

Mexico: A Closer Look at State Anti-Corruption Prosecutors

March 2021



REPORT



Advocacy for Human Rights in the Americas

INTRODUCTION

Mexico has long struggled with endemic corruption and other criminal activity by authorities.¹ High-ranking federal officials of recent years have been implicated in crimes ranging from torture to cooperation with drug traffickers.^{2,3} In the last five years, roughly 20 former (and current) governors have faced formal investigations or trials for corruption, organized crime, and other illegal acts.^{4,5} Thus far, few crimes committed by high-ranking officials have led to convictions in Mexico, with the outcome of charges filed in certain emblematic cases still to be seen.⁶ Meanwhile, participation of state agents in a range of crimes continues, including but also extending beyond the high-profile cases reported in the news.

Corruption has remained largely unpunished despite an expansion of Mexico's anti-corruption infrastructure in recent years. The National Anti-Corruption System (Sistema Nacional Anticorrupción, SNA), mandated by 2015 constitutional reforms and established in 2016, is intended to tackle corruption head-on by creating a slate of new bodies equipped to fight corrupt practices at the federal and state levels.^{7,8,9} The transformation of the former federal Attorney General's Office (Procuraduría General de la República, PGR) into an autonomous National Prosecutor's Office (Fiscalía General de la República, FGR) is another key step meant to increase the independence and concrete results of investigations into criminal networks, including crimes committed by or in collusion with authorities. However, as WOLA has highlighted previously, implementation of the National System has been uneven, and the FGR has yet to deliver on the promise of transforming into an effective and truly autonomous institution (although the efforts of certain FGR offices point to positive practices that could be replicated by others, given the necessary political will).^{10,11,12}

Despite the obstacles it faces, the National Anti-Corruption System presents important areas of opportunity, with several of its components warranting greater attention than they have received. The System includes the creation of state-level anti-corruption systems with Citizen Participation Committees, inter-agency Coordinating Committees, and specialized anti-corruption prosecutors, among other bodies.¹³ While some states have been slow to implement their anti-corruption systems, the systems' basic infrastructure now exists in the vast majority of states.^{14,15} In particular, the National System reports that, as of February 19, 2021, 30 of 32

states have named specialized anti-corruption prosecutors.¹⁶ These officials can and must play a key role in the national anti-corruption fight.

National and international actors studying corruption and working to support the rule of law would do well to focus attention on such prosecutors' offices, since any anti-corruption effort that seeks a broad impact in Mexico requires both robust implementation at the state level and tangible results in the realm of criminal justice. For this reason, below we offer an overview of some of the challenges and advances of state-level anti-corruption prosecutors, identifying several areas that should be monitored and addressed going forward.

Methodology

The present exercise focuses on five states: Coahuila, Jalisco, Nuevo León, Sonora, and Veracruz. We interviewed several state anti-corruption prosecutors and submitted freedom of information requests to prosecutors' offices in late 2020, as well as exchanging written communications and interviewing members of civil society organizations and academic institutions who follow the work of anti-corruption prosecutors' offices in early 2021.¹⁷ These virtual focus group discussions, open-source reports, and news articles allowed us to identify common areas of concern that represent challenges seen not only in the focus states but also more broadly throughout the country.

Why focus on state-level prosecutors?

As analysts in Mexico have pointed out, an effective National Anti-Corruption System requires actions beyond punishing individuals for crimes: it must include analysis and improvement of institutional practices to prevent systems of corruption.¹⁸ Administrative sanctions are another important component of the strategy. Mexico's National System includes multiple bodies in charge of these areas.

At the same time, however, Mexico's legacy of impunity underscores the need to consolidate the investigation and prosecution of corruption-related criminal offenses, establishing a credible system of consequences to dissuade acts of corruption that cause serious harm to society. For this reason, our analysis focuses on advances and challenges in punishing acts of corruption through the criminal justice system. Still, this is only one part of the larger anti-corruption strategy and is not the only objective of anti-corruption prosecutors' work (notably, recovery of funds stolen through corruption is another relevant objective).

Due to the distribution of government bodies and criminal jurisdiction in Mexico, most corruption-related crimes can be expected to fall under state (not federal) jurisdiction. Thus, the role of prosecutors at the state level is crucial.

State-level anti-corruption work presents unique challenges and opportunities. One strength of the system is the existence of the National Convention of Anti-Corruption Prosecutors (Convención Nacional de Fiscales Anticorrupción, CONAFA), which brings together prosecutors from across different states. It facilitates collab-

oration and analysis to paint a more complete picture of corruption and the tasks required to effectively combat it.

The picture has not been entirely encouraging, however, with many states struggling to produce significant results in criminal investigations and prosecutions. Civil society and the media have questioned the lack of convictions obtained by some of the new offices, prompting responses from prosecutors emphasizing their short time in operation (criminal trials in Mexico may take years) and suspensions of judicial branches' work in 2020 due to the COVID-19 pandemic.¹⁹

Independently of the performance to date of each office, state-level prosecutors are an essential tool to fight corruption. If the National Anti-Corruption System is to reach its potential, it is essential for these offices to have the capacity and support necessary to effectively tackle corruption-related crimes.

Investigations, warrants, and judgments obtained by anti-corruption prosecutors' offices (time period requested: from naming of prosecutor until Sept. 2020)²⁰

State and time period of data reported	Total investigations opened	Arrest warrants obtained	Convictions	Acquittals
Coahuila Sept. 2017-Sept. 2020	537	4	0	0
Jalisco Jan. 2018-Sept. 2020	3025	1	0	0
Nuevo León March 2018-Sept. 2020	592	0	3	4
Sonora Oct. 2015-Sept. 2020	900	73	19	0
Veracruz 2019-Sept. 2020	1691	8 (data from 2020 only)	0	Data not provided

2020 anti-corruption investigations²¹

State	Investigations opened Jan.-Sept. 2020	Investigations open as of Sept. 2020
Coahuila	31	364
Jalisco	593	Unspecified
Nuevo León	500	360
Sonora	72	378
Veracruz	640	Data not provided to public

2020 budget of anti-corruption prosecutors' offices²²

State	2020 budget in Mexican pesos (1 peso = roughly 5 U.S. cents)	2020 budget per capita in Mexican pesos (in reference to state population) ²³
Coahuila	\$47,615,145.35	15.13
Jalisco	\$66,220,466.00	7.93
Nuevo León	Reported that no specific budget exists	n/a
Sonora	\$66,301,194.00	22.51
Veracruz	\$22,585,124.00	2.80

Analysis

The data reported by state prosecutors show differences in the comparative levels of funding received by each anti-corruption offices. Sonora's office, which has been operating the longest and has the most convictions (19) and arrest warrants issued (73) of the group, also has the highest budget per capita.^{24,25} Meanwhile, Jalisco and Veracruz, the third and fourth most populous states in the country, reported working with a notably lower budget relative to the size of their populations.²⁶

The number of prosecutors and staff relative to cases, as well as trends in caseloads, also differ between offices. For context, the federal anti-corruption prosecutor stated in her first annual report to congress that, following a period of insufficient staffing, by March 2020 she had 36 prosecutorial staff and 47 total staff.²⁷ Her office had opened 950 investigations during its first year and had transferred, combined, or otherwise concluded 196 of them by March 2020, including six in which the office brought the case before judicial authorities to initiate a trial.²⁸

At the state level, Veracruz reported a team of 37 staff (more than a third of whom are administrative staff) and four investigative police, while Jalisco, with a roughly comparable new caseload to Veracruz in the first nine months of 2020, reported 93 staff without specifying their positions.^{29,30,31} However, from the data provided it is unclear how many investigations from prior years remain open in these offices. In December 2020, Jalisco State Anti-Corruption Prosecutor Gerardo de la Cruz Tovar publicly reported the start of trials against 24 suspects during the year.³²

Coahuila reported 42 total staff, although fewer than half of these clearly correspond to prosecutorial positions.³³ It specified that its total number of open investigations in September 2020 was 364, and that it had brought 33 additional cases before judicial authorities, with one arrest warrant pending execution.³⁴ Nuevo León reported a total of 53 staff, with a similar number of total cases and open cases as Coahuila.³⁵ Despite this similarity, the evolution of the offices' caseloads is markedly different: as seen in the corresponding tables, the Nuevo León office reported having opened a large majority of its total cases during the first nine months of 2020, whereas Coahuila's new caseload during this time period constituted a small minority of its total cases.

It is worth noting that Mexico's relatively young adversarial criminal justice system (now in force nationally following a 2008 constitutional reform and an eight-year transition period) offers the option of resolving certain cases through reparations agreements or plans.³⁶ In these cases, prosecutors would not litigate a full trial seeking a conviction. However, the prosecutors' offices listed above either did not provide information on their use of such alternatives, reported not yet having resolved any cases this way, or resolved a very small percentage of cases through these channels. Coahuila reported 16 cases resolved through such alternatives, while Sonora reported two.^{37,38}

What the prosecutors say

Prosecutors we interviewed advocate for several reforms that they view as necessary to improve their work. In particular, they identify two over-arching areas to be addressed: first, a frequent lack of autonomy (including budgetary autonomy), and second, legal mandates and caseloads that are both under- and over-inclusive of corruption crimes.

Autonomy

A fundamental prerequisite for any office whose purpose is to prosecute entrenched corruption is autonomy: both from the potentially corrupt actors under investigation, as well as from institutions that could interfere with prosecutors' work at the behest of such actors or for political reasons. According to anti-corruption prosecutors and civil society stakeholders with whom we spoke, this means giving anti-corruption prosecutors internal administrative, operational, and budgetary autonomy from the state prosecutors' offices. They spoke of the need for anti-corruption prosecutors to hire and manage their own personnel, oversee their financial resources, and control the investigation and prosecution of their cases.

According to those interviewed, many state anti-corruption prosecutors lack such control. In 2019, CONAFA reported that only three of the country's anti-corruption prosecutors had complete administrative, operational, and budgetary autonomy guaranteed by law.³⁹ However, one of those three (Nuevo León) denied having an assigned budget as late as October 2020, informing us that "it is the state prosecutor's office who, according to each area's needs, must apply the budgetary resources authorized for the operation of all units."⁴⁰ Stakeholders reported that when an anti-corruption office lacks budgetary autonomy, its work may be hindered or even derailed, in part because it must request authorization for its expenditures.

Lack of administrative and other forms of autonomy can also have wide-ranging consequences for anti-corruption prosecutors' day-to-day work. Without complete autonomy, anti-corruption prosecutors may require state prosecutors' approval for tasks as fundamental as bringing charges or hiring their staff.⁴¹ As reported to us in interviews conducted for this research, being subject to the decisions of a state prosecutor increases the risk of the chain of command limiting specific corruption investigations or initiatives, or interfering in which cases are taken on by the anti-corruption offices at all.

The process for naming the anti-corruption prosecutors

is another important factor in the offices' autonomy. If authorities interested in weakening the anti-corruption offices are in charge of designating the prosecutor, the risk of non-independent prosecutors increases. While it is difficult to avoid entirely the participation of authorities who might act based on personal or political interests, designation processes that involve checks and balances and the participation of experts and civil society provide greater safeguards.

Currently, different states employ different methods for naming anti-corruption prosecutors, and legal guarantees of robust and participative processes are far from the norm.⁴² This generates concerns regarding candidates' independence and qualifications. The process to remove prosecutors from their posts is also inconsistent across states.⁴³ Once more, checks and balances can help minimize the risks of removal for political reasons, considering that anti-corruption prosecutors' work may make them especially vulnerable to such risks.

In a package of proposed legislative reforms, CONAFA seeks to address these issues by establishing anti-corruption prosecutors' administrative, operational, and budgetary autonomy.⁴⁴ It proposes having panels of experts on corruption, human rights, and criminal justice select shortlists of candidates to present to legislators, who would name anti-corruption prosecutors by a two-thirds vote.⁴⁵ The prosecutors' removal would also be by a two-thirds vote, and only for "serious causes" as outlined in Title IV of the Mexican constitution.⁴⁶

While more can be done to strengthen autonomy, it is important to emphasize that autonomy does not mean that anti-corruption prosecutors should work in isolation. Information-sharing and collaboration with other prosecutors' offices (including the FGR) and other institutions with an anti-corruption mandate (such as financial intelligence units and auditors) is important to strengthen the effectiveness of anti-corruption work. Prosecutors, as well as civil society experts, have pointed to areas of opportunity in this regard. In an October 2020 report, for example, the Citizen Observatory of the Nuevo León State Anti-Corruption System expressed concern over the lack of coordination between the state comptroller and the anti-corruption prosecutor's office, among other state and municipal bodies.⁴⁷

Stakeholders have also identified the need for anti-corruption prosecutors' offices to strengthen their own internal knowledge and skills, particularly to allow for expert analysis of financial data and transactions.⁴⁸ As in other areas of criminal investigation and prosecution,

adequate training and expertise in litigating in Mexico's new, adversarial justice system is a perennial need.

Jurisdiction and case management

State legislation sets out which crimes fall under the jurisdiction of the state anti-corruption prosecutors' offices. This legislation, while not uniform, generally includes basic corruption crimes such as bribery and embezzlement. However, jurisdiction over corruption cases can become fragmented between state and federal authorities, particularly when an underlying (state) corruption crime is followed by federal-jurisdiction laundering of the illicitly obtained funds.⁴⁹

On the other hand, over-inclusion of crimes in anti-corruption mandates has also been identified as a problem. In a January 2021 CONAFA conference, Chiapas Anti-Corruption Prosecutor Rogelio Estrada Heleria stated that the rushed obligation to implement the National Anti-Corruption System had essentially led states to rename the section "Crimes Committed by Public Servants" to "Crimes of Corruption" in their penal codes.⁵⁰ In other words, anti-corruption prosecutors' offices have jurisdiction over a range of cases, some of which may have little to do with corruption in a strict sense, and that may include other types of crimes and human rights abuses.

In a high-profile example, the Jalisco state anti-corruption prosecutor's office is investigating serious human rights violations committed by police against civilians in June 2020, in which dozens of victims were arbitrarily detained, temporarily disappeared, tortured, and subjected to other abuse.^{51,52} Civil society actors in Jalisco have recommended reforms to both add and subtract crimes from the anti-corruption prosecutor's mandate.⁵³ In Mexico State, analysts have noted that, of the small percentage of complaints that have led to convictions, many of these are cases of police abuse or other serious crimes, but they are not all necessarily corruption crimes.⁵⁴ Veracruz State Anti-Corruption Prosecutor Clementina Salazar Cruz stated in December 2020 that a significant percentage of complaints against municipal authorities during the year had been made by individuals denouncing the crime of abuse of authority, which covers acts as broad as authorities' unjustified delay or refusal to provide attention or services to members of the public.⁵⁵

In Sonora, the Coordinating Committee of the state anti-corruption system has criticized the saturation of the specialized prosecutor's office because it investigates crimes of every size, such as "200-peso bribes to police" (~\$10USD) or "10 stolen bags of cement."⁵⁶ The Coordinating Committee has recommended set-

ting a minimum level of economic damage to trigger an investigation by the anti-corruption prosecutor, leaving smaller crimes in the hands of other agents.⁵⁷

More broadly, stakeholders point to the need to focus anti-corruption prosecutors' work on large-scale or high-impact corrupt practices, as well as to target higher-ranking officials in investigations. Some civil society actors informed WOLA that their state's anti-corruption prosecutor's office investigates low or middle-ranking authorities who use their official positions for personal gain, but shows little diligence in investigating the "grand corruption" phenomena that plague much of Mexico in the form of corrupt networks whose activities range from siphoning money from public coffers to collusion with private criminal actors. Federal Anti-Corruption Prosecutor María de la Luz Mjiangos Borja advocated in her 2020 report to congress for an internal reorganization of work to free her office from low-level or isolated crimes and allow for emphasis on high-impact, grand corruption work.⁵⁸

Another concern reported by some of the prosecutors and civil society actors interviewed is that the statutes of limitations for corruption crimes are sometimes insufficient to allow for their investigation, as such crimes are likely to be denounced or detected after the relevant corrupt actors have left power.⁵⁹ While the foregoing underscores the need to improve prompt detection of these crimes, concern remains over cases in which there has already been a delay that could impede punishment of the relevant offenses.

Finally, prosecutors and civil society actors from different states report that protection measures for individuals reporting corruption are inconsistent and often insufficient. While anonymous tips can be a mechanism to encourage the flow of information to anti-corruption systems and overcome concerns over retaliation, not all state systems facilitate anonymous reporting. In an analysis of anti-corruption systems carried out by think-tank Ethos, stakeholders in Chihuahua voiced their concerns over a lack of secure reporting channels and protection for those denouncing corrupt acts.⁶⁰ Issues such as these exacerbate reporting challenges in a country where only 11 percent of crimes are reported.⁶¹

The Federal Anti-Corruption Prosecutor Seeks Reforms

At the federal level (FGR), Anti-Corruption Prosecutor María de la Luz Mijangos Borja presented a report to the Mexican congress in March 2020 that outlined several issues her office had faced since its inception, pointing to an initial lack of proper staffing and arguing that the office's mandate should focus more on the bigger picture of "grand corruption."⁶² She advocated for legislative reforms to give her office greater investigative and prosecutorial powers and to toughen punishments.⁶³ However, it is worth remembering that Mexico has historically increased punishments for a range of crimes without evidence that this would deter them.

Civil Society's Perspective

When asked about their state anti-corruption prosecutors' offices, members of civil society and academic institutions echoed several of the prosecutors' concerns, especially regarding autonomy. A lack of results or diligence from anti-corruption offices was sometimes explained, at least in part, with reference to a lack of will on the part of the state prosecutors' offices, rather than primordially being under the control of the anti-corruption office.

At the same time, other aspects of civil society analysis contradicted the anti-corruption prosecutors' perspectives. Some non-governmental stakeholders reported positive collaboration or evaluations of anti-corruption prosecutors' efforts, but the majority were critical of prosecutors' work, sometimes considering that the anti-corruption office merely dragged out investigations without real intentions of resolving them.

Several interviewees stated that the work of anti-corruption prosecutors was selective at best, simulating progress while in reality protecting certain actors, such as officials currently in power. As noted above, interviewees reported that the cases that are pursued do not focus enough on big-picture corruption, and instead tend to be medium- to small-level or isolated cases, even when the prosecutors' jurisdiction allows for investigation of large corruption networks.

Civil society actors also noted a lack of proactive transparency from some anti-corruption prosecutors, such as not sharing public updates on their work and not providing information requested by other members of the state anti-corruption system, such as the Citizen Participation Committees.

U.S. Cooperation

Anti-corruption prosecutors whom WOLA interviewed pointed to the value of fluid collaboration with counterparts in the United States, given the binational reach of many corruption-related crimes and actors. They noted that information-sharing with U.S. authorities is helpful when one party has data useful to an investigation in the other country.

In recent years, the United States Agency for International Development (USAID) has funded a number of projects to support efforts to reduce corruption and strengthen the National Anti-Corruption System at the federal and state levels, reporting over \$25 million invested in ongoing projects in this area in October 2020.⁶⁴ USAID has supported CONAFA-wide studies and events (such as the January 2021 conference referenced above) and has supported individual anti-corruption prosecutors' offices through "100-day challenges" to improve the resolution of investigations in several of the states included in this report, among other examples.⁶⁵ Between FY2014 and FY2018, the State Department also provided \$17 million in equipment, training, and other activities to assist Mexico in its efforts to address money laundering and other illicit financial activities, including training for federal and state prosecutors.⁶⁶

Former president of CONAFA and Sonora State Anti-Corruption Prosecutor Odracir Espinoza Valdez stated that the investigative technologies that foreign counterparts share with Mexico are often directed towards federal and military agencies, though state prosecutorial offices would benefit from such materials. Prosecutors also told WOLA that training on how to manage criminal databases as well as high-level evidence analysis would be beneficial to them.

Conclusions

State anti-corruption prosecutors' offices are a crucial component of Mexico's National Anti-Corruption System. However, recurring issues such as a lack of full autonomy, coupled with external obstacles and internal reticence to focus their work on high-impact corruption that implicates powerful actors, mean that they have not reached their potential. Civil society organizations seeking to monitor and engage with anti-corruption work are sometimes stymied by a lack of transparency or political will on the part of prosecutors' offices.

In light of the foregoing, future efforts to improve the work of these offices, including international support, should seek to overcome structural obstacles such as designation processes and institutional hierarchies that threaten or undermine prosecutors' independence. Beyond these issues, anti-corruption prosecution plans that prioritize high-impact corruption are of great

relevance, as is ensuring that prosecutors' jurisdiction includes all relevant corrupt practices. Prompt information-sharing and collaboration between different prosecutors' offices at the state and federal level, as well as with other institutions, is crucial to identify corrupt practices and to allow investigations to advance efficiently; equally important is ensuring access to safe and efficient channels for the population to make complaints and provide sensitive information. At the internal level, many offices still require greater expertise in financial crimes and evidence, as well as in case-building and litigation of corruption crimes in the adversarial criminal justice system.

Anti-corruption prosecutors' offices should both have the legal, institutional, and political support needed to make their work effective, and be held accountable—along with the state prosecutors' offices to which they belong—to ensure that they fulfill their obligations. The success or failure of such prosecutors' offices is one important indicator of the direction in which Mexico's larger fight against entrenched corruption will evolve.

Sources

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ACKNOWLEDGEMENTS

This report would not have been possible without the generous support of Luminate, as well as the guidance of Maureen Meyer, Vice President of Programs at WOLA.