The Lava Jato Corruption Scandal: Comparing the Responses of Peru and Mexico

Raquel de Mattos Pimenta
Catherine Greene

Edited by
Paul Lagunes
Jan Svejnar
ABOUT THE PROJECT

Lava Jato or Operation Car Wash refers to Latin America’s largest known corruption scheme in living memory. Related events began unfolding in Brazil in March of 2014. Construction companies were colluding with employees of Brazil’s state-owned oil company to win public works contracts. The oil company’s employees took bribes, while politicians obtained kickbacks as personal gifts or campaign donations.

The relevant scholarship had warned that corruption could result in public works being constructed at inflated costs. However, such warnings were ignored, and so the people involved in the scheme managed to steal billions in state funds. Prosecutors further revealed that bribes paid by the region’s largest construction group extended to eleven other countries besides Brazil.

In spite of the continued interest among policy practitioners and academics, there are key questions about Lava Jato that remain unanswered. For instance, how did the construction company that led the corruption scheme choose the countries in which to do business? According to the international press, the scheme played a role in the 2014 World Cup, but was corruption also at work in the planning and execution of the 2016 Rio Olympics? Also, what is motivating some of the key actors fighting corruption in Brazil, and what can be done to avoid similar corruption scandals in the future?

To answer these and related questions, the Center on Global Economic Governance (CGEG) at Columbia University’s School of International & Public Affairs has collected a series of policy briefs on Lava Jato-related themes. This project is proudly cosponsored by the Center for Development Economics and Policy (CDEP), Columbia Global Center in Rio, and the Latin America Initiative at Rice University’s Baker Institute for Public Policy with the goal of shedding light on a complex problem that has affected the lives of millions.

ABOUT THE POLICY BRIEF CONTRIBUTORS

Raquel de Mattos Pimenta is a Ph.D. candidate at the University of São Paulo (USP) Law School. Her dissertation focuses on anti-corruption reforms and institutional analysis in Brazil. She is interested in the regulation of public-private relations so as to avoid corruption and monopoly control over any given industry. She is a researcher at the Law and Public Policy Group of the USP Law School. De Mattos was a Fulbright Visiting Researcher at Yale Law School (2017-2018) and lead editor of the Yale Journal on Regulation. She holds an LL.B. and an LL.M. with honors from the University of São Paulo. Previously, she worked as a lawyer on antitrust, corporate governance, and compliance programs in Brazil.

Catherine Greene is a Financial Consultant for the Finance and Markets Global Practice division at the World Bank (WB). Her expertise is in anti-money laundering and public asset disclosure procedures. She is interested in anti-corruption matters, especially prevention and management of conflicts of interest, beneficial ownership transparency, and de-risking. She is currently the Publication Manager for the U4 Anti-corruption Resource Centre. Greene holds an LL.B. from the University of San Andrés (Buenos Aires), and an LL.M. from Yale Law School (2018). She was a Fulbright Scholar at University of Massachusetts (2013), and is working on her thesis for a Master’s degree in International Affairs from University of Bologna. Previously, she worked as a public defender and as a financial transparency consultant at the Inter-American Development Bank.
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Abstract  
There is variation in how Latin American countries have reacted to the Lava Jato corruption scandal. Some were quick to hold accountable the company and the public officials involved. Others’ actions were less decisive and have not resulted in prosecutions or other concrete results. This policy brief explores the possible reasons for such variations in two countries, Peru and Mexico. Thus far, Mexico’s authorities have managed to impose only administrative sanctions, with no criminal convictions. In contrast, Peruvian authorities were more expedient; they initiated criminal investigations and launched legal reforms. The active implementation of an anti-corruption framework may help explain the differences more than the mere existence of such a framework or the scale of Odebrecht’s involvement in each country’s local market. The Peruvian and Mexican cases also show that the countries in Latin America must do more than simply enact laws. Enforcement is needed.
The Lava Jato corruption scandal is one of the most notorious cases of transnational bribery in Latin America.¹ The Brazilian conglomerate Odebrecht had more than 100,000 employees in 21 countries, revenue exceeding 14 billion USD, and a significant history of developing infrastructure projects.² After a wide-ranging corruption investigation, however, in December 2016, Odebrecht reached a settlement with Brazilian, U.S., and Swiss authorities in what the U.S. Department of Justice called the “largest foreign bribery case in history.”³ Odebrecht executives confessed that the company had paid bribes of 788 million USD in ten countries in Latin America, plus Angola and Mozambique, between 2003 to 2014.

Odebrecht used a sophisticated but standardized scheme that worked in a number of countries.⁴ The company colluded with corrupt public officials to inflate the prices of contracts awarded to Odebrecht for public infrastructure projects, diverting some of this income to its now infamous “Structured Operations Department,” and using these funds for outright bribes, and contributions to the electoral campaigns of public officials who favored Odebrecht. After the scandal broke, some countries held Odebrecht accountable after public protests while others were less decisive in their actions.

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¹ For the purpose of this brief, we will use the terms “Lava Jato” to refer to the Odebrecht’s corruption scheme as it extended throughout Latin America.
This essay examines the Lava Jato case from the perspective of two Latin American countries—Mexico and Peru—because they responded to the crisis with strikingly different levels of success. The Peruvian authorities responded quickly with criminal investigations. Peru also initiated legal reforms to protect the continuity of ongoing infrastructure projects, seized Odebrecht assets, and banned the company from further public procurement. By contrast, the Mexican authorities were slow to act. They imposed administrative sanctions, but, as of this writing, Mexico has yet to secure criminal convictions against any company representatives or any of the public officials involved.\(^5\)

This essay proceeds in four parts. Part I provides a brief overview of the recent economic and political performance of Peru and Mexico. Parts II and III examine the Lava Jato scandal from the perspective of each country, identifying differences in how the Peruvian and Mexican authorities responded to the scandal. Part IV concludes by discussing the explanatory power of specific factors.

**Peru and Mexico: Overview**

Peru’s economic performance has been relatively strong over the past decade and a half. Its GDP grew 5.5% annually on average between 2001 and 2014, experiencing a

\(^5\) This brief relies exclusively on public information, most of which was published on or before August 2018. Events surrounding the Lava Jato scandal are still unfolding in both Mexico and Peru, thus we recognize that our conclusions are time-specific. On a related note, it is worth pointing out that both countries changed presidential administrations while this brief was being developed; therefore, the actions of these new administrations are not the focus of our analysis.
notable decrease in poverty. However, Peru still faces some harsh realities. For example, towards the end of Alberto Fujimori’s authoritarian government in 2000, the country was affected by large-scale human rights violations and shaken by recorded evidence of corruption. Transparency International (TI) estimates that Fujimori’s administration embezzled the equivalent of 600 million USD of public money. The decade that followed was marked by efforts to dismantle the authoritarian features of the Fujimori regime. Still, Peru’s Public Defender’s Office estimated in 2017 that Peru loses 12,000 million soles per year (3,600 million USD) to corruption.

Mexico is the second largest economy in Latin America and home to the tenth largest oil reserve in the world. In the last decade, the country began to experience for the first time a primary surplus and a decline in the public debt-to-GDP ratio. However, there are estimates that Mexico loses between 5% and 9% of its annual GDP to corruption.
Both countries have taken steps to address corruption since the early 1990s, aiming to increase institutional capabilities, accountability, and transparency. However, further progress is required. Around 80% of Peruvians had little to no trust in their government, and current data shows that the estimate rises to 93% in the case of Mexico.\textsuperscript{13} Peru and Mexico hold similar positions on TI’s Corruption Perception Index (2018), scoring 37 and 29, respectively (where 0 is highly corrupt and 100 is very clean).\textsuperscript{14}

This was the backdrop against which the Lava Jato scandal appeared. After more than two years of international investigation, the company reached a plea agreement with Brazilian, U.S., and Swiss authorities in which it admitted to having paid bribes to officials, political parties, and candidates in order to secure unlawful advantages in over a hundred projects. The company admitted having made corrupt payments in Peru of 29 million USD, between 2005 and 2014, for which it had received 143 million USD in benefits.\textsuperscript{15} Odebrecht paid officials to influence bids on infrastructure projects in the country; for one project between 2005 and 2008 it paid 20 million USD, and in another, in 2008, the company paid 1.4 million USD. Odebrecht admitted having made corrupt payments in Mexico between 2010 and 2014 totaling 10.5 million USD, to gain benefits worth 39 million USD.\textsuperscript{16} In one specific instance, Odebrecht agreed to pay 6 million USD in 2013 to a high-level official of a state-owned company for helping the company win a project.\textsuperscript{17}

\begin{itemize}
\item \textsuperscript{14} Transparency International, “Corruption Perception Index 2018,” \url{www.transparency.org/cpi}.
\item \textsuperscript{15} Source: Plea Agreement, United States v. Odebrecht S.A., No. 1:16-cr-643 (E.D.N.Y., 2016).
\item \textsuperscript{16} Ibid.
\item \textsuperscript{17} Ibid.
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The scale of Odebrecht’s admitted bribery in Peru and Mexico was less than what the company admitted to paying in other countries. Nonetheless, the details of Odebrecht’s corrupt activities revealed by the plea agreement sparked a response in these countries. We address these responses in the following sections.

Odebrecht in Peru

Odebrecht was a key player in Peru’s recent history. Peru was the second country, after its home country Brazil, in which Odebrecht began operations; it hosted some of the company’s most ambitious construction projects. The company had a massive presence in Peru: at one point it held 80% (in terms of value) of the active contracts for Peru’s infrastructure investments.

The plea agreement shook the country’s political and economic elite. Jorge Henrique Simões Barata, former superintendent of Odebrecht in Peru, had, as of June 2018, admitted to bribery in at least eight Odebrecht projects involving subways, highways, and dams. The scheme described by Barata would begin with an inflation of the cost of the

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infrastructure projects. The company’s Structured Operations Department would engage in layers of money laundering, and then distribute kickbacks to officials involved in the contract negotiations. The Department would also participate in illegal financing of political campaigns by various means such as gifts, cash, and off-the-record donations. In cases that are still before the Peruvian courts, Odebrecht’s executives have testified that the projects involved federal and local authorities, as well as local companies engaged in joint ventures with Odebrecht.

All four of Peru’s presidents elected since Fujimori have been implicated. Alejandro Toledo, the first democratically-elected president (2001–06), was alleged to have received 10–20 million USD from Odebrecht to help secure a major contract for a highway linking Brazil to Peru (*Interoceánica Sur*). Jorge Barata testified that bribes were laundered through intermediaries close to the president and then transferred to Toledo’s

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23 Ibid.

24 Ibid.

family offshore accounts. Toledo is currently in the United States; Peruvian authorities have issued requests for his extradition.

Toledo’s successor, Alan García (2006–11), is also under investigation by the Prosecutor’s General Office (Fiscal General) for alleged corruption in Odebrecht projects. These projects include the construction of Lima’s subway, for which, García’s former Vice Minister of Communication, Jorge Cuba, is under preventive arrest. What appear to be García’s initials—“AG”—were found in telephone notes of Marcelo Odebrecht (heir and former CEO of the Odebrecht Conglomerate). Public information on Marcelo Odebrecht’s testimony to Peruvian authorities did not provide further details about this note, but he has confirmed knowing Alan García. Recently, following a request from the relevant authorities, the former president was barred from leaving the country for the duration of the investigation.

31 Ibid.
Turning to another president, Ollanta Humala (2011–16)—and his wife, Nadine Heredia—served 9 months of pre-trial detention on money-laundering and conspiracy charges. They allegedly accepted 3 million USD from Odebrecht for the 2006 and 2011 campaigns of Humala’s party, the *Partido Nacionalista*. In April 2018, they were released from pre-trial detention, though investigations are ongoing.

President Pedro Pablo Kuczynski (2016–18) was also reached by the investigation: his consulting firm, Westfield Capital, held contracts and received fees from Odebrecht while Kuczynski was serving in Toledo’s government, creating a potential conflict of interest. Kuczynski’s firm received payments from Odebrecht while it was involved in public contracts related to the *Interoceánica Sur* highway project, which was subject to cost over-runs and inflated prices. He conceded that Westfield Capital had provided consulting services to Odebrecht but claimed it had done so under the supervision of his business partner and that he himself did not personally benefit from the payments his firm received from Odebrecht. After these facts became public, the political opposition tried to impeach Kuczynski. However, he was able to secure his position by entering into a political alliance with Kenji Fujimori, the son of Alberto Fujimori.

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34 Ibid.  
36 Ibid.  
37 Ibid.  
persuaded some members of Congress to refrain from voting to impeach; in exchange, he obtained a presidential pardon for his father.\textsuperscript{39} Public outrage followed the controversial pardon: thousands of Peruvians took to the streets.\textsuperscript{40} Nine months later, the Peruvian supreme court revoked the pardon and ordered Alberto Fujimori’s return to prison.\textsuperscript{41}

Videos were released of government officials offering enticements and bribes to opposition lawmakers to avert Kuczynski’s impeachment.\textsuperscript{42} Among the offers were lunches with the president, key posts for government officials, the speeding-up of public works projects of interest to particular members of Congress, and outright bribes.\textsuperscript{43} As a result of these incriminating tapes, Kuczynski, who had been elected on an anti-corruption platform, was forced to resign in March 2018.

His vice-president, Martín Vizcarra, took over and is to remain president until 2021. Vizcarra was previously governor of his home region of Moquegua in southern Peru, but he spent most of the turbulent years of the Lava Jato scandal in Canada.\textsuperscript{44} There is no known link between him and Odebrecht. The new administration pushed for a referendum on anti-corruption reforms, including the creation of a senate, a ban on re-election of

\textsuperscript{39} Ibid.
\textsuperscript{41} Dan Collyns, “Peru’s high court overturns pardon of former strongman Fujimori”, \textit{The Guardian}, sec. Peru, October 3, 2018, \url{https://www.theguardian.com/world/2018/oct/03/peru-high-court-overturns-pardon-alberto-fujimori}
\textsuperscript{43} Ibid.
lawmakers, stricter regulation of political parties’ financing and the reform of the Judiciary’s selection committee.\textsuperscript{45} The referendum is set to take place on December 9, 2018.

Odebrecht’s connection to the Peruvian political elite was based on a strategy of contributing to all parties and leaders: it spread its influence to alleviate the risk that any particular political group would lose its influence. For instance, Barata reported that Odebrecht had made illegal contributions to the opposition leader, Keiko Fujimori, the daughter of Alberto Fujimori.\textsuperscript{46} Keiko Fujimori has been required to serve three years of jail as a preventive measure while investigations continue.\textsuperscript{47}

The Lava Jato scandal also had an impact on the economic elite of the country. The stock of Graña y Montero, one of Peru’s most important construction companies and a partner of Odebrecht in several projects, lost 40\% of its value between December 2016 and January 2017.\textsuperscript{48} By the end of that year, executives of Graña y Montero and other local

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\textsuperscript{47} Dan Collyns, “Keiko Fujimori, Peru’s opposition leader, sent back to jail ahead of corruption trial”, \textit{The Guardian}, sec. Peru, October 31, 2018 https://www.theguardian.com/world/2018/nov/01/keiko-fujimori-perus-former-first-lady-sent-back-to-jail-ahead-of-bribery-trial. Lava Jato scandal has been a fast paced one in Peru, so we recognize that between the writing and publication of this brief new facts may come to light.
\end{flushright}
construction companies were under pre-trial detention, although some of them were released at the start of 2018.49

The Lava Jato scandal could lead to further revelations in Peru. The Peruvian Congress established an Investigation Committee (Comisión Lava Jato) to examine corruption allegations in 11 out of 40 projects executed by Brazilian companies in Peru, with more than 140 persons and entities under investigation.50 Recently, in November of 2018, the Committee released an extensive report with its conclusions.51

In addition to the Investigation Committee, Peru has used other mechanisms to promote accountability.52 For instance, there is the High-Level Anti-Corruption Commission (Comisión de Alto Nivel Anticorrupción, CAN),53 which was created in 2010 to help coordinate the efforts of the country’s main anti-corruption advocates, both from the side of government and civil society. The CAN put forward a national strategy against corruption (Plan Nacional Anticorrupción 2018–2021). On the enforcement front, in April

51 The report came out soon before this brief was complete. For this reason, we do not discuss the report’s findings in detail, but there are claims that the report was politically biased to protect Keiko Fujimori and Alan Garcia. See Martin Hidalgo Bustamante, “Análisis del informe de la Comisión Lava Jato: algunas ausencias y poco sustento”, El Comercio, sec Política, November 11, 2018, https://elcomercio.pe/politica/analisis-informe-comision-lava-jato-ausencias-sustento-noticia-576393.
53 Voting members of the CAN include the President of the Congress, the Minister of Justice, the President of the Constitutional Tribunal, the General Prosecutor, and representatives of regional governments and municipalities.
2016, Peru passed Law 30.424 on corporate liability for bribery, establishing independent criminal liability for legal entities (such as corporations) in cases of local and foreign bribery.\textsuperscript{54} Possible sanctions include fines, bans from government contracting, and even the dissolution of the legal entity.

Peru has also made substantial changes to its anti-corruption efforts after the Lava Jato scandal surfaced. In February 2017, then-President Kuczynski, under public pressure, issued Urgent Decree 003 (\textit{Decreto de Urgencia 003-2017}).\textsuperscript{55} The Decree had the explicit aim of protecting public infrastructure projects by securing reparations for the state from tainted infrastructure contracts, and of safeguarding the local companies that acted as subcontractors and suppliers for these projects. Companies convicted of, or admitting to, offenses beyond Peru’s borders could be prohibited from extracting funds out of the country, a step meant to ensure that the necessary financial resources would be available in case payment for damages was required by the Peruvian authorities. In addition, any significant divestment from these companies would require governmental approval, which could be withheld so as to protect Peru’s public contracts. As a consequence of this decree, Odebrecht assets in Peru were seized and the company was banned from public contracts.

With such rules, the government attempted to project a norm of zero tolerance towards corruption. But due to flaws in the Decree’s institutional design, its enforcement

\textsuperscript{54} Published in the \textit{Diario Oficial del Bicentenario El Peruano} (Official Gazette), sec. Normas Legales, in April 1, 2016.
interrupted some projects, while also disrupting suppliers’ payments and some proposals for the sale of Odebrecht’s assets. As an unintentional result, it harmed local companies and hindered the development of public works projects. The magnitude of Odebrecht’s corruption, along with this poorly calibrated policy response, had an adverse impact on the Peruvian economy, affecting approximately 250 projects and 50,000 employees.

In March 2018, Law 30.737 was passed, which aimed to address some of the original Decree’s unintended consequences while preserving the state’s ability to recover damages for corruption. For instance, it limited the extent to which governmental approval was required for divestments which could take time and interrupt the execution of public projects.

Seeking to improve enforcement capability, Peru created two task forces to investigate Odebrecht and hold individuals accountable. One is investigating bribery, the other money laundering. Although investigations have been advancing, there are several challenges. For example, the lack of information sharing and coordination between the

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bribery and money laundering teams has been criticized.\textsuperscript{60} Also, there have been public clashes inside the Prosecutors Office between the General Prosecutor and members of the task force around the investigation of Keiko Fujimori.\textsuperscript{61}

\textbf{Mexico}

In Mexico, contrasting somewhat with Peru, legal and institutional reforms preceded the plea agreement of Odebrecht. Nonetheless, their pre-existence did not lead to criminal charges or the prosecution of any public officials.

In 2012, as Enrique Peña Nieto was running for president, the fight against corruption was one of his main electoral promises.\textsuperscript{62} He vowed to create a new system that would foster institutional coherence and provide proper tools to investigate and fight against corruption.

\begin{footnotesize}
\textsuperscript{60} Gustavo Gorriti, “Hablaste, te fregaste!” \textit{Ilustracion Peruana Caretas}, No. 2543, June 14, 2018, \url{http://caretas.pe/las_palabras/83064-hablaste-te_fregaste}.
\textsuperscript{61} Junior Miani Montejo, “Chávarry puede remover a José Domingo Pérez de investigación a Fujimori?”, \textit{El Comercio}, sec. Política, November, 8, 2018, \url{https://elcomercio.pe/politica/pedro-chavarry-remover-jose-domingo-perez-investigacion-keiko-fujimori-noticia-575497}. Again, we should stress that Lava Jato in Peru has been a very dynamic topic and we recognize that events are still unfolding.
In 2014, a constitutional reform was achieved under Peña Nieto’s presidency with the help of an alliance of the three main political parties, known as “Pacto por México.”\(^6\) Another constitutional reform in 2015 created the national anti-corruption system (Sistema Nacional Anticorrupción, SNA).\(^6\) This included the creation of an independent anti-corruption prosecutor’s office,\(^6\) the establishment of a special tribunal for corruption,\(^6\) and the development of institutional infrastructure aimed at coordinating the work of various officials responsible for matters related to transparency.\(^6\) The new anti-corruption system was to be implemented through laws that would guide and regulate its functions. Corporate liability for corruption was established, and the power of prosecutors was increased.

These constitutional reforms and the new laws regulating the SNA were a response to pressure from civil-society groups. Such groups had championed many elements of the anti-corruption reform,\(^6\) like requiring public officials to disclose their assets and

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\(^6\) The constitutional reform of 2014 was a package of laws on a wide range of topics, including energy, anti-trust, telecommunications, tax, finance, labor, education, criminal procedural law and a new set of rules regarding the amparo, a remedy for the protection of constitutional rights.


interests,\textsuperscript{69} strengthening the sanctions for corruption cases,\textsuperscript{70} and the appointment of a specialized prosecutor for such cases (\textit{Fiscalía Contra los Delitos de Corrupción}).\textsuperscript{71}

Somewhat similar to Peru’s CAN, the SNA was intended to set in motion a coordinating mechanism for the different transparency authorities in the country. Yet, the system has not had much of an impact—turning it into a point of criticism during the 2018 presidential election.

Peña Nieto’s government has been marked by a series of corruption scandals, including a large-scale diversion of public funds known as “La Estafa Maestra,”\textsuperscript{72} and the “Casa Blanca” scandal. The latter erupted when a journalist’s investigation revealed that the “white house” purchased by the First Lady, was actually registered in the name of a company associated with a high-speed rail project to which the administration had granted a contract six days before.\textsuperscript{73} A month after the investigation was publicized, the First Lady is said to have called off the sale,\textsuperscript{74} and two years later, when announcing the launch of the SNA, Peña Nieto apologized for the scandal.\textsuperscript{75}

\textsuperscript{69} Decree for establishing the obligation to submit asset and interest disclosure, published in the \textit{Diario Oficial de la Federación} (Official Gazette), July 14, 2017, \url{https://bit.ly/2Rl8npv}.


\textsuperscript{72} “Billions were diverted with shell companies,” \textit{Mexico News Daily}, September 5, 2017, \url{https://mexiconewsdaily.com/news/billions-were-diverted-through-shell-companies/}.

\textsuperscript{73} Jo Tuckman, “Mexican president Enrique Peña Nieto faces outcry over £4.4m mansion,” \textit{The Guardian}, November 10, 2014, \url{https://www.theguardian.com/world/2014/nov/10/mexico-president-enrique-pena-nieto-mansion-explain}.


\textsuperscript{75} Redacción, “‘Casa Blanca’: el presidente de México, Enrique Peña Nieto, pide disculpas por el escándalo de la compra de una lujosa mansión,” \textit{BBC Mundo}, July 19, 2016, \url{https://bbc.in/2Ayidx7}.
Lava Jato represented yet another scandal surrounding Peña Nieto’s administration. Even though Odebrecht had been active in Mexico, it had less of a presence there than in Peru—not having as many large or diverse projects. Most of Odebrecht’s involvement in Mexico was centered on projects connected to the state-owned oil company Petróleos Mexicanos, commonly known as Pemex.76

As early as 2010, before Peña Nieto was president, Mexico’s main auditing body, the Superior Audit of the Federation (Auditoría Superior de la Federación, ASF), had detected multiple irregularities in contracts granted by Pemex to Odebrecht.77 Also in 2010, according to the later plea agreement, bribes started to flow from Odebrecht to several Mexican public officials. These red flags, however, did not lead to immediate investigation; illegal activities between Pemex and Odebrecht continued undisturbed for another six years.

One of the anomalies that had been identified by the ASF was related to inflated pricing for the renovation of a refinery located in Minatitlán, Veracruz state.78 The agency reported its findings to Pemex in 2011, and continued to do so for the next three years. The state-owned oil company nevertheless moved forward with the execution of the contract,

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without applying any sort of sanction to Odebrecht or the government officials involved. The result was a marked increase in the project’s cost (66%), and a delay of five years (from 2008 to 2013) before it was completed. According to ASF reports, and an investigation pursued by the press agency Animal Político, the administration of then president Felipe Calderón granted overpayments of 191 million USD to Odebrecht in 2010 to 2012 for the completion of the Minatitlán project.\footnote{Ibid.} During the same period, Pemex allegedly paid Odebrecht 25 million USD for forty additional public contracts, which were granted without any public bid process.\footnote{Ibid.}

The ASF had identified other irregularities regarding the Minatitlán project, mainly related to extra payments for work that was never conducted and for increases in staffing costs. Such irregularities were also seen in other projects, such as for the gas pipeline “Los Ramones,”\footnote{Poder, “Pemex otorgó contratos a Odebrecht pese a irregularidades como sobrecostos y pagos ilegales,” RindeCuentas, May 30, 2017, https://www.rindecuentas.org/reportajes/2017/05/30/todo-lo-que-deberias-saber-de-odebrecht-en-mexico-y-su-cercania-con-el-poder/.} a refinery in Salamanca,\footnote{Arturo Angel, “Pemex dio más de 950 mdp en pagos irregulares a Odebrecht: ASF; se atenderán observaciones, dice,” Animal Político, November 1, 2017, https://www.animalpolitico.com/2017/11/pemex-pagos-irregulares-odebrecht/.} and the “Quetzal” international gas pipeline connecting the south of Mexico to the north of Guatemala.\footnote{Raúl Olmos and Daniel Lizárraga, “La negra historia de la constructora Odebrecht en México” La Prensa, February 15, 2017, https://bit.ly/2E3jujS.} Despite these findings by ASF, there was no intervention. Pemex continued to grant contracts directly to Odebrecht...
and its subsidiaries,\textsuperscript{84} Mina-Trico and Ebramex. Between 2010 and 2014 four contracts were granted totaling more than 1,574 million USD.\textsuperscript{85}

By the end of 2016, Odebrecht’s plea agreement triggered an investigation headed by one of Mexico’s main anti-corruption agencies, the Comptroller General’s Office (\textit{Secretaria de la Función Pública}, SFP), regarding the award and execution of public works contracts between Pemex and Odebrecht.\textsuperscript{86} The investigation focused on allegations published in the newspaper \textit{Diario Reforma} that Emilio Lozoya, former international coordinator of Peña Nieto’s presidential campaign and former director of Pemex (from 2012 to 2016), had been involved in diverting Odebrecht’s money into illegal campaign contributions.\textsuperscript{87} These allegations were vehemently denied by the office of the Mexican President\textsuperscript{88} and by Lozoya himself.\textsuperscript{89} However, the SFP investigation identified several irregularities\textsuperscript{90} in the contracts between Odebrecht and Pemex—irregularities that had been detected by the ASF—and launched preliminary sanctioning procedures.\textsuperscript{91} These resulted


\textsuperscript{85} Raúl Olmos and Daniel Lizárraga, “La negra historia de la constructora Odebrecht en México”.


\textsuperscript{87} Parker Asman, “Was Mexico President’s 2012 Campaign Funded by Odebrecht?,” \textit{InSight Crime}, October 27, 2017, \url{https://www.insightcrime.org/news/brief/was-mexico-president-2012-campaign-funded-odebrecht/}.


in eight investigations into administrative wrongdoing: four against the company and its subsidiaries, two against its legal representatives, and two against public servants working for Pemex.  

A year later, the SFP formally barred Odebrecht from participating in contracts with Mexico’s Federal administration for a period of four years. This decision applied only to future contracts; those contracts already awarded to Odebrecht and those being executed were not affected by the SFP ruling. This was a marked difference from the Peruvian case and its retroactive ban, which invalidated contracts that had been obtained by corruption. Although Mexico’s ban on Odebrecht contracts was not retroactive, in June 2017, Pemex had given notice that, due to the investigation over “administrative irregularities,” it was cancelling a 2015 engineering, procurement and construction contract at the Refinery “Miguel Hidalgo,” also known as project “Tula 1.” In December 2017, the SFP imposed a sanction on Odebrecht due to “improper charging” of 119 millions Mexican pesos (6.4 millions USD) for indirect costs under the construction contract for Tula 1.

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In 2018, the SFP imposed another administrative ban on Odebrecht for 2 years and three months.\textsuperscript{96} Odebrecht’s finance director, Gleiber José de Faria, and its Mexican director, Alberto de Meneses Weyll, were held personally liable; it was the latter who had confessed to paying a bribe of 10 million USD to Lozoya.\textsuperscript{97} The new sanction extended the period of Odebrecht’s exclusion from future contracts, and imposed a fine of 543.5 million pesos (almost 30 million USD).

In addition to these administrative proceedings, the Attorney General of Mexico (\textit{Procuraduría General de la República}, PGR) has carried out a criminal investigation.\textsuperscript{98} The inquiry was based on the allegations of three former Odebrecht’s directors who confessed to having received bribes between 2012 and 2016. The criminal investigation has not, however, led to any convictions, and the PGR has been criticized for being improperly influenced by the Executive. Criticisms reached their peak in September 2017, when Santiago Nieto, the prosecutor in charge of investigating the case, was fired.\textsuperscript{99} The PGR claimed that he had violated the office’s code of conduct.\textsuperscript{100} Nieto asserted that those allegations were untrue and that he was dismissed because he would not give in to government pressure relating to the Odebrecht investigation.\textsuperscript{101} A month later, the Attorney


\textsuperscript{97} Ibid.


\textsuperscript{99} Jude Webber, “Mexico: The electoral price of impunity,” \textit{Financial Times}, April 1, 2018 https://www.ft.com/content/e9ea0498-2223-11e8-9a70-08f715791301.

\textsuperscript{100} “La PGR destituye al titular de Fiscalía Electoral por violar Código de Conducta”, \textit{Expansión México}, October 20, 2018. https://expansion.mx/nacional/2017/10/20/la-pgr-despide-al-titular-de-la-fepade

General, Raúl Cervantes, stated just before resigning that the criminal investigation of Odebrecht was over and that his office was ready to present charges. As of late 2018, no charges have been filed; this raises the question of why, if incriminating information is available, the case has not moved forward.

Since the Odebrecht case became public, Mexican authorities have taken only limited steps, implementing some administrative sanctions and carrying out investigations with only limited outcomes. Political pressure and a lack of cooperation from Mexico’s federal government explain the lack of enforcement by the SFP and PGR. For example, the PRI members of Congress and PRI allies voted in October 2017 to stop the ASF in its pursuit of criminal sanctions against officials who took part in a deal involving one of Odebrecht’s subsidiaries.102 Members of the Special Citizen Commission from the SFP have said that government interference has hindered their work.103 Lawmakers have not appointed any of the judges who were supposed to deal with the corruption cases. An independent prosecutor who was to be empowered by the new system to investigate such cases has not been designated.104 Eduardo Bohórquez, president of Transparencia Mexicana, claims that the absence of charges is politically motivated, raising some questions of the independence of the prosecutors. According to Bohórquez, the decision

102 Jude Webber, “Mexico: The electoral price of impunity,” Financial Times, April 1, 2018 https://www.ft.com/content/e9ea0498-2223-11e8-9a70-08f715791301.
not to file charges is a matter of survival for the ruling Party (PRI). He warns that “with another scandal like this, the entire political machinery and its funding could fall apart.”

Although the Peña Nieto government presented anti-corruption efforts as one of its main campaign promises, the reality differed. Legal reforms and new institutions cannot achieve much if political forces hold them back. The Odebrecht case in Mexico has become another target of criticism for the opposition, and it is not surprising that new President Andrés Manuel López Obrador has asserted that the fight against corruption will be a key element of his administration. He addressed the Odebrecht case during the campaign, insisting that the investigation should focus not just on the bribery payments that took place during the administration of Peña Nieto, but also on business conducted during the Calderón presidency.

**Conclusion**

This essay examines the different responses in Peru and Mexico to the Lava Jato scandal and seeks to identify factors that explain this difference. Our main conclusion is that the mere existence of anti-corruption policies and mechanisms does not explain the

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different results in each country, but that the active implementation and enforcement of such policies does.

Mexico had already set up the main elements of its National Anti-Corruption System before the Odebrecht plea agreement took place, while in Peru many relevant changes were introduced only after the scandal went public. One would have expected that, as a result, Mexico could achieve better, quicker, and more concrete results in its investigations than Peru. The reality was quite different. Peru saw its political and economic elite shaken by the scandal, which implicated three former presidents, and forced the ruling president to resign. In contrast, events unfolded in Mexico at a much slower pace. In Peru, the scandal was followed by criminal investigations and the development of urgent measures for guaranteeing the continuity of infrastructure projects, seizing Odebrecht’s assets, and debarring it from public procurement. In contrast, Mexico did not move as fast; it imposed some administrative sanctions, but thus far has not convicted any public official involved in the case.

A number of implementation and enforcement challenges account for this difference: Peru saw a higher level of coordination among the relevant authorities and the absence of effective pressure and influence from the executive branch; in Mexico, prosecutorial independence was hindered.

The scale of Odebrecht’s involvement in each country’s economy did not appear to influence its responses to the scandal. If it had, we would have expected to see a more
modest response from the Peruvian authorities. Although Odebrecht had some large and important projects in Mexico, it had a much higher-profile presence in Peru. The scandal therefore posed more serious consequences for Peru’s political and economic elite, making any response risky. And yet it was in Peru where political and judicial responses developed faster and had more impact, in contrast to Mexico’s slow and unsuccessful investigations.

This history indicates that addressing corruption in Latin America or elsewhere requires more than the development of a legal framework. Simply having a set of rules is not enough: a country must develop the follow-up mechanisms through civil society and judicial proceedings that are necessary for enhancing transparency. The lack of enforcement can be as crippling as the absence of rules.
## Summary of findings

<table>
<thead>
<tr>
<th>Odebrecht in the market and in the politics</th>
<th>Peru</th>
<th>Mexico</th>
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<tr>
<td>Odebrecht played a key role in the Peruvian market. At one point it held 80% of the infrastructure investments. The company nurtured relationships with all presidents since Fujimori, except for the current President Vizcarra.</td>
<td></td>
<td>Odebrecht has been in charge of some large and important projects (most of them at the federal level), but it has not gained predominance in Mexico’s infrastructure market as a whole. Most of the projects in which Odebrecht was involved were related to the Mexican oil company (Pemex).</td>
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<th>Legal Framework</th>
<th>Peru</th>
<th>Mexico</th>
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<td>Although part of the relevant anti-corruption framework was already in place before the Odebrecht plea agreement of December 2016, most of the reforms and regulations came afterward, some of them tailored specifically to deal with the Odebrecht case. Commentators have criticized the lack of coordination among authorities.</td>
<td></td>
<td>The main elements that make up the Mexico National Anti-Corruption System (SNA) were already in place before the Odebrecht plea agreement of December 2016. The Odebrecht case shows the challenges of implementation of such policy, especially those related to the lack of prosecutorial independence.</td>
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<th>Impact of Odebrecht investigation</th>
<th>Peru</th>
<th>Mexico</th>
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<td>The Odebrecht plea agreement shook the country’s political and economic elite, implicating three former presidents, and forcing a sitting president to resign. It resulted in the passage of urgent measures aimed at guaranteeing the continuity of public infrastructure projects. Odebrecht assets were seized and the company was debarred from public contracts. Criminal investigations against its CEOs and against public officials are taking place.</td>
<td></td>
<td>The Odebrecht investigation has moved more slowly. As of late 2018, no public official has been convicted. There are several ongoing administrative investigations, mostly against the company and its subsidiaries, and only two against public servants working for Pemex.</td>
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