

## **Impunity's Triumph: The Failure of Mexico's Special Prosecutor**

Kate Doyle

June 8, 2006

Mexicans will look back on the Office of the Special Prosecutor created by President Vicente Fox to investigate the crimes of the dirty war, and wonder if it was doomed by design.

Established in 2002 as an alternative to launching a politically sensitive truth commission, the "Special Prosecutor for Social and Political Movements of the Past" (FEMOSPP) was ostensibly intended to charge former government officials for past human rights crimes, clarify the hidden history of the dirty war, and compensate victims and their families.

But four years and hundreds of millions of pesos later, the Fiscalía has served to convict no one and clarify nothing.

Worse still, the incompetence and failure of the effort have been persistently glossed over by assurances from President Vicente Fox and Fiscal Especial Ignacio Carrillo Prieto that all was well.

In his first public pronouncement about the creation of the Fiscalía in November 2001, President Fox scolded those who sought to achieve mere historical accountability.

"We have to go beyond the idea of a Truth Commission," he told his audience. "We must try not only to understand the actions and omissions of the past, but also to punish them."

But as a scathing critique published last month by Human Rights Watch makes clear, the government's legal strategy has been a catastrophe. The first and most controversial charges filed by the Fiscal -- against ex-President Luis Echeverría and other former senior officials for complicity in genocide in the student massacres of 1968 and 1971 -- were thrown out of court and both cases are now closed.

And although the Supreme Court handed Carrillo an important victory in 2003 in ruling that the crime of "disappearance" was not subject to a statute of limitations, in a Kafkaesque twist a new federal regulation published last May prohibits the prolonged detention of the accused unless evidence of their crime -- i.e., a body -- can be produced. Two former police officials jailed in the 1975 disappearance of Jesús Piedra de Ibarra were immediately freed as a result.

The government has even failed to arrest a majority of the officials indicted by Carrillo Prieto; former intelligence chief Luis de la Barreda Moreno, among others, has evaded justice for over two years.

As far as the President is concerned, these legal disasters are not his problem. In response to the Human Rights Watch critique, presidential spokesperson Rubén Aguilar told the press, “We don’t agree with these observations. We believe that we have done the job that we set out to do and that there have been very important advances in the development of justice.”

Following his executive’s example, Dr. Carrillo Prieto is equally adept at resonating with conviction that is unmatched by commitment or action.

My own brief contact with the Special Prosecutor gave me a personal glimpse of his style. Carrillo sought a meeting in late 2002 in order to request the assistance of the National Security Archive in soliciting declassified documents from the United States government on Mexico’s dirty war.

Our success in requesting similar records for other countries made collaboration between the Archive and the Fiscal a natural one. I brought his staff copies of letters we had helped write in the past – requests that resulted in the opening of thousands of pages of extraordinary files from the CIA, State Department and Pentagon on El Salvador, Honduras, Guatemala, Chile and Argentina.

Thousands of documents also exist in U.S. files concerning the Mexican dirty war. They include CIA reporting on leftists and suspected subversives, defense intelligence on the operations of the Mexican Army, reports from the FBI from its liaison with the *Dirección Federal de Seguridad* (DFS), and U.S. Embassy analysis on the Mexican government’s political decisions. Access to these documents would provide new details about the cast of characters and their motives behind the staging of the dirty war.

The Fiscal’s Director of Analysis and Documentation, Angeles Magdaleno, and I drafted a letter to President George W. Bush seeking his help in identifying and opening U.S. records that might assist the Special Prosecutor. Carrillo Prieto forwarded the letter to Attorney General Macedo de la Concha for his signature. It never left Macedo’s desk.

That was a lost opportunity – but only one among many. In September 2003, Carrillo invited the renowned Argentine Forensic Anthropology Team (Equipo Argentino de Antropología Forense) to examine the feasibility of opening suspected mass graves from the dirty war. The team met with him in Mexico City, then traveled to Sinaloa and Guerrero to inspect possible exhumation sites. Following their return to Buenos Aires, they wrote a detailed report outlining the steps that Carrillo’s office would need to take before exhumations could begin.

Their report concluded, “Success in the location, exhumation and identification of the remains of disappeared persons is directly related to the development of an exhaustive prior investigation that involves the review and analysis of all documentary and testimonial sources available.”

Within weeks of the team’s visit, the Fiscal was telling the national and international press that the Argentine forensic experts would soon arrive to begin unearthing clandestine graves, including sites on military bases.

He failed to tell the Argentines, however. They never heard from him again. When reached in Buenos Aires last week, Silvana Turner, one of the team leaders on the trip to Mexico, said she and her colleagues remained “available to collaborate any time.”

With the future of the Fiscalía’s criminal investigations in doubt, his success in providing historical clarification of the dirty war becomes all the more crucial. But that project, too, is plagued by delay, incompetence and indifference.

Six months after the Fiscal’s research team presented their history of the dirty war – “*Que no vuelva a suceder*” (“So that it won’t happen again”) – it has yet to be released to the public. Following the National Security Archive’s decision to post a draft version on our Web site on February 26, Attorney General Daniel Cabeza de Vaca launched a “leak” investigation. So far two of the report’s authors, José Sotelo and Alberto López Limón, have been served subpoenas, requiring them to give a sworn declaration about their role in its premature publication.

For his part, President Fox promised to release the official report on April 15; almost two months later, Mexicans continue to wait. Having missed the deadline he himself set, the President has not even bothered to announce a new date for its release.

The draft report draws on some of the millions of pages of government documents on the dirty war that were turned over to Mexico’s National Archives (AGN) in response to an order by the President in 2001. At the time, Fox was praised by many for his decisive action in providing unprecedented public access to the records of repression.

It has since become clear, however, that when historians and lawyers from the Special Prosecutor’s office chose records for their investigative purposes, they also effectively sealed the documents from outside researchers. In an interview with Human Rights Watch, Dulce María Liahut, director of the Central Historical Archive at the AGN, reported that hundreds of files were closed as a result.

No one knows when they will be returned – if ever. One can easily imagine a scenario in which the Attorney General’s office decides to hold them indefinitely

as part of “ongoing investigations.” In that case, the Special Prosecutor will have served not to clarify the past and provide accountability for human rights crimes – but rather as a convenient tool for identifying the most damaging and dangerous material in the archives so that they could be removed forever. All in the name of the transparency, of course.

And for anyone who had high hopes for the quality of the final report – if and when it is released – the Special Prosecutor’s reflections on the matter will likely extinguish them. When asked by the press to address the draft version that appeared in February, Carrillo Prieto acknowledged it to be a one of several drafts that his investigators had produced, but said that none of them was definitive:

“In reality, there is never a definitive document, because truth is a construction,” said the Special Prosecutor. “Historical truth is definitive for periods of time, and certainly requires revisions, new approximations and tools, new instruments for historical analysis.”

“Truth is a construction”: perhaps that phrase best expresses the cynical principles that lay behind the Fox government’s decision to create the Office of the Special Prosecutor for Political and Social Movements of the Past in the first place.