



# MEXICO

CAPITAL: Mexico City

POPULATION: 109.6 million

GNI PER CAPITA (PPP): \$14,270

SCORES	2006	2010
ACCOUNTABILITY AND PUBLIC VOICE:	N/A	5.00
CIVIL LIBERTIES:	N/A	4.52
RULE OF LAW:	N/A	3.93
ANTICORRUPTION AND TRANSPARENCY:	N/A	3.85

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

**Francisco E. González<sup>1</sup>**

## INTRODUCTION

At the turn of the 21st century, a broad sense of optimism about Mexico's future prevailed at home and abroad. Free elections in 2000 led to a peaceful transfer of power from the centrist Institutional Revolutionary Party (PRI), which had ruled for 71 years, to the rightist National Action Party (PAN). Along with the leftist Party of the Democratic Revolution (PRD), these parties formed the main elements of a competitive, multiparty democracy. The 2000 election also marked the first presidential turnover that did not take place amid economic turmoil, as had been the case in 1976, 1982, 1987–88, and 1994–95. Mexico seemed to have successfully completed a “dual transition” from authoritarian to democratic rule and from a relatively closed economy to one that was open and integrated with the United States and Canada through the North American Free Trade Agreement (NAFTA).<sup>2</sup>

A decade later, as Mexico prepares to celebrate in 2010 the bicentenary of the start of its war of independence against Spain and the centenary of its pioneering social revolution, it is a tragic coincidence that the country finds itself in the midst of a new conflict.<sup>3</sup> President Felipe Calderón declared war against the country's fearsome drug cartels shortly after coming to office in December

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**Francisco E. González** is the Riordan Roett Associate Professor of Latin American Studies at Johns Hopkins University SAIS in Washington, D.C. He is the author of the book *Dual Transitions from Authoritarian Rule: Institutionalized Regimes in Chile and Mexico, 1970–2000* (Johns Hopkins University Press, 2008) and is currently finishing a book titled *Economic Shocks and Democracy from the Great Depression to the Great Recession: Evidence and Lessons from Latin America*. González holds master's and doctoral degrees in politics from the University of Oxford.

2006. As the cartels' main business has been squeezed since the launch of operations, which to date have involved more than 45,000 military and police personnel, they have aggressively diversified their business interests into kidnapping, human smuggling, and extortion on a grand scale: in practice, the war on drugs has become a war against organized crime.<sup>4</sup> As of August 2009, more than 13,000 individuals had been killed in gang-related violence during the Calderón administration, with an accelerating toll in 2008 and 2009. While the violence has not rolled back Mexico's "dual transition" advances, conditions on the ground have deteriorated, making the exercise of basic civil liberties more difficult. The rule of law remains a far-fetched ideal despite the good intentions of political leaders and a solid track record of legislative reforms. Other pillars of good governance, such as transparency and the fight against corruption, are in a similar bind.

Standardization and enforcement of the law is complicated by Mexico's federal system. The country consists of 31 states plus the capital city federal district (DF) and close to 2,500 municipalities. Mexico is also the 11th largest country in the world by population (with 108 million inhabitants in 2009), and its diverse ethnic composition includes a sizable indigenous population (around 15 percent of the total), a majority made up of *mestizos* (or mixed indigenous-white), and a small white minority stemming from 20th-century European immigration.

Another factor behind the country's democratic governance deficit is the legacy of authoritarian rule, particularly the lingering culture of high-level graft and the persistence of private and public monopolies in the economy. A handful of private companies dominate the telecommunications and broadcast media sectors, for example, while the public sector features a state-owned oil monopoly and powerful, ossified trade unions. These influences continue to skew the political playing field and help perpetuate socioeconomic inequality, which has receded in recent years but remains very high and, crucially, strongly politicized.<sup>5</sup> The politicization of inequality is a function of a divided but strident left-wing politics, which finds an echo in the abysmal disparity of living conditions among Mexicans. The right, which through the PAN has been in power since 2000, has been incapable of dampening such anxiety because under its stewardship, Mexico's economy has grown very slowly. Moreover, the country's integration with the American economy means that since the U.S.-centered 2008 global bust the country has been hammered—the economy is expected to decline by 6.5 percent or more in 2009, a fall even more precipitous than the country's last economic collapse in 1994–95. The economy, while open to international commerce, remains extraordinarily concentrated in its main sectors, and the PAN governments have been unwilling or incapable of injecting competition into what remains an economy characterized by both low productivity and high operating costs.

<b>ACCOUNTABILITY AND PUBLIC VOICE</b>	<b>5.00</b>
FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	5.50
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	4.25
CIVIC ENGAGEMENT AND CIVIC MONITORING	5.67
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	4.57

Increasingly competitive elections were the backbone of the transition to democracy in Mexico, prompting some scholars to call it a “voted transition.” Successive electoral negotiations, particularly between 1989 and 1996, increased opposition parties’ victories at the local, state, and federal levels and eroded PRI hegemony.<sup>6</sup> The role of the Federal Electoral Institute (IFE), established in 1990 to manage and oversee elections, was particularly important. Although it was initially controlled by the federal government, it gained full independence in 1996, becoming an organization that was staffed by professionals and led by *consejeros ciudadanos* (citizen counselors) rather than politicians. However, given that the lower chamber of Congress 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 judicial branch was brought into the electoral arena with the creation of the Electoral Tribunal of the Federal Judiciary (TEPJF) in 1996. Seven magistrates preside over the tribunal, and their impartiality has generally been praised by leaders across the political spectrum, with some complaints regarding the adjudication of fines for violations of campaign finance norms.

The federal government provides all parties with generous public financing. In 2008, for example, the IFE provided a total of US\$250 million, 30 percent of which was distributed equally among the eight parties represented in the bicameral Congress, regardless of the size of their delegations. In the Congress of 2006–09, the PAN held 207 Chamber of Deputies seats and 52 Senate seats, the PRD held 127 and 26, and the PRI held 106 and 33. Smaller parties and independents accounted for the remainder. While the even distribution of this 30 percent enhanced the equality of campaigning opportunities, the rest of the financing was allocated according to each party’s representation in the 300 directly elected Chamber of Deputies seats (the other 200 seats in the 500-seat lower house are filled through proportional representation). This part of the formula naturally benefited the largest parties.<sup>7</sup>

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

At the subnational level, there are a handful of states, such as Chihuahua and Nuevo León, where power has shifted over time from the PRI to the PAN and then back to the PRI, suggesting that such alternation has become increasingly part of the routine of democratic politics. On the other hand, in at least 13 of the 31 states, the PRI remains undefeated in gubernatorial elections. In some of these cases the traditional image of powerful *caciques* (local political bosses) remains an everyday reality. The same applies at the municipal level, where the three main parties have developed political machines with solid voting clienteles. 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.

Regulations to prevent the undue influence of economically privileged interests became one of the main points of contention after the July 2006 presidential election, which was decided by less than 0.5 percent of some 42 million ballots.<sup>8</sup> Legal uncertainty over campaign finance rules allowed dominant economic groups to provide a last-minute wave of financial support to PAN candidate Calderón, which fueled a media offensive against the fiery populist López Obrador in the run-up to election day. The media onslaught allowed Calderón to close a gap in voter support that stood at about 10 percentage points 90 days before the vote.

Once in office, President Calderón accommodated PRD and PRI calls for electoral reform legislation, which was enacted in November 2007. In an effort to create a more level playing field, the reform “cut the length of presidential campaigns almost by half [to just three months prior to election day], gave the IFE power to regulate party primaries, cut public funding to political parties, and banned all political advertising outside of officially arranged time slots.”<sup>9</sup> It did not lift the ban on independent candidates for federal races, a change some have called for in order to shake up what is viewed as Mexico's *partidocracia* (rule by the leaders of political parties).

The new regulations faced their first test with the midterm elections of July 2009 and appear to have functioned largely as intended, despite some grumbling and complaints of cheating. In the balloting, the ruling PAN and the PRD suffered crushing defeats (the PAN won 147 seats, losing 59; the PRD won 72 seats, losing 51; and four smaller parties—the Green Party, Labor Party, New Alliance Party, and Convergence—won 40 seats). The PRI, in a spectacular comeback in Congress, will have 241 seats in the lower chamber, a net gain of 135 seats. The PRI also won five of six governorships in dispute, making it the early favorite to win the 2012 presidential elections. A movement arose during the campaign urging voters to show their displeasure with the political class by casting a null vote, but less than 6 percent of voters did so.

The three branches of government counterbalance one another significantly, increasing effectiveness and accountability. 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.<sup>10</sup> The rival parties have been at loggerheads over highly politicized issues such as pensions, fiscal policy, energy, and labor law, but even in these areas mild reforms—which do not address Mexico’s underlying economic problems—have been successfully implemented under President Calderón. The chances of further structural reforms decreased significantly given the PAN’s defeat in the 2009 midterm elections.

Freedom of political choice varies according to locality. Whereas in the aggregate Mexico comes across as a proper electoral democracy with free and fair elections, growing concern surrounds the political influence of criminal groups. Estimates in September 2008 suggested that 8 percent of Mexico’s roughly 2,500 municipalities were under the “total” control of drug traffickers, while they exercised “some” control in close to 60 percent of all local governments.<sup>11</sup> The current fear is that organized criminals’ financial clout and capacity to carry out threats could have provided them with the means to clandestinely impose candidates for the 2009 elections.

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.<sup>12</sup> Most positions in the federal, state, and local bureaucracies are up for grabs whenever there is a change in government.

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. Such activities have a substantial influence on government policy and pending legislation. While legal impediments to registration are minimal, the absence of laws and regulations on lobbying tends to favor the efforts of big firms with abundant financial and technical resources, as opposed to nonprofit advocacy organizations, and the establishment of normative lobbying practices is undermined by the ban on reelection in Congress. Deputies serve three years and senators six, after which they have to step down, and their accumulated experience in dealing with pressure groups goes with them.<sup>13</sup> Meanwhile, because state and local governments are more driven by patronage and clientelistic practices than officials at the federal level, they are less inclined to foster the transparency that civic organizations need to engage in effective oversight. Most nongovernmental organizations (NGOs) are able to carry out their work vigorously, but NGO workers in some regions, particularly in southern rural zones, are at times subject to threats and intimidation (see Civil Liberties).

Full legal protections for freedom of expression have existed on paper since the years of PRI rule, but in practice the proper exercise of this right developed very gradually. In its hegemonic heyday the PRI exerted its influence by withholding state advertising from publications and broadcasters that engaged in political dissent. In some cases the authorities would resort to intimidation or coercion. The decline of PRI hegemony, particularly during the 1990s, allowed the emergence of an environment that was 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 “insults” and obliged state governments to follow suit. However, as of July 2009 defamation was still criminalized in 21 of 32 states.<sup>14</sup>

Although the media 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. However, the single greatest threat to media independence and freedom of expression in Mexico 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. At the end of 2008, the World Association of Newspapers (WAN) reported that 23 journalists had been killed since 2000, and seven others had disappeared since 2005. The organization said that made Mexico more dangerous for the media than any country in the Americas. WAN noted that none of the perpetrators of journalists’ murders since the start of the war against organized crime have been brought to justice.<sup>15</sup> This impunity has encouraged self-censorship in violent regions, and many newspapers in these areas no longer publish bylines on stories about organized crime. In an emblematic case, TV Azteca reporter Gamaliel López and cameraman Gerardo Paredes vanished in May 2007 in the northeastern state of Nuevo León. López had reported for six months on the local presence of the army and had exposed corruption. A different but also troubling dynamic applies in the southern state of Oaxaca, where Indymedia cameraman Brad Will, a U.S. citizen, was killed during unrest in late 2006. *El Tiempo* reporter Misael Sánchez Sarmiento, who investigated Will’s death, was shot and wounded by a gunman in June 2007. Preliminary investigations as well as recommendations by the Mexican National Commission for Human Rights (CNDH) indicate that fundamental principles of legality and judicial security have been severely violated in the processing of Will’s case. In 2009, those responsible for Will’s death remained at large.<sup>16</sup>

Given the centrality of elections in Mexico’s young democracy, control over media content during campaigns has been the focus of acute conflict. As noted, the uneven use of the media in the run-up to the 2006 presidential election was so obvious that Calderón, after taking office, quickly supported opposition demands for a new 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 that parties spent in the 2006 federal elections went to the private media. This use of public money was especially egregious given that the television market is essentially a duopoly dominated by Televisa (7 in 10 Mexicans get their news from its outlets) and TV Azteca (which accounts for 2 of the remaining 3). Radio broadcasting is also concentrated, although 13 different private groups participate nationally.<sup>17</sup> Televisa, which wields great financial and political clout and maintains a dominant position as shaper of Mexican public opinion, is one of Mexico's most powerful actors and is the subject of intense political debate and controversy. One illustrative incident pitted the media conglomerate against well-known journalist Carmen Aristégui, who argued that her December 2007 exit from a popular radio show she conducted on W Radio (a station part-owned by Televisa), was politically motivated. She also alleged that Televisa under-reports stories adverse to State of Mexico governor Enrique Peña Nieto, the early PRI front-runner for the 2012 presidential race, a charge strongly denied by Televisa.

## CIVIL LIBERTIES

4.52

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	3.00
GENDER EQUITY	4.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	4.25
FREEDOM OF CONSCIENCE AND BELIEF	6.33
FREEDOM OF ASSOCIATION AND ASSEMBLY	5.00

Although subsequent to the democratic transition Mexico adopted almost every international human rights treaty, institutional inefficiencies have limited its ability to implement such agreements and address abuses. For example, there is little effective protection against torture and other physical violence by officers of the state, and impunity is rampant. The National Agreement on Security, Justice, and Legality—signed in August 2008—is the latest step to establish a foundation for acceptable behavior and procedures within the police force. The agreement includes plans for a system that would enable citizens to file complaints against law enforcement officers for misconduct. Implementation will likely be difficult, particularly for municipal and state governments, whose officers are most often in contact with the public. The recent use of the military to combat drug-related violence also poses a problem, as soldiers are not trained for law enforcement duties and fall under the jurisdiction of military courts, which are much less open to public scrutiny than civil courts.<sup>18</sup> As Human Rights Watch reports, “While engaging in law enforcement activities, Mexico’s armed forces have committed serious human rights violations, including enforced disappearances, killings, torture, rapes, and arbitrary detentions.”<sup>19</sup>

Under Calderon's administration, the armed forces have been increasingly relied on. The number of military and police forces deployed has reached 45,000.<sup>20</sup>

Mexico's prisons are seriously troubled by overcrowding, except for maximum security facilities, which nevertheless suffer from corruption and inadequate staffing. The system was designed to cope with 168,000 inmates, but the total prison population had reached 222,671 as of September 2008.<sup>21</sup> The Calderón administration has announced plans to construct a series of new prisons, while an overhaul associated with the National Public Security Program of 1997 was created to reduce crowding by dealing with backlogged cases and adjusting sentences.<sup>22</sup> With prisons overcrowded and understaffed, internal violence is pervasive. For example, a series of three riots in facilities in the border cities of Reynosa, Ciudad Juárez, and Tijuana between September 2008 and March 2009 left at least 60 dead.<sup>23</sup> Furthermore, top organized crime leaders like Osiel Cárdenas and Joaquín "El Chapo" Guzmán, the latter of whom performed a cinematic prison escape in 2001, have kept control of their criminal organizations from their prison cells. Jailbreaks such as one in May 2009 that freed 53 members of the feared paramilitary group Los Zetas have exposed collusion between jail authorities and organized criminals.<sup>24</sup>

Amnesty International has reported that human rights defenders and other social activists face significant threats in Mexico, particularly at the local level.<sup>25</sup> According to the Mexico office of the UN High Commissioner for Human Rights, 128 human rights defenders were subject to aggression—including 10 cases of murder—in the country between 2006 and August 2009. Guerrero, Oaxaca, and Chihuahua were most affected by threats and violent attack, and impunity reigned in 98.5 percent of the cases.<sup>26</sup> The UN Human Rights Council noted in early 2009 that people involved in demonstrations and social movements are sometimes jailed, citing at least 60 cases of criminalization of public protest in 17 states.<sup>27</sup>

Moreover, social leaders are put in prolonged detention based on false criminal charges that are often politically motivated. The UN Committee against Torture has expressed concern regarding the prevalence of arbitrary detention and long-term detention without trial in Mexico.<sup>28</sup> In addition, in January 2009 the government established new laws to combat organized crime that contemplate *arraigo*, or detention prior to charges, for up to 80 days in some cases.

Organized crime has become arguably the most critical and pervasive governance problem in Mexico. It is closely associated with drug-related violence, which has grown exponentially since 2003–04, along with extortion, kidnappings, and the trafficking of arms, humans, cash, and drugs across the U.S. border.<sup>29</sup> The *LA Times* reports that there were 9,903 drug-related deaths from January 1, 2007 to May 29, 2009, with the 2008 tally double that of 2007, and a further substantial rise in 2009 all but assured as of August.<sup>30</sup> Killings and violence are concentrated in the states of Chihuahua, Durango, Baja California Norte, and Sinaloa, and crimes have escalated in severity. Though much of the



violence seems targeted, during the September 2008 independence celebration in Morelia, the capital of Michoacán, 7 people were killed and 100 wounded by a grenade tossed into a crowd. Immediately connected to the drug violence, the event was considered an act of terrorism.<sup>31</sup>

Despite deployment of the army and a spate of legal initiatives, the state has thus far proven incapable of guaranteeing basic security for Mexican citizens when it comes to organized crime. Indeed, organized criminals have also targeted prominent members of Mexico's law enforcement establishment. In May 2008, gunmen ambushed Edgar Millán Gómez, the acting chief of Mexico's federal police, in a brazen attack as he entered a supposedly secure apartment. The assassination was widely interpreted as retribution for the arrest Alfredo Beltrán Leyva, one of the leaders of the Beltrán Leyva cartel, an offshoot of the Sinaloa cartel.<sup>32</sup> In February 2009 gangsters kidnapped, tortured, and killed Brigadier General Mauro Enrique Tello, who had recently assumed command over law enforcement in Cancún.<sup>33</sup> Overall, hundreds of law enforcement agents have been slain since the late 2006 sharpening of the confrontation between gangs and the state.

Due in part to simple geography, human trafficking is an insidious problem in Mexico. The Act to Prevent and to Punish Human Trafficking was ratified in November 2007 in a bid to curb the practice, and there is also a Special Prosecutor's Office on Violent Crime against Women and Human Trafficking. Unfortunately, there is a lack of standardization, with most states lagging behind in their capacity to enact and enforce this legislation. Official numbers, surely a gross underestimation, say that 16,000 children and adolescents are involved in prostitution, sex tourism, and trafficking for the purpose of sexual exploitation. The criminal code has been changed to help increase the punishment for child exploitation, and a number of support mechanisms for victims have been created.<sup>34</sup>

Federal laws enacted since the early 2000s to allow for the redress of rights abuses by the authorities have not been adopted in the states. Very few officials have been convicted of violations, and those who have been convicted faced only minor charges. Almost no victims have received justice or reparations for their suffering. This impunity can be attributed to weak political will and the deep corruption of the judiciary in many local and state jurisdictions, along with the limited independence of federal and state prosecutors.<sup>35</sup> Moreover, according to a report by Human Rights Watch, the National Human Rights Commission (CNDH), which should be a primary source of protection for citizens, is failing in its mission to promote reforms and remedies, despite resources that are the envy of other regional ombudsmen's offices.<sup>36</sup>

Although Mexico's laws and treaty obligations call for gender equality, men continue to dominate positions of influence and the policy-making process.<sup>37</sup> Gender discrimination remains a serious problem. Investigations in 2006 found that "in some states, discriminatory laws that exclude women still exist," and that women's main complaints involved fair compensation for labor, equal

treatment before the law, and freedom from violence.<sup>38</sup> Although some progress has been made, as with other governance problems in the country, federal laws and commitments on gender equality are often poorly implemented or inadequately coordinated at all levels of government. The best-known symbol of the continuation of abuse against women in Mexico is the killings in Ciudad Juárez of more than 400 women between 1993 and 2006. Despite the high profile and extreme nature of these cases, they have yet to be fully addressed, and state authorities attempted to downplay the severity of the murders.<sup>39</sup>

Women still have limited opportunities to obtain education and participate in the economy. In 2005, 36.7 percent of women age 15 or older had not finished primary school, compared with 20 percent for males. In 2008, female participation in the labor force was only 37.6 percent.<sup>40</sup> The National Institute for Women created a gender equity model that encourages private and public employers to promote the employment of women and affirmative action. By 2008, this was adopted by 176 organizations, benefiting more than 300,000 men and women.<sup>41</sup> Still, women's rights advocates have expressed concern about a number of practices within the export-oriented *maquiladora* manufacturing sector, including regulations requiring women to present "non-pregnancy certificates in order to be hired or to avoid being dismissed."<sup>42</sup>

Mexico's constitution, as amended in 2001, recognizes the nation's "multi-cultural" status as well as the individual and collective rights of indigenous peoples.<sup>43</sup> These rights include self-classification, self-determination, cultural identity, and full access to the judicial system. However, specialists emphasize that indigenous communities cannot exercise their rights in practice and that they remain the most marginalized segment of the country's population.<sup>44</sup> In 2003, the National Commission for the Development of Indigenous Peoples (CDI) initiated a number of programs to provide education and other support to indigenous populations. A budget of more than US\$2 billion was allotted for indigenous programs in 2008.<sup>45</sup> Since the constitutional change, indigenous groups have had easier access to government, and specific customs and traditional practices have been recognized by legislation. However, the government still lacks translators and other resources to overcome language barriers. One result has been the hindrance of trials involving indigenous individuals. Although programs to promote indigenous-language education were established in cooperation with the National Institute of Indigenous Languages in 2005, the country is still unable to provide full access to bilingual and intercultural education.<sup>46</sup> The UN Committee on Economic, Social, and Cultural Rights remains concerned, moreover, with the working conditions experienced by indigenous individuals in Mexico, who are often underpaid or not paid at all.<sup>47</sup>

The Mexican state is secular and grants equal juridical treatment to churches and other religious groups. The federal constitution and many state constitutions also have explicit provisions for religious freedom. However, conflict occasionally occurs, especially related to the religious practices of indigenous groups. In the southern border state of Chiapas, where evangelical churches have expanded

in recent decades, thousands of converts have been expelled from their communities, their children have been denied education, and in many cases authorities have refused to supply them with basic public services.<sup>48</sup> Intervention by the government in religious affairs is much less common than church participation and influence in politics. For example, the Roman Catholic Church has made efforts to allow clergy to run for elected office, which is currently illegal in Mexico.<sup>49</sup> Since the PAN captured the presidency in 2000, the federal government and the religious leadership have been much closer in public forums and events than was the case under PRI rule. Given objections by the PRI and PRD to such alleged weakening of the state's secular foundations, Congress enacted legislation in 2007 to strengthen the separation between church and state.

Freedoms of association and assembly have generally been respected since the late 1990s. The Mexican state has performed well in recognizing and protecting the rights of civic associations, business organizations, and political groups to organize, mobilize, and advocate for peaceful purposes. The weakest area remains the labor sector, where pre-modern and authoritarian practices still dominate. The Federal Labor Law restricts strikes and protests by workers and worker organizations. Intimidation is prevalent in trade union proceedings, and many decisions are made through public announcements rather than secret ballots. There have been only marginal improvements since 2000.<sup>50</sup> As much as 60 percent of the workforce is employed in the informal sector, in which workers have no state or organizational mechanism to pursue their rights to fair working conditions and trade unions. Labor unions, which retain a prominent image in national lore, are characterized by anachronistic structures and authoritarian leadership. During the PRI's 70 years in power, workers either went without the protection of a union or were forced into state-sponsored organizations that became deeply institutionalized. The oil workers' union (STPRM) and the public teachers' union (SNTE) remain the most powerful unions in the country; each is a personalized political machine managed through the imposition of vertical discipline, corruption, and intimidation of dissenters. Individuals who join independent trade unions often face repression and dismissal.<sup>51</sup> Human Rights Watch has found that "according to some estimates, roughly 90 percent of all Mexico's collective bargaining agreements are negotiated by non-independent, pro-government, pro-company unions." Most workers have no input in these agreements, as the law only requires that 20 workers be present for negotiations.

Public protests are often mounted to draw attention to human rights violations, economic concerns, or claims to national resources.<sup>52</sup> However, protest movements and public demonstrations at times result in violent confrontations with local police forces, which use excessive force with impunity. Two prominent cases occurred in 2006. The first was in the town of San Salvador Atenco in the State of Mexico, where a protest following the eviction of informal flower vendors devolved into a clash that left two dead, several dozen injured, hundreds arrested, and accusations against the police of excessive force and the sexual

abuse of at least 26 women.<sup>53</sup> As of May 2009, a dozen protesters remained incarcerated with sentences of up to 112 years, while official repercussions were limited a handful of police disciplined for abuse of authority, rather than more serious charges. The other episode occurred in the city of Oaxaca, where the annual teachers' union protest spun out of control and local police, backed at times by plainclothes gunmen, responded with open fire. The events put the city at a standstill and lasted seven months, by which time at least a dozen protesters had died. The protesters failed in their goal of removing Governor Ulises Ruiz from office for corruption and abuse of power, though as of mid-2009 his responsibility for the violence remained under scrutiny in the Supreme Court.

## **RULE OF LAW**

**3.93**

INDEPENDENT JUDICIARY	4.00
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	3.40
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	4.00
PROTECTION OF PROPERTY RIGHTS	4.33

Despite significant judicial reforms in the mid-1990s, corruption, especially in the police force, has plagued the criminal justice system. In 2008, President Calderón introduced a fundamental overhaul that aimed to replace the existing system of secretive paper trials with an adversarial, oral trial process. There are both advantages and shortcomings to the reform package. Encouragingly, the open nature of oral trials will make prosecutors, defense attorneys, and judges more accountable and transparent. The new system also aims to end the long periods of pretrial detention that have marked the Mexican judicial system. Victims will also be more involved in the process than ever before, with improved ability to initiate investigations.<sup>54</sup>

However, many question the ability of the government to successfully execute the mammoth task of reforming federal and state judiciaries, a process that includes revised law school curriculums and judicial training manuals, reconfigured courtrooms, and the development of a reliable chain of custody for evidence and detainees. Moreover, there are serious concerns regarding the two-tiered nature of the reform, which allows harsher restrictions on the rights of those accused of involvement in organized crime. In response to criticisms of the early drafts, Congress in 2008 approved a bill that provides safeguards against police abuses such as arbitrary detentions and procedures during public security operations.<sup>55</sup> Overall, despite a slow start to the decade-long implementation process, these reforms represent a generally positive step toward strengthening the rule of law in Mexico.

Judicial independence has improved significantly since the era of PRI dominance, but it remains weak in important areas and faces daunting challenges as drug-related crime overwhelms the justice system. Reforms ushered

in under President Ernesto Zedillo (1994–2000) transformed the Mexican Supreme Court 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.<sup>56</sup> In a clear sign of the Supreme Court's newfound independence, it has engaged in a massive public relations campaign appealing directly to the people for support and has effectively lobbied the executive branch for significant budget increases.<sup>57</sup> High-profile examples of the Supreme Court's adjudication of political disputes include a ruling in favor of opposition lawmakers seeking information regarding the questionable financing of former President Zedillo's 1994 campaign,<sup>58</sup> a 2005 budget quarrel where the court upheld President Vicente Fox's attempt to limit Congress's budget powers, and the unanimous decision of the court to overturn key articles of *Ley Televisa*, a telecommunications bill found to favor the Televisa/TV Azteca duopoly in the process of allocating frequencies and offering cable and internet services.<sup>59</sup> The Court's independence has also been questioned, however, particularly in the case of journalist Lydia Cacho, who was detained unlawfully after exposing a child pedophilia ring. Although public opinion believed powerful businessmen and politicians—including a sitting governor—to be behind her unlawful detention and subsequent denial of justice, in November 2007 the Court ruled against her.<sup>60</sup>

The lower courts have been less successful in demonstrating their independence. The federal judicial system includes 29 circuits with over 200 circuit courts, and about 250 district courts. Furthermore, 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.<sup>61</sup> The rapid rise in drug-related criminal activity has added to this widespread perception of judicial corruption.<sup>62</sup>

The 1994 reforms established a culture of judicial review, and it has become routine for the executive and legislative branches to act on judicial decisions. Indeed, some observers have begun to talk about the “judicialization” of Mexican politics. Two different review mechanisms have been introduced: *controversia constitucional* provides a centralized review of disputes between government authorities, while *acción de inconstitucionalidad* allows political parties to bring claims directly before the Supreme Court. Under either form of review, a minimum of 8 out of the 11 justices must vote to invalidate a law, giving them an important role in arbitrating Mexico's democracy.<sup>63</sup> Nonetheless, compliance has at times been slow, as in the lack of action to comply fully with the decision in the *Ley Televisa* case.

The federal judicial appointment and dismissal process appears to be 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.<sup>64</sup> At the lower levels, federal judges are appointed, assigned, removed, suspended, and transferred by the Federal Council of the Judiciary, a board comprised of Mexico's legal elite. Federal judges undergo rigorous training, and district court judges are appointed after taking a competitive examination.<sup>65</sup> Additional training will be absolutely critical to the success of the recently enacted shift to oral trials.<sup>66</sup> State court judges, unlike their federal counterparts, are appointed and dismissed by elected governors, and tenure is almost nonexistent. As a result, regional politics have a high degree of influence on state courts.<sup>67</sup>

The Mexican constitution has not traditionally afforded citizens the presumption of innocence. A recent study by the Center for Economic Research and Instruction (CIDE) found that 93 percent of accused criminals were prosecuted without a prior investigation.<sup>68</sup> A central tenet of the Calderón reforms addresses this issue by instituting the presumption of innocence. Under the current system, citizens are not generally granted a fair, public, or timely trial. Often defendants cannot access government documents, trials are carried out in secret, and key witnesses are coerced. CIDE found that 80 percent of respondents reported never seeing the judge who sentenced them. A National Center for State Courts study revealed that defendants are found guilty 90 percent of the time, but evidence against them is almost nonexistent.<sup>69</sup> Indigence and the poor quality of defense lawyers make defendant access to credible legal representation the exception rather than the rule.<sup>70</sup> In addition, the competence and professionalism of Mexican prosecutors is highly questionable. In 2000, an internal commission described only 6.6 percent of the prosecutorial service as legal, honest, efficient, professional, loyal, and impartial.<sup>71</sup> All of the aforementioned problems occur in the context of a general climate of impunity. The CNDH reports that only 10 percent of all crimes committed are reported to authorities due to a profound sense of public distrust. Of those, only one in a hundred end with a sentence against the perpetrator of the crime.<sup>72</sup>

The institutionalization of corruption remains the key weakness of Mexico's law enforcement system. 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, which, according to scholar Edgardo Buscaglia, affects 72 percent of the nation's municipalities.<sup>73</sup> Transparency Mexico has reported a figure of US\$2 billion spent annually on bribes. President Calderón, however, appears determined 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.<sup>74</sup>

Mexico's notoriously corrupt police are fueling the increase in violence, to the detriment of the Calderón administration's efforts to take on the drug traffickers. In addition, there is still a lack of effective civilian control over the local police, federal police, and the military. Only 22 percent of Mexicans have confidence in the police, well below the Latin American average.<sup>75</sup> As for the

military, 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."<sup>76</sup> There have been only a handful of military cases to address the abuses of civilians; in response to a Human Rights Watch request, the Ministry of Defense was only able to name a single, unverified case from 1998. This failure to ensure accountability is particularly problematic since, as seen in similar situations in other countries, human rights abuses in Mexico have increased along with the military's role in traditional police functions. The deployment of tens of thousands of troops has elicited well-documented complaints related to the militarization of police functions.<sup>77</sup> More than 300 people filed human rights claims against the military or police in the first five months of 2008, double the rate from the same period a year earlier. The military is taking steps to address violations, such as opening its first human rights department to better administer complaints.<sup>78</sup>

More positively, police and military officials generally do not interfere with the political process. 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, reaching into the U.S. embassy in Mexico and Calderón's personal security apparatus.<sup>79</sup> Critics warn that placing the heretofore less corrupt military in direct contact with organized criminals could lead to more institutionalized graft. Furthermore, the efficacy of such operations remains unclear. The situation in Ciudad Juárez offers an interesting case study in the militarization of policing in Mexico. More than 430 people were killed in Juárez in drug violence in the first two months of 2009, totaling nearly half of Mexico's homicides. President Calderon deployed 5,000 troops to the city, who were given unprecedented authority to impose order. By April 2009, fewer than 30 people died in drug violence. The notable decline in homicides was accompanied, however, by a wave of human rights complaints following the creation of a new government office developed to oversee the military's conduct in Juárez.<sup>80</sup> Moreover, the gains in security proved merely temporary, as murders in the city reached record levels by August 2009.

In a key 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. Calderón also 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, the plan also involved further purging of corrupt officers from local police forces and a series of social measures designed to improve public confidence in government agencies.<sup>81</sup>

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.<sup>82</sup> In 1992, the previously inalienable *ejido* (the main form of communal landowning since the 1917 constitution was promulgated) was reformed, allowing such lands to be sold on the private market if a majority of the communal owners approve.<sup>83</sup> The enforcement of existing property rights remains weak. Mexico was ranked 86 out of 132 countries in this category by the World Economic Forum’s 2009 Global Competitiveness Report, making it one of the worst performers in Latin America.<sup>84</sup> 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.

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. 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

3.85

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.25
PROCEDURES AND SYSTEMS TO ENFORCE ANTICORRUPTION LAWS	3.75
EXISTENCE OF ANTICORRUPTION NORMS, STANDARDS, AND PROTECTIONS	3.75
GOVERNMENTAL TRANSPARENCY	4.67

Overregulation of government activity, including state economic activity, provides ample opportunities for corruption at all levels. Paradoxically, even the system put in place to deal with corruption under the Secretaría de la Función Pública (SFP), or comptroller general, has increased the opportunities to engage in it.<sup>85</sup> In order to enhance transparency and efficiency at the public sector level, in 2008 the government launched a national contest to identify “the most useless procedure.”<sup>86</sup> While efforts like these are critical to enhancing the participation of citizens in public affairs and holding public officials accountable, the government’s agenda on transparency is still not comprehensive or effective enough to adequately cut red tape and the attendant petty corruption.



Federal law mandates annual asset declarations for officeholders and bureaucrats, but this mechanism is not enough to sever the connection between public office and private gain, which remains a strong feature of Mexico's political culture. Civil servants themselves determine whether their asset disclosures can be made public, and a majority chooses not to release them, sometimes arguing that such personal information could make them targets for kidnappers. The SFP is supposed to check all declarations, but in reality it does not have the capacity to verify the data of hundreds of thousands of civil servants. Officials can also make use of devices like offshore bank accounts to hide bribes and contracting kickbacks, practices that seem to be rather common.<sup>87</sup> Between sophisticated techniques, judicial corruption, and the political calculations involved in investigation and prosecution, when it comes to the prosecution of high-level politicians and the military, impunity is the most likely result.<sup>88</sup> Despite widespread suspicion of corruption within upper echelons of government, the last top official to be convicted on criminal charges was former governor Mario Villanueva in 2001.<sup>89</sup>

Mexico has signed and ratified various international conventions related to battling graft. 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,<sup>90</sup> the country's score in Transparency International's 2008 Corruption Perceptions Index was a mere 3.6 out of 10, representing no improvement since 2003.

In the last 10 years, Mexico has begun to develop institutions to address corruption and transparency, including the SFP and the Federal Superior Auditor's office (ASF), which is overseen by Congress.<sup>91</sup> These institutions have considerable independence and allow civic participation in the pursuit of government transparency. In 2008, a plan was assembled to give preventative power to federal administrators aimed at strengthening processes of identification and investigation of corruption; improving coordination among public agencies; and enhancing the participation of citizens in anticorruption matters.<sup>92</sup> Public sector whistleblowers have an adequate protection system, but this is not necessarily the case for those employed in the private sector.<sup>93</sup> The same institutional weaknesses that contribute to high levels of corruption, such as the lack of coordination between the courts and other justice-sector institutions, prevent corruption victims from receiving adequate redress.<sup>94</sup>

Since 1997, the Tax Administration Service (SAT) has combated tax evasion and related acts of corruption, producing encouraging results. Over the last five years, there have been 4,056 denunciations that resulted in the removal of 1,567 public officials. Moreover, the perception of graft among SAT officials has declined by 55 percent since 2002. However, problems persist, as the SAT's chief officer acknowledged at a recent congressional hearing. He said that around 70 percent of the SAT's personnel hold positions that are susceptible to corruption and that most problems occur at customs.<sup>95</sup>

Allegations of official corruption are rarely investigated or prosecuted without prejudice. The exception has been President Calderón's bold move to tackle corruption in the federal police forces, the defunct PFP and the AFI, as part of his counternarcotics campaign. Since 2007, the government has suspended more than 280 officers, including commanders from all 31 states. Investigators arrested the former chief of the federal anti-organized crime unit for allegedly accepting US\$450,000 from drug cartels in return for information and arrested or fired 35 members of an elite antidrug unit accused of spying for the cartels. The Mexican media frequently reports on corruption scandals. However, Mexico's status as one of the most dangerous countries for journalists in the Americas, combined with the concentration of media outlets in a few business groups, creates multiple constraints that render inconsistent the media's usefulness as a bulwark against corruption.<sup>96</sup>

Mexico has taken important steps to improve access to information, including the passage of an internationally respected law on the matter in 2002 and the creation of an independent body to oversee its implementation, the Federal Institute for Access to Information (IFAI). Citizens have the right to access basic government records,<sup>97</sup> and there are effective means to petition government agencies for public information; the IFAI has developed INFOMEX, an online system for soliciting information. However, access to information in the executive branch is easier and faster than in the legislature and judiciary, where requests can take over a year to process.<sup>98</sup>

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 affect transparency during the budget-making process. For example, the oversight panels, which are subject to political interference, rarely initiate independent investigations into financial irregularities.<sup>99</sup> Mexico's ranking on the Open Budget Index for 2008 is 54 out of 85, placing it in the group of countries that provide "some" information about the budget-making process.<sup>100</sup>

The federal government has a legal duty to publicly announce the results of procurement decisions and regulations.<sup>101</sup> However, in practice, important information on public spending is not published in a detailed and accurate manner, especially with respect to the use of multimillion-dollar trust funds known as *fideicomisos*.<sup>102</sup>

Major procurements require open and competitive bidding. There is also a legal framework for unsuccessful bidders to instigate an official review of procurement decisions.<sup>103</sup> The web-based Compranet system allows public access to procurement rules and contracts within a reasonable time period, and the information can be organized by sector, agency, tender number, and date. International donors, such as the Inter-American Development Bank (IDB), have accepted the use of Compranet for national and international bidding in IDB-financed projects in Mexico.<sup>104</sup> Foreign assistance is managed by the foreign ministry, or Secretaría de Relaciones Exteriores (SRE). Following disastrous

flooding in the states of Tabasco and Chiapas in 2007, the SRE and the UN Disaster Assessment in Mexico established the Information Management Center to improve the coordination and monitoring of foreign aid.<sup>105</sup> This represents an important step toward fairness and proper administration of such assistance.

## RECOMMENDATIONS

- In order to promote policy continuity and encourage accountability to voters, Mexico should end the ban on immediate reelection of legislators.
- Mexico should rely more on institutional reform than military pressure to combat organized crime. The bulk of resources dedicated to the war against organized crime should be spent in the civilian sphere, focusing on law enforcement and the criminal justice system. Penitentiary reform should combine the construction of new prisons with increased training, vetting, and compensation for guards.
- Police reform, regardless of the structure chosen in terms of balance between federal, state, and municipal forces, must include extensive background checks, human rights training, and regular performance evaluations.
- The Mexican government should work to establish institutional mechanisms of cooperation with both its southern and northern neighbors to strengthen border controls, including joint projects to modernize and increase the efficiency of the customs service, an agency critical to stanching the flow of weapons and chemical precursors into Mexico.
- In order to strengthen protections against human rights abuses as well increase military accountability to civilian oversight, trials of military members accused of violating the rights of civilians should be conducted in regular courts.
- Greater efforts must be made to protect journalists from intimidation and attack by organized crime, starting with efforts to end impunity for attackers. Congress should pass the proposed constitutional amendment to federalize crimes against freedom of expression, and greater resources should be provided to investigators of crimes against journalists.

## NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at <http://freedomhouse.org/template.cfm?page=139&edition=8>.

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- <sup>89</sup> Marcela Armienta, "Atoran Monopolios a México: Denise Dresser," *Frontera.info*, March 3, 2009.
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<sup>102</sup> Fundar, “Tras los Pasos de Nuestros Pesos,” *Pesos y Contra Pesos* 2, no. 2 (February 2008).

<sup>103</sup> Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, Arts. 65-70.

<sup>104</sup> Inter-American Development Bank, “IDB Accepts Compranet for Operations Financed in Mexico,” news release, February 8, 2006.

<sup>105</sup> Secretaria de Relaciones Exteriores, “Acerca del Centro de Información SER-ONU,” home page.