



MEXICO

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Introduction

1. The transitional justice mechanisms the Mexican government put in place to investigate the grave human rights violations committed before the political transition of 2000 did not achieve their aims. Results were meager regarding truth-seeking. It has been impossible to bring to trial those responsible for past crimes, and no reparations have been made to victims. These mechanisms have recently been dismantled, compromising the fight against impunity and establishment of the rule of law. International law mandates Mexico to investigate and try these crimes, but it has done so only partially and ineffectively. For the ICTJ, transitional justice in Mexico is an unfinished business.

Background

2. After the 2000 defeat at the polls of the PRI, the party that had governed Mexico continuously since 1929, the need became clear to clarify and punish the crimes committed by the previous regime during episodes of political repression in the last part of the twentieth century. During his electoral campaign Vicente Fox committed himself to creating a truth commission to investigate the grave human rights violations that took place during the “dirty war” of the 1970s and 1980s, as well as the October 2, 1968, Tlatelolco massacre and the June 10, 1971, Corpus Christi massacre.

3. This promise was not kept for several reasons.¹ Instead of a truth commission, President Fox created a Special Prosecutor’s Office for the Attention to Matters Allegedly Related to Federal Crimes Committed Directly or Indirectly by Public Servants against Persons Linked to Social or Political Movements of the Past (SPO) at the end of 2001, arguing that he was seeking institutional stability for the country. This decree came on the heels of Recommendation 26/2001 of the National Human Rights Commission (CNDH), based on cases it had received since 1990 through its Special Program on Alleged Disappeared Persons (PREDES). It took this body 11 years to issue

¹ Mariclaire Acosta and Esa Ennelin, “The ‘Mexican Solution’ to Transitional Justice,” in Naomi Roht-Arriaza, *Transitional Justice in the Twenty-First Century*, (New York: Cambridge University Press, 2006), 94–119; and Sergio Aguayo Quezada and Javier Treviño Rangel, “Fox y el pasado. La anatomía de una capitulación,” *Foro Internacional*, 47, no. 4 (2007), 709–39.

a resolution of the complaints presented by relatives and civil society organizations about forced disappearances that took place in the context of the counterinsurgency of the 1970s and early 1980s.² The CNDH recommendation documented 532 cases and acknowledged the forced disappearance of 275 persons. In 160 cases it had insufficient information, and in 97 it saw no basis to allege a forced disappearance but admitted that it could not be ruled out.

4. When he received Recommendation 26/2001 on November 27, 2001, Fox announced his acceptance and agreed 1) to request that the Attorney General's Office (PGR) create a Special Prosecutor's Office to gather, investigate, and develop cases related to the complaints made and to create a support committee to contribute historical, social, political, and legal elements so that the PGR could fulfill its mandate; 2) to instruct the Ministry of the Interior to create an interdisciplinary committee to study, analyze and present reparations proposals to victims and those affected by events of the past; and 3) to open historic institutional archives.

General Evaluation

5. Attorney General Rafael Macedo de la Concha, on active duty in the Mexican Army,³ officially issued an agreement creating the SPO (A/01/02) on January 4, 2002, and appointed a Special Prosecutor with no experience in the field. The SPO's poor results stem from the contradictions in its mandate, the way the prosecutor was selected, the political resistance it encountered, its errors and failed strategies, and its lack of social legitimacy, mainly among victims and human rights organizations.⁴

6. From the beginning, the SPO's mandate was limited and vague. On the one hand, it centered on offenses committed by federal authorities, omitting state and municipal authorities and paramilitary groups. On the other hand, the offenses it was supposed to investigate were those committed against persons linked to political and social movements of the past, without clearly establishing what the link was or defining the concept of "political and social movements." It also did not have a specific historical period on which to focus its investigations, and the duration of its mandate was never established.

7. At one point the SPO had more than 170 individuals on its staff, organized into four areas of work,⁵ with a budget of more than 247 million pesos.⁶ It focused on bringing charges against those responsible for the Tlatelolco and Corpus Christi massacres and the forced disappearances of the dirty war, including cases documented by the CNDH.

² According to the Association of Relatives of Detainees, Disappeared Persons and Victims of Human Rights Violations in Mexico (AFADEM-FEDEFAM), approximately 1,200 persons disappeared during the dirty war.

³ Macedo had been the military attorney general during the Ernesto Zedillo administration and had worked in his youth at the Federal Security Directorate, one of the institutions implicated in repressive and counterinsurgency policies during the dirty war. See Aguayo and Treviño, "Fox y el pasado," 731.

⁴ *Ibid.*, 730-31.

⁵ The four areas were 1. the Legal Investigation Programs, which included Program A, to investigate cases related to Recommendation 26/2001; Program B, to investigate the 1968 and 1971 massacres; and Program C, to investigate other cases (the result of the lack of a specific historical period); 2. Information and Analysis Program; 3. Program for Cooperation, Citizen Participation, and Institutional Relations, with a sub-program of legal analysis and dissemination; 4. Support Committee.

⁶ Aguayo and Treviño, "Fox y el pasado," 737. 247 million Mexican pesos is equal to over 23 million US dollars.

According to the ICTJ report on the subject,⁷ the SPO was a well-intentioned mechanism for investigating and establishing the truth regarding the grave human rights violations that had taken place in Mexico. It was expected that through it the victims could get justice. But its work centered on individual proceedings and therefore could not determine the common patterns of all the cases it dealt with and the systemic nature of the violations, which are fundamental for determining responsibility of command or authority. It could not develop substantive links with the victims and their families, even though it had a mandate to do so. It used its allotted resources badly.⁸ It did not develop the technical capability necessary to investigate the kind of crimes for which it had responsibility. In addition, it suffered from a lack of political support within and outside the government.⁹

8. Of more than 1,000 cases the SPO investigated during its five-year existence, it brought only 10 charges in 19 cases; it issued 20 arrest warrants and brought 8 indictments. The arrest warrants were not executed immediately because of lack of cooperation from the Federal Investigation Agency. The most important cases focused on assigning responsibility to the highest-level officials involved in the Tlatelolco and Corpus Christi massacres, as well as the forced disappearance of persons linked to the September 23 Communist League (such as Jesús Piedra Ibarra and Ignacio Salas Obregón). This was the case in which former President Luis Echeverría Álvarez and the former directors of the Federal Security Directorate, Miguel Nazar Haro and Luis de la Barreda Moreno, were accused, respectively, of genocide and forced disappearance. They were later released for lack of evidence of genocide, because the statute of limitations had passed, or as the result of legislative reforms that favored the accused.¹¹ To date there has been not a single conviction.

9. In February 2006 the press published a draft version of the report *Let It Never Happen Again! (¡Qué no vuelva a suceder!)*, issued by the SPO's investigation and analysis unit.¹² Later, on November 17, 2006, the SPO gave the attorney general its *Historic Report to Mexican Society (Informe Histórico a la Sociedad Mexicana)*, substantially modified from its previous version, particularly regarding the responsibility of the armed forces. This report, available to the public for only a few days, and its supporting documents were sent to the National Institute of Penal Sciences (INACIPE) for study and legal analysis. Today it is not possible to access any of these documents in PGR or INACIPE portals.¹³ The report was also removed from the former SPO Web page.

10. The historic institutional archives were an important source of documents related to truth and justice, but access to them was always restricted, and they were under the care of a former member of what had been the Federal Security Directorate, who used his

⁷ Paul Seils, *A Promise Unfulfilled? The Special Prosecutor's Office in Mexico*, ICTJ (June 2004), p. 39.

⁸ *Ibid.*, 738.

⁹ Acosta and Ennelin, "The 'Mexican Solution'".

¹⁰ *Ibid.*, 105.

¹¹ In 2004 and 2006 the Federal Penal Code was amended in reference to persons over 70 serving their sentences in their homes, and the crime of violation of constitutional rights and guarantees, for which some of the accused had been indicted, was struck from the books.

¹² This report was published by the National Security Archive (Washington, D.C.), February 26, 2006.

¹³ Both can be consulted on the National Security Archive Web page.

discretion in handling them.¹⁴ To date, the whereabouts of these documents are unknown, and there is no public database to consult them.

11. On the last day of President Fox's term, November 30, 2006, the attorney general abrogated the accord that had created the SPO, using Accord A/317/06.¹⁵ This accord was not published in the *Diario Oficial de la Federación* (Official Gazette) until four months later, on March 26, 2007.

12. The Ministry of the Interior, charged with providing for comprehensive reparations to the victims, created the Interdisciplinary Committee for Reparations to Victims or Those Adversely Affected by Human Rights Violations of Individuals Linked to Social and Political Movements in the 1960s and 1970s (CIRD). This committee is still operating, but no information is available to the public about its work or results.¹⁶

Obstacles

13. Mexican legislation was not—and still is not—favorable to transitional justice. The definitions of grave violations of human rights are both weak and insufficient. The SPO used different, inadequate legal categories for the kind of crimes it was investigating, such as the illegal deprivation of liberty in the form of abduction or kidnapping, instead of the forced disappearance of persons.¹⁷ In the indictments it did not use the Supreme Court's criteria concerning the continual nature of the forced disappearance of individuals nor the possibility of establishing responsibility in accordance with the Inter-American Convention on the Forced Disappearance of Persons, without violating the principle of non-retroactivity of the law.¹⁸

14. In 2002 Mexico ratified important international instruments in this field but added interpretative statements limiting their scope. It also put forward reservations about military jurisdiction.¹⁹ Another obstacle is the limitation of investigation of past crimes under military jurisdiction, validated by the Supreme Court.²⁰ For this reason the case of Rosendo Radilla Pacheco was dismissed because of the death of the accused, General

¹⁴ Human Rights Watch, *Justice in Jeopardy: Why Mexico's First Real Effort to Address Past Abuses Risks Becoming Its Latest Failure*, p. 11, July 2003.

¹⁵ The reasons for closing the FEMOSPP were that the historic investigation, documentation retrieval, and gathering of evidence to develop the cases had resulted in indictment of those allegedly responsible; a report about the historic truth had been presented; and there was a need to aim PGR efforts to respond to other public demands.

¹⁶ On September 14, 2007, the Ibero-American University Human Rights Program used a procedure established in the Federal Law on Access to Information to request information about the committee's members, norms, and minutes of proceedings. Along these same lines, on June 13, 2008, the Mexican Commission for the Defense and Promotion of Human Rights, A.C. (CMDPDH), requested the committee's minutes. The response was that the information is partially restricted.

¹⁷ This is how the case of peasant leader Rosendo Radilla Pacheco was brought after he was abducted and "disappeared" by the armed forces on August 25, 1974.

¹⁸ Supreme Court's decision, Constitutional Controversy 33/2002, June 29, 2004.

¹⁹ Mexico ratified the International Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity and the Inter-American Convention on the Forced Disappearance of Persons. Its reservation regarding the latter was that military jurisdiction does not constitute a special jurisdiction.

²⁰ According to the thesis of jurisprudence 148/2005, dated October 26, 2005, the Supreme Court has ruled that any crime committed by military personnel, whether in active service or not, will come under the jurisdiction of military justice.

Francisco Quiroz Hermosillo, despite an SPO appeal. The case is still before the Inter-American Human Rights Court.

Recommendations

15. The State should withdraw its reservations and interpretative declarations from the pertinent international instruments and accept the jurisdiction of the Committee against Forced Disappearance, in accordance with the International Convention for the Protection of All Persons Against Enforced Disappearance.

16. The State should reform its human rights legislation.

17. The State should present a public report about the current state of transitional justice in Mexico, including a report by the CNDH about compliance with Recommendation 26/2001. It should release all the historical documents used by the Special Prosecutor's Office.

19. In the framework of the Government Policy Commission on Human Rights, the State should call for the creation of a working group with participation of civil society and victims' organizations, as well as the technical assistance of the UN OHCHR, to evaluate and reformulate the process of transitional justice.

20. Civil society should ask United Nations international bodies to monitor and evaluate the process of transitional justice in Mexico.