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President Enrique Peña Nieto Agrees to Ensure Independence for New Prosecutor’s Office

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President Enrique Peña Nieto defused a potential controversy when he agreed to promote changes to a constitutional mandate that would have allowed him to appoint the head of a new independent prosecuting entity being created to replace the attorney general’s office (Procuraduría General de la República, PGR) in 2017.

The proposal to transform the PGR to the new entity known as the Fiscalía General de la República (FGR) was part of the far-reaching political and electoral reforms that the Congress approved in 2011 and 2013. Most of the attention at the time was focused on the portions of the law that allowed citizen consultations and independent candidacies (SourceMex, May 4, 2011, and Dec. 11, 2013). But the changes, published in Mexico’s federal register in February 2014 (SourceMex, March 19, 2014), also contained the provision that required the transformation of the PGR into a more independent entity to be known as the Fiscalía General de la República (FGR).

Removing political interference
Under the changes, the FGR would have the power to make its own prosecutorial decisions rather than implementing the policy of the sitting president. The creation of the new office to pursue cases without political interference was considered an important step in improving the application of justice in Mexico, where only 2% of crimes are solved.

According to legal experts, the FGR would emphasize the protection of individual rights, particularly those of victims of crime. The FGR would have two specialized units, one to investigate and prosecute electoral crimes and the other to focus on cases of corruption.

While the changes appeared positive on the surface, there was a provision in the law that stipulated that the current attorney general would automatically become the first independent prosecutor. This created significant controversy in October, when Peña Nieto appointed Institutional Revolutionary Party (PRI) insider Raúl Cervantes Andrade to head the PGR, replacing Arely Gómez González, who was named head of the federal auditing ministry (Secretaría de la Función Pública, SFP) (SourceMex, Nov. 2, 2016).

Critics immediately suggested that the appointment was a calculated move to have a party inside take over the more independent FGR for almost a decade. Under the constitutional reforms, the new prosecutor would serve for nine years, meaning that the individual taking over the FGR could potentially remain in office through 2026. Under current practice, the attorney general is appointed by the president and theoretically would serve for the same six-year period as the executive. In reality, each of the last several presidents has had several individuals head the prosecutor’s office during his six-year term. Sometimes the president has chosen to replace the attorney general, and other times the prosecutor has resigned from the post.

Adding to the controversy was the overwhelming manner in which the Senate voted to ratify the appointment of Cervantes as attorney general, which led to suspicions that the Senate had not taken
sufficient actions to prevent Peña Nieto from placing his chosen candidate at the helm of the new FGR.

Some critics suggested that Peña Nieto simply intended to “clone” the PGR in the new prosecutor’s office. “A cloning process implies an absolutely homogenous duplication from the same cell,” said an article in the online news site SinEmbargo.mx. “With the same human, material and financial resources, and a leader without true autonomy, we are hard-pressed to believe that the Fiscalía would be much different from the Procuraduría.”

**Change puts Senate in charge**

Responding to the criticisms, Peña Nieto proposed a change in the law that would discard the provision that would automatically make Cervantes the new head of the FGR. Instead, the president proposed that the Senate appoint the first prosecutor.

“The automatic transfer [to the new post] was taken away from Raúl Cervantes,” columnist Francisco Garfias wrote in the daily newspaper Excélsior. “President Peña Nieto gave in to the demands and concerns of civil-society organizations, which had urged him to make this change.”

Others praised the president. “Today’s move is certainly a step in the right direction,” said Juan Francisco Torres Landa, an attorney for the non-governmental organization México Unido contra la Delincuencia. “This important appointment needs much more dialogue and discussion among lawmakers and civil society groups.”

In an editorial, the daily newspaper El Universal wrote, “The presidential move has the effect of depressurizing an issue that was beginning to take on political overtones. The new prosecutor’s office will be charged with restoring the confidence in the procurement of justice to our country and ensuring that all investigations follow the letter of the law and the principle that we are all equal in the eyes of the law.”

El Universal added, “We have an opportunity on the table. Now, the legislative branch must create a transparent process while consulting with experts from universities, state bars, and other experts so as to not lose the confidence of the public when the new prosecutor is designated.”

This is not the first time that Peña Nieto has ceded to criticisms from civil society. In June, he vetoed a weak anti-corruption bill and returned it to Congress to make the necessary changes. The original measure incorporated some of the anti-corruption reforms put forward by a coalition of non-governmental organizations, academics, business groups, and legal experts via a blueprint known as “Ley 3 de 3.” However, among other things, the bill left out an important provision that required officials, elected or appointed, to declare their assets, identify their interests (including previous jobs and friendships), and offer proof that they pay their taxes (SourceMex, June 22, 2016, and July 13, 2016).

**Civil society wants input**

Other organizations suggested that the process is not complete without the input of civil society in the selection of the new prosecutor, a process that will likely occur sometime in 2017. The national coalition of human rights organizations Todos los Derechos para Todas y Todos, which represents more than 80 groups in 21 states, said the changes in the Constitution should include a provision that allows the participation of civil society in the process.
According to the coalition, the new prosecutor should be selected via a “public, transparent, and inclusive process” in order to resist “all sorts of pressures, particularly those of a political nature” to skew the selection.

The Congress also received Peña Nieto’s proposal with open arms. “The president was very receptive. It was necessary to reconsider the way that such an important position is filled,” said Senate president Pablo Escudero, a member of the Partido Verde Ecologista de México (PVEM).

The Senate leadership said the upper house wants to move quickly to approve the changes in order for the independent prosecutor to be named by a qualified majority of the Senate after the selection process is completed.

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