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The National Anticorruption System in Mexico: Democracy and Efficient Governments 2016-2022

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Abstract

The origin of the State as a form of social organization was linked to democracy as a form of government; both analytical categories entail essential qualities in people such as equality and freedom, but with different characteristics, powers, and obligations. The Rule of Law can be an effective check on the exercise of state power; democracy, in turn, can be the most appropriate political system for the protection of fundamental rights. In the context of a deep inequality gap, Mexico lags in fighting corruption. Since the promulgation of the general law regulating the National Anticorruption System (NAS) in 2016 (Congreso de la Unión, 2017), efforts have been made to coordinate the work of Mexican authorities at all levels of government for the prevention, detection, and punishment of acts of corruption. Faced with social disenchantment with politics, democracy, and the weakening of state sovereignty, it is worth asking what is the relationship between the Rule of Law and democracy? What is the socio-political context on which the NAS emerges? How has it worked institutionally? And what have been its repercussions in the configuration of the Rule of Law? These questions are part of a national research agenda, but also of a global agenda in contemporary democracies. I attempt to contribute to the study of a complex relationship between the Rule of Law (as one of the dimensions of quality democracies), democracy (as a form of government in Mexico) and the fight against corruption in the country (as one of the indicators of the Rule of Law) based on the NAS, recently passed into law, and facing serious challenges to function with all its capacities and powers. This relationship between Rule of Law-Democracy-Controls of legality represents one of the biggest obstacles in the path to democratic consolidation.

Anticorruption System

1. Introduction

Only after the political transition[1], compliance with the Rule of Law has been one of the most important challenges of democracy in Mexico. Ever since the advent of political alternation in the presidency in the year 2000[2], the party system, the electoral system and the instruments of citizen participation have been subjected to several constitutional reforms and the creation of secondary laws, which have gradually perfected the mechanisms for access and distribution of political power.

However, the Rule of Law presents serious deficiencies placing the results of democracy below the average level of performance recorded not only by first world countries, but also by many Latin American states that emerged from civil wars or coups d'état. For contemporary democracies to raise their quality standards, fair, regular, and competitive elections are only minimum requirements in a much broader basis of citizen rights that must be provided and guaranteed (Chavarría, 2008). Democracies must comply with at least eight independent but complementary dimensions to improve their conditions and characteristics (Morlino, 2012)[3]. One of the explanations for the discrepancy between the strengthening of the political system and the poor conditions of democracy in Mexico during the last decades could be found precisely in the weakness of the Rule of Law.

A paradox represented by the creation of a National Anticorruption System in Mexico and the sustained growth of corruption rates in the country between the years 2016-2022 is embroidered. Questions arise that question government performance at all levels to address conditions of poverty and inequality.

After the revolutionary process (1910-1917), the reforms that built the institutional scaffolding in Mexico focused on defining the mechanisms for access and distribution of power. The authoritarian origin of Mexican presidentialism, with supra-constitutional and meta-constitutional powers for the office of the president, caused the Rule of Law to lag, always taking second place. And on the oth-

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[1]I understand the term Transition as the "interval that extends between one political regime and another". In the case of Mexico, the interval between the dissolution of the authoritarian regime and the establishment of a democratic regime. Elementary definition of Transition in (O'Donnell & Schmitter, 1994).

[2]First electoral process in Mexican history in which a party other than the Institutional Revolutionary Party won the Presidency of the Republic through an electoral contest. After 71 years in power, the defeat of this party opened the doors to the debate on what alternation in the exercise of government is.

[3]The procedural dimensions—so called because they refer specifically to the formal mechanisms for access to and distribution of government positions—are: 1) Rule of Law; 2) Electoral Accountability; 3) Inter-institutional accountability; 4) Competition between parties; and 5) Participation of different actors, including citizens. The substantive dimensions—because they promote the fundamental principles and values of human beings—are: 6) Full respect for the rights that can be expanded in the realization of various freedoms; 7) Progressive expansion of greater political, social, and economic equality; and 8) Responsiveness, that is, the satisfaction of citizens and civil society in general, derived from the response capacity of the government and its institutions.

er hand, the concerted transition to democracy subordinated the Rule of Law to political agreements, the product of non-transparent negotiations, and relegated the interest to generate mechanisms for accountability[4]. A scant effectiveness of the Rule of Law produces defective democracies (Morlino & Palombella, 2010). Faced with the possibility of limiting abuses of power and guaranteeing equal access to justice, it was decided to impose the effectiveness of political power with control mechanisms that, up to this today, limit the principles of people's freedom and equality.

In the following pages, I attempt to contribute to the study of a complex relationship between the Rule of Law (as one of the dimensions of quality democracies), democracy (as a form of government in Mexico) and the fight against corruption in the country (as one of the indicators of the Rule of Law) based on the NAS, recently passed into law, and facing serious challenges to function with all its capacities and powers. This relationship between Rule of Law-Democracy-Controls of legality represents one of the biggest obstacles in the path to democratic consolidation. The mechanics of political change in Mexico after the 1917 constitution focused on achieving competitive, fair, and regular elections to define government positions throughout the country, from the Presidency to mayors in the two thousand four hundred and sixty-three municipalities in the country[5]. Even though today candidates can run independently (without a party), for example, and the other instruments of citizen participation, such as popular consultation, legislative recall, or the right for civil society to present legislative initiatives are available, the high levels of corruption in the public and private spheres continue to be reason enough to consider those rights and liberties as inequitable and unequal.

The Rule of Law in Mexico does not fit the parameters of quality democracy[6] despite the progress that has been made in recent decades in other dimensions. On the other hand, the mere existence and compliance with the Rule of Law is not enough either. In addition to its minimum base, it is necessary to build a *Democratic Rule of Law* committed to complying with quality standards, but also observant of human rights. This is related not only to the ability to comply

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[4]The most important reforms that founded contemporary democracy in Mexico can be grouped as follows: 1) Profound changes, which involved changing the system through the end of the dictatorship, the constitutional definition of democracy, and the emergence of the hegemonic party (1911-1929); as well as the end of authoritarian presidentialism and the emergence of social movements (1930-1976); and 2) Fundamental changes in the system, which once defined as democratic, were gradually perfecting the legal framework through electoral reforms during the period spanning from 1977 to 2014. Effective compliance with the rule of law was subordinated to discussion on the party and electoral system. For further explanation, see (Pérez & Chavarría, 2018, Quality of Democracy and Political Challenges in Mexico).

[5]Geografía (2018). Source:
http://www.inegi.org.mx/geo/contenidos/geoestadistica/CatalogoClaves.aspx.

[6]…a quality democracy is one that presents a stable institutional structure, which makes freedom and equality of citizens possible through the legitimate functioning of its institutions. It completely satisfies the citizens (results). …and there are conditions of freedom and equality (content)… mechanisms to assess whether the government works in relation to the demands expressed by civil society (procedure) exist (Morlino, 2005, Calidad de la democracia. Notaspara sudiscusión, pp. 38-39, my own translation).

with the law and enforce it, but also to the autonomy and efficiency of the justice system, the fulfilment of political rights and civil liberties (Morlino, 2010), without the abuse of police or armed forces and, complementarily but rather important-ly, with effective forms of fight against corruption and with limits to the poten-tial abuse of government power.

The last section deals, of course, with the NAS, which—legal and regulatory configurations aside—is one of the most important institutional instruments to strengthen the Rule of Law and, consequently, to improve democratic condi-tions. However, even though it has included citizen participation in the three le-vels of government from its inception, a serious weakness has been detected in the system as a whole: the interest in combating corruption in the states of the federation does not parallel that at the national level. Despite being a constitu-tional mandate, some of the states with the highest levels of corruption do not have adequate legislation, and the system's efficiency depends largely on its links with state and municipal governments.

The research process consists of a qualitative study that links the concepts of Rule of Law, Democracy and Corruption with the implementation of a particular public policy, such as the NAS. The methodological strategy relates the theoreti-cal analysis with evaluation indices of government performance in the matter.

2. Rule of Law in Its Minimal Conception

One of the first issues to be resolved when linking the Rule of Law to democracy is the type of definition that is adopted. During the last decades, the debate on the contents that both concepts should comprise if they are rise to the challenges of 21st century societies has grown in importance.

However, one of the difficulties around the different definitions of democracy is that, for the most part, they are limited to complying with certain basic cha-racteristics that allow us to verify the existence of indicators determining the democratic or anti-democratic character of a given political regime, without nec-essarily considering the social sphere as an important part of its construction. The consequences of this limitation are mainly reflected in the establishment of regimes that can be seen as democratic when considering the realm of formali-ties and laws, but that are in fact only circumscribed to the rules and procedures of access and distribution of power, without considering a broader set of rights. This is no small difficulty if we consider that democracy's success is achieved when it satisfactorily responds to social demands[7].

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[7]The minimal definitions of democracy are constrained to the sphere of the theoretical, the legal or the political, without fundamentally considering society as a whole or the social groups that make it up as recipients of its results. This has to do with the exhaustion of traditional theoretical perspec-tives in the study of political systems, which focus only on principles of criteria verification and fal-sification for assigning a democratic or non-democratic character to systems, such as the existence of institutional mechanisms for access and distribution of government positions, but without taking into account the fulfillment of a set of citizen rights; the operation of constitutional frameworks or an index of laws, nda without considering the guarantee of substantive dimensions of democracy, such as, for example, equality and freedom of citizens.

Something similar happens with the definition of the Rule of Law (Palombella, 2010). A good part of the attributes assigned to it are restricted to the application and fulfilment of regulatory frameworks[8]—which may or may not be democratic—and which hardly incorporate the principles of equality and freedom as part of a set of fundamental rights. Thus, the implementation of a quality democratic system, aimed towards the fulfilment of its social responsibilities can be sabotaged by a minimal Rule of Law and vice versa; Rule of Law directed towards the protection of rights may be limited by weak democratic mechanisms, which would need to be strengthened. Current democracies require much broader sets of contents than those referring only to electoral processes, and the Rule of Law must also exceed the threshold of minimal definitions. Strictly speaking, the Rule of Law rest on the fact that "every law must have been drafted and publicly promulgated by a competent authority before the events it intends to regulate occur, and said law is applied equitably by the relevant institutions, including, but not only, the Judiciary" (O'Donnell, 2004: p. 2).

This minimal definition alludes to the due process for the passing of laws and to the powers of the legislative branch of government on that matter. It also refers to principle of non-retroactivity of the law and the general scope of its application, as well as to the institutions responsible not only for the enactment of laws, but also for their enforcement. In this sense, the Rule of Law has also been a tool of non-democratic governments, such as monarchies or dictatorships. In the absence of a complete Rule of Law, with a scope that goes beyond the regulatory framework to enact and enforce laws, freedom and equality as citizenship values cannot be guaranteed. Other attributes that are specifically directed towards the protection of said values are needed[9].

With the implementation of these minimum contents, political systems present serious problems that undermine the primary intention of regulating the exercise of power, for example, deficiencies in the legislation itself—not meeting the objectives that gave rise to it, violating the equity principle through selective

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[8]Some of the most important definitions of the rule of law and its relationship with the political system have been classified as formal, substantive, and operational. This classification allows us to identify what type of institutional structure has been designed according to the rule of law we are talking about: universal for the creation of laws that limit government power; formal for the generation of clear, prospective, general laws, publicly promulgated and defended in independent courts; of substantive content so that in addition to the above, rights such as the common good, equality, freedom and/or justice are guaranteed; or operational to implement professional, independent and impartial justice institutions that guarantee fundamental rights. This way, its empirical analysis is made possible based on three indicators: 1) The institutional structure established by nation states; 2) The political systems that have incorporated mechanisms to guarantee fundamental rights and that, therefore, can be considered as democracies; and 3) The measurement and evaluation of the performance of the Rule of Law, as well as the degree of consolidation that they have achieved. (Aguiar, 2013, Estado de Derecho y Régimen Político).

[9]For example, for the due process in the formulation of laws, they must be prospective and clear; relatively stable; they must be drafted in accordance with public and general rules; independently of the judiciary; respecting the basic principles of fairness, impartiality and the right to an open and fair hearing; the courts must have review powers to ensure that the principles of the rule of law are complied with; courts must be accessible and crime prevention agencies must not be allowed to act above the law (O'Donnell, 2004, The Quality of democracy. Why the rule of law matters).

application of the law, despotic treatment by governments towards their citizens considering themselves above the law, conditions of injustice and impunity due to an inefficient and bureaucratic judicial system, and the simple and flagrant illegality when the law is applied intermittently and discretionally (O'Donnell, 2004).

Considering all the strides in strengthening the electoral and party system in Mexico, high disapproval rates for democracy as a form of government[10] could be explained from these conceptual limitations of the Rule of Law and their accompanying repercussions on the restriction of rights. For this reason, when the Rule of Law is linked to democracy, more than a minimal definition is needed. It is necessary to complement it with attributes that widen and improve its scope; it must be empirically related to the protection of a set of political and civil rights, as well as establishing control mechanisms for the potential abuse of state power based on three principles (O'Donnell, 2004):

1) The establishment of legal rules that are valid, include sanctions and procedures previously and carefully established, and are regulated by constitutional norms;

2) Established rights and obligations are universal; and

3) Rights and obligations inherent to political citizenship have a subset of civil rights that people cannot forfeit. This mechanism indicates the scope of the Rule of Law within the limits of a territory and a population—when referring to political citizenship—in contemporary democracies. Likewise, it refers to the essential qualities of people: the principles of equality and freedom as inherent to the human condition, which the Rule of Law must protect regardless of the political regime in question. The relationship between state institutions materializes in this point, democracy as a form of government and citizen rights—among which is the limit to potential abuses of power and the fight against corruption.

In this sense, a broad definition of the Rule of Law that is also related to democracy as a form of government is not generically linked to compliance with the law and the proper functioning of the courts, but mainly:

…as the foundation of the authority that is legally exercised by a state and a government that coexist within a democratic regime. This means that there is a legal system that is in itself democratic in a three foldway: 1) It sanctions and guarantees participatory rights, political liberties and the guarantees of the democratic regime; 2) It sanctions and guarantees the civil rights of the entire population and 3) It establishes accountability networks that put the acts of all public and private agents, including the highest ranking government officials, under legal control… (O'Donnell, 2004: pp. 7-8, my own translation).

The fulfillment of these three conditions constitutes a broad and comprehensive definition of the Rule of Law. When speaking of the type of relationship

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[10]The support for democracy index *Latinobarómetro* 2021 reported that acceptance of democracy in Mexico, had an increase of 5 points, going from 38 in 2018 to 43 in 2020. Still below the total average of acceptance of 49 points in Latin America (Latinobarómetro, Informe 2021).

between the principles of equality and freedom with the first forms of social organization and later, with the first nation-states and the consequent adoption of democracy[11], these notions refer to the need not only to enforce the law in all its spheres and levels—because such a characteristic is not exclusive to democracies—, but to doing so with regard for and guarantee of fundamental rights.

The complexity that this permanent interaction entails is not a minor one if one considers the paradox between the rise of democracy in most countries around the world[12] and the high rates of discredit and disapproval of democratic institutions. This kind of gap between expectations and results could be explained from the study and evaluation of six characteristics that the Rule of Law should contain in contemporary political systems (O'Donnell, 2004):

1) The legal system must be homogeneous throughout the territory of the State;

2) Effective and legally supported control over the entire territory;

3) Independence of the judiciary;

4) The degree to which state agencies treat citizens with fairness, consideration and respect;

5) Compliance with civil rights; and

6) Compliance with human rights.

These six characteristics, proposed to locate the objectives of the Rule of Law, allow us to link people's political values —equality and freedom—to a higher level than it would be possible with a minimal definition, and place them at the center of their relationship with democracy as the prevailing form of government in most contemporary political systems. They have the purpose, in the first place, to disaggregate the elements that can constitute a democratic Rule of Law; secondly, to identify its empirical indicators for its practical analysis, and lastly, to make its assessment possible in gradual terms, that is, to evaluate its degree of

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[11]The democratization of the first States has been studied by Huntington (1994) through waves (transitions from a non-democratic regime to one that is democratic) and counter-waves (as inverse processes: transitions from democratic regimes to non-democratic regimes). According to the author, the first wave of democratization took place in the United States, France, Argentina, Chile, Switzerland and Great Britain, during the years from 1828 to 1926. The counter wave that corresponds to this period took place between 1922 and 1942, in Italy, Germany, Lithuania, Latvia, Poland and Estonia. The second wave came from 1943 to 1962, with the decolonization of India by the British government and the Allied occupation of Germany, Italy and Austria. The respective counter wave went from 1958 to 1975, with a series of military coups in Latin American countries, such as Peru, Chile and Uruguay. And finally, the third wave of democratization starting in 1976, in Southern Europe, Latin America, South Africa, Eastern Europe, Russia and Romania.

[12]Empirical evidence shows that more than 60% of all countries have at least some minimal forms of democratic institutions and procedures. The Community of Democracies (CD) lists more than 100 countries. The UN International Conference on New or Restored Democracies (ICNRD) has been strengthened since its creation in 1998 for the global development of democracy by virtue of its suitability to promote, among other objectives, economic development, poverty reduction and the protection of human rights (Beetham, Carvalho, Landman, & Weir, 2008: p. 7). Freedom House (2017), for example, has recorded that while in 1974 the number of democratic states was only 39, by the end of 2006, out of 193 independent countries, 123 of them qualified as at least electoral democracies. Democracy has become the predominant form of government in the world not only because it enjoys international legitimacy, but also because it guarantees a minimum set of rights and freedoms inherent to people (Magen & Morlino, 2009).

effectiveness in the different dimensions of quality democracies.

The great challenges of today's democracies are around the need to move from a minimal definition of the Rule of Law that supports the unrestricted compliance with the law, towards the gradual fulfillment and guarantee of fundamental, individual and collective rights.

3. Democratic Rule of Law

The Rule of Law can be established as the basis of quality democracies because it is opposed to arbitrary or discretionary government systems with wide margins of power and without restrictions[13]. It cannot be separated from the fundamental elements of political morality and institutional viability. Laws consecrate and protect political and civil liberties, as well as procedural guarantees; all public powers are limited by the same legal framework and individuals can assert their rights against the State. Since the government itself is governed by law, political corruption and other forms of illegality are prohibited (Magen & Morlino, 2009).

A democracy in terms of content, procedures, and results, is therefore characterized by the presence of a democratic Rule of Law, which itself incorporates five main dimensions (2009):

1) Protection of civil liberties and political rights;

2) Independence of the judiciary and a modern judiciary;

3) Institutional and administrative capacity to formulate, apply and enforce the law;

4) Effective fight against corruption, illegality, and abuse of power by state agencies; and

5) Security forces that are respectful of citizens' rights and under civilian control.

As can be seen, the six characteristics proposed in the previous section as part of Rule of Law (O'Donnell, 2004), materialize as variables inquality democracies for their empirical evaluation (Magen & Morlino, 2009). However, the one marked with number 4, referring to the effective fight against corruption, illegality, and

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[13]In the case of Mexico, for example, until before the alternation in the Presidency of the Republic in the year 2000, the Mexican regime was defined as an authoritarian presidentialism, with an executive branch that exceeded its constitutional powers and exercised some meta-constitutional ones, with subordination of powers, centralized decision-making, with corporatized and patronage social and business organization and trade union; as well as with a hegemonic party, elections without real competition, without opposition parties and restrictive electoral laws. Some of these meta-constitutional powers of the president: 1) Appointment of the presidential candidate of the single party (PRI), who was considered the virtual winner of the contest; 2) He was head of state and of the armed forces, which allowed him military control; 3) He was the maximum leader of the hegemonic party, which effectively made it the property of the State, the party in government was not distinguished from the government party; 4) Negotiator and interlocutor with social, corporatist and patronage organizations, and other interest groups,; 5) He appointed the candidates of the hegemonic party to the governorships of the federative entities, which strengthened the local personal leaderships; 6) He appointed the candidates of the hegemonic party for the Chamber of Deputies and the Senate of the Republic; 7) He was the unquestioned leader of government policies; and 8) He maintained the initiative and control of the political and electoral reforms (Woldenberg, Después de la transición, 2002: p. 39; Escobedo, 2000: pp. 120-127).

abuse of power by state agencies, deserves a differentiated treatment because it implies certain attributes that go beyond the scope of the regulatory framework of institutions regarding the administration and enforcement of justice, and is directly involved with the rest of the democratic dimensions (Table 1).

The fight against corruption and abuse of power is located transversally both in the characteristics of the Rule of Law that incorporates the principles of equality and freedom and in the dimensions of a Democratic Rule of Law. Although they can be mistakenly understood as synonyms, Democratic Rule of Law and democracy as a form of government are not the same; the affinity between both concepts is profound and multidimensional, but with one difference: the incorporation of accountability mechanisms[14].

The virtues of the Rule of Law are substantially the same as those of the democratic process in three key aspects: 1) the Rule of Law defends the political rights of a democratic regime; 2) it protects the liberties and rights of the entire population (including minorities and other disadvantaged groups); and 3) it establishes horizontal accountability (responsibility networks that mean that all public and private agents, including the highest state officials, are subject to

Table 1. Transition from the rule of law to the democratic rule of law.

Characyeristics of the Rule of Law with the principles of equality and freedom	Dimensions of a Democratic Rule of Law
The judiciary must be homegenic in all of the State's territory. Effective and legally suported control over the whole of the territory.	Institutional and administrative capabilities to formulate, apply and enforce the law.
Independence of the judicary	Independence of the judiciary and a modern justice system.
State agencies treat the citizenry with equity, consideration and respect. Civil rights fulfilled Human Rights fulfilled	Protection of civil liberties and political rights. Law enforcement and security agencies that respect citizen rights and operate under civilian control.
Effective fight against corruption, illegality, and abuse of power by state agencies.	

[14]By accountability, it is understood that all agents, public and private, including those at the highest level, are subject to an appropriately established legality, with controls that apply the full weight of the law to their actions. Hence, each citizen is subject to the legal authority of one or more institutions, and no one should be above or below the law. In this sense, two types of accountabilities are defined: 1) Electoral accountability: via electoral institutions through which citizens can change parties or people in government, and/or before organizations and social groups who demand from the state the sanction or punishment for officials who violated the law; and 2) Inter-institutional accountability: before state institutions that prevent or punish presumably illegal actions of public servants. In this way, the establishment of a democratic rule of law with accountability implies that citizens are not only subjects of democracy, but also agents of the political system. Therefore, they should never be seen as supplicants of the goodness of the government or the state. Citizens—as agents and bearers of a set of civil rights and eventually also of social rights—have the right to be treated with full consideration and respect, in equal conditions (Morlino, 2012).

appropriate and legally established controls for the legality of their actions (Magen & Morlino, 2009).

Correctly conceived, the interrelationship between the Rule of Law and democracy goes beyond the democratic processes that must permeate the different institutions and spheres of society: the Rule of Law makes individual rights—the basis of democracy—possible.

Of the five variables proposed by Magen & Morlino (2009) for the study of the Democratic Rule of Law, the one marked with number (4), which refers to the effective fight against corruption, illegality, and abuse of power by state agencies, was not included in the institutional design in Mexico after the revolutionary process of the early twentieth century; this was neither an interest of the political elite during the more than seventy years of the authoritarian presidential regime, nor was it part of the large number of subsequent legislative reforms with national scope that sought to articulate legal powers, levels of government, and citizen participation. Those reforms materialized, for example, in the reconfiguration of the electoral system, the party system, the judiciary and the public security system, as instruments of political control.

The Rule of Law is key to the general improvement of democratic performance and until a few years ago, the variable in question was not a priority in the Mexican political system despite efforts to strengthen other procedural dimensions. Along with the attention given to civil liberties and political rights; the independence and modernity of the judiciary; and the institutions in matters of justice, corruption, illegality, and abuse of power in Mexico were neglected.

4. The Fight against Corruption as Part of a Global Agenda

According to The World Justice Project (WJP)[15], Mexico's overall Rule of Law score dropped 2.9% in their 2020-2021 report. This meant falling by one position in the global ranking. Currently, it ranks 113th out of 139 countries in the world and 27th out of 32 countries in the Latin American and Caribbean region: within the last places in either of the two regional scales. The country with the highest score in the region is Uruguay (25th place out of 139 countries), followed by Costa Rica and Chile. The three countries with the lowest scores are Nicaragua, Haiti, and the Bolivarian Republic of Venezuela (139th out of 139 countries).

In the context of the health emergency and its consequences, Mexico faces serious deficiencies regarding citizen participation, the incidence of civil society and the press as checks and balances to the power of the Presidency of the Republic. In terms of liberties, freedom of opinion, expression, meeting, and asso-

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[15]WJP defines the concept of Rule of Law as the support of equality, opportunities, and peace-conditions. As the basis for the development of transparent governments that guarantee fundamental rights through four principles: accountability, fair laws, open government, and accessible and impartial mechanisms to resolve disputes. Collectively, they encompass eight indicators: 1) Limits to government power; 2) Absence of corruption; 3) Open government; 4) Fundamental rights; 5) Order and security; 6) Regulatory compliance; 7) Civil Justice; 8) Criminal Justice (WJP, 2022).

ciation register serious setbacks in terms of their effective exercise. In addition, delays in civil and criminal justice procedures have increased. Despite the creation of the NAS as a public policy in 2016, WJP (2022) reports that in 2021, the greatest challenge facing the Mexican State is Corruption.

Transparency International (TI) (2020), on the other hand, showed that Mexico improved two points and six places in the Corruption Perception Index (CPI) 2020 compared to 2019, and it scored 31 points (where 0 would be the lowest and 100 the best possible evaluation). Even though it now ranks 124th out of 180 countries evaluated, it continues to have the lowest score among the countries in the OECD, ranking last of the 37 member countries.

The risk of impunity that violates the Rule of Law remains latent due to the lack of sanctions for corruption cases and networks that are known to public opinion after being revealed by investigative journalists. Likewise, TI reported that in the 2016 to 2019 period none of the cases of transnational corruption involving Mexican companies and officials was sanctioned in Mexico[16].

5. The NAS in Mexico

There are few organizations that measure, evaluate, and report the levels of corruption and its consequences in the country at a national level. The Mexican Institute for Competitiveness (IMCO, 2017), Mexican Transparency (TM, 2017), The Accountability Network (RRC); Mexicans against Corruption and Impunity (MCCI), *México Evalúa* (ME), the Employers' Confederation of the Mexican Republic (COPARMEX)—a business oriented organization—and the National Institute of Statistics and Geography (INEGI)[17]—a government institution—are the most respected in the field, but they generally take the measurements and results of international organizations as a reference. Most of them—except INEGI—work with self-raised funding that tends to be limited, and their evaluations are not so regular and, therefore, not updated. As long as adequate methodologies and indicators are not generated in the country for our reality, research references will continue to be those of international organizations, which aside from the possible external influence or manipulation of data, stemming from their investment in the financing of the developing countries, are the only measurements that can be used as a parameter of institutional performance in the country.

In addition to strengthening the Rule of Law, legislation needed for effectively combating corruption must consider three fundamental variables: the guarantee of political rights; protection of the entire population's liberties and rights; and

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[16]In three years of government, emblematic arrests have been made, such as the case of the former Secretary of Social Development, Rosario Robles, or the lawyer Juan Collado and—with the support of international corporations—the capture and extradition of the former director of Pemex, Emilio Lozoya, and the former governor of Chihuahua, César Duarte. On August 1, 2021, a popular consultation was held in Mexico, which was promoted by the federal government as an attempt to bring the last 5 former presidents to justice for alleged acts of corruption, without favorable results.

[17]All acronyms shown correspond to the organizations' names in Spanish.

the establishment of accountability mechanisms, networks that entail that all public and private agents, including the highest state officials, are subject to appropriate and legally established controls on the legality of their acts (Magen & Morlino, 2009).

Based on these variables, the indicators for the empirical analysis of the scope and limitations of the Rule of Law are the following: 1) Protection of civil liberties and political rights; 2) Independence of the judiciary and a modern justice system; 3) Institutional and administrative capacity to formulate, apply and enforce the law; 4) Effective fight against corruption, illegality and abuse of power by state agencies; and 5) Security forces that are respectful of the rights of citizens and are under civilian control.

Of these five indicators, four of them have been incorporated into the Mexican legal framework—under the figure of National Systems—(as shown in Table 2), based on a minimum set of rights. Evaluation parameters have been generated on institutional performance from the observance or non-compliance thereof, and they are subject to public scrutiny.

From the foregoing, it follows that an effective fight against corruption, illegality, and abuse of power by state agencies has not been incorporated into the nationallegal framework for coordinated attention at the three levels of government, or for the design and implementation of public policies. There may be several reasons for this: the presidential and authoritarian nature of the Mexican political system, which regarded corruption not as a problem but rather as a tool; the lack of interest of the Legislative Branch—or the political forces represented in it—which, after more than a hundred years of legal reforms, legislated on the matter just recently; or simply because it is typical of the emergence of new democracies in the process of consolidation.

The fact is that the effective fight against corruption had not been given the importance it now has. At least until July 2016 (Secretaría de Gobernación, 2016), when a new law giving rise to the NAS came into force with the task of establishing the principles, general bases, and public policies for coordination between authorities at all levels of government for the prevention, detection, and punishment of administrative offenses and acts of corruption, as well as for the supervision and control of public resources. The purpose of this system is to establish, articulate, and evaluate the policy on public or private corruption in the

Table 2. Indicators of the rule of law included in the Mexican legal framework.

Justice system	1) Protection of civil liberties and political rights
	2) Independence of the judiciary and a modern justice system
National Public Security System	3) Institutional and administrative capabilities to formulate, apply and enforce the law, and
	4) Law enforcement and security forces that respect citizens' rights and act under civilian controls.

governmental sphere (Senado de la República, 2017).

However, within the framework of a quality democracy and the primacy of the Rule of Law, legislation alone does not guarantee the fight against corruption will work. The poor performance of Mexican democracy in all its dimensions, and the negative evaluations—both nationally and internationally—in each of its areas of performance and, in particular, those dealing with human development, require responsible institutions with quality standards and above all, they demand citizen participation as part of an effective surveillance and transparency mechanism in the exercise of public functions.

6. Implications of the NAS in the Configuration of the Rule of Law

Without undermining the progress achieved through the other two systems, the NAS presents itself as a relevant opportunity for effective application of the law and for transparency in the exercise of public functions. Its proper execution will allow the completion of a cycle of reforms that have laid the legal and regulatory foundations for the construction of a Democratic Rule of Law. The administration of justice, the protection of human rights, and the commission of crimes in local and federal jurisdictions, show deficiencies that easily fail any evaluation, but the correct implementation of the NAS can contribute to improving institutional performance—as proposed by O'Donnell—committed to the fulfillment of citizen rights through efficient results in its five components. However, this opportunity will be limited if other mechanisms that comprehensively improve democratic conditions and build citizen participation are not implemented along with the NAS. Accountability, the participation of minorities, political competition, and an efficient response to social needs must be added to the fight against corruption.

As a recently created national system and in the face of the new federal government in office as of 2018, the organic structure and legal framework of the NAS are constantly being tested by the complexity involved in ending the authoritarian past of presidentialism in Mexico. However, some of the primary functions of this new system could strengthen the Rule of Law if an attempt is made to answer a set of questions that serve as a guide for institutional activity in dealing with and sanctioning acts of corruption: Is integrity in public service performance assured? To what extent is the separation between public service and personal business and family interests of officials effective? How effective are measures to protect officials and the public from being implicated in bribery? To what extent do the rules and procedures for financing elections, candidates, and elected representatives prevent their subordination to sectors' interests? To what extent is the influence of powerful corporations and business interests on public policy kept in check, and to what extent are both free from involvement in corruption, including abroad? What degree of confidence do citizens have that public officials and public services are free from corruption? (Beetham, Car-

valho, Landman, & Weir, 2008).

These questions are relevant because they can reveal disparities both in the functioning and in the results generated by the NAS, depending on the level of government where they are being applied. Some of the most important deficiencies in this matter are found at the sub-national scale.

7. National Diagnose and Local Anticorruption Systems

State governments are a fundamental part in the construction of national democracy. The first advances in terms of plural representation in the Legislative Power, in the alternation of the Executive branch and of social movements with citizen participation, occurred at the state level. Some of the most sustained explanations about the alternation of the year 2000 in the federal government, argue that it was nothing more than the conclusion of a long process that began with the gradual obtaining of representation in the municipalities and states of the republic.

In the global context, the importance of local governments is increasing when implementing programs and public policies to meet the specific needs of the population. The municipality, as the first level of government and contact with citizens, has generated first-level experiences in the creation of social assistance and sustainable development programs, for example. Including municipalities in federal plans and programs is not easy, above all, due to the federal nature of the republic, which recognizes exclusive powers in full use of their freedom and sovereignty. In terms of corruption, they are no less important.

According to the National Institute of Statistics and Geography (INEGI) and the National Government Impact Quality Survey (ENCIG, 2019), which provides information on the population's perception of the phenomenon of corruption and their experiences when carrying out procedures, payments, and requests for services, as well as on their contact with authorities and public servants, during 2019, 15.7% of adults who had contact with public servants were victims of corruption. In that same year, 6154 public servants were sanctioned: 44.6% were part of federal public administration institutions and 55.4% of state public administrations. 5.1% of the companies had direct experience of acts of corruption.

People and companies' experiences of corruption occurred more frequently with some authority in charge of public security and law enforcement. 59 out of every 100 adults who had contact with these public servants in 2019 were victims of corruption while, in companies, victimization was 35 out of every 100 economic units in 2020.

On the other hand, the highest percentage in corruption experiences was estimated in the contact with security and law enforcement authorities with 59.2% of the cases; followed by procedures related to land use, demolition or construction permits, requests for evidence of freedom from encumbrance or other procedures in the Public Registry of Property with 25 percent. These figures express both the relationship of people affected, as well as the experiences of corruption

registered in procedures, payments, and requests for public services, as well as other types of contacts with public servants in urban areas.

Regarding the population's trust in people, institutions, or actors of society, it is estimated that, in 2019, people trusted their relatives and elementary public schools the most, with 86.8% and 75.1% respectively. 56.7% trusted Human Rights commissions. A revealing fact about citizen acceptance of institutions is that the Army and the Navy have 73.5% confidence compared, for example, to 51.2% of people who trust the Federal Government, or 40.5% who trust state governments. The lowest degree of trust was for political parties with 24.6 percent.

The total cost of corruption during the reference year amounted to 12,770 million pesos in the making of payments, procedures, or requests for public services and other contacts with authorities, which is equivalent to 3822 pesos on averageper person affected. The cost of corruption in interactions with public security authorities was 2244 million pesos, which represented 1294 pesos on averageper person affected.

During 2019, the perception of the frequency of acts of corruption in government institutions fell to 87%, from 91.1% in 2017. Perhaps due to the effects of a zero tolerance for corruption campaign implemented in media communication by the federal government as of 2018. However, data shows that the prevalence rate of corruption increased from 14,635 victims per 100,000 inhabitants in 2017, to 15,732 in 2019 (Table 3). This means a constant rise since 2015, when the number of victims of corruption per 100,000 inhabitants was 12,590. The role of local governments in building a Democratic Rule of Law is essential for the national index, which increased by 7.5% in 2019.

The states that had the highest growth in this practice per hundred thousand inhabitants—to the detriment of the Rule of Law during 2019—were: Guanajuato (80.6%); Puebla (63.9%); Durango (58.6%); Oaxaca (42.0%); Nayarit (39.8%); Coahuila (36.7%); State of Mexico (30.1%); and Veracruz (24.6%).

The incidence rate also increased during 2019: from 25,541 acts of corruption per 100,000 inhabitants in 2017 to 30,456 in 2019. These figures express both the relationship of people affected, the experiences of corruption registered in procedures, payments, and service requests, as well as other types of contacts with public servants in urban areas (Table 4).

At the national level, corruption incidence per hundred thousand inhabitants increased by 4.1%, going from 15.1% in 2017 to 19.2% two years later. The states where the percentage of corruption acts increased in this same period were Guanajuato (161.2%); Puebla (100.6%); Quintana Roo (60.4%); State of Mexico (59.6%); Mexico City (40.2%); Jalisco (37.5%); and Veracruz (29.0%). Both corruption prevalence and incidence in Mexico show a different reality versus the rhetoric of the new government at the federal level that proclaimed corruption had ended as of 2018 with its inauguration. The operation and results of the NAS for articulating anti-corruption public policies at the local and national scales have not stopped the phenomenon of corruption nor have

Table 3. Corruption prevalence rate per 100,000 inhabitants in Mexico 2017/2019.

Federal entity	Victims of corruption per 100,000 inhabitants cada 100			Federal entity	Víctimas de corrupción por cada 100,000 habitantes.		
	2017	2019	Change %		2017	2019	Change %
NATIONAL	**14,635**	**15,732**	**7.5**				
Aguascalientes	14,556	14,677	0.8	*Morelos*	17,229	16,396	−4.8
Baja California	13,757	11,330	−17.6	*Nayarit*	11,042	15,439	39.8
Baja California Sur	11,904	7673	−35.5	*Nuevo León*	13,690	10,348	−24.4
Campeche	12,708	13,964	9.9	*Oaxaca*	11,192	15,897	42.0
Coahuila	11,272	15,410	36.7	*Puebla*	9577	15,693	63.9
Colima	10,646	6945	−34.8	*Querétaro*	11,829	11,324	−4.3
Chiapas	16,184	14,137	−12.6	*Quintana Roo*	17,618	19,946	13.2
Chihuahua	15,633	9381	−40	*San Luis Potosí*	16,729	13,144	−21.6
Ciudad de México	20,093	20,690	3.0	*Sinaloa*	13,963	12,442	−10.9
Durango	16,010	25,389	58.6	*Sonora*	15,158	12,562	−17.1
Guanajuato	8968	16,200	80.6	*Tabasco*	14,686	8640	−41.2
Guerrero	14,308	15,808	10.5	*Tamaulipas*	11,325	7705	−32.0
Hidalgo	13,905	9883	−24.5	*Tlaxcala*	12,568	11,617	−7.6
Jalisco	13,921	16,100	15.7	*Veracruz*	10,592	13,225	24.9
Estado de México	15,901	20,683	30.1	*Yucatán*	12,344	13,260	7.4
Michoacán	14,847	10,231	−31.1	*Zacatecas*	11,109	6872	−38.1

Fuente: INEGI/ENCIG 2019.

they diminished it. According to the same survey, the most worrying problem for citizens is insecurity (78.6%). Since 2011, corruption has been among the three most important problems, with 52.8% in 2019; and since 2015 it ranks second, even above unemployment (32%), poverty (31%) and poor government performance (28%) (ENCIG, 2019).

According to the above statistics, strengthening of the Rule of Law in democratic conditions makes timely and permanent monitoring of the actions and results of the NAS paramount as a recently created public policy on the matter, not only at the national level but also in each of the federal entities. At the subnational level, the institutional structures, the division of powers, the administration of justice, as well as social participation, respond to different incentives,

Table 4. Corruption incidence rate per 100,000 inhabitants in Mexico 2017/2019.

Federal entity	Corruption acts per 100,000 inhabitants cada 100			Federal entity	Corruption acts per 100,000 inhabitants		
	2017	2019	Change %		2017	2019	Change %
NATIONAL	**25,541**	**30,456**	**19.2**				
Aguascalientes	24,443	25,935	6.1	*Morelos*	29,689	32,095	8.1
Baja California	19,467	20,369	4.6	*Nayarit*	21,640	24,257	12.1
Baja California Sur	22,469	11,975	−46.7	*Nuevo León*	22,559	14,394	−36.2
Campeche	27,698	23,587	N.A.	*Oaxaca*	24,780	24,778	N.A.
Coahuila	22,455	50,307	N.A.	*Puebla*	13,406	26,888	100.6
Colima	12,601	9938	−21.1	*Querétaro*	20,663	17,205	−16.7
Chiapas	21,173	23,975	13.2	*Quintana Roo*	22,046	35,364	60.4
Chihuahua	40,673	19,926	N.A.	*San Luis Potosí*	28,007	29,301	4.6
Ciudad de México	34,111	47,834	40.2	*Sinaloa*	40,682	22,204	−45.4
Durango	46,676	55,192	N.A.	*Sonora*	61,652	24,221	N.A.
Guanajuato	13,245	34,593	161.2	*Tabasco*	26,861	18,354	−31.7
Guerrero	22,613	54,501	N.A.	*Tamaulipas*	17,083	13,218	−22.6
Hidalgo	24,552	16,402	−33.2	*Tlaxcala*	23,364	19,396	−17.0
Jalisco	25,129	34,545	37.5	*Veracruz*	14,277	18,422	29.0
Estado de México	21,124	33,713	59.6	*Yucatán*	19,158	23,083	20.5
Michoacán	26,727	21,043	N.A.	*Zacatecas*	14,721	9693	−34.2

N.A. Not available as at least one of the components needed for the calculation is not statistically significant

Fuente: INEGI/ENCIG 2019.

according to historical contexts that weaken or strengthen democratic dimensions (Chavarría, 2018).

Although the implementation of Local Anticorruption Systems (LAS) is a constitutional mandate for states, that process has shown significant deficiencies that could hinder the effectiveness of the NAS. In 2019, some states still faced different types of problems operating their LAS in a coordinated manner, ranging from the lack of adequate legislation to coordinate their legal framework with the General Law of the NAS, the lack of designation of key appointments for its operation, the lack of public budget allocation to fulfill its functions, and even the lack of autonomy to define their own action agendas. In this context,

the thirty-two realities of the states of the republic try to come together in a national order that, in turn, faces serious difficulties.

Hence the need to carry out research that addresses the problems of Mexican democracy from the local (the municipalities) to the federation, from the inside out and from the bottom up. It is necessary to remember that the most important processes of change in the national political system began at the municipal and state levels; it is essential to build state and municipal information systems that generate their own indicators for monitoring, preventing, and punishing corruption.

The distance between the theory of democracy and its daily exercise generates a credibility deficit that affects the levels of participation and the quality of representation; the principles of equality and freedom seem to fade between constant, almost permanent, violations of human rights, generating fragmented and unequal societies. In Mexico, the promise of a Democratic Rule of Law persists. If the goal is to build democracy, citizenship must also be built.

According to Transparency International (2020), some of the pending issues for the institutional strengthening of the Rule of Law in Mexico are the following:

- Reducing high levels of impunity. Currently, 99.8% of complaints of acts of corruption are not resolved. More than half of the prosecutor's offices in the country are autonomous and remain under the control of state governments.
- Involving citizens in the fight against corruption. Above all, in what refers to mechanisms for damage reparations and non-repetition.
- Institutional strengthening of the fight against corruption. This entails a broad review of the advances and perhaps setbacks in the functioning of the NAS.
- In the context of the health emergency and its social and economic consequences, Mexico must strengthen the Superior Audit of the Federation (SAF) and the National Institute of Transparency, Access to Public Information, and Protection of Personal Data (INAI)
- The Office of the Attorney General of the Republic (FGR) and the institutions for the administration of justice must focus on giving concrete results: sentencing of corruption networks, recovery of assets diverted in major corruption cases, and ensuring compensation for damages to victims of crimes related to acts of corruption.

8. Final Reflection

The quality of democracy in Mexico depends on effective compliance with the Rule of Law, as the latter fosters the former's comprehensive development by allowing not only the existence, but also the acceptable functioning of instruments and institutions accountable that hold public servants and rulers for their actions. The abysmal difference between ideal democracy and real, existing democracy in Mexicogenerates serious questions about its capabilities to tackle high inequality and povertyrates, to prevent and punish the constant violation of

human rights by the state, to protect the life and safety of its inhabitants against the violence generated by the commission of crimes of low and high impact on the social fabric, and to create worthy opportunities for human development throughout the country. The NAS—duly implemented at all levels of government—is potentially a good institutional mechanism to address and improve these conditions.

A national problem, such as political corruption, cannot be addressed in the same way at the three levels of government, hence differentiated public policies that respond specifically to the political, economic, and social context of each federal entity are needed. The efficiency of federal legislation always depends on the efficiency of state legislation. If there are differences in content and procedures, surely there will be differences in terms of results; some of the states with the highest corruption rates have not got adequate legislation to combat it yet.

A large part of the legal provisions in Mexico—from the Constitution to local regulations—do not contemplate any type of sanction in case of non-compliance. Impunity triggers negative consequences that violate the principles of equality and freedom in the country. The substantial difference between the Democratic Rule of Law and the rest of the quality dimensions of democracy is that it requires compliance with the law with respect to human rights, nothing more, nothing less. The historical-social and political contexts of the federal entities largely determine their institutional structure, the will to process conflicts and citizen demands, as well as their insertion in the national democratic system. However, the Democratic Rule of Law is a transversal dimension that involves the three orders of government.

When the normative framework corresponds to the social reality at the three levels of government, but the performance of democracy is not sufficient, equal application of the law with respect to human rights is necessary.

When laws do not work, when they do not address them or solve them, the efficiency of the Rule of Law is needed along with complementary mechanisms, such as accountability and transparency.

However, critical, informed, and responsible citizen participation is also needed. Participation—just like the Rule of Law—is key to improving the performance of democracy at the three levels of government. Democracy is built from societies, from the bottom up; the legal framework is already defined, it needs to be fulfilled. The contents and procedures as quality parameters are already established, but the quality of the results is lacking.

In this sense, some of the pending issues to research are the following: 1) The results that can be generated on the performance of Mexican democracy by relating the Rule of Law to other dimensions, depending on the type of information wished to be known and/or evaluate; 2) Follow-up of the installation of the LAS, in order to analyze their processes of legislation and citizen participation, and studying the indexes of democratic quality in each of the federative entities with respect to the Rule of Law; and 3) The study of the results generated by the

link between the NAS and the LAS's, as well as the public policies and institutions that are generated, in terms of their quality.

The usual ways of understanding democracy from its juridical, legal, or normative aspects, have been surpassed by a reality in which the conditions of poverty and inequality—to mention those with the greatest social impact—demand better results. The political system is necessary, but not sufficient to guarantee equality and freedom as essential values of human beings. A broad conception of democracy in which social inclusion takes place is still missing.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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