

Cofepris
Comisión Federal para el Desarrollo
Económico y Urbano

INSTITUTIONAL DESTRUCTION: *A self-inflicted injury to the State*



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INSTITUTIONAL DESTRUCTION

A self-inflicted injury to the State



SYNTHESIS

The slow but progressive construction and consolidation of the democratic institutions and the professionalization of the public administration in Mexico, are being threatened by a series of attacks that the federal government has provided in almost two years of ruling. Through budgeting reduction, the colonization of managerial bodies of autonomous branches,

and the disappearance and subordination of institutions, the federal executive has undertaken a decisive campaign to dismantle some of the democratic counterweights that could restrict the presidential power and delay the consummation of the fourth transformation project.

THE COST OF BUILDING INSTITUTIONS

The establishment of the still weak Mexican democracy was achieved thanks to a long transition process that anchored itself on the construction of democratic institutions capable to dissolve political conflicts peacefully, legally, and equitable, by the time the governmental bureaucracies were professionalized. These institutions were the product of citizen struggles that led to wide debates between different political performers that agreed to decentralize the presidential power. Albeit, some of the key institutions of Mexican democracy already existed, these were subordinated, formally or informally, to the wishes of the federal executive, while others were formed with the objective to fulfill certain specialized and relevant tasks for the Mexican state.

Among the fundamental institutions of Mexican democracy the legislative power, the judiciary power, and the constitutional autonomous bodies are found,¹ which were progressively created since the nineties to decouple the federal executive from mul-

¹ The autonomous constitutional bodies are those that are created by the constitution, the constitution establishes their basic competency (basic competence nucleus) and are not located organically or structurally in some power. They are different from the constitutionally relevant bodies.

iple responsibilities that belong to the state and not the government in turn. Even though, since the beginnings of the XXI century the federal legislative power was defined for its plurality and its capability to provide a counterweight to the presidential power, the results of the concurrent election of 2018 gave birth to a new phase of unified government in Mexico,² consequently, the Mexican Congress, democratically composed, has few incentives to contradict the requirements of the executive.

Even if it is normal that in an electoral democracy like the one in Mexico the votes decide the composition of the majorities and the minorities, it is also true that the majorities do not have the authority to weaken the constitutional order of a state, and much less, to go above it. The fact is, it seems to be a systematic attack on different institutions that seem to be uncomfortable for the new project spearheaded by the new federal administration. Although it's not new that president López Obrador undertakes ma-

² The unified government is understood as the one in which the executive power and the legislative power is controlled by the same partisan force.

neuers that allow him to concentrate more power,³ or that he shows disapproval with the existence of the autonomous constitutional bodies,⁴ in his condition of the head executive, López Obrador has turned his disagreements into public decisions. These have weakened a set of institutions of the Mexican state that are essential to activate the cogs that harmonize the democratic function of the political system of the country.

A ROUTE TO TOTAL CONTROL OF THE GOVERNMENT

Beyond the likes and dislikes that the 4T (fourth transformation for its acronym in Spanish) may generate, the institutional design exists to maintain certain democratic normalcy, so disrespect it constitutes a threat to the very political system as we know it.

³ Review “Hiperpresidencialismo presupuestal” [Budgetary Hyper-presidentialism] en el Reporte de La Pandemia en México: Dimensión de la Tragedia. [in the Pandemi Reportin Mexico: The Tragedy Dimension]

⁴ Conferencia de prensa matutina del 8 de noviembre de 2019. [November 8th 2019 Press morming conference] <https://tinyurl.com/yxeg82zm>.

In the time of the current administration, at least three tactics to weaken certain counterweights to the executive power have been identified: the first is to decrease the budget of the institutions that bother him the most, the second one is to colonize the managerial bodies of the autonomous branches, and the third and most radical, is to structurally disappear or subordinate the institutions to the federal executive.

1 BUDGETARY REDUCTION

As we know, the budget of a country reflects the priorities of its government, in that way the branches in which more resources are deposited tend to be the ones to execute the most relevant tasks of an administration, to the contrary the ones that receive the least resources will play secondary roles. In this sense, it’s interesting to observe that during the current administration some autonomous branches have suffered important budgetary reductions in relationship to the budgetary requests sent to the Secretariat of Finance and Public Credit and that at a

later time were modified by the Chamber of Deputies. Due to this, several institutions have had to adjust their budgets and it is expected that the first thing the cause of this reduction is the inoperability of some of the functions of the institutions, and then attempts to their existence by leaving them with disabilities to make different actions of their reasons to be.

If you compare the budgetary project presented by each autonomous branch to the SHCP, with the final approved Budget by the lower chamber,

it is observed that at least six autonomous branches, besides INEGI⁵ and CONEVAL,⁶ they had cutbacks equivalent to 5.6% of what they requested in the PPEF,⁷ that is to say around 2 thousand 855 million pesos.

5 The National Institute of Statistics and Geography for its acronym in Spanish.

6 The National Council of Evaluation of Social Development Policy for its acronym in Spanish.

7 Project of Budgetary Expenditure of the Federation for its acronym in Spanish.

It bears to mention that, in 2019, there was a reduction equivalent to 11.3% regarding the PPEF that year. Between the most disadvantaged bodies in 2020 are the Federal Telecommunications Institute (IFT for its acronym in Spanish), the Attorney General's Office (FGR for its acronym in Spanish), the National Electoral Institute (INE for its acronym in Spanish), and the Federal Institute for Access to Public Information and Data Protection (INAI for its acronym in Spanish), with reductions of 10.9%, 8.2%, 6.0%, and 5.4% respectively.

It should be noted that since each institution has different legal constitutional mandates, is possible that a specific branch will need extraordinary resources in a few years. That is the case with the INEGI and the INE that modify their workload according to their information collection and the electoral journeys of each year. As you know, the amount requested by the INE for 2020 was equivalent to 12 thousand 492 million pesos, without counting the amount destined to the public financing of the political parties. This budget was justified by the electoral process of 2020-2021 were almost 3 thousand 200 charges will be elected, in which 15 governors are highlighted, the totality of the chairs in the Chamber of deputies, and 30 local congressmen, as well as city halls in 30 states of the

TABLE 1. COMPARISON BETWEEN PPEF AND PEF OF CONSTITUTIONAL AUTONOMOUS BODIES IN 2020
(MILLION PESOS)

INSTITUTION	BUDGETARY PROJECT 2019	BUDGET 2019	ADJUSTMENT %	NET ADJUSTMENT	BUDGETARY PROJECT 2020	BUDGET 2020	ADJUSTMENT %	NET ADJUSTMENT	CONSEQUENCES
INEGI	12,629.70	12,129.70	-3.96	-500.0	16,572.90	16,572.90	0.00	0	13 surveys won't take place on the agricultural census.
INE	16,313.0	15,363.0	-5.82	-950.0	17,732.4	16,660.8	-6.04	-1,071.6	The institute will perform the biggest election in history with no margin of error
CRE	248.2	248.2	0.00	0	252.9	252.9	0.00	0	No relevant modifications are perceived
INAI	937.1	900.1	-3.95	-37.0	927.4	877.4	-5.39	-50.0	
CNDH	1,971.3	1,809.4	-8.21	-161.9	1,911.2	1,874.2	-1.94	-37.0	The autonomy of the CNDH is not guaranteed.
COFECE	582.8	582.8	0.00	0	589.5	581.2	-1.40	-8.3	N/A
IFT	1,780.00	1,500.0	-15.73	-280.0	1,730.0	1,541.20	-10.91	-188.8	Difficulty in compliance of its responsibilities
FGR	15,328.2	15,351.0	0.15	22.8	18,202.2	16,702.2	-8.24	-1,500.0	
ASF	2,304.4	2,304.4	0.00	0	2,378.40	2,809.60	18.13	431.2	N/A
INEE	997.3	697.3	-30.08	-300	N/A	N/A	N/A	N/A	Disappeared

Source: In-house elaboration with information from the PEF 2019-2020.

republic. At least all of the federal elections will be organized by the INE and it may be that some of the local ones are enticed to this authority. The scale of this election implies a series of tasks that represent expenses that are not at all negligible. In 2020, 32 local councils will have to be installed, 300 district councils, design electoral supplies, and credentialing approximately 15 million people.

2 COLONIZATION

The second weakening tactic is the relative colonization of the different powers and Constitutional Autonomous Bodies (OCA for its acronym in Spanish). Except for the legislative power which is directly elected by the people, the election of the political leadership in the judiciary power and the members of the executive bodies of the OCA implies at least two powers: the executive and the legislative. During this sexennium, the members of the government/executive bodies that have been renewed:

- » The Energy Regulatory Commission (CRE for its acronym in Spanish)
- » The National Human Rights Commission (CNDH for

its acronym in Spanish)

- » The Federal Institute for Access to Public Information and Data Protection (INAI),
- » The Bank of Mexico
- » The National Institute of Statistics and Geography (INEGI),
- » The National Institute of Educational Evaluation (INEE for its acronym in Spanish)
- » The Federal Economic Competition Commission (COFECE for its acronym in Spanish)
- » The Attorney General's Office (FGR)
- » The Federal Telecommunications Institute (IFT) and
- » The National Electoral Institute (INE)

Besides, three chairs of the Supreme Court of Justice of the Nation (SCJN for its acronym in Spanish) were renovated. From all of the nominations, 10 were people related to the party in power and, in some cases, directly to the President.



Image: Minister Yazmín Esquivel Mosso at www.soldemexico.com.mx

Even if it is a common pattern in almost all of the sexenniums, the questionable legality of the processes in which some public servants were elected ignites an alarm that must be considered.

In at least 7 of the 27 nominations made in said institutions disagreements existed by the opposition pertaining to the legal and constitutional process.

Two of the most striking cases are the nomination of the head of The National Human Rights Commission and the 4 out of 6 commissioners of The Energy Regulatory Commission that have been renewed during the current management.

The appointment of the current head of the CNDH was given amidst a series of irregularities and conflicts amongst which the suitability of Rosario Piedra Ibarra to run the CNDH was highlighted, the presentation of the same triad in several occasions, and the doubtful majority obtained in the election given in the plenum of the Senate of the Republic. Albeit Rosario Piedra has been one of the multiple victims of the state



weakness to guarantee the security of the Mexican people and has been a human rights activists in the country, the 9th article of the CNDH law establishes that the candidates to direct the said body must not be or have been members of a directive body of a political party during one year before the date of its appointment. Despite that, Rosario Piedra still appeared in the INE databases as part of the national council of MORENA (National Regeneration Movement for its acronym in Spanish) in the date in which the Senate elected her as the head of that body.

Image: Demonstration against the process carried out in the appointment of the President of the CNDH at www.notigape.com/202607/senadores-buscaran-impugnar-a-rosario-piedra-ibarra.

Violations on the election procedure happened, the 10th ter article second paragraph of the CNDH law, which establishes that in case the ballot required is not reached to appoint the president of the body, the corresponding commission or commissions must present a new triad, as many times as it is necessary to reach the required ballot. Infringing said disposition, the Senate Political Coordination Board repeated the triad on two occasions so that in the third elections the majority needed was reached. Likewise, doubts arose about the legality of the election in the Plenum of the Senate.

In the 102nd article subsection B, the Constitution indicates that just like the Counselors of the CNDH that should be elected by the vote of two-thirds of the present members of the Chamber of Senators, the current head of the CNDH only gathered 76 votes equivalent to 65.5% of the assistance of the plenum that was of 116 senators. It was argued that two of the votes were in reality a blank sheet of paper and an envelope consequently those were not recorded. This is how Piedra Ibarra was appointed as head of the CNDH for the 2019-2024 period, a decision that has been challenged three times through constitutional protections due to the constitutional vices presented during the election, which currently are in process



Image: Rosario Piedra Ibarra, President of the CNDH at www.24horas.mx.

of the ruling. Likewise, in light of the appointment of Rosario Piedra Ibarra as president of the CNDH, five members of the advisory council of the body presented their irrevocable resignation to the honorary position, since they consider the process was plagued with irregularities and lack adherence to the law. The Senate has not appointed 6 of the 10 counselors that the CNDH must-have.

TABLE 2. CONTESTED APPOINTMENTS BY THE OPPOSITION

INSTITUTION	THE NUMBER OF RENEWED MEMBERS	INCONSISTENCIES	THE PROTESTERS IN THE OPPOSITION
CRE	4	"In spite that the first triad sent by the president to the Senate was rejected, the second triad repeated 11 of the 12 initial candidates. The president ended up imposing the commissioners. The candidates did not answer correctly to the numerous questions made during their presentations in the Energy Commission of the Senate."	Members of the opposition accused the president of imposing the commissioners and not looking for consensus.
CNDH	1	"Despite that the triad sent to the United Commissions of Human Rights and Justice was rejected in the plenum of the Senate, it was repeated two times. Several inconsistencies happened in the final election. Rosario Piedra Ibarra did not meet the legal requirements to pursue the CNDH presidency."	The opposition in the Senate filed a claim of unconstitutional action
SCJN	1	The minister Yazmín Esquivel arrived at the SCJN despite the conflict of interest that she had by being the wife of a personal friend of the president that has benefitted by multiple government contracts during López Obrador's administrations.	The opposition indicated interests' conflict.

Source: In-house elaboration with information from the Senate of the Republic and the SCJN.



Commissioners imposed by the President: Guadalupe Escalante, José A. Celestinos, Norma L. Campos y Luis Linares at www.abcnoticias.com.mx

In relationship with the CRE, article 6th of the Law of Coordinated Regulatory Bodies in Matters of Energy⁸

8 Article 6. The commissioners will be appointed by tiered periods of seven years of annual succession, with the possibility of being designated again in one occasion by equal period. The position that is generated in charge of commissioner will be covered by the person designated by the senate from the proposed triad by the head of the Federal Executive, in terms of the hereby article. If the position is generated before the ending of the respective period, the person designated to cover it will last in rule only the missing time to perform by the substituted, it could be designated exclusively at the end of this period. To appoint each commissioner, the President of the Republic will submit a triad to be considered by the Chamber of Senators, which, prior arraignment of the proposed people, will designate the Commissioner by the vote of two thirds of its present members, during the non-renewable period of thirty days. If the Senate could not resolve during that period, the Commissioner position will be taken by the person from said triad that the President of the Republic appoints. In case the Chamber of Senators completely rejects the proposed triad, the President of the Republic will submit a new one, following the terms of the previous paragraph. If the second triad were to be rejected, the position of Commissioner will be taken by the person within the triad that the President of the Republic appoints.

details that the Senate will elect the commissioners of the ruling body of the CRE among the triads that the Mexican President provides to cover each position. In case no members of the triad gather the needed votes to be ratified, the President must send a new triad. This happened March 21st, 2019, when none of the candidates of the 4 triads sent by López Obrador acquire the qualified majority, but the second batch of triads by the executive repeated 11 of the 12 candidates sent the first time. Even if this maneuver does not constitute a legal fault, it's understood that the decision reflected presidential neglect to build consensus to reinforce this body. The rejection of the Senate to the second batch of triad left President López Obrador in the position to impose the commissioners, according to the law, but without the consensus of the Senate.

One of the few cases about the selection of heads of autonomous constitutional bodies that can be listed as successful in democratic terms was the renewal of 4 counselors of the General Council of the INE.

Maybe, due to the mechanism of selection established by the Constitution, in which different institutions intervene. First the CNDH, the INAI, and the Board of Political Coordination of the Chamber of Deputies which are responsible to shape the Technical Evaluation Committee which, in turn, is responsible to elect the best profiles to integrate their quintets for each position that will be sent to the lower Chamber for approval. Their approval should be by two-thirds of the present members.⁹

It bears to mention that due to the legal procedures for the appointment of the heads of each autonomous constitutional body and the SCJN are different, the majority party and the President López Obrador had

⁹ Article 41st, fraction V, subsection A of the Political Constitution of the United Mexican States.

peculiar behaviors in each appointment. For example, given the case that the members of up until three of the triads of candidates that pursue a sit of the SCJN or the CRE do not gather the necessary majority, the federal executive could appoint them directly, it's to be expected that AMLO (Andrés Manuel López Obrador for its acronym in Spanish) did not abrade in this political operation. Contrary to what happened to the appointment of the head of the CNDH, in which several illegalities happened.

3 DEMISE

The third identified tactic is the definitive demise of some institutions. The President has repeated on different occasions that the OCA drain too much budget and does not return good results,¹⁰ consequently, he will consider the demise of several of them. Previously he has managed to suppress on May 15th, 2019, the National Institute for the Evaluation of Education (INEE for its acronym in Spanish), as a consequence of the approval of the new educational reform. This institution had already suffered budgetary cuts in 2019 of 300 million pesos and had been forced to fire

¹⁰<https://tinyurl.com/yygfz6xo>.

at least 218 employees. Apart from the performance of the INEE that took care, among other things, the student and teachers evaluation, it was noted from the directive body of the institution that this modification was due to pressures from the National Coordination of Education Workers (CNTE for its acronym in Spanish) which was uncomfortable with the teacher's evaluations.

One more case that is worth mention is the Federal Commission for the Protection against Sanitary Risks (COFEPRIS for its acronym in Spanish). On Wednesday, August 19th, 2020 in the Official Journal of the Federation (DOF) the accord in which the adherence of different administrative units and decentralized bodies of the Secretariat of Health, was published, among which the COFEPRIS is found. This Institution that has the mission to protect the population of health risks caused by the use of supplies and services, as well as for exposure to work and environmental factors, the occurrence of sanitary emergencies, and the provision of health services through the regulation, control, and prevention of sanitary risks is now subordinated to the Subsecretariat of Prevention and Health Promotion, headed by Hugo López-Gatell M.D. The decision is counterintuitive since the regulating body will be subordinated to the regulated subject, consequently,

the technical and resolution capacity of the COFEPRIS is called into question and the next decisions that it makes will be a big indicator of their full independence and autonomy.

In summary, it will be essential that citizenship pays attention to the way the actions of the autonomous branches evolve and if their decisions are framed within the constitution and the law. Likewise, the behavior of the heads of each entity must be carefully evaluated with the goal to ensure that the resolutions which are incumbent are performed independently from the president and not under pressure or subordinations.



