Mexico

Mexico is a federal republic of 32 federal entities located at the north of Latin America. It has an estimated population of over 120 million, which makes it the eleventh most populous country and the most populous Spanish-speaking country in the world, as well as the second most populous country in Latin America, behind Brazil. Mexico is a member of the United Nations, the World Trade Organization, the G20, the Pacific Alliance and a founding member of the Open Government Partnership. Mexico joined the Organization for Economic Co-operation and Development (OECD) in 1994, later joined by Chile, the only other Latin American country in the Organization.

The center-left Institutional Revolutionary Party (PRI) ruled the country from its foundation in 1929 to 2000, when it was defeated by the center-right National Action Party in 2000. The PRI returned to power in 2012 with the election of President Enrique Peña Nieto, whose single six-year term ends in 2018.

Mexico is the second biggest economy of the Latin America and is classified as an upper-middle income country by the World Bank. (World Bank website). It has the fifteenth largest nominal GDP and the eleventh largest by purchasing power parity in the world. Mexico could become the world's seventh largest economy in 2050, but it is decelerating with an annual GDP growth of 2.3 percent in 2016, down from 2.6 percent in 2015. This is due to a global environment of modest growth and stagnant trade. A further economic slowdown is expected from a slowdown of investment from the uncertainty of a potential renegotiation of the North American Free Trade Agreement (NAFTA). However, there is another aspect that obstructs the full economic potential of Mexico. The think thank Mexican Institute for Competitiveness (IMCO) estimates that corruption is costing Mexico from 2 to 9 percent of potential GDP growth.

Corruption in Mexico

As graph xx shows, Mexico suffered the worst decrease in the region regarding the CoC Indicator from 2006 to 2015. Other evaluations from international organizations go in the same direction. According to the Heritage Foundation, widespread corruption has increased public dissatisfaction. Mexico ranks 123 of 176 in 2016’s Corruption Perceptions Index of Transparency International with a score of 30, a decrease of 5 points and 28 places compared to 2015. In its Integrity Review of Mexico, the OECD warned that if corruption is not tackled effectively, it will be impossible to effectively address many of the other dire challenges facing the country: slumping productivity and competitiveness, stubborn inequality and serious regional security issues. Figure xx shows the fall of Mexico’s CoC Indicator from 2006 to 2015. The country decreased from 4.49 in 2006 in the recoded version of the index to 3.51 in 2015, almost a one-point decrease (half a point with the WB original coding). It also illustrates that this decline is higher than the one observed in the average of Latin America.

Figure xx

In the same sense, public perception about corruption reflects a negative trend. On the National Survey of Quality and Governmental Impact (ENCIG) from Mexico’s National Institute of Statistics and Geography (INEGI) of 2015, corruption is cited as the second most important problem with 51 percent, just behind insecurity and crime. In the survey from 2013, 49 percent reported that they believed corruption was a major issue in their state. Similarly, in the 2015 Latinobarometro survey, only 3.9 percent of Mexican respondents declared having high confidence in government, 17.1 percent some confidence, while 35.2 and 42.4 percent declared having low and no confidence respectively.

The drop in rankings and confidence is related to recent high-profile corruption scandals that have dominated news cycles. In November of 2014, journalist Carmen Aristegui published a report exposing a company with government contracts that owned a mansion designed for the presidential family, described by the First Lady as the “real family home” in a society magazine. In August of 2015, Comptroller Virgilio Andrade, a presidential appointee, cleared the President of any wrongdoing. Two years later, during the signing of General Law of the National Anticorruption System (NACS) in 2016, the President acknowledged that the scandal had hit his government's credibility, but claimed that his family had done nothing illegal. The biggest drop in Figure xx is recorded in 2014, the year of the corruption allegations against President Peña Nieto.

Two of the other most well known cases of corruption are from members of President Peña Nieto’s PRI, although it is worth mentioning that corruption is not limited to that party and there have been corruption escandals of politicians from other parties as well. The former governor of the Tamaulipas state, Tomás Yarrington, was indicted by a jury in the US on charges of drug smuggling, bank fraud, racketeering, money laundering and taking millions of dollars in bribes from the Gulf Cartel and other traffickers since 1998, when he was the mayor of Matamoros. After almost five years on the run, Yarrington was arrested in Italy on April of 2017.

After an investigative report on the website Animal Politico, Javier Duarte, the former governor of the Veracruz state, fled the country at the end of his term in 2016 amongst allegations of corruption, involvement in organized crime and embezzling millions of dollars. Further fueling citizen’s anger, the new governor Miguel Angel Yunes accused Duarte’s government of giving water instead of chemotherapy to children with cancer. A few days later after Yarrington’s arrest, Duarte was apprehended on Guatemala.

The common theme of these cases is that the investigations did not come from the Mexican political system, like oversight authorities or opposition parties, but from other sources, in two cases from the media and in another from judicial authorities from the US.

Aimed at restoring the credibility of the Mexican political system, the aforementioned NACS is just the latest of reforms that aims to fight corruption in the country. According to the OECD, the eight laws that create the System aim to overcome “key shortcomings of the past” by addressing fragmentation in policies, avoiding implementation gaps, improving co-ordination between levels of government, strengthening enforcement mechanisms and reinforcing oversight through greater transparency, expanded auditing powers and involvement of civil society. (OECD report)

Specifically, the laws include a governance structure comprised of a NACS Co-ordination Committee, a Citizen Participation Committee and ethics committees in ministries. They also involve a revamping of codes of conduct for public officials, as well as the federal manual for internal control and risk management standards. Also, they include the development of an online platform comprised of key databases of sanctions and procurement, to support better detection and oversight. (OECD Report)

Furthermore, the law requires that states develop their Local Anti-corruption Systems (LACS) and respective committees. It will oblige more rigorous asset and interest declarations of all officials, and both government employees and firms involved in public sector activities will be subject to a new disciplinary regime for integrity violations. Finally, it demands the enlisting of Specialized Anti-corruption Prosecutors to prosecute acts of corruption. (OECD report)

Nonetheless, it appears that NACS got off on the wrong foot. In April of 2017, the president of the Citizen Participation Committee Jaqueline Peschard denounced that the System was instated without the Specialized Anticorruption Prosecutor, nor the regional authorities in charge of imposing sanctions to public servants that commit serious offenses. Mexico’s main parties did not agree on subject of the Prosecutor, which shows a lack of political will to implement the NACS. (El Financiero)

Political Finance

Political finance reform was an integral part of the transition of Mexico to a multi-party system. The formulation of some form of public funding for political parties started in the 1960s, but broad political reform was accelerated in the 1990s, during a crisis of credibility of the PRI and the incorporation of the country to NAFTA. The reforms established prohibition to public entities from contributing to political parties and banned contributions by businesses, individuals who live or work outside of Mexico, churches and foreign entities. Moreover, the reforms mandated reports from parties to electoral authorities detailing private contributions and all expenditures. (Reporte chido)

In efforts to further amend the political finance system, comprehensive reforms were passed after 2005, which is reflected in figure xx. The figure displays the sensibility of the PFR Index to the most recent amendments of existing laws. The figure also shows that Mexico has a higher level of regulation than the average of the whole region, an inverse relationship that the one observed on the CoC Indicator.

Graph xx

The reform of 2007, implemented after the contentious 2006 presidential election in which Felipe Calderon became president, altered the financing of political campaigns. It changed the formula for the allocation of public funds to political parties and increased the importance of winning seats, by linking electoral victories to future funding. It also limited private contributions to 10 percent of the total money that was spent in the previous presidential campaign. (CFR)

In a similar way, the most recent political reform of 2014 introduced a new national electoral body to organize elections all over the country and the reelection for Senators and Deputies for up to 12 years. Also, it amplified regulation by increasing the grounds for annulment of election, specifically by exceeding the permitted funding, as well as by expanding the definitions under which a public servant might break electoral rules. Furthermore, it increased the voting choices for Mexicans voting abroad, gender parity rules and increased the threshold of votes for a party to maintain registry and public funding. It introduced the figure of coalition governments and, in response to a push by civil society, independent candidates, who can now participate in elections and receive public and private funds. (Mexico Institute Guide for Mexican elections)

However, political finance reform has been ineffective to counter corruption due to a failure of enforcing the rules and there are no signs that the latest efforts will be any different. Electoral authorities lack the necessary tools to truly monitor the campaign financing process, which could be constituted by illegal campaign contributions at more than four times the legal amounts. (CFR) Also, they fail to address two of the worst problems for democracy in Mexico, vote buying and the infiltration of drug money in campaigns. According to the findings on this study, political finance will only be effective if there are steps taken in regards of the independence of the judiciary.

Judicial Independence

Parallel to the CoC Indicator, there is a downward tendency on the WEF Judicial Independence Indicator from 2006 to 2015. This tendency is reflected in figure xx and might have be related do with the controversy that has surrounded the three nominations that President Peña Nieto’s made to the Supreme Court. The figure also shows that Mexico is almost in the same level as the region average.

graph xx

However, the downward trend starts before Peña Nieto’s rise to power. This might have to do with the start of the drug war by former President Felipe Calderon. The inability of the judiciary and police to assume responsibility over security was one of the reasons Calderon decided to use the Army against drug cartels in the country. Calderon often bypassed national courts and extradited drug traffickers to the US almost immediately after being captured. It is worth noticing that the security situation did not improve with President Peña Nieto.

Aware of the problem of the judiciary, Mexican authorities pushed for the most significant change to the system, a 2008 amendment requiring that all state and federal judicial systems transition from a written-based inquisitorial system to an oral-based accusatorial. States that have complied with the reform say that it has helped them with a better allocation of criminal justice resources. However, the reform has been criticized because it does not go far enough in punishing corrupt judges. (Insight Crime)

Public Investment

The indicator of public investment, which is based on data on capital expenditures of the ECLAC, shows an overall increase of spending in the matter in absolute terms since 2006, as shown on figure xx. Compared with the rest of Latin America, public investment as a percentage of GDP is below the mean, which would be explained by the sheer size of the Mexican economy. In absolute terms, there was a decrease in spending following the 2008 international financial crisis, but it did not fall below 2.48 percent of the GDP. After this bump, public investment further increased when President Peña Nieto took power.

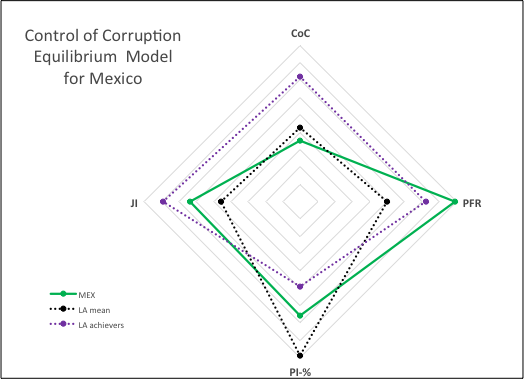
graph xx

An example of this kind of investment under President Peña Nieto is the new airport of Mexico City, which will cost of 9.4 billion USD and is expected to open in 2020. To keep an increasing public investment in a context of low income from oil exports, the government has increased the national debt. In March of 2017, debt stood at 9.68 trillion MXN (522 billion USD). (Nota sobre la deuda)

As specified above, public investment acts as an opportunity of corruption if the procurement process allows corrupt public officials to favor specific companies in which they have a stake. Also, it is important to highlight that the scandal of President Peña Nieto is related with this type of corruption.

Improving the control of corruption in Mexico

As in the case of Argentina, Judicial Independence seems to be the key variable for controlling corruption. The previous analysis show that despite enacting reforms and increasing its PFR Index, the CoC Indicator has decreased, further hit by the increase of public investment in real terms. It also shows that the level of Judicial Independence is above the average of the region. Nevertheless, this indicator needs to increase to the levels of the high achievers of the region to have an effect on the other variables of the model.



Mexico is above the high achievers in respect to party finance regulation but this is not translated in lower levels of corruption. Mexico is below the region mean in public investment as percentage of the GDP but above the high achievers, which is consistent with the findings that this kind of investment is an opportunity for corruption, specifically with lower levels of judicial independence. In this respect, Mexico is above the region’s average but below the high achievers. With this in mind, actions should be aimed at strengthening judicial independence and the rule of law.

The most important changes concerning judicial independence in Mexico could be traced to the 1990s. Foreseeing that his party was going to become the opposition for the first time in its existence, former President Ernesto Zedillo pushed for a reform in 1994 aimed at the independence of the Supreme Court. Aspects of that reform were to remove the direct designation of Judges by the Presidency and an institutional design to ensure its permanence and stability. With the PRI back in power, President Peña Nieto has been able to nominate three spots to the eleven-judge body. All of these nominations have been criticized by civil society organizations for responding to partisan quotas and the lack of transparency of the confirmation process on the Senate. (mexico evalua)

President Peña Nieto’s nomination of former Attorney General Eduardo Medina Mora was the most criticized of all three. This was due to Medina Mora’s previous role as Mexico’s top prosecutor, as well as his work in front of the defunct Secretariat of Public Safety and the organized crime division of the Office of the Attorney General. Civil society organizations denounced that Medina Mora sought to exercise discretionary power in these agencies and used them with political aims. (mexico evalua)

Furthermore, judicial independence in Mexico is limited by way the judicial branch receives its funds. The executive and legislative branches control the judiciary’s budget, so each year it has to bargain for it. Distinct from other countries, the Mexican Constitution does not specify a percentage of GDP for the judiciary. (texto de de jure independence) This makes the judiciary dependent of the political system despite all the written rules to make it autonomous.

Another challenge for Mexico’s control of corruption is related with the judiciary’s capabilities to resist organized crime. Mexico's judicial system is also highly susceptible to corruption because of what the CFR has called “autocratic judges and lack of transparency”. (CFR backgrounder) There is also lack of confidence in the justice sector, so crimes are underreported, which creates widespread impunity. (C Special Report)

A case that illustrates the weakness of the Mexican judiciary and its vulnerability in resisting private interests is the case of Judge Anuar González. The judge from the state of Veracruz ordered the release of a wealthy young man accused of sexually assaulting a schoolgirl, on the grounds that the perpetrator did not enjoy it. After the indignation over the case reached international media and lead to local protests, the Council of the Federal Judiciary suspended González and informed that it would review all of his decisions to look for any ‘irregularities’.

The recent reform to the judicial sector was seen as way to strengthen the judiciary but recent information about its implementation paint a bleak picture. Citing a study about the impact of the reform on the state of Morelos, Jose Pardinas, director of IMCO, said that one the problem is in the prosecution stage, before even a case goes before a judge. He criticized the lack of investments in training the personnel in charge of procurement, which is often overworked and underpaid. (Milenio TV)

To overcome the implementation gap of the judicial system, the IMCO focuses on improving the operating conditions of the prosecuting system. Specifically, it proposes increase the number of public defendants and experts, as well as distributing them based on criminal incidence, while guaranteeing conditions of autonomy. It also recommended increase the number of prosecuting agents and to create an Audit and Monitoring Unit to monitor the quality and delivery of justice. (Documento IMCO)

This shows that despite reform efforts, Mexico still has a long way to go in terms of ensuring the independence of its judiciary and the functioning of its judicial branch. Among the options that the government should follow are: a) ensure the transparency of the nomination process of all judges, b) guarantee the participation of civil society in this process and follow their recommendations, c) evaluate the funding process of the judiciary branch and consider locking a budget based on a percentage of the GDP or the revenue of the government to ensure its financial independence, d) improve the funding for the prosecuting part of the judicial system, so that judges can work with more efficient information e) reduce capital expenditures, public funding for political parties and invest part the savings in the of the judicial branch.

Fundamental for all of these changes is civil society. Civil society organizations have been participating increasingly in the transformations of the judicial branch, either by participating in the public debate about nominations to the Supreme Court or by assessing the success of the judicial reform.

The government should also look at the success of the high achievers in the region in terms of control of corruption and judicial independence, which are Chile, Costa Rica and Uruguay, to work towards the professionalization of the judiciary and towards a merit based system. Most importantly, the government should divest resources from capital expenditures, which are much higher than the high achievers of the region, towards the professionalization and increase of salaries of prosecuting and judiciary personnel, as well in the creation of effective oversight entities, in aims of reducing the likelihood of corruption. In the same sense, it should consider decreasing the amounts of funding of parties, since these resources are used as opportunities to corrupt and not to increase the voice of citizens on the democratic process. However, any cut to the parties’ resources could be met with resistance.

The last political reform in Mexico lead to the election of Pedro Kumamoto, an independent representative on Jalisco’s State Congress, who won his seat in 2015 when he was 25 years old. In consonance to citizens’ demands, Kumamoto has been leading a campaign to decrease funding of political parties. The proposal, which has been backed by civil society and business organizations, would calculate the funding for each party depending on turnout and not on the registered voters. Voting for the proposal has been delayed to the end of April and will be a test to see if political parties are willing to give away their resources and listen to citizens’ demands.