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DEMOCRACY AND THE RULE OF LAW IN MEXICO

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The Mexican elections of 2012 have ushered in a new president. After twelve years in opposition, the Institutional Revolutionary Party (Partido Revolucionario Institucional, PRI), the party that had dominated Mexico for decades, will once again have a representative in the presidential palace in the shape of Enrique Peña Nieto. This will be the second change of government. In 2000 it was Vicente Fox, the conservative Partido Acción Nacional (PAN) candidate, who made the running. In terms of democratic theory, when a government changes for a second time it is undergoing the "two turnover test". Samuel P. Huntington claimed that a democracy can only be considered stable if the party in power at the beginning of the democratic process loses a fair election and hands over power peacefully. In turn, the new party that has gained power then also has to lose an election and hand over power peacefully, as this shows that all political groups are prepared to play by democratic rules.¹ Critics argue that free elections and new governments are still no guarantee of the rule of law. Rule of law (used here as synonymous with the German term *Rechtsstaatlichkeit*²) has become a fashionable subject among political scientists. In the field of democratic research, the rule of law is increasingly being interpreted as an essential component or prerequisite for a functioning

- 1 | Cf. Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, Norman, University of Oklahoma Press, 1991, 267: "The party or group that takes power in the initial election at the time of transition loses a subsequent election and turns over power to those election winners, and if those election winners then peacefully turn over power to the winners of a later election".
- 2 | Cf. Helmuth Schulze-Fielitz, "Zur Geltung des Rechtsstaates: Zwischen Kulturangemessenheit und universellem Anspruch", *Zeitschrift für Vergleichende Politikwissenschaft*, 5, 2011, 1, 1-23.

democracy. The renowned Spanish sociologist and political scientist Juan Linz put it succinctly in his phrase: "No *Rechtsstaat* [sic!], no democracy."³

In the 19th century, Benito Juárez, Mexico's liberal president and great national hero, dreamt of a Mexico where the rule of law would provide the basis for a stable and prosperous nation. Modern Mexico officially laid the foundations for the rule of law with its constitution of 1917; a constitution that is still basically in force today. It sets out in detail fundamental rights and human rights, guarantees in terms of the due process of law, the separation of powers and the tasks of the judiciary. The wording of the constitution has been changed in the course of several amendments. More recently, in July 2011, international law was incorporated directly into constitutional law: international treaties such as the UN Declaration of Human Rights now form part of the constitution and every Mexican citizen has the right to bring a claim. From a legal positivist point of view, Mexico now meets all the requirements of a constitutional state under the rule of law. However, Mexican lawyers and all observers are unanimous in their belief that, despite these high standards, Mexican rule of law is in reality a morass of inefficiency, uncertainty and corruption.⁴

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PRI RULE AND THE RULE OF LAW

It was not so much the 1917 constitution that initially brought about the (legal) reality of the state of Mexico as the more than 70-year rule of the PRI. After the Mexican Revolution, a political system took root in which the PRI was the dominant party. Elections were held and other parties formed, such as the PAN, but these elections were never really competitive. The PRI regularly won with a clear majority and asserted its power over the various organs of state, resulting in unequal conditions in future elections. However, in contrast to many Latin American military dictatorships, Mexico was ruled by a civil autocracy that had

3 | Cf. Juan Linz, "Democracy Today", *Scandinavian Political Studies*, 20, 1997, 115-134.

4 | Cf. Rudolf Huber, *Demokratie, Rechtsstaat und Menschenrechte in Mexiko*, Konrad-Adenauer-Stiftung, Sankt Augustin, 2008.

broad public support. Important social groups were incorporated into the de-facto state party in order to mobilise the masses in a controlled way.⁵ Officially there was also a functioning judiciary, with the number of newly-qualified lawyers increasing each year from 1006 in 1970 to 13,585 in 2000.⁶

However, the real function of the judiciary was little more than symbolic and it served simply to legitimise the regime when it came to legal issues of a political

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nature.⁷ All the official state institutions were under the control of the PRI, including the judiciary. It is true that the Mexican constitution includes a range of elements related to checks and balances, such as the separation of power, a two-chamber system and federalism, but the Mexican president was always at the center of the power structure.⁸ Although he had few official powers, in practice the president was head of the PRI, which in turn dominated Mexico. The relationship between politics and the judiciary also mirrored the domination of the president and the lack of any horizontal controls.⁹ In particular, the constitutional rulings of the Supreme Court, the Suprema Corte de Justicia de la Nación (SCJN), were constantly being modified, giving successive presidents far-reaching opportunities for interference and control.

5 | Cf. Hans-Joachim Lauth, "Perspektiven der Demokratisierung", in: Hans-Rudolf Horn and Hans-Joachim Lauth (eds.), *Mexiko im Wandel*, Vervuert, Frankfurt am Main, 1995, 195-208.

6 | Cf. Robert Kossick, "The Rule of Law and Development in Mexico", *Arizona Journal of International and Comparative Law* 21, 3, 2004, 715-834, here: 733.

7 | Cf. Sergio López-Ayllón and Héctor Fix-Fierro, "'Faraway, So Close': The Rule of Law and Legal Change in Mexico", in: Lawrence Friedman and Rogelio Pérez-Perdomo (eds.), *Legal Culture in the Age of Globalization*, Stanford University Press, Palo Alto, 2003, 285-318, here: 288.

8 | Cf. Manfred Mols, *Mexiko im 20. Jahrhundert*, Schöningh, Paderborn, 1981, 338 et sqq.

9 | Cf. Beatriz Magaloni, "Authoritarianism, Democracy and the Supreme Court: Horizontal Exchange and the Rule of Law in Mexico", in: Scott Mainwaring and Christopher Welna (eds.), *Democratic Accountability in Latin America*, Oxford University Press, Oxford, 2003, 268-305; Beatriz Magaloni, "Enforcing the Autocratic Political Order and the Role of Courts: The Case of Mexico", in: Tom Ginsbourg and Tamir Moustafa (eds.), *Rule by Law. The Politics of Courts in Authoritarian Regimes*, Cambridge University Press, Cambridge, 2008, 180-206.

Mexican presidents used their influence to ensure their favoured judges were appointed to office. In order to ensure the SCJN remained fully under the control of the president, it was completely dissolved several times: in 1928, 1934 and 1994. The powers of the SCJN and the federal courts were also strictly limited by the constitution, with politically-sensitive questions such as elections or ownership issues being excluded from their jurisdiction.

The PRI's ruling system dominated the country for many decades. Systematic human rights abuses were tolerated in order to ensure the stability of the regime. Opposition parties, journalists, students, peasants and their unions were all subjected to violence.¹⁰ After democratisation, the National Human Rights Commission attempted to clear up the crimes that had been committed. The public prosecutor's office even brought charges against former president Luis Echeverría, but in the end all charges were dismissed by the courts and the SCJN due to the statute of limitations. This demonstrates Mexico's weakness in an important area of the rule of law: respecting and guaranteeing human rights. With just a few exceptions, there were never large-scale, systematic human rights abuses resulting in tens of thousands of deaths as was the case under the military dictatorships of countries such as Guatemala and Argentina. However, there was an ongoing disregard for human rights that was in part actively pursued by the regime and in part passively tolerated. There is very little historical data in this respect. Every year, the Freedom House organisation, which has been tracking civil rights since 1972,¹¹ has awarded Mexico a rating of 3 to 4 and classified the country as "partly free", reflecting the country's assessment as a "mild" autocracy.

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But despite this, political force was ever present. In this climate it was hardly possible to talk about the rule of law in Mexico; instead it was a rule of law controlled by despots and a rule of men controlled by the PRI regime.

10 | Cf. Alan Knight, "Political Violence in Post-revolutionary Mexico", in: Kees Koonings and Dirk Kruijt (eds.), *Societies of fear: the legacy of civil war, violence and terror in Latin America*, St. Martin's Press, New York, 1999, 105-124, 118.

11 | Freedom House, *Homepage*, <http://freedomhouse.org> (accessed 4 Oct 2012).

LIBERALISATION AND TRANSITION

Repression was just one aspect of the regime's reaction to crises and problems. At the same time, the PRI was keen to gain legitimacy by means of liberalisation and reform and to stabilise the political system. But at the end of the day, rather than serving to restabilise the authoritarian regime, these reforms set in motion a slow and creeping process of democratisation.¹² After years of economic and political crisis, President Carlos Salinas de Gortari (1988-1994) made political concessions to the opposition parties in order to gain support for his economic reform projects. In return for supporting the government, the PRI promised to recognise any PAN gains in the gubernatorial, mayoral and local elections and agreed to electoral reform. An independent electoral commission, the Instituto Federal Electoral (IFE) was set up and has played a crucial role in ensuring free elections since 1994. A second new body, the National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH) was set up with the remit of improving the situation on human rights.¹³ The 1917 constitution guaranteed a range of human and civil rights, but only *de jure*, and the PRI regime was never serious about putting these guarantees into practice. Salinas stressed the importance of human rights and on 5 June 1990 he set up the CNDH by decree. In 1992 it was awarded constitutional status as an autonomous institution. The work of the CNDH and the way it functions is similar to that of an ombudsman: it has the task of observing, protecting and improving the human rights situation. The reforms introduced by Salinas produced greater judicial independence and thereby set the conditions for constitutional controls.

Salinas' successor, Ernesto Zedillo, found himself facing problems galore: first and foremost the serious financial crisis of 1994/1995 that became known as the peso crisis

12 | Cf. Todd Eisenstadt, "Eddies in the Third Wave: Protracted Transitions and Theories of Democratization", *Democratization*, 7, 2000, 3, 3-24.

13 | Cf. Hans-Rudolf Horn, "Menschenrechtsdiskussion und Zivilgesellschaft", in: Hans-Rudolf Horn and Hans-Joachim Lauth (eds.), *Mexiko im Wandel*, Vervuert, Frankfurt am Main, 1995, 177-194; cf. also Comisión Nacional de Derechos Humanos CNDH, <http://cndh.org.mx> (accessed 4 Oct 2012).

or the tequila crisis.¹⁴ On top of this there were domestic problems such as the uprising in the southern state of Chiapas as a result of social problems and the assassination of PRI General Secretary José Francisco Ruiz Massieu in September 1994.¹⁵ All in all, Zedillo's challenges were rooted in a growing economic, political and social crisis.¹⁶ As had happened under Salinas, this once again resulted in a policy of "informal coalition building" with PAN and in further reforms, including renewed reform of the Supreme Court.¹⁷ Just a month after Zedillo took office, he introduced changes to the country's parliament and constitution aimed at shaking up the SCJN and the jurisdiction of the federal courts. The number of Supreme Court judges was reduced from 26 to 11 (the number that was originally intended in the 1917 constitution), and their term of office was limited to 15 years. When appointing judges, the president could no longer simply present his favoured candidate to the Senate, but now had to submit a list of three names for the Senate to choose from. In addition, the particular qualifications needed to secure a position on the Supreme Court were more strictly specified and remuneration was increased. But the most important reform was the expansion of the Court's powers. Along with handling the *amparo*, a procedure similar to that of the constitutional complaint and a concrete action for monitoring standards, it now also dealt with *controversias*

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14 | Cf. Jörg Faust and Wolfgang Muno, "Ökonomische Reformen versus Demokratie. Die Beispiele Costa Rica, Mexiko und Venezuela", *WeltTrends*, 20, Autumn 1998, 127-150.

15 | Cf. Stephen Haber et al., *Mexico since 1980*, Cambridge University Press, Cambridge, 2008, 139 et sqq.

16 | Cf. Manfred Mols, "Politische Transformation in Mexiko", in: Wilhelm Hofmeister and Josef Thesing (eds.), *Der Wandel politischer Systeme in Lateinamerika*, Vervuert, Frankfurt am Main, 1996, 229-278, 265.

17 | On the reform of the Supreme Court cf. Kurt Madlener, "Die Justiz als Garant der Menschenrechte in Lateinamerika: Die Unabhängigkeit der Justiz und der Richter", in: Helen Ahrens and Detlef Nolte (eds.), *Rechtsreformen und Demokratieentwicklung in Lateinamerika*, Vervuert, Frankfurt am Main, 1999, 152-174; Beatriz Magaloni and Guillermo Zepeda, "Democratization, Judicial and Law Enforcement Institutions, and the Rule of Law in Mexico", in: Kevin Middlebrook (ed.), *Dilemmas of Political Change in Mexico*, Institute of Latin American Studies, London, 2004, 168-197; Julio Ríos-Figueroa, "Fragmentation of Power and the Emergence of an Effective Judiciary in Mexico, 1994-2002", *Latin American Politics and Society*, 49, 2007, 1, 31-57.

constitucionales, disputes between various organs or levels of state power such as between the executive and the legislative or between federal states and the government, corresponding to the system of dealing with disputes between state organs that applies in Germany's Federal Constitutional Court. Added to this were the *acciones de inconstitucionalidad*, an abstract control of constitutionality. A new judicial body, the Consejo de la Judicatura Federal was also set up, consisting mainly of representatives of the judiciary, one representative of the executive and one from the Senate. Its seven members were given responsibility for the administration and supervision of the federal justice system. In order to implement his reforms after their easy passage through Congress, President Zedillo "persuaded" all the sitting judges to take retirement and appointed new judges in line with the new procedures and with the approval of the Senate. Two of them were already Supreme Court judges, something which was only made possible thanks to an ad-hoc amendment to the constitution. This was tantamount to serious interference in the independence of the judiciary, but at least it improved the conditions in favour of creating an independent Supreme Court.

The reforms of 1996 were the high point of a liberalisation that continued over two decades and which clearly led to organisational improvements in terms of horizontal control functions. Since then, particularly at the highest level, there has been an independent Supreme Court, an independent electoral tribunal and a human rights commission.

A DEMOCRATIC REGIME

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The steps towards liberalisation gradually led to the democratisation of Mexico. With its candidate Vicente Fox, PAN won the presidential elections in 2000. This transfer of power meant that for the first time since the Mexican Revolution the PRI had lost control over the highest office. But it still remained the strongest party in both parliamentary chambers, held the majority in 20 out of 31 state parliaments and provided 17 out of 31 governors. The new, freely-elected President Fox therefore found himself with a divided government. It was to be the same for his successor, Felipe Calderón, also a PAN candidate. After a

hard-fought campaign, Calderón won the election with a slim majority, gaining 35.9 per cent of the vote as against the 35.3 per cent won by the PRD candidate Andrés Manuel López Obrador, the popular mayor of Mexico City. In third place came the PRI candidate, Roberto Madrazo, who was well beaten with just 22.2 per cent.¹⁸ Under Fox, both sides had a very confrontational attitude after the PRI had lost power for the first time in history and the opposition had won for the first time.¹⁹ Without a clear majority in parliament, Fox soon became a lame duck and many of his initiatives were stonewalled. In contrast, Calderón's term saw much higher levels of cooperation, with PAN and PRI forming an informal alliance due to their mutual interest in stabilising Mexico.



Under president Felipe Calderón, PAN und PRI formed an informal alliance due to their mutual interest in stabilising Mexico. | Source: World Economic Forum (CC BY-SA).

In the area of the rule of law, at first the new democratic governments felt there was little they needed to do, as Salinas and Zedillo had already taken action. However, they did perceive a need to reform criminal law. The written procedure based on the Inquisition, where an investigating judge had sole power, led to excessively long trials, countless prisoners being kept on remand, forced confessions and a

18 | Cf. Frank Priess, "Ein gespaltenes Mexiko wählt Kontinuität", *KAS-Auslandsinformationen*, 7/2006, 125-160.

19 | Cf. Haber et al., n. 15, 153.

plethora of wrongful convictions.²⁰ After several countries across Latin America had taken steps to modernise their criminal law, Fox presented a similar package of reforms to the Mexican Congress in April 2004 with a view to introducing oral hearings and more rights for defendants.²¹ In this way, Fox certainly succeeded in sparking public debate, but Congress initially rejected the reforms. It was only when Calderón resubmitted the bill to parliament four years later, in 2008, that it was finally passed.²² It is planned to reform criminal law in all federal states by 2016 and to pass corresponding laws to implement the reforms. It is, of course, still too early to assess these reforms, but the fact that they are in the pipeline is a major step forward compared to the old system.

PROBLEMS FACING THE RULE OF LAW

A range of reforms have been undertaken since the liberalisation phase set in motion by the PRI regime, leading to improvements in Mexico's rule of law. Nevertheless, there are still some serious failings. Rule of law in Mexico has problems in three particular areas: the judiciary below the Supreme Court, the police and human rights.

A weak Judiciary below the Supreme Court

Apart from constitutional issues, it is only capital crimes that fall under the jurisdiction of the federal courts, while most crimes – 80 per cent of cases – are tried in the state courts.

The reform of the Supreme Court and federal judiciary are without doubt positive judicial reforms. However, most Mexican citizens have very little to do with the legal system at this high level. Apart from constitutional issues, only capital crimes fall under the jurisdiction of the federal courts, while most crimes – 80 per cent of cases – are tried in the state courts.²³ However, the dispensation of justice in the various states is still largely controlled by the

20 | Cf. Kai Ambos, "Strafprozeßreform in Lateinamerika im Vergleich. Länderanalysen und strukturelle Probleme", in: Helen Ahrens and Detlef Nolte (eds.), *Rechtsreformen und Demokratieentwicklung in Lateinamerika*, Frankfurt am Main, Vervuert, 1999, 175-206.

21 | Cf. David Shirk, "Criminal Justice Reform in Mexico: An Overview", *Mexican Law Review*, 3, 2010, 2, 189-228.

22 | Cf. Matt Ingram and David Shirk, *Judicial Reform in Mexico. Toward a new Criminal Justice System, Special Report May 2010*, Transborder Institute, San Diego, 2010.

23 | Cf. Haber et al., n. 15, 208.

governor. He appoints the judges to the courts (Tribunal Superior de Justicia) that are in turn responsible for the state judiciary. Although this political hierarchy applies to all of Mexico's states, there are still significant regional differences. Magaloni and Zepeda carried out a comparative study of the judiciaries of 31 Mexican states and the federal district of Mexico City. They examined staffing, the number of cases resolved and closed, the number of arrest warrants that were actually enforced, i.e. that led to arrests and charges, and the number of convictions. They then set up an average performance index for the years 1996 to 2000, awarding points on a scale between 0 and 100. We can assume that there have been no substantial changes in the years since then, so this study is still valid, particularly with regard to the differences between the Mexican states.

Table 1

Performance of Mexican judiciary in the federal states

State	Performance rating
Baja California Sur	78.9
Coahuila	72.9
Nayarit	70.7
Colima	68.2
Veracruz	67.4
Guanajuato	67.3
Sonora	66.8
Aguascalientes	63.6
Puebla	63.1
Durango	62.0
Querétaro	61.8
Campeche	60.8
Tabasco	60.3
Chihuahua	59.7
Michoacán	59.7
Zacatecas	59.6

State	Performance rating
Jalisco	59.3
Nuevo León	57.5
Hidalgo	57.05
Sinaloa	56.9
San Luis Potosí	52.9
Morelos	52.7
Distrito Federal (Mexico City)	51.3
Tamaulipas	50.8
Quintana Roo	50.1
Baja California	49.7
Estado de Mexico	46.6
Tlaxcala	46.2
Chiapas	44.8
Guerrero	41.7
Oaxaca	39.0
Yucatán	38.2

The index is purely output-oriented and the quality of the legal proceedings cannot be properly evaluated. It is however clear that there are enormous differences within Mexico. The poorer states in particular have performed very badly and achieved less than half the points awarded to the more well-off states.

Mexico's police force: corrupt and ineffective

The structure of the Mexican police force can best be described as "organised chaos".²⁴ There are around 370,000 police officers in Mexico (as at 2007), which equates to approximately 350 police officers per 100,000 Mexicans,

24 | Cf. Niels Uildriks, *Mexico's Unrule of Law. Implementing Human Rights in Police and Judicial Reform under Democratization*, Lexington, Lanham, 2010, 61; cf. also Daniel Sabet, *Police Reform in Mexico: Advances and Persistent Obstacles*, Working Paper Series on U.S.-Mexico Security Collaboration ▶

a level that is much higher than the global average of 225 reported by the United Nations and well above the UN's recommended figure of 280. It is made up of a conglomerate of different organisations. There are federal, state and municipal police divided into over 200 different organisational units. A large proportion of local police forces are made up of the smallest units comprising less than 100 officers. Expert opinion on Mexico's force is unanimous: it is corrupt, ineffective, unmotivated, badly-trained and poorly-paid, often guilty of torture and abuse and in league with organised crime. During the decades of PRI rule, the police service offered an opportunity to hand out sinecures as one element in the corrupt patronage system. The advent of democracy in Mexico has brought few changes in this area.

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In their study of the police force in Mexico City, Nelson Artega Botello and Adrián López Riviera examined the reasons why people decided to join the police force.²⁵ This was only very rarely because of a desire to enforce law and order. The main reasons given by those questioned were: to accumulate capital to start a business, recover a loss or simply to make easy money. A police officer's average salary in Mexico is very low. In 2005 it corresponded to around 13.45 U.S. dollars a day (compared to a minimum wage of 4.05 U.S. dollars, and an average wage for a factory worker of 35.77 U.S. dollars or for a construction worker of 15.27 U.S. dollars).²⁶ On top of this, police officers have to pay for their own insurance, and they are even billed for their uniforms and ammunition. Entry conditions are minimal, and public school graduates with only the most basic qualifications can become police officers within 4 or 5 months. Over 50 per cent of police officers in Mexico have only basic school qualifications or indeed have no

May 2010, Mexico Institute, Woodrow Wilson International Center for Scholars, Trans-Border Institute, University of San Diego, Washington/San Diego, 2010.

25 | Cf. Nelson Artega Botello and Adrián López Riviera, "Everything in this Job is Money". Inside the Mexican Police", *World Policy Journal*, 17, 2000, 3, 61-70.

26 | Cf. David Shirk and Alejandra Ríos Cázares, "Introduction: Reforming the Administration of Justice in Mexico", in: Wayne Cornelius and David Shirk (eds.), *Reforming the Administration of Justice in Mexico*, Notre Dame, University of Notre Dame Press, 2007, 1-50, 20.

qualifications at all. It is estimated that 30 to 50 per cent of the Mexican people have at some point paid bribes to the police. It is normal practice to pay a small sum, known as a *mordida*, to police officers in order to avoid problems such as parking tickets. There is little interest in prosecutions, and in fact 99 per cent of all crimes in Mexico go unprosecuted and unpunished.²⁷ These kinds of figures make it impossible to call the country a constitutional state under the rule of law. Accusations of torture, forced confessions and abuses including rape are paid scant attention and are not systematically recorded.²⁸



“Organised chaos”: There are about 370,000 police officers in Mexico. | Source: marianovsky / flickr (CC BY-NC-ND).

All attempts to reform the police have failed thus far. Even the increasing militarisation of the police, i.e. the use of military units to carry out police tasks and the trend towards recruiting former soldiers to serve as police officers – a practice that began under Zedillo and was ramped up by Calderón as part of his war on drugs – has failed to resolve the problems and indeed has only created new ones. It remains the case that the police in Mexico presents a problem to the rule of law rather than being its champion and enforcer.

27 | Cf. Ingram and Shirk, n. 22, 4.

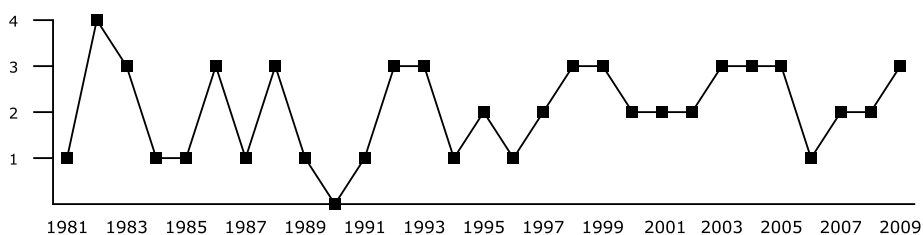
28 | Sabet reports that a survey in Mexico City showed that 50 per cent of those questioned reported “some form of abuse or mistreatment”; cf. Sabet, n. 24, 5.

Ongoing human rights abuses

The establishment of a human rights body is certainly a sign of institutional progress, but it has not led to any substantial improvements in the country's human rights situation. The CNDH is able to flag human rights violations, but it has no executive powers. The Cingranelli-Richards Human Rights Index (CIRI) provides no evidence of any improvement.²⁹ In the early 1980s the human rights situation was actually even better than in today's democratic era.

Fig. 1

CIRI Human Rights, 1981-2009



Source: CIRI, n. 29.

Qualitative estimates also confirm the poor state of affairs. In a report on Mexico published in 2011, Human Rights Watch refers to widespread human rights violations.³⁰ Between 2009 and 2011, the human rights organisation documented the situation in five states: Baja California, Chihuahua, Guerrero, Nuevo León and Tabasco. It found evidence of 170 cases of torture, 39 people who disappeared and 24 illegal executions. So overall there is no doubt

29 | The Index provides data on the levels of physical integrity rights. It is an additive index made up of information on torture, mistreatment by the police during arrests, disappearances and illegal executions. A rating of 0 means that these four rights are not respected at all by the government, a rating of 8 means they are fully respected. Cf. David Cingranelli and David Richards, "Measuring the Level, Pattern and Sequence of Government Respect for Physical Integrity Rights", *International Studies Quarterly*, 43, 1999, 2, 407-418; CIRI, Cingranelli-Richards Human Rights Index, <http://ciri.binghamton.edu> (accessed 4 Oct 2012).

30 | Human Rights Watch, "Neither Rights nor Security. Killings, Torture, and Disappearances in Mexico's 'War on Drugs'", Nov 2011, http://www.hrw.org/sites/default/files/reports/mexico1111webwcover_0.pdf (accessed 4 Oct 2012).

that the human rights situation in Mexico is precarious and the country is far from being a functioning constitutional state under the rule of law that protects the human rights of its citizens and punishes breaches via its state institutions. The militarisation of the police as part of the war against drugs has caused particular problems, with military personnel being responsible for countless violations.

Table 2

Rule of Law in Mexico according to BTI

	2005	2007	2009	2011
Separation of power	9	9	9	9
Independent judiciary	6	6	5	5
Penalties for abuse of office	5	5	5	4
Civil rights	6	6	6	6
Rule of law	6.50	6.50	6.25	5.75

Source: BTI, n. 31.

SUMMARY: MEXICO'S AMBIVALENT RULE OF LAW

Despite everything that has been accomplished in terms of the rule of law in Mexico, some serious problems remain. The bulk of this progress was achieved during the liberalisation phase of the authoritarian regime, particularly during the time of the Zedillo government. This

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is when the organisational basis for the independent judicial supervision of the executive and legislative arms was laid down. However, the separation of powers remained restricted to the top institutions; at the lower levels, the legal system was still seriously lacking. Up to now, the police has stubbornly ignored all attempts at reform and remains hugely ineffective and corrupt. Human rights abuses on the part of the police and military are all too common. The *Bertelsmann Transformation Index* looks at four dimensions of Mexican rule of law: the separation of power, independent judiciary, penalties for abuse of office and civil rights.³¹

31 | Scale from 1 ("worst practice") to 10 ("best practice"), *Bertelsmann Transformation Index 2006-2012*, <http://bti-project.de> (accessed 4 Oct 2012).

Mexico gets good marks in the Separation of Power category, but is rated as weak in the Independent Judiciary area. This is where the above-mentioned problem exists in a way that is difficult to assess and remedy in this kind of indicator. The Supreme Court is independent, but the lower courts are not. Abuses of office and corruption are rarely punished, so the low scores are accurate in this respect, but the score for civil rights seems somewhat overly positive. It is true that rights in terms of voting rights or freedom of opinion are not restricted by the state in Mexico, but there are still some serious human rights violations.³²

Three factors are often blamed for the obvious shortcomings in the Mexican rule of law: corruption, lack of political will and lack of resources. This last factor has been looked at in more detail by Beatriz Magaloni and Alberto Diaz-Cayeros.³³ First of all, they provide details of the official expenditure of the various state authorities, comparing 1998 with 2004, before and after democratisation. Mexican state authorities receive a low level of funding compared to other countries in the region and spend much less than nations such as the USA on the police and judiciary. However, expenditure has clearly increased. Magaloni and Diaz-Cayeros then looked at the effectiveness of these organs using a survey of experts. Performance was rated on a scale of 1 to 5, first before 1994 and then in 2004.³⁴

32 | Human rights such as freedom of opinion are increasingly also being restricted by the drug cartels, who threaten or even murder critical journalists. The independent organisation Reporters Without Borders estimates between 80 and 100 journalists have been killed; cf. Reporters Without Borders, <http://en.rsf.org> (accessed 4 Oct 2012).

33 | Cf. Beatriz Magaloni and Alberto Diaz-Cayeros, *Democratic Accountability and the Rule of Law in Mexico*, unpubl. manuscript, 2008, <http://yale.edu/macmillan/ruleoflaw/papers/DemocraticYale2.pdf> (accessed 4 Oct 2012).

34 | 1 means: the institution is ineffective and decisions are legally contested or simply ignored. The institution is also considered corrupt and untrustworthy. 2 means: the institution is occasionally effective but largely irrelevant; decisions are sometimes respected, sometimes not. 3 means: generally effective, but important decisions that affect powerful and influential interests are not respected. The institution is weakened by corruption. 4 means: the institution is generally effective and trustworthy but one or two decisions are not respected. 6 means: the institution is a model of effectiveness and the rule of law. Decisions are respected.

Table 3
**Resources available to state institutions
 in Mexico in 1998 and 2004**

State institution	Budget 2004 (million pesos)	Budget 1998 (inflation-adjusted price level of 2004, million pesos)
IFE	3,479	3,681
TFPE/TEPJF	912	In the IFE budget
CNDH	629	?
SCJN	2,206	In the federal courts budget
Chamber of Deputies	3,166	3,539 total parliamentary budget
Senate	1,659	In the total parliamentary budget
Federal courts	16,281	7,465
Federal police	6,426	1,235
State police	2,500	3,020
Local police	9,157	6,317
Public prosecutor's office	7,256	5,452

Source: Magaloni and Diaz-Cayeros, n. 33.

As expected, two important conclusions can be drawn from this analysis. On the one hand, positive changes have been made to many institutions and there have been improvements in the Mexican rule of law. As previously mentioned, these positive changes mainly affect the highest federal institutions. The IFA electoral institute and electoral jurisdiction have received a positive rating in the study, but they are also the only organs to receive such a positive assessment. Most of the other institutions are given average or poor scores. This is particularly true of the judiciary in the various federal states and at local level. The worst score goes to the state and municipal police. However, the major discrepancies in performance cannot be solely blamed on lack of resources. Corruption and particularly lack of political will play a major role and are highlighted by Magaloni and Diaz-Cayeros as one of the explanatory factors. Many areas of government and bureaucracy are still dominated by representatives of the old order.³⁵

35 | Magaloni and Diaz-Cayeros, n. 33, 228.

Table 4
**Performance of Mexican state institutions
 in 1994 and 2004**

State institution	2004 rating	1994 rating	Change
IFE	4.3	2.8	1.5
TFPE/TEPJF	4.1	2.2	1.9
Electoral institutes in states	3.3	2.1	1.2
CNDH	3.3	2.6	0.7
Human rights commissions in states	2.8	2.0	0.8
Senate	3.5	2.4	1.0
Chamber of Deputies	3.4	2.2	1.2
State parliaments	2.9	2.0	0.9
Local councils	2.9	2.2	0.7
Federal courts	3.2	2.6	0.6
Local courts	2.8	2.3	0.5
Federal police	3.2	2.6	0.6
State police	2.2	2.1	0.1
Local police	2.2	2.0	0.2
Public prosecutor's office	3.0	2.8	0.2
Public prosecutors	2.8	2.6	0.2
Overall average ³⁶	3.1	2.5	0.6

Source: Magaloni and Diaz-Cayeros, n. 33.

The empirical data demonstrates the ambivalence of the rule of law in Mexico. Progress in certain areas has been offset by other enduring problems. It is clear that the progress that has been made is actually of limited relevance to the population as a whole. Free elections organised and monitored by the IFE are certainly to the benefit of all Mexicans, but they only happen every couple of years. A functioning Supreme Court is also a very positive development. But in their everyday lives, Mexican citizens are more likely to come into contact with the police and the

36 | Other institutions were rated that are not listed here.

lower courts, both of which are still far removed from operating under the rule of law. In Latin America, there is a long tradition of glaring discrepancies between the letter of the law and reality.

Benito Juárez's dream of a Mexico under the rule of law is still a long way off, but it is closer than at any time in Mexican history: "Faraway. So close."³⁷ However, the Mexican drug cartels have spread their tentacles right across Mexico, bringing threats of violence, corruption, establishing their networks of patronage and casting a dark shadow over the country's nascent democracy and fragile rule of law. In his bid to modernise and stabilise Mexico, President-elect Peña Nieto will have to fight on many fronts if he wants to prevent it falling back into its old ways.

37 | López-Ayllón and Fix-Fierro, n. 7.