

Judicial Reform in Mexico

Toward a New Criminal Justice System



Trans-Border Institute

Joan B. Kroc School of Peace Studies

University of San Diego

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SPECIAL REPORT

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Executive Summary

- **Mexico’s public security challenges have prompted substantial public attention to the need to reform the judicial sector:** Elevated levels of “common” crime and high profile violence from organized crime have contributed to public frustration and calls for greater security. Due to the lack of transparency and efficiency in the criminal justice system, fewer than 25 percent of crimes are reported and just 1 or 2 percent of crimes result in a sentence.
- **In 2008, Mexico introduced a series of constitutional and legislative changes that will bring major changes to its criminal justice system:** Mexico’s 2008 judicial sector reforms comprise four main elements: 1) changes to criminal procedure through the introduction of new oral, adversarial procedures, as well as alternative sentencing and dispute resolution; 2) a greater emphasis on the due process rights of the accused (i.e., the presumption of innocence and an adequate legal defense); 3) modifications to police agencies and their role in criminal investigations; and 4) tougher measures for combating organized crime.
- **Implementing the 2008 reforms involves an array of challenges, and will require substantial resources and effort over a long period of time:** Reforms have been implemented in only 13 of Mexico’s 32 states, and there are numerous supplementary measures needed to enhance judicial sector functioning. Some critics tend to fear that reform efforts may be trying to do too much, too fast, with too few resources, and with too little preparation. Others say they don’t do enough.
- **For the reform effort to succeed, policy makers will need to develop realistic estimates of the resources needed:** Currently, there is no estimate of the reforms’ anticipated financial costs on which to base budgetary allocations, but there is widespread agreement that the effort will require massive investments—in education, training, and supporting infrastructure—that have yet to materialize. Policy makers must begin to properly estimate and allocate adequate resources to ensure the success of the reforms.
- **To monitor progress, administrators will need to develop indicators to measure successful implementation and performance:** Policy makers and civic organizations working to implement the reforms must develop baseline and performance measures to properly evaluate the progress, accomplishments, and inadequacies of reform efforts. Greater transparency and access to information will be required, as well as resources dedicated to data gathering, analysis, and dissemination.
- **Above and beyond the recent reforms, there is a need to promote greater professionalism and accountability in the judicial sector:** “Oral trials” are no magic bullet for Mexico’s ailing judicial system. The core problems of the Mexican justice sector stem from the corruption and weakness of judicial institutions. Procedural reforms cannot be successful without further efforts to promote greater professionalism, transparency, and accountability among police, prosecutors, public defenders and judges (e.g., more training, better vetting, more effective oversight, improved public access to information, and stronger professional associations).



Overview: Judicial Reform in Mexico

As stories of crime and violence play out in the headlines, Mexico is in the midst of a major transformation of its judicial sector. In recent years, Mexico has been gradually implementing a series of reforms that advocates hope will dramatically improve public security and the administration of justice over the next decade. Central to the process of judicial reform in Mexico is a package of ambitious constitutional and statutory changes approved by the Mexican Congress in 2008, and to be implemented throughout the country by 2016. Together, these reforms touch virtually all aspects of the judicial sector, including police, prosecutors, public defenders, the courts, and the penitentiary system. The reforms include significant changes in Mexican criminal procedure, new measures to promote greater access to justice (for both criminal defendants and crime victims), new functions for law enforcement and public security agencies in the administration of justice, and tougher measures for combating organized crime.

Advocates of the reforms hope that they will help Mexico to achieve a more democratic rule of law by introducing greater transparency, accountability, and due process to Mexico's judicial sector. However, critics note that the reforms attempt to achieve too much in too little time, contain blatantly contradictory features, and fail to address persistent problems of institutionalized corruption. Meanwhile, although there has been substantial attention to Mexico's judicial sector reforms among Mexican scholars and legal experts, there has been remarkably little effort to outline these initiatives for a U.S. audience. As U.S. policy makers and experts contemplate renewed efforts to strengthen Mexican judicial sector institutions, there is great urgency to understand what progress has been made so far in Mexican judicial sector reform and what issues remain. This report helps to fill the gap in our current understanding of these problems by explaining Mexico's justice sector challenges, the specific changes proposed under the 2008 reform package, and the challenges that lie in store for Mexico as it implements judicial sector reforms over the next decade.

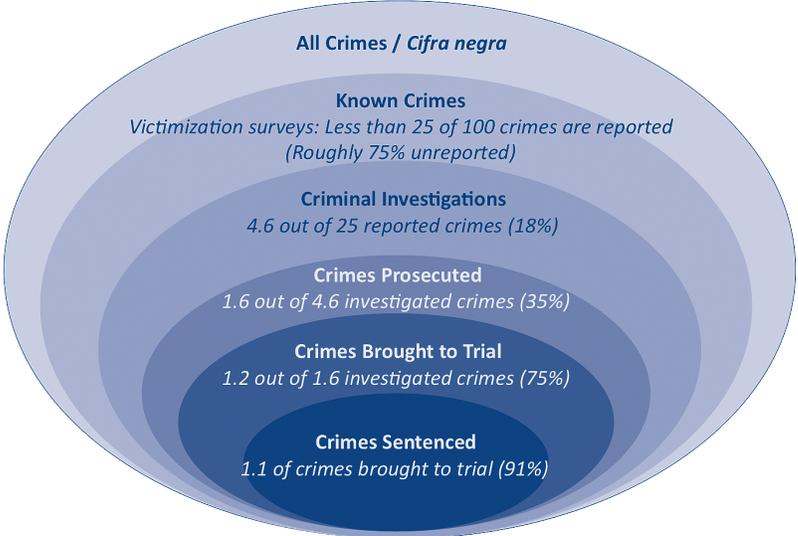
Mexico's Criminal Justice Sector Challenges

The weaknesses of Mexico's criminal justice system contribute to high levels of criminal impunity, poor protections for individuals accused of a crime, and low public confidence in the judicial sector. Indeed, in a 2007 Gallup poll, only 37% of Mexicans responded positively to the question, "do you have confidence in Mexico's judicial system?" while 58% said "no" and 4% "don't know."¹ According to Mitofsky, a polling firm, police are ranked among the least respected Mexican institutions; just one in ten Mexicans has some or much confidence in police agencies.² Mexican citizens distrust law enforcement officials not only because of the perception that authorities are unable to solve crimes, but because of the perception (and reality) that there is widespread corruption and criminal activity on the part of justice system operatives, most notably police.³ As a result, victimization surveys suggest, 25% or fewer crimes are even reported, making the true incidence of crime a "black statistic" (*cifra negra*).⁴

Much of the problem has to do with the fact that Mexico’s new democracy is still in the process of developing a “democratic” police force and a professional, independent judiciary. Historically, Mexican law enforcement agencies were an extension of autocratic or semi-authoritarian systems of control, and have long exhibited significant problems of institutional corruption. Police organizations were generally able to impose order, but were also used as instruments of patronage and political coercion.⁵ Mexico’s transformation from a virtual one-party state into a multi-party democracy has brought significant changes with regard to the expectations for the nation’s public security apparatus, making the use of traditional coercive tactics and accommodation of organized crime unacceptable. Partly as a result of their evolving role, police organizations not only lack the capacity to adequately enforce the law, but the degree of accountability that promotes greater effectiveness, professionalism, integrity, and adherence to due process.⁶ In other words, police reform has not kept pace with Mexico’s democratic regime change.

Meanwhile, by many accounts, the administration of justice through Mexico’s court system has also proved woefully inadequate. As is common to other parts of Latin America, the problems faced by Mexican judiciary are largely attributable to the historical neglect—if not outright subversion—of the institution in the political system. Due to several factors that hindered democratic development in the 19th and 20th centuries, Mexico’s judiciary has been far weaker than the legislature and (especially) the executive branch.⁷ In Mexico and most Latin American countries, large majorities express a lack of confidence in judicial sector institutions.⁸ In Mexico, these concerns owe partly to persistent and deeply engrained problems in the functioning of courts and penal institutions, which suffer from significant resource limitations and case backlogs. As a result, only about one in five reported crimes are fully investigated, and an even smaller fraction of these result in trial and sentencing. The net result is widespread criminal impunity, with perhaps one or two out of every 100 crimes resulting in a sentence (See Figure 1).⁹ For the victims of crimes in Mexico, there is rarely any justice.

Figure 1: Life Cycle of a Crime in Mexico



Source: Guillermo Zepeda Lecuona, “Criminal Investigation and Subversion of Justice System Principles,” in *Reforming the Administration of Justice in Mexico*, 2007. Numbers rounded to nearest tenth.

Yet, there are also problems of access to justice for those accused of a crime. Those few cases in which a suspect is detained and brought to trial are hampered by lengthy, inefficient criminal proceedings that often lack an adherence to due process.¹⁰ Police investigators are often poorly trained and inadequately equipped to employ modern forensic and investigative techniques in the course of a criminal proceeding. State and federal investigative police agencies exhibit disturbing patterns of corruption and abuse, including the use of bribery and torture, according to surveys of prison inmates.¹¹ Meanwhile, during the course of criminal proceedings, defendants are frequently held in “pre-trial detention,” with very limited access to bail even when the offense is relatively minor.¹² During pre-trial detention and despite the “presumption of innocence,” the accused are frequently mixed with the general prison population while they await trial and sentencing. Because of lengthy delays in criminal proceedings, many defendants languish in jail for months or years without a sentence.¹³

Once a suspect has been identified, however, a guilty verdict is highly likely, particularly when a suspect is poor and the crime is petty. Indeed, although the probability of being arrested, investigated, and prosecuted for a crime is extremely low, as many as 85% of crime suspects arrested are found guilty.¹⁴ Recent studies suggest that nearly half of all prisoners in Mexico City were convicted for property crimes valued at less than 20 dollars.¹⁵ According to critics of Mexico’s criminal justice system, these patterns are attributable to the lack of an adequate legal defense, and the fact that there is ready acceptance of the prosecutor’s pre-trial investigations as evidence at trial. Also, in this context, a suspect’s guilty plea is often the sole cause for indictment and conviction, and a disturbingly high proportion of torture cases in Mexico involves forced confessions.¹⁶ Meanwhile, armed with superior resources, access to evidence, and procedural advantages, public prosecutors are often able to easily overpower the meager legal defense available to most accused criminals. Additionally, faced with overwhelming caseloads, the judge that rules on preliminary hearings is the same judge at trial and sentencing, and frequently delegates matters—including court appearances—to courtroom clerks. As a result, many inmates report that they never even had a chance to appear before the judge who sentenced them.

Once in prison—whether for pre-trial detention or final sentencing—inmates typically encounter severely overcrowded facilities, inadequate access to basic amenities, corrupt and abusive prison guards, violence and intimidation from other inmates, and ongoing criminal behavior (including rampant drug use).¹⁷ According to official statistics, on average Mexican prisons are overcrowded by more than 30% above capacity in 2009, and with continuously growing populations.¹⁸ In recent years, these conditions found in Mexican prisons have contributed to serious problems with rioting and escapes.¹⁹ Such conditions illustrate the inadequacy of Mexico’s current penal system—and perhaps the use of incarceration in general—as a means of promoting the rehabilitation of convicted criminals, the vast majority of whom will eventually be released back into society.²⁰

In short, the overall picture is one where the “un-rule of law” prevails and there is a severe lack of access to justice, particularly for the indigent.²¹ For Mexico and other Latin American countries that have undergone democratic transitions in recent decades, achieving the rule of law presents a major test of regime performance, since perceptions of the judicial system appear to be positively correlated with support for democratic governance.²² In Mexico, concerns about the country’s on-going public security crisis have led authorities to introduce major changes with the goal of modernizing the nation’s law enforcement agencies and empowering the judiciary. Whether they are successful may have important implications for overall support for democratic governance, and significantly shape the decisions of the Mexican electorate in the coming years. To better evaluate the challenges that reformers face, the contours of the country’s criminal justice system and the nature of recent reform initiatives are considered in more detail below.

What Kind of Reform? Oral Trials, Due Process, and More

The legal foundations of the Mexican criminal justice system are found in the country’s post-independence constitutions, as well as both federal and state administrative laws, criminal codes, and criminal procedure laws (See Table 1). Generally speaking, these foundations placed Mexico within the civil law tradition, which typically relies on an inquisitorial model of criminal procedure where an instructional judge actively leads the investigation and process of determining a suspect’s guilt or innocence. That said, it is important to recognize that there is enormous variation in the application of inquisitorial criminal procedures around the world. Indeed, Mexico has developed a highly unique legal tradition that mixes elements of different systems and includes several unique features, such as the *amparo*, a special injunction or “writ of protection” introduced in the 19th Century.²³

The advent of a new revolutionary constitution in 1917 brought significant modifications to Mexico’s criminal justice system, and new efforts to reform the country’s criminal codes over the next decade and a half.²⁴ First, the new constitution eliminated the Ministry of Justice and, importantly, the figure of the instructional judge; as discussed below in more detail, this placed prosecutors in a more central role in the investigation and prosecution of crimes, a move that set Mexico significantly apart from other inquisitorial systems. Second, a new federal criminal (or penal) code—outlining both the principles of Mexican criminal law, and specific crimes and punishments—was enacted in 1931, and has remained the primary basis of Mexican criminal law throughout most of the post-revolutionary period. This Federal Criminal Code (*Código Federal Penal*, CFP) establishes the basis of criminal law, while the rules for criminal proceedings are contained in the Federal Code of Criminal Procedure (*Código Federal de Procedimientos Penales*, CFPP) originating in 1934. The CFP and CFPP generally set the example for state-level criminal codes and procedures, though there is significant variation across different states (particularly with regard to criminal codes).

Table 1: Legal Foundations of the Mexican Criminal Justice System

Source	Origins and Evolution	Key Provisions
<i>Mexican Constitution (Constitución de la República Mexicana)</i>	<ul style="list-style-type: none"> • 1917: reformulation of the Liberal, rights-based 1857 Constitution, with the incorporation of key Mexican revolutionary principles promoting social justice, municipal autonomy, and prohibitions on re-election 	<ul style="list-style-type: none"> • Articles 14, 16, and 18-23: individual guarantees • Articles 94-107: role and function of the federal judiciary • Article 102: role of the federal attorney general, or Ministerio Público Federal) • Article 122: the role of the public prosecutor in the Federal District. • Article 103, 107: the right to a legal injunction (amparo)
<i>Organic Law of the Federal Judicial Power (Ley Orgánica del Poder Judicial de la Federación, LOPJF)</i>	<ul style="list-style-type: none"> • 1908, 1917, 1928, 1934, 1935: LOPJF contained modifications to role of public prosecutor. • 1995: new LOPJF with provisions for judicial review and vetting of judiciary, and last modified in January 2009 	<ul style="list-style-type: none"> • Eleven separate titles and 251 articles establish the general regulations for federal court system including the Supreme Court, Federal Judicial Council, Circuit Courts, District Courts, and Federal Electoral Tribunal • Rules on jurisdiction and transfer cases from lower courts (atracción), professional advancement, and use of juries.
<i>Organic Law of the Federal Attorney General (Ley Orgánica de la Procuraduría General de la República, LOPGR)</i>	<ul style="list-style-type: none"> • 1908 and 1919: Organic laws established to regulate Federal Public Prosecutor • 1917: Article 21 of Constitution outlines functions of public prosecutors • 1983: LOPGR establishes Federal Attorney General's office 	<ul style="list-style-type: none"> • Series of regulatory laws and modifications to the LOMPF in 1941 and 1955 and the LOPGR in 1984, 1985, 1987, 1988, 1993, and 1996 progressively strengthened prosecutorial autonomy and restructured federal law enforcement agencies in Mexico.
<i>Federal Criminal Code (Código Penal Federal, CPF)</i>	<ul style="list-style-type: none"> • 1835: first Mexican criminal code adopted in Veracruz; • 1860s: Emperor Maximilian adopts French criminal code; 1871: Juárez adopts CPF (following Spanish model) • 1931: Post-revolutionary government adopts new CPF • 2008: Judicial reform significantly modifies CPF 	<ul style="list-style-type: none"> • Volume I of the CPF outlines general principles of criminal law (what constitutes a crime, types of criminal offenders, and principles of punishment). • Volume II of the CPF deals with specific crimes and their punishments.
<i>Federal Code of Criminal Procedure (Código Federal de Procedimientos Penales, CFPP)</i>	<ul style="list-style-type: none"> • 1934: post-revolutionary government enacts new CFPP • 2009: Most recent modification to CFPP • Further modifications are pending review by the Mexican Supreme Court to adapt federal criminal procedure to the 2008 judicial reforms. 	<ul style="list-style-type: none"> • Thirteen titles and 576 articles regarding jurisdiction; search and seizure; court appearances; pre-trial proceedings; criminal actions; probable responsibility; presentation of evidence; concluding arguments; acquittals and judgments; post-trial phase; rehabilitation; special cases (mental illness, juvenile offenders, drug addiction).
<i>State Organic Laws, Criminal Codes, and Criminal Procedural Codes</i>	<ul style="list-style-type: none"> • 31 state codes • Federal District codes 	<ul style="list-style-type: none"> • While there is considerable variation, state laws and codes generally adhere to standards established at the federal level.

Over the last two decades, a series of reforms to the above structures have been implemented in Mexico, with substantial implications for the criminal justice system and democratic governance overall. The 1980s brought the dismantling of the nation's federal police agency, as well as new structures for coordinating national security policy, under President Miguel de la Madrid (1982-88).²⁵ In December 1994, under President Ernesto Zedillo (1994-2000), the federal government restructured the national public security system and reformed the judiciary to promote higher professional standards,²⁶ stronger powers of judicial review,²⁷ new standards for judicial precedent,²⁸ and greater judicial independence.²⁹ In November 1996, the Zedillo administration also introduced the Federal Organized Crime Law (*Ley Federal de Delincuencia Organizada*, LFDO) to address the proliferation of organized crime syndicates in recent decades.

Arguably, the most substantial efforts to promote judicial sector reform in recent decades began during the administration of Vicente Fox (2000-2006), the first president originating from the National Action Party (*Partido Acción Nacional*, PAN), a socially conservative, pro-business party founded in 1939. In April 2004, the Fox administration proposed a series of constitutional and legislative changes to modernize Mexico's criminal justice system.³⁰ The 2004 proposal pressed for a comprehensive reform of including, among other major changes, a shift to modify Mexico's unique variation of the inquisitorial system by further incorporating elements of the adversarial model. Although the Fox administration was able to pass significant reforms to the juvenile justice system in 2003, the 2004 justice reform package met significant resistance and ultimately stalled in the legislature.³¹ Despite failing to win congressional approval, the Fox administration's proposal triggered a national debate on the merits of a major judicial reform, and also signaled federal approval to Mexican states working to implement similar reforms at the sub-national level.³² The states of Nuevo León, Chihuahua, and Oaxaca were among the earliest adopters of new adversarial procedures and other innovations.³³

The perception that these state-level reforms contributed to greater judicial efficiency and transparency helped build support for the adoption of federal level judicial reforms by the Mexican Congress in 2008, during the administration of PAN President Felipe Calderón (2006-2012). The reform package was based primarily on a bill passed in the Chamber of Deputies, with some significant modifications introduced in the Senate in December 2007.³⁴ The reforms were debated in Congress for over a year. They benefited from widespread support among jurists, academics, and human rights advocates favoring a greater emphasis on due process protections.³⁵ Levels of violence from organized crime, which took sharp upswings in 2007 and especially early 2008, also lent a sense of urgency to improve the justice sector. In this context, the package was finally approved on March 6, 2008 with broad, multi-party support. It passed with 462 votes out of 468 federal deputies in the 500-member Chamber of Deputies, and with a 71-25 vote in the 128-member Senate.³⁴ Because the reform package included constitutional amendments—including revisions to ten articles (16-22, 73, 115, and 123)—the approval of a majority of Mexico's 32 state legislatures was required. After just three months, the reforms were approved at the state level and brought into effect with the publication of

the federal government's official bulletin, the *Diario Oficial*, on June 18, 2008.

The 2008 reform package comprised four main elements: 1) changes to criminal procedure through the introduction of new oral, adversarial procedures, alternative sentencing, and alternative dispute resolution (ADR) mechanisms; 2) a greater emphasis on the rights of the accused (i.e., the presumption of innocence, due process, and an adequate legal defense); 3) modifications to police agencies and their role in criminal investigations; and 4) tougher measures for combating organized crime. Each of these elements is explored in more detail below.

1) *“Oral Trials”*: Changes in Mexican Criminal Procedure

Arguably, the most heralded aspect of the 2008 reforms is the introduction of “oral trials,” with live public proceedings to be held in open court. However, popular emphasis on the novelty of “oral” trial procedures is somewhat misleading for two reasons.³⁷ First, Mexican criminal courts have traditionally relied on the use of oral testimony, presentation of evidence, and argumentation, in at least some fashion.³⁸ Therefore, a more appropriate aspect of the reform to emphasize is the larger transition from Mexico's unique inquisitorial model of criminal procedure to an adversarial model that draws elements from the United States, Germany, Chile, and other countries. A second reason that the emphasis on “orality” is somewhat over-played is that, with the transition to adversarial trial proceedings, live oral trials will be used in only a small fraction of the criminal cases managed by Mexican courts. This is because the reform involves other changes, notably the expanded use of ADRs and alternative sentencing (such as “plea-bargaining,” or *juicio abreviado*). These procedural options are intended to help reduce the overall number of cases handled in court. By promoting various alternatives to prison (such as mediation, community service, reparations to victims, etc.), the reforms are intended to achieve greater efficiency and restorative justice (*justicia restaurativa*). Since a majority of criminal cases will be resolved without ever getting to trial, this will presumably relieve congestion in the courts and contribute to a more efficient judicial process.

It should be pointed out that, contrary to conventional wisdom, Mexico does not have a true inquisitorial system, in which the judge plays a leading role as the “inquisitor” overseeing the investigation and prosecution of a criminal case. Instead of an instructional judge (*juez de instrucción*), who would directly lead the investigation in a “typical” inquisitorial system, the public prosecutor (*ministerio público*) plays a central role and has a relatively high degree of autonomy in Mexico's criminal proceedings. This significant departure from typical inquisitorial systems dates back to the early 20th century, and makes Mexico's system somewhat more similar to the U.S. system than many may realize.³⁹ Prosecutorial independence is especially notable during the preliminary inquiry (*averiguación previa*), in which a suspect is investigated and formally indicted for a crime. This hybrid or “mixed” model has some important liabilities. Indeed, critics charge that the power and autonomy of the public prosecutor during the preliminary inquiry contributes to abuses such as forced confessions and mishandling of evidence.⁴⁰

Figure 2: Key Steps in Mexico’s New Adversarial Criminal Procedures

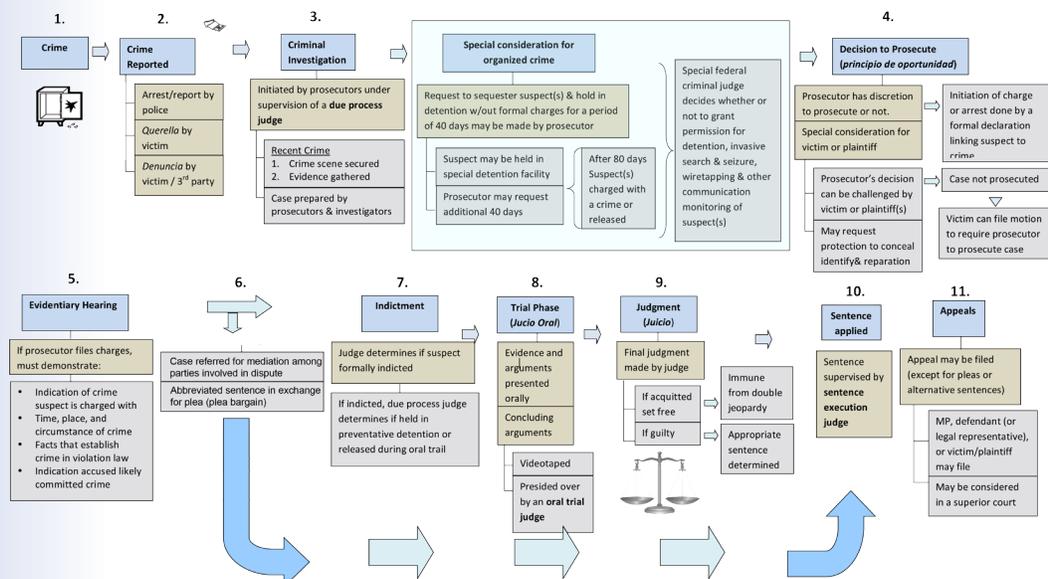


Figure prepared with assistance from Nicole Ramos.

Under the 2008 reforms, Mexico will further modify its system by adopting elements of the adversarial model, which is typically associated with common law systems like the United States or the United Kingdom. One of the primary characteristics of adversarial systems is that the judge functions as an impartial mediator between two opposing “adversaries” —the prosecution and the defense— as they present competing evidence and arguments in open court. Indeed, the defense counsel generally has a more active role in representing the defendant throughout the criminal proceedings, and in presenting evidence and arguments in court.⁴¹ This lends to certain perceived advantages and disadvantages of adversarial systems. Among the advantages are the checks and balances built in to the criminal proceeding, as well as both efficiency and transparency in the presentation of evidence in court. However, adversarial systems also place at least one of the adversaries in the uncomfortable position of actively advocating for the “wrong” side, and sometimes winning.⁴²

Under the reforms approved in 2008, the Mexican federal government, and eventually all state governments, will adopt many aspects of the adversarial model over the coming years. This shift implies many significant changes to the roles of key players and the legal structures that regulate the criminal justice system (See Figure 2). The implications for criminal legal procedure include a more abbreviated and less formalized preliminary investigative phase, and a greater reliance on presentation of testimony and evidence during live, public trials that are recorded for subsequent review or appeal.⁴³ The reforms also include several additional innovations. Some of these, such as the arraigo, are discussed below. Others are intended to promote a more efficient division of labor, relieve congestion and case backlogs, and provide greater checks and balances throughout the process. All of these changes will have significant implications for each of the major

players in Mexican law enforcement and administration of justice: the defendant, police, judges, prosecutors, defense attorneys, and the victim.

First, in keeping with the design of the adversarial model, Mexican judges will now play more of a moderating role during the trial phase, while prosecutors and defense counselors present arguments and evidence in live, recorded, oral hearings. An equally important innovation is that the reforms also create special judgeships for different phases of the criminal proceedings, ostensibly promoting an efficient division of labor and fewer conflicts of interest. A due process judge, or juez de garantía, will preside over the pre-trial phase (investigation, preliminary hearing, indictment, and plea-bargaining). A sentencing judge, or juez de sentencia (also called the oral trial judge, or “juez de juicio oral”) will preside over the trial phase, as well as the presentation of oral arguments and the final verdict. A sentence implementation judge (juez de ejecución de sentencia) will be charged with ensuring that sentences are properly applied and the terms of agreement for restorative justice (e.g., repayment of damages) are fulfilled.⁴⁴ As discussed in greater detail below, the creation of the new due process judge is primarily intended to ensure due process prior to the trial phase.

Meanwhile, the public prosecutor (ministerio público) will lose some of the traditional power vested in that office. With the introduction of “probable cause” as a basis for criminal indictment, the preliminary investigation (averiguación previa) is no longer as central to the process. This means that the role of the public prosecutor is less decisive in determining the probable guilt of the accused (probable responsible), but also that the public prosecutor has a lower threshold to initiate a charge or arrest (Article 19, Paragraph 1). The public prosecutor will still have substantial discretion about whether or not to seek prosecution, under a provision known as “the principle of opportunity” (principio de oportunidad) which allows the prosecutor to strategically weigh his or her decision against the resource limitations and priorities of law enforcement.

One possible concern, however, is that prosecutors will neglect to take a case for political, personal, or other reasons. Hence under Article 20, Section C of the Mexican Constitution, the reforms also allow crime victims to file a criminal motion before a judge in certain cases, with the goal of creating pressure on public prosecutors to investigate important cases. The reforms also include privacy protections to conceal the identity of the victim, plaintiff, and witnesses. In addition, the reforms mandate a system of reparations for harms resulting from the crime, including an emphasis on the restitution or restoration of damages (reparación de daño), the terms of which can be determined by the due process judge through mediation or other solutions.

2) The Rights of the Accused: Guarantees for the Presumption of Innocence, Due Process, and an Adequate Legal Defense

Also included in the 2008 reforms are stronger constitutional protections for the presumption of innocence, a more substantial role for judges in distinct phases of the criminal proceeding (including a requirement that the judge must be physically present

during all hearings involving the defendant), specific provisions banning the use of torture, new measures to provide a quality legal defense for the accused, and other procedural safeguards intended to bolster due process. This new emphasis on the protections for the rights of the accused is frequently described—both by proponents and critics—as a “system of guarantees” or a *sistema garantista*.⁴⁵

First, as part of the presumption of innocence, the 2008 reforms seek to limit the use of preventative detention, or “pre-trial” detention. In recent years, because of case backlogs and inefficiencies, more than 40% of Mexico’s prison population (some 90,000 prisoners) has consisted of prisoners waiting in jail for a final verdict.⁴⁶ Many suspects are detained even when charged with relatively minor offenses, such as shoplifting or an automobile accident.⁴⁷ Moreover, pre-trial detainees are frequently mixed with the general prison population, and in many instances their cases are not adjudicated for exceedingly long periods of time. Under the new reforms, pre-trial detention are intended to apply only in cases of violent or serious crimes, and for suspects who are considered a flight risk or a danger to society. Also, the new reforms require those held in pre-trial detention to be housed in separate prison facilities (away from convicted criminals), and to be held only for a maximum of two years without a sentence.

Second, as noted earlier, the 2008 reforms created a new due process judge (the *juez de garantía* or *juez de control*), whose role is to ensure that a criminal case moves forward properly during its investigation, preliminary hearing, and indictment. The due process judge is responsible for determining whether a suspect’s rights should be limited during the trial phase (e.g., pre-trial detention, house arrest, restraining order) or whether they should be released on bail or on their own recognizance until a guilty verdict has been delivered. The due process judge will also issue the final sentence in cases where the defendant accepts a plea bargain (*juicio abreviado*), in which all parties accept that the accused will receive a lesser sentence in exchange for a guilty plea. The due process judge will also oversee other alternative dispute resolution processes, such as the use of mediation.

Another important change included in the new reforms is the emphasis on the physical presence of the judge during all hearings involving the defendant. Under Mexico’s traditional system, criminal proceedings do not take place primarily during live audiences in a condensed timeframe, and hearings are sometimes conducted by court clerks without the presence of the actual judge. The result is that many criminal defendants attest that they never had direct interaction with the judge who handled their case. Indeed, in surveys with Mexican inmates, Azaola and Bergman (2009) report that 80% of inmates interviewed in the Federal District and the State of Mexico were not able to speak to the judge who tried their case.⁴⁸ With the shift to an emphasis on the physical presence of the judge throughout the criminal proceeding, crime suspects and their legal defense counsel will presumably have a greater ability to make direct appeals to the individual who will decide their case.

Third, the reforms also include specific provisions, under Article 20 of the Mexican Constitution, admonishing against the use of torture. In response to the aforementioned problems

of torture-based confessions in the Mexican criminal justice system, the reforms make it unlawful to present a suspect's confession as evidence in court (unless obtained in the presence of the suspect's defense attorney). In theory, this means that the prosecutor will have to rely on other evidence to obtain a conviction, and thereby conduct more thorough investigations. This also means that the accused will theoretically have the benefit of good legal counsel and a more informed understanding of the consequences prior to implicating themselves in a crime.

Finally, with regard to the rights of the accused, the reforms aim to strengthen and raise the bar for a suspect's defense counsel. All criminal defendants will be required to have professional legal representation. Under the reforms, any third party serving as the defense counsel for the accused must be a lawyer, a change from the prior system, which allowed any trusted person (*persona de confianza*) to represent the accused. Also, under constitutional amendments to Article 17, the reform requires that there be a strong system of public defenders to protect the rights of the poor and indigent. This provision is extremely important, given that the vast majority of defendants rely on a public defender (*defensor de oficio*). Indeed, the same prisoner survey noted above found that 75% of inmates were represented by a public defender, and 60% of these switched from their first public defender because of the attorney's perceived indifference.⁴⁹

3) Police Reform: Merging Preventive and Investigative Capacity

The main criticisms of the Mexican criminal justice system reside less with judges and courtroom procedure than with law enforcement, particularly prosecutors (*ministerios públicos*) and police officers.⁵⁰ While most attention to the 2008 judicial reforms has focused on the shift in courtroom procedures, equally important changes are in store for police investigations and law enforcement agencies. Specifically, the reforms aim toward a greater integration of police into the administration of justice. Under Mexico's traditional system, most police were ostensibly dedicated to preventive functions, and —aside from detaining individuals in *flagrante delicto*— not considered central to the work of prosecutors and judges. Under the new system, police will need to develop the capacity and skills to protect and gather evidence to help prosecutors, judges, and even defense attorneys determine the facts of a case and ensure that justice is done. As police become more involved in criminal investigations and legal proceedings, it is essential and urgent that they be adequately prepared to carry out these responsibilities properly. Under Mexico's 2008 reforms, the Constitution (Article 21, Paragraphs 1-10) underscores the need to modernize Mexican police forces, which are now expected to demonstrate greater professionalism, objectivity, and respect for human rights. While the reforms provide an eight-year period for the transition to the new adversarial system, many of the reforms affecting police have already entered into effect.

The most significant change is that the reforms strengthen the formal investigative capacity of police to gather evidence and investigate criminal activity, in collaboration

with the public prosecutor, or *ministerio público*. For example, under reforms to Article 21, Paragraph 1 of the Mexican Constitution, along with public prosecutors and investigators, police will now share responsibility for the protection of the crime scene and the gathering of evidence. This is significant because, until recently, as many as 75% of Mexico's more than 400,000 police lacked investigative capacity, were deployed primarily for patrol and crime prevention, and were largely absolved of responsibilities to protect or gather evidence. Given that evidence collected by the reporting officer is often a primary tool for the prosecution in other criminal justice systems, the limited capacity of Mexican police in this regard seriously limits and sometimes even interferes with the successful resolution of criminal cases.

The 2008 reforms now open the door to greater police participation in criminal investigations, and even the reorganization of police agencies to facilitate more effective police investigations.⁵¹ At the federal level, thanks to supporting legislation passed in May 2009, the Attorney General's Office (*Procuraduría General de la República*, PGR) and the Secretary of Public Security (*Secretaría de Seguridad Pública*, SSP) reorganized their respective police agencies. Under the Federal Attorney General Law (*Ley Orgánica de la Procuradora General de la República*), the PGR effectively dissolved the Federal Agency of Investigations (*Agencia Federal de Investigaciones*, AFI) and created the new Federal Ministerial Police (*Policía Federal Ministerial*, PFM).⁵² Agents of the Attorney General's police forces will now have greater powers to investigate crimes. For example, the reforms expand the ability of the Assistant Attorney General for Special Investigation of Organized Crime (*Subprocurador de Investigación Especializada de Delincuencia Organizada*, SIEDO) to assume responsibility for crimes that are normally reserved for local jurisdiction (*fuero común*). This procedure, known as "attraction" (*atracción*), will ostensibly enable—and presumably compel—the federal government to take on a greater role in the investigation of severe crimes that are beyond the capacity of state and local law enforcement.

Even more significant, the 2008 reforms allow for a blending of crime prevention and investigative functions that were formerly performed by separate law enforcement agencies: the preventive police and the investigative police. Under supporting legislation for these reforms, namely the 2009 Federal Police Law (*Ley de la Policía Federal*), the SSP replaced its Federal Preventive Police (*Policía Federal Preventiva*, PFP), creating the new Federal Police (*Policía Federal*). The new law effectively bestows investigative powers upon what was previously the Federal Preventive Police (PFP), which formerly carried out a strictly preventive function. Under the new law, Federal Police officers will be able to collaborate with the PGR on its investigations, though it is not yet clear what protocols will be ultimately developed to manage this coordination. Other new functions include securing crime scenes, executing arrest orders, and processing evidence, all formerly functions of the AFI. Federal Police agents also now have authorization to operate undercover to infiltrate criminal organizations.

A separate aspect of the 2008 reforms that is intended to promote police professionalism has mixed implications. Under the reforms, police are now subject to special labor

provisions that give administrators greater discretion to dismiss law enforcement personnel. Specifically, Article 123 allows authorities to dismiss police more easily, weakening their labor rights protections. While this amendment is intended to ensure that administrators can expeditiously remove ineffective or corrupt officers, Zepeda (2008) notes that it could have the unintended effect of further undermining civil service protections that help to ensure an officer's professional development and protect him from undue pressure or persecution.⁵³ Police already face unpredictable career advancement and deplorable working conditions, according to the Justice in Mexico Project's 2009 *Justiciabarómetro* survey of more than 5,400 municipal police in the metro-area of Guadalajara, Mexico's second largest city.⁵⁴ That survey found that nearly 70% of officers feel that promotions are not based on merit, and most (60%) think that personal connections drive one's career advancement on the force. If that is indeed the case, the new reforms will likely make police officers even more dependent on the whims of their superiors.

In the end, the most important impact of the 2008 reforms on law enforcement may be the checks and balances that will result from stronger due process protections for the accused. If reform advocates' predictions hold true, the shift to adversarial procedures will raise the standards for investigation and prosecution, as a stronger legal defense creates greater pressure on police and prosecutors to follow proper procedure and build the strongest possible case against a particular crime suspect.

4) Organized Crime: Providing New Tools to Combat Crime Syndicates

Finally, the 2008 reforms also significantly target organized crime, defined in accordance with the United Nations Convention Against Organized Crime, signed in Palermo, Italy in 2000. That convention broadly defines an organized crime syndicate as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences [with a maximum sentence of four or more years in prison]... in order to obtain, directly or indirectly, a financial or other material benefit."

In cases involving organized crime, the Mexican constitution has now been amended to allow for the sequestering of suspects under "arraigo" (literally, to "root" someone, i.e., to hold firmly) for up to 40 days without criminal charges (with possible extension of an additional 40 days, up to a total of 80 days).⁵⁵ Under arraigo, prisoners may be held in solitary confinement and placed under arrest in special detention centers created explicitly for this purpose. Furthermore, in order to facilitate extradition, the reforms also allow for the suspension of judicial proceedings in criminal cases. Prosecutors may use the 40 day period to question the suspect and obtain evidence to build a case for prosecution. Because formal charges have not been levied, they are not entitled to legal representation and they are not eligible to receive credit for time served if convicted.⁵⁶

In addition to special mechanisms for the detention of organized crime suspects, the 2008 reforms also paved the way for new uses of wiretapping and other tools for fighting organized crime. Also, following from the 2008 reforms, new supporting legislation on asset forfeiture (*extinción de dominio*) was passed in 2009 to define the terms for seizing property in cases related

to drug trafficking, human trafficking, and auto theft.⁵⁷ Under the new law, the Federal Attorney General's office has discretion to determine when a particular suspect is involved in organized crime, and whether or not assets related to those crimes are eligible for forfeiture.⁵⁸

Implementing Judicial Reform at the Federal and State Level

The scope and scale of change contemplated under the 2008 judicial reforms is enormous. Existing legal codes and procedures need to be significantly revised at the federal and state level; traditional court facilities need to be remodeled and outfitted with video-recording equipment; judges, court personnel, and lawyers need to be retrained; police need to be professionalized and prepared to assist with criminal investigations; victim and witness assistance programs need to be developed; new bureaucracies need to be expanded to supervise non-custody defendants (e.g., individuals on bail, probation, or parole); and citizens need to be prepared to understand the purpose and implications of the new procedures. After the reforms passed in 2008, the federal and state governments were given until 2016—a period of up to eight years—to adopt the reforms.

The Secretary of the Interior (Secretaría de Gobernación, SEGOB) chairs the 11-member Coordinating Council for the Implementation of the Criminal Justice System (Consejo de Coordinación para la Implementación del Sistema de Justicia Penal, CCISJP), which is aided by a technical secretary who oversees the reform process within SEGOB.⁵⁹ The council also has nominal representation from academia and civil society.⁶⁰ Although the reforms were passed in mid-2008, the CCISJP was not formally inaugurated until its first convocation in June 2009, which was followed by additional meetings in August 2009 and January 2010.⁶¹ This initial delay was partly attributable to the death of the former technical coordinator of the council, Assistant Secretary of the Interior José Luis Santiago Vasconcelos, in a plane crash in Mexico City in April 2008, alongside then-Secretary of the Interior Juan Camilo Mouriño. The new technical coordinator for the council, Assistant-Secretary of the Interior Felipe Borrego Estrada, was appointed in December 2008.⁶²

The role of the CCISJP is to: 1) serve as the liaison between the various members of the council and other entities working to promote judicial reform, 2) monitor advances in the implementation of federal reforms at the state level, 3) provide technical assistance to states working to implement the reforms (e.g., courtroom design, software, etc.), 4) provide training for judicial system operatives (e.g., judges, lawyers, legal experts), and 5) manage administrative and financial aspects of the reform (e.g., guiding legislative budget requests). The goal of the CCISJP is to have reforms approved in all Mexican states and implemented in 19 of 32 federal entities (31 states and the Federal District) by 2012, when the current administration leaves office.⁶³

Efforts to implement these reforms will require resources, time, and some coaxing at both the federal and state level. Foremost is the problem of funds. While there is widespread recognition of the need for a massive investment of funds to the judicial sector, there is no estimate for the total cost of implementing the reforms. However, the commitment of governmental resources at the federal and state level will likely need to be greatly increased from their present levels.⁶⁴

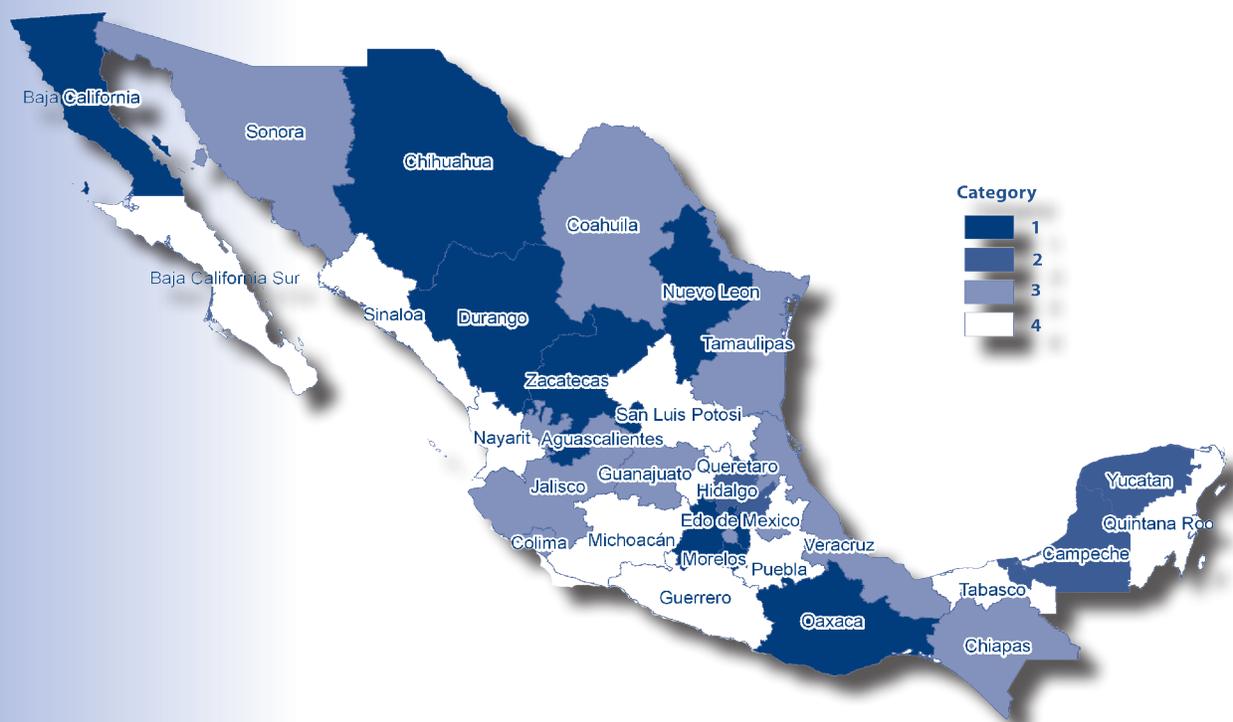
A second challenge is the effort to generate momentum and political will at both the federal and state level. At the federal level, the Supreme Court has made little progress in developing a new Federal Code of Criminal Procedure (Código Federal de Procedimientos Penales, CFPP). This has left states with little guidance on the federal procedures that will ultimately have important bearing on their own criminal codes. While there are some notable advocates for the reform on the Supreme Court, it is not clear how or when it will begin to demonstrate leadership on the generation of the new code of criminal procedure.

Meanwhile, at the state level, there has been some significant progress. Indeed, six states —Chihuahua, Mexico State, Morelos, Oaxaca, Nuevo León, and Zacatecas— had already adopted and implemented similar reforms prior to 2008, providing important precedents that informed the federal initiative. Indeed, in June 2007, the state of Chihuahua had already held its first oral trial.⁶⁵ Meanwhile, several other states —Baja California, Durango, and Hidalgo— had approved but not yet implemented state-level initiative prior to the federal reforms. According to a January 2010 report from the CCISJP, several other states are currently working to revise their constitutions and criminal codes to achieve compliance with the 2008 reform.⁶⁶ Still, some states lag significantly behind, with no significant signs of activity toward adopting the reforms more than two years after the federal reform.⁶⁷ To be sure, with a total of 18 state-level elections in 2009 and 2010, there have been significant political distractions that make it difficult to mobilize reform initiatives. However, some states will need to either pick up the pace or eventually lobby for an extension of the current 2016 deadline for passage of the reforms.

Among states that have either approved or implemented state-level reforms, there are some significant differences in substance and strategy. Some states have applied some of the reforms to all types of criminal cases, but started with a limited set of judicial districts and only later expanded to other places, an approach that could be called “geographic gradualism.” Other states inverted this strategy, applying the reforms to all judicial districts in the state, but starting with certain types of criminal cases (implementación por delito) and only later expanding to all criminal cases, with some states even expanding to matters of civil and family law. This might be referred to as a categorical approach, or “substantive gradualism.”

For the purposes of gauging the progress that different states have made in implementing the reforms as of December 2009, we draw on Ingram’s in-depth research and field interviews to identify four categories illustrated in Figure 3 (next page):⁶⁸

Figure 3: State-Level Implementation of Judicial Reform Initiatives⁶⁹



Category 1 comprises those states that have advanced furthest towards achieving the goals of the federal reform, including states that made early efforts to reform the criminal justice sector (some doing so several years ago, pre-dating the federal reform of 2008), and other relative late-comers that have nonetheless moved quickly to pass necessary reforms and are in the midst of or very close to the process of implementation. This group consists of eight states (in alphabetical order): Baja California, Chihuahua, Durango, Morelos, Nuevo León, Oaxaca, State of Mexico,⁷⁰ and Zacatecas.⁷¹

Category 2 captures those states that have reform initiatives underway but that had not yet been approved as of December 2009, i.e., states that have a reform initiative pending in the local legislature, or have been debating different reform initiatives. This group includes Hidalgo, Yucatán, and Campeche. Despite not having approved the reforms, these states are further along than the remaining states in that there is at least a formal proposal for reform already under debate and receiving public comment.

Category 3 captures those states that have not approved a reform and do not have a reform package under consideration, but have nonetheless passed or have existing ADR laws that complement the goals of the federal reform. In some states in this group, there were reform initiatives but these have stalled or appear inactive. This category also includes the state of Veracruz, which has formal reforms that created an adversarial proceeding but this reform is regarded by observers as partial, cosmetic, or insufficient.

Category 4 consists of two types of states: a) those that practice ADR (usually in the

form of offering a mediation center) without laws that formally expand or regulate ADR, and b) those for which there is no ready evidence of bills or other reform projects in the pipeline. This category includes the remaining states: Baja California Sur, Coahuila, Guerrero, Nayarit, Querétaro, Puebla, Sinaloa, San Luis Potosí, and Tabasco.

In short, Category 1 captures states that might be called “strong reformers”, Category 2 captures states that might be called “moderate reformers”, Category 3 includes those that might be called “pending reformers”, and Category 4 covers states that might be labeled “non-reformers.”⁷² These categories are only meant to distinguish broad classes of states.⁷³ Naturally, the reform process is in flux and many states may propose a reform or make an advance that is not included here. Similarly, states may appear to move forward towards reform, and then the process may stall (e.g., Coahuila). Thus, the landscape of reform is irregular in ways that make it difficult to get a clear picture or “snapshot” of the state of reform across all states. More importantly, our discussion here is not intended as a precise metric of reform levels across the Mexican states, but as a general overview of the reform process. That is, our categorization is not meant to be comprehensive or exhaustive of all legal changes across the states. Rather, it provides a quick view of clear and meaningful differences among the states. The appendix of this report provides further details on the advances made in key states.

Prospects for the New Criminal Justice System

There are certainly real prospects for Mexico’s 2008 judicial sector reforms to be successful. Proponents of Mexico’s judicial sector reforms point to seemingly successful transitions from inquisitorial to accusatory systems elsewhere in Latin America, most notably Chile.⁷⁴ Indeed, the Mexican government has established an international agreement with the government of Chile to share experiences and training in order to facilitate Mexico’s transition to the adversarial model of criminal procedure. The experience of Chile appears to suggest that the use of adversarial trial proceedings and alternative sentencing measures reduces paperwork, increases efficiency, and helps to eliminate case backlogs by concentrating procedures in a way that facilitates judicial decisions. Meanwhile, although the ideals of security and liberty are often perceived to be in tension with one another, an emphasis on guaranteeing the rights of both crime victims and suspects ultimately strengthens the rule of law. That is, a rights-based approach compels the state not only to defend the security of the public, but also compels state actors themselves to respect the law in their treatment of individuals.

Still, despite these much-touted benefits, Mexico’s judicial reforms have faced serious and merited criticism, both from traditionalists and from advocates of more substantial reform. Some initially bristled at the perception that the reforms were being actively promoted by outside forces, particularly from the United States.⁷⁵ On a related note, given troubling gaps and inconsistencies riddled in the reforms themselves, some critics

expressed concerns that the reform constituted an ill-conceived, costly, and potentially dangerous attempt to impose a new model without consideration of the intricacies, nuances, and benefits of Mexico's existing system. Indeed, even now, despite widespread agreement that massive investments in the judicial sector will be needed, there is no concrete estimate of the reforms' anticipated financial costs on which to base budgetary allocations. In short, critics tend to fear that Mexico's sweeping judicial reforms may be trying to do too much, too fast, with too few resources, with too little preparation, and with little promise of success.⁷⁶

Meanwhile, others worry that the reforms have not gone far enough. In the eyes of some critics, the reforms ultimately fail to address the major institutional weaknesses of the judicial sector.⁷⁷ Indeed, in other countries where similar reforms have been implemented, such as Honduras, problems of corruption and inadequate professional capacity have continued to undermine the effective administration of justice. At the same time, as noted above, the 2008 reforms introduced new measures that may actually undermine fundamental rights and due process of law. The use of arraigo—sequestering of suspects without charge—is widely criticized for undermining habeas corpus rights and creating an “exceptional legal regime” for individuals accused of organized crime.⁷⁸ Although not usable as evidence in trial, confessions extracted (without legal representation) under arraigo can still be submitted as supporting evidence for an indictment. Also of concern to due process advocates is the introduction of the use of the plea bargain (*juicio abreviado*), since unscrupulous prosecutors could try to use plea agreements as a means to pressure innocent persons into incriminating themselves.

To be sure, protecting the legal rights of crime suspects is often unsavory to the public.⁷⁹ However, having strong rights for the accused helps to ensure that the government is itself bound by the law, and that all citizens have access to justice. Respecting the presumption of innocence and the due process of law ultimately imposes the burden of proof on police and prosecutors, who must demonstrate the credibility of their charges against a suspect. However, in Chile and elsewhere, concerns about pretrial release and the risk of flight by the accused, has led to backsliding on reforms that provided important protections for the presumption of innocence. Given the proliferation of violent crime, many Mexicans are understandably reluctant to place greater emphasis on the presumption of innocence and pre-trial release, as this rights-based approach may excessively favor criminals to the detriment of the rest of society. As a result, there is some concern among reform advocates that Mexican authorities may give in to practical and public pressures that will undermine the rights-based aspects of the reforms.

In short, the road ahead for Mexico's 2008 judicial reforms will likely be long, difficult, and of uncertain destination. As shown by the discussion above, the reform process at the sub-national level is evolving in a highly uneven manner across Mexico's 32 states. This unevenness has positive and negative implications. Regarding the former, the variation in timing and content of reforms across the Mexican states offers a rich variety of experiences from which observers and policymakers can learn about best practices and

policy implementation. Both before and after implementing reforms, states can look to their neighbors and draw practical lessons from their varying experiences, as is often the case in federal systems of government. At the same time, for practitioners and experts, Mexico's ongoing experience with criminal justice reform offers a living laboratory to study processes of reform and institutional change that are a core part of democracy.

On the negative side, however, the unevenness of criminal procedure across the Mexican states generates different realities in the daily practice of justice institutions in each state. For citizens, these differences can mean a very different experience of the judicial process and very different quality of legal outcomes in one state versus another. In other words, citizens within a single country receive a different treatment by the courts and may experience justice in starkly different terms depending only on which state they call home. For legal practitioners, including attorneys and judges, these differences in legal standards and professional expectations can challenge received training, create unusual ethical dilemmas, and narrow employment opportunities.

In short, criminal procedure reform and its multiform character pose challenging tensions and puzzles for scholars, practitioners, and policymakers. A promising resolution is to acknowledge the institutional unevenness in the justice sector and seek to better understand the sources of this unevenness, that is, the process of institutional change and policy implementation, leveraging these lessons to advance the reform process in Mexico and achieve a more uniform institutional landscape.

At both the federal and state level, the ultimate legacy of these reforms will depend largely on how they are implemented, and by whom. There will need to be enormous investments in the training and professional oversight of the estimated 40,000 practicing lawyers in Mexico, many of whom will operate within the criminal justice system's new legal framework.⁸² Enabling Mexico's legal profession to meet these higher standards will require a significant revision of educational requirements, greater emphasis on vetting and continuing education to practice law, better mechanisms to sanction dishonest and unscrupulous lawyers, and much stronger and more active professional bar associations.⁸³ At the same time, more than 400,000 federal, state, and local law enforcement officers have been given a much larger role in promoting the administration of justice. If they are to develop into a professional, democratic, and community-oriented police force, they will need to be properly vetted, held to higher standards of accountability, given the training and equipment they need to do their jobs, and treated like the professionals they are expected to be.

For comparative perspective, it is worth noting that in the United States several key reforms to professionalize the administration of justice and promote a rights-based criminal justice system only took effect in the post-war era. Also around the same time period, the development of professional standards and oversight mechanisms for actors in the U.S. judicial system took place sporadically and over the course of several decades. In the 1960s and 1970s, the United States established key provisions to ensure access to

a publicly funded legal defense (1963 *Gideon v. Wainwright*), due process for criminal defendants (1967 *Miranda v. Arizona*), and other standards and practices to promote “professional” policing. In effect, this due process revolution—as well as other changes in the profession—helped raise the bar for police, prosecutors, and public defenders, and thereby promoted the overall improvement of the U.S. criminal justice system.

Moreover, it took at least a generation and major, targeted investments to truly professionalize the U.S. law enforcement and judicial sectors. The Safe Streets Act of 1968 mandated the creation of the Law Enforcement Assistance Administration (LEAA), which helped fund criminal justice education programs. LEAA also supported judicial sector research through the National Institute of Law Enforcement and Criminal Justice, the precursor to the National Institute of Justice. Mexico will likely need to make similarly large investments in the judicial sector, and will require a similarly long-term time horizon as it ventures forward.

One possible accelerator for Mexico is that many domestic and international organizations have been working actively to assist with the transformation. The National Fund for the Strengthening and Modernization of Justice Promotion (Fondo Nacional para el Fortalecimiento y Modernización de la Impartición de la Justicia, Fondo Jurica) has sponsored the development of a model procedural code and new training programs. Meanwhile, U.S. government agencies and non-governmental professional associations have offered various forms of assistance, including financial assistance and legal training. Notably, the Rule of Law Initiative of the American Bar Association (ABA), the National Center for State Courts, and U.S. government-funded consulting agencies, like Management Systems International, have also worked to promote reform and provide training and assistance. Also, from 2007-2008, the Justice in Mexico Project organized a nine-part series of forums hosted in Mexico and the United States in collaboration with the Center for Development Research (Centro de Investigación para el Desarrollo, A.C., CIDAC) to promote analysis and public dialogue about judicial reform.⁸⁵

Of critical importance for all of these efforts will be the development of quantitative and qualitative metrics to evaluate the actual performance of the new system. Are cases handled more efficiently by the criminal justice system than in the past? Are all parties satisfied when their cases are handled through mediation? Have police, prosecutors, public defenders, and judges demonstrated significant improvements in capacity and service delivery? Does the new criminal justice system adequately prepare convicts (and communities) for their ultimate re-entry to society? Unfortunately, on many of these questions, there are few adequate baseline or performance indicators available.⁸⁵

Concluding Observations

Despite conventional characterizations, Mexico’s recent justice sector reforms are much more involved than the mere introduction of “oral trials.” They involve sweeping chang-

es to Mexican criminal procedure, greater due process protections, new roles for judicial system operators, and tougher measures against organized crime. Advocates hope that the reforms will bring greater transparency, accountability, and efficiency to Mexico's ailing justice system. However, by no means do recent reforms guarantee that Mexico will overcome its current challenges and develop a better criminal justice system. Whether this effort to reform the criminal justice system will succeed may depend less on these procedural changes than on efforts to address other long-standing problems by shoring up traditionally weak and corrupt institutions.⁸⁴

The enormity of the challenges confronted by Mexico's judicial sector is not to be under-estimated. Mexico is working to make major progress in a relatively short period, attempting to radically alter hundreds of years of unique, independent legal tradition in less than a decade. The reality is that the reform effort will take decades, will require massive resources and effort, and will involve a great deal of trial and error. Also, given the dramatic changes proposed, there may be significant and legitimate resistance to some aspects of the reforms. In working through these issues, Mexico can certainly look to and learn from both the positive and negative experiences of other Latin American countries that have adopted legal reforms in recent years (e.g., Chile, Colombia, Costa Rica, El Salvador, Honduras, and Venezuela). However, like Mexico itself, the Mexican model of criminal justice is quite unique. Any effort to change the Mexican system will undoubtedly develop along its own course, at its own pace, and with sometimes unexpected results. In the end, the success of these efforts will rest on the shoulders a new generation of citizens and professionals within the criminal justice system, who will be both the stewards and beneficiaries of Mexico's on-going judicial sector reforms.

Appendix:
Categorical Index of State Level Reform Initiatives
(as of December 2009)

No.	State	I	II	III	IV	Category
1	Aguascalientes	0	0	1	0	3
2	Baja California	1	0	0	0	1
3	Baja California Sur	0	0	0	1	4
4	Campeche	0	1	0	0	2
5	Chiapas	0	0	1	0	3
6	Chihuahua	1	0	0	0	1
7	Coahuila	0	0	1	0	3
8	Colima	0	0	1	0	3
9	Distrito Federal	0	0	1	0	3
10	Durango	1	0	0	0	1
11	State of Mexico	1	0	0	0	1
12	Guanajuato	0	0	1	0	3
13	Guerrero	0	0	0	1	4
14	Hidalgo	0	1	0	0	2
15	Jalisco	0	0	1	0	3
16	Michoacán	0	0	0	1	4
17	Morelos	1	0	0	0	1
18	Nayarit	0	0	0	1	4
19	Nuevo León	1	0	0	0	1
20	Oaxaca	1	0	0	0	1
21	Puebla	0	0	0	1	4
22	Querétaro	0	0	0	1	4
23	Quintana Roo	0	0	0	1	4
24	San Luis Potosí	0	0	0	1	4
25	Sinaloa	0	0	0	1	4
26	Sonora	0	0	1	0	3
27	Tabasco	0	0	0	1	4
28	Tamaulipas	0	0	1	0	3
29	Tlaxcala	0	0	1	0	3
30	Veracruz	0	0	1	0	3
31	Yucatán	0	1	0	0	2
32	Zacatecas	1	0	0	0	1
	Totals:	8	3	11	10	

Description of State-Level Reform Index

Category 1 consists of (in alphabetical order) Baja California, Chihuahua, Durango, Morelos, Nuevo León, Oaxaca, State of Mexico, and Zacatecas.

In **Baja California**, the transition to the adversarial system has proceeded quickly with a package of reforms approved initially on October 19, 2007 but that failed to go into effect in 2009 as planned. After several prior delays, the reform was scheduled to take effect May 3, 2010, but in the weeks before that date the transition was postponed again; it is now anticipated to take effect in August 2010. The new timetable establishes that the reform will be geographically gradual, taking place first in the district of Mexicali. In 2012, it will be implemented in the district of Ensenada, and finally in the districts of Tijuana, Tecate, and Playas de Rosarito in 2013.

Chihuahua, along with Nuevo León and Oaxaca, is one of the reform pioneers. On January 18, 2006, a legislative initiative proposed reforming criminal procedures in the state. The constitutional portion of the reform was approved on May 11, 2006 (CHI-Decreto 595/06, 5), which entered into effect on June 11, 2006 (CHI-Dec. 603/06 II; Periódico Oficial No. 46, pag. 4775-4778). Regarding the transition to the adversarial system, the Code of Criminal Procedure (Código de Procedimientos Penales, or CPP) was approved on June 15, 2006, and was implemented gradually throughout the state. Unlike Nuevo León's implementation by subject matter jurisdiction (i.e., by type of crime), Chihuahua implemented the reform at first only in one judicial district, but applied the reform to all crimes. This process began in the Judicial District of Morelos in the city of Chihuahua, on January 1, 2007 (CHIH-CPP, Transitorios, Art. Segundo; PJ-CHIH Informe 2007, 20), and the state's remaining 12 judicial districts adopted the reform by July 1, 2008 (Informe 2007, 20; Acuerdo 2009).

Like other states after it, Chihuahua has developed not only ADR mechanisms (e.g., mediation and conciliation), but also alternative ways to exit the previously rigid and inflexible criminal process. For instance, the Code of Criminal Procedure allows for a "reparative agreement" (acuerdo reparatorio), in which the defendant agrees to make reparations to the victim (arts. 196 et seq). Also, criminal proceedings can be interrupted or suspended (suspensión del proceso a prueba) if the defendant meets certain eligibility and suitability criteria, a process similar to diversion or probation in some U.S. courts, (CHIH-CPC, arts. 201 et seq.). Further, there is the possibility of an "abbreviated process" (procedimiento abreviado) in which the proceedings before the court can be shortened if the defendant admits to the charge and waives trial (CHI-CPC, arts. 387 et seq).

Durango reports first pushing for reform in 2007 (Gaucín 2009), but the new Penal Code (Código Penal) was not approved until June 11, 2009. Similarly, the new Code of Criminal Procedure (Código Procesal Penal, or CPP) was not approved until June 21, 2009. These reforms were originally scheduled to enter into effect no later than Dec. 31, 2009 (DUR-CPC, Art. Transitorio Primero, sec.

I), and the court's website reported the inauguration of the new installations for adversarial proceedings on December 14, 2009 (DUR-PJ 2009). As in other states that have opted for a geographically gradual process of implementation, Durango's reform will first take effect in the state's capital city, Durango. The reform will then expand to other districts.

Morelos is another state that began a substantial reform process before the 2008 federal reform. Following consultations with academics and opportunities for public comment, debate began in the legislature on July 12, 2007. The reform to the Code of Criminal Procedure was approved four months later, on November 19, 2007, laying the foundation for the adversarial process in the state. It was implemented in a geographically gradual manner throughout the state, following the example of Chihuahua. The First Judicial District saw implementation beginning on October 30, 2008. Like Chihuahua and other states, the Code of Criminal Procedure in Morelos includes the opportunity for early or alternative exits from the criminal process.⁸⁸

Nuevo León was the pioneer of current trends in criminal procedural reform in Mexico. The first adversarial trial in Mexico took place in this state on February 23, 2005 (Carrizales 2005). Indeed, the reform process may have begun here as early as October 2003. A 2004 reform to the Code of Criminal Procedure (CPP) initiated the process of legal change in the state. The CPP identifies which types of cases are eligible for the adversarial model, defining a process of substantive gradualism, which is unlike most other states in Category 1. Early in the post-reform era – from July 2004 to December 2005 – the kinds of cases were more limited. However, on December 7, 2005, Decree 279/05 broadened this restriction.⁸⁹ In the area of criminal offenses, one last reform was approved on February 20, 2009, and took effect July 1, 2009, expanding the types of eligible cases even further. Nuevo León is also among the first states to expand the adversarial process beyond criminal cases to include civil and family matters. Decree 360/06, approved on August 11, 2006, established that rental disputes, child custody, and divorces that were initiated by mutual consent would be the jurisdiction of the adversarial process (NLN-Civil Code, art. 989). By 2007, the adversarial system was functioning in these civil matters (PJ-NLN 2008, 20-21).⁹⁰

Oaxaca approved a new Code of Criminal Procedures on September 6, 2006 that enacted the transition to adversarial proceedings (OAX-CPC, *Transitorio Segundo*). The new process was scheduled to go into effect one year later, in September 2007, and the adversarial model was first implemented on September 9, 2007, in the judicial districts of the eastern region of the Isthmus of Tehuantepec (*Informe 2007*, 14). One year after that, on September 9, 2008, the model was expanded to the districts in the western Mixteca region (PJ-OAX 2008a, 15; PJ-OAX 2008b). The process of expansion is supposed to continue gradually across the state, one region per year, until the reform reaches all seven regions of the state by September 2012. While the judicial leadership has extolled the system, at least some private attorneys are skeptical, noting a lack of training and a lack of sensitivity to indigeneous custom.⁹¹

In the **State of Mexico**, an initial reform in January 2006 was very superficial, essentially adding a series of articles to the existing Code of Criminal Procedures (articles 275-A

through 275-R). This layering of several articles onto the existing code seemed a cosmetic effort to create an adversarial process. Indeed, the law referred to the new process as trials that were not oral but “predominantly oral” (“Juicio Predominantemente Oral”; see PJ-MEX 2008). Symptomatically, the annual “state of the courts” report (Informe Anual 2006) did not have a separate section on the creation of adversarial proceedings, which should have been revolutionary (Langer 2007) and particularly notable within Mexico. Accentuating the superficial character of the modifications in 2006, a reform in February of 2009 implicitly acknowledged a need for deeper changes by seeking a fuller transformation to take effect by August 1, 2009. However, the reform calendar was restructured four months later, on June 30, 2009, calling for the establishment of adversarial proceedings by October 1, 2009, in four judicial districts, including the state capital of Toluca (Decreto 289/09, 2). The reform will now be expanded progressively throughout the remaining districts in the state with a final target date for completion of October 1, 2011.

In **Zacatecas**, a reform initiative was first formally proposed on March 28, 2007 (Decreto 511/07), though the opening of decree notes that this kind of reform was being contemplated in the state as early as 2005. The approved reform was published six months later, on September 15, 2007, and entered into effect almost a year-and-a-half after that, on January 5, 2009 (Código Procesal Penal, Transitorio Primero). The first adversarial case entered the new system four days later, on January 9, 2009. As of December 29, 2009, in the first full year of operation, the judiciary had processed 205 oral trials (PJ-ZAC Informe de Audiencias; PJ-ZAC Consultas). This is a remarkable number considering that Chihuahua, in its third year with the new system, processed only 59 oral trials (see above).

Category 2 consists of Campeche, Hidalgo, and Yucatán.

In **Campeche**, there are no trials in the adversarial model, according to the Regulatory Code of the Judiciary (LOPJ, last reformed Dec. 18, 2007). However, a reform initiative is circulating as of September 8, 2009. Indeed, this is the fifth version of such an initiative, and appears to be following the model code of criminal procedure from the National Council of State Courts (Consejo Nacional de Tribunales de Justicia, or CONATRIB).

Hidalgo, like Campeche, does not have an approved reform. However, the state formed an implementing commission called the “Interinstitutional Reform Commission” (Comisión Interinstitucional para la Reforma Integral del Sistema de Justicia Penal, or CII). As of October 5, 2009, this commission delivered a set of legislative initiatives to the state legislature. The proposed plan is to implement the reform gradually across districts (geographic gradualism), following the model of Chihuahua, Oaxaca, Morelos, and, later, Durango and Baja California (HID-CII Informe, 2-5).

Yucatán also does not have an approved reform (see LOPJ; last reform dated December 15, 2007). However, the judiciary has initiated a reform project (anteproyecto de reforma). The first version of this initiative circulated in 2009, and a second version was circulated recently on January 4, 2010, requesting a new round of comments and feedback. As was the case in Campeche, this code is based off the model code of criminal

procedure generated by the CONATRIB (PJ-YUC 2010). The court anticipates the law going into effect in 2011 (PJ-YUC 2009).

Category 3: The various states that comprise this category share the fact that they practice ADR and have passed formal laws regulating ADR.

Aguascalientes has had a Center for Participatory Justice (Centro de Justicia Participativa) in operation since October 2001 (PJ-AGS). In 2008, the state passed a law governing ADR (Ley de Justicia Alternativa), systematizing mediation and conciliation. Other states in this group have similar experiences passing ADR laws, but they have also shown at least some effort towards promoting the criminal procedure reform.

In **Coahuila**, a public unveiling of plans for reform in the first week of June led some observers to optimistically report that oral trials would be implemented in Coahuila prior to the federal procedural reform. However, the court's most recent annual report states the reform is still a work in progress, and that a new judicial center is being built, people are being hired, and more trainings are scheduled for 2010 (PJ-COA 2009). Thus, despite having an ADR law, the broader reform in Coahuila appears to have stalled.

Sonora had a similar reform initiative (anteproyecto) put forward on November 28, 2008. However, given the absence of any evidence of reform since then, the project does not seem to have advanced anywhere (the LOPJ shows no reforms after Sep 7, 2007, and the CPP shows no reforms since July 12, 2007).

In **Guanajuato** in 2008, the governor publicly stated he wanted the adversarial process in the state (Gob-GUA Noticias 2008), and on August 27, 2009, the local legislature approved an initiative to reform portions of the constitution in a way that would set the stage for a broader reform (Dictamen 901; Boletín 252/09). However, this was only a first step. As of November 11, 2009, the constitutional changes had still not been approved by half the municipalities as required (Miranda 2009), and there were no formal initiatives yet being debated for broader reforms to the Code of Criminal Procedures or other legislation. Without these actions, 2009 closed with Guanajuato looking much like Coahuila or Sonora.

Category 4: The remaining states do not appear to have any bills or initiatives for transitioning to the adversarial process, and also do not have a formalized system of alternative dispute resolution.

The reform process may be underway, but there was no ready evidence from government and court websites, annual court reports, or local legislation to gauge where the state might be located in the reform process. In Tabasco there are trainings underway, but the reform is unlikely before 2011. In an interview on January 19, 2010, the president of CONATRIB, Rodolfo Campos Montejo, noted that it may almost be too late for Tabasco ("se les va el tren", or "the train is leaving them behind"), highlighting that states like Nuevo León and Mexico are already applying the adversarial process in civil matters like family law and rental disputes, and that states like Tabasco (and the rest of Category 4) are "missing the boat" (TAB-PJ 2010).

Endnotes:

- 1 Ray (2008).
- 2 To be sure, the only institutional actors in Mexico less well respected than police are unions, legislators, and political parties. Consulta Mitofsky (2010).
- 3 Indeed, according to a recent survey conducted by the Justice in Mexico Project, police themselves perceive a high degree of corruption on the force. Out of more than 5,400 municipal police officers surveyed, roughly a third described severe problems of corruption; 40% showed little trust in their superiors; and 68% said that corruption is concentrated at high levels within their department. Only about half (52%) felt that there are adequate mechanisms for investigating corruption. 32% indicated that the problem most concerning to citizens is drug trafficking; 29% indicated that the problem most difficult for local police to solve is drug trafficking; and 45% said that the illicit criminal activity in which local police are most likely to be involved is drug trafficking. Moloeznik, et al. (2009).
- 4 ICESI victimization surveys suggest that no more than a quarter of all crimes (roughly 22% in 2008) are actually reported. 39% of those who don't report crimes indicate that it is a waste of time; the next largest proportion (16%) indicate that they do not trust the authorities, and 10% say that the process of reporting a crime is too cumbersome. A third (33%) of those who reported a crime said that there was no result from reporting the crime. See www.icesi.com.mx
- 5 Vanderwood (1970), Vanderwood (1992), Arteaga Botello and López Rivera (1998), Yáñez R (1999), Davis (2006), Davis (2008), Uildriks (2009).
- 6 Varenik (2003).
- 7 Post-independence political instability in the 19th century, the 34-year dictatorship of General Porfirio Díaz (1876-1910), and severely restricted terms of democratic competition during 71 years of uninterrupted rule by the Institutional Revolutionary Party (PRI) significantly impeded the development of judicial independence in Mexico. Under the PRI, for example, judicial appointments depended heavily on loyalty to the ruling party and judicial decisions only rarely contradicted the elected branches of government controlled by the party. Zamora, et al. (2005), Schatz, et al. (2007).
- 8 After decades of irrelevance in Latin America, courts have played an increasingly important role in addressing issues of transitional justice, in constitutional deliberations, and in reforms to the administration of justice throughout the region. A central theme throughout much of the new literature on the judiciary in Latin America is the link between democracy and the rule of law, particularly the role of the courts in protecting a democratic society against abuses of authority in a context of political uncertainty. Fix-Zamudio (1986), Melgar Adalid (1995), Domingo (1996), Fix-Zamudio and Cossío Díaz (1996), Jarquín and Carillo Florez (1998), Prillaman (2000), Domingo and Sieder (2001), Ungar (2001), Biggar (2003), Magaloni (2003), Domingo (2004), Hilbink (2007).
- 9 Zepeda Lecuona (2004).
- 10 Human Rights First (2001).
- 11 As discussed below, municipal police do not conduct investigations. However, patterns of corruption and abuse associated with police investigations collected at the federal and state level are indicated by prisoner responses to survey questions regarding the use of bribery and physical coercion in the criminal justice system. Azaola and Bergman (2007).
- 12 International Rehabilitation Council for Torture Victims (IRCT) (2006), Lara Klahr (2008), Human Rights Watch (2009), Luhnnow (2009).
- 13 Luhnnow (2009).
- 14 The fact that a preponderance of those found guilty are poor people charged with petty offenses suggests that some who can afford to do so may “buy” their way out of criminal charges. *Ibid.*
- 15 Tobar (2008).
- 16 According to the International Rehabilitation Council for Torture Victims (IRCT), a “majority of torture reports and other human rights violations continue to occur in the context of the administration of justice, particularly during the investigative and prosecutorial phases of criminal proceedings. Furthermore, there is a growing number of torture complaints of political detainees against the security forces.” Indeed, according to Mexico’s human rights ombudsman, as many as 90% of reported torture cases are the result of the forced confessions of prisoners. Hernández Forcada and Lugo Garfias (2004), p. 139; International Rehabilitation Council for Torture Victims (IRCT) (2006), p. 8.
- 17 Regarding drug use, Azaola and Bergman (2009) cite evidence that many inmates entered prison without prior drug use, but developed an addiction once in prison. This implies added social costs, Azaola and Bergman

- argue, since addicted prisoners are more likely to become connected to other delinquents and develop full-fledged criminal careers. Azaola Garrido (1990), H. Bringas and Roldán Quiñones (1998).
- 18 In 2009, prisons in the Federal District and Mexico State account for a combined total of about 28% of Mexico's entire prison population, and operated at 212% and 183% capacity, respectively. According to a survey conducted in those same states by Bergman and Azaola (2009), conditions inside prisons are very bad and getting worse; in 2009, over 70% of inmates reported that they did not have enough food, a dramatic increase from previous years. Azaola and Bergman (2009).
 - 19 Twenty died and dozens were wounded in an August 2009 prison riot in which police later confiscated numerous makeshift weapons, guns, and a fragmentation grenade. Justice in Mexico Project (2009). <http://www.justiceinmexico.org/news/pdf/justiceinmexico-august2009news-report082109.pdf>. (Accessed March 1, 2010).
 - 20 Mexico is not alone in this regard. A veritable “boom” in incarcerations in the United States has increasingly raised serious questions about the effectiveness of supposedly “modern” prison facilities with regard to either the prevention of crimes or the rehabilitation of those who commit them. Even worse, prisons appear to perpetuate and intensify social inequalities. Writing in 2009, Raphael and Stoll point out that, in the United States, “less-educated minority men are considerably more likely to be incarcerated currently than at any time in the past.” Raphael and Stoll (2009).
 - 21 Méndez, et al. (1999) Bailey and Godson (2000), Bailey and Chabat (2001), Cumaraswamy (2002), Zepeda Lecuona (2004), Davis (2006), Cornelius and Shirk (2007), Donnelly and Shirk (2009).
 - 22 There is a correlation coefficient of .5026 between country evaluations of democratic governance reported in the 2008 Latinobarómetro and perceptions of judicial system performance reported in the 2007 Gallup poll. This is suggestive of a relationship between citizen perceptions of democracy and the effectiveness of judicial institutions.
 - 23 A *juicio de amparo*, also simply referred to as an *amparo*, is literally a legal “writ of protection” that provides an injunction blocking government actions that would encroach on an individual's constitutional rights. An *amparo* grants individuals certain rights, including: (1) defending liberty, life and personal dignity; (2) defending individual rights against unconstitutional laws; (3) examining the legality of judicial decisions; (4) protecting against governmental actions; and (5) protecting against actions by *ejidos* (communal farms). A court's decision to grant an *amparo* effectively places an injunction for a given party to cease and desist an offending action. This injunction is only binding for the parties involved in that particular case case (i.e., *inter partes* effects).
 - 24 Speckman Guerra (2007).
 - 25 The Federal Security Directorate (Dirección Federal de Seguridad, DFS) oversaw domestic security matters from 1947 to 1985, and served as a primary instrument of social and political control for the federal government. The dissolution of the DFS, due to problems of rampant corruption, led to the creation and destruction of a series of new federal law enforcement agencies over the next two decades. The DFS was eventually replaced by the CISEN. Another agency, the Federal Judicial Police (Policía Federal Judicial, PFJ), was widely perceived to be the new locus of corruption. The PFJ was replaced by the Federal Investigative Agency (Agencia Federal de Investigación, AFI) by presidential decree in 2001, ostensibly to develop capabilities similar to the U.S. Federal Bureau of Investigation. However, in December 2005, the PGR announced that nearly one-fifth of AFI officers were under investigation for suspected involvement in organized crime; as discussed below, the agency was dissolved in 2009. Justice in Mexico Project, Justice in Mexico News Report, June 2009. <http://www.justiceinmexico.org/news/pdf/justiceinmexico-june2009news-report062309.pdf> (Accessed February 22, 2010).
 - 26 The reforms introduced in December 1994 created a new oversight mechanism, known as the Federal Judicial Council (Consejo de la Judicatura Federal, CJF), for vetting or evaluating the professional qualifications of judges prior to appointment. The CJF is a mixed body comprising seven individuals, including the Chief Justice of the Supreme Court, one other appointed judge, two district magistrates, two members chosen by the Senate, and one member appointed by the Mexican president. These members serve four-year, non-renewable terms. The creation of such councils is a regional phenomenon developed in Latin America during the 1990s. Ungar (2001).
 - 27 The reforms also expanded the Supreme Court's powers of judicial review by introducing “motions of unconstitutionality” (*acciones de inconstitucionalidad*). This innovation allowed key institutional actors—the executive branch, political parties, and a designated proportion of representatives from the Senate, the Chamber of Deputies, and the Mexico City legislature—to challenge the constitutionality of legislation or other government actions.
 - 28 While *amparo* decisions have *inter partes* effects, universally binding precedents (*erga omnes* effects) can only be established after the Supreme Court or collegiate circuit courts make five consecutive and identical majority rulings on the same topic in *amparo* cases, provided that the collegiate court decisions are not contradicted by the Supreme Court. In such cases, this establishes a legal precedent

known as a *jurisprudencia*, in reference to the published summaries that compile and document modifications in Mexican law. In effect, precedents through *jurisprudencia* establish a very limited form of *stare decisis* in the Mexican legal system. Still, generally speaking, while decisions made by judges in other cases can be (and often are) informally consulted and found to be persuasive in determining the outcome in a case, they do not set binding precedents.

- 29 Recent decisions (such as the court's June 2007 verdict on the Televisa Law) signal a growing sense of autonomy on the part of the Mexican Supreme Court, which may constitute the beginning of a new era of judicial independence and activism in Mexico. Ultimately, though, the political factors that motivated the 1994 reform are the subject of some scholarly debate, with some scholars describing the reforms as an "insurance policy" for the PRI in anticipation of its electoral decline. See: Beer (2006), Begné Guerra (1995), Domingo (2000), Inclán Oseguera (2004), Finkel (2008), Inclán Oseguera (2009).
- 30 For a more complete discussion of the 2004 judicial reform package proposed by the Fox administration, see Shirk and Ríos Cázares (2007).
- 31 In 2003, there were several significant modifications to the Federal Juvenile Delinquency Law (*Ley para el Tratamiento de Menores Infractores, LTMI*).
- 32 In 2005, the Justice in Mexico Project sponsored a briefing of the Mexican Senate to outline the arguments for and against the Fox reforms. The technical analysis generated by the project was then disseminated to inform debates occurring at the state and local level. Gonzalez Placencia, et al. (2005).
- 33 Mangis and Szmania (2008), Márquez-Carrasquillo and Shirk (2008).
- 34 One of the earliest Calderón-era legislative proposals to modify the judicial system came from Federal Deputy Jesús de León Tello, from the National Action Party (PAN). However, the bill that became the basis for the 2008 reforms was championed by the head of the Judicial Committee in the Chamber of Deputies, former-Mexico governor and then-Federal Deputy César Camacho Quiroz, from the PRI. After the bill passed in the Chamber of Deputies key provisions (having to do with the use of search and seizure without a warrant) were removed by the Senate in December 2007.
- 35 Soon after the reforms were passed, Mexico's National Human Rights Commission indicated the reforms were intended to "adjust the system to the principles of a democratic rule of law, such as guaranteeing the rights of victims and the accused and the impartiality of trials, to develop more effective practices against organized crime and in the functioning of prisons, as well as linking the National Public Security System to the protection of human rights, and obliging authorities at all three levels of government to coordinate broadly and truly share information on criminality and police personnel; to regulate the vetting, training and tenure of personnel, to certify competency, and open spaces for social participation in evaluation [of the system]." Comisión Nacional de Derechos Humanos (2008). Author's translation.
- 36 Members of the PRD supported the reforms, though the PRD was the party most divided on the vote. Tobar (2008).
- 37 Advocates of judicial reform began to utilize the reference to "oral trials" in a deliberate manner, because the concept provided a simple visual for encapsulating the many changes entailed in the reform.
- 38 Contrary to popular opinion, not all aspects of traditional Mexican criminal law are based on written affidavits (*expedientes*). In the evidentiary phase (*instrucción*) within the larger process of a criminal trial (*proceso penal*), judges frequently interview victims, suspects, witnesses, prosecutors, and defense attorneys "orally." Certain portions of criminal proceedings, particularly at the pre-trial evidentiary (*pre-instrucción*) hearing, occur in live court sessions.
- 39 This significant departure from traditional inquisitorial systems dates back to reforms initially proposed in the early 20th century, under the 1908 Organic Law of the Federal Public Prosecutor (*Ley Organica del Ministerio Público Federal y Reglamentación de Sus Funciones*), the 1908 and 1917 Organic Law of the Federal Judicial Power (*Ley Orgánica del Poder Judicial Federal*), Article 21 of the 1917 Constitution, the 1919 Law of Organization of the Federal Public Prosecutor (*Ley de Organización del Ministerio Público Federal, LOMPF*), and the 1934 Reglamentary Law for Article 102 of the Mexican Constitution (*Ley Reglamentaria del Artículo 102 de la Constitución de la República*), and the 1983 Organic Law of the Federal Attorney General (*Ley Orgánica de la Procuraduría General de la República*). Subsequent modifications to the LOMPF in 1941 and 1955 and the LOPGR in 1984, 1985, 1987, 1988, 1993, and 1996 progressively strengthened prosecutorial autonomy and restructured federal law enforcement agencies in Mexico.
- 40 Zepeda Lecuona (2004), Zamora, et al. (2005), Naval (2006).
- 41 While inquisitorial systems also have defense counsel for the accused, their interaction with judges and prosecutors tends to focus primarily on assuring adherence to proper criminal procedure.
- 42 According to one recent critique of the use of the adversarial system in the United States, "Meant to facilitate the search for truth, our adversarial justice system often degenerates into a battlefield where winning, rather than doing the right thing, becomes the goal. Mistrust on both sides, egos and personal and agency agendas can get in the way of justice." Trainum (2010).

- 43 This moves away from the primarily written presentation of affidavits that are transcribed by the public prosecutor, which are known as expedientes or actuaciones.
- 44 The oral trial judge (juez de tribunal oral) will preside over the trial phase of a criminal proceeding, working in an open courtroom, considering evidence presented by the prosecution and the defense, and ultimately making a determination regarding the guilt or innocence of the suspect.
- 45 “Garantismo” is a loaded term in Mexico. On the one hand, it is used in a positive sense by progressive jurists concerned about the real effect of civil rights. On the other hand, it is used disparagingly by more conservative jurists who think judges and the state should be more concerned about the form and procedures of the law than with protecting particular interests. This tension resonates with discussions about legal or judicial “activism” in the United States.
- 46 Ciudadano (2006), El Porvenir (2006), Reforma (2006), Salazar (2006).
- 47 The consequences of mixing pre-trial and convicted prisoners can be dangerous. In September 2008, two prison riots broke out in the La Mesa prison facility known as “La Peni,” killing nearly two dozen people. The La Mesa prison is intended to house accused criminals who are ineligible for release before trial and sentencing, but also contained convicted criminals. Justice in Mexico Project (2008).
- 48 Azaola and Bergman (2009).
- 49 Ibid.
- 50 As Zamora, et. al. note, “Mexican criminal penalties are harsh, but the combination of harsh penalties and ‘flexible’ enforcement gives a great deal of power to police officers to exact bribes in exchange for overlooking an infraction, large or small.” Zamora, et al. (2005), p. 359.
- 51 The AFI was created by presidential decree in 2001 to bolster the investigative capacity of the Federal Attorney General’s Office (PGR). At that time, the AFI replaced the corruption-plagued Federal Judicial Police in order to bring about a more professional, scientific, and comprehensive investigative process that would take aim at the operational foundations of organized crime – similar to the stated goals of the new Federal Ministerial Police. The agency came under fire in 2005 under widespread allegations of corruption, and in December of that year the PGR announced that nearly one-fifth of its officers were under investigation for suspected involvement in organized crime. Agents of the AFI took to the streets in April 2009 to demand that the PGR and Congress not allow the agency to disappear. Nonetheless, the measure was approved by congress, and Pres. Calderón signed it into law on May 29, 2009. From the date the new law went into effect, the PGR had thirty days to purge its rosters of undesirable personnel. Former AFI agents able to pass toxicology, medical, psychological, and background checks were given priority in the new agency. Economista (2005), Castillo and Mendez (2006), El Financiero (2009).
- 52 As discussed below, the reforms also grant expanded permission for authorities to monitor telephone, satellite, and internet communications in the investigations of organized crime activity, provided permission is granted through a judicial order.
- 53 Zepeda Lecuona (2008).
- 54 More than 80% of the more than 5,400 participants in the study reported earning less than \$800 USD per month, relatively low compared to other public sector employment. Moreover, despite civil service protections in the law, over two thirds felt that the procedures used by police departments for raises and promotions are unfair and not based on merit. Many officers reported excessively long working hours (70% work more than 50 hours a week with no overtime pay); a fifth of the force reported extremely extended shifts (a 24-hour shift for every two days off); and 68% reported 30 minutes or less for meals and breaks. Moloznik, et al. (2009).
- 55 Currently, the Federal Code of Criminal Procedure does not have clear criteria for how a judge should make a determination regarding the application of arraigo, or what is the necessary burden of proof that prosecutors must met (e.g., probable cause). As stated under Article 133 of the CFPP, “The judicial authority may, at the request of the public prosecutor, impose preventive measures on the person against whom a criminal action is being introduced, in so far as these measures are necessary to prevent flight from judicial action; the destruction, alteration, or hiding of evidence; intimidation, threats, or improper influence over witnesses to the crime.” Deaton (2010), p. 17.
- 56 The arraigo procedure was first introduced in Mexico in 1983, as a measure to combat organized crime. However, in 2006, the Supreme Court ruled that the procedure was unconstitutional, citing violations of the habeas corpus rights of individuals held without charge. The 2008 reforms raised the arraigo procedure to the level of a constitutional provision, thereby eliminating charges of unconstitutionality. How broadly, frequently, and effectively the procedure has been utilized since 2008 is not clear, in large part because access to information about arraigo cases is difficult to obtain.
- 57 Becerril and Ballinas (2009), Villamil (2009).
- 58 “Assets falling subject to the law are defined as: instruments, objects, or products of crimes; those used to hide, disguise, or transform criminal proceeds; properties of third parties used to aid in the commission of

- crimes; and goods belonging to third parties deemed by the PGR to be the product of criminal activity... Under the law, the PGR must submit an annual report to Congress of asset seizures. Moreover, if a judge deems that a seizure was performed unjustly the assets must be returned with interest within six months.” Justice in Mexico Project (2009).
- 59 In addition to the Secretary of the Interior, this council includes representatives from the Chamber of Deputies, the Senate, the Supreme Court, the Federal Attorney General (Procuraduría Federal de la República, PGR), the Public Security Secretary (Secretaría de Seguridad Pública), the Federal Judicial Council (Consejo de la Judicatura Federal), the National Public Security Conference (Conferencia Nacional de Secretarios de Seguridad Pública), the Legal Counsel of the Federal Executive Branch (Consejería Jurídica del Ejecutivo Federal), the National Commission of State Supreme Courts (Comisión Nacional de Tribunales Superiores de Justicia, CONATRI), and the National Conference of Attorneys General (Conferencia Nacional de Procuración de Justicia).
- 60 Professor Miguel Sarre Iguíniz, of the Technical Autonomous Institute of Mexico (Instituto Tecnológico Autónomo de México, ITAM) was approved as the academic representative in January 2010. Businessman and NGO activist Alejandro Martí García, whose son was kidnapped and killed, was appointed as the representative for civic organizations on the counsel. Secretaría de Gobernación (2010).
- 61 The inaugural meeting of the council took place on June 18, 2009, one year after the reforms were first approved. Deputy Carlos Navarro Sugich represented the Chamber of Deputies, Senator Mario López Valdez represented the Senate, Counselor Oscar Vázquez Marín represented the Consejo de la Judicatura Federal, Minister José de Jesús Gudiño Pelayo represented the Supreme Court. The second and third meetings took place on August 13, 2009 and January 8, 2010, respectively. Secretaría de Gobernación (2009).
- 62 At the time of the crash, Santiago Vasconcelos, 51, was a long time federal prosecutor who had recently joined Pres. Calderón’s staff as a top legal advisor. As a former drug prosecutor, Santiago Vasconcelos previously headed the Special Office for the Investigation of Organized Crime (Subprocurador de Investigación Especializada de Delincuencia Organizada, SIEDO), was subject to frequent threats on his life. Beginning his service with the Attorney General’s office in 1993, Santiago Vasconcelos was appointed assistant attorney general for Judicial and International Affairs in 2007. Santiago Vasconcelos had helped oversee a dramatic increase in cross-border extraditions, including that of Gulf cartel leader Osiel Cardenas. His replacement, Borrego Estrada, was previously a member of the National Action Party (PAN), served as president of the Supreme Court of Zacatecas from 1998 to 2004, and at the time of his appointment was secretary of the Justice Committee in the Chamber of Deputies and PAN representative for the Committee for the Reform of the State. *El Universal* (2008), *Milenio* (2008).
- 63 Interview with Felipe Borrego Estrada in Mexico City on March 17, 2010.
- 64 One indicator of the low prioritization of resources for justice reform implementation is that the 2009 federal budget failed to include any funding for the CCISJP itself, which then required a special allocation to cover the activities of the technical secretary’s office.
- 65 Anselmo Chávez Rivero, an indigenous man of Tarahumara descent, was charged with the rape of two minors; he and other witnesses testified in their native language before Judge Francisco Manuel Sáenz Moreno, who found the defendant guilty. *Fierro* (2007).
- 66 According to CCISJP, in several states, one or more branches of government have demonstrated significant activity or political will to advance the reforms. These include Guanajuato, Tabasco, Tlaxcala, and Yucatán. Secretaría de Gobernación (2010).
- 67 According to CCISJP, these states include Aguascalientes, Baja California Sur, Campeche, Chiapas, Coahuila, Colima, the Federal District, Guerrero, Jalisco, Michoacán, Nayarit, Puebla, Querétaro, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, and Veracruz. *Ibid.*
- 68 The main data for this assessment comes from a review of documents collected from individual court and government websites, including the annual “State of the Courts” reports (Informes Anuales), local constitutions, internal regulatory documents of the court (e.g., *Ley Orgánica del Poder Judicial*, or LOPJ; also Reglamentos), and local penal codes (Código Penal) and codes of criminal procedure (Código de Procedimientos Penales, or CPP; this is sometimes referred to also as Código Procesal Penal). Journalist accounts, academic commentary, and other secondary sources complement these official records. The grouping is also supported by information available at other organizations that track the criminal justice reform. For instance, the National Institute of Penal Sciences (Instituto Nacional de Ciencias Penales, or INACIPE) maintains a website that lists states that have produced reforms to their criminal codes or codes of criminal procedure, as well as reforms related to alternative dispute resolution. The Program to Support the Rule of Law (Programa de Apoyo al Estado de Derecho, or PRODERECHO), an organization affiliated with the United States Agency for International Development (USAID) (PJ-MOR 2009), has a website that provides information related to the status of reform efforts in each state. See <http://www.inacipe.gob.mx> (last visited Feb. 15, 2010) and <http://www.proderecho.com> (last visited Feb. 10, 2010).
- 69 Map generated by Ingram with ArcMap 9.3.

- 70 For readers unfamiliar with Mexico, the country, a state, and the nation's capital share the same name. Further, the state wraps around a large portion of the capital city. The phrasing "State of Mexico" is used to distinguish the state from the city for the sake of clarity. In Spanish, the state's full name is "Estado de México," frequently shorthanded as "Edomex".
- 71 All the states in the first group are recognized by PRODERECHO as advanced reformers in the implementation stage, except for Baja California and Durango, which we include but PRODERECHO does not. These two states have more recent reforms, so it is not surprising that PRODERECHO's website might not have been updated to include them. Durango's reform was approved in mid-2009 and entered into effect by the end of 2009. Similarly, Baja California's reform is recent and was not scheduled to go into effect until February 2010 (now May 2010).
- 72 For most of the states in Category 2, 3, or 4, PRODERECHO reports either (a) that the state has expressed some interest in pursuing reform, which the federal reform requires anyway (Baja California Sur, Coahuila, Guerrero, Nayarit, Querétaro, San Luis Potosí, Tabasco), or (b) no information at all (Campeche, Michoacán, Sinaloa, Yucatán), reflecting the absence of information regarding projects of reform. We categorize Campeche and Yucatán as Category 2 because Ingram found independent evidence of active reform initiatives under consideration.
- 73 For instance, the State of Mexico does not have a formal law governing ADR but has been transitioning incrementally towards the adversarial process since 2005 and passed a more comprehensive reform in 2009. This state should be distinguished from other states, even those that have ADR, ADR laws, and a fuller reform package under consideration.
- 74 Chile, of course, has had the advantage of a historically strong judiciary, low levels of institutional corruption in the judicial sector (including its national police force), and a relatively strong economy. Even so, on the aforementioned 2007 Gallup poll, Chileans rated the performance of their judicial system far more critically than Mexicans.
- 75 Proceso (2008).
- 76 Pelayo and Solorio (2010).
- 77 Corcoran (2008).
- 78 As Zepeda (2008) argues, the worst miscarriage of justice is when the coercive apparatus of a democratic state deprives an innocent person of their liberty; without a formal charge against an individual, the presumption of innocence should prevail. Zepeda Lecuona (2008).
- 79 One concern about the arraigo is that it undermines the reforms' torture prohibitions. According to Deaton (2010), "The detaining authorities have a powerful incentive to torture a detainee in order to get them to make false confessions so that they may then have the "evidence" to file charges against them. Not only do they have the incentive, but given the secret nature of arraigo and its placement of detainees incommunicado, without adequate access to their attorney, arraigo is an invitation to torture. That is, it is an invitation to commit the very abuse that the constitutional prohibition against torture is designed to prevent." Alcántara (2006), Deaton (2010), p. 16.
- 80 Blake and Blake Bohne (2009).
- 81 Indeed, there are some concerns that reform efforts in Chile have not shown as much progress as advocates would like, and has even experienced a significant counter-reform movement that has reversed some key aspects of their reforms. Venegas and Vial (2008).
- 82 Since there are no requirements that lawyers maintain active bar membership or registration to practice law, the total number of practicing lawyers is unknown. Fix Fierro (2007) estimates this number to be around 40,000. There is no clear indication exactly how many of these practice criminal law. Fix Fierro suggests that, given the proliferation of Mexican law schools in recent years, Mexico's legal profession suffers from a problem of quantity-over-quality. Fix Fierro and Jiménez Gómez (1997).
- 83 Efforts to promote professionalism among lawyers are needed, as they will be primarily responsible for "quality control" in the Mexican criminal justice system. Although Mexico has recently adopted a new code of ethics, Mexican lawyers are not presently required to receive post-graduate studies, take a bar exam, maintain good standing in a professional bar association, or seek continuing education in order to practice law. All of these are elements of legal professionalism that developed gradually and in a somewhat ad hoc manner in the United States, and mostly in the post-war era.
- 84 At the same time, lawyers were building new standards for professional conduct, including its Model Code of Ethics first developed by the American Bar Association (ABA) in 1969 and used in most states. This code was preceded in 1908 by the Canons of Professional Ethics. An ABA Commission on Evaluation of Professional Standards was first appointed in 1977, and the ABA developed its Model Rules of Professional Conduct in 1983. Only one state, California, does not formally adhere to the model rules, though it does have its own rules of professional conduct. See: www.aba.org.
- 85 This series of forums, known as the "Justice Network / Red de Justicia," brought together hundreds of U.S.

- and Mexican law students, legal practitioners, businesspeople, academics, journalists, and NGO representatives in Aguascalientes (September 2007), Baja California (May 2007), Chihuahua (March 2008), Coahuila (March 2007), Jalisco (July 2007), Nuevo León (January 2008), Oaxaca (November 2007), and Zacatecas (September 2007). In 2009, the project also worked to establish a bi-national legal education program between the University of San Diego and the Universidad Autónoma de Baja California (UABC) with assistance from Higher Education for Development (HED).
- 86 Recent efforts by the Justice in Mexico Project to interview lawyers and police through an instrument known as the “Justiciabárometro,” constitute some of the first independent surveys on the profile, operational capacity, and professional opinions of judicial system operators. However, other process indicators are sorely needed to measure the real implications of the reforms.
- 87 See <http://www.chihuahua.gob.mx/justiciapenal> (last visited Feb, 14, 2010).
- 88 At the second oral trial, there were complaints that it was a closed proceeding (doors were closed to prevent overcrowding after a large number of people came to watch), and that eight of the ten other oral trial judges were also in the audience, creating the potential for future bias or the appearance of partiality if the case needed to be retried (TBI 2008e, 15).
- 89 The Penal Code of Nuevo León identifies three degrees of culpability: (1) *dolo*, (2) *culpa*, and (3) *preterintentionality*. *Culpa* most closely resembles negligence or an act of omission in the U.S. language of *mens rea*. Article 28 of the Code reads as follows: “Obra con culpa quien realiza el hecho legalmente descrito, por inobservancia del deber de cuidado que le incumbe de acuerdo con las leyes o reglamentos, las circunstancias y sus condiciones personales, o las normas de la profesión o actividad que desempeña. Así mismo en el caso de representarse el hecho como posible y se conduce en la confianza de poder evitarlo.”
- 90 Oral proceedings may have already been taking place as early as late 2006, but the court’s report for 2006-2007 covers the time period from August 2006 to July 2007, and it is not clear in which year the reported cases took place (PJ-NLN 2007, 20).
- 91 These are Baja California Sur (TBI 2008c, 11-12) and Tlaxcala (TBI 2009a, 17). In the latter, the president of the state supreme court repeatedly faulted the local legislature for not prioritizing justice (TBI 2009a, 17; 2009c, 17).
- 92 Private attorneys who practice criminal law remain skeptical in other parts of Mexico, as well. However, there is at least some evidence that these attorneys may be motivated by the fact the new system will result in lower earnings for them, in part because they will have to either acquire new training or find a different line of work, and in part because the new process makes litigation periods shorter, generating efficiency but also reducing the fees attorneys can charge (see, e.g., Pelayo and Solorio 2010, 356). Similarly, judges and other older or mid-career legal professionals may oppose the reform because they do not want to have to learn a new way of doing the job they have been doing for 10, 20, or 30 years.
- 93 “El sistema penal acusatorio, adversarial, y oral . . . ha sido incorporado [en la Constitución del Estado, el Código de Procedimientos Penales, y la Ley Orgánica del Poder Judicial].”
- 94 Opening of decree notes that this kind of reform was contemplated in the state as early as 2005.
- 95 Judge Javier Pineda Sorda was also affiliated with PRODERECHO, a non-profit organization promoting judicial reform in Mexico (Actualidad Judicial, 62). Due to some ties between USAID and PRODERECHO, observers might question to what extent Pineda Sorda is identified as a domestic or foreign broker of expertise. Despite his ties to PRODERECHO, however, he is a public servant in Chihuahua, which would weigh heavily in favor of classifying him as a domestic influence. Zacatecas has relied on foreign expertise in the past, including trainers from Costa Rica, Chile, Spain, and England (Actualidad Judicial 2007, 63-66).
- 97 See <http://www.portal.camp.gob.mx/C3/C6/justiciapenal>; also <http://www.tribunalcampeche.gob.mx/cisj-upte>.
- 98 See <http://www.nuevosistemadejusticiapenalhgo.gob.mx>
- 99 In Chiapas, the Ley de Justicia Alternativa passed on March 18, 2009. No reform is apparent in the existing Code of Criminal procedure, which notes the last reform was on October 21, 2009. In Mexico City, an Alternative Justice Center (Centro de Justicia Alternativa) has been operating since September 1, 2003 (Informe 2008, 53), and the Ley de Justicia Alternativa passed on January 8, 2008. In the northern state of Tamaulipas, the Ley Orgánica del Poder Judicial (last reform dated September 3, 2009) says nothing about any changes in criminal procedure, but a Mediation Law (Ley de Mediación) is in existence since 2007. In Tlaxcala, the 2009 State of the Courts report (Informe 2009) says nothing about changes in criminal procedure, and the LOPJ is similarly silent (last reform dated January 12, 2007). However, the Ley de Justicia Alternativa dates back to 2007. Jalisco passed its LJA in 2006 (effective Jan. 1, 2008), Guanajuato on May 27, 2003 (last reformed on August 1, 2006), Colima in 2003, and Sonora on April 7, 2008.



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