

# JUSTICE IN MEXICO

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## ACCOUNTABILITY

### IFAI & TRANSPARENCY

Mexico's particular brand of federalism, statutory discrepancies among the states, and bureaucratic resistance are in danger of sapping the vigor of a federal information-access law, passed by Congress in 2002. While the principle of the public's "right to know" is quickly agreed on by most parties, the universal achievement of this right proves a much thornier issue. This is because the federal mandate depends in large measure on the backing it gets at the sub-national level, in the form of accompanying state and city public-access laws. Even though local statutes may only govern local records, if such laws are restrictive and run against the liberal spirit of the national legislation, the "development and use of the federal law" can be stunted and discouraged, political columnist Alonso Lujambio says. (*Reforma*, March 26, 2006)

So far 28 of 32 states and 60 of almost 2435 municipal governments have passed local transparency statutes in the wake of the landmark federal law, whose open-records provisions apply to the three branches of the federal government, the central bank, and autonomous agencies, commissions, and state-owned companies. Demonstrating authorities' far-from-uniform attitudes regarding open government precepts, the local transparency statutes vary in juridical character from state to state, inspiring and dispiriting citizens testing the contours of the public's "right to know" a scant four years after the federal legislation passed.

On the one hand, some statutes, such as Campeche's and Chihuahua's surpass the federal law in terms of openness and transparency, foreseeing use of Internet technology to speed information requests from citizens to authorities, Lujambio says. On the other hand, other statutes, such as those of Guanajuato and Quintana Roo, appear to chip at the spirit of universal public access through newfangled bureaucratic checks. For example, a provision in the Guanajuato law would virtually limit all eligible solicitants to inhabitants of the state capital, and the Quintana Roo statute apparently prohibits out-of-state residents from filing petitions. Injecting other administrative obstacles, a number of states have placed restrictions on the composition and responsibilities of citizen panels tasked with overseeing execution of the state information laws. By seating unpaid members for terms as short as one year and deferring adjudicating powers to existing tribunals, the statutes inhibit professionaliza-

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tion of the panels, preclude the development of an enforcement capacity, and transform the panels into mere honorifics. Apart from these compromised statutes that belittle the public's "right to know," four states – Chiapas, Hidalgo, Oaxaca, and Tabasco – even lack their own state transparency laws.

Among politicians accused of idiosyncratic and anti-democratic enforcement of state information-access laws, former Mexico City mayor and presidential frontrunner Andres Manuel Lopez Obrador is blamed with failing to honor valid information requests and attempting to thwart the work of a watchdog citizens council, writes *Reforma* columnist Juan Ciudadano, a pseudonym for a group of concerned city residents (*Reforma*, April 3, 2006). In another op/ed piece in the newspaper, noted political analyst Alonso Lujambio lists the problems facing the federal law and also spotlights a campaign to remedy them (*Reforma*, March 26, 2006). Led by three prominent state governors, the campaign sets to enshrine the public's "right to know" through constitutional amendment, immunizing such a right from the efforts of anti-transparency forces.

Despite the formidable challenges listed above, Mexico's Federal Institute for Access to Information (IFAI), the agency created by the 2002 law, did publicize some modest advances in the press in the past two weeks, coinciding with a national "right to know" forum held in Guanajuato. In one recent ruling the institute sided with a graduate student after ordering a state-owned salt producer to divulge financial records (*El Norte*, April 9, 2006). And at the Guanajuato forum, the IFAI director touted a recent case that involved some taxpayer advocates who had used the information-access law to demand records regarding an unaccounted-for 13 million pesos from the federal budget.

**Sources:**

[Barajas, Abel. "Vence estudiante a paraestatal: Fracasa litigio contra fallo del IFAI: Exportadora de Sal debe abrir sus finanzas." \*El Norte\* 9 April 2006.](#)  
[Ciudadano, Juan. "AMLO: transparencia cancelada." \*Reforma\* 3 April 2006.](#)  
[Lujambio, Alonso. "El Segundo impulso." \*Reforma\* 26 March 2006.](#)

## ACCESS TO JUSTICE

### JOURNALISTS FEEL INTIMIDATION

In spite of much publicity, the case of missing journalist Alfredo Jiménez Mota remains unresolved even a full year after his disappearance. Jiménez, who would be 26 this year, covered drug trafficking-related news for *El Imparcial* newspaper of Hermosillo, Sonora. He is widely presumed to be dead – a latest victim of retaliatory attacks by drug lords against the print media in northern border states. Earlier this year, in February, the newsroom of the Nuevo Laredo daily, *El Mañana*, was shot up by gunmen who nearly killed a reporter – an attack that followed the 2004 stabbing death of a top editor at the paper. Among other notorious attacks on journalists, the 2005 shooting death of Nuevo Laredo radio reporter Guadalupe Garcia Escamilla, who covered the crime beat, remains unpunished, as does the 2004 assassination of Francisco Javier Ortiz Franco, an editor at the investigative Tijuana newspaper *Zeta*.

Shortly after Jiménez's high-profile disappearance in early April 2005, the Federal Attorney General's Office (PGR) announced the creation of a special prosecutor's office whose title at the time was cited in the press as "Fiscalía Especial para la Investigación de los Crímenes y Atentados contra Periodistas," indicating an investigatory capacity. Yet a recent analysis of the PGR's website shows a link to a differently titled "Fiscalía Especial para la Atención de Delitos Cometidos contra Periodistas," and a paragraph explains that investigation of cases will be handled not by the new special prosecutor's office but by another entity, which had already been handling such cases. Apparently, the

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new prosecutor's office primarily functions to receive complaints about crimes against journalists, and the news that emerged from a press conference earlier this year flatly spoke to its having fielded 35 such complaints, suggesting no involvement in meaningful detective work.

The lack of significant news regarding the Jiménez Mota disappearance appears to have bred suspicion in at least one noted columnist writing in a national newspaper in past weeks. In a piece hinting at possible collusion among government officials and drug lords, writer Miguel Angel Granados Chapa questions the Fox administration's conviction and competence in pursuing Jiménez's assailants. In the column published in *Reforma* newspaper April 4, the writer attributes a quote to Fox, whom he says pledged to bring "the full force of the state" to bear on resolving the case. Pointedly, Granados Chapa wonders if the "full force" phrase was deployed mainly to serve political ends and was therefore never really intended to be carried out completely. But he also wonders on the other hand if serious efforts were made to implement the directive and that the government's failure to resolve the Jiménez disappearance, consequently, speaks to an ineffectual federal administration.

Sources:

[Granados Chapa, Miguel Angel. "Plaza Pública: Alfredo Jiménez Mota." Reforma 4 April 2006.](#)

## SUBNATIONAL DEVELOPMENTS

States appear to be working toward revamping or altering existing criminal justice frameworks. Most of these reforms revolve around the introduction of oral argument to some limited trial proceedings. Oaxaca, the State of Mexico, the Federal District, Aguascalientes, Nuevo Leon, and Chihuahua are all mentioned in the press as working toward instituting changes to their respective penal codes. The following include some recent specific developments at the subnational level:

**OAXACA:** The Oaxacan state legislature has closed a provision in the state's penal code which had carved out a separate juridical category for "crimes of passion." It is believed that the scrapping of Article 293 will result in the grouping of such crimes, also known as "honor killings," with other kinds of murder. Currently, "crimes of passion," such as when a jealous husband kills a wife, generally result in lower sentences for perpetrators since motive is perceived as a mitigating factor. In one recent case from 2004, a Oaxacan man was sentenced to about three and a half years of time served and fined approximately \$10,000 after being found guilty in the "honor killing" of his wife.

Sources:

[Jarquín Edgar, Soledad. "Iniciativa en Oaxaca para borrar 'lesiones por honor.' Cimac Noticias. 3 March 2006. "Se deroga el artículo 293 del Código Penal para el Estado Libre y Soberano de Oaxaca." Honorable Congreso del Estado de Oaxaca.](#)

**OAXACA:** The introduction of oral argument to trial proceedings appears to be progressing as part of a package of reforms to the state's penal code, expected to be passed in the state legislature this year. Numerous articles in the press attest to the implementation of training programs for judges and lawyers, who are in need of understanding how the new procedures are supposed to work. The Oaxacan project has come in for some criticism, though, from Juan Ciudadano, the pseudonym of a citizens rights group that publishes frequently in the pages of national newspaper *Reforma*. The group chastises Oaxaca's Supreme Court, the force behind the oral-argument movement, for pointedly excluding from reforms that court proceedings be open to the public. In another interesting note, Oaxaca's state supreme court chief justice has been quoted in the press as saying that oral argument will be applied in both civil ("delito menor") and criminal ("delito grave") court proceedings.

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For more on the penal code reforms, see:

<http://www.tribunaloaxaca.gob.mx/index.php?doc=inicio>

**STATE OF MEXICO:** Oral trials are expected to be used in penal proceedings related to minor crimes such as assault and fraud as of October. The eighteen judicial districts in which the Estado de Mexico is divided will have a special location to implement this innovative type of trials. Currently, only the state of Nuevo Leon uses oral arguments to deal with minor crimes ("delitos culposos no graves.").

**Sources**

Reforma article from 3 April 2006.

Arrancan Juicios Orales en Edomex, El Universal, 14 April, 2006