# TRANSPARENCY GUARDIANS

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*Government transparency and the Freedom of Information Act (FOIA) are nearly synonymous in the United States. As one of the first laws of its kind, FOIA was once a model around the world. Our collective understanding of how access-to-information (ATI) laws should work has been shaped by FOIA's central edict that anyone can request government records and the government must provide them unless they are exempt, an obligation enforced by judicial review. But compliance with FOIA's mandates has proven to be an intractable failure—with iterative rounds of legislative reforms having little to no impact—and FOIA is too often viewed largely as a bureaucratic headache of technicalities and distractions from the real work of government.*

*In my previous Article, An* Information Commission, *I called for the creation of an independent administrative agency to reimagine how FOIA obligations are enforced in the United States. In it, I argued that such an institution not only would be better positioned to monitor compliance but would also be able to transform the popular imagination of*

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*ATI from a regulatory compliance task into a fundamental right—all in service of a more accountable government.*

*This Article builds directly on that previous work and serves as a proof of concept. It reports original research conducted during a nine-month grant-funded study of Mexico's recently extant information commission, the Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales, known as INAI for its initials in Spanish. INAI was a leader in the global transparency community, however its model was not well known among U.S. policymakers, academics, or advocates. Using an embedded approach to institutional ethnography and its interdisciplinary methods, I conducted dozens of hours of recorded interviews, engaged in countless observations of proceedings and workflow, drew data from public reports, and situated my findings within the transparency scholarship in Mexico. This Article documents how the legal architecture enabled INAI to accomplish its mission and makes the case that INAI demonstrates the potential of a well-designed information commission both to guarantee ATI as a fundamental human right and to serve as a counterweight to democratic backslide that is too common around the world.*

## Introduction

"If you ask me, 'Do you feel impartial?' I will tell you, 'No, I am partial, I am partial in favor of society.'"

– Adrián Alcalá Méndez, Commissioner of INAI[1]

I walked up to the front doors of the Instituto Nacional de Acceso a la Información y Protección de Datos Personales, known as INAI, Mexico's information commission, charged with protecting the public's right to access information.[2] The building itself was transparent—made of glass—and adorned with the image of a transparent house made into an "i" for information, its logo.[3] I was there to take my first tour of the building and to get an overview of the work of this institution that I would be studying for the next nine months.

It was vast. Over four floors, a beehive of activity spanned cubicles, private offices, suites, and conference rooms. I was shown an archives room, an event room, and a courtroom lookalike for plenary

1. Interview with Adrián Alcalá Méndez, Comisionado [Commissioner], Instituto Nacional de Acceso a la Información y Protección de Datos Personales (INAI), in Mexico City, Mex. (May 25, 2023), at 15 (transcript on file with author).

2. Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales [National Institute of Access to Information and Protection of Personal Data], https://home.inai.org.mx/ [https://perma.cc/L5QT-SMPC]. Personal data protection is a second, and often emphasized, part of INAI's charge, *see id.*, but it falls outside the scope of this Article.

3. *See id.* (displaying the logo on the top left of the homepage).

sessions of the commission. As I walked past departments, I asked what each one did. While I expected some of the answers, others surprised me. I discovered a unit full of computer engineers who did nothing but work on technology to support INAI. I walked past an area charged with public outreach and I saw some of the sample publicity and educational materials on the walls—materials printed in Nahúatl, Maya, and Zapotec, some of the officially-recognized indigenous languages in Mexico. And INAI officials hosted me in the office of international relations. Really? The international relations office of the information commission? Yes, really. They had an international relations department. And it was not small. Even though I had studied government transparency as an academic for more than a decade, around each corner I found advances far beyond what I had imagined.

Government transparency has been transformed into a global value, a necessity in any democracy, and a human right enshrined in constitutions.[4] On an individual level, it acts as a "key" that unlocks other rights by guaranteeing access to information necessary to pursue full vindication of civil, political, social, and economic rights.[5] At a structural level, it safeguards against corruption, checks excesses in government power, and facilitates democratic participation in governance through voting and beyond.[6]

Many countries have modeled transparency obligations to varying degrees on the U.S. Freedom of Information Act (FOIA), one

4. For example, the right to access information has been affirmed by decisions of the Inter-American Court of Human Rights, the European Court of Human Rights, and the United Nations Human Rights Committee. *See, e.g.*, Claude-Reyes v. Chile, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 151 (Sep. 19, 2006); Társaság a Szabadságjogokért v. Hungary, App. No. 37374/05 (Apr. 14, 2009), https://hudoc.echr.coe.int/eng?i=001-92171; Hum. Rts. Comm., *Gen. Comment No. 34: Article 19: Freedoms of Opinion and Expression*, U.N. Doc. CCPR/C/GC/34 (Sep. 12, 2011).

5. *Estrena INAI la serie 'Derecho a saber' que se transmitirá en el canal del Congreso* [*INAI Premieres the Series 'Right to Know,' Which Will Be Broadcast on the Congressional Channel*], El Heraldo de México (Mex.) (Mar. 23, 2022, 5:05 PM), https://heraldodemexico.com.mx/nacional/2022/3/23/estrena-inai-la-serie-derecho-saber-que-se-transmitira-en-el-canal-del-congreso-389703.html [https://perma.cc/676F-TXKA] (quoting INAI Comisionada Presidenta Blanca Lilia Ibarra Cadena as saying that the new television program about INAI will help people "to recognize that the right to access information is a key that allows the exercise of other human rights"); Interview with Iván Benumea Gómez, Coordinador del Programa de Justicia Fiscal [Coordinator of the Tax Justice Program], FUNDAR, in Mex. City, Mex. (June 8, 2023), at 1 (transcript on file with author) ( "[T]hrough access to information, making requests and presenting appeals, we can contribute to the guarantee of other human rights.").

6. *See generally* Gregory Michener, *Transparency as Leverage or Transparency as Monitoring? U.S. and Nordic Paradigms in Latin America*, *in* Troubling Transparency: The History and Future of Freedom of Information 269, 273–74 (David E. Pozen & Michael Schudson eds., 2018) [hereinafter Troubling Transparency] (giving accounts of uses of access to

of the first laws guaranteeing public access to government documents.[7] FOIA's central promise is that anyone can request any government record and the government must provide that record promptly, with only limited exemptions.[8] Yet a chronic, unabated, intractable failure of compliance has severely undermined FOIA's promise.[9] Agency delay and over-withholding are endemic to the FOIA system,[10] and the promise of judicial review of agency FOIA violations has proven woefully inadequate either as a deterrent or a remedy.[11]

Alternative oversight models exist. In *An Information Commission*,[12] I argued that FOIA enforcement should be delegated to an independent agency, styled as an information commission, rather than to courts.[13] In short, an information commission could engage in a far greater volume of adjudication, would approach transparency from a mission-driven, public-minded orientation that would

information laws in political contestation as well as ongoing deterrence and "fire alarm" functions to prevent and uncover abuses of power).

7. Gustav Björkstrand & Juha Mustonen, *Introduction: Anders Chydenius' Legacy Today*, *in* The World's First Freedom of Information Act: Anders Chydenius' Legacy Today 4 (Juha Mustonen ed., 2006); *see also Country Data*, The RTI Rating, https://www.rti-rating.org/ [https://perma.cc/YFR4-NFB4] (rating the 139 countries that currently have right to information laws and detailing the state of those laws); David Pozen, *Freedom of Information Beyond The Freedom of Information Act*, 165 U. Pa. L. Rev. 1097, 1105–06 (2017) (noting that "the majority of the world's countries . . . have adopted laws that replicate FOIA's basic features").

8. *See* 5 U.S.C. § 552(a)(3), (b) (detailing request-and-response procedures and enumerating nine listed exemptions to mandatory disclosure).

9. *See, e.g.*, Katie Townsend & Adam A. Marshall, *Striking the Right Balance: Weighing the Public Interest in Access to Agency Records Under the Freedom of Information Act*, *in* Troubling Transparency, *supra* note 6, at 226, 227 (arguing for a public interest balancing test to combat the trend that administration of FOIA [Freedom of Information Act] has "tilted so far in favor of government secrecy that . . . the act is failing to serve its core purpose"); Staff of H. Comm. on Oversight & Gov't Reform, 114th Cong., FOIA Is Broken: A Report 8–31 (Comm. Print 2016) (describing delay and over-withholding as central and intractable problems); Pozen, *supra* note 7, at 1100 (opining that "one might find that FOIA ultimately serves to legitimate the lion's share of government secrecy while delegitimating and debilitating government itself.").

10. *See* Margaret B. Kwoka & Michael Karanicolas, *Overseeing Oversight*, 54 Conn. L. Rev. 655, 670–72 (2022) (documenting journalist complaints about delay and over-withholding).

11. Margaret B. Kwoka, *An Information Commission*, 112 Geo. L.J. 841, 864–73 (2024), (providing evidence of systematic judicial failures to improve agency compliance) [hereinafter Kwoka, *An Information Commission*]; *see also* Margaret B. Kwoka, *Deferring to Secrecy*, 54 B.C. L. Rev. 185, 211–35 (2013) (arguing that the judiciary has found myriad ways to defer to agency claimed need for secrecy despite the statutory mandate for de novo judicial review).

12. *See generally* Kwoka, *An Information Commission*, *supra* note 11.

13. *Id.* at 873.

improve adjudication outcomes, and could perform a wide range of useful activities well beyond adjudication of individual complaints.[14]

This Article documents how such an institution can work on the ground. Supported by a nine-month-long Fulbright García-Robles research grant, I relocated to Mexico City to study INAI. INAI was arguably the most celebrated information commission in the world, held up as the gold standard to which others aspire, and a leader in the transparency community internationally.[15] The idea that the United States could learn important lessons in good governance from our nearest southern neighbor may come as a surprise to some given that Mexico has long struggled with government corruption.[16] But it was precisely that struggle that propelled the reforms in Mexico that created INAI, making transparency a salient issue to the public and INAI a force to be reckoned with.[17] Indeed, INAI was not just central to the transparency story in Mexico, it was central to democratic governance in Mexico; as this Article will document, INAI had been aptly described as "the fourth branch of government."[18]

But I made it to INAI just in time; in November of 2024, President Claudia Scheinbaum's administration backed a set of constitutional reforms to eliminate INAI and absorb some limited set of INAI's functions into an executive branch agency.[19] As this Article will describe, that INAI drew the ire of elected officials to the point of constitutional elimination is indicative of the powerful role it served as a check on government power.[20]

The goal of this Article is not to engage in a full comparative analysis between the transparency systems of Mexico under INAI's leadership and the United States, nor to argue that all aspects of the

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14. *See id.* at 873–85.

15. *See* Vivek Ramkumar & Diego de la Mora, *Mexico's Battle for Transparency*, U.S. News & World Rep. (Feb. 13, 2016), https://www.usnews.com/news/best-countries/articles/2016-02-13/mexicos-battle-for-transparency [perma.cc/Z7MP-GVLT]; Paul Lagunes & Oscar Pocasangre, *Dynamic Transparency: An Audit of Mexico's Freedom of Information Act*, 97 Pub. Admin. 162, 162–63 (2019).

16. *See* Vivek Ramkumar & Diego de la Mora, *Mexico's Battle for Transparency*, U.S. News & World Rep. (Feb. 13, 2016), https://www.usnews.com/news/best-countries/articles/2016-02-13/mexicos-battle-for-transparency [perma.cc/5ZAQ-NGCA].

17. *See* Interview with Adrián Alcalá Méndez, *supra* note 1, at 4–5.

18. Michener, *supra* note 6, at 282.

19. James Wagner & Emiliano Rodríguez Mega, *Why Mexico Is Eliminating Independent Watchdog Agencies*, N.Y. Times (Nov. 28, 2024), https://www.nytimes.com/2024/11/28/world/americas/mexico-senate-watchdog-agencies.html [perma.cc/SF73-JHRP].

20. *See* discussion *infra* Part IV (describing the role of INAI as a "defender of democracy").

former Mexican system could or should be adopted in the U.S. context.[21] Rather, this Article provides a primer on INAI for an American reader and serves as a basis for further academic and policy conversations about FOIA reform in the United States. Moreover, in a time of great upheaval in the law governing agency power and deep skepticism of the administrative state,[22] this research provides a surprising source of inspiration that administrative bodies can be designed to further democratic ideals and protect fundamental human rights.

This Article also contributes to important conversations in global transparency scholarship. One emerging strain of study compares and evaluates the work of information commissions,[23] and this Article contributes to those conversations by providing an in-depth account of INAI's institutional design. Another strain of study has questioned the value of transparency in itself;[24] this Article provides a platform on which further research may use the Mexican context as a laboratory for understanding transparency's effects during a period in which, unlike in the United States, transparency laws were working more or less as they promised.[25] In this way, this Article is a foundation upon which to build our understanding of the future and promise of transparency.

Drawing on the methodologies of social scientists who conduct institutional ethnographies, I relied, as they do, on interviews, observations, and textual sources to inform my work.[26] While at INAI, I observed proceedings, shadowed workflow, visited operations,

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21. For an elaboration on the potential for an information commission in the U.S. context, including how such a body would fit into U.S. constitutional and administrative law constraints, *see generally* Kwoka, *An Information Commission*, *supra* note 11.

22. The 2023 U.S. Supreme Court term alone marked the undoing of *Chevron* deference, the invalidating of agency enforcement actions, the unprecedented scrutiny of agency rulemakings, and the expansion of judicial review of agency actions, to name just the headlines. *See generally* SEC v. Jarkesy, 144 S. Ct. 2117 (2024); Ohio v. EPA, 144 S. Ct. 2040 (2024), Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (2024); Corner Post, Inc. v. Bd. of Governors, 144 S. Ct. 2440 (2024).

23. *See, e.g.*, María Constanza Castro Orduña, *Enforcement of the Right to Information: Challenges and Best Practices*, Transparency Int'l (July 22, 2024), https://knowledgehub.transparency.org/helpdesk/enforcement-of-the-right-to-information-challenges-and-best-practices.

24. *See, e.g.*, Pozen, *supra* note 7; David E. Pozen, *Transparency's Ideological Drift*, 128 Yale L.J. 100 (2018); Janet Freilich, *Government Misinformation Platforms*, 172 U. Pa. L. Rev. 1537 (2024).

25. *See, e.g.*, Margret Kwoka, *Returning FOIA to the Press*, Knight First Amend. Inst. at Colum. Univ. (June 11, 2024), https://knightcolumbia.org/blog/returning-foia-to-the-press [perma.cc/S2SR-HXPH].

26. *See, e.g.*, Emily Billo & Alison Mountz, *For Institutional Ethnography: Geographical Approaches to the Institutions and the Everyday*, 40 Progress Hum. Geography 199 (2016).

accessed data, and, most critically, interviewed personnel up and down the chain of command and in every relevant division of the organization.[27] This interdisciplinary method allowed me to study "what people *do* as well as what they *say*,"[28] using what has been termed a "time on the inside" approach to understanding bureaucracy.[29] This approach paid dividends. I arrived with the relatively narrow goal of understanding INAI as an agency adjudication model, but left with an understanding of how adjudication fits into a larger, much more holistic, and much more comprehensive transparency system.

While this Article details how INAI was organized to accomplish its ambitious goals, it also realistically acknowledges INAI's imperfections and shortfalls. At base, however, this research identifies key components of a well-functioning information commission, reveals the promise of agency administration of access to information rights, and lays bare the extent to which the U.S. approach to government transparency—namely, FOIA—has fallen behind the global state of the art.

The Article proceeds in four parts. Part I lays out the legal architecture surrounding INAI, paying special attention to the structures that protected its independence and endowed it with necessary authority to accomplish its role. Part II details what I observed as INAI's key features as a guardian of transparency. It walks through INAI's operations, documenting how essential functions were performed while highlighting the ways these functions complemented each other. Part III takes on the challenge of evaluating its results, concluding that INAI boasts an impressive set of accomplishments, while candidly identifying shortcomings that emerged. Lastly, Part IV situates INAI in the political landscape in which the governing party, with an anti-big-government platform, attacked INAI, eventually leading to its demise. It argues that INAI was uniquely situated as

27. My work at INAI was conducted pursuant to a cooperative work agreement between myself and INAI, as well as two rulings by the Ohio State University Institutional Review Board (IRB), that my interviews both of government officials and journalists were exempt from IRB approval procedures. *See* Letter from INAI, Propuesta de Proyecto de Cooperación con Margaret Kwoka [Cooperation Project Proposal with Margaret Kwoka] (Oct. 24, 2022) (on file with author); Letter from Jacob Stoddard, Ohio State Univ., Office of Responsible Rsch. Practices, to author, Study No. 2022E0709 (Aug. 4, 2022) (on file with author); Letter from Jacob Stoddard, Ohio State Univ., Office of Responsible Rsch. Practices, to author, Study No. 2022E0696 (Aug. 4, 2022) (on file with author).

28. Billo & Mountz, *supra* note 26, at 202 (citing Steve Herbert, *For Ethnography*, 24 Progress Hum. Geography 550 (2000)).

29. *See id.* at 209 (collecting examples of studies of U.N. organizational bureaucracies).

a counterweight to the concentration of government power and to defend against political attacks. Though the resulting constitutional reforms eliminated INAI, this Article argues that INAI serves as an inspiration and starting template for future transparency reforms.

## I. The Legal Framework for INAI

INAI was born out of reforms in 2007, during a time when transparency reforms globally were trending toward creating independent oversight bodies.[30] More than half of countries with freedom of information laws have external oversight bodies to hear transparency complaints, and a majority of those have reporting structures that seek to preserve independence.[31] About half of all oversight bodies can issue legally binding orders; of those, some can directly penalize noncompliant entities while others must rely on courts for enforcement.[32] INAI was, as described below, at the strong end of this range by design—an approach that is generally supported in the international transparency community.[33]

### *A. The Origins of INAI*

The 1917 Mexican Constitution is the governing document that has retained its basic form since the Mexican Revolution, when it was drafted in the city of Querétaro.[34] The original version of Article 6 contained a provision guaranteeing a traditional formulation of the right to freedom of expression.[35] In 1977, during a

30. For a global comparative approach to situating INAI, *see* Kwoka & Karanicolas, *supra* note 10, at 681–97.

31. *See id.* at 681; *see also Country Data: By Indicator*, The RTI Rating, https://www.rti-rating.org/country-data/by-indicator/ [https://perma.cc/SRV7-V8D6].

32. *See* Kwoka & Karanicolas, *supra* note 10, at 681; *see also Country Data: By Indicator*, *supra* note 31.

33. These structures are rewarded, for instance, in the global right to information rating. *See Country Data*, *supra* note 7.

34. *See* Zachary Bookman & Juan-Pablo Guerrero Amparán, *Two Steps Forward, One Step Back: Assessing the Implementation of Mexico's Freedom of Information Act*, 1 Mex. L. Rev. 3, 8 (2009). I visited a city museum in Querétaro where the desk on which this document was said to be signed resides, but alas, it was not in an area open to public viewing. Still, the mountainous region in which the city sits is a backdrop for the drama of the moment when revolutionaries imagined a liberal, participatory democracy for Mexico.

35. *See* Sergio López Ayllón, INAI, El Acceso a la Información Como un Derecho Fundamental: La Reforma al Artículo 6° de la Constitución Mexicana [Access to Information as a Fundamental Right: The Reform to Article 6 of the Mexican Constitution] 12 (2009); Constitución Política de los Estados Unidos Mexicanos, CP, art. 6, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 11-13-2007, *translated in* Rainer Grote, *Mexico 1917 (rev. 2007)*, Constitute, https://www.constituteproject.org/constitution/Mexico_2007 [perma.cc/L94A-6QT7] ("The expression of ideas

period of reforms provoked by infamous instances of government repression in the 1960s, an additional phrase was added: "the right to information will be guaranteed by the State."[36] The Supreme Court initially denied that this guaranteed a right for individuals to request and receive government-held information, however, by the 1990s it recognized that Article 6 encompassed such a right.[37] Still, no established mechanism existed to guarantee that right and despite some meaningful victories in court, the right to access public information suffered from a failure of implementation.[38]

Throughout this period, a single party—the Institutional Revolutionary Party (Partido Revolucionario Institucional, or PRI)—maintained the elites' authoritarian control through patronage, coercion, and corruption.[39] Toward the end of the twentieth century; however, the PRI's stronghold over Mexican politics was weakening.[40] In the 1990s, a new Federal Electoral Institute, created by constitutional amendment in the wake of highly suspect 1988 presidential election results, cleaned up voting procedures and improved competitive politics.[41] The 2000 election of President Vicente Fox from the National Action Party (Partido Acción Nacional, or

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shall not be subject to any judicial or administrative investigation unless such expression offends good morals, infringes upon the rights of others, incites crime, or disturbs the public order.").

36. Bookman & Guerrero Amparán, *supra* note 34, at 9 (citing, in particular, the Tlatelolco Massacre on October 2, 1968, in which Army and police forces opened fire on and killed hundreds of students demonstrating in Mexico City); Constitución Política de los Estados Unidos Mexicanos, CP, art. 6, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 11-13-2007, *translated in* Grote, *supra* note 35; *see also* Kate Doyle, Tlatelolco Massacre: Declassified U.S. Documents on Mexico and the Events of 1968, Nat'l Sec. Archive Elec. Briefing Book No. 10 (1998), https://nsarchive2.gwu.edu/NSAEBB/NSAEBB10/intro.htm [https://perma.cc/5JL9-NKSH].

37. *See* López Ayllón, *supra* note 35, at 13; *see* Bookman & Guerrero Amparán, *supra* note 34, at 10.

38. *See* López Ayllón, *supra* note 35, at 13.

39. Alejandra Ríos Cázares & David A. Shirk, *Evaluating Transparency and Accountability in Mexico: National, Local, and Comparative Perspectives*, *in* Evaluating Accountability and Transparency in Mexico: National, Local, and Comparative Perspectives 1–2 (Alejandra Ríos Cázares & David Shirk eds., 2007); Bookman & Guerrero Amparán, *supra* note 34, at 5.

40. *See* Jared Olson, *The Fall of Mexico's PRI Party, A Once-Dominant Political Force*, Al Jazeera (May 31, 2024), https://www.aljazeera.com/news/2024/5/31/the-fall-of-mexicos-pri-party-a-once-dominant-political-force [https://perma.cc/TG2W-THJ8].

41. Bookman & Guerrero Amparán, *supra* note 34, at 11. This body was one of three original constitutionally autonomous bodies, a constitutional designation described in greater detail below, created in the 1990s. Sergio López Ayllón, *La Autonomía del INAI Como Contrapeso de los Poderes Públicos* [*The Autonomy of the INAI As a Counterweight to Public Powers*], *in* INAI, Autonomía, Funciones, Relevancia y Retos por Venir 20, 25 (Irma Eréndira Sandoval-Ballesteros et al. eds., 2020).

PAN) represented the first peaceful transition of power to another political party in almost a century.[42]

With the introduction of party competition came increased calls for reforms in government accountability and transparency.[43] President Fox, eager for an early legislative victory, pushed for a transparency law during his first year in office.[44] As the Fox administration set a transparency agenda, civil society began to organize, meeting in May 2001 in Oaxaca to craft proposals and demands for the new legislation.[45] This group of journalists, activists, scholars, and lawyers was later dubbed "Grupo Oaxaca," and while accounts differ as to the group's degree of influence on the law eventually enacted, it is clear that this organized response was critical to some of the law's details.[46]

In 2002, legislators in the state of Sinaloa enacted the country's first access-to-information law, followed quickly by the Mexican Congress unanimously passing a federal law on the same topic.[47] The Federal Law of Transparency and Access to Public Information (Ley de Accesso a la Información Pública) established, among other things, the Federal Institute for Access to Public Information (Instituto Federal de Accesso a la Información, or IFAI),[48] INAI's

42. Bookman & Guerrero Amparán, *supra* note 34, at 5.

43. *See* Ríos Cázares & Shirk, *supra* note 39, at 2. Interestingly, in 2015, political scientists Daniel Berliner and Aaron Erlich used the Mexican states as a natural experiment in the effect of political party competition on pro-transparency legal reforms. *See* Daniel Berliner & Aaron Erlich, *Competing for Transparency: Political Competition and Institutional Reform in Mexican States*, 109 Am. Pol. Sci. Rev. 110, 121, 126 (2015). They found an "important role of political competition in driving the passage of state-level [access to information] laws" largely driven by an "insurance" motivation; that is, the current officials constrain themselves in order to constrain their successors should they lose re-election. *Id.* Their research supports the account that increasing political competition also created conditions for transparency reforms at the national level.

44. Bookman & Guerrero Amparán, *supra* note 34, at 14; *see also* Berliner & Erlich, *supra* note 43, at 112 ("When the PAN's [National Action Party's] Vicente Fox was elected to the presidency in 2000, however, he promised in his campaign to present an ATI [access-to-information] law to the Congress during the first year of his term.").

45. *Id.* at 13. Grupo Oaxaca also advocated for transparency obligations to extend across all government branches and federal bodies, a position eventually adopted in the later reforms as well. *See* López Ayllón, *supra* note 41, at 27.

46. López Ayllón, *supra* note 41; Bookman & Guerrero Amparán, *supra* note 34, at 13–14 (noting that one U.S.-based transparency researcher focused on Latin America found Grupo Oaxaca provoked a "sea change" in the drafting process, whereas a federal official who served as a lead drafter of the law contested the extent of influence).

47. Ríos Cázares & Shirk, *supra* note 39, at 9.

48. *Id.*; Bookman & Guerrero Amparán, *supra* note 34, at 5–6 ("Citizens can now appeal an information denial from a federal agency to an administrative court, receive a decision within 50 days, and if necessary, file suit thereafter in federal court.").

precursor.[49] Interestingly, some of Grupo Oaxaca's proposals that were rejected at the time as constitutionally infeasible—including empowering IFAI to investigate and sanction government entities[50]—were powers later conferred on INAI.[51] Within a few years, every state in the country had an analogous law.[52]

The next major shift in transparency laws in Mexico came with the subsequent presidential transition. While states had adopted their own laws, they varied greatly.[53] Toward the end of President Fox's term in office,[54] with a looming change in administration, another push for transparency arose, bolstered by IFAI's support and solid reputation.[55] The resulting reform, a 2007 constitutional amendment, aimed to harmonize a set of rights and procedures to access information and create an independent body to review files.[56] Still, under this rubric, IFAI only oversaw executive agencies, whereas each autonomous body and non-executive branch arm of government needed its own oversight agency.[57] The election of President Peña Nieto came with his announcement that he intended to convert IFAI into an independent body and grant it the power to oversee transparency obligations of all federal entities, including the legislative and judicial branches, as well as other autonomous bodies.[58] Thus was born INAI.

The creation of INAI fit within a "new variation" that emerged in Mexico—constitutionally autonomous bodies which depart from

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49. Ríos Cázares & Shirk, *supra* note 39, at 9.

50. Bookman & Guerrero Amparán, *supra* note 34, at 14.

51. *See* text accompanying *infra* notes 239–240.

52. Bookman & Guerrero Amparán, *supra* note 34, at 16.

53. Mauricio Merino, *The Challenge of Transparency: A Review of the Regulations Governing Access to Public Information in Mexican States*, *in* Evaluating Accountability and Transparency in Mexico, *supra* note 39, at 64 (using ten criteria to compare state-level implementation of transparency policy, and concluding that there are "as many differences [between them] as there are differences between the states.").

54. Mexico has single six-year presidential terms. *The Mexican Electoral System*, Instituto Nacional Electoral (Apr. 22, 2017), https://ine.mx/the-mexican-electoral-system/ [https://perma.cc/JPJ2-SLTP].

55. Bookman & Guerrero Amparán, *supra* note 34, at 15–16.

56. López Ayllón, *supra* note 41, at 28; *see also* Constitución Política de los Estados Unidos Mexicanos , art. 6, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 17-01-2025, *translated in* Grote, *supra* note 35 (defining all information held by executive, legislative, and judicial powers, alongside other entities such as public trusts and funds and unions, to be public, subject only to reservations for public interest, security reasons, and laws protecting personal privacy and guaranteeing every person the right to free access to such public information).

57. López Ayllón, *supra* note 41, at 29. The failure of independent bodies to create their own review bodies and IFAI's lack of enforcement powers were key weaknesses of the pre-INAI transparency system. *See* Bookman and Guerrero Amparán, *supra* note 34, at 49.

58. López Ayllón, *supra* note 41, at 29.

the traditional separation of government powers into only three branches: executive, legislative, and judicial.[59] These bodies are created directly by the Constitution (which dictates their membership and powers), are not among the three traditional branches of government but have parity with those branches, have decision-making authority over their resources and responsibilities, and are based on expertise rather than majoritarian control.[60] In the 1990s, three such bodies were created: the Human Rights Commission, the Federal Elections Commission, and the Bank of Mexico.[61] In 2008, the National Institute of Statistics and Geography was founded; the final six bodies were created in a series of reforms in 2013 and 2014, which included the creation of INAI.[62]

### *B. INAI's Structure and Powers*

The 2014 constitutional amendment, augmented by provisions added in 2016, established INAI.[63] INAI is an autonomous, multi-member body responsible for guaranteeing compliance with the right to access public information and protection of personal data, governed by a general (national) law to be passed by the federal Congress.[64] The Constitution granted INAI the power to review such matters from any obligated entity, including legislative, executive, and judicial powers; it also granted this power to review these matters from other autonomous bodies, political parties, public trusts and funds, and any natural or legal person that receives public funds or exercises public power, with the exception of matters within the jurisdiction of the Supreme Court, which are reviewed by a special three-member committee.[65] The Constitution further provided that decisions of the autonomous body to release information to the public are final and cannot be further challenged by

59. *Id.* at 23.

60. *Id.* at 24 (citing Manuel García Pelayo, Las transformaciones del Estado contemporáneo (1993)).

61. *Id.* at 25.

62. López Ayllón, *supra* note 41, at 25. The other five are the Federal Institute for Telecommunications, the National Institute for Education Evaluation, the Federal Commission for Economic Competency, the National Evaluation Council, and the Attorney General's Office of the Republic. *Id.*

63. Constitución Política de los Estados Unidos Mexicanos, art. 6 § A(VIII), Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 17-01-2025, *translated in* Grote, *supra* note 35.

64. *Id.*

65. *See* Ley General de Transparencia y Acceso a la Información Pública (General Act of Transparency and Access to Public Information) [hereinafter LGTAIP EN], tit. VIII, as amended DOF 04-04-2015 (Mex.).

obligated entities, with the sole exception that Solicitor General can bring a challenge before the Supreme Court when the autonomous body's decision could endanger national security.[66]

The Constitution also set forth INAI's basic structure, membership, appointment, and budgetary process. It established a seven-member commission, dictated that the Senate will approve new appointments by a two-thirds vote, and provided that the President has ten days after Senate approval to veto the appointment.[67] If the President vetoed a nominee, the next nominee could be approved by the Senate with a three-fifths vote.[68] If that second nominee was vetoed, the Senate could approve a third nominee by a three-fifths vote and no further veto could be had.[69] Each commissioner was to serve a seven-year term.[70] The Constitution further specified that gender equity would be sought in nominating commissioners.[71] The President of the Commission, selected by a secret vote of the commissioners, served for three years.[72] Finally, this set of provisions established a ten-member advisory board, chosen by a two-thirds vote of the Senate and charged with, among other things, proposing a budget to the Senate.[73]

The General Act of Transparency and Access to Public Information, passed in 2017, implemented these new constitutional guarantees.[74] The General Act applied to all levels of government in Mexico and acted as a floor for transparency rights.[75] In addition, both the federal government and each state also has its own law that provides jurisdiction-specific detail.[76] The federal law provided additional structures and obligations pertinent to INAI.[77] For example, it provided that "care shall be taken to ensure [commissioners have] experience in matters regarding access to information and

66. *Id.*
67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.*
73. *Id.*; *see also* Ley Federal de Transparencia y Acceso a la Información Pública [Federal Law on Transparency and Access to Public Information], art. 54, Diario Oficial de la Federación [DOF] 09-05-2016, últimas reformas DOF 01-04-2024 (Mex.) [hereinafter LFTAIP ENG] (granting power to the advisory board to issue "an opinion on the draft budget for the following year," to review "the Institute's report on the budget allocated to programs and the budget year and to issue the corresponding observations").
74. *See* LGTAIP EN, *supra* note 65, tit. VIII.
75. *Id.* arts. 1, 23.
76. *Id.* art. 60.
77. LFTAIP ENG, *supra* note 73, tit. III, ch. III.

protection of personal data."[78] It also required a detailed consultation process with public stakeholders in the selection of candidates for open commissioner positions.[79]

Importantly, the federal law also gave INAI a much more specific set of powers. It granted the power to interpret both the general and federal transparency laws, resolve actions for review filed by private persons against obligated entities, resolve actions for reconsideration filed by private persons to challenge decisions issued by state information commissions or on INAI's own initiative for claims of general relevance, establish sanctions against non-compliant entities, engage in public education about the right to access information, promote a culture of transparency in public education, train government officials, and provide technical support to obligated entities, among others.[80] It further specified that the Plenum, a group comprised of the seven sitting commissioners, has the power to set precedent[81] and file constitutional controversies, which are a special cause of action that allows one government branch to sue another for impinging on its authority.[82]

### *C. Transparency Rights in Mexico*

Beyond establishing the structure of INAI, both the general and federal laws elaborated on the specific transparency obligations of obligated entities, which INAI and its state counterparts were to enforce.[83] As with FOIA, the law provides that any person may submit a request for information,[84] and a response is required within twenty days.[85] The law also provides for various methods of submitting

78. *Id.* art. 18.
79. *Id.* art. 19.
80. *Id.* art. 21.
81. *Id.* art. 35(XVII); *see also id.* art. 199.
82. *Id.* art. 35(XVIII); *see also* Constitución Política de los Estados Unidos Mexicanos, art. 105, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 17-01-2025, *translated in* Grote, *supra* note 35 (describing constitutional controversies that arise between, among other possibilities, two federal entities).
83. LFTAIP ENG, *supra* note 73, arts. 68–73, 121. While the INAI no longer exists, the substantive transparency obligations remain intact. Abraham Díaz & Gustavo A. Alcocer, *Extinction of the National Institute for Transparency, Access to Information, and Personal Data Protection*, Nat'l L. Rev. (Mar. 26, 2025), https://natlawreview.com/article/extinction-national-institute-transparency-access-information-and-personal-data [perma.cc/BS75-8GKE]; *see Sheinbaum Says Audits Found 'Corruption' at Mexico's INAI: The Mañanera Recapped*, Mexico News Daily (Nov. 21, 2024), https://mexiconewsdaily.com/politics/sheinbaum-inai/ [https://perma.cc/BQJ5-JQUX] (noting the Mexican president's intention to "disband" the INAI and shift its responsibilities to the Anti-Corruption and Good Governance Ministry).
84. LFTAIP ENG, *supra* note 73, art. 123.
85. *Id.* art. 135.

a request[86] and tracking procedures,[87] and expressly allows anonymous requests.[88]

Under the law, some information can be "classified as reserved" or deemed "confidential."[89] Information is classified as reserved under one of thirteen categories, including information that would threaten national security or public safety, adversely affect international relations or monetary policy, threaten the safety of an individual, obstruct investigations, reveal deliberative process of government officials, or impede fair adjudications, among others.[90] Such information may generally only remain reserved for up to five years, with a possible five-year extension.[91] And no information can be classified as reserved if it involves serious human rights violations or acts of corruption.[92]

By contrast, confidential information covers personal data of an identifiable individual or various types of commercial secrets, including matters in banking, industry, and trade secrets.[93] Confidential information remains confidential indefinitely and can generally only be accessed by the private person or entity to whom the information belongs.[94] Information deemed confidential may still be disclosed in certain circumstances—most notably, under a "public interest test" in which the "proportionality between the invasion of privacy caused by the release of the confidential information and the public interest, must both be established."[95] When a document has reserved or confidential portions, a public version must redact the classified content.[96]

Far beyond simply dictating a request-and-response obligation, Mexican law commands a lengthy, detailed set of "transparency obligations"[97]—commonly called "affirmative" or "proactive" disclosure

86. *Id.* art. 123 (providing that requests may be submitted "to the Transparency Unit, through the National Platform, at the office or offices designated for this purpose, via email, postal mail, courier, telegraph, verbally or any means approved by the National System.").

87. *Id.* art. 124 (describing logging requests through the National Platform).

88. *Id.* art. 125 (The applicant's name "will be provided by the applicant in a manner optional and, under no circumstances, may be an essential requirement for the application to be accepted.").

89. *Id.* art. 110.

90. *Id.*

91. *Id.* arts. 97, 99.

92. *Id.* art. 112.

93. *Id.* art. 113.

94. *Id.*

95. *Id.* art. 117.

96. *Id.* art. 118.

97. *See id.* arts. 68–74 ("Title Third: Transparency Obligations").

obligations[98] in the United States—which require that certain information be published without waiting for a request.[99] The federal law details types of records subject to these requirements, a bullet-pointed list that runs eighteen pages,[100] revealing a level of specificity lacking in the United States.[101] Many requirements specify the publication of statistical reports on public health, the economy, crime, law enforcement, and the like.[102] Some mandate the publication of records related to formal legislative or judicial processes[103] and specific budgetary reporting; still others mandate publication of specific kinds of records held by a particular obligated entity.[104] Some listed requirements are almost comically specific, such as "statistical information on historical and notable trees in the country"[105] or "the list of sugar mills, specifying their production volumes, annual cost, and federated state."[106] This long and detailed list of transparency obligations—now numbering more than 350

98. *See, e.g.*, Bernard W. Bell et al., *Improving the Affirmative Disclosure of Agency Legal Materials*, 13 Mich. J. Env't & Admin. L. 342, 420 (2024) (using "proactive" and "affirmative" disclosure obligations interchangeably to refer to obligations to publish information without waiting for a request and making recommendations for expansions to existing obligations in U.S. law for such publications).

99. *See, e.g.*, LFTAIP ENG, *supra* note 73, art. 69 ("legally bound entities . . . must make available and keep updated the information as is specified herein below").

100. *See id.* art. 69–76.

101. *See id.* The primary affirmative disclosure obligations in the United States appear in the Freedom of Information Act (FOIA), which requires publication in the Federal Register of certain types of documents, including agency regulations and general guidance, and publication online of a few other types of records, including agency orders and records frequently requested (three or more times) by a member of the public. *See* 5 U.S.C. § 552(a)(1)–(2).

102. *See, e.g.*, LFTAIP ENG, *supra* note 73, art. 69(V)(c) (mandating publication of "[s]tatistics on police force performance and reliability assessments disaggregated by federated state and institution"); *id.* at VII(c) (mandating publication of "[s]tatistical information on disputes settled by international arbitration on matters of foreign trade, specifying the arbitrator, parties, subject matter of the dispute and date of award"); *id.* at XII(a) (mandating publication of "[t]he list of institutes or health facilities, detailed by name, specialty, address and phone number").

103. *See, e.g.*, *id.* art. 70(IV) (mandating publication of "the daily debate calendar [of the legislature]"); *id.* art. 71(IV) (mandating publication of "the rulings imposing disciplinary sanctions on members of the Federal Judiciary Branch").

104. *See, e.g.*, *id.* art. 72(I) (listing particular disclosure requirements for the Mexican Central Bank, such as "[s]tatistical data on printed paper money and minted metallic currency").

105. *Id.* art. 69(IV)(b).

106. *Id.* art. 69(IX)(b).

specific items[107]—is a defining feature of the law, and one INAI was empowered to enforce.[108]

Finally, the law establishes internal structures within each obligated entity: an office called a Transparency Unit and a body called a Transparency Committee.[109] The Transparency Unit is responsible for processing requests, similar to a FOIA office, but also for helping the public submit requests and promoting a culture of transparency inside the entity.[110] The Transparency Committee, meanwhile, is a multi-member committee, composed of the person in charge of the obligated entity's archives, the head of the Transparency Unit, and the head of the each entity's Internal Control Body (akin to an inspector general's office).[111] This Committee resolves matters by vote, and must, by such vote, approve any classification of information as reserved or confidential and prepare a public index of all such decisions.[112] The law specifies that the "Transparency Committee will have access to the classified information held by the relevant Department."[113] Further, the Transparency Committee must review any proposed response of a nonexistence of information and confirm the reasons for the nonexistence.[114] And the law requires that all requests for access to information and responses to those requests (including information provided) be published online.[115]

* * *

This comprehensive set of legal structures is remarkably detailed in defining obligations, having endowed INAI with authority, and having protected INAI (and its state counterparts) from political interference to the maximum extent possible. This legal architecture, as the next Part will describe, defines the scope of activities in which

107. INAI, *¿Qué es la Plataforma Nacional de Transparencia?*, YouTube (Apr. 8, 2019), https://www.youtube.com/watch?v=PS6DBh7WKDc [perma.cc/9RJE-FKSC].

108. *See* LFTAIP ENG, *supra* note 73, art. 77 ("The Institute will oversee that legally bound entitizes comply with the transparency obligation regarding the information they disclosed . . . ."); *see also id.* arts. 78–80 (detailing oversight methods).

109. *See* LFTAIP ENG, *supra* note 73, tit. II, ch. III.

110. *Id.* art. 61.

111. *Id.* art. 64.

112. *Id.* art. 140.

113. *Id.*

114. *Id.* art. 141.

115. *Id.* art. 144.

INAI engaged to effectively protect the fundamental right of access to information.

## II. The Operations of INAI

Irma Eréndira Sandoval-Ballesteros describes INAI as a "particularly powerful oversight organization" which "functions simultaneously as an administrative court in charge of reviewing the government's negative responses to information requests and as an ombudsman responsible for strengthening the 'culture of transparency' in both government and society."[116] Consistent with her view, I observed an immense, powerful, comprehensive body engaged in such a wide variety of activities it is difficult to capture them all.

In this Part, I endeavor to theoretically link INAI's various functions and to further use the interviews I gathered to document how the officials charged with carrying out those functions view their import and impact. This institutional account, based in the social science methodologies used for institutional ethnographies, weaves together public data, legal frameworks, and cultural norms to paint a picture of a dynamic, holistic approach to being a transparency guardian.[117]

### *A. National Transparency Platform*

There was no conversation at INAI that did not, at some point, come back to the National Transparency Platform (PNT, its acronym in Spanish).[118] From an outside perspective, the PNT appears to be a relatively straightforward portal for requests and repository for

116. Irma Eréndira Sandoval-Ballesteros, *Structural Corruption and the Democratic-Expansive Model of Transparency in México*, *in* Troubling Transparency, *supra* note 6, at 291, 296.

117. The literature on institutional ethnography or anthropology of law establishes methodologies for understanding how structures and institutions are linked in the experience of those engaging them, and the accounts of law on the ground that those linkages reveal. *See, e.g.*, Billo & Mountz, *supra* note 26; Marjorie L. Devault, *Introduction: What is Institutional Ethnography?*, 53 Soc. Probs. 294, 294 (2006); Laura Nader, *The Anthropological Study of Law*, 67 Am. Anthropologist 3, 16–17 (1965); Laura Nader, *Up the Anthropologist: Perspectives Gained from Studying Up*, *in* Contrarian Anthropology: The Unwritten Rules of Academia 12, 18–19 (2018).

118. Plataforma Nacional de Transparencia [PNT], https://www.plataformadetransparencia.org.mx/Inicio [https://perma.cc/R8Q8-R2UX]; *see also* LGTAIP EN, *supra* note 65, art. 49 (establishing the PNT by mandating that "Guarantor Agencies will develop, manage, implement and put into operation the electronic platform that allows compliance with procedures, obligations and provisions outlined in this Act . . . ."). The PNT has remained in operation even though INAI has been extinguished. *See Proceso Para Ejercer El Derecho De Acceso A La Información* [*Process for Exercising the Right of Access to Information*], INAI, https://home.inai.org.mx/?page_id=1643 [https://perma.cc/Q6ZW-67EP].

released documents. Yet, the reality is much more complex. The PNT is the Swiss army knife of transparency, an adaptable tool that functions slightly differently to each person depending on their role.

To a member of the public, the PNT has two main visible functions: (1) facilitating requests and (2) acting as an online library tool. Regarding the first function, facilitating requests, any person can make an account with an email and password login, and the process of making a request is then straightforward.[119] A dropdown menu allows the user to choose to make a request at the federal or state level and, if state, to choose which state.[120] A subsequent dropdown menu shows all obligated entities within the jurisdiction and specifies that a given request can be directed to a maximum of thirty-three obligated entities at once.[121] Then, in a text box, the user can describe the requested information.[122] A second optional text box allows the user to provide any details that might help in the search for responsive information.[123] There is also an option to upload documents.[124] And finally, the user can designate how they would like to receive the requested information.[125]

The PNT then acts as the default method through which a response is provided and any appeal—then to INAI—is filed.[126] Inside the PNT, a user can tell when a request becomes eligible to appeal,[127] and a simple button to submit a complaint to INAI gave the user access to a straightforward page in which the basis for

119. *See* PNT, *supra* note 118 (to create or login to an account, one chooses 'Iniciar Sesion" found on the upper right corner of the homepage).

120. *See id.*

121. *Solicitud de Acceso a la Información Pública* [*Request for Access to Public Information*], Plataforma Nacional de Transparencia, https://www.plataformadetransparencia.org.mx/auth/login?returUrl=%2Fsisai%2Fsolicitudes%2Finformacion-publica [https://perma.cc/T3EJ-TPBM]. There are now more than 8,000 obligated public entities cataloged in the PNT. Presentation for the INAI, Luis Fernando Araiz Morales, General Directorate of Information Technologies, *Plataforma Nacional de Transparencia* [*National Transparency Platform*] (June 16, 2022) (on file with author).

122. PNT, *supra* note 118.

123. *Id.*

124. *Id.*

125. *Id.* In addition, once you create an account and log in, accessible options are provided, including requests for accommodations, indigenous language access, and an optional demographic survey concerning the purposes of the request. *Id.*

126. *See* Norma Julieta Del Río Venegas et al., El ABCs De La Plataformas Nacional De Transparencia [The ABCs Of The National Transparency Platform] 15–16 (2022).

127. *See* Interview with Gabriel Santiago López & Martha Patricia García Medina, Ponencia de la Comisionada Blanca Lilia Ibarra Cadena, in Mexico City, Mex. (Feb. 16, 2023), at 3 [hereinafter Ponencia Interview] (transcript on file with author).

dissatisfaction could be written in a text box or attached in a separate document.[128] Moreover, the deadlines for all actions for each request are clearly stated inside the user's account, as is a history of all requests, responses, and appeals.[129] Finally, a user can submit a complaint just as easily if the user believes an obligated entity has failed to comply with its transparency obligations (the affirmative publication requirements listed in the statute).[130] That is, if a user searches for information that should be public, and it is absent, then the user can submit a complaint that the entity is in violation of the law through this same platform.[131]

Importantly, this system was consolidated in 2021; the PNT now allows the user to make a request to any of the more than 8,000 obligated entities at the federal and state levels across the country.[132] In 2022, 1,029,715 requests for information were submitted through the PNT, with 240,623 directed to federal entities and the remainder to state-level entities.[133] That same year, the public submitted 90,331 appeals through the PNT, both to INAI and to its state counterparts.[134]

The second publicly visible function of the PNT is akin to a readily-searchable online library of public information.[135] This repository encompasses all information subject to transparency obligations—the affirmative obligations described above,[136] which total some 8,665,875,354 records published by 8,240 obligated entities across the country.[137] It also houses all requests and responses ever made by anyone, which now total more than 7,746,498 requests,[138]

128. *See* Interview with Ana Yadira Alarcón Márquez, Jorge Iván Guzmán Alvarado, Juan José Rivera Crespo, Evangelina Sales Sanchez, in Mexico City, Mex. (Feb. 9, 2023), at 8 [hereinafter Secretaria Tecnica del Pleno Interview] (transcript on file with author) ("[I]f you submit [your action for review] through the national platform, and select the file, many of the fields will be pre-filled [such as] the obligated entity and the name of the requester or legal representative . . . the date of the response . . . the reasons or motivations for denial and the copy of the response.").

129. PNT, *supra* note 118.

130. *Id.*

131. INAI, *supra* note 107.

132. *See* INAI, Informe de Labores [Work Report] 281 (2022).

133. *Id.* at 282.

134. *Id.* at 286. Integration of the state-level commissions is ongoing, and as of the end of fiscal year 2022, twenty-six state commissions (of thirty-two, including the federal district of Mexico City) used the PNT to handle appeals. *See id.*

135. *See* PNT, *supra* note 118 ("The home page of the Internet portals of the regulated entities will have a direct access link to the site where the public information referred to in this Title is found, which must have a search engine.").

136. *See* discussion *supra* Section I.C.

137. INAI, *supra* note 132, at 288.

138. *Id.* at 279.

as well as all resolutions of appeals to INAI.[139] Several categories of information of great public interest—including public salaries, public contracts, directories, and government services—have special search buttons on the PNT homepage which take the user directly to search engines on those topics.[140] These thematic search engines facilitate about two thirds of all PNT searches (overall, at last count in the 2002 annual report, 12,150,403).[141] In this way, the PNT serves as one-stop shopping for members of the public seeking government information.

Importantly, the PNT is concerned with the accessibility of information, not just its technical availability. It is constantly introducing new tools to improve the functionality of its offerings.[142] For example, it created a tool to export data into machine-readable formats, such as Excel.[143] It also offers a variety of accessibility aids, such as text-to-voice, high-contrast versions, large font, and more.[144] The PNT is not sacrificing aggressive transparency measures but remains steadfast in ensuring information is maximally accessible.

Yet, the PNT encompasses much more than what the public sees. The General Transparency Law required the system to also facilitate communications among obligated entities, INAI and its state counterparts,[145] a functionality that elevated the PNT to an integrated transparency tool. Every person who interacts with transparency obligations within the government has their own back-end login to the PNT, an administration-side portal. But each person's portal looks different depending on their responsibilities.[146] Officials in the Transparency Unit in each obligated entity can see (or log) new requests that arrive and refer the request to the area of the entity with relevant information.[147] This referral comes with an internal deadline, which appears in the PNT.[148] Meanwhile, each area has a

139. Presentation for the INAI, *supra* note 121, at 7.

140. *Id.* at 7–8 (describing the targeted search functions for these categories); *see also* PNT, *supra* note 118.

141. INAI, *supra* note 132, at 279; *see* Presentation for the INAI, *supra* note 121, at 9.

142. INAI, *supra* note 132, at 279.

143. *Id.* at 280.

144. *Id.* at 281.

145. PNT, *supra* note 118; LGTAIP EN, *supra* note 65, tit. VIII.

146. *See* Interview with Sandra Sandoval Corchado, Raquel Granillo Herrera & Gloria Bravo, Unidad de Transparencia [Transparency Unit], INAI, in Mexico City, Mex. (Feb. 2, 2023), at 2–3 [hereinafter Unidad de Transparencia Interview] (transcript on file with author).

147. *See id.* at 25–26; *Banco de México's Transparency Unit (TU)*, Banco de México (2023), at 12 (on file with author) ("The National Transparency Platform (PNT) is the channel provided by INAI, for receiving information requests that are made under the right of access to information according to Article 6 [of the] Mexican Constitution.").

148. Unidad de Transparencia Interview, *supra* note 146, at 2–3.

designated point of contact for access to information matters, and that person's login to the PNT lists requests referred to them as well as the deadline for responding to the Transparency Unit.[149]

The Transparency Unit was also able to see any time a response was appealed and submit a defense of its response to INAI.[150] Those in INAI responsible for handling appeals could access the full file, including the initial request and response, the requester's submitted basis for appeal, and the Transparency Unit's defense of its actions, along with all relevant deadlines and actions taken.[151] The portal, therefore, looks different for every actor, giving them access to and tracking of all documents relevant to actions required of them.

Finally, the PNT facilitated communication, coordination, and supervision between INAI and its state counterparts. Each state had a "guarantor agency" or state-level information commission which administered transparency obligations at the state level, including resolving complaints submitted by the public.[152] Nearly all such state-level commissions used the PNT to manage requests, appeals, and complaints, just as federal agencies and INAI did, though the most populous state—Estado de México—had its own platform, interconnected with the PNT.[153] Because state-level commission decisions could be appealed further to INAI and, in some limited cases, INAI could remove a case from the state-level commission at its discretion,[154] ensuring that deadlines are honored and requests do not get lost.

This comprehensive tracking system has obvious benefits in processing requests, ensuring that deadlines are honored, and ensuring that requests do not get lost.[155] But there are less obvious benefits,

149. *See id.* at 26.

150. *Id.* at 5.

151. *Id.* at 5–6*; see also* Ponencia Interview, *supra* note 127, at 3 (Patricia García Medina stated that the PNT "has modules for responding to requests, and there's a module we have for processing appeals," and that "in the [PNT] we have the file for all of the actions for review that are assigned to us.").

152. PNT, *supra* note 118.

153. Interview with María del Rosario Mejía Ayala, Sharon Morales Martínez, Guadalupe Ramírez Peña, Luis Gustavo Parra Noriega, & José Martínez Vilchis, Comisionados del Infoem, Toluca, Estado de México, Mex. (Mar. 27, 2023), at 9 [hereinafter Infoem Interview] (transcript on file with author).

154. LGTAIP EN, *supra* note 65, art. 41; PNT, *supra* note 118; *see also* Secretaria Tecnica del Pleno Interview, *supra* note 128, at 12 (discussing the rationale for taking these types of cases as being of particular national importance or filling in for a state agency that is unable to resolve the case).

155. Unidad de Transparencia Interview, *supra* note 146, at 27 (in response to a question asking whether they are mostly able to comply with deadlines, Sandoval said, "We always have to comply, it is the law.").

too. For example, when a program area has not complied with an internal deadline to respond to the Transparency Unit, the Transparency Unit can easily follow up.[156] The head of the Transparency Unit at INAI explained that if an area does not respond to a request referred to them, she contacts the director of the area to report that the Transparency Unit liaison is not responding; if that does not work, she continues up the chain of authority to ask for support to receive a response.[157] The Transparency Unit in the Central Mexican Bank similarly reported that if an area is not responding, they will sometimes indicate that they plan to elevate noncompliance to the director level if needed.[158] Without clear tracking available not only to the Transparency Unit but to every area's liaison, such accountability would not be possible.

Another important feature of the PNT's detailed tracking and documentation is the ability to pull data on performance of transparency obligations easily. For example, INAI published an annual report that ran some 500 pages, detailing all manner of transparency activities, comparisons of performance among obligated entities, monitoring and auditing (described further below),[159] and improvements and reforms.[160] In another stunning example, the director of the Transparency Unit at INAI easily cited statistics to me concerning the rate at which their unit's responses to requests were appealed versus other agencies.[161] Thus, those who interact with the transparency system can see—in real time—where the weak links are and how to improve. In short, the PNT is the glue that held together all activities of obligated entities and oversight bodies, rendering the transparency system itself visible to the public and policymakers alike.

### *B. Adjudication*

INAI was an administrative adjudication juggernaut. It processed an extremely high volume of appeals and complaints and possessed

156. *See id.* at 28.

157. *Id.*

158. Interview with Rodrigo Villa Collins, Claudia Tapia Rangel & Sergio Zambrano Herrera, Banco de México, in Mexico City, Mex. (Mar. 23, 2023), at 13 [hereinafter Banco de México Interview] (transcript on file with author).

159. *See* discussion *infra* Section II.C.

160. *See generally* INAI, *supra* note 132 (reporting in astonishing detail statistics about the number of requests, outcomes of those requests, appeals and outcomes, requesters' demographic information, complaints about failure to publish required records, appeals from state entities, lawsuits, sanctions issued, and many other matters).

161. *See* Unidad de Transparencia Interview, *supra* note 146, at 5.

the full panoply of enforcement powers one might imagine. It set precedent, held public sessions, examined disputed records, received submissions from both sides of the dispute, and issued written rulings. It performed an astonishing amount of work in short order. And more than three quarters of the time, it sided with the public.[162] This Section will describe how and what INAI accomplished through adjudication.

There are three ways cases—dubbed "actions for review" under the federal law[163]—arrived at INAI.[164] The overwhelming majority of cases were appeals from a requester who was dissatisfied with a response from a federal entity.[165] In the last reported year, INAI resolved 16,894 such cases.[166] The other cases INAI received originated from INAI's state counterparts; some (1,151 in the last reported year) were appealed up from the state commission's order, while others (only 59 last year) were taken up by INAI in its discretion to decide them in the first instance.[167] The last category typically involved requests of particular public interest or with broader implications—factors that INAI identified in part by sampling, each week, actions for review filed at the state commissions and screening those samples.[168] Every single appeal was decided by a majority vote of the commissioners themselves, among whom had to be a five-member quorum, within forty days.[169]

When I arrived at INAI, I was centrally preoccupied with how such a feat was possible. How could a group of five to seven commissioners, with already big jobs overseeing an agency of more than 800 employees with myriad functions,[170] also decide—as a central part of its work—individual appeals in some twenty thousand cases a year?[171]

I sat down in the office of the Secretary of the Plenum, a position of great power within INAI, serving just below the commissioners

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162. *See* INAI, *supra* note 132, at 58.

163. LFTAIP ENG, *supra* note 73, art. 146.

164. *See* INAI, *supra* note 132, at 57.

165. *Id.* The law specified an exhaustive list of bases for submitting an action for review, including classification of information, declaration of non-existence of information, delivery of incomplete information, failure to respond by the legal deadline, costs assessed, and more. LFTAIP ENG, *supra* note 73, art. 148.

166. *See* INAI, *supra* note 132, at 57.

167. *Id.*

168. *See id.* at 59–60.

169. LFTAIP ENG, *supra* note 73, art. 151 (providing that an action for review must be resolved within forty days, which can be extended once for a maximum of twenty additional days); *id.* art. 33 ("Plenum sessions will be valid with the attendance of at least five Commissioners, the Commissioner-President included.").

170. Secretaria Tecnica del Pleno Interview, *supra* note 128, at 3.

171. *Id.* at 5.

themselves, and with her own staff and departments below her.[172] She spoke with me while simultaneously working her way through a large stack of papers, signing each one with ink and then passing them to a staff member. (I was told this ministerial task was soon to being digitized.) Her office, the Secretariat, was responsible for managing the operations of casework and plenary sessions.[173] She apologized for multitasking, although, by the end of the two hours I spent with her, it seemed more appropriate for me to apologize for intruding, given the enormity of her responsibilities.

When a member of the public submitted an action for review, the Secretariat had seventy-two hours to assign it—a process governed by randomization—to a particular commissioner, though her office always completed the task within twenty-four hours.[174] The PNT was immediately critical; once assigned, the file was available to the commissioner's staff through the PNT, a record from which they could pull the full history starting with the request and all subsequent communications up to the action for review.[175] The PNT also delivered notifications; obligated entities received notification of the action for review, the requester was notified of any response submitted and relevant deadlines, and the final resolution was transmitted through the PNT and provided to the arm of the Secretariat that monitors compliance with the resolution.[176] As the Secretary said, for the PNT, it is "very important . . . that the system be interconnected."[177]

Once an action for review arrived at the assigned commissioner's office, preliminary procedural steps protected both the integrity of the process and important substantive rights of the public. The first procedural step screened the action for review to ensure it conformed with required processes, such as stating a basis for the complaint and submitting it by the relevant deadline.[178] Nonconforming actions were dismissed, but—as appropriate—the commissioners'

172. *Id.* at 2–3.

173. *Id.* at 3.

174. *Id.* at 5; *see also* Ponencia Interview, *supra* note 127, at 3 (describing the method of receiving assignments from the secretariat).

175. Secretaria Tecnica del Pleno Interview, *supra* note 128, at 6.

176. *Id.* at 7. The secretary reported that ninety percent of notifications went through the PNT, and the remainder were sent through other methods as requested but also logged through the PNT. *Id.*

177. *Id.*

178. *See Proceso Para Ejercer El Derecho De Acceso A La Información* [*Process for Excercising the Right of Access to Information*], *supra* note 118.

staff contacted the requester to clarify and provide an opportunity to respond before dismissal.[179]

These initial procedures also protected the public. Officials at INAI were adamant that members of the public can effectively avail themselves of the review process without a lawyer's help.[180] It was enough, they explained, for the complaining party to say, for example, "I do not agree with the classification [of information as exempt] because I believe this information is public."[181] With a statement as brief as that, a complaint was adequately stated and an action for review could proceed.[182] Beyond the simplicity of submitting an action for review, many individuals I spoke with stressed the importance of INAI's duty to supplement the complaint[183] with its own investigation.[184] Secretary Alacrón explained:

> INAI . . . is a citizens' body and we serve the citizens. Sometimes the citizens do not know how to present [their complaint] and so we have the obligation to say in some way, if I see that they missed something and I do understand what they wanted to say, but they did not say it well, I have the power to correct the error without the person asking for [that help].[185]

Another official, a commissioner's chief of staff, emphasized that even with very little in the way of argument from the appealing party, "[w]e can . . . get to the bottom of the issue."[186] The General Counsel of INAI similarly stressed that there is a "social imbalance" that must be corrected by allowing INAI to reach the merits even when the requester has not identified the right arguments.[187]

Once the commissioner's staff clarified the issues and the action for review was deemed facially adequate, it was "accepted," prompting notification to the obligated entity through the PNT that it had seven days to respond with any relevant arguments or proof.[188] Oftentimes, the entity stood on its initial response and justifications,

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179. Secretaria Tecnica del Pleno Interview, *supra* note 128, at 8.

180. *See* Ponencia Interview, *supra* note 127, at 3.

181. *Id.* at 2.

182. *Id.*

183. This translation, my own, is from "suplencia de la queja." Secretaria Tecnica del Pleno Interview, *supra* note 128, at 9.

184. *Id.*

185. *Id.*

186. Ponencia Interview, *supra* note 127, at 3.

187. Interview with Gonzalo Sánchez de Tagle Pérez Salazar, Abogado General del Instituto Nacional de Transparencia del Estado Mexicano [Gen. Couns. of the Nat'l Inst. of Transparency of the Mexican State], in Mexico City, Mex. (Feb. 23, 2023) (transcript on file with author).

188. Ponencia Interview, *supra* note 127, at 4.

but sometimes, they added information or even changed their position to, for example, provide more information to the requester.[189]

INAI, for its part, had the power to inspect the underlying records, even in cases of national security and law enforcement records.[190] While many records could be provided for inspection electronically, some were so sensitive the obligated entity did not want to risk electronic transmission.[191] In those instances, authorities from the entity would come to INAI in person, with physical copies of the records, and meet with staff working on the matter to review the records.[192] Often inspection was required in those cases because the arguments presented were not very detailed due to the nature of the information.[193] While there was no live hearing akin to court proceedings, a requester could submit additional arguments or even present themselves at INAI personally.[194] In those instances, the staff person working on their case would physically go down to the office that receives members of the public and answer questions or hear their concerns.[195] As a result, the process was flexible, open, and informal. Still, it was well documented and accessible to the public through the PNT.[196] Finally, decisions were required to be (and were) made within forty days, with the possibility of a single, twenty-day extension.[197]

Managing this volume of work with such strong protections for the public demanded significant resources, as work wrapped up on a weekly cycle.[198] When I was there, each commissioner received approximately seventy new actions for review each week.[199] Each

189. *Id.*

190. LFTAIP ENG, *supra* note 73, art. 153 ("Commissioners must have, at all times, access to classified information in order to determine its nature as required."). Exercise of this power is optional and often is unnecessary. Ponencia Interview, *supra* note 127, at 4. One staff person said that if, for example, an obligated entity claims that releasing a record could affect a lawsuit, INAI will verify the status of the lawsuit. *See* LFTAIP ENG, *supra* note 73, art. 170. If the lawsuit has concluded, it will deny that basis for withholding the record. Inspection of the records themselves is not required in such a case. *See* Ponencia Interview, *supra* note 127, at 6.

191. *See* Ponencia Interview, *supra* note 127, at 5.

192. *Id.*

193. *Id.*

194. *Id.* at 8.

195. *Id.*

196. PNT, *supra* note 118.

197. LFTAIP ENG, *supra* note 73, art. 151.

198. Secretaria Tecnica del Pleno Interview, *supra* note 128, at 9.

199. Ponencia Interview, *supra* note 127, at 3. When I was at INAI, there were two open commissioner seats, and thus work was divided not between seven commissioners, but five. Hum. Rts. Watch, *Mexico: Public Accountability, Privacy Under Threat* (May 24, 2023), https://www.hrw.org/news/2023/05/24/mexico-public-accountability-privacy-under-threat

commissioner had a staff of about fifteen people, ten of whom worked on individual access-to-information cases and were each assigned about seven new cases per week.[200] The staff members interacted with the obligated entity and requester in the course of the additional submissions, as described above, then drafted an initial proposed resolution.[201] An evolving system of precedents, which staff cited as important in their work, helped streamline decision-making in cases where the subject matter had already been decided.[202]

The chief of staff—sometimes alongside other senior staff—met weekly with the commissioner to review a summary of proposed resolutions and answer questions, after which the commissioner authorized release of the proposed resolutions to other commissioners.[203] Each Friday, by 10:00 a.m., staff for each commissioner transmitted to all other commissioners' offices the proposed resolutions for the following week.[204] By Monday at 1:00 p.m., each commissioner's staff was required to circulate any commentary on the proposed resolutions to the authoring commissioner, including suggestions, revisions, or objections.[205] The authoring commissioner then responded.[206] The discussions often resulted in great agreement, especially when the comments were minor, such as suggestions to include additional detail or support in the resolution, though dissenting votes and concurring votes with additional commentary still remained in some matters.[207] By 6:00 p.m. on Tuesday, the final decisions were required to be submitted to the Secretary of the Plenum, who had until the 10:00 a.m. Wednesday plenary session to create a final list of the votes of the 500 or so cases to be decided that week.[208] The parties were notified the following Monday

[https://perma.cc/Q7VL-CASY]. As a result, each commissioner and their staff were responsible for more than the usual number of cases, typically 100 per week. Secretaria Tecnica del Pleno Interview, *supra* note 128, at 10.

200. Ponencia Interview, *supra* note 127, at 7. The remaining staff work on personal data protection complaints and cases. *Id.*

201. *Id.*

202. *Id.* at 22.

203. *Id.* at 8–9.

204. *Id.* at 10.

205. *Id.*

206. *Id.* at 11.

207. *Id.*

208. Secretaria Tecnica del Pleno Interview, *supra* note 128, at 11.

at the latest.[209] Each commissioner could choose to present a case, typically because of its importance to the public.[210]

Notably, the requester overwhelmingly won—at least in part. Of more than 18,000 cases resolved in the last reporting year, 5,447 were dismissed on procedural grounds.[211] Of the 12,657 decided on the merits, only 20% affirmed the action of the obligated entity.[212] The remainder were reversed (26%), modified (45%), or resulted in an order to comply with the request (9%).[213] I asked a chief of staff for one commissioner why he thought the reversal rate was so high; put differently, why does the requester win at such an astonishing rate? His answer was as follows:

> I think it is because we have freedom to decide. Before, the oversight bodies were not autonomous, they were under the executive, and I think that there would be less degrees of freedom. Now, the Institute has freedom to resolve the merits how it sees fit, and also to supplement the complaint . . . [whereas] a Court will say, you know, "you grieved this in the wrong form, it is not procedurally correct." And here, I insist, despite the fact that the requester did not say, "A, B, and C," we say, "oh, OK, you say it's not classified, we will review if it complies with A, B, and C [requirements of the law]."[214]

Another high-ranking member of this commissioner's staff added that obligated entities have a natural tendency to over-withhold records out of caution, but that INAI worked under a "maximum transparency" principle and thus, did not simply uphold the initial responses.[215] The chief of staff asserted that INAI maintained its focus on the citizen because it originated in the citizenry—academia, journalism, civil society—who fought for the human right of access to information; the citizen does not have the resources the government has, so INAI had to, in a sense, represent them.[216] The President of INAI herself cited to me the outcomes of resolutions—specifically the eighty percent reversal rate—as evidence that the commissioners were "authentic guardians and defenders of the people's right to know."[217]

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209. *Id.* The law provided three business days for notification. LFTAIP ENG, *supra* note 73, art. 159.

210. Ponencia Interview, *supra* note 127, at 12.

211. INAI, *supra* note 132, at 58.

212. *See id.* at 58–59.

213. *Id.*

214. Ponencia Interview, *supra* note 127, at 13.

215. *Id.* at 14.

216. *Id.* at 17.

217. Interview with Blanca Lilia Ibarra Cadena, Comisionada Presidenta [Commissioner President], INAI, in Mex. City, Mex. 2 (Mar. 14, 2023) (transcript on file with author).

Another critically important attribute of INAI's adjudication model was finality. Technically, INAI's resolutions of actions for review were not susceptible to further challenge in court.[218] But functionally this operated in only one direction: if INAI ordered an obligated entity to produce information that it had withheld, the obligated entity could not bring a lawsuit to challenge INAI's order—the order was "unassailable."[219] Nonetheless, a member of the public who remained aggrieved by INAI's resolution—for example, a resolution affirming an obligated entity's decision to withhold information—could challenge the resolution by bringing in court an "amparo," which is a cause of action for constitutional violations.[220] In a very real sense, then, orders that promote transparency were final, whereas orders that approve secrecy could be further challenged in court. The primary exception to this rule was that the Solicitor General of Mexico was able bring a case to challenge an order that threatens national security, but the procedural requirement that such a suit be authorized at the highest level rendered the practice quite rare.[221] The general counsel of INAI described the un-reviewability of INAI's resolutions as being "of enormous importance . . . and unusual, because no one else has it."[222]

Finally, INAI also issued "construction criteria," which functioned as binding interpretations of the law.[223] A committee, housed in the Secretariat of the Plenum, analyzed INAI's decisions to find issues that recurred in the same or very similar forms and to suggest construction criteria for consideration.[224] The Secretary of the Plenum gave the example of requests for international travel expenses of

218. LGTAIP EN, *supra* note 65, art. 97 ("The resolutions issued by the Guarantor Agencies, referred to in this Chapter, are final and unassailable for regulated entities. The individual may challenge the decision by way of a writ of amparo, under the terms of applicable legislation.").

219. PNT, *supra* note 118; LGTAIP EN, *supra* note 65, art. 97 ("The resolutions issued by the Guarantor Agencies, referred to in this Chapter, are final and unassailable for regulated entities. The individual may challenge the decision by way of a writ of amparo, under the terms of applicable legislation.").

220. LGTAIP EN, *supra* note 65, art. 97; PNT, *supra* note 118.

221. Interview with Gonzalo Sánchez de Tagle Pérez Salazar, *supra* note 187, at 1. The general counsel of INAI explained that there used to be one or two such cases per year, or sometimes none, until the pandemic, when there were twenty-seven in 2021 and twelve in 2022, which he attributed in part to information access issues concerning vaccines. *Id.* at 2. By contrast, citizens bring about 500 amparo actions per year. *Id.*

222. *Id.* at 1.

223. Secretaria Tecnica del Pleno Interview, *supra* note 128, at 11–12; *see* INAI, Lineamientos para la Emisión de Criterios De Interpretación [Guidelines for the Issuance of Interpretation Criteria], ACT-PUB/31/03/2022.09 (Mar. 31, 2022) (Mex.) (establishing a process for creating these binding precedential interpretations).

224. Secretaria Tecnica del Pleno Interview, *supra* note 128, at 12.

certain legislators.[225] With 500 representatives and 128 senators, many of whom make international trips for official government purposes, recurring requests for travel expenses were ripe for interpretation criteria that definitively decided what information was public.[226] Another recently issued construction criteria was more procedural: it declared that when an INAI resolution affirmed only one of multiple bases used to classify information, the Transparency Committee must reissue its opinion basing it only on the affirmed grounds.[227] INAI maintained a public database of all such construction criteria, with clear indicators for those that are outdated or overruled.[228] There were thirty-two such documents pertaining to access to information laws.[229]

The adjudication machine of INAI was finely tuned to enforce maximum access to government information.[230] The processes were informal, gave the requester the benefit of the doubt, and gave INAI full access to the information it needed to issue opinions.[231] The decisions of INAI enjoyed a high degree of finality, and INAI had the power to issue binding interpretations of access rights that govern the conduct of obligated entities and future INAI resolutions alike.[232] While shortfalls still existed, discussed in greater detail in Part IV, these attributes overall revealed an impressive accomplishment of administrative adjudication and enforcement of transparency obligations.

### *C. Monitoring*

Beyond dispute resolution, INAI engaged in a multipronged strategy to monitor compliance. It ensured obligated entities complied with its own decisions, issuing sanctions and penalties if necessary.[233] It audited compliance with the law's myriad affirmative transparency requirements and issued grades to obligated entities,

225. *Id.*
226. *Id.*
227. INAI, Criterio de Interpretación para Sujetos Obligados Reiterado Vigente [Interpretation Criteria for Obligated Subject Reiterated in Force] (2022), http://criteriosdeinterpretacion.inai.org.mx/Criterios/INAI_2E_SO_004_2020_Criterio-Interpretacion_V_R.docx.
228. *See* Criterios de Interpretación, https://criteriosdeinterpretacion.inai.org.mx/Pages/default.aspx [https://perma.cc/67LF-J8GF] (explaining on the homepage which indicators show that documents are outdated or overruled).
229. *See id.* (allowing for the search of documents by subject matter).
230. *See* Ponencia Interview, *supra* note 127, at 22.
231. *See id.* at 8.
232. *See* Secretaria Tecnica del Pleno Interview, *supra* note 128, at 12.
233. *Id.* at 19.

rewarding good performance and calling out the bad.[234] It even sampled responses to requests that went unappealed, looking for any systematic compliance issues.[235] Aided by the PNT's data collection capabilities, INAI's monitoring function created both carrots and sticks, while rendering a public accounting of transparency performance.[236]

To begin with the most immediate kind of monitoring, INAI possessed the full panoply of powers to enforce its own resolutions.[237] A division of the secretariat of the Plenum was tasked with ensuring compliance with those resolutions.[238] By default, obligated entities had ten days to comply with INAI resolutions, though in exceptional circumstances INAI would allow twenty days.[239] By that date, the obligated entity had to upload to the platform proof of its compliance for verification,[240] to which the requester had five days to object.[241] But the office of compliance reviewed all obligated entities' actions to carry out a resolution, even if the requester did not object.[242] As a result, about twenty staff members reviewed 350 or more cases per week to ensure compliance with INAI's resolution.[243]

If INAI determined noncompliance with its resolution from an obliged entity, it had various options. It could issue an official warning to the public servant responsible for the violation, which then appeared in their personnel file and on a public list.[244] It could also fine the public servant who was responsible.[245] As the director of compliance and enforcement explained, the fine was paid by the individual, not the entity because "you must individualize responsibility"

234. Interview with Ileana Hidalgo Rioja, Secretaria del Acceso de la Informacion [Secretary of Access to Information], INAI, in Mex. City, Mex. (Mar. 9, 2023), at 5.

235. *Id.* at 6–7.

236. *Id.* at 6.

237. *See* LFTAIP ENG, *supra* note 73, art. 171 (giving INAI power to issue rulings of noncompliance, notify a higher official in the obligated entity, and decide on corrective action or sanction to be imposed).

238. Secretaria Tecnica del Pleno Interview, *supra* note 128, at 3.

239. *Id.* at 16.

240. LFTAIP ENG, *supra* note 73, art. 169.

241. Secretaria Tecnica del Pleno Interview, *supra* note 128, at 17.

242. *Id.* at 18 (I was told that they did not engage in substantive review only when the requester affirmatively agreed that the obligated entity had come into compliance.).

243. *Id.*

244. *See id.* at 19.

245. *See id.*

for the violation.[246] Such fines were deducted directly from the responsible employee's paycheck.[247]

In reality, INAI rarely exercised direct sanctions. It had recently reported a consistent compliance rate above ninety percent,[248] a figure I was told underrepresents actual compliance because it cuts off reporting at a certain date, even though obligated entities often comply after the reporting date.[249] Moreover, INAI did not start with punishment. Rather, when noncompliance occurred, it approached the obligated entity from a position of "accompaniment," or helping the entity achieve compliance.[250] In the end, it issued only a handful of warning letters and even fewer—sometimes no—monetary sanctions.[251]

A different enforcement tool was much more frequently invoked. The law required that when INAI determined an obligated entity was noncompliant, it had to refer the matter to an "Internal Control Body," a sort of inspector general inside every government agency[252] empowered to investigate and sanction violations.[253] In 2022, INAI referred 1,022 instances of noncompliance to these internal control bodies for investigation and possible sanctions.[254]

Monitoring at INAI, however, went far beyond ensuring compliance with the resolutions of cases arising out of requests that had been denied. Under the auditing function of the Secretary for Access to Information, INAI sampled requests and responses to analyze the quality of those responses, even when the requester had not filed an action for review or otherwise lodged a complaint,[255] focusing on obligated entities with particularly high rates of actions for review filed by citizens, agencies with thematic importance to

246. *Id.*; *see also* LFTAIP ENG, *supra* note 73, art. 186 ("Monetary penalties in the form of coercive action cannot be settled with public funds.").

247. Secretaria Tecnica del Pleno Interview, *supra* note 128, at 19.

248. INAI, *supra* note 132, at 114.

249. *See* Interview with Juan José Rivera Crespo, Director de Responsabilidades [Director of Responsibilities], Direción General de Cumplimiento y Responsabilidades [General Directorate of Compliance and Responsibilities], in Mexico City, Mex. (Mar. 3, 2023), at 1–2.

250. *Id.* at 3.

251. In 2022, for example, it issued three warning letters and no fines whatsoever against public servants. INAI, *supra* note 132, at 118. It did, however, issue some monetary sanctions against private obligated entities. *Id.* at 119.

252. LFTAIP ENG, *supra* note 73, art. 160.

253. Secretaria Tecnica del Pleno Interview, *supra* note 128, at 22.

254. INAI, *supra* note 132, at 117.

255. Interview with Ileana Hidalgo Rioja, *supra* note 234, at 6–7.

current events, and other metrics.[256] This auditing examined the response to ensure it is accessible, reliable, truthful, useful, verifiable, and that any classification or reservation of information is correct.[257] In 2022, an audit of 7,998 requests found an 88.04% compliance rate.[258]

INAI also monitored compliance with transparency obligations—those multitudes of categories of records that obligated entities must publish affirmatively[259]—in two ways. First, for any complaint submitted by a member of the public regarding compliance with those obligations, INAI issued a resolution subject to the same enforcement options described for resolutions of actions for review above.[260] Second, and perhaps more importantly, INAI independently audited compliance on an annual basis; it verified that each obligated entity was uploading documents in its portal in the categories required by law.[261] INAI reported an astonishing 96.74% compliance rate in this regard,[262] a rate the Secretary of Access to Information credited as having increased over time because of INAI's work in educating and helping entities comply, as well as the development of the PNT. [263]

The auditing system permitted a detailed report grading each obligated entity on compliance[264] and facilitated an analysis of trends among entities.[265] At one obligated entity I visited, these audit scores were proudly displayed to me,[266] listing various recognitions from INAI resulting from high compliance rates.[267] Those subject to the

256. *Id.* at 7.

257. *Id.*; Presentation from INAI to Margaret Kwoka, at 10 (on file with author).

258. *Id.* at 11.

259. *See e.g.*, LFTAIP ENG, *supra* note 73, arts. 68–71.

260. INAI, *supra* note 132, at 122. These types of complaints are far less frequent than actions for review. In 2022, there were 1,072 such complaints; 543 were decided on the merits, of which 333 were granted, and no warnings or fines were issued, though 20 cases were referred to internal control bodies of the respective obligated entities. *Id.* at 121–23.

261. Interview with Ileana Hidalgo Rioja, *supra* note 234, at 5–6.

262. Presentation from INAI to Margaret Kwoka, *supra* note 257, at 9.

263. Interview with Ileana Hidalgo Rioja, *supra* note 234, at 6.

264. *See* INAI, *supra* note 132, annex 7.6 (published separately, available at https://home.inai.org.mx/wp-content/uploads/Anexos_7.3.5_Informe_de_Labores_2022.xlsx [https://perma.cc/F7MG-PPBH]).

265. *See, e.g.*, *id.* at 140–62 (breaking down, for example, audit result statistics by type of obligated entity, such as executive, legislative, judicial, political party, unions, and public trusts).

266. *Banco de México's Transparency Unit (TU)*, *supra* note 147, at 9.

267. For example, they pointed out that every year since 2016, they had been recognized as having trained 100% of their staff of nearly 900 people in access to information obligations. Banco de México Interview, *supra* note 158, at 15.

law are motivated by the desire to perform well on these publicly reported metrics.[268]

### *D. Outreach*

INAI engaged in a robust set of activities beyond enforcement. It taught and trained; it advertised and promoted; it educated and empowered; and it translated and showed up in communities.[269] In my daily experience living in Mexico City, I came to believe that at least in part because of these efforts, people *knew* INAI as an institution and knew of the right to information.

Upon arriving at INAI, it was clear the institution was committed to meeting people where they were. Before security, a separate entrance stood ready to receive members of the public. Inside, INAI employees met with people who visited in person, answered the phones, and responded to emails. They helped people frame requests or directed them to the right place. And this kind of public reception office had a street-facing entrance at every single public entity, with Transparency Unit employees staffing it during all business hours.[270]

INAI encouraged people to show up any way they can. INAI's homepage asked, "Do you have questions about how to exercise your rights?" and then prompted users to contact INAI, providing a phone number, email address, postal address, and physical address for INAI's office building and assuring users that "we will advise you!"[271] Another banner advertised a program to "visit INAI" directed at civil society, academics, or the general public.[272]

This institutional commitment to ensuring members of the public can effectively exercise their rights is, if anything, underscored by how it was honored in the breach. When I asked the Transparency

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268. In other areas, it has been found that measuring performance encourages those who must report such metrics to improve, either to avoid embarrassment or after the fact to address any public backlash that occurs for reporting poor performance. *See, e.g.*, Archon Fung et al., Full Disclosure—The Perils and Promise of Transparency 29 (Cambridge Univ. Press ed. 2007); Paula J. Dalley, *The Use and Misuse of Disclosure as a Regulatory System*, 34 Fla. St. U. L. Rev. 1089, 1126 (2007). In addition to metrics on substantive disclosure, the audit also reports staffing levels and structural compliance for transparency units and committees at each obligated entity and training levels of all employees entity-wide in areas of access to information and their role in complying with transparency obligations. *See* Presentation from INAI to Margaret Kwoka, *supra* note 257, at 11–12.

269. Interview with Ileana Hidalgo Rioja, *supra* note 234, at 13–14.

270. I observed these personally at many public buildings, including at the Fiscalia General (akin to the U.S. attorney general's office), the Mexican Central Bank, and others.

271. Instituto Nacional de Transparencia, *supra* note 2.

272. *Id.*

Unit director what kinds of improvements she could imagine, she cited as one hurdle accessibility of information to members of the public with disabilities.[273] To demonstrate, she showed me a request INAI had received in pictorial images of sign language.[274] She explained, frankly somewhat embarrassed, that she drafted a response and then used an online tool to convert it into what she thought were pictorial images of sign language and responded in that way.[275] The requester then responded that those pictures—which essentially spelled out the words in signs—were not proper sign language.[276] Chagrined, she redoubled her efforts with the help of INAI's once-a-week sign language interpreter, who typically interprets for the live plenary sessions.[277] Together, they filmed a side-by-side video with one side showing an INAI staff person reading the response aloud and the other showing a sign language interpretation of the response.[278] That video was issued as the response to the request.[279] She summed up the experience by saying the following:

> The truth is we are [always] learning . . . This time, I felt badly that . . . personally we did not understand because there is no training about deaf people, and . . . we still have not succeeded in meeting them where they are . . . So now we are proposing to have more material available in sign language.[280]

In connection with INAI's outreach efforts to underserved or disadvantaged communities, she cited additional examples, including efforts to create materials in indigenous languages and a program to ensure incarcerated individuals can effectively make requests.[281]

But assistance in making requests is only the beginning. INAI placed print advertisements on the sides of buses and in newspapers. It had information booths at public events, festivals, and fairs.[282] It had a segment on a public television station with programming about access to information and the work INAI was

273. Unidad de Transparencia Interview, *supra* note 146, at 30.
274. *Id.* at 17.
275. *Id.*
276. *Id.*
277. *Id.* at 18.
278. *Id.*
279. *Id.*
280. *Id.*
281. *Id.* at 31, 33.
282. For example, I bumped into INAI's large installation, complete with a stage and live presentations, at the largest Spanish language book fair in the world, held annually in Guadalajara. *See Inauguran Pabellón de la Transparencia en la Feria Internacional del Libro de Guadalajara 2023* [*Transparency Pavilion Inaugurated at the 2023 Guadalajara International Book Fair*], ITEI (Nov. 27, 2023), https://www.itei.org.mx/v4/prensa/noticias/1792 [perma.cc/C6EC-SGK3].

doing.[283] It had its own YouTube channel with more than 10,000 videos, where it livestreamed its public sessions, events, meetings, and endless other educational videos it produced.[284]

INAI and its state counterparts also made enormous efforts to reach children, publishing children's books with themes about the importance of transparency, imparting lessons about the right to access information. For example, one book, "The Diary of Jatziri," follows a fictional girl in Mexico City whose cousins come to stay with her family when the water sources near their farmland in Sinaloa are contaminated by a nearby mine.[285] During their stay, the 2017 earthquake occurs, cutting off the water supply to their neighborhood.[286] While they remain without water, representatives from INAI visit their school, and they learn how they can find out about efforts to restore water and get information from those responsible.[287] The book is illustrated, and published in Spanish and Náhuatl, the most widely spoken of sixty-eight officially recognized indigenous languages in Mexico.[288] Many other such publications came from INAI and its state counterparts.[289]

The law supported these kinds of efforts. The federal transparency statute authorized INAI to "present proposals to the appropriate

283. *See Estrena INAI la serie 'Derecho a saber' que se transmitirá en el canal del Congreso* [*INAI Premieres the Series 'Right to Know,' Which Will Be Broadcast on the Congressional Channel*], *supra* note 5.

284. *See* inaimexico, YouTube (Apr. 16, 2025), https://www.youtube.com/user/ifaimexico [perma.cc/4PF8-NUF6].

285. *See* Teresa Icaza & Andrés López, El Diario de Jatziri 29 (Blanca Lilia Ibarra Cadena et al. eds., 2019).

286. *See id.*

287. *Id.*

288. *See* SECVER Oficial, *Inemilizamox Jatziri | El diario de Jatziri - Edición Xalapa*, YouTube (July 24, 2022), https://www.youtube.com/watch?v=q0LV_0u80Jo [perma.cc/78E8-2HLF] (recording a public reading of the book).

289. *See e.g.*, Camila Trujillo Ramos et al., Instituto de Transparencia, Información Pública y Protección de Datos Personales del Estado de Jalisco [ITEI], "¡Claro que lo cuento!" (2018). ITEI, the state counterpart for Jalisco, publishes, for example, "¡Claro que lo cuento!" (a book of transparency-themed short stories for children) and a "transparency passport" which children can fill out with their own information and answer questions to complete games that teach them about access to information and data protection. *Id.; see Premian a pequeños escritores, promueven derechos a la información, protección-datosagenda anticorrupción en ¡Claro que lo cuento!* [*They Award Young Writers, Promote the Right to Information, Data Protections, and Anti-Corruption Agenda in ¡Claro que lo cuento!*], ITEI (Dec. 1, 2018), https://www.itei.org.mx/v4/prensa/noticias/1341 [perma.cc/Z5GS-RN6C]; ITEI, El Pasaporte de la Transparencia [The Transparency Passport] (Version 3.0) (on file with author). For its part, the state counterpart in the most populous state, Estado de México, which includes a large part of the greater Mexico City metropolitan area, has created a puppet character called "El Villano de Robodatos" (the data-robbing villain) whom it uses in publications including comic strips to teach children about data protection. *See* Infoem, El Villano Robadatos Ataca de Nuevo, [The Data-Robbing Villain Strikes

educational authorities so that content addressing the social importance of the right of access to information be included in the pre-school, primary, secondary and normal school curricular programs and in the training courses for school teachers of the basic education levels," as well as a long list of other authorized outreach and educational activities.[290] Educating the public was one of INAI's central roles, and one it dedicated time, resources, and expertise to carrying out.[291]

### *E. The Plenum*

Professor Irma Eréndira Sandoval-Ballesteros has advocated for a "democratic-expansive understanding of transparency" that "views transparency as a matter of political rights and citizenship rather than bureaucratic hygiene."[292] While she questions the success of Mexico's transparency laws in achieving this goal (discussed further below),[293] what I observed was leadership at the top levels of INAI—specifically the Plenum, made up of the seven commissioners themselves[294]—committed to precisely that vision.

The most obvious public acts of the Plenum occurred at the plenary sessions, typically held once a week.[295] These sessions were open to the public in person and were streamed online, with recordings and transcripts archived on INAI's website.[296] At these sessions, the Secretary presented a summary of resolutions on which the Plenum was to vote; the body then took a formal vote on the full list previously submitted, and each commissioner could individually present

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AGAIN] (on file with author); *El Villano Robadatos, herramienta* útil *para visibilizar riesgos en internet* [*The Robodata Villain, A Useful Tool for Highlighting Online Risks*], INFOEM (Jan. 2, 2024), https://www.infoem.org.mx/es/contenido/noticias/el-villano-robadatos-herramienta-%C3%BAtil-para-visibilizar-riesgos-en-internet [https://perma.cc/97XU-6YUG]. The commissioners there showed me their physical puppet of this character on my visit.

290. LFTAIP ENG, *supra* note 73, art. 43 (listing, as authorized activities, having information booths at libraries, proposing research activities at higher education institutions, publishing materials to foster a culture of access to information, promoting citizen and social participation, training users in their rights, fostering strategies to ensure the right is available to all sectors of society as appropriate, and more).

291. *Id.*

292. Sandoval-Ballesteros, *supra* note 116, at 293.

293. *See* discussion *infra* Part III.

294. *Que es el Pleno?* [*What is the Plenary?*], INAI, https://home.inai.org.mx/?page_id=1636 [perma.cc/3EPR-KX45].

295. *Sesiones de Pleno: Actas* [*Plenary Sessions: Minutes*], INAI, https://home.inai.org.mx/?page_id=1584 [perma.cc/DQM7-WBHK].

296. *Audios y Versiones estenográficas* [*Audios and Verbatim Versions*], INAI, https://home.inai.org.mx/?page_id=1584&op=4 [perma.cc/Y6LT-4376]; *see also* INAIMEXICO, YOUTUBE, https://www.youtube.com/@ifaimexico/videos [perma.cc/L2X4-R6HQ] (the full sessions and excerpted versions are also saved in video form to INAI's YouTube channel).

specific cases they find particularly important.[297] Which cases to present was entirely up to each commissioner, and those determinations could be made based on subject matter, interest, or public importance, among other subjective criteria.[298] But many of the individual presentations acted as a sort of public relations campaign to educate the public about what INAI does and why guaranteeing a right of access to information matters.[299]

At one session I attended, for example, Commissioner Acuña presented a case where the Human Rights Commission had denied a request for data on how many attacks against journalists had been registered in the previous year, referring the requester instead to the attorney general's office.[300] He explained how the Human Rights Commission responded incorrectly, but went far beyond simply explaining the entity's failure to follow the transparency law.[301] He described the threats journalists face in Mexico, the important public service they perform, and the importance of public access to data about dangers to journalists.[302] Two more commissioners, including the President of the Commission, also spoke in favor of the resolution, citing statistics on the number of journalists murdered in previous years and explaining the history of the program to protect journalists administered by the Human Rights Commission.[303]

This example is not surprising; journalists have a special relationship to INAI.[304] The President of INAI during the time I was there—Blanca Lilia Ibarra Cadena—had been a journalist, not a lawyer, before coming to INAI.[305] When I asked her how transparency laws were working for journalists, she cited that 9.9% of all requests at

297. *See, e.g.*, INAI, *Sesión Pública Ordinaria del Pleno del INAI Correspondiente al 1 de febrero 2023* [*Ordinary Public Session of the INAI Plenary Session Corresponding to February 1, 2023*], YouTube (Feb. 1, 2023), https://www.youtube.com/watch?v=Ns4hketYpB4 [perma.cc/SC5X-5T4L].

298. Secretaria Tecnica del Pleno Interview, *supra* note 128, at 10; *see also* Ponencia Interview, *supra* note 127, at 12 (giving examples of particular topics of interest that might cause a commissioner to present a case, such as freedom of expression, women's rights, the environment, or corruption).

299. Ponencia Interview, *supra* note 127, at 12–13 (explaining that the goal of the presentations is often to show the public why the right to access information is useful).

300. INAI, *supra* note 297, at 26:00.

301. *Id.* at 26:00–41:00.

302. *Id.*

303. *Id.* at 41:00–48:00.

304. Interview with Blanca Lilia Ibarra Cadena, Comisionada Presidenta, INAI (Mar. 8, 2023), at 18 (transcript on file with author).

305. *Integrantes Del Pleno* [*Members of the Plenary*], INAI, https://home.inai.org.mx/?page_id=1737 [perma.cc/2DJD-7ZLY].

the federal level came from journalists and explained that INAI works specifically to train journalists and develop relationships with them.[306] As she put it, "INAI is allied with journalists," naming iconic investigative reporting based on access to public records that have revealed corruption or human rights violations.[307] When I interviewed another commissioner, Commissioner Alcalá (later the President of INAI), I asked him why access to information was so relevant in political conversations in Mexico, and he cited case after case of important events where journalists' access to information was critical, starting with a then-recent fire in a migrant detention center in Tamaulipas and eventually reaching back to a 1995 demonstration in Aguas Blancas, Guerrero, in which state officers killed seventeen farmers.[308]

The Plenum also set a broader tone of discourse around public access to information. Just as Sandoval-Ballesteros wanted, the Plenum's articulation of access to information protections was not centered on a bureaucratic compliance checklist; rather, it was tied to fundamental human rights. Commissioner Alcalá explained that in Mexico, fundamental rights are subject to four principles: interdependence, indivisibility, universality, and progressivity.[309] Interdependence describes how rights are interconnected: "the right to health is interconnected with the right to access information, or the right to work is connected to the right to information . . ."[310] Again, the right to access information was described as this "key" that unlocks access to other fundamental rights.[311]

The framing of access to information as a fundamental human right was so pervasive, so consistent, and so effortlessly deployed that I asked nearly everyone how access to information had become such a powerful part of public discourse. Each time, I received a strikingly similar answer: the public outrage over corruption had

306. Interview with Blanca Lilia Ibarra Cadena, *supra* note 304, at 15.

307. *Id.* at 18.

308. *See* Interview with Adrián Alcalá Méndez, *supra* note 1, at 6–7*; Masacre de Aguas Blancas. 28 de junio* [*Aguas Blancas Massacre. June 28*], CNDH, https://www.cndh.org.mx/noticia/masacre-de-aguas-blancas-28-de-junio [https://perma.cc/HFN6-66CC]; *see also* Gerardo Lemos et al., *Blaze Kills at Least 38 People at Migrant Detention Center Near Mexico–US Border*, CNN (Mar. 29, 2023, 08:49 AM), https://www.cnn.com/2023/03/28/americas/mexico-migrants-fire-intl [https://perma.cc/A7ZQ-SKZV] (reporting on the fire at the migrant detention facility).

309. Interview with Adrián Alcalá Méndez, *supra* note 1, at 3.

310. *Id.*

311. *Id.* As the secretary of Access to Information said, she is in charge of guaranteeing the full exercise of the human right to access information. Interview with Ileana Hidalgo Rioja, *supra* note 234, at 1.

prompted a movement for government transparency.[312] Commissioner Alcalá explained that, unfortunately, there had long been corruption with impunity, and transparency laws were the result of a social movement to demand accountability and legitimacy in government.[313] As a result, access to information feels tangibly important and relevant to ordinary citizens.

Without a doubt, the Plenum represented true leadership and vision for transparency rights. Commissioners were active parts of public life, appearing on panels, at events, in community venues, and elsewhere.[314] Importantly, the President of INAI also acted as an official liaison to the legislature, presenting annual reports, participating in the budget process, and appearing to testify when political questions were raised.[315] Commissioners were each responsible for overseeing particular areas within INAI, setting affirmative agendas and promoting activities within these areas.[316] In short, the commissioners themselves—their leadership, their commitments, their passion, their priorities, their rhetoric—mattered.

## III. INAI's Results

Mexico's transparency law as written—a measure of de jure transparency[317]—was rated second in the world during the era of INAI by the Centre for Law and Democracy, which publishes a global Right to Information Rating for every country with an access-to-information law.[318] And as implemented, the de facto transparency in Mexico was also widely considered to be "broadly successful," despite some challenges and areas of opportunity

312. *See e.g.*, David Iaconangelo, *How Governors' Offices Became Ground Zero for Corruption in Mexico*, Christian Sci. Monitor (Apr. 25, 2017, 05:16 PM), https://www.csmonitor.com/World/Americas/2017/0425/How-governors-offices-became-ground-zero-for-corruption-in-Mexico [perma.cc/MJW7-CHJQ].

313. *See* Interview with Adrián Alcalá Méndez, *supra* note 1, at 4.

314. *See* inaimexico, *supra* note 284 (INAI's YouTube channel often documents the commissioners' public appearances).

315. *See, e.g.*, Isabella González, *El organismo para la transparencia en México queda paralizado por tiempo indefinido* [*Mexico's Transparency Agency Is Paralyzed Indefinitely*], El País (Apr. 1, 2023, 06:15 AM), https://elpais.com/mexico/2023-04-01/el-organismo-para-la-transparencia-en-mexico-queda-paralizado-por-tiempo-indefinido.html [https://perma.cc/2B9A-95FX] (showing then-President Ibarra testifying in Mexico's Senate).

316. *See, e.g.*, Interview with Adrián Alcalá Méndez, *supra* note 1, at 89 (describing his role in particular areas).

317. *See* Adriana García García, Wilson Ctr., Transparency in Mexico: An Overview of Access to Information Regulations and Their Effectiveness at the Federal and State Level 13–17 (2016).

318. *Country Data*, *supra* note 7.

for improvement.[319] INAI stood as a central component both of the de jure and de facto evaluation of Mexico's transparency success.[320] This Part details evidence of INAI's success, alongside critiques and challenges that have been mounted.

### *A. INAI's Powerful Role*

While the "success" of any legal reform is by nature difficult to measure, studies have taken a variety of approaches in reaching this conclusion. Some academics have used empirical accounts for the results of transparency, while others have gathered public data, reports, and evaluations to compile evidence of performance.[321] On the whole, Mexico's transparency law during INAI's era fared well in the overall assessment of scholars and policy analysts worldwide.

In one empirical study, researchers submitted test requests to 197 different obligated entities and analyzed the timeliness and completeness of the responses.[322] They further varied identity markers to test whether signals of political influence and wealth of the requester would affect response quality.[323] The researchers concluded that the country's "entities are not discriminating between regular and the seemingly influential citizens" and that they are "answering more frequently and providing more information" in 2015 than in a previous wave of requests in 2007.[324] The responsiveness rate—eighty-one percent—was high compared to previous years and in the range of "full compliance."[325]

In another large-scale empirical study, researchers used machine learning to code some two million requests to federal executive agencies in Mexico over time, utilizing publicly-available data from the PNT.[326] They concluded that the transparency system was "extremely successful" with respect to civil society's relations with the

319. Berliner & Erlich, *supra* note 43, at 112.

320. *See generally* Fernado Nieto-Morales, *The Elimination of INAI: A Blow to Transparency and Accountability in Mexico*, Wilson Ctr. (Nov. 21, 2024), https://afghanistan.wilsoncenter.org/article/elimination-inai-blow-transparency-and-accountability-mexico [perma.cc/LZX6-UDVT] (explaining the dismantling of INAI under President Andrés Manuel López Obrador was a setback for Mexico in its trajectory towards democracy and transparency).

321. *See e.g.*, Paul Lagunes & Oscar Pocasangre, *Dynamic Transparency: An Audit of Mexico's Freedom of Information Act* 166–67 (Inter-Am. Dev. Bank, Working Paper No. 836, 2017).

322. *Id.*

323. *Id.*

324. *Id.* at 172.

325. *Id.* at 173. It did, however, identify quality of information, lengthening response times, and increasing fee assessments as areas of concern. *Id.*

326. Daniel Berliner et al., London Sch. Econ., Big data y acceso a la información en México [Big Data and Access to Information in Mexico] 4 (2022).

state,[327] and a "central tool for a wide variety of key democratic actors in Mexico."[328] This finding was evidenced in part by the fact that requests had become more sophisticated over time[329] and in part by the fact that, on average, more sophisticated requests received more satisfactory responses.[330] Moreover, it found that federal agencies promptly handled thousands of information requests each week, and that overall, "the access to information system in México has exceeded the promise made when it was founded two decades ago."[331]

Using another approach, Latin America transparency expert Gregory Michener undertook a meta-analysis of transparency across Latin America, combining de jure metrics of transparency law strength and de facto measures, including government statistics on requests and responses, with audits conducted by researchers to conclude that Mexico has one of the few "fully positive outcomes."[332] He concluded that "[d]espite much naysaying by domestic FOI advocates, Mexico is the regional FOI superstar."[333] He found INAI itself to be a powerful political actor, having "leveraged advocates, legislators, and even governors in its pursuit of clout and expanded competencies."[334]

INAI was not just a bit player in the successes of the Mexican law—it was central to how it functioned. Michener opined that "in terms of de facto effectiveness [of Mexico's transparency system], Occam's razor points to the role of Mexico's information commissioner."[335] A Wilson Center white paper similarly found that oversight bodies in Mexico—INAI and state counterparts—were crucial to ensuring that transparency laws were not just strong on the books but were actually implemented and enforced.[336]

Impressively, the government itself sought to understand the general public's relationship with the transparency laws and INAI

327. *Id.* at 5.

328. *Id.* at 28.

329. *Id.* at 13 (noting that an increase in sophistication of requests likely has two components: first, an increase in the proportion of requests submitted by sophisticated requesters and second, an increase in knowledge base about how to submit successful requests).

330. *Id.* at 27–28.

331. *Id.* at 28.

332. Gregory Michener, *Assessing Freedom of Information in Latin America a Decade Later: Illuminating a Transparency Causal Mechanism*, 57 Latin Am. Pol. & Soc'y 77, 87 (2015).

333. *Id.* at 93.

334. *Id.* at 94.

335. Michener, *supra* note 6, at 285.

336. Adriana García García, Wilson Ctr., Transparency in Mexico: An Overview of Access to Information Regulations and Their Effectiveness at the Federal and State Level 20–21 (2016) (noting that strengthening laws does not affect de facto transparency

through a periodic statistical study using surveys and interview sampling methods.[337] Administered by the National Institute of Statistics and Geography (which also conducts the Mexican census, among other functions), the National Survey of Access to Public Information and Protection of Personal Data demonstrated public engagement and satisfaction with transparency laws and INAI, with a national sample size of nearly 18,000 households.[338]

Public satisfaction with encounters with the transparency system was impressive. More than 80% of people who consulted government websites for public information found the information they sought,[339] and about three quarters of those who consulted a government website for information were either "very satisfied" or "somewhat satisfied" with the information they found.[340] Similarly, 73.1% of people who made a request for information reported receiving what they asked for, 94.1% of those who received information found it useful, and 84.4% of those who received information were satisfied with the response.[341] Overall, about two thirds of submitters felt "very satisfied" or "somewhat satisfied" with the process.[342]

My own interviews with journalists and nonprofit researchers who used the Mexican transparency law confirmed this largely positive assessment of INAI. Journalists I spoke with agreed that reporters in Mexico relied on information requests and worked with INAI or its state counterparts regularly.[343] Uniformly, journalists reported the ease of submitting a request.[344] One reporter, who has been

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without oversight, and that "ensuring independent appointment and tenure of commissioners and respecting strong institutional autonomy is essential to achieve effective oversight.").

337. *See generally* INEGI, Encuesta Nacional de Acceso a la Información Pública y Protección de Datos Personales (ENAID) 2019 [National Survey of Access to Public Information and Protection of Personal Data (ENAID) 2019] (2020) [hereinafter ENAID 2019], https://en.www.inegi.org.mx/contenidos/programas/enaid/2019/doc/enaid_2019_principales_resultados.pdf [perma.cc/4XN2-6NJX]. This study was conducted in 2013, 2016, and 2019, but has not been completed since, seemingly due to pandemic disruptions as the website's most recent study is from 2019. *Cf. Information on Government, Public Safety and Law Enforcement*, INEGI, https://en.www.inegi.org.mx/programas/enaid/2019/default.html [https://perma.cc/8YTQ-YBBK].

338. ENAID, *supra* note 337, at 7.

339. *Id.* at 45–46.

340. *Id.* at 51.

341. *Id.* at 58, 61, 66.

342. *Id.* at 67.

343. Interview with Gabriela Villegas Ramirez, Journalist, Univision Tex. (May 30, 2023) (transcript on file with author).

344. Interview with Alejandra Ibarra Chaoul, Periodista & Autora, in Mexico City, Mex. (May 24, 2023), at 2 (transcript on file with author); *see* Interview with Efraín Tzuc Salinas, Periodista de Datos, Quinto Elemento Lab, in Mexico City, Mex. (May 30, 2023), at 3–4 (transcript on file with author).

making requests since 2015 (previously in a role as an organizer and activist), said that it has gotten easier over time because government officials are better trained and the PNT has made the process much more efficient.[345] Some also cited as particularly useful the availability of information affirmatively published under the transparency obligations on the PNT.[346] As for responses, while limitations were often noted (and are described in detail below), timeliness of the response was almost never an issue.[347]

Requesters also noted that the process of submitting an appeal to INAI was straightforward. One requester described the PNT process as extremely simple and easy to use, and any difficulty is simply a question of how much effort the requester wants to make to argue their case.[348] He added, "considering the workload of INAI, the resolution of the appeals is extremely fast."[349]

Efrain Tzuc, a very frequent requester who makes about 300 requests a year, estimated that in 85% of the responses, he does not receive everything he hoped for, and that in 80% of those instances, he files an appeal with INAI.[350] When I asked him how often he wins, he replied: "The truth is that I almost always win, I think something like 90% or more [of the time]."[351] The director of the fiscal justice project at Fundar, a transparency-oriented nonprofit, estimated a lower rate of success, around fifty/fifty, which he attributes at least in part to the politically sensitive nature of Fundar's requests; still, in general, he reported feeling "satisfied" with INAI's processes.[352] Another reporter, Gabriela Villegas, who has made information requests across Mexico, Guatemala, and the United States, agreed she was somewhat reluctantly "satisfied," quickly adding, "I have also

345. Interview with Efraín Tzuc Salinas, *supra* note 344, at 3–4.

346. Interview with Gabriela Villegas Ramirez, *supra* note 343 ("Now with the [PNT], the truth is that it has gotten a lot better, the information is more organized and for example, I remember when municipalities sometimes would hide some information, but now with the [PNT], they have to put the information on the platform and the transparency is proactive."); *see also* Interview with Iván Benumea Gómez, *supra* note 5, at 5 ("We look hard and are very clear what information is available, so when we make a request it is because we have not found it [on the PNT].").

347. *See* Interview with Efraín Tzuc Salinas, *supra* note 344, at 3–4; Interview with Gabriela Villegas Ramirez, *supra* note 343; Interview with Alejandra Ibarra Chaoul, *supra* note 344, at 7 ("[A]s opposed to FOIA, they always reply within the time frame . . . .").

348. Interview with Iván Benumea Gómez, *supra* note 5, at 4.

349. *Id.* at 5.

350. Interview with Efraín Tzuc Salinas, *supra* note 344, at 4.

351. *Id.* at 5.

352. Interview with Iván Benumea Gómez, *supra* note 5, at 2–3.

had experiences in other countries with their systems . . . despite everything, I would not complain about [the Mexican] system."[353]

Studies of the Mexican transparency system during the INAI era regularly cite prominent examples in which reporters have unearthed information of great public import through information requests.[354] Some reveal corruption[355] or misuse of public funds,[356] the very matters of central concern when transparency reforms were enacted. As such, there appears much to celebrate in the success of INAI in implementing the Mexican transparency system.

### *B. Critiques of INAI*

Despite the widespread celebration of Mexico as a beacon of transparency reforms, there remained significant criticisms of the state of transparency generally and the role of INAI specifically, even aside from the political critiques that eventually led to INAI's abolition.[357] Merit-based critiques largely fell into three general themes. First, there were persistent concerns that only a small fraction of the public actually engaged the transparency system.[358] Second, those who did engage in the system cited some areas of INAI's implementation failure, suggesting opportunities for improvement.[359] And third, scholars and public policy analysts lamented that, despite strong transparency laws, the accountability goals of increasing public trust and combating corruption had not been

353. Interview with Gabriela Villegas Ramirez, *supra* note 343.

354. *See, e.g.*, Berliner & Erlich, *supra* note 43, at 112 (noting that the "Pulitzer Prize-winning New York Times investigation into Wal-Mart's use of bribery in Mexico was also carried out in part through the use of information requests"); Juan Pablo Guerrero Amparán, *The Right to Know in Mexico: The Challenge of Dissemination*, *in* Focus on Citizens: Pubic Engagement for Better Policy and Services 257, 259 (OECD ed., 2009); Daniel Berliner et al., *The Political Logic of Government Disclosure: Evidence from Information Requests in Mexico*, 83 J. Pol. 229, 233 (2021).

355. *See* Berliner & Erlich, *supra* note 43, at 112; *see also* David Barstow & Alejandra Xanic von Bertrab, *How Wal-Mart Used Payoffs to Get Its Way in Mexico*, N.Y. Times (Dec. 17, 2012), https://www.nytimes.com/2012/12/18/business/walmart-bribes-teotihuacan.html [perma.cc/93MP-WXAM] (citing allegations and evidence that officials had acted unlawfully in granting permits to Wal-Mart de Mexico).

356. *See, e.g.*, Interview with Guerrero Amparán, *supra* note 353 (explaining that, due to a request for information, the Office of the President ceased buying expensive clothes for the First Lady and the shopping list of previous acquisitions was disclosed); *see also* Berliner et al., *supra* note 354 at 233 (noting that "newspaper stories frequently reference the use of information requests . . . [in identifying] potential misuse of funds").

357. Interview with Guerrero Amparán, *supra* note 354, at 258–59.

358. *See* discussion *infra* Section III.B.1.

359. *See* discussion *infra* Section III.B.2.

meaningfully addressed.[360] This Part describes and contextualizes these criticisms.

### 1. Participation

One area of concern uniformly raised by INAI officials, requesters, academics, and policy analysts was the level of public engagement with INAI and the transparency system.[361] A consensus is that while the PNT was designed for everyday users and INAI worked hard to meet users at their individual levels, use of transparency laws remained concentrated among more sophisticated users.[362]

To begin, academics noticed that use of the law appears to be relatively highly concentrated. In one (now somewhat dated) study, approximately 5,000 out of 90,000 requesters made 50% of all requests, and some 450 made 25% of the total number of requests.[363] A more recent study that used machine learning to code a large volume of requests concluded that experienced requesters received more satisfactory responses and were responsible for a greater proportion of requests over time. [364] While one might read that result as demonstrating that users are becoming more sophisticated, the same evidence suggests that the system has not achieved one of its other goals: to ensure that access to information is a right that the general population can exercised as a practical matter.[365]

The 2019 national survey on transparency, described previously, demonstrates that there remains much opportunity in public education.[366] Just 54.8% of the population knew or had heard of the existence of an institution that guarantees the right of access to public information, and only 46.2% of those who knew were able to mention INAI specifically.[367] Only 16.1% of the population had consulted a federal government website for information that is published affirmatively,[368] and of those who did not locate the information they wanted, almost two thirds took no further action, only 4.3% submitted an information request, and only 3.1% made a complaint that the information was not public.[369] On the requesting side, just 3.6%

360. *See* discussion *infra* Section III.B.3.
361. Interview with Guerrero Amparán, *supra* note 354, at 258–59.
362. *Id.*
363. *See id.* at 258.
364. Berliner et al., *supra* note 326, at 3, 13.
365. *Id.* at 3.
366. *See* ENAID 2019, *supra* note 337 and accompanying text.
367. *Id.* at 23.
368. *Id.* at 43.
369. *Id.* at 49.

of the population had submitted an information request,[370] and of those who did not receive what they wanted, the majority did nothing; only 18.3% appealed to INAI or its state counterparts.[371] While those who do engage feel a high level of satisfaction, the level of engagement left opportunity for improvement.

Commissioner Alcalá specifically highlighted as an area in need of greater focus that only around forty percent of the public was aware of the existence of INAI and transparency law, and very few people exercised their rights to access information.[372] The Secretary of Access to Information explained that a study of open government metrics concerning citizens' participation gave INAI a low mark.[373] Journalists I spoke with made similar points. One commented that regular citizens are unlikely to be successful invoking the law, and that people who can use the law most effectively are the press, civil society, and people who work with information access.[374]

Still, there were signs of some opportunity and progress. For example, in the national survey, the level of interest in submitting a request—hovering around twenty percent—is much higher than the level of actual engagement.[375] Moreover, nonprofits dedicated to transparency were looking to engage more diverse communities of users; for example, one journalist mentioned that organizations like Article 19[376]—a transparency advocacy organization—are providing training to indigenous people, rural communities, and others to make requests for information that affects them directly, and that those are good steps.[377]

INAI was not at all passive in this regard.[378] A recent initiative called the National Plan for Socialization of the Right to Access Information aimed to educate the population about their rights and to bridge the equality gap in exercising other fundamental

370. *Id.* at 53.

371. *Id.* at 65.

372. Interview with Adrián Alcalá Méndez, *supra* note 1, at 8–9.

373. Interview with Ileana Hidalgo Rioja, *supra* note 234, at 12.

374. *See* Interview with Efraín Tzuc Salinas, *supra* note 344, at 12; *see also* Interview with Alejandra Ibarra Chaoul, *supra* note 344, at 6–7 (noting that for the appeals process, "[i]t's not impossible, but for a journalist without a lot of structure, it's . . . [still difficult]").

375. ENAID 2019, *supra* note 337, at 68.

376. *Sobre ARTICLE 19 MX-*CA [*About ARTICLE 19 MX-CA*], Article 19, https://articulo19.org/sobre-articulo19/ [perma.cc/7WZD-8SLY].

377. Interview with Efraín Tzuc Salinas, *supra* note 344, at 12.

378. Another variation on this problem is the challenge of ensuring accessibility to the disability community, something cited as of primary concern and redoubled efforts by the director of the transparency unit. Unidad de Transparencia Interview, *supra* note 147, at 30–31.

rights.[379] When I visited, INAI reported having conducted thirty-five training courses and training more than a thousand facilitators from various communities through this initiative.[380] Those facilitators, in turn, were to return to their communities to educate citizens about their rights.[381] This initiative also coordinated closely with INAI's social media and communications departments.[382] These measures were seen as directly intended to address public engagement.[383] To be sure, the results of these initiatives were yet to be realized, but INAI was dedicating resources to addressing the problem of public engagement.

### 2. Implementation

Many stakeholders I spoke with identified areas of implementation of the law as ripe for improvement. The problems they identified varied considerably based on their perspective.[384] Across the board though, those who interacted with the transparency system identified possible improvements in the law itself that could ameliorate some of the difficulties.[385]

Various INAI officials cited the increasing use of the national security exception—added in 2014—to the rule that INAI's orders are final and unreviewable as a major concern.[386] One official explained that the Supreme Court took so long to resolve these matters that it could pose an obstacle to INAI's orders even when INAI wins.[387] He cited recent examples, including when the President claimed that all contracting related to controversial public infrastructure projects was subject to the national security exception, which included a tourist train in the Yucatán (the Trén Maya) and the new Mexico City airport.[388] Though that decree was later found unconstitutional,

379. Presentation from INAI to Margaret Kwoka, *supra* note 257, at 19.

380. *Id.* at 20; Interview with Ileana Hidalgo Rioja, *supra* note 234, at 13.

381. Interview with Ileana Hidalgo Rioja, *supra* note 234, at 13.

382. *Id.* at 13–14.

383. *See* Interview with Adrián Alcalá Méndez, *supra* note 1, at 9 (citing the need to listen to society on how better to engage the public, asserting that a policy that today is the vanguard is this initiative).

384. Ponencia Interview, *supra* note 127, at 18; Interview with Juan Alberto Galván Trejo, Director Contencioso [Litigation Director], INAI, in Mexico City, Mex. (Feb. 23, 2023), at 2 (transcript on file with author).

385. *See generally* Interview with Juan José Rivera Crespo, *supra* note 249, at 1–2.

386. Ponencia Interview, *supra* note 127, at 19; Interview with Juan Alberto Galván Trejo, *supra* note 384, at 2.

387. Ponencia Interview, *supra* note 127, at 19.

388. *Id.* at 19; Interview with Juan Alberto Galván Trejo, *supra* note 384, at 7.

it undermined the independence of INAI's orders.[389] Much of the recent uptick in these national security exceptions concerned information about Covid-19 vaccines and other public health matters during the pandemic.[390]

Still, in 2022, only fourteen such national security cases were brought.[391] While each case may have had an outsized impact on resources as well as importance to public debates, this level of litigation is not overwhelming. Moreover, historically, each year there was often only one or sometimes no such cases brought.[392] Still, these concerns suggest the need to possibly narrow or limit the application of any national security exception.

Other problems are more logistical or resource oriented. Many officials with whom I spoke appeared overloaded with work, keeping up only by working long hours and pushing each person to maximum productivity.[393] Some officials noted the problem of abusive requesters, without a clear path forward.[394] The Secretary of the Plenum's response was simply that the fundamental right to access information cannot be denied, no matter how sympathetic obligated entities' or state bodies' claims were.[395] The Secretary of Access to Information, who oversaw the audit of affirmative transparency obligations, noted that while the audit can verify that each required category is posted, it cannot always determine if the records posted in the category were complete.[396] She cited initiatives

389. *AMLO Issues New Decree in Response to Supreme Court Ruling*, Mex. News Daily (May 19, 2023), https://mexiconewsdaily.com/politics/amlo-issues-new-decree-in-response-to-supreme-court-ruling/ [https://perma.cc/N2RH-DBLP].

390. *See* INAI, *supra* note 132, at 68; *see also* Interview with Juan Alberto Galván Trejo, *supra* note 384, at 2 (noting that in 2021, of twenty-seven such national security cases, many were about vaccines and other pandemic public health matters).

391. INAI, *supra* note 132, at 68.

392. Interview with Juan Alberto Galván Trejo, *supra* note 384, at 2.

393. *See, e.g.*, Unidad de Transparencia Interview, *supra* note 146, at 9–10 (noting a "philosophy that you have to do more with less" as a way of coping with increasing workload); *see also* Banco de México Interview, *supra* note 158, at 28 (noting that deadlines pose problems when many requests come in simultaneously and they do not have sufficient staff, but that sometimes they are there until two or three in the morning to ensure they meet the deadline).

394. *See, e.g.*, Banco de México Interview, *supra* note 158, at 8 (describing an incident in which two or three people in her unit were working full time to respond to a single requester's requests).

395. Secretaria Tecnica del Pleno Interview, *supra* note 128, at 14.

396. Interview with Ileana Hidalgo Rioja, *supra* note 234, at 17.

she was engaging across agencies to try to verify the completeness of these files.[397]

Interestingly, requesters cited different concerns, primarily falling into two categories.[398] One was obligated entities' rate of compliance with INAI's orders.[399] When I asked Alejandra Ibarra Chaoul about her interactions with Mexican transparency laws, the very first story she relayed was illustrative. She had requested data on the number of journalists who had been killed who were part of a federal journalist protection program.[400] Her request was denied for privacy reasons, even though she requested only aggregate data and not personally identifiable information, so she appealed to INAI.[401] The President of INAI at the time chose to discuss the case publicly at its plenary session and even posted about the case on social media, ruling in favor of Ibarra Chaoul.[402] She was thrilled with the result, but then, things went sideways.[403] When it went back to the obligated entity to process, the agency required more information from Ibarra Chaoul and asserted new reasons for not processing the request.[404] Eventually, faced with mounting more and more complex legal arguments, she gave up, opting instead to get information directly from journalists' families.[405]

Efrain Tzuc described a problem of compliance generally, identifying two points of failure.[406] First, he said that if INAI's order was not completely clear, the compliance office did not have the power to interpret the order, and so the obligated entity interpreted it how it likes.[407] Second, even if the order was completely clear, the requester had to follow up until actually getting the records to which the requester is entitled.[408] Ivan Benumea, at nonprofit FUNDAR, told me that compliance could fall into a limbo in which obligated

397. *Id.*
398. The only journalist I spoke with who had a different view was Gabriela Villegas, whose experience was that when she won an INAI appeal, the entities complied with the order. Interview with Gabriela Villegas Ramirez, *supra* note 343. One other journalist, who asked to remain anonymous, mostly used INAI's repository of proactive disclosures, rather than the request and appeal processes. *See* Interview with Anonymous Journalist, in Mexico City, Mex. (May 12, 2023), at 1 (transcript on file with author).
399. Interview with Alejandra Ibarra Chaoul, *supra* note 344.
400. *Id.*
401. *Id.*
402. *Id.*
403. *Id.*
404. *Id.*
405. *Id.*
406. Interview with Efraín Tzuc Salinas, *supra* note 344, at 6.
407. *Id.*
408. *Id.*

entities take advantage to find some bureaucratic response to the order, rather than providing the information, and INAI might say that the reply closes the case.[409] Tzuc pointed to the fact that the law is much less detailed in regulating the compliance phase as the root cause of the problem.[410]

A final category of complaints concerned INAI's implementation of the public interest balancing test.[411] While those within INAI cited positively the ability of the commission to rule on the public interest,[412] journalists believed it was underutilized.[413] Benumea noted that the public interest balancing test that justifies releasing information "is a practice that it seems to me INAI has stopped using with much frequency"—possibly, he says, because of the complicated political situation in which INAI finds itself, with opposition from the President, or possibly because, with the volume of cases, INAI has forgotten to apply such individualized treatment.[414] Regardless, the law appeared to provide more options for INAI to maximize transparency, and requesters did not always see those options employed.

### 3. Accountability

A final area of critique of the Mexican transparency system during the INAI era questioned whether the system was achieving the government accountability it promises. Government accountability typically translates into two concrete goals in Mexico: fighting corruption and increasing public trust in government.[415]

Corruption is a salient political topic in Mexico, ranging from grand corruption involving presidents themselves to petty practices of accepting bribes to issue permits or licenses, or to avoid penalties or fines.[416] Correspondingly, one of the primary stated justifications

409. Interview with Iván Benumea Gómez, *supra* note 5, at 4.

410. Interview with Efraín Tzuc Salinas, *supra* note 344, at 6.

411. In addition to these problems that came up repeatedly, ironically, one journalist lamented how few requests were reviewed by INAI, despite the fact that INAI engaged in an astonishing amount of review compared to judicial review in the United States. *See id.* at 13; *see also* Kwoka, *An Information Commission*, *supra* note 11, at 223–37 and accompanying text (documenting the comparatively high rate of review).

412. For example, Commissioner Alcalá explained that when "information is withheld, we are here to guarantee and question the situation of whether it must be provided or not . . . in the public interest." Interview with Adrián Alcalá Méndez, *supra* note 1, at 6.

413. Interview with Efraín Tzuc Salinas, *supra* note 344, at 8.

414. Interview with Iván Benumea Gómez, *supra* note 5, at 3.

415. *See* Sandoval-Ballesteros, *supra* note 116, at 291 (explaining that two of the biggest struggles for the Mexican government are "against corruption and for transparency").

416. *See* Roberto Carlos Fonseca, *Mexico's National Anti-Corruption System: Reaching the Finish Line?*, 50 U. Miami Inter-Am. L. Rev. 85, 87–90 (2019).

for the constitutional reforms that created INAI was transparency's potential as a vital tool in the fight against corruption.[417] As a result, many feel it appropriate to measure the law's success, at least in part, on whether it has effectively curbed corruption.[418]

Former government official and academic Sandoval-Ballesteros criticizes the success of Mexican transparency laws on the grounds that they have failed to meaningfully curb rampant corruption, citing the infrequency of sanctions imposed on public officials for failure to comply with transparency obligations.[419] Commissioner Alcalá likewise mentioned that despite transparency laws, "Mexicans, we continue to perceive ourselves as a corrupt society."[420] Former Commissioner Guerrero Amparán and his coauthor Zachary Bookman similarly describe the problem: "Still, critical work is needed to truly deliver on the promises and potential of this legal apparatus. It is estimated that up to 10% of Mexico's GDP is still mired in corruption."[421]

A related metric to measure the success of transparency laws is whether they have increased public trust in government. One study by public administration scholar David Arellano-Gault cites statistics that public trust has, if anything, fallen since the enactment of transparency reforms in Mexico.[422] He argues that the creation of INAI is based on a "paradox" that the laws designed to increase public trust by opening government to public view are enforced through distrust of government actors themselves, treating them as "interested actors unable to change without punishments attached."[423] Arellano-Gault blames this theoretical failing for the practical result that "governmental actors have been able to change their behavior in such a way as to deliver information according to the law[, but] have not adopted the transparency ideals in order to change the organizational way of doing things."[424]

I do not quarrel with the assertions that corruption and public trust remain critical issues in Mexico. Still, it seemed both too early

417. *Id.* at 95–96 (situating the transparency reforms amidst other anticorruption reforms).

418. *Id.* at 112–13.

419. *See* Sandoval-Ballesteros, *supra* note 116, at 298–99.

420. Interview with Adrián Alcalá Méndez, *supra* note 1, at 5.

421. Bookman & Guerrero Amparán, *supra* note 34, at 6.

422. David Arellano-Gault, *The Quest for Public Trust: The Limits of Information Access Reforms Based on the New Institutional Economics. The Case of Mexico*, 39 Int'l J. Pub. Admin. 694, 703 (2016).

423. *Id.* at 697.

424. *See* Arellano-Gault, *supra* note 422, at 703; *see also* David Arellano-Gault & Walter Lepore, *Transparency Reforms in the Public Sector: Beyond the New Economics of Organization*, 32

and too easy to blame the continuing problem on the transparency reforms and INAI. To begin, corruption is a complex, seemingly intractable problem that no one tool—such as transparency alone—is likely to solve.[425] And INAI remained—until its undoing—a relatively new institution, administering a relatively new set of laws; its full impact was unlikely to be felt so soon.[426]

Moreover, INAI was working to address issues around transparency and cultural norms, including trust in government and government culture. For example, even though Arellano-Gault asserts that "distrust is a cornerstone of [the Mexican] law,"[427] he concedes that "INAI has tried to develop other policies and strategies to make public officials embrace and adopt the general 'values' of transparency."[428]

What I observed was that INAI was not operating under a singular commitment to distrust of obligated entities and punitive approaches to incentivize compliance. Rather, "accompaniment" or "support" was a theme of many of my conversations with INAI officials.[429] The Secretary of Access to Information oversaw a department with a liaison at every obligated entity, creating a direct line of communication between INAI and those subject to transparency obligations.[430] This department had a complete accounting of all of the support and advice methods it offered, and it also engaged in technical consults.[431] Finally, as INAI's annual report says, "training should be considered a fundamental element in the creation of a culture of transparency."[432] In the last reporting year, INAI offered more than 250 courses reaching nearly 300,000 public servants in areas of access to information, archives, ethics, accountability, and more.[433] It also maintained a network of officials who are liaisons

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Org. Studies 1029, 1037, 1040 (2011) (finding that obligated entities have "internalized" transparency norms, but many are only complying with bare legal requirements).

425. Interview with Adrián Alcalá Méndez, *supra* note 1.

426. Interview with Juan José Rivera Crespo, *supra* note 249.

427. *See* Arellano-Gault, *supra* note 422, at 696.

428. *Id.* at 697.

429. *See* Infoem Interview, *supra* note 153. This goal was also reflected in INAI's annual report. INAI, *supra* note 132, at 136 (describing measures of support as part of its initiatives to collaborate with obligated entities).

430. Interview with Ileana Hidalgo Rioja, *supra* note 234, at 8.

431. INAI, *supra* note 132, at 136–38.

432. *Id.* at 320.

433. *Id.* at 322.

between INAI and obligated entities, who engaged in planning and implementing training strategies at their organizations.[434]

Despite these impressive efforts at collaboration, obligated entities and state counterparts still viewed INAI as a supervisor or enforcement authority first, and only second as a partner in furthering transparency goals.[435] To be sure, the relationship between INAI and government officials remained a work in progress, but one that INAI was actively shaping to promote transparency culture inside government.[436] These efforts had the potential not only to improve transparency performance but also create a more accountable government in which the public can place greater trust.

## IV. INAI as a Defender of Democracy

Cataloguing INAI's legally endowed powers, its complex mechanisms for carrying out its functions, and its various successes and shortcomings provides an understanding of this institution. But such an account misses something important: the sum of those parts does not quite add up to the whole. INAI was a deeply political actor, eventually finding itself in the crosshairs of a constitutional crisis instigated by left-wing populist President Andrés Manuel López Obrador (popularly known as AMLO). While the result of the crisis was the elimination of INAI, the pitched battle over INAI's existence reveals a fundamental truth about the institution: INAI was powerful. It posed a threat to those who abuse power. It was worth attacking. And its power was buttressed by legal and institutional safeguards. While those safeguards eventually failed, INAI was revealed for a significant time to be a meaningful defender of democracy.

### *A. INAI's Constitutional Crisis*

In 2018, AMLO won the presidency with fifty-three percent of the popular vote, wresting power from the PRI once again, under the party name Movimiento Regeneración Nacional (known as

434. *Id.* at 330.

435. Banco de México Interview, *supra* note 158, at 24 (responding to the question of whether INAI's relations with obligated entities encompass more supervision or partnership, that "without doubt, yes [INAI] is supervision"); *see also* Infoem Interview, *supra* note 153, at 32 (noting both collaboration and some tension between state guarantor bodies and INAI).

436. *See* Fernando Nieto-Morales, *The Elimination of INAI: A Blow to Transparency and Accountability in Mexico*, Wilson Ctr. (Nov. 21, 2024), https://gbv.wilsoncenter.org/article/elimination-inai-blow-transparency-and-accountability-mexico [perma.cc/5GJK-Y88J].

Morena).[437] From his campaign to his victory speech and beyond, his leftist message was "the poor come first."[438] He often railed against government excess and gave up perks of his own office to prove it—declining to live in the traditional presidential palace, which he turned into a cultural center,[439] and selling off the presidential plane to the government of Tajikistan and flying coach instead.[440] And in his administration, he undertook initiatives that seemingly made real differences in the lives of the working poor—from cash transfers to the elderly to public infrastructure projects to raising the minimum wage—making him one of the world's most popular leaders.[441]

At the same time, he repeatedly sought to evade the checks and balances of democratic institutions and instead to accumulate power in the presidency.[442] He pushed through controversial initiatives, attacked institutions that have constrained him, and sought to undermine, reform, or dismantle checks on his own power.[443] As a result, he was criticized as authoritarian and antidemocratic.[444]

One of the most telling battles he has mounted is against the National Electoral Institute, known as INE for its initials in

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437. Steve Ellner, *López Obrador's Moment*, MR ONLINE (July 9, 2018), https://mronline.org/2018/07/09/lopez-obradors-moment/ [perma.cc/RE2P-ABCW].

438. *See id.* (the article quoting Andrés Manuel López Obrador's [AMLO's] victory speech on July 2, 2018).

439. Tom Phillips, *Mexico President-Elect Rejects Bodyguards: 'The Citizens Will Protect Me'*, GUARDIAN (July 3, 2018), https://www.theguardian.com/world/2018/jul/03/mexico-amlo-president-no-bodyguards [perma.cc/ZHH7-ST2G].

440. Jesus Jiménez, *Mexico's Lavish Presidential Plane Arrives at Its New Home in Tajikistan*, N.Y. TIMES (May 15, 2023), https://www.nytimes.com/2023/05/15/world/americas/mexico-obrador-presidential-plane-tajikistan.html [perma.cc/BW8U-R7MG].

441. Kate Linthicum, *Why Is AMLO One of the World's Most Popular Politicians? We Took a Road Trip Through Mexico to Find Out*, LA TIMES (Dec. 19, 2022), https://www.latimes.com/world-nation/story/2022-12-19/why-is-mexicos-amlo-one-of-the-worlds-most-popular-politicians-we-took-a-road-trip-to-find-out [https://perma.cc/Y2G6-W4UF].

442. *See* Alejandro García Magos, Opinion, *Is AMLO Undermining Democracy in Mexico?*, OPENDEMOCRACY (May 13, 2021), https://www.opendemocracy.net/en/democraciaabierta/democratic-backsliding-mexico-force-for-good-bad.

443. *See, e.g.*, Dawn Marie Paley, *Trampled by Transformation: Mexico's Tren Maya*, NACLA (July 24, 2023), https://nacla.org/trampled-transformation-mexico-tren-maya/ [https://perma.cc/3B92-RCQL] (documenting various loopholes AMLO created to push through the Tren Maya infrastructure project).

444. *See, e.g.*, Mariano Sánchez-Talanquer & Kenneth F. Greene, *Is Mexico Falling into the Authoritarian Trap?*, 32 J. DEMOCRACY 56, 57 (2021); Alejandro García Magos, *Democratic Backsliding in Mexico: Lessons for Opponents of Authoritarian Populism*, WILSON CTR. (May 26, 2023), https://www.wilsoncenter.org/article/democratic-backsliding-mexico-lessons-opponents-authoritarian-populism [https://perma.cc/ZLX2-ENBE]; David Frum, *The Autocrat Next Door*, THE ATL. (Feb. 21, 2023), https://www.theatlantic.com/ideas/archive/2023/02/mexico-democracy-autocrat-andres-manuel-lopez-obrador/673137/ [https://perma.cc/US9C-WB3N].

Spanish. AMLO's stated objections to INE were its costs and the comparatively high salaries for INE officials, alongside his claims that INE is somewhere between unnecessary and itself corrupt.[445] Meanwhile, defenders cite INE as the institution that legitimized Mexican elections and allowed democratic rule to prevail over the single-party state.[446] The former INE president reported that in AMLO's (very long) daily morning press conferences, dubbed "mañaneras," he attacked INE more than 300 times.[447] At one point, AMLO pushed a set of reforms through the legislature that would have "slashed [INE's] work force, reduced its autonomy and curbed its power to punish politicians for violating election laws."[448] The move prompted massive street demonstrations in early 2023,[449] nearly shutting down the center city, and eventually was struck down by the Supreme Court.[450]

Over time, AMLO turned his gaze on INAI. The line of attack was largely the same, focusing on the resources required to run INAI, the salaries of INAI officials, and the alleged superfluity of its functions—instead, he argued, the money should be spent directly on the people.[451] To be clear, salaries of personnel of information

445. Tara John et al., *As Criticism Grows Louder, Mexico's President Accuses Protesters of Narco Links*, CNN (Feb. 27, 2023), https://www.cnn.com/2023/02/27/americas/mexico-protest-ine-amlo-intl-latam/index.html [https://perma.cc/LBH2-ZVEE].

446. Rodrigo Soriano & Sonia Corona, *Así le hemos contado la protesta de la oposición en defensa del INE* [*This Is How We Reported on the Opposition's Protest in Defense of the INE*], El País (Feb. 26, 2023), https://elpais.com/mexico/2023-02-26/la-protesta-de-la-oposicion-en-defensa-del-ine-en-vivo.html [https://perma.cc/ZE28-BP8N].

447. Jannet López Ponce, *AMLO ha atacado al INE en 300 mañaneras: Lorenzo Córdova exhibe "hostigamiento"* [*AMLO Has Attacked the INE in 300 Morning Press Conferences: Lorenzo Córdova Exposes "Harassment"],* Milenio (June 28, 2022), https://www.milenio.com/politica/amlo-atacado-ine-300-mananeras-lorenzo-cordova [https://perma.cc/Q4SC-ZU32].

448. Emiliano Rodríguez Mega, *Mexican Court Strikes Down President's Bid to Remake Election Laws*, N.Y. Times (June 22, 2023), https://www.nytimes.com/2023/06/22/world/americas/mexico-electoral-bill-supreme-court.html [perma.cc/A959-48NP].

449. Natalie Kitroeff, *More Than 100,000 in Mexico Protest Changes to Election Agency*, N.Y. Times (Feb. 26, 2023), https://www.nytimes.com/2023/02/26/world/americas/mexico-protest-amlo.html [perma.cc/TGL6-BHJL].

450. *See* Rodríguez Mega, *supra* note 448.

451. *See, e.g.*, *La austeridad y los recursos del INAI, la quimera de AMLO; son insuficientes para pensiones y aquí te decimos por qué* [*Austerity and INAI Resources, AMLO's Pipe Dream; They're Insufficient for Pensions, and Here's Why*], El Universal: Redacción (Jan. 17, 2024, 07:43 PM), https://www.eluniversal.com.mx/nacion/la-austeridad-y-los-recursos-del-inai-la-quimera-de-amlo-son-insuficientes-para-pensiones-y-aqui-te-decimos-por-que/ [https://perma.cc/7SSA-4QK8] (noting that AMLO proposes to reallocate INAI's budget to a new pension program, but that it would be an insignificant portion of the funds necessary); Pedro Villa y Caña & Alberto Morales, *Funciones del Inai las puede asumir la Función Pública o incluso la FGR, plantea AMLO* [*AMLO Proposes That INAI Functions Can Be Assumed By the Civil Service or Even the Attorney General's Office*], El Universal (Jan. 19, 2024, 08:45 AM), https://www.eluniversal.com.mx/nacion/funciones-del-inai-las-puede-asumir-la-funcion-publica-o-incluso-la-fgr-plantea-amlo/

commissions are comparatively high, and budgets for these autonomous bodies are not insubstantial.[452] INAI has some 800 employees and a budget of around fifty million U.S. dollars.[453] But as INAI President Alcalá declared, "When it comes to the protection of human rights, it should not be monetarily quantifiable the direct impact on the lives of people, but our cost annually . . . represents [only] 0.06 percent of the total budget of the federal government."[454]

AMLO's first step was to reject the appointments of new commissioners to vacancies left when sitting commissioners' terms ended.[455] In March 2022, two such vacancies were to be filled but, leaked information suggests, AMLO and leaders of the Morena-party controlled Senate agreed to stall new appointments.[456] At the end of March, a third commissioner's term ended; with that, INAI lost its quorum and could no longer constitutionally act.[457] Stuck in a stalemate and unable to perform its functions, INAI presented a constitutional case at the Supreme Court against the Senate, seeking to force the Senate to name new commissioners.[458] In July 2023, the

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[https://perma.cc/UXJ9-M2HR] (documenting AMLO's claims that INAI's functions could be performed by other existing agencies); Leila Miller, *Mexico's Transparency Institute Has Revealed Government Corruption and Wrongdoing. It's Now Paralyzed*, L.A. Times (Apr. 21, 2023), https://www.latimes.com/world-nation/story/2023-04-21/la-fg-mexico-amlo-transparency-institute [https://perma.cc/5VGQ-PCC2] (quoting AMLO as saying "We don't have anything to hide . . . . Why do we need a bureaucratic apparatus?" at a *mañanera* press conference); Kelin Dillon, *AMLO Promises Transparency in INAI Reform*, Pulse News Mex. (Jan. 11, 2021), https://pulsenewsmexico.com/2021/01/11/amlo-promises-transparency-in-inai-reform/ [https://perma.cc/PLC7-DJVN] (quoting AMLO's description of an amorphous punishment mechanism in lieu of INAI and criticizing INAI's performance, including alleged hiding tax breaks for large corporations).

452. Sandoval-Ballesteros, *supra* note 116, n.16 (noting that, on average, "commissioners receive more than forty-three times the minimum wage versus the multiple of three that an average teacher receives in Mexico.").

453. INEGI, Censo Nacional de Transparencia, Acceso a la Información Pública y Protección de Datos Personales [National Census on Transparency, Access to Public Information and Protection of Personal Data] 13, 16 (2021), https://www.inegi.org.mx/contenidos/programas/cntaippdpf/2021/doc/cntaippdpf_2021_resultados.pdf [https://perma.cc/2XLF-6ZPR]. The 2020 budget for INAI was reported at 867,300,000 pesos, and the combined budget of INAI and all of its state counterparts at 2,043,856,643 pesos (about $120 million U.S.D.). *Id.* at 16.

454. INAI, *Conferencia de Prensa INAI 07.02.2024*, YouTube (Feb. 7, 2024), https://www.youtube.com/watch?v=ZvXcH_8K2lA [perma.cc/2Y7K-823Y], at 05:00.

455. Miller, *supra* note 451.

456. *Id.*

457. Guadalupe Irízar, *Pierde INAI quórum tras salida de comisionado* [*INAI Loses Quorum After Commissioner's Departure*], Reforma (Apr. 1, 2023, 2:28 PM), https://www.reforma.com/pierde-inai-quorum-tras-salida-de-comisionado/ar2580249 [https://perma.cc/3ULL-9NLD].

458. Antonio López Cruz, *INAI celebra fallo de la Corte sobre omisión en nombramiento de comisionados; Senado se defiende* [*INAI Welcomes Court Ruling on Omission in Commissioner Appointment; Senate Defends Itself*], El Universal (July 13, 2023, 04:22 PM), https://www.eluniversal.com.

Supreme Court ruled for INAI, ordering the Senate to act.[459] The Senate moved to confirm two new commissioners, but even after the Court's order, the vote of the full Senate failed.[460]

Effects of INAI's paralysis were felt immediately. Once INAI lost its quorum, the secretary of the interior, Adán Augusto López, reportedly instructed federal agencies to stop responding to information requests.[461] During the 145-day period in which INAI could not resolve cases, 8,200 appeals went unanswered.[462] One journalist I interviewed did not appeal a denial during that time, knowing that INAI was unable to resolve it.[463] Some noted that INAI's budget was also at risk without competency to act, as the commission could not fully participate in ongoing budget processes.[464]

Eventually, INAI presented a new constitutional case.[465] On August 23, 2023, the Mexican Supreme Court ruled that INAI could hold sessions and constitutionally act with only four members of the commission, given the extraordinary situation and the Senate's failure to appoint new commissioners.[466] For more than a year, INAI held sessions with only four commissioners, resolving cases and continuing to press for new appointments.[467]

AMLO's attack on INAI only grew in ambition. On February 5, 2024, the President introduced proposed Constitutional reforms that, among other matters such as overhauling the judiciary, pension

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mx/nacion/celebra-inai-decision-de-la-corte-de-returnar-expediente-de-controversia-constitucional/ [https://perma.cc/TA27-KBTN].

459. *Id.*

460. Luis Carlos Rodríguez & Victor Gamboa, *Rechaza Senado dos ternas para elegir a dos comisionados del INAI* [*The Senate Rejects Two INAI Commissioners*], El Universal (Dec. 6, 2023, 03:23 PM), https://www.eluniversal.com.mx/nacion/rechaza-senado-dos-ternas-para-elegir-a-dos-comisionados-del-inai/ [https://perma.cc/RZ6D-Y6BF].

461. Arturo Sánchez Jiménez, *Asfixia presupuestal, riesgo latente del INAI, reconocen comisionados*, La Jornada (May 2, 2023, 11:32 AM), https://www.jornada.com.mx/notas/2023/05/02/politica/asfixia-presupuestal-riesgo-latente-del-inai-reconocen-comisionados/ [https://perma.cc/8KWN-HQ26].

462. Cody Copeland, *Mexico Supreme Court Ruling Puts Transparency Agency Back to Work*, Courthouse News Serv. (Aug. 23, 2023), https://www.courthousenews.com/mexico-supreme-court-ruling-puts-transparency-agency-back-to-work.

463. Interview with Anonymous Journalist, *supra* note 398, at 8.

464. *See id.*

465. Controversia Constitucional 280/2023, Pleno de la Suprema Corte de Justicia [SCJN], Semanario Judicial de la Federación y su Gaceta, Octubre de 2023 (Mex.).

466. Elías Camhaji, *La Suprema Corte autoriza que el INAI sesione con cuatro comisionados tras meses de parálisis* [*The Supreme Court Authorizes the INAI to Meet with Four Commissioners After Months of Paralysis*], El País (Aug. 23, 2023, 10:03 PM), https://elpais.com/mexico/2023-08-23/la-suprema-corte-autoriza-que-el-inai-sesione-con-cuatro-comisionados-tras-meses-de-paralisis.html [https://perma.cc/5B4D-XU6R].

467. *See, e.g.*, INAI, *supra* note 297 (noting, at the beginning of the session, that the four-member commission was acting pursuant to the Mexican Supreme Court's order).

systems, and elections,[468] would completely eliminate INAI and most other autonomous bodies.[469] At a press conference with all commissioners two days later, President Alcalá defended the institution as one that came from the will of the people.[470] He explained that other agencies cannot take over INAI's functions because they cannot be both judges and parties to controversies over access to records.[471] Indeed, the commissioners have all publicly defended the institution as a necessary democratic counterweight.[472]

In June 2024, Claudia Sheinbaum, the former head of government for Mexico City and member of the Morena party, won the presidential election by a thirty point landslide to become AMLO's successor.[473] In her campaign, she also questioned INAI's value, stating that "resources are for the people, not for bureaucracy."[474] True to her campaign statements, one of her early acts in office was to push through the very constitutional reform package AMLO had championed, which passed in the legislature in November 2024 and was ratified by the states the following month.[475] Alongside several other constitutionally autonomous bodies, INAI was thus written out of the law.[476]

This lamentable result is also revealing. When I asked then-Commissioner-now-President Alcalá why AMLO was targeting INAI, he answered "[b]ecause we are naturally uncomfortable for the powerful . . . we hold a big magnifying glass on all public authorities . . . and we are a counterweight in favor of

468. *Mexican President to Put Lofty Reforms on Agenda Ahead of Election*, Reuters (Jan. 12, 2024), https://www.reuters.com/world/americas/mexicos-president-will-present-constitutional-reforms-next-month-2024-01-12 [perma.cc/E79L-YT2K].

469. *Presidencia plantea eliminar al INAI y que Función Pública resguarde datos personales y responda solicitudes* [*The Presidency Proposes Eliminating the INAI and Having the Civil Service Safeguard Personal Data and Respond to Requests*], Animal Político: Redacción (Feb. 6, 2024), https://www.animalpolitico.com/politica/amlo-reformas-eliminar-inai-autonomos [perma.cc/8C67-HWAX].

470. INAI, *supra* note 454, at 04:00.

471. *Id.* at 05:30.

472. *See generally id.* (describing all the democracy-enhancing functions of INAI).

473. Kylie Madry & Valentine Hilaire, *Mexico's Sheinbaum Wins Landslide to Become Country's First Woman President*, Reuters (June 3, 2024, 03:40 AM), https://www.reuters.com/world/americas/mexicans-vote-election-seen-crowning-first-female-president-2024-06-02/ [perma.cc/29QB-X45U].

474. Carlos García, *De Gira por Guanajuato, Sheinbaum cuestiona existencia del INAI* [*On Tour in Guanajuato, Sheinbaum Questions the Existence of the INAI*], La Jornada (Apr. 29, 2023), https://www.jornada.com.mx/notas/2023/04/29/politica/de-gira-por-guanajuato-sheinbaum-cuestiona-existencia-del-inai [perma.cc/J4XN-2U43].

475. Wagner & Rodríguez Mega, *supra* note 19.

476. *Id.*

society."[477] Then-President Ibarra Cadena echoed that theme. The work of INAI, she said, "is a specialized job and its support comes from the Constitution, but the social demand came from the people."[478] One way to look at INAI's demise, then, is that INAI was a powerful enough check on government authority to be worth taking down.

### *B. Structural Defenses*

As the result of this constitutional struggle reveals, no institution is completely immune from politics, nor perhaps should it be. Still, INAI's defining features—independence, finality of authority, and expertise—were essential not only to performing its duties, but to defending itself as long as it was able to ensure that it remains a check on government power and an accountability tool for the people.[479] This Section describes the mechanisms through which INAI's independence and power were structurally protected.

Many of the aforementioned functions of INAI are in and of themselves protective of INAI's independence and autonomy. The nomination process, as previously described, was clearly not immune from political whims but was designed to be insulated from day-to-day politics.[480] The budgetary process was likewise channeled outside of presidential politics.[481] And the finality of INAI's authority to resolve cases, its powers to enforce its own orders, and its autonomy in running its operations all contributed to its protection from political influence.[482] These matters, discussed in greater detail above, were routinely cited as critical to INAI's autonomy in discussions with folks inside and outside of INAI.[483]

Beyond these structures, other aspects of INAI were evident as important safeguards to INAI's independence. The first one might be

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477. Interview with Adrián Alcalá Méndez, *supra* note 1, at 14.

478. Interview with Blanca Lilia Ibarra Cadena, *supra* note 217, at 3; *see also* Infoem Interview, *supra* note 153, at 8 (quoting one commissioner as saying that autonomous bodies are "uncomfortable" for AMLO because they "want to access information like the construction or the expenses of the Tren Maya and how the government distributes vaccines").

479. Nieto-Morales, *supra* note 320.

480. *See* Constitución Política de los Estados Unidos Mexicanos , art. 6, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 17-01-2025, *translated in* Grote, *supra* note 35.

481. *See* LGTAIP EN, *supra* note 73, art. 54.

482. *See supra* notes 81–83 and accompanying text.

483. Interview with Gonzalez Sánchez de Tagle Pérez Salazar, *supra* note 187; Secretaria Tecnica del Pleno Interview, *supra* note 128.

labeled litigation authority.[484] However, it encompassed a stronger set of powers than the term typically does in the United States.[485] In addition to the capacity to defend its own actions that might be challenged in court, INAI could also bring what are called constitutional controversies.[486] These lawsuits are a special cause of action that one branch of government can bring against another, alleging that the actions of the defendant branch are infringing on the constitutional competencies of the plaintiff branch.[487]

This litigation capacity allowed INAI to protect its own authority. While these were not common lawsuits, they were not extraordinary either.[488] INAI's general counsel told me that there were about ten such cases pending at the time I spoke with him,[489] including INAI's lawsuit against the President after he issued a decree declaring major infrastructure projects exempt from transparency laws on national security grounds.[490] The general counsel added, "[t]o the extent to which the power of any public body can be undermined, it is not the power itself that is affected, but rather it is the purpose for which the autonomous body was created," and in the case of INAI, "to protect … fundamental rights" including access to information.[491]

Another important structural safeguard I observed was the existence of independent state counterparts to INAI that build in redundancy and accessibility. I visited Infoem, the state counterpart in the Estado de México, the most populous state in the country, and met with nearly all of its commissioners.[492] This impressive group of people had a vibrant discussion about the role of information commissions in Mexico, and one noted that "you can see that we have a variety of ideas . . . and [some] are different from INAI['s positions]," but another commissioner chimed in, "but we

484. *See* Kwoka, *An Information Commission*, *supra* note 11, at 295–97 and accompanying text.

485. *See* Neal Devins & Michael Herz, *The Battle That Never Was: Congress, the White House, and Agency Litigation Authority*, 61 Law & Contemp. Probs. 205, 207–08 (1998) (describing the relative lack of litigation authority afforded to United States government agencies outside of the U.S. Department of Justice).

486. Interview with Gonzalo Sánchez de Tagle Pérez Salazar, *supra* note 187.

487. *Id.* at 6.

488. *Id.*

489. *Id.*

490. INAI, *supra* note 132, at 18.

491. Interview with Gonzalo Sánchez de Tagle Pérez Salazar, *supra* note 187.

492. Infoem Interview, *supra* note 153, at 1.

have to defend one another . . . Without transparency, there is no democracy."[493]

Beyond providing each other with political support, this multitude of bodies had the chance to experiment and even to produce useful redundancies, making the national transparency system more resilient. For example, Infoem had its own transparency platform, which interoperated with the PNT but was hosted and run entirely by Infoem.[494] The result was that when the PNT experienced technical problems, Infoem's platform served as a backup for its own state.[495] In the other direction, INAI had power to resolve appeals from the state level if for some reason, such as loss of a quorum, the state level body could not resolve them.[496] These redundancies were cited in both directions as helpfully reinforcing each other.

Finally, a less-tangible structural element of INAI was clearly protective of the institution and its autonomous role: its public and political capital. INAI had set itself to the task of promoting the value of a human right to access information.[497] It was a marketing marvel, and the results were apparent everywhere you look.

Whenever I took an Uber during my nine months in Mexico City, I was readily identifiable as a foreigner by my appearance and accent. The driver would inevitably ask what I was doing there, and I would explain I was on a research grant to study INAI. "INAI!" the driver would inevitably exclaim, followed by their detailed opinions about the state of transparency and the performance of INAI. Everyone knew about it. When I tell people I study FOIA in the United States, most people look at me blankly. This popular knowledge and support for transparency rights may be the legacy of INAI.

## V. Conclusion

As U.S. courts and policymakers are dismantling independent agencies, a deep look at the activities, operations, and ethos of INAI provides some counterweight to document the unique benefits that independent administrative bodies bring. At a

493. *Id.* at 1, 31 (noting that the relationship between Infoem and INAI was very good).
494. *Id.* at 19–20.
495. *Id.* at 24.
496. Secretaria Tecnica del Pleno Interview, *supra* note 128, at 12.
497. Nieto-Morales, *supra* note 479. In addition to the impressive public relations campaign INAI wages in Mexico, it had an enormous international presence as a leader in international organizations, a partner in technical assistance binationally, and a collaborator with international researchers such as myself. INAI, *supra* note 132, at 418–31.

minimum, the innovations of INAI in administering and enforcing transparency obligations highlight opportunities for reform of transparency laws around the world, and particularly in the United States, where understanding INAI only reinforces how out of date our transparency system is. This research provides a base upon which to build out studies of transparency's effects in an environment where the legal structures are highly functioning, facilitating insights into the role of transparency in protecting democracy and advancing human rights.