendiciondecuentas.org.mx. Among others, the most relevant study to the organization's structuring was *La Estructura de la Rendición de Cuentas en México*, edited by Mauricio Merino, Sergio López Ayllón, and Guillermo Cejudo. CIDE, 2010.

The Accountability Network's main goal is to use academic studies, public debate, and social-impact assessments to promote the design and implementation of an accountability policy. Their initiative has been unprecedented. Not only did it stem from a public academic institution that was funded and governed by the Mexican State, but it also included members of other public institutions, such as the Federal Institute for Information Access and Data Protection (IFAI), which was created under the first set of pro-transparency reforms; the Superior Auditing Office (ASF), which is the Chamber of Deputies' auditing office for public finances; the General Archive of the Nation (AGN), which is formally housed under the Ministry of the Interior; the former Federal Electoral Institute (IFE), which was a national autonomous body in charge of conducting federal election processes; and the Mexican Conference for Access to Public Information (COMAIP), an umbrella organization for the bodies guaranteeing transparency in each of Mexico's states. In other words, the Accountability Network amalgamated several public institutions that would be relevant to the design of said policy—all of which agreed to join the academic team that gave birth to the project.¹⁸

Since the Accountability Network's founding, the above public institutions have engaged with civil-society organizations, which had already been using applied knowledge and public assessment for transparency and accountability measures in Mexico for a long time. These civil-society organizations had already formed a true community around the issue, exerting their influence upon the media and decision-makers alike. However, aside from a few occasional projects, these civil-society organizations never established a permanent channel for collaborating among themselves—and even less so, for collaborating with public institutions. In this sense, the Accountability Network constituted a step forward, with a wide network of scholars from various public and private universities and research centers becoming active participants as well. For the first time, Mexico's large and influential community of civil-society organizations could join scholars and public officials (who usually functioned independently) to engage in debates and work to address the issues at hand.

Since its founding, the Accountability Network has committed to three main principles. First of all, the network is not made up of natural persons, but of legal persons and collectives that have voluntarily ascribed to the CIDE's project. Thus, the network has kept the names, careers, and freedoms of the people in the organization separate from the network's initiatives. The Accountability Network does not take ownership of the research, findings, or projects that its members conduct individually, but does foster their works' public distribution via the network's website, which has become a comprehensive database as well as a channel for everyday communication among its followers and member organizations.

¹⁸ The full list of the 75 social, public, and academic organizations that have formally convened with the Accountability Network can be found in the website cited above.

Secondly, the network does not emit its own communiqués: rather, member organizations share their opinions separately. Only when documents are consensually drafted during open deliberations are these presented under the Accountability Network's name. The same rule applies to its editorial guidelines: the books in the series "*Cuadernos de la Red*" (The Network's Notebooks), as well as the articles published throughout the network's trajectory, have invariably respected the original author's rights over their works. Lastly, the network has never changed or increased the scope of its original aim: to show why Mexico needs to prioritize the design of a public policy to guarantee accountability. Thus, even though all its members have their own agendas, collective efforts seek to promote the drafting of said public policy. The way this unprecedented collective of institutions and organizations has upheld its principles without compromising any of its members, together with the fact that the network's work has focused on defining and creating a method for the proper drafting of said public policy, have turned the Accountability Network into an invaluable project. Furthermore, the network's professional, efficient, and committed executive management and Advisory Board, which was designed to represent its members' plural interests, have been critical to the development of the network's projects.

Still, the truth is that despite the quality and depth of the Accountability Network's research projects and debates, and despite the fact that the network is only composed of legal persons, it probably would not have had as great an impact on transparency and anti-corruption measures if it had not been for the twofold window of opportunity Mexico witnessed from 2012 to 2015. The first opportunity arose when President Calderon's six-year term ended and the PRI came back into power. The second opportunity came with the two incidents mentioned above: the tragedy of Ayotzinapa and the scandal around the "*Casa blanca*," which catalyzed enough public demand to create what will soon become the most ambitious set of democratic reforms Mexico has ever drafted. We hope.

IV

As for the first window of opportunity, which came with the beginning of a new presidential term, it should be noted that even though changes in executive power always generate new expectations and spaces for debating the governmental agenda, 2012 marked the return of Mexico's dominant party, the PRI, under Enrique Peña Nieto, creating further demand for political legitimization. Rather than going back to being the same old party, the PRI hoped to refurbish its image with the promise of consolidating democracy and plurality. Thus, soon after winning the elections and even before taking office, Peña Nieto launched an effort to propel a constitutional reform to make information—for all levels of government as well as

the judicial, legislative, and executive branches—more easily accessible. As soon as Peña Nieto took office, he also announced the creation of the Pact for Mexico: a list of 95 points by which Mexico's three main parties—PRI, PAN, and PRD—had agreed to undertake a series of structural and organizational reforms that would revamp Mexico's political and economic realms.

The general consensus around the Pact for Mexico was soon swept away by the energy reform, which opened the doors to private investment for energy exploration, production, and distribution—this was particularly controversial, given oil's symbolic weight in Mexico. However, the Pact for Mexico lasted long enough to allow the transparency reform to be passed less than a year later, in February 2014—creating a space for open, public dialogue between the organizations that were once part of the Accountability Network and Mexico's senators.¹⁹ This dialogue was never easy or smooth. In a way, scholars and activists do not speak the same language as politicians. Furthermore, it would not be past the political class to use public conversation to advance personal political positions or compete with colleagues. Nevertheless, the open dialogue in the Senate proved fruitful.

Among other fundamental changes, President Peña Nieto's initiative was broadened to include certain transparency obligations for political parties, unions, public trusts or funds of any kind, as well as the judicial branch. At the same time, the reform ensured the autonomy of the organ in charge of guaranteeing information access (the IFAI) and secured the scope of said organ's resolutions, which are valid throughout Mexico.²⁰ Surely, these changes would have never taken place without the aforementioned technical and political dialogue between senators and civil-society organizations—especially since the Chamber of Deputies and some of the PRI's parliamentary representatives actively tried to check the revamped right to transparency's scope throughout the legislative process. Nevertheless, senators

¹⁹ I hesitate as I write this note, as when one gives thanks one always makes the mistake of forgetting a name or two and of making it seem as if everyone's efforts were exactly the same. Despite this risk, the senators that have interacted with the Accountability Network since their mandates began in September of 2012 are worth mentioning. Their cooperation with *Transparencia Mexicana*, *México Evalúa*, *IMCO*, *Fundar*, *Artículo 19*, *México Infórmate*, *Colectivo por la Transparencia*, the IFAI, and COMAIP has been especially notable. Furthermore, these senators have opened public spaces to discuss and compare similarities and differences, and to propel new initiatives openly. Without these senators, this would have never taken place in Mexico's legislative processes— at least not with reforms as relevant as these. The senators are the following: for the PRI, Arely Gómez, Raúl Cervantes, Enrique Burgos, and Cristina Díaz; for the PAN, Laura Rojas, Marcela Torres Peimbert, Javier Corral, and Ernesto Ruffo; for the PRD, Alejandro Encinas, Armando Ríos Piter, Zoé Robledo, and Mario Delgado; and lastly, for the PVEM, Pablo Escudero. The senators I mentioned at the top of each party list deserve special recognition: these senators dedicated their time and effort to building and preserving a dialogue with the Accountability Network. There is no question that my list is missing several legislators from the upper house, who must have contributed to the reforms' success without me duly noticing. In another note, I will enlist the federal deputies that have also provided contributions of equal merit.

²⁰ The full text of the constitutional reform on transparency, which was published in February of 2014, can be found on the Accountability Network's website, cited above. A narration of the events that led up to the initiative's conclusion may also be found on said website.

remained firm and—after several months of tug of war between both chambers, the federal government, and civil society organizations—managed to overcome their opponents' attempts at resistance. Without a doubt, the constitutional reform for transparency passed on February 2014, is, to date, the most advanced in the world in terms of the extent to which it guarantees citizens' fundamental right to access information.

This reform also gave the Senate the faculty to revise IFAI memberships and, if necessary, appoint new commissioners tasked with guaranteeing the right to information access under the newly created National Transparency System. Thus, after publically discussing the IFAI commissioners' performance and openly considering academic and civil-society perspectives, the Senate chose to completely overhaul the IFAI—which was composed of seven commissioners. After summoning the candidates who met the established requirements and had strong enough careers to fill these posts, the Senate established a procedure to meticulously study each of the candidates' careers, credentials, and qualities. In an unprecedented move, a "complementary committee" of ten scholars, activists, and professionals—who had all collaborated with the Accountability Network in the past (but were not required to have done so for the purposes of this committee)—was invited to participate in the evaluations as well.²¹ Despite its controversies, the process to renew the revamped IFAI's members marked a precedent that cannot be ignored: candidates for Senate-designated public posts were compared and evaluated according to public criteria, with the support of a team of specialists who worked independently of the legislative branch.

Without a doubt, the most relevant product of this open dialogue was the joint creation of the General Transparency Law, which, in turn, stemmed from the constitutional transparency reform. In another unprecedented move, the same group of senators behind the aforementioned changes decided to create a "writing group" for the bylaws—bringing together representatives from the Collective for Transparency (*Colectivo por la Transparencia*), Mexico Get Informed (*México Infórmate*), and the Accountability Network.²² These organizations' representatives worked alongside the senators' technical and legal consultants to draft a legislative proposal that both adhered to the February 2014 constitutional reform and safeguarded Mexico's previous advances in terms of information access. Thus, after approximately 250 hours of drafting and deliberating, in early November 2014, Senators Arely Gómez, Alejandro Encinas, Laura Rojas, and Pablo Escudero

²¹ Those who wish to read about the details of the procedure and its results may consult the Accountability Network's website as well.

²² While the first two organizations are also part of the Accountability Network, it was more convenient for them to participate in the writing group on their own behalf. Meanwhile, the Accountability Network chose a CIDE investigator to act as the network's representative. Ana Cristina Ruelas, from *Colectivo por la Transparencia*; Gabriela Morales, from *México Infórmate*; and Natalia Calero, from CIDE, served as writers and as messengers between the Senate and the Accountability Network's organizations. It is worth noting that their performance was commended by both legislative chambers, as well as by their respective communities.

publically announced the end of said stage and the beginning of a new process to consult senators and other officials who would be subject to the new legislation.

The senators' move boldly established 48 proactive transparency measures for the officials under the new legislation. That is, officials would basically have to make all information regarding the fulfillment of their duties public, especially information on public expenditures of any kind. In addition, the law mandated several specific obligations for sensitive areas of public administration. The project established new timelines and procedures to prevent public information from remaining concealed without proof of reputation damage. In addition, the project mandated the opening of records of crimes against humanity and severe human rights violations. It established procedures to charge and sanction public officials who deliberately hid or destroyed public information. Lastly, the project fleshed out the details of the National Transparency System and in general went above and beyond the suggestions issued by the United Nations and the Organization of American States.²³

In December, the legislation faced criticism from several of the State's autonomous organs—especially the Bank of Mexico—and other public departments, which raised their complaints before the executive branch's Legal Counsel's Office—the ideal place to make their voices heard. In early 2015, despite the senators' efforts to draft the legislation as open and transparently as possible, contradictory and confusing rumors about the Office of the President's corrections to the bill started to surface. These corrections would have derailed much of the headway the bill had already made. Fortunately, the organizations that had collaborated with the Senate for these reforms made their dissatisfaction public, using every media outlet within their grasp. Thus, within the first weeks of 2015, radio, television, newspapers, and social media outlets unleashed a wave of reports against the federal government's alleged attempts at derailing the project—or at least several of its critical components. Increased pressure from civil accountability organizations and the general public made the return to dialogue and consensus possible. Still, it is hard to know whether public pressure would have sufficed to stop the government's attempts at halting the legislation's progress if it had not been for the political window of opportunity that came with the two deplorable events mentioned above. While there is no doubt that public discontent helped make progress in terms of transparency, there is no way of determining to what extent this discontent bolstered the civil organizations and senators leading Mexico's transparency efforts.

In any case, on March 2nd, the senators opened a new round-table session to discuss possible changes to the initial bill. Just a few days earlier—on February 23rd—the Office of the President, directed by Aurelio Nuño, had invited the Accountability Network's civil-society organizations, which had participated in the transparency-reform debates, to join him at the presidential residence, Los Pinos, to discuss Legal Counsel Humberto Castillejo's objections to the bill. While this meeting was not

²³ The Accountability Network's website provides details on the General Transparency Law.

easy, it was highly productive: Counsel Castillejo took the civil organizations' arguments into account, and the civil organizations considered the executive branch's reasons for making changes to the original project. By the end of the meeting, the Office of the President agreed to send the Accountability Network a written note with the legislation's modifications—at that point, there were still no official accounts of the modifications, which the senators had only encountered through rumor.

The Senate received the note a few hours before the public hearing was held on February 28th. The note was published online that same day. Thus, the hearing's deliberations were based on well-founded legal arguments, rather than on assumptions and abstract allegations.²⁴ Many of the objections that had been leaked over the weeks preceding these debates were removed (some of them, perhaps, were never more than rumors), and the Senate agreed with the remaining, well-founded objections. Even with the modifications, the version of the bill the Senate ultimately approved satisfactorily reflected the aspirations that the Accountability Network's civil and academic organizations had for the bill. After being sent to the Chamber of Deputies for ratification, the General Transparency Law was approved on April 16, 2015. I have no doubt that as time goes by, this will be a date worth remembering.

V

With the window of opportunity open since the last trimester of 2014, the two main opposition parties, PAN and PRD, rekindled their interest in launching a National Anticorruption System akin to the one the Accountability Network had proposed several years earlier.²⁵ PAN President Ricardo Anaya was the first to launch the initiative by inviting several representatives from Mexican Transparency and the Accountability Network to engage in technical discussions in October of 2014. In light of President Peña Nieto's failed attempt to create a National Anticorruption Commission, which never gained enough political consensus despite its incorporation in the Pact for Mexico, the discussions centered around designing a new system to combat corruption. With the knowledge that this window of opportunity would not be open for long, a group of PAN legislators and consultants quickly took up the task of drafting the constitutional reform, which would include PAN and Accountability Network proposals on how to address corruption.

²⁴ Details on this publication may be found on the Accountability Network's website.

²⁵ See the report I published with the Woodrow Wilson Center and Comexi (see footnote 5), which provides details on the Accountability Network's proposals for a comprehensive, articulate, and coherent accountability system. It is also worth noting that legislators from various parties had already presented 11 different initiatives to fight corruption, none of which would provide a comprehensive, articulate, and coherent system.

The PAN's proposals were quite comparable to Mexican Transparency and the Accountability Network's, but did not fully coincide. In any case, the PAN's initiative launched a discussion among parties, scholars, and organizations seeking a viable and satisfactory solution. However, against all odds, the PRI presented a different proposal in late December. The PRI's proposal outlined the creation of a comprehensive Public Integrity Council, to be composed of representatives from every State organ—including all state-level governorships as well as the country's executive, judicial, and legislative branches—along with five notable citizens who would operate under the executive branch to create multiple public policies to combat corruption.

Whether this proposal would have been welcomed under different political circumstances will remain a mystery. In fact, a similar notion had already been included in the Pact for Mexico. However, with Mexico's delicate situation in the backdrop, the PRI's proposal was frankly offensive. Not only did it go against most of the PAN's previous deliberations, but it also seemed to imply that state governors could simply sit down with the president and five notable citizens and put a stop to Mexico's systemic corruption problem. This notion sparked intense debate among the Accountability Network's organizations and attracted external organizations that had not prioritized corruption before to join the debate as well. The joining of *Causa en Común* (Common Cause), under activist María Elena Morera's leadership, was especially relevant.²⁶ Morera had been advocating for human rights and public safety for years and was regarded as a leader by a wide net of human-rights organizations. Furthermore, Morera successfully engaged the Office of the President in a frank and direct manner.

María Elena Morera successfully brought together a group of organizations to draft a proposal to counter the PRI's Public Integrity Council. Morera's initiative adhered to the Accountability Network's bases throughout the process. During a press conference held December 10th, Morera also proposed forging a public alliance among anticorruption groups. The organizations' meeting drew the media's attention, and was even covered in the *New York Times*. With this, the Office of the President finally opened the door to direct dialogue.

In our first meeting with Aurelio Nuño, who heads the Office of the President, and Legal Counsel Humberto Castillejo, two conditions were established: Castillejo and Nuño proposed the first condition, by which they would listen to our arguments but would by no means consider these conversations a negotiation process. The negotiations, if any, were to be held among political parties. The second condition was ours: we would have no reserves in our conversation and would prioritize seeking social support for our position rather than attempting to mold our opinions according to Castillejo and Nuño's will. Both conditions were properly met. The Office of the President abstained from providing us with any information on their

²⁶ Among others, the *Centro de Estudios Manuel Espinosa Yglesias* (CEEY) was a notable new collaborator, as were *México ¿cómo vamos?*, and *Red Actívate por Puebla*.

political negotiations, while we members of the Accountability Network attempted to accrue as much citizen and organizational support as possible for the National Anticorruption System.²⁷

In January of 2015, the PRD parliamentary group invited me to discuss the Accountability Network's proposal with the PRD deputies in the lower house. At that point, the proposal had already been backed by other civil-society organizations, opinion leaders, business chambers, and even the Mexican Episcopal Conference. To my mind, PRD legislators had decided to support and promote the National Anticorruption System even before I was summoned. Still, the dialogue helped their initiative become more akin to ours and helped persuade the PAN to bring their proposal closer to what was becoming a common denominator. The fact that the Chamber of Deputies' PRD representatives joined this collective effort was, in my opinion, a defining step in overcoming the government's remaining hesitations toward embracing this far-reaching reform.

A few weeks later, on February 16th, the PAN and PRD parliamentary groups that had been separately debating the details of our proposals met with several members of the Accountability Network to discuss the enactment of a joint project.²⁸ I assume that these legislators' negotiations with the Office of the President and the PRI's parliamentary group went well, as the initiative was approved in the Chamber of Deputies only ten days later, on February 26th, after which it was handed over to the Senate for the remainder of the legislative process.

Fortunately, the initiative ended up in the hands of the same senators who had worked hard to enact the transparency reform. This group of senators recognized the fact that both projects actually needed each other. In terms of the legislation the lower house passed on to the Senate, I am unaware of the exact contents of the March negotiations among the upper house's parliamentary groups. However, several senators spoke to the press regarding the negotiation's main points of dissent, namely, the upholding of "*fueros*," a form of constitutional immunity for certain public officials, especially the president. "*Fueros*" keep protected individuals from being judged during their tenures except in cases of treason or serious

²⁷ Ever since the Accountability Network started deliberations, dozens of people began contributing to this project. Though it would be impossible to mention them all, several of them played particularly important roles in the project's design: Eduardo Bohórquez (who stood by the process ever since the conversations with the PAN parliamentary group began), José Roldán Xopa, José Octavio López Presa, Max Kaiser, Marco Fernández, Sergio López Ayllón, and Lourdes Morales. María Marván, Enrique Cárdenas, Juan Pardini, María Amparo Casar, and Edna Jaime were also present during the negotiations with the Office of the President. Many more people should have been included in this paragraph, but the ones mentioned here simply cannot be passed by.

²⁸ Among the deputies who, to my mind, should be remembered as active lobbyists for the consensus with the Accountability Network's organizations, the following stand out: Ricardo Anaya, Elizabeth Yáñez, and Fernando Rodríguez Doval, from the PAN; and Miguel Alonso Raya and Fernando Belaunzarán from the PRD. Many others, whose participation was less constant but probably equally relevant, were also important to the legislative process.

common crime. Clearly, leaving the "*fueros*" intact was the price PAN and PRD deputies had to pay so that the rest of the anticorruption reform could pass with the PRI and PVEM's support in the lower house. Once the initiative reached the Senate, however, the "*fuego*" controversy threatened the reform's approval once again.

Nevertheless, the Senate decided to honor the same practice that had characterized the transparency reform's legislative process. Senators from the Senate Committees for Government, Anticorruption, Constitutional Points, and Secondary Legislative Studies decided to hold a public hearing on April 14th and invited a group of anticorruption experts as well as three other institutions that would eventually become part of the new system, namely, the Superior Auditing Office (ASF), the Federal Court of Justice for Tax and Administrative Matters, and the Ministry of Public Service. Those of us who participated in the occasion almost unanimously asked senators to approve the lower house's initiative without making any changes. Most of us also recognized the need to revisit the component on constitutional "*fueros*" as soon as possible, but not at the expense of delaying the reform, which could, in the best of cases, take at least a half a decade to show any tangible results—even though some of us believe it will require the work of a full generation. Fortunately, on April 16th, two days after the hearing, the Senate committees approved the anticorruption reform.

Tuesday, April 21st will also be a date worth remembering: amid heated debate, the reform was approved on the Senate floor, allowing for the creation of the National Anticorruption System. Being a constitutional reform, it was finally approved by the majority of state legislatures and promulgated by President Peña Nieto on May 27, 2015.

However, nothing is written in stone, especially when it comes to making sweeping changes to the conditions that have perpetrated corruption in Mexico for much of its history.

VI

If successful, the anti-corruption reform's premises will prove highly ambitious. Before concluding this text, I will present a summary of the reform's central premises and components, citing the document that gained the most support from the Accountability Network.²⁹ The reform's first premise states that corruption should be addressed at its roots rather than solely focusing on its effects—it would be impossible to truly curtail corruption with a punitive and individualistic approach that only punishes corrupt acts after they have already been committed

²⁹ While said document was written by me, Eduardo Bohórquez, José Roldán Xopa, José Octavio López Presa, Max Kaiser, and Marco Fernández also participated in its elaboration. I would like to take this opportunity to thank them for their hard work and valuable contributions once again.

and proven. Fighting corruption with an individualistic crime-and-punishment perspective not only ignores the causes of corruption (regulations, responsibilities, procedures, and decision-making environments) but also produces "social vaccines" that end up normalizing corrupt practices.

Rather than changing the environments that present opportunities for corruption, viewing the issue through the lens of corrupt persons that need to be sanctioned would only bring about a never-ending chain of punished individuals, with no practical consequences for the causes behind corruption. This, in turn, would multiply detection rates for corrupt acts, with media coverage increasing in response. In the end, increased exposure could prompt society to start viewing corruption as a customary part of everyday political and social relations. Thus, institutional reactions against corruption should not be limited to the detection and prosecution of corrupt acts. Instead, institutions should permanently and deliberately detect and modify the regulations and processes that generate corruption.

The second premise is that an institutional intelligence design should be implemented to effectively address the causes of corruption. Varying interpretations of legal frameworks and operational criteria inevitably affect day-to-day public administration, creating loopholes for corruption and arbitrary decision making. Thus, there is an urgent need to design the right instruments to detect these loopholes—namely, the imprecise or sub-par legal regulations, the confusing procedures, the inadequate distribution of faculties and attributions among public officials and offices, the fragmentation or weakening of decision-making responsibilities, the lack of connectivity among processes and results, the absence of public surveillance and internal control, etc.—, which create environments (and even incentives) for public officials to use their assigned authority and monetary resources for personal gain.

Indeed, fighting corruption requires institutional intelligence to detect and curtail any opportunities to gain control over public resources and decisions with the purpose of deflecting them for personal gain. Rather than basing these efforts on generalizations or abstractions, this institutional intelligence should look to accumulated experience and institutional histories on the application of regulations, procedural quality, spaces for interaction between society and the authorities, and decision-making processes that have generated corruption in the past.

Institutional intelligence should be founded upon a registry of cases in which corruption has been detected effectively, recurrently, and even systematically. It should be based on these cases' accumulated evidence, drawing conclusions from a system of precedents. At the same time, the institutions in charge of combating corruption should have enough authority to change the conditions that heighten the risk of gaining control over public resources and decisions and using them for corrupt acts. Nevertheless, the authorities responsible for fighting corruption should under no circumstances take over the responsibilities of the public offices

where corruption is taking place, nor should these offices ignore the authorities' institutional intelligence recommendations.

The third premise is that there should be a system of checks and balances for the institutions combating corruption. The only way to create a long-term solution for corruption is to have not just one but many institutions with the authority to jointly address corruption. It is important to note that limiting these efforts to a single national entity could increase the risks of mismanagement and politicization, whereas having multiple institutions would help create a mutual vigilance system. Having institutions that specialize in corruption—that is, internal and external oversight, and the development of institutional intelligence and processes of prevention, investigation, and sanction—does not imply that efforts will be fragmented. Rather, institutions should coordinate and adapt in synergy. These institutions should expressly create a mechanism for collaboration and information exchange.

Building a system of checks and balances based on having myriad institutions collaborating among themselves could strengthen their ability to identify, prevent, investigate, and make changes in situations that cause corruption. Individual power and resource mismanagement could be more assertively punished according to the offenses' severity: going from minor administrative offenses to serious cases of corruption to outright crimes. Evidently, this should be coordinated with a comprehensive, articulate, and coherent system.

The National Anticorruption System will be composed of four main institutions—two of them already exist but should be reformed and strengthened, and another two are new. Firstly, the Ministry of Public Service (SFP) will be in charge of internal control and of administrative innovation in the Federal Public Administration. The SFP will have the authority to coordinate a national internal control system, which will involve the State's autonomous organs as well as state and municipal governments. To fulfill this task, the SFP will need to be strengthened and reformed.

At the most basic level, strengthening the Ministry of Public Service (SFP) will imply establishing a professional career system for the federal government's internal auditors. To maintain impartiality and professionalism, the SFP should appoint internal auditors for their professional skills and not for their closeness to department heads. In our view, building a professional system of internal auditors is critical to the National Anticorruption System's success.

Besides sanctioning minor administrative offenses and ensuring the legality of internal public-administration processes, the SFP should seek to promote institutional innovation. Essentially, the SFP should use its institutional intelligence to fight the causes of corruption.

Lastly, the SFP will have the authority to coordinate the national internal-control system, which would bring best practices beyond the federal public administration

by including the State's autonomous organs as well as municipal and state governments. For all these reasons, the head of the SFP will still be appointed by Mexico's president, but will need Senate ratification as well.

The Superior Auditing Office (ASF), which was reformed and strengthened just like the Ministry of Public Service, will still be the nation's top external controller for the fight against corruption. Thus, the ASF should have full constitutional autonomy, even though the Chamber of Deputies will still have exclusive control over public-finance evaluations.

In order for external control to effectively complement internal control in terms of checks and balances, the Superior Auditing Office (ASF) will need to overcome the restrictions that keep it from taking action during current tax years or from revisiting previous events that have sparked subsequent corrupt acts. We propose that the ASF should have the authority to take real-time action for specific incidences of corruption. Furthermore, the ASF would draft records that could eventually lead to the sanctioning of corrupt public officials. Likewise, auditing calendars would have to be modified so that the external control's findings may efficiently influence each tax year's public-spending programming. The ASF would also have the faculty to check state-level public spending deriving from the National Fiscal Coordination System, with no exceptions.

As stated in the proposal, internal and external control efforts should be both preventative and innovative. Thus, the ASF should have the authority to coordinate the National Auditing System so that state-level superior auditing organs, which are in charge of external control for each locality's resources and attributions, comply with shared technical regulations and criteria. Both the SFP and the ASF will have the authority to: i) sanction minor administrative offenses, ii) initiate sanction procedures for serious corruption offenses before the Federal Court of Auditors, and, if necessary, iii) provide assistance to the Special Prosecutor's Office for Corruption for cases of corruption crimes.

However, for corruption crimes, the Special Prosecutor's Office for Corruption will be in charge of investigating, creating files, and representing parties before Mexico's judicial branch. Thus the judicial framework for criminal law will need to be revised so that the Special Prosecutor's Office for Corruption can investigate and prosecute corruption crimes independently of the branch, institution, level of government, or autonomous organ in which corruption is committed. The Special Prosecutor's Office for Corruption may sanction all individuals involved in corruption-related crimes, regardless of whether said individuals are public officials or civilians. The Special Prosecutor's Office for Corruption is to take action based on the corruption reports issued by the internal and external control organs or by civilians. However, it may also act on its own accord.

Lastly, a Special Chamber within a revamped Court of Administrative Justice would also be a central component to the proposed system. The Chamber, to be composed

of a central group as well as several regional chambers, will bring together all the records of serious cases of corruption registered in all internal control and auditing organs in Mexico. Judges will conduct the due processes corresponding to these records and will have the power to issue disqualification sanctions and fines for all individuals and public officials who participate in proven acts of serious corruption.

It is worth highlighting that the Court will only try serious acts of corruption, whereas the internal and external control organs will still be in charge of prosecuting minor administrative offenses, and the Special Prosecutor's Office for Corruption would manage all corruption crimes. Thus, Mexico's administrative and criminal proceedings system needs to be reformed so that corruption-related offenses and crimes may be addressed in all their forms.

Basically, the National Anticorruption System will be composed of the four institutions described above, independently of any other anticorruption measures the Mexican State decides to take—including cultural or public-ethics efforts. In addition to these four institutions, the Judicial Council of the judicial branch, the IFAI, and representatives from a council of citizens will be responsible for supervising the system's operation and issuing recommendations to ensure its efficacy. The system's design will require a constitutional reform as well as new laws on responsibilities and corruption that take advantage of international best practices. In addition, bylaws for the proposed institution's proper functioning will need to be drafted as well. Likewise, the National Anticorruption System will include a coordination and information-exchange mechanism for all its institutions. The mechanism will issue recommendations based on the institutional intelligence process—these recommendations will apply to all three federal branches and to all state-level authorities.

In summary, the National Anticorruption System will i) create a history of the country's institutional experiences with corruption; ii) establish an active channel of interaction between the three federal branches, autonomous organs, and local governments; iii) prevent the fragmentation of current institutions and create separate, specialized, and mutually-reinforcing courts to sanction administrative offenses, serious acts of corruption, and federal crimes in accordance with the agreements Mexico has drafted with the Organization of American States, the United Nations, and the Organization for Economic Co-operation and Development (OECD); iv) promote the creation of a system that would address corruption beyond the federal level by focusing on state and municipal governments as well; v) use a system of checks and balances to comprehensively fight corruption; vi) investigate and prosecute those responsible for committing corrupt acts—both in the government and among private citizens—and go further by addressing the causes of corruption; and vii) establish measures to create institutional intelligence, prevent corruption, support innovation, and promote a national culture that stands against corruption.

VII

The ongoing transparency and corruption reforms have been the subject of much public debate. These reforms have built upon academic and social organizations' years of research and dialogue to draft comprehensive, articulate, and coherent public policy on accountability as a way to fight the corruption that has plagued Mexico's public institutions. Corruption hinders institutions from performing as expected, deteriorates trust and social relationships, violates rights, wastes resources, limits economic growth, and stops income distribution. Corruption is the number one cause of inequality, impunity, and exclusion from Mexico's political regime.

The constitutional reform that will create the National Anticorruption System will by no means be the sole component of the fight against corruption—which will require further changes in bylaws and public-administration practices. However, the reform will pave the way for the fight against corruption. This reform is not unaffected by the progress that has already been made in terms of transparency, nor will it be unaffected by the pending legislation on personal files and information protection. Without the corruption reform, however, there would still be something missing. If the strengthening of the right to information access had been approved without the creation of institutions specifically designed to combat corruption, Mexico would still be missing an integral part of its new foundation.

Both reforms have paved the way to change Mexico's system for corruption-related administrative and criminal proceedings—the Achilles heel of Mexico's political regime. Changing this will counter the institutional fragmentation that has hindered institutional work from prospering ever since Mexico's democratic transition. The reform will bind these institutions, along with all of Mexico's state governments, to the same accountability policy. It will promote a system of checks and balances so that no states or entities are excluded from the fight against corruption. Instead, they will all be responsible for transparency and social vigilance—mutually supervising each other and creating an influx of institutional intelligence in order to correct the processes, regulations, and environments that cause corruption today. The reform will counter the deep-rooted misconception that combating corruption is limited to punishing corrupt individuals without addressing the causes of corruption. Lastly, it will highlight the need to fully overhaul the government's operations and public administrations—which has been a pending issue ever since Mexico's democratic transition.

None of these changes will take place in the short term, which makes the need to start now that much more urgent. The events that opened a window of opportunity for the enactment of the transparency and corruption reforms bring the promise of a completely different political scene. For the first time in the history of Mexico's public administration, all public officials would have to document what they are doing and how they are doing it, recording their proceedings in accessible public

files. Also for the first time, citizens could become directly involved in supervising public management. Traditional bureaucracy's corrupt practices will have to give way—not just because the right to information access implies that corruption will be publicly exposed, but also because for the first time, comprehensive regulations will define corrupt practices within Mexico's administrative and criminal proceedings. Once these practices are detected and documented, professional external and internal auditors can address the issues, which would then be sanctioned in a new Special Chamber within the Court of Administrative Justice. Not only that, but the Special Prosecutor's Office for Corruption would be able to prosecute corruption, with its central group systematically and publically addressing corruption issues. If the reform is successful on its own terms, Mexico will have to reassess its public spending, supervision, and sanctioning practices. Never before has there been a reform this ambitious to tackle, however slowly, the trends in Mexico's illegitimate spending of public resources. As I write these notes, I sincerely trust that, despite it all, this story will have a happy ending.