

Countries at the Crossroads

COUNTRIES AT THE CROSSROADS 2012: MEXICO

INTRODUCTION¹

Mexico's general election of July 1, 2012 took place amid conditions for democratic governance that have deteriorated since 2010. Regardless of the electoral outcome, which included not only the presidency and federal Congress but also executive and legislative authorities in several important states and hundreds of municipalities, officials face an uphill struggle to increase citizen confidence in the government's ability to tackle serious governance deficiencies, notably the security crisis that has beset many parts of the country.

The main factor behind the deterioration of democratic governance is the expansion of the "war on drugs" that President Felipe Calderón launched shortly after assuming office in December 2006, and which has more recently come to be known by the more generic "war on organized crime." Large criminal groups, under increased government pressure, have not only engaged in vicious fights but also, in some cases, have fragmented into smaller groups that have diversified into additional illicit activities including kidnapping, extortion, prostitution, and human trafficking. With more than 50,000 soldiers and federal police participating in the anti-crime effort and committed support from the United States government since 2008, there prevails an outward sense of a determined government, headed by an unflinching, obstinate leader who began his last year in office on December 1, 2011 with an approval rating above 50 percent.² Still, with 47,515 crime-related deaths officially registered between December 2006 and September 2011,³ the end of Calderón's term is also characterized by growing domestic and international opposition to the way the Mexican government has conducted the war on drugs, including both a lack of transparency and alleged human rights abuses.

The sense of strength and purpose that the Calderón government has tried to project stands in tension with deeply flawed institutions that inhibit cooperation among decision makers; norms and practices by authorities at the federal, state, and municipal levels of government that lead to systematic violations of civil liberties and make achievement of the rule of law a very distant aspiration; and by a party-centric political culture that reproduces itself and thrives through patronage, collusion, graft, and sporadic intimidation of individuals or groups that stand in the way.

Although Mexico certainly remains a democracy and is far from the failed state label occasionally attached to it, the end result of these problems is a somewhat hollow state: outwardly it tries to display to the world a tough, macho image of effectiveness, but inwardly it is ridden by gridlock, the fragmentation of authority, and the proliferation of private actors that wield extreme violence against state and society. Among the damaging consequences is that the Mexican state has in some places lost a basic and exclusive attribute, a monopoly over the use of force within its boundaries. This loss, as well as more enduring problems, is reflected in declining conditions across most aspects of accountability and public voice, civil liberties, the rule of law, and anticorruption and transparency.

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ACCOUNTABILITY AND PUBLIC VOICE

Increasingly competitive elections were the backbone of the transition to democracy in Mexico, prompting some scholars to call it a “voted transition.”⁴ Successive negotiations over electoral conditions, particularly between 1989 and 1996, helped increase opposition parties’ victories at the local, state, and federal levels and eroded the hegemony of the Institutional Revolutionary Party (PRI), which ruled uninterrupted from 1929 until 2000. Until that point, other parties were allowed to compete in elections, but they could not win top positions such as governorships or, most importantly, the presidency. In 2000, however, the PRI lost the presidential election to the National Action Party (PAN), which has since held power under two administrations, that of Vicente Fox between 2000 and 2006, and Calderón starting in December 2006. Legislative power is currently divided between the three primary parties, which include the center-right PAN, the centrist-populist PRI, and the center-left Party of the Democratic Revolution (PRD). In the 2009-2012 Congress, the PAN held 50 seats in the 128-member Senate and 142 in the 500-seat Chamber of Deputies, the PRI held 33 and 237, and the PRD held 26 and 69. Smaller parties, including the Green Party (PVEM), Workers Party (PT), Convergence, and the New Alliance (PANAL), hold the rest of the seats.

The Federal Electoral Institute (IFE) was established in 1990 to manage and oversee elections. IFE gained full independence from the government in 1996, becoming an organization staffed by professionals and led by citizen counselors rather than politicians. However, given that the Chamber of Deputies is in charge of appointing the counselors, the composition of the IFE’s nine-member General Council has tended to reflect the balance of power in that chamber. The appointment of three new counselors in December 2011 confirmed that the appointments reflect political negotiations among the PRI, PAN, and PRD to have counselors that sympathize with them.⁵ Electoral disputes are adjudicated by the Electoral Tribunal of the Federal Judiciary (TEPJF), established in 1996 and presided over by seven magistrates whose impartiality has generally (though not always) been praised by leaders across the political spectrum. Elections to Congress are conducted through a mix of majority and proportional representation voting, and political parties must receive 2 percent of the vote in national elections in order to maintain their registrations.

Although they are not generally perceived to affect national races, the influence of drug cartels in elections has increased in recent years. States holding gubernatorial elections in 2010 included four of the most violent—Chihuahua, Sinaloa, Durango and Tamaulipas.⁶ In Tamaulipas, front-runner Rodolfo Torre of the PRI was assassinated, and in Chihuahua, only one-third of voters cast ballots.⁷ During the November 2011 campaigns in the violence-plagued state of Michoacán, more than 50 candidates stepped down prior to the election as a result of intimidation by criminal groups. The IFE annulled the PRI victory in the race for mayor of the state capital, Morelia, while the PRI victory in the gubernatorial race was examined following claims that many citizens received telephone threats in the run-up to election day.⁸ Although Michoacán has exhibited particularly complex dynamics related to the nexus of violence and politics, multiple other races, particularly at the local level and in the northern and Pacific coast states, have been affected by intimidation, vote-buying, and drug cartel money.

The opportunity for regular rotation of power among different parties is well established at the federal level, but the left alleged foul play in the 1988 and 2006 presidential elections. The blatant nature of the fraud in 1988 eventually served to strengthen Mexico’s democratic movement. Conversely, the refusal in 2006 of PRD candidate Andrés Manuel López Obrador

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and his allies to recognize Calderón's victory, and the months of protest that followed, weakened the left, while also deepening its suspicions that, absent a landslide victory, powerful business and political forces would act aggressively to prevent a transfer of power away from what the left considers a conservative, unjust, inequality-exacerbating status quo. Despite a far-reaching electoral reform in 2007 that sought to address complaints related to the 2006 elections and included extremely tight controls on campaign finance, suspicion of the IFE's monitoring and enforcement capacity remains acute within the left.

At the subnational level, power has now shifted between the main parties—generally from the PRI to one of the others, and then back to the PRI—at least twice in 11 of Mexico's 31 states (the mayor of Mexico City, officially the Federal District, also has powers akin to those of a state governor; the PRD has dominated recent mayoral elections), suggesting that such alternation has increasingly become part of the routine of democratic politics. Intriguingly, unlikely PRD-PAN coalitions have unseated PRI governors in Chiapas, Nayarit, Oaxaca, Puebla, and Sinaloa, although in several of these cases the coalition candidate had a previous history of PRI militancy. In 10 states, however, the PRI remains undefeated in gubernatorial elections.⁹ At the municipal (local) level, as of early 2012 the PRI governed in 62 percent of Mexico's 2,440 municipalities, the PAN in 19 percent, the PRD in 13 percent, and smaller parties in about 6 percent.¹⁰

Despite significant variation, the traditional image of powerful *caciques* (local political bosses) remains an everyday reality in a majority of states and municipalities in Mexico. The three main parties have developed political machines with solid voting blocs, and more often than not, the PAN and the PRD, which had long criticized the PRI's patronage and clientelism while they were in opposition, have replicated this style of politics once in power. Frustration with the party system is signified by increasing use of the term *partidocracia*, meaning collusion among and rule by the power, influence, and money of the main parties' leaders.

Nonetheless, the three branches of government counterbalance one another significantly. Indeed, the most important change since the mid-1990s has been the weakening of the previously "imperial" presidency and the associated rise of the legislative and judicial branches. The Mexican presidency lacks the decree powers, fast-track authority, and other legislative prerogatives found in many other Latin American presidential systems, making it a relatively weak executive.¹¹ Congress spent a large portion of Calderón's term working on a political reform bill, which passed the Senate in December 2011 and the Chamber of Deputies in April 2012.¹² To take effect, the reform must be ratified by a majority of state legislatures. The reforms that have been approved by both chambers include independent candidacies for office as well as the possibility of federal and local citizen initiatives and popular consultation; however, some of the most sought-after reforms, particularly the possibility of legislative reelection and a second round in presidential campaigns, were left out of the reform.

The Professional Civil Service Law creates a framework that encourages employment and promotion based on open competition and merit. However, it applies only to the federal government, and even there, it focuses on senior and mid-level officials.¹³ Most positions in the federal, state, and local bureaucracies are up for grabs whenever there is a change in government, with positions commonly filled by associates and supporters of newly elected leaders.

Civic engagement and monitoring have grown gradually in Mexico since the late 1980s. As political power has shifted from the presidency toward Congress, advocacy and lobbying have become lucrative, full-time, professional occupations that have a substantial influence on government policy and pending legislation. If ratified, the political reforms approved by Congress have the potential to enhance public input on policy issues.¹⁴ While legal impediments

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to registration are minimal, the absence of laws and regulations on lobbying tends to favor the efforts of large, well-financed firms over those of nonprofit advocacy organizations.

Most nongovernmental organizations (NGOs) are able to operate and carry out their work vigorously—and the level of civil society activity has risen notably since the end of PRI dominance—but NGO workers in some regions, particularly in southern rural zones, are at times subject to threats and intimidation (see Civil Liberties). Moreover, according to nonprofit organizations, increased violence has reduced philanthropic giving by making people “increasingly wary of attracting attention to themselves” and leaving nonprofits vulnerable to extortionists.¹⁵ However, several highly visible signs of increased civic pressures have appeared in recent years, notably the Movement for Peace with Justice and Dignity (MPJD), an anti-violence group founded by poet Javier Sicilia following the murder of his son in Cuernavaca in March 2011. The group brought together an array of victims’ rights and other social activists and mounted several bus caravans during the year, bringing attention to the cause and helping the group gain access to President Calderón and other high officials.

The decline of PRI hegemony, particularly during the 1990s, allowed for the emergence of an environment more conducive to media freedom. This process has been bolstered by the growing role of the internet, which is not hindered by the state. In April 2008, President Calderón signed a law that decriminalized defamation and obliged state governments to follow suit. Nevertheless, according to a June 2011 report by PEN Canada, “criminal libel, slander and defamation laws remain on the books in 15 states in Mexico and civil defamation laws continue to be used to harass journalists who work to uncover corruption.”¹⁶ The group also reported that community radio stations often face repression by local authorities—including police raids, arrests, and other hostility—in response to coverage of local politicians and political events.¹⁷

Given the centrality of elections in Mexico's young democracy, control over media content during campaigns has been the focus of acute conflict. Uneven access to the media in the run-up to the 2006 presidential election was so obvious that Calderón, after taking office, quickly supported opposition demands for an electoral reform. Media conglomerates considered the 2007 reform draconian because it banned political advertising outside of officially arranged time slots, but public opinion strongly favored such limits. Estimates suggest that 80 percent of the US\$324 million spent by parties in the 2006 federal elections was dedicated to advertisements in the private media.

Nor is the private media a model of pluralism. On the contrary, concentration of ownership and monopolistic practices, especially locally, is one of the primary impingements on freedom of expression. Mexican broadcast media continues to be dominated by two companies: Televisa and TV Azteca. These two conglomerates control over 90 percent of the free-to-air television market. In addition, 13 business groups control 86 percent of radio stations.¹⁸ Televisa, in particular, wields great financial and political clout and maintains a dominant position as shaper of Mexican public opinion. The company is capable of harming the careers of politicians who threaten its dominance; conversely, it may transform a favored candidate into a winning politician, as was the case with Enrique Peña Nieto, formerly governor of the State of Mexico and subsequently the leading contender for Mexico’s presidency in 2012.¹⁹ The company routinely inserts “branding” and political propaganda into television programming—mixing advertisement with entertainment in a way that often blurs reality.²⁰ The Mexican media oligopoly has historically shared a close relationship with the government. As journalist Jenaro Villamil notes, “Mexican media operate in a manner that reflects an ordered hierarchy, controlled by powerful forces of government and private business....it is commonly known that the owners work closely to maintain their status,

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order, and credibility through mutual agreement or the trade of favors.”²¹ Moreover, although some media, particularly the print sector, is often vibrant, the expansion of media freedom remains territorially uneven. Some state and municipal governments burden critical media outlets with frequent audits, threats to revoke licenses, or direct intimidation.

The other primary obstacle to media independence and freedom of expression is organized crime’s growing capacity to menace the owners of print and broadcast media, and to kill—in some cases after sadistic torture—journalists who cover organized crime and law enforcement. According to Mexico’s own National Human Rights Commission (CNDH), 75 journalists were killed in Mexico between 2000 and 2011; Reporters Without Borders reports an additional 14 disappeared since 2003.²² In addition to being targeted for assassination, Mexican journalists are regularly subject to threats and kidnapping. Impunity is the norm: in 2011, the Committee to Protect Journalists’ Impunity Index ranked Mexico 8th out of the 12 countries in the world where five or more journalists were killed in 2011.²³ The violence has encouraged self-censorship, with many outlets, especially in high-crime regions, no longer publishing bylines and refraining from investigative coverage of organized crimes. As traditional media coverage of the violence has declined, Mexicans in high-crime areas have increasingly turned to social media such as Facebook and Twitter. However, the criminal groups have also started targeting individuals who share information online: in two incidents in September 2011, three bodies were found, along with placards signed by the Zetas gang pointing to the victims’ online reporting as the cause of their deaths.²⁴

The Mexican government has come under increasing pressure to take action against the perpetrators of such crimes, but results have been scant. Most murders fall under generally ineffective state jurisdiction, and a special federal prosecutor’s office that opened in 2006 fared little better at combating impunity. Finally, in late 2011 and early 2012, momentum built for the long-sought federalization of crimes against journalists, and the required constitutional amendment received final approval in June 2012.²⁵

CIVIL LIBERTIES

Both the armed forces and the police have committed a range of abuses in the fight against organized crime, including killings, excessive use of force, rape, disappearances, torture, and arbitrary detention. In most cases, these abuses have gone unpunished. The nongovernmental Mexican Commission for the Promotion and Defense of Human Rights (CMDPDH) registered more than 600 complaints against the military for human rights abuses in the first four months of 2011 alone.²⁶ Torture, a particularly pervasive problem, is used to obtain information about organized crime and to extract confessions. Although torture is illegal, the burden of proving abuse is placed on the victim.

A November 2011 Human Rights Watch report found that every category of security forces involved in the drug war is guilty of using torture. According to victims’ accounts, the tactics include beatings, asphyxiation, simulated drowning, electric shocks, sexual torture, and mock executions.²⁷ The official ombudsman, the CNDH, has registered and confirmed a torrent of abuse complaints, which rose from 336 in 2006 to 1,666 in 2011.²⁸ Nonetheless, prosecutors’ offices report very low numbers of complaints, and Mexico’s status as the first country in the world to incorporate the Istanbul Protocol on guidelines for investigating torture has resulted in little improvement.²⁹

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A potential milestone for reform efforts occurred in June 2008, when a constitutional amendment was passed to transform the justice system into an adversarial system of competing arguments in oral trials. It also contained changes aimed at eliminating torture, including an explicit presumption of innocence for all defendants and limitations on the admissibility of evidence. However, the reforms—which apply to the states but not the federal government—do not have to be implemented until 2016, and as of the end of 2011, only a handful of states had taken even initial steps toward adherence with the law.³⁰

Prison conditions have deteriorated substantially in recent years, and facilities are characterized by overcrowding, lack of sanitation, and pervasive inhumane treatment. Over 40 percent of prisoners have not been convicted of a crime, and can be held for years awaiting a trial, with accused criminals mixed in with convicted ones, and low-level offenders mixed with convicted assassins.³¹ There have been numerous incidents of prison riots and escapes: according to the Secretariat of Public Security (SSP), at least 3,200 riots occurred in 2011, with 316 deaths and 320 escapees.³²

Arbitrary arrest and detention are prohibited by law. However, the CNDH reported 1,197 complaints of arbitrary arrests and detentions in 2010.³³ The Mexican constitution requires police to obtain a court order before carrying out searches and arrests, but there is an exception for *flagrancia*, when the suspect is caught in the act of committing a crime. Human Rights Watch found that the *flagrancia* exception is routinely abused, with all registered detentions by the military—involving over 30,000 people between December 2006 and April 2011—allegedly linked to *flagrancia* cases, which rarely included pre-operation consultation with civilian authorities.³⁴ While in general, the CNDH is perceived to have increased its level of activity and willingness to challenge the government in recent years, it lacks capacity and enforcement power and does not always maximize the power it has; in addition, the state-level ombudsmen are often far less effective.

As part of the 2008 overhaul, lawmakers introduced the provision of *arraigo*, which allows prosecutors, with judicial authorization, to detain anyone suspected of being involved in organized crime for 80 days before they must be charged.³⁵ According to the CNDH, from June 2008 to April 2010, there were about 120 complaints filed regarding *arraigo*, 70 of which included complaints of maltreatment.³⁶ Worse yet, the problem of forced disappearances allegedly perpetrated by the security forces in Mexico has been growing, with the number of complaints rising from 4 in 2006 to 134 complaints between January and October 2011; such complaints are likely highly underreported due to fear of reprisal. According to Human Rights Watch, victims are detained by soldiers or police, but never registered or handed over to prosecutors, and families seeking information encounter stonewalling and resistance to opening investigations.³⁷ The routine usage of short-term disappearance, in which suspects are held for hours or days without record or contact with lawyers or families, is yet another common occurrence.³⁸

Not only are many of these tactics illegal, they are ineffective. Crime-related homicide rates quintupled between 2006 and 2011, while the risk of being kidnapped tripled and allegations of extortion skyrocketed.³⁹ In addition to drug-related violence, certain groups were particularly vulnerable, none more so than migrants passing through Mexico to the United States. Despite improved initiatives to investigate the abuse of migrants during 2010, after 72 Central American migrants were murdered in August in Tamaulipas, mass graves containing at least 177 victims were found in April 2011 in the same area.⁴⁰ Brutality has become the currency of several gangs, and thousands of victims have borne signs of torture and mutilation. The crime

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wave is far from uniform, however. Mexico City, by far the country's largest metropolis, has largely been spared, but other important cities, such as Monterrey, Torreón, Veracruz, Tijuana, and above all Ciudad Juárez—where over 3,000 people were killed in 2010 alone⁴¹—have experienced paralyzing waves of violence at various points in recent years. Rates have subsequently declined in some places, notably Tijuana and Juárez in 2011, but it is unclear to what degree the falls reflect improved law enforcement as opposed to shifting dynamics among the criminal groups. While citizens have repeatedly expressed support for the use of the military, the acceleration of violence and high rate of impunity (see Rule of Law) has resulted in much lower perceptions of governmental efficacy. Thus, a May 2011 poll showed that half of all Mexicans thought that President Calderón should cut a deal with the drug gangs in order to diminish the violence.⁴²

Members of civil society who have attempted to address issues related to the violence are among the rising number of activists who have been subject to attacks and intimidation in recent years. In December 2011 the CNDH reported opening 523 investigations for such threats between 2005 and 2011, including 27 murders.⁴³ While many of these acts occurred in states with a long history of social tension, such as Oaxaca, Chiapas, and Guerrero, a number of killings in 2010 and 2011 targeted members of the MPJD in various parts of the country.⁴⁴ The December 2010 murder of anti-impunity activist Marisela Escobedo in Chihuahua and the November 2011 killing of MPJD member Nepomuceno Moreno in Sonora elicited particular outrage.

Unsurprisingly given its geographic location, Mexico is a large source, transit point, and destination for human trafficking. Women, children, indigenous people, and migrants are considered the most vulnerable groups to trafficking for both sexual exploitation and forced labor. Congress passed an antitrafficking law in 2007,⁴⁵ and all of the states plus Mexico City have reformed their penal codes to criminalize at least some forms of human trafficking, although the codes vary in scope.⁴⁶ In February 2011, the CNDH reported that 11,000 migrants had been kidnapped in the past six months.⁴⁷

Despite the documented abuses committed by the military, prosecutions of military members are extremely rare.⁴⁸ Until June 2011, when the Supreme Court of Justice (SCJN) ruled that international treaty obligations require that all cases of human rights violations be tried by civilian courts instead of military tribunals, the military justice system had claimed jurisdiction over human rights violations committed by the armed forces.⁴⁹ The Inter-American Court of Human Rights (IACHR) has found Mexico's military responsible for human rights violations on multiple occasions, including an October 2010 finding of army culpability for the rape and torture of two indigenous women in 2002 and a 2010 ruling against the military for detaining and torturing two peasant ecologists.⁵⁰ While the government has taken some steps to comply with the rulings, victims and their families reported intimidation by soldiers throughout the protracted process of seeking justice, with the brother of one of the indigenous women found dead in Guerrero in 2008.

Despite some advances, the attainment of gender equity remains a work in progress. Federal law prohibits rape, domestic violence, and sexual harassment. The law also stipulates equal pay for equal work, labor protection for pregnant women, and the right to contraception and family planning. However, state laws vary and sanctions for domestic violence and sexual harassment are often far weaker.⁵¹ In addition, Mexican women are lacking in basic physical security. The 2006 National Survey on Household Relationships found that 67 percent of women over 15 years of age had suffered some form of abuse.⁵² Murder is common, and rarely punished:

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according to the nongovernmental Citizen Femicide Observatory, more than 1,700 women were killed between January 2009 and June 2010 in just 18 states, with impunity the norm.⁵³

Abortion has been a prominent issue since 2007, when Mexico City legalized the procedure during the first 12 weeks of pregnancy. The law prompted a fierce backlash, with more than half of Mexico's states passing constitutional amendments tightening restrictions, generally by granting legal personhood to fetuses. Prosecutions for suspected illegal abortions also increased.⁵⁴ The SCJN upheld Mexico City's law in 2008, but also confirmed two states' strict laws in September 2011 when a legal challenge fell one vote shy of the SCJN supermajority necessary to strike down the statutes. There has been progress in official recognition of gay rights. In August 2010, the SCJN upheld a Mexico City law allowing same-sex couples in the city to marry and adopt children.

The Mexican Constitution and several laws recognize the diversity of the nation's ethnic groups and indigenous populations, and give them the right to autonomy—as long as human rights and gender equality are respected—representation, and preservation of their language and culture. Many communities, including 70 percent of the 570 municipalities in the state of Oaxaca, are governed by traditional indigenous practices without state interference.⁵⁵ Mexico has also endorsed the United Nations Declaration on the Rights of Indigenous Peoples. According to the national statistical institute, 15.7 million Mexicans, or nearly 14 percent of the population, consider themselves indigenous.⁵⁶ However, education in the 62 officially recognized indigenous languages remains limited, due to the lack of fluent teachers and teaching materials.⁵⁷ Also, state constitutions and laws vary in their degree of protection and promotion of indigenous rights.⁵⁸ In practice, indigenous people and their lands, communities, and livelihoods are in danger from the state and, in some areas, from nonstate actors attracted to the remoteness and resources of many indigenous regions.

Laws prohibiting discrimination against the mentally and physically disabled are not properly enforced. Disability Rights International reported in 2010 that mental institutions across the country violated human rights through practices including the use of physical and chemical restraints, lobotomies, and the trafficking of mentally disabled children.⁵⁹ Some cities, particularly Mexico City, have made substantial strides in improving accessibility and employment opportunities for the disabled.

The laws and constitution protect freedom of religion and prohibit discrimination, but at the local level incidents of religious intolerance occasionally occur, primarily in small, rural communities in Chiapas, where tensions between expanding Protestant and Evangelical groups and the decreasing number of Catholics sometimes lead to conflict. The Mexican state is secular, defined explicitly as “lay” in a 2010 constitutional amendment, and the constitution upholds the separation of church and state. Political activities are generally not permitted within religious groups, political meetings cannot be held by religious associations, and clergy cannot hold public office, promote partisan political views, support political candidates, or oppose the laws of the state.⁶⁰ However, religious involvement in the political sphere remains a controversial issue. In October 2011, Cardinal Norberto Rivera stated that the Catholic Church can and must involve itself in politics, as Jesus did.⁶¹ Both the PRI and especially the PAN are considered to maintain relations with the Catholic Church of varying degrees of closeness.⁶²

One significant area of religious restriction is the ban on owning or administering radio or television stations, and the required government permission to broadcast religious programs has been hard to obtain for some non-Catholic groups. According to the NGO Association for

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Religious Liberty, this has resulted in at least 400 pirate radio stations, of which 100 or more broadcast Evangelical Protestant programming.⁶³

The constitution provides for freedom of association and assembly. Citizens are free to associate and form political associations and private groups, of which there are many operating in Mexico. About 10 percent of the formal Mexican workforce is unionized. Although organizing does not require a large number of workers, procedures are difficult to follow and applications are frequently rejected. Workers who try to organize independently are at risk of being fired or being expelled from official unions protecting their monopoly over collective bargaining agreements. These agreements often take the form of protection contracts negotiated between management and an unrepresentative union that has not been chosen democratically by workers and often offers them no input. Such contracts contain multiple clauses aimed at preventing independent organizing.⁶⁴ The prevalence of such arrangements severely limits workers' ability to engage in legally-sanctioned strikes. In February 2010, the Supreme Court issued a ruling that allowed employer Grupo Mexico to fire over 1,000 striking miners at the Cananea copper mine in Sonora, which effectively eliminated the right to strike, according to Mexican labor law experts.⁶⁵

Organized and peaceful demonstrations occur frequently in Mexico. Groups that wish to meet in public areas must inform local authorities in advance. Exceptions to the norm of peaceful protest do occur. A recent dramatic incident took place on December 12, 2011, when a student protest in Chilpancingo, Guerrero blocked a major motorway and later turned violent. Two students were killed and 14 injured when the police tried to disperse the protest, including with automatic weapons; four police officers were also injured, and a gas station worker later died of burns from trying to contain fires at the pumps. The governor of Guerrero dismissed the state's prosecutor and two top security officials a day after the protest.⁶⁶ Threats to freedom of assembly may also come from criminal gangs, as evidenced by an October 2011 incident in an indigenous community in Oaxaca in which armed men assaulted and threatened a group protesting the construction of a wind farm.⁶⁷ In one positive sign, 12 community activists who had been jailed during a protest in 2006 in the town of Atenco in Mexico State were released in June 2010. They had been accused of kidnapping policemen during a protest that the CNDH said had been put down using excessive force. One judge said the case was "a disguised form of criminalizing social protest" in Mexico.⁶⁸

RULE OF LAW

Despite significant judicial reforms in the mid-1990s, corruption and inefficiency have plagued the criminal justice system and contributed to a severe lack of public confidence in the judicial branch. The 2008 justice system overhaul has produced mixed results. The reform aimed to replace the existing system of opaque, document-based trials with an adversarial, oral process intended to make prosecutors, defense attorneys, and judges more accountable and transparent. The new system also attempts to curtail extended pretrial detention and facilitate greater involvement of victims.⁶⁹ While states have until 2016 to implement the reforms, implementation to date has been slow and uneven. Human Rights Watch reports that "changes in law have yet to be translated to changes in practice" and "the few states where the new system has been introduced have passed significant counter-reforms or inserted exceptions that undercut the oral adversarial system's key changes."⁷⁰

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The 2008 justice system reform also created an “exceptional” or parallel legal framework for combating organized crime that lacks normal due process protections (see Civil Liberties). In addition, the slow pace of implementing the reforms means that, in practice, the inquisitorial legal system continues both at the federal level and in most states. The Calderón administration has pushed Congress to enact federal criminal procedure reform, but the approaching end of his term diminishes the likelihood of approval prior to the next session of Congress.

Reforms implemented under President Ernesto Zedillo (1994–2000) transformed the SCJN into a key independent player in the Mexican political arena. Whereas Supreme Court justices were previously political figures who relied on the PRI patronage apparatus for career advancement, they are now mostly professional legal scholars. Safeguards meant to protect justices from political influence have been built into the appointment process.⁷¹ The lower courts have been less successful in demonstrating their independence. The federal judicial system includes 29 circuits with over 200 circuit courts and approximately 250 district courts. In addition, each state has its own high court and myriad civil, penal, and administrative tribunals. The country's lower courts are fraught with political meddling and corruption. Some 45 percent of Mexicans polled in 2008 said it was possible to bribe a judge to receive a favorable decision, a high figure even by Latin American standards.⁷² Furthermore, the World Economic Forum's Global Competitiveness Report 2010-2011 rates the judiciary's level of independence from influence by government officials, citizens, and companies at a score of 3.2 out of 7, where 1 is “heavily influenced” and 7 is “entirely independent.”⁷³

The 1994 reforms also helped to establish a culture of judicial review, and it has become routine for the executive and legislative branches to comply with judicial decisions. Indeed, some observers have begun to talk about the “judicialization” of Mexican politics. Two different review mechanisms were introduced: the constitutional controversy provides a centralized review of disputes between government authorities, while the action of unconstitutionality allows political parties to bring claims directly before the SCJN. These join a longstanding mechanism for citizens to file grievances, the *amparo* (injunction), to form an important set of checks on excessive power. Under any form of review, a law can be invalidated if a supermajority of 8 out of the 11 justices concur, giving them an important role in arbitrating Mexico's democracy.⁷⁴

Several developments in 2011 carry the potential for significant transformation of the relationship between citizens, the judiciary, and the state. First, in June, several constitutional amendments passed into force, including a crucial change that explicitly obligates Mexico to abide by international treaty obligations. Partially as a result of that change, in October 2011 the SCJN issued a far-reaching ruling based on the Inter-American Court of Human Rights' ruling in a case (*Radilla Pacheco v. Mexico*) involving the forced disappearance of a suspected guerrilla in the 1970s. Not only did the Court endorse the IACHR's ruling that military members should be tried in civilian courts for abuses of civilians, it also stated that all judges must take treaty obligations into account and all officials, judges or otherwise, must interpret laws and treaties in the way most favorable to the promotion of human rights.⁷⁵

The federal judicial appointment and dismissal process is generally fair and unbiased. The president, who previously appointed Supreme Court justices, now submits a list of three nominees to the Senate for deliberation and confirmation.⁷⁶ Federal judges are appointed, assigned, removed, suspended, and transferred by the Federal Council of the Judiciary, a board comprised of Mexico's legal elite, although one that has been accused of insufficient oversight and use of its sanctioning power.⁷⁷ State court judges, unlike their federal counterparts, are appointed and dismissed by elected governors, and security of tenure is almost nonexistent. As a

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result, regional politics have a high degree of influence on state courts.⁷⁸ Federal judges undergo rigorous training, and district court judges are appointed after taking a competitive examination.⁷⁹ The additional training that will be required for all judges and prosecutors is one of the most difficult challenges posed by the shift to oral trials.

Prior to the 2008 amendments, the constitution did not explicitly afford citizens the presumption of innocence, and one 2007 study found that 93 percent of accused criminals were prosecuted without a prior investigation.⁸⁰ Even after the reform, the presumption of innocence remains tenuous, especially in the many jurisdictions that are lagging on implementation of the oral trial system. Under the inquisitorial system, citizens are generally not granted a fair, public, or timely trial. Defendants frequently cannot access government documents, trials are carried out in secret, and key witnesses are coerced. Pre-reform studies suggested that nearly 75 percent of defendants lack defense attorneys and 71 percent of convicted defendants were sentenced without seeing a judge.⁸¹ Thus, as one study noted, “inmates are generally not the most dangerous criminals, but they are the poorest. The vast majority of the prison population is composed of inmates who committed relatively minor crimes...and evidence shows that criminals who commit major crimes frequently manage to avoid prosecution,” often because they can afford high-quality legal representation.⁸²

The aforementioned problems occur in the context of a general climate of impunity. One think tank notes that 83 percent of crimes committed in 2010 were never reported to authorities due to a profound sense of public distrust.⁸³ Moreover, between 1997 and 2010, on average only 20 percent of all crimes committed were investigated by prosecutors, only 9 percent came before a judge, and only 1 percent resulted in punishment.⁸⁴ Even as crime has increased in recent years, the number of cases processed by the Public Ministry has remained relatively constant as it is operating at full capacity and is only able to process a limited number of cases.⁸⁵

Public prosecutors have substantial discretion about whether or not to seek prosecution, which raises concerns about the motivations for avoiding or pursuing certain cases.⁸⁶ In order to reduce opportunities for abuse, “the [2008] reforms also allow crime victims to file a motion before a judge in certain cases, which will exert pressure on public prosecutors to investigate cases.”⁸⁷ In general, the institutionalization of corruption remains the key weakness of Mexico's law enforcement system. More broadly, impunity for corrupt officials is rampant. Recent studies show that organized crime is making this problem worse by channeling enormous amounts of money toward the bribery of officials, few of whom are ever punished (see Anticorruption and Transparency).⁸⁸

Although the military has traditionally enjoyed substantial autonomy, police and military officials generally do not interfere with the political process. To be sure, corruption within the law enforcement apparatus affects the efficacy of policy decisions, but officials who cooperate with organized criminals do so on an individual basis rather than as part of an institutional strategy. Corruption in the security forces ranges from small bribes to suitcases filled with drug traffickers' cash. Many state and municipal police officers are bribed to provide the cartels with protection and information. Infiltration has been extensive, allegedly reaching into the U.S. embassy in Mexico and Calderón's personal security apparatus.⁸⁹ In a move to improve control over the security forces, the Federal Preventive Police (PFP) and the Federal Agency of Investigations (AFI)—which President Fox modeled on the U.S. Federal Bureau of Investigation (FBI)—were merged into one force in the summer of 2008. Also in 2008, Calderón announced plans to double the size of the federal police force in order to eventually reduce the role of the military in policing operations. Known as the Comprehensive Strategy against Drug Trafficking,

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the plan also involved purging corrupt officers from local police forces and a series of social measures designed to improve public confidence in government agencies.⁹⁰ The Calderón administration has increased the number of federal officers, enhanced officer training programs, and introduced drug screening and polygraph requirements.⁹¹ In addition, “thousands of municipal police officers—in some cases, entire departments—have been dismissed in a bid to tackle extensive corruption.”⁹²

However, despite the SCJN’s ruling in the *Radilla* case, the military’s traditional autonomy in terms of operational oversight largely continues. Human Rights Watch has reported continued high levels of impunity for abuses against civilians by soldiers, caused specifically by the military’s insistence on investigating itself “in a system that lacks basic safeguards to ensure independence and impartiality.”⁹³ According to the group’s November 2011 report, of “more than 3,671 investigations opened in the military justice system between 2007 and 2011, only 29 soldiers have been convicted of crimes.”⁹⁴

In October 2011, President Calderón took an important step towards addressing the issue of impunity by proposing a change to the Code of Military Justice that transfers certain human rights cases (including rape, torture, and enforced disappearance) to the civilian court system.⁹⁵ However, according to Human Rights Watch, “serious abuses such as extrajudicial killings would still be investigated by the military justice system...It would also grant military authorities discretion in classifying abuses, despite a track record of downgrading the severity of charges against soldiers.”⁹⁶

The issue of property rights is a sensitive one for Mexico. Article 27 of the constitution states: “Ownership of the lands and waters within the boundaries of the national territory is vested originally in the Nation, which has had, and has, the right to transmit title thereof to private persons, thereby constituting private property.” The government has the right to impose limitations on private property at any time as it sees fit, and can appropriate resources to ensure a more equitable distribution of wealth.⁹⁷ Although the federal government has rarely abused this provision in recent years, the enforcement of existing property rights remains weak. Mexico was ranked 80 out of 142 countries in the property rights category by the World Economic Forum’s 2011-2012 Global Competitiveness Report.⁹⁸ According to the World Bank’s Doing Business report, contract enforcement in Mexico ranks roughly on par with its regional peers in terms of cost and number of procedures, and actually outperforms other countries in the Organization of Economic Cooperation and Development (OECD) in terms of time from initiation of litigation to collection.⁹⁹

Particularly at the state and local levels, the state does not adequately protect citizens from the arbitrary or unjust deprivation of their property. Subnational government officials use bribes or threats to acquire property for private gain. Nonstate actors also seize property with impunity, and both formal and informal sector businesses incur substantial costs from extortion and increased security requirements. Representatives of drug traffickers are increasingly forcing individuals to sell land, especially in coveted areas, and the authorities are typically either incapable of responding or bribed into inaction.

ANTICORRUPTION AND TRANSPARENCY

Combating corruption remains a massive challenge in Mexico. Transparency International reported a figure of US\$2.75 billion spent on bribes in Mexico in 2010—an increase of 18

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percent from the previous year.¹⁰⁰ Those earning minimum wage spend fully 33 percent of their income on bribes.¹⁰¹ President Calderón has made efforts to crack down on graft. In late 2008, he made a high-profile speech announcing that 11,500 public servants had been fined a total of nearly US\$300 million for corruption.¹⁰² In 2010, meanwhile, almost 1,800 criminal prosecutions were pursued for corruption—a significant increase from previous years.¹⁰³

Efforts are also being made to confront the high incidence of petty corruption. The progressive shift toward electronic public services has reduced opportunities for corruption by reducing the number of encounters with public officials. The Ministry of Public Administration (SFP), which is charged with oversight of spending by executive branch agencies, has implemented the automation of services and provides links to services and information. On the other hand, inefficient government bureaucracy is cited in the World Economic Forum Global Competitiveness Report 2010-2011 as the most difficult factor for doing business in Mexico.¹⁰⁴

Opportunities for corruption based on state activity in the economy continue to be significant because of the state's prominent economic role—most obviously in the oil industry—and the limited oversight of executive branch agencies. A legislative agency, the Supreme Auditor of the Federation (ASF), audits public accounts throughout the various branches and institutions of government, but has insufficient capacity to oversee the huge public apparatus. Moreover, oversight bodies like the SFP and the ASF are subject to political pressures to some extent, and possess low capacity compared to the sheer size of Mexico's public administration.¹⁰⁵ According to the World Bank, corruption may cost Mexico up to 9 percent of GDP,¹⁰⁶ and the score in the Control of Corruption category of the Bank's World Governance Indicators decreased from 50.5 in 2007 to 44.5 in 2010.¹⁰⁷

Since 1997, the Tax Administration Service (SAT) has combated tax evasion and related acts of corruption, producing encouraging results. The World Bank Doing Business 2011 report shows that the annual number of payments companies must make to tax authorities has been cut, which may reduce the ability of tax officials to solicit bribes. Still, Mexico's tax collection rate is the lowest among OECD member states, and Transparency International's Global Corruption Barometer 2010 revealed that 9 percent of households reported paying bribes to tax officials. Even though the OECD has found that Mexico has taken effective steps to educate government and private business officials on corruption in international business transactions, the country's score in Transparency International's 2011 Corruption Perceptions Index was a mere 3.0 out of 10, representing a sharp worsening of perceptions from the 3.6 obtained in 2008.¹⁰⁸

All federal and most state officers must present an annual assets declaration, but they can choose to either make it public or not. There is little state capacity to oversee the huge number of declarations.¹⁰⁹ Officials also make use of devices like offshore bank accounts to hide bribes and contracting kickbacks, practices that are considered common. Between sophisticated techniques, judicial corruption, and the political calculations involved in investigation and prosecution, impunity is the norm for high-level politicians and military officers. Despite frequent rumors and occasional evidence linking specific officials and politicians to corruption, prosecutions of important figures such as governors, urban mayors, and high-level executive branch members are exceedingly uncommon.

Mexico has also ratified international conventions against corruption, including the Inter-American, United Nations, and OECD conventions against corruption.¹¹⁰ The Federal Penal Code criminalizes corruption, bribery, extortion, abuse of office, and money laundering, and provides for average penalties of 5-to-10 years' imprisonment for corruption cases. However, the

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strong legal framework is undermined by a judicial system that is weak, only partially independent, and ranked as one of Mexico's most corrupt institutions.

Although high-level allegations of official corruption are rarely investigated or prosecuted without prejudice, lower officials are sometimes investigated and punished. An important development has been the federal government's establishment of a national database to ensure that police officers fired for corruption and links to organized crime cannot rejoin a different police force. The government also wants police at all levels to take lie-detector tests. However, enforcement has been slow, and the rate of failure in the lie detector tests has some officials fearing that there will be a shortage of police once the purges are over. In summer 2011, more than 400 police, prosecutors, forensics experts, and other staff in the Attorney General's Office were fired for failing the tests, the second mass firing in a year.

In the states most gravely affected by organized crime, allegations of corruption, along with crime in general, are increasingly given less media coverage due to the threat of violence by criminals or state authorities working in collusion with the former. However, national outlets frequently report on corruption, and in recent years have led the way in uncovering and publicizing scandals.

In March 2011, President Calderón addressed the lack of a federal whistleblower law by proposing a new Federal Law on Anticorruption Regarding Public Contracts along with updates to the existing Federal Law of Administrative Responsibilities of Public Servants. Together, the changes will establish procedures to provide protection for individuals who report fraud and create a system of economic incentives and recognition for those who identify corrupt officials and acts.¹¹¹ The same institutional weaknesses that contribute to high levels of corruption, such as the lack of coordination between officials, prosecutors, and courts, prevent corruption victims from receiving adequate redress. Likewise, corruption and graft are rife in Mexico's public education system, so children are exposed to it and internalize it from a young age.

The Federal Institute for Access to Information (IFAI) has a mandate of facilitating equal access to public information and ensuring that personal information is protected from federal government abuse. IFAI runs the INFOMEX online portal, where citizens can request information from the federal government. However, although IFAI plays an important public role in Mexico, it can only obligate the federal government to provide information and has no mandate to prosecute if the laws are violated. The judiciary, legislature, political parties, and individual states are not forced to show their public records to the IFAI.¹¹² The constitution was reformed in 2007 to make information access a fundamental citizen right, with the intention of aligning federal, state, and municipal standards for transparency, but accessing state and local information is often slow and complicated. Efforts to improve transparency are also endangered by judges and legislators who may use arbitrary criteria to decide what information remains confidential or reserved.¹¹³

Congress can amend the federal budget, and there is a separate legislative committee and two commissions that provide oversight of public funds. In practice, however, several problems, particularly a lack of comprehensiveness within both the executive budget proposal and post-enactment auditing, affect transparency during the budget-making process. Mexico's score on the Open Budget Index was 54 out of 100 in 2008, and by 2010 it had decreased to 52, placing it in the group of countries that provide "some" information about the budget-making process.¹¹⁴

Most observers agree that advances in procurement policy have been greater than in other areas of government. According to Transparency International, the legal framework of government procurement is sound.¹¹⁵ Laws and regulations mandating competition, impartiality,

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open access, and public notification are available online on Compranet, Normateca Federal, and other websites. However, compliance with the rules is inconsistent among federal agencies as well as state and local ones. Despite laws that cover conflicts of interest, competitive bidding, review of procurement decisions, and blacklisting measures, corruption within the contracting sector is still widespread.¹¹⁶

RECOMMENDATIONS

- Protect journalists and civil society members from intimidation and attack by organized crime and state authorities by conducting rapid, thorough investigations and prosecutions that will end impunity for attackers and deter future efforts at silencing civic voices.
- In order to ensure accountability for human rights violations in the context of the war against organized crime, Congress must act to put into effect the Inter-American Court of Human Rights and Mexican Supreme Court decisions calling for the transfer of trials of military members accused of abuses against civilians to civilian courts.
- The bulk of resources devoted to the war on organized crime should be spent in the civilian sphere, focusing on institutional reform of the law enforcement and criminal justice systems. Emphasize the construction of investigative and prosecutorial capacity in order to encourage more Mexicans to report crimes.
- Police reform must include extensive background checks, human rights training, strong internal affairs mechanisms, and regular performance evaluation, as well as salaries sufficient to deter police from soliciting or accepting bribes.
- The failures of the prison system must be addressed: the planned construction of additional prisons must not be delayed, dangerous prisoners should be separated from nonviolent ones, and prison guards must be evaluated, retrained, and given protection from threats by organized criminals.

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