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Mexican Congress Approves Weakened Anti-Corruption Legislation

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In mid-June, the Mexican Congress approved a legislative initiative that takes into account some of the anti-corruption reforms put forward by several non-governmental organizations, but also falls short of the demands made by civil society. In separate votes, the Senate and the Chamber of Deputies both approved the Ley General de Responsabilidades Administrativas (General Law for Administrative Responsibilities), an initiative that seeks to increase transparency and addresses corruption.

The measures take into account most of the proposals put forth in a blueprint known as “Ley 3 de 3” by a coalition of non-governmental organizations, academics, business groups, and legal experts, including the ethics watchdog Transparencia Mexicana (Mexican Transparency, TM), Mexicanos Contra la Corrupción (Mexicans Against Corruption), and the Instituto Mexicano para la Competitividad (Mexican Institute for Competitiveness, IMCO). The measures received strong support from the Confederación Patronal de la República Mexicana (COPARMEX), an employers’ confederation.

However, the legislation weakens a provision in the Ley 3 de 3 that would have required public officials, elected or appointed, to make their assets and tax returns public. The Ley 3 de 3 contained a set of important demands, including a requirement that officials declare their assets, that they identify their interests (including previous jobs and friendships), and that they offer proof that they pay their taxes.

“Additionally, this initiative defines clear rules of conduct for public officials and private entities who work with these officials, as well as sanctions for those who are corrupt,” said the Ley 3 de 3 website.

Citizen-led initiative a historic first

The very presence of this legislation on the Congressional agenda represents a victory of sorts for civil society in Mexico. Under political reforms approved in 2014, citizens obtained the right to propose legislation if the equivalent of 0.13% of those on the electoral register support it (SourceMex, March 19, 2014). Proponents worked feverishly to obtain the 120,000 signatures required to validate the initiative and force Congress to address the issue. “Getting the signatures will not be a piece of cake, but it is doable,” María Amparo Casar Pérez, executive president of Mexicanos Contra la Corrupción, said earlier this year.

The response was overwhelming, with citizens backing an effort outside of the political establishment to finally address corruption in Mexico. “Ley 3 de 3 has been running a campaign video asking what most unites Mexicans—is it the national anthem, the football team, or perhaps tacos? The answer it suggests is, instead, corruption,” said the BBC News website.
“Mexican civil society is now leading the fight against corruption—not by choice, but by necessity,” said Enrique Cárdenas, coordinator of the drafting committee of Ley 3 de 3 and the chief executive officer of the think tank Centro de Estudios Espinosa Yglesias.

According to Cárdenas, the alternative of following regular legislative procedures and waiting for political parties to present their own bills and discuss them was no longer an option, because of mistrust that the political establishment would do the right thing. Authorities seem to be “just too corrupt to create an anticorruption law with real teeth,” noted Cárdenas.

Citing two recent examples of government impunity, the Ley 3 de 3 website emphasized the urgency of approving the legislation. The first case involved the charges of embezzlement, money laundering, and racketeering levied against ex-Coahuila Gov. Humberto Moreira, who led the Partido Revolucionario Institucional (PRI) during President Enrique Peña Nieto’s electoral campaign. The Peña Nieto administration has declined to prosecute Moreira, which led prosecutors in Spain to bring charges against the former governor (SourceMex, Dec. 7, 2011, and Jan. 27, 2016).

The second case cited by Ley 3 de 3 involved Peña Nieto and allegations that the president and the first lady, Angélica Rivera, committed acts of corruption when they purchased properties from a public contractor who is a personal friend of the president (SourceMex, April 29, 2015, and Aug. 26, 2015). That contractor, Juan Armando Hinojosa Cantú, is the owner of a company that has won concessions for several projects from the federal and México state governments in the past several years, including a controversial highway on land belonging to the Otomí communities (SourceMex, Aug. 12, 2015). The allegations became known as the Casa Blanca case, for the name of the house Hinojosa built for Peña Nieto and Rivera.

“The Mexican people are tired of corruption and impunity. Every day we hear about new scandals, such as those of Humberto Moreira, the Casa Blanca case, and several others,” said the Ley 3 de 3 website. “However, asking politicians to solve the problem is like asking a football player to referee his own match. The solution has to come from us.”

Some observers said the public already took the opportunity to send a signal to Peña Nieto with the recent elections, in which the PRI lost seven out of 12 gubernatorial races, including several seats that the governing party had held for generations (SourceMex, June 15, 2016).

“There was indeed a punishment vote against Peña Nieto, and it was because of his indifference in the face of corruption and not because of his recent initiatives to support gay marriage throughout the country (SourceMex, May 25, 2016) or his proposal to relax restrictions on marijuana (SourceMex, April 27, 2016),” IMCO president Juan E. Pardinas wrote in a guest piece in the daily newspaper Reforma. “I hope that the president takes on the anti-corruption initiative with the same passion as he did those two other issues.”

A ‘decaffeinated’ law

The Senate took up the initiative first, and the political parties immediately took sides. The pro-business Partido Acción Nacional (PAN) and the center-left Partido de la Revolución Democrática (PRD) supported the Ley 3 de 3 as written and without reservation. Conversely, the governing Partido Revolucionario Institucional (PRI) and its principal ally in Congress, the Partido Verde Ecologista de México (PVEM) expressed concern that the proposal would infringe too much on the privacy of legislators. Instead of accepting a measure to open up the finances of officials
entirely to public scrutiny, the PRI-PVEM proposed an addendum to the legislation that said the information would be made public, “except for those areas where public scrutiny could negatively affect the constitutional right to privacy and protection of personal information.” The PRI-PVEM proposed that a five-member committee be appointed to make the final decisions on which personal information would be divulged.

The committee would decide if public servants have to make public the values of their assets and those of spouses and family members, and determine what information could be made public. However, the consent of the person making the declaration would be required for the latter to happen. Under the proposal, the president would name one of the members of the committee and the Senate would appoint the remaining four.

Political analysts were quick to criticize the PRI-PVEM proposal. “I don’t think that corruption can be fought with a new bureaucratic organ,” columnist Sergio Sarmiento wrote in Reforma. “Just like any other agency, the new anti-corruption system—with a coordinating committee, a committee of citizen participation, and an executive secretary—will do nothing more than create a new bureaucracy, requiring its own budget, new positions, and its own labor union.”

Sarmiento, however, also cast doubt on the original Ley 3 de 3. “I also don’t believe that this initiative would have solved the problem,” said the Reforma analyst, whose column is syndicated nationally. “To force an honest individual to allow his or her tax information and patrimony to be published would not only allow us to identify the corrupt individuals but would also create new forms of corruption and would discourage honest individuals from working in public service.”

For his part, Cuauhtémoc Carmona Álvarez wrote in jest in the daily newspaper Milenio: “The PRI and PVEM senators did not want patrimonial declarations, the information on the past connections, and taxes of public officials to be made public because it could lead to a witch hunt. How far has the PRI fallen when it has to use witches as a parliamentary argument?”

Proponents had been optimistic that the original Ley 3 de 3 would win approval, since the PAN, the PRD, and the center-left Partido del Trabajo (PT) together have a plurality in the upper house. However, 14 legislators from the PAN, PRD, and PT mysteriously did not show up for the vote, giving the PRI-PVEM enough of a 59-51 majority to pass its version of the law, which opponents decried as a “decaffeinated version” of the law. According to observers, if just nine of the absentees had shown up to vote, the initiative would have passed as originally written.

A few days later, the Chamber of Deputies took up the measure, voting on the exact initiative that the Senate approved. The vote in the lower house was also divided along party lines, with 228 members of the PRI, PVEM, and Partido Nueva Alianza voting against making any changes to the Senate initiative. The PAN, PRD and Partido Encuentro Social could only muster 209 votes for their proposal to vote on the original Ley 3 de 3.

“The reason the Ley 3 de 3 was changed is the fear that the people would find out [details] about the large amount of wealth in the hands of a few individuals, and that this wealth was obtained through political power,” said PRD Deputy Xavier Nava.

PRI and PVEM officials complained that their parties had not been given credit for approving what they consider a sweeping anti-corruption initiative. “For a long time, we had understood the message of the citizens that we had to design new methods to combat corruption,” said PVEM Sen.
Pablo Escudero Morales, who chairs the anti-corruption committee (Comisión Anticorrupción) in the upper house.

“We are convinced that we have taken the proposal offered by civil organizations and constructed a solid system to prevent, detect, and sanction acts of corruption,” the PRI and PVEM said in a statement.

However, other observers noted that the PRI purposely delayed a vote in Congress until after the recent gubernatorial and local elections in order to minimize the potential political damage of approving a watered-down initiative. “We were left with very little of the original Ley 3 de 3,” columnist Yuriria Sierra wrote in the daily newspaper Excélsior. “The measure was sent to the proverbial freezer [at the end of the regular session of Congress]. With the start of the special session, legislators [primarily from the PRI and PVEM] made small changes, which they were certain would not be noticed by the citizens.”

Even with the passage of a diluted anti-corruption measure, some PAN members were optimistic that the new law would make enough of a difference to change the political culture in Mexico. PAN Deputy Adriana Elizarraraz said the new law would achieve the objective of halting dishonest acts linked to public officials. In particular, she mentioned the creation of the office of the independent prosecutor. “This individual would have autonomy to punish those officials who resort to acts of corruption,” Elizarraraz said.

TM director Eduardo Bohórquez agreed that the creation of a strong independent prosecutor was a positive outcome of the new legislation. Under the old system, an anti-corruption czar sent the results of an investigation to other ministries such as the Secretaría de Contraloría or the Secretaría de Función Pública, both agencies that deal with accounting and business administration. “We will now have an independent anti-corruption prosecutor with full autonomy,” Bohórquez said.

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