

I. Summary and Recommendations

Mexico's 2000 presidential election was a decisive turning point in the country's transition to democracy. The victory of Vicente Fox, an opposition candidate, marked the end of seven decades of one-party rule. And the support he received from voters across the political spectrum made clear that Mexican society was ready for this change.

But elections alone do not make a democracy. How a country's leaders are selected is, of course, fundamental. But so is how they govern. And a principle requisite of democratic rule is that a nation's leaders be fully accountable to its citizens, as well as to its laws.

President Fox inherited a political system whose defining feature had been, precisely, its lack of accountability. In addition to rigging elections, the old regime had routinely violated the rights of its citizens, as well as its laws, and then covered up these violations by withholding basic information from Mexican society, while rejecting scrutiny from abroad. After the 2000 election ended one-party rule, the critical challenge that Mexico still faced in its transition to democracy was how to end this pattern of violation and cover-up.

Six years later, Mexico has made dramatic progress in addressing one part of that pattern, but very little in addressing the other. Under President Fox, the country has pursued a course of unprecedented openness and transparency—allowing international scrutiny of its rights practices and public access to information held by government agencies. What Mexico has yet to do, however, is effectively address the human rights problems that this openness and transparency have helped to expose. In particular, the country has yet to establish accountability for past atrocities, or to make serious progress in curbing the abuses that continue to be committed on a regular basis today. President Fox's efforts in these areas, while ambitious on paper, have largely failed to achieve their principal goals.

This report examines the current state of Mexico's transition to democracy from a human rights perspective. It does not address all the pressing human rights issues facing the country today. Rather, it focuses on those that are, in our view, most directly relevant to the challenge of promoting democratic accountability: openness to international rights monitors (Chapter 2); public access to government information (Chapter 3); accountability for past abuses (Chapter 4); and reforms of the justice system needed to end ongoing abuses (Chapter 5). In its concluding chapter, the report

discusses the most notorious human rights case of recent years—the murder and “disappearance” of hundreds of women in Ciudad Juárez—showing how that tragedy illustrates the main themes of this report (Chapter 6).

The report’s findings are based on extensive interviews with Mexican officials from all three major political parties and all three branches of the federal government, as well as from various state governments and autonomous institutions. The findings are also drawn from extensive interviews and consultation with representatives from local nongovernmental organizations, which have played an absolutely essential role in promoting democratic change in Mexico, as well as with lawyers, journalists, scholars, and leading members of Mexican civil society. Finally, the findings draw upon interviews with numerous victims and relatives of victims of human rights violations.

As Mexico prepares for its first presidential election since the end of one-party rule, the country’s transition to full democracy remains far from complete. President Fox’s human rights agenda has helped to advance this transition in certain key areas. Yet, Mexican democracy remains shackled by the laws and institutions it inherited from the old regime. The challenge of delivering the country from its authoritarian past will soon pass to a new president. To meet this challenge, the next administration will need to pursue an aggressive human rights agenda—building upon the strengths of Fox’s agenda, while avoiding its significant shortcomings.

Openness and Transparency

A central obstacle to democratic accountability in Mexico has been the culture of secrecy that has traditionally pervaded all areas of government. For years, Mexican citizens were denied access to the most basic information regarding the institutions and even the rules that governed their daily lives. In addition to infringing upon their right of access to official information, this lack of transparency severely undermined their ability to counter the abusive practices that state agents and institutions routinely committed against them.

The stifling impact of this culture of secrecy was compounded by the country’s refusal to allow international scrutiny of its human rights practices. The old regime actively discouraged and disregarded such scrutiny on the grounds that it constituted foreign meddling in the internal affairs of the state. Even under President Ernesto Zedillo, whose government showed greater willingness to engage with international rights monitors, Mexico never abandoned the position that respect for state sovereignty was more important than the protection of basic rights.

A New Foreign Policy

One of the first significant policy shifts that the Fox administration brought to Mexico was its rejection of a radical doctrine of non-interference that had defined the country's foreign policy for years. On his first full day in office, President Fox signed an agreement with the United Nations High Commissioner for Human Rights (UNHCHR) that committed Mexico to collaborating with the U.N. office to assess and improve Mexico's human rights practices. Several weeks later he announced the removal of onerous travel restrictions that had been used to limit foreign advocates' access to the country. And in the administration's first appearance before the U.N. Commission on Human Rights several months later, his foreign minister extended a permanent invitation to the U.N.'s human rights rapporteurs to evaluate conditions in Mexico and, in the same speech, announced the country's new approach to human rights: Mexico would treat them as universal and absolute values that surpassed national sovereignty in importance.

The foreign minister's words were backed by a variety of concrete actions that showed that Mexico was seriously committed to promoting human rights—both abroad and at home. The Fox administration had scrapped the defensive posture of the old foreign policy that aimed to shield Mexico from international scrutiny, and replaced it with a proactive policy that used the international rights regime as a catalyst for change within Mexico.

While international scrutiny is not, in itself, a prerequisite for democratic rule, accountability is. And international scrutiny often has proven instrumental in prompting states to take accountability more seriously. In the case of Mexico, international scrutiny has played a vital role in reinforcing efforts by local rights advocates to raise public awareness of the scope and nature of the country's human rights problems. As with all bad habits, the first step to addressing these problems is recognizing that something is wrong. And thanks in large part to the new foreign policy, the era of total denial in Mexico appears to have past.

The Transparency Law

Mexico's opening to scrutiny from abroad was soon followed by an even more radical opening to scrutiny from within. In 2002, the Mexican Congress passed a "transparency law" that dealt a potentially decisive blow to the longstanding culture of secrecy in government affairs. The new law established a "principle of maximum disclosure" that essentially reversed the state's traditional approach to the disclosure of official information. Where in the past disclosure was the exception, under the new law it would be the rule. The law also established a powerful mechanism—the Federal

Institute for Access to Official Information (IFAI)—to enforce this principle within the executive branch and mandated the creation of comparable mechanisms within the other branches.

The transparency law may prove to be the most important step Mexico has taken in its transition to democracy since the 2000 election. And the credit for making it happen is shared by many—from President Fox who signed the law, to the legislators from all three major parties who voted to pass it, and, perhaps most importantly, to a diverse array of civil society actors who conceived the law and convinced Mexico’s political leaders that it was necessary.

The potential impact of the law received a huge boost from the 2002 declassification of millions of secret documents from government archives. The release of the documents, ordered by President Fox, amounted to a retroactive application of the new principle of disclosure, giving journalists, investigators, and ordinary citizens access to government information, including extensive documentation of past human rights violations that had been denied to them for decades.

Ongoing Threats to Openness and Transparency

While the transparency law has transformed Mexico’s approach to managing information, there is still serious danger that the culture of secrecy will reassert itself in the future. The progress made in promoting transparency within the executive branch has not yet been matched in the other branches of government, nor in autonomous state institutions such as the National Human Rights Commission—and the transparency law does not even cover political parties, which employ large quantities of public funds to shape the country’s electoral and legislative processes. What’s more, within the executive, the IFAI remains vulnerable to political interference and has already encountered growing resistance on the part of several key agencies to turning over information. And in terms of the declassified archives, meaningful access remains severely limited by a variety of factors, including the overly broad application of criteria for protecting people’s privacy, which result in archivists withholding documents that should be made public. In sum, the historic advances that Mexico has made in the area of transparency still remain precarious today.

The opening to international scrutiny has not faced the same sort of institutional obstacles as the implementation of the transparency law. Yet the progress here may be even more precarious, given that it is neither enshrined in law nor the product of a formal political consensus. It is rather the foreign policy of one administration and

could easily be abandoned as quickly as it was launched on the first day of the next presidency.

Whether the openness and transparency continue and deepen will depend largely upon the next administration. To ensure that the transparency law realizes its full potential, the new president will need to insist that all government entities provide broad public access to information in their possession; promote legislation that would grant the IFAI constitutional autonomy and establish “transparency obligations” for political parties and other non-state actors that spend public funds; and support initiatives by other branches of the federal government, as well as by autonomous agencies, to create better implementing regulations to comply with the transparency law.

On the foreign policy front, the next administration will need to decide whether to embrace the new openness doctrine or return Mexico to the old “don’t ask, don’t tell” approach to international human rights. The new president should reject the notion that promoting national sovereignty is more important than protecting basic rights, continue actively collaborating with the UNHCHR and other international human rights monitors, and prioritize the implementation of measures in the National Human Rights Program, updating it as necessary to reflect evolving circumstances.

Accountability and Law Enforcement

A central area where Fox’s human rights agenda has come up short has been in its initiatives aimed at addressing another legacy of the old regime: the routine subordination of the rule of law to the perceived imperatives of public security.

The most egregious human rights crimes committed over the years in Mexico have typically targeted people that the state deemed to be security threats of one kind or another—from armed insurgents, to student activists, to common criminals. At their most extreme, these violations included the massacres of student protesters in 1968 and 1971, and the torture, execution, and forced disappearance of hundreds of civilians during the country’s “dirty war” in the 1970s and early 1980s. Compounding the horror of these atrocities was the fact that, for decades, Mexico failed to investigate and prosecute those responsible, thereby forcing Mexican society to assimilate the ultimate lesson in the limits of their country’s rule of law: government officials could get away with even the most brutal crimes.

Far more common than those acts of political violence, however, have been the routine abuses committed by law enforcement agents against criminal suspects throughout the

country. The most notorious of these has been the use of torture to obtain confessions from detainees. Another has been the systematic misuse of pretrial detention, resulting in innocent people being locked up with hardened criminals for months on end.

President Fox has launched two major initiatives to address this legacy of state lawlessness—one aimed at ending years of impunity for past abuses, the other at preventing future ones. Both initiatives were ambitious and essential. Yet both have so far failed to achieve their main goals.

The Special Prosecutor's Office

In November 2001, President Fox responded to repeated calls for a truth commission to investigate past abuses by creating something that was potentially even better: a special prosecutor's office that would investigate and prosecute these crimes—an initiative that would, in other words, seek both truth and justice.

Yet the results after four years have been deeply disappointing. The office has succeeded in obtaining the arrest and indictment of the former head of the secret police and three other security officials—something that would have been unthinkable in Mexico until very recently. But these successes have been eclipsed by major setbacks. The courts have roundly rejected the special prosecutor's efforts to indict former President Luis Echeverría and other former officials on charges of “genocide” for the massacres of student protestors. Although the special prosecutor did win an important Supreme Court ruling that authorized the prosecution of decades-old cases of forced disappearance, his office has managed to file charges in only fifteen of the more than 600 cases before it. And, as of this writing, the office has not obtained a single conviction.

Perhaps the most substantial accomplishment of the Special Prosecutor's Office so far, in addition to the indictments and the one favorable ruling from the Supreme Court, has been the production of an ambitious draft report on the history of the past abuses under investigation. Yet this draft report is, itself, the clearest evidence that the Special Prosecutor's Office has not lived up to its potential. The report has revealed the existence of extensive documentation in government archives that implicates former officials and military officers in the “dirty war” crimes. Yet even the report's main author concedes that it is a woefully incomplete document, containing only a small fraction of the information that could have been collected if a more thorough investigation were carried out. What the draft report shows, in other words, is that the Special Prosecutor's Office has made some progress in ending the official cover-up of these atrocities, but not nearly as much as it might have.

Justice Reform

One of the most ambitious initiatives of the Fox presidency has been a proposed overhaul of the justice system that would, among other things, address the root causes of its two most recurrent human rights problems—the use of torture and the misuse of pretrial detention.

In the case of torture, the main reason the practice continues is that prosecutors are able to use coerced statements to convict people at trial. It is easier, they find, to beat a confession out of someone than to conduct a professional investigation. The Fox proposal would curb this practice by removing the perverse incentive that promotes it. A modification of the Federal Constitution would establish that only confessions given directly before a judge could be used to convict someone of a crime. The coerced confession extracted in a backroom or basement corridor would no longer be admissible at trial.

In the case of pretrial detention, the problem is a legal regime that denies judges discretion to grant provisional liberty to suspects who are entitled to it—namely those who pose no danger to society, nor risk of evading justice. Under current law in most parts of Mexico, anyone charged with a “serious crime” is automatically jailed until trial. And, over the years, popular demand for anti-crime measures has prompted legislators at both the state and federal level to expand the list of these “serious” crimes to include a host of nonviolent and relatively minor crimes. As a result, today more than 40 percent of prisoners in Mexico have not been convicted of the crime for which they are being held, many of them locked up for months on end with convicted criminals.

The Fox proposal represents an important first step toward reducing this abusive practice at the federal level by allowing federal judges to grant provisional liberty in cases involving some “serious” crimes. The proposal also calls for a reform of the Mexican Constitution that would establish a presumption of innocence for individuals not convicted of a crime. This constitutional guarantee could be used to compel further changes in federal criminal law, as well as changes in the criminal law of the states, to reduce the excessive use of preventive detention at the local level.

Unfortunately, the proposed reforms have languished in Congress for more than two years, and their prospects for passage in the immediate future do not seem promising.

Reconciling Rights and Security

The failure of these two very different initiatives reflects Mexico's broader failure to integrate human rights and public security into a single coherent agenda. Perhaps the most eloquent testament to the enduring imbalance between these two priorities is the fact that, today, whereas tens of thousands of unconvicted Mexicans are locked up with hardened criminals because of their alleged involvement in nonviolent crimes, only four former officials are facing trial in civilian courts for the abduction, torture, murder, and forced disappearance of hundreds of people during the country's "dirty war."

The Special Prosecutor's Office was intended to help rectify this imbalance. Its failure to do so is, ultimately, the responsibility of the administration that created it. After launching the ambitious initiative, the Fox administration failed to ensure that the office possessed the credibility, technical expertise, and powers it needed to succeed. It also failed to ensure active collaboration from other institutions, including the federal investigative police who have been unable or unwilling to execute a majority of the arrest warrants in these cases, and, most importantly, the Mexican military, which has refused to cooperate in a serious fashion with the investigation and prosecution of these cases.

The work begun by the Special Prosecutor's Office can still be salvaged. But it will require the next president to take concrete steps to overcome the obstacles that have hindered progress until now. One such step is to compel the armed forces to collaborate actively with investigators and prosecutors working on these cases. A second step is to seek legislation granting the prosecutors of these cases the powers they need to obtain witness testimony. And finally, to reinforce and complement efforts to prosecute these cases, the president should promote the creation of a truth commission with the resources, expertise, and independence necessary to advance the investigation begun by the Special Prosecutor's Office.

Mexico's failure to pass justice reform proposals into law is more the fault of its Congress than that of its president. Yet here too the president could play a much more active role in confronting the broader political obstacle that impedes their passage: the widespread misperception that human rights and public security are conflicting priorities.

Opponents of Fox's anti-torture measure argue, for example, that it would weaken the hand of law enforcement, and thereby strengthen the hand of criminals. But they are wrong. Rather than undermining prosecutors, the measure would merely force them to do their job better. Unable to rely on coerced confessions, they would need to conduct more thorough investigations in order to obtain convictions. Current practice—notably the failure to end the use of coerced confessions—is a travesty for human rights and

public security: innocent people confess to crimes they didn't commit, while actual criminals go free.

Similarly, opponents of reforms aimed at curbing pretrial detention argue that the proposed measures, like the anti-torture reforms, would weaken law enforcement efforts. But, as with torture, the excessive use of pretrial detention constitutes a serious threat to public security. The cost of incarceration of tens of thousands of non-violent prisoners diverts public funds that would more wisely be invested in efforts to combat violent crime. It also contributes to the severe overcrowding of Mexican prisons, which in turn undermines the ability of penal authorities to control inmate populations—which then, in turn, results in a prison system where petty criminals (not to mention innocent suspects) must endure months living under the influence and even supervision of hardened criminals. The end result is a prison system that functions as a finishing school for delinquents.

Unfortunately, it seems unlikely that Congress will approve these much-needed measures so long as the basic misperception of their potential impact on public security prevails. For Mexico to make progress in this area, its political leaders—and in particular its president—will need to campaign actively to persuade the public that passage of the proposed measures is essential for promoting both human rights and public security.

The Lessons of Ciudad Juárez

Of all the human rights problems that rose to prominence during the Fox presidency, none has received more local and international media coverage than the state's response to hundreds of cases of murdered and “disappeared” women over the past decade in Ciudad Juárez, Chihuahua. This coverage has been crucial, both for drawing attention to the plight of the victims in Chihuahua and for raising much-needed awareness of the chronic problem of violence against women in Mexico. Yet, the tragedy of Ciudad Juárez also offers other important—though largely overlooked—lessons related to the main themes of this report.

One is the lesson that public security and human rights should be understood as complementary aims. In Chihuahua, innocent people were coerced into confessing to the killings of women, allowing the true criminals to remain at large. Another related lesson is that ending these abusive practices requires reforming the underlying deficiencies of the justice system that give rise to them. And a third fundamental lesson of Ciudad Juárez is that international scrutiny, combined with local advocacy, can play a crucial role in bringing about real progress in promoting human rights and accountability. Thanks in large part to this combination of international scrutiny and

local advocacy, the state of Chihuahua is now close to passing precisely the sort of justice reform measures that the Fox administration has been unable to get passed at the federal level. In short, the case of Ciudad Juárez shows that the kind of reforms that Mexico needs in order to make real progress on human rights are indeed possible.

Recommendations

Based upon the experience of the past five years, Human Rights Watch believes that there are four broad policies that the next administration should pursue in order to strengthen the protection of human rights and advance the transition to full democracy and rule of law in Mexico.

1) Openness

The next administration should pursue a foreign policy that encourages international scrutiny of human rights issues within Mexico. Specifically, it should:

- Recognize the universality of international human rights values and rejecting the notion that protecting national sovereignty is more important than protecting basic human rights;
- Continue active collaboration with the U.N. High Commissioner's Office and other international human rights monitors; and
- Continue implementation of measures proposed in the National Human Rights Program, while working with civil society to strengthen the program's contents.

2) Transparency

The next administration should promote increased government transparency. Specifically, it should:

- Instruct all entities within the executive branch to comply fully with the transparency law and maximize public accessibility to the information in their possession;
- Promote legislation that would grant the IFAI constitutional autonomy and establish transparency obligations for political parties and other non-state actors that spend public funds; and
- Support initiatives by other branches of the federal government, as well as the autonomous agencies and state governments, to create better transparency standards and implementing regulations.

3) Accountability

The next administration should promote accountability for past human rights atrocities. Specifically, it should:

- Order the armed forces to collaborate actively with investigators and prosecutors of human rights crimes involving current and former military personnel, and promote legislation that would prevent any cases involving human rights crimes from being tried in military courts;
- Promote legislation that would give prosecutors of human rights cases authority to offer reduced sentences to some individuals in exchange for effective collaboration in prosecuting these cases;
- Establish a truth commission with the resources and independence necessary to construct an authoritative account of past abuses and, most importantly, reinforce efforts to prosecute them.

4) Law Enforcement

The next administration should actively promote the passage of justice reforms aimed at curbing abuses that undermine public security. Specifically, it should promote reforms of the justice system that would:

- Require that confessions be made before a judge in order to have evidentiary value;
- Allow judges discretion to grant provisional liberty to suspects who pose no threat to society or risk of flight; and
- Incorporate the presumption of innocence in the Constitution.