

The Current State of Democracy in Mexico as Seen in Attempts to Reform the Electoral System

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Abstract

The López Obrador administration in Mexico embarked on a major electoral reform effort from 2022 to 2023, amending electoral laws significantly. The reforms included provisions related to the election to electoral positions by voters, a reduction in the number of personnel involved in electoral affairs, limitations on types of violations related to electoral campaigning, and a reduction in penalties for electoral violations. All of these changes were seen as posing a threat to the fundamental principles of democracy, specifically the "fairness and impartiality" of elections. However, in May and June of 2023, the Supreme Court of the Justice of the Nation declared the reforms invalid through constitutional review. This ruling demonstrated the judiciary's role in curbing arbitrary exercise of power, indicating that the separation of powers in Mexico is currently functioning.

Introduction

The administration of Andrés Manuel López Obrador in Mexico implemented a comprehensive electoral system reform from 2022 to 2023. The president asserted that its primary purpose was cost reduction through the streamlining of electoral operations. However, this move sparked harsh criticism from numerous experts and citizens, who contended that it would dilute the democratic quality of the elections and potentially favor the ruling party, thereby supporting the current regime. Multiple constitutional challenges were mounted against this reform, ultimately resulting in the Supreme Court of the Justice of the Nation (SCJN) declaring all electoral system reform amendments invalid.

This paper aims to elucidate the underlying intentions and motives behind this series of electoral system reform attempts, as well as to analyze the implications of the implementation of the reform and the subsequent court ruling of invalidity on the current state of democracy in Mexico.

The Timeline and Overview of Electoral System Reform

The endeavor for electoral system reform commenced in April 2022 when the president submitted a constitutional amendment proposal to the lower house of the Congress of the Union. This constitutional amendment encompassed a wide range of changes, including the restructuring of electoral management institutions and electoral courts, reduction of political party subsidies, and a significant decrease in the number of federal and state legislators.

For instance, concerning electoral management institutions, the existing National Electoral Institute (Instituto Nacional Electoral: INE) was reconfigured into the National Institute of Elections and Consultation (Instituto Nacional de Elecciones y Consultas: INEC). Additionally, the draft proposed reduction of the number of councilors in the General Council, the supreme decision-making body, from 11 to 7, and introduced direct voting by citizens to select them (appointment of these councilors had previously been based on expertise and experience in electoral administration). Furthermore, it also applied the direct voting system to judges of the Electoral Tribunal of the Federal Judiciary (Tribunal Electoral del Poder Judicial de la Federación: TEPJF), responsible for adjudicating election-related offenses and disputes. It also abolished Local Public Electoral Organization (Organismo Público Local Electoral: OPLE), which had been

established in each state to manage electoral affairs at the local level, as well as local courts of the TEPJF, previously situated in five locations nationwide. Election operations at the local level were to be handled by temporary staff hired for each election, and all election-related disputes were to be collectively adjudicated by the TEPJF.¹

In Mexico, constitutional amendments require the support of a two-thirds majority in both houses of the Congress of the Union for approval. While the ruling coalition held a majority in both houses,² it did not reach the required threshold for constitutional amendments. As a result, President López Obrador had hinted at having a “plan B” in case the amendment was rejected. Indeed, following the rejection of the constitutional amendment in the lower house on December 6, 2022, he promptly submitted a new proposal for the creation and amendment of electoral procedural laws to the same house on the same day, which was swiftly approved the following day. The upper house also approved all the bills on December 14, 2022 and February 22, 2023, resulting in the enactment of the reform-related laws.³

While this legislative revision had a more limited scope compared to the constitutional amendment proposal, it introduced problematic changes in the area of election administration and penalties for electoral violations. The structure of the INE remained largely intact, but the departments responsible for election operations saw significant downsizing. The number of members in each OPLE was reduced from 5 to 3, and that of the permanent commissioner for regional committees, which oversee each of the 300 electoral districts nationwide, was reduced from 5 to 1. Additionally, the number of personnel belonging to the National Electoral Professional Service (Servicio Profesional Electoral Nacional: SPEN), a subsidiary of the INE, was drastically reduced from 2,571 to 396. These two organizations collaborate on various tasks such as voter registration card issuance, the determination of voter counts for constituency delimitation, election administration,

¹ Claudia Salazar (2022), “La reforma electoral de la 4T a detalle,” *Reforma*, 28 April (<https://www.reforma.com>); Claudia Guerrero and Érika Hernández (2022), “Pretenden reforma ia su conveniencia!” *Reforma*, 29 April (<https://www.reforma.com>).

² In the lower house, following the 2021 midterm elections, the ruling coalition secured 281 seats out of a total of 500. Claudia Salazar and Erika Hernández (2021), “Paran a 4T en Congreso,” *Reforma*, 7 June (<https://www.reforma.com>).

³ Yared de la Rosa (2022), “Diputados rechazan reforma electoral de AMLO; van por el plan B,” *Forbes México*, 6 December (<https://www.forbes.com.mx/diputados-rechazan-reforma-electoral-de-amlo-van-por-el-plan-b/>); Georgina Zerega (2023), “El Senado aprueba el “plan B” de la reforma electoral de López Obrador,” *El País*, 23 February (<https://elpais.com/mexico/2023-02-23/el-senado-aprueba-el-plan-b-de-la-reforma-electoral-de-lopez-obrador.html>).

monitoring, and voter education activities at the district level.⁴

Furthermore, there were significant changes in penalties for violations related to electoral finance and campaign. Under the previous regulations, candidates found in violation of the law could face penalties ranging from fines to disqualification depending on the severity of the violation. However, this amendment eliminated disqualification as a penalty, leaving only fines. Moreover, the previous law broadly prohibited public officeholders from engaging in campaigning that could favor specific candidates through the use of their positions. With the reform, the types of violations were notably narrowed, focusing primarily on prohibiting “the use of public funds for contracted advertising.”⁵

Problems Embedded in the Reform and Subsequent Developments

According to López Obrador, the primary objective of the reform was cost reduction through organizational restructuring. In the initial constitutional amendment proposal, it was claimed that extensive electoral system reform, including institutional restructuring, would lead to a reduction of 24 billion pesos (approximately US\$1.4 billion), and subsequent legislative changes would result in savings of 3.5 billion pesos (approximately US\$204 million). President López Obrador emphasized that through the “plan B” of legislative amendments, “expenses would be significantly reduced without affecting the functionality of INE” and the conduct of elections.⁶

However, this series of reform attempts contained numerous issues that could obstruct the conduct of democratic elections. The failed constitutional

⁴ INE (2022), “Pronunciamiento de las consejeras y consejeros del Instituto Nacional Electoral (14 de diciembre de 2022),” *Central Electoral* (<https://centralelectoral.ine.mx/2022/12/14/pronunciamiento-de-las-consejeras-y-consejeros-del-instituto-nacional-electoral-sobre-la-reforma-electoral/>); Javier Divany, Karyna Soriano, and Fernando Merino (2023), “Viene ola legal contra plan B,” *El sol de México*, 3 March; Fabiola Vázquez (2023), “Del #YoDefiendoalINE al Plan B de la reforma electoral,” *Gatopardo*, 24 February (<https://gatopardo.com/podcast-gatopardo/del-yodefiendoal-ine-al-plan-b-de-la-reforma-electoral/>).

⁵ Secretaría de Gobernación (2022), *Diario Oficial de la Federación*, 27 December, Edición Vespertina (México: Secretaría de Gobernación) (www.dof.gob.mx/abrirPDF.php?archivo=27122022-VES.pdf&anio=2022&repo=); Secretaría de Gobernación (2023), *Diario Oficial de la Federación*, 2 March, Edición Matutina (México: Secretaría de Gobernación) (<https://www.dof.gob.mx/abrirPDF.php?archivo=02032023-MAT.pdf&anio=2023&repo=>).

⁶ Belén Zapata (2022), “¿Cómo es la reforma electoral de México? ¿Qué propone y qué causa controversia?” *CNN Español*, 15 November (<https://cnnespanol.cnn.com/2022/11/15/reforma-electoral-mexico-que-propone-controversia-orix/>); Guadalupe Irizar and Antonio Baranda (2023), “Minimiza presidente impacto de ‘Plan B’,” *Reforma*, 3 March (<https://www.reforma.com>).

amendment proposal included provisions for the election of INEC commissioners and TEPJF judges through voting by constituents. These positions require a high degree of expertise and neutrality detached from political parties and the government. Electing such positions by popular vote raised concerns about the potential disregard for necessary expertise and the increased influence of specific political forces on organizational operations. This, in turn, cast significant doubt on the “fairness and impartiality”⁷ of elections, which is fundamental to the survival of a democratic system.

Furthermore, the subsequent series of legal reforms significantly reduced the number of staff responsible for election administration, and temporary employees were primarily tasked with carrying out the practical duties during elections. This had the potential to impede the accumulation of knowledge and experience required for the smooth conduct of elections, making it difficult to administer elections as efficiently as before. In addition, narrowing down the types of violations related to election campaigning enabled individuals in public office, such as presidents and governors, to use government-funded social welfare policies and other achievements for the promotion of specific political parties or candidates. This held the potential to undermine the fairness of elections.

Furthermore, among the legal reforms, the removal of candidate disqualification as a penalty for illegal activities related to election financing and campaign promotion garnered the most criticism. This amendment meant that even those found guilty of serious election violations would only face fines, allowing violators to continue participating in elections and rendering penalty provisions ineffective as a deterrent against misconduct, particularly for well-funded campaigns.

As a result, this reform was strongly criticized by researchers specializing in political science and law, who characterized it as something that “encourages election violations, distorts previously functioning organizations,”⁸ and “represents a historical regression for Mexican democracy.”⁹ Concerns were also expressed by the United States

⁷ Guillermo O’Donnell and Philippe C. Schmitter (1986), *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (Baltimore: The Johns Hopkins University Press), p. 8.

⁸ Guadalupe Vallejo (2022), “Advierten que “Plan B” de AMLO da manga ancha a cometer infracciones electorales,” *Expansión*, 8 December (<https://politica.expansion.mx/mexico/2022/12/08/advierten-que-plan-b-amlo-cometer-infracciones-electorales>).

⁹ Juan Jesús Garza Onofre and Javier Martín Reyes (2022), “Una regresión histórica,” *Reforma*, 29 April (<https://www.reforma.com>).

government and the Council of Europe regarding the potential harm to the neutrality and transparency of the electoral process and the resulting erosion of trust in election results.¹⁰

Given these problems and the significant domestic and international concerns, the INE and opposition parties filed challenges to the constitutionality of the reform. Consequently, the SCJN declared all legislative changes invalid in its rulings on May 8 and June 22, 2023, citing procedural defects during the bill's deliberation and voting in Congress. This marked the failure of the electoral system reform attempt.¹¹

The Significance of this Series of Events for Democracy

What is the significance of this series of events for contemporary Mexican democracy?

The most notable point is the significant negative impact on the procedures that underpin democracy. Mexico has grappled with various substantive governance issues such as corruption, poverty, human rights, and security since achieving democratization in 2000.

On the other hand, concerning the electoral system, while numerous challenges exist in its practical operation leaving large room for improvement,¹² overall, fair and just elections have been conducted to a level where it can be judged that a democratic system is being maintained.¹³

However, the attempt at electoral system reform spearheaded by the President had the potential to undermine the procedural foundations of Mexico's democratic system, which is barely maintained. The implementation of the enacted amendments would drastically downsize the organization responsible for election operations at the INE, increasing the likelihood of insufficient personnel and expertise to adequately monitor and ensure fair election processes. Moreover, the light penalties for violations, combined with the pre-existing issue of inadequate enforcement, would likely

¹⁰ José Díaz Briseño (2023), "Dice EU observar impacto de 'Plan B'," *Reforma*, 28 February (<https://www.reforma.com>); European Commission for Democracy through Law (Venice Commission) (2022), Opinion on the Draft Constitutional Amendments Concerning the Electoral System, CDL-AD(2022)031 (Strasbourg: Council of Europe) ([https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)031-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)031-e)).

¹¹ Víctor Fuentes (2023), "Sepulta la Corte Plan B de AMLO," *Reforma*, 9 May (<https://www.reforma.com>); Víctor Fuentes (2023), "Dan en la Corte adiós a 'Plan B'," *Reforma*, 23 June (<https://www.reforma.com>).

¹² Shigeru Minowa (2019), "La reforma electoral de 2014 en México: Sus logros y retos para la democracia de calidad," *Anales de estudios latinoamericanos*, 39.

¹³ V-Dem Institute (2023), *Democracy Report 2023: Defiance in the Face of Autocratization* (Gothenburg: V-Dem Institute).

exacerbate existing problems rather than address them. Undoubtedly, this situation would erode public trust in the election process and its outcomes.

On the other hand, this series of events also demonstrated the strength of public trust in democratic institutions and the mechanisms in place to protect them in contemporary Mexico.

In the process leading up to the achievement of democratization in Mexico, which followed 71 years of de facto one-party rule, the role played by an autonomous electoral management institution was highly significant.¹⁴ This institution, independent of the government, is known to have played a pivotal role, and even today, the Mexican National Electoral Institute commands a high level of public trust in comparison to other government entities.¹⁵ A case in point illustrating the extent of this trust is the large-scale demonstrations conducted by citizens opposing the reforms in over 100 cities nationwide following the passage of the legislation.¹⁶

Furthermore, the fact that the SCJN, responding to constitutional challenges against the amended law, issued a ruling of unconstitutionality on procedural grounds, based on legal expertise without delving into value judgments about the law's content, demonstrates that the fundamental principle of the separation of powers, a cornerstone of constitutional democracy, is still functioning at present. This underscores the judiciary's role in restraining arbitrary exercise of power that could infringe upon the rights of citizens.

In essence, contemporary Mexico finds itself at a juncture where attempts to undermine democratic procedures based on partisan interests persist within the realm of politics. Simultaneously, the current state of affairs reflects the continued effectiveness of a system established during the democratization process and subsequently refined. This system serves as a bulwark against endeavors that could weaken the democratic system, indicating that, for the time being, such attempts have been curtailed by this series of developments.

¹⁴ For a crucial role in the democratization process played by the INE's predecessor, the Federal Electoral Institute (Instituto Federal Electoral), founded in 1990, please refer to José Woldenberg (1999), "La transición a la democracia," *Nexos*, 261.

¹⁵ Reforma-MCC (2023), "Se acentúa mala imagen del PRI," *Reforma*, 20 April (<https://www.reforma.com>).

¹⁶ Reforma / Staff (2023), "Replican reclamo en 100 ciudades," *Reforma*, 27 February (<https://www.reforma.com>).

Conclusion

López Obrador has long faced criticism from opposition groups, who have labeled him as a populist. However, he has been regarded as a seasoned politician who, while advocating for radical policies, has demonstrated the ability to choose realistic policies that expand his support base.¹⁷ Nevertheless, the current attempt at reform has raised concerns, as it is being pushed through with claims of making the electoral system more democratic and challenging the legitimacy of the existing electoral system dominated by a privileged elite.¹⁸ There are concerns that such actions, reminiscent of populism seen in countries like Venezuela, could erode democracy. At this juncture, the system has demonstrated its capacity to resist such intentions and maintain democratic processes. However, following the SCJN's invalidation of a series of legal reforms known as "plan B," figures like Mario Delgado, the leader of the ruling party National Regeneration Movement (Movimiento Regeneración Nacional: MORENA), and Claudia Sheinbaum, who has been confirmed as the party's official candidate for the 2024 presidential election, have started advocating for the realization of a "plan C."¹⁹ Given MORENA's strong support among the general populace, it is crucial to closely monitor whether such attempts could have a significant impact on the state of democracy in Mexico.

¹⁷ Shin Toyoda (2019), "Can Corrupted Republic Be Saved?: López Obrador and National Regeneration Movement in Mexico," *Latin America Report*, 35(2).

¹⁸ Editor (2022), "Reforma electoral establecerá una auténtica democracia: presidente," Sitio Oficial de Andrés Manuel López Obrador, 14 November (<https://lopezobrador.org.mx/2022/11/14/reforma-electoral-establecera-una-autentica-democracia-presidente/>); Belén Zapata (2022), "¿Cómo es la reforma electoral de México? ¿Qué propone y qué causa controversia?" *CNN Español*, 15 November (<https://cnnespanol.cnn.com/2022/11/15/reforma-electoral-mexico-que-propone-controversia-orix/>).

¹⁹ "Plen C" refers to the intention of defeating the forces that pushed for the repeal of the current institutional reform in the next election and then proceeding with a similar reform. See, Mayolo López and Antonio Baranda (2023), "Atacan morenistas a la Corte por 'Plan B'," *Reforma*, 23 June (<https://www.reforma.com>).

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