

State-level Judicial Reform in Mexico

The Local Progress of Criminal Justice Reforms

WORKING PAPER

Trans-Border Institute

Joan B. Kroc School of Peace Studies
University of San Diego



About the Report:

This report was prepared for the Justice in Mexico Project (www.justiceinmexico.org) hosted by the Trans-Border Institute at the University of San Diego. Since 2002, this project has been a focal point for research, scholarly interchange, and policy forums to examine the challenges and prospects for the rule of law in Mexico. This project is made possible by the support of The William and Flora Hewlett Foundation and The Tinker Foundation. This report also benefits from generous financial support from the TIES Program from Higher Education for Development sponsored by the U.S. Agency for International Development through a grant to the University of San Diego and the Universidad Autónoma de Baja California.

Copyright Justice in Mexico Project, May 2010.

Trans-Border Institute (TBI)

University of San Diego
5998 Alcalá Park, San Diego, CA 92103
www.sandiego.edu/tbi
transborder@sandiego.edu

**State-level Judicial Reform in Mexico:
The Local Progress of Criminal Justice Reforms
Matthew C. Ingram***

Introduction

This paper offers an overview of recent and ongoing reforms in the criminal justice sector across the Mexican states. A package of federal reforms approved by the Mexican Congress in 2008 mandated specific changes, but left the implementation of these changes to the individual states, giving them until 2016 to complete the task. Like the United States, Mexico is a federal system; it is composed of 32 subnational units, including the federal district of Mexico City. Thus, the reform process has been filtering through the various states, and the scope and pace of reform have developed unevenly across the country. The goal of this paper is to provide a panoramic view of the changes by the states, identifying some of the main issues regarding the timing and content of reforms pursued in different states.

The 2008 federal reforms in the criminal justice sector targets multiple areas of legal and institutional change.¹ One of the components of this reform package that has occupied the attention of practitioners, policymakers and scholars alike has been the transition to oral advocacy – from (a) an inquisitorial, document-centered process, historically associated with civil law countries, to (b) an adversarial process of oral confrontation before a judge, historically associated with the common law tradition. But there are other important areas of reform. The full scope of the reform package covers (1) changes to criminal procedure (including the adversarial transition just described, use of alternative dispute resolution and sentencing, and options for prosecutorial discretion); (2) enhanced victim and defendant rights; (3) new measures for improving policing; and (4) special measures to combat organized crime (see INACIPE 2008a; Shirk 2009; Rodriguez 2010).

A full, comprehensive analysis of all policy changes across all legal areas and across all 32 states is beyond the scope of this paper. In an effort to narrow the discussion, I highlight reforms regarding the broad, overarching transition towards an accusatorial system, as well as reforms in the area of alternative dispute resolution. Aside from the practical benefits of narrowing the scope of the discussion, there are other reasons for focusing on these two issues. First, states that have made the effort to revise their local legislation in order to transition to the accusatorial process have generally also included other procedural changes in the reform project, e.g., prosecutorial discretion and alternative sentencing options. Also, regarding victim and defendants rights, many measures intended to enhance the effectiveness of these rights inhere in the adoption of alternative dispute resolution and the transition to the accusatorial system. In other words, a better administration of criminal justice proceedings in the courts – including the roles of judges, defense, and prosecution – will do a great deal towards improving the rights of both victims and the accused. In this regard, a goal of the reforms is that a majority of criminal cases be resolved via mechanisms of alternative dispute resolution (INACIPE 2008a, 21), that is, without ever getting to trial. Achieving this goal would free up the courts and contribute to a more efficient judicial process. Finally, regarding organized crime and crime prevention, many

* Center for U.S.-Mexican Studies, University of California, San Diego, 2009-2010 (usmex.ucsd.edu).

¹ Approved June 17, 2008 (Diario Oficial de la Federación 2008; published June 18, 2008); initial efforts date back to March of 2004 under President Vicente Fox (Presidencia 2004).

public safety policies are intertwined with federal efforts in this area, including broad strategies towards building a national police force, combating drug traffic, and improving intelligence. This is not to say that states do not have a role in building capacity in this regard, including improving local policing. Indeed, in the discussion below I note a few instances where states have taken steps in this direction. But these efforts are in many ways ancillary to national-level efforts in public safety, and there is a generalized sense that the federal government should take the lead in addressing the major public safety challenges, if only to avoid creating a patchwork pattern of laws that afford criminal organizations unintended opportunities to take advantage of irregularities and inconsistencies across the states (INACIPE 2008b). Thus, the first two areas – the accusatorial system and alternative dispute resolution (ADR) – are the areas where states have the most autonomy to act. In other words, *when* and in *what form* a state adopts the accusatorial system or ADR depends to a much greater degree on local politics than national politics when compared to the strategies for fighting organized crime or improving public safety. Thus, the discussion presented offers a systematic treatment of these two more local policy areas and a more impressionistic treatment of other policy areas.

The discussion here is general both across states and within any particular state. The systematic evidence regarding the accusatorial model and ADR and the more impressionistic evidence regarding other policies should convey a sense of the timing with which different states have pursued the reforms, similarities and differences in issues covered by the reforms, and the approaches to implementing the reforms. For instance, some states adopted the accusatorial process early, even *before* the federal 2008 reform (e.g., Chihuahua, Nuevo León, or Oaxaca), while others have done little or nothing more than a year *after* the federal reform. Further, among reformers, states have pursued different strategies of implementation. 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 (what I call *geographic gradualism*). Others inverted this strategy, applying the reforms to all judicial districts in the state, but starting with limited types of criminal cases and only later expanding to all criminal cases, with some states even expanding to matters of civil and family law (*substantive gradualism*, or “implementación por delito”).

The material below is organized as follows. First, section II provides a broad overview of the level of accusatorial and ADR reforms across Mexico’s states. A chart and a map in this section organize the states into four categories according to the general level of reform they have achieved, allowing the reader to glance quickly at the information and gauge which states are further along in the reform process and which are lagging behind. Section III takes a closer look at individual states within each category, dedicating most attention to the first group (Category 1), which includes the eight states that have approved and/or begun implementing the accusatorial process as of December 2009. Finally, I conclude with a discussion of some of the broader implications of the unevenness of justice reforms across the Mexican states.

An Overview of Criminal Justice Reform in Mexican States

A review of reforms towards the adversarial process and formal laws governing alternative dispute resolution yields information that helps organize the 32 Mexican states into four categories of reform. Category 1 captures 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 others that, while they might be relative late-comers, 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): (1) Baja California, (2) Chihuahua, (3) Durango, (4) Morelos, (5) Nuevo León, (6) Oaxaca, (7) State of Mexico², and (8) Zacatecas. Category 2 captures those states that have reform initiatives underway but that have 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 accusatorial proceeding but this reform is regarded by observers as partial, cosmetic, or insufficient, as detailed below. Finally, Category 4 consists of two types of states. First, it includes states that practice ADR (usually in the form of offering a mediation center) but have not passed laws to expand or regulate ADR. Second, the group also includes states for which there is no ready evidence of bills or other reform projects. This category includes the remaining states: Baja California Sur, Coahuila, Guerrero, Nayarit, Querétaro, Puebla, Sinaloa, San Luis Potosí, and Tabasco.

The main data that generates this grouping 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.³ The states that have produced criminal justice reforms are all in the first group reported here (Category 1), with the exception of Chiapas because I could not confirm the reforms independently in local documents. Also, 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.⁴ All the states in the first group are recognized by PRODERECHO as advanced reformers in the implementation stage, except for Baja

² 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”.

³ See <http://www.inacipe.gob.mx> (last visited Feb. 15, 2010).

⁴ See <http://www.proderecho.com> (last visited Feb. 10, 2010).

California and Durango, which I 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.⁵ Further, 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. I categorize Campeche and Yucatán as Category 2 because I found independent evidence of active reform initiatives under consideration.

Restating, Category 1 captures states that might be called “strong reformers”, Category 2 captures states that might be called “pre-reformers”, Category 3 includes those that might be called “moderate reformers”, and Category 4 covers states that might be labeled “non-reformers”. The classification of a few individual states may strike some readers as unusual or counterintuitive, but the categories are only meant to distinguish broad classes of states. For instance, the State of Mexico does not have a formal law governing ADR but has been transitioning incrementally towards the accusatorial 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. Similarly, states that have a full reform under consideration (Category 2) may not have ADR, but their formal efforts to pass a fuller reform should distinguish them from those states that have not done so.

Notably, 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. The information here is intended to be current through December 2009. More importantly, it is not intended as a precise metric of reform levels across the Mexican states, but as a general overview of the reform process. Restating, the categorization presented here 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. Table 1 in the appendix provides a chart summarizing the classification of each state.

Using this categorical index (1-4), Figure 1 below presents a map of Mexico. Each color corresponds with a value of the index. The darkest colors identify the strong reformers in Category 1. Thus, these states appear in black. Next are the “pre-reformers” from Category 2 in dark gray. In a lighter shade of gray are those states with formal ADR laws (Category 3), followed by Category 4 in white – those states with some form of ADR but no formal ADR regulation, as well as states for which there was no ready evidence of any of these reforms or practices consonant with the federal reform. Put simply, darker colors reflect stronger, more comprehensive efforts; lighter colors reflect weak or partial efforts.

⁵ 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).



Figure 1. Map showing reform categories across Mexican states.⁶

A Closer Look at Key States

To better illustrate the reform process occurring at the state level, below I provide more detailed information on individual states in each category. Most of the emphasis in this section is placed on those states where significant advances have been made. For those focused on the legal details of Mexico’s recent criminal justice sector reforms, detailed references are provided to identify key elements of the legal framework for the reforms in each state.

Category 1

Baja California: Baja California is the newest member among the frontrunners of the reform process. An Alternative Justice Law (*Ley de Justicia Alternativa*, or LJA) passed on October 19, 2007 (BC-LJA 2007). This law provided for alternative dispute resolution mechanisms, including mediation and conciliation, even for many criminal complaints. However, the normative framework went into effect 18 months later, in April of 2009 (BC-LJA, art. Transitorio Primero), and the actual system of ADR was not scheduled to begin operating until 2010. Indeed, the system was going to be implemented in a geographically gradual manner, starting on April 20, 2009, in the judicial district of Mexicali, one year later (April 2010) in

⁶ Map generated with ArcMap 9.3.

Tijuana, and another year later (April 2011) in Ensenada. Further, these timetables would only apply to ADR in non-criminal cases. As far as criminal cases are concerned, ADR was supposed to start operating in Mexicali on May 3, 2010, in Ensenada on February 1, 2011, and in Tijuana, Tecate, and Playas de Rosarito on February 1, 2012 (BC-LJA, Transitorio Primero). The initial passage of the law predated the approval of the federal reform, but the law was not scheduled to take effect until well after the federal reform. Part of the reason for this delay likely has to do with the fact that the law required training and registration of mediators with state authorities (BC-LJA, arts. 11 et seq).

The transition to the accusatorial system has proceeded quickly in Baja California, with a package of reforms approved initially on October 19, 2007 but that failed to go into effect in 2009 as planned. Thus, a second set of reforms were approved on November 13, 2009, scheduling the implementation to take effect in February 2010 (BC-PJ Informe 2008-2009, 47). This set of reforms was again delayed, and on January 22, 2010, the effective date of the reform was changed again; it is currently rescheduled to take effect May 3, 2010 (Decreto 348/10, reforming art. Transitorio Primero; Di Carlo 2010). The new timetable establishes that the reform will be geographically gradual, taking place first in the district of Mexicali. Two years later, on May 3, 2012, the reform will be implemented in the district of Ensenada, and finally in the districts of Tijuana, Tecate, and Playas de Rosarito on May 3, 2013.

Regarding the content of the reform, Decree 279 established that the criminal process will be oral, i.e., accusatorial (BC-Decreto 279/09, art. 3). Earlier, several phases of trainings in November 2008 and throughout 2009, conducted by INACIPE and PRODERECHO, and addressing a range of topics from basic concepts to advanced procedural mechanisms, set the stage for the reform and its implementation (BC Informe 2008-2009, 50-54). Additionally, a new Public Safety Law (*Ley de Seguridad Pública*, or LSP), passed on August 21, 2009. In part, this law provides for the creation of a new Center for Evaluation and Confidence Control (*Centro de Evaluación y Control de Confianza*), which the state has four years to complete (BC-LSP, Transitorio Segundo). This Center will be in charge of assessing and evaluating all law enforcement personnel for hiring and promotion, including public prosecutors, police, and forensic investigators (BC-LSP, arts. 32 et seq). Also, the state's main public university (Universidad Autónoma de Baja California, or UABC) was preparing a course on the accusatorial process for the fall of 2009 (TBI 2009d, 16). For other discussions of reforms in this state see Pelayo and Solorio (2010).

Chihuahua: This state, along with Nuevo León and Oaxaca, is one of the reform leaders. On January 18, 2006, well before the federal reform, 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). This reform altered four articles of the state constitution (arts. 6, 93, 105, and 117), and these changes required the alteration (or wholesale creation) of nine other documents: (1) Ley Orgánica del Poder Judicial (reformed); (2) Ley Orgánica del Ministerio Público (reformed); (3) Código Penal del Estado de Chihuahua (new); (4) Código de Procedimientos Penales (new); (5) Ley de la Defensoría Pública (new); (6) Ley de Ejecución de Penas (new); (7) Ley de Justicia Especial para Adolescentes Infractores; (7) Ley de Atención a Víctimas u Ofendidos del Delito (new), (8) Ley del Derecho de la Mujer a una Vida Libre de Violencia, and (9) Ley de Justicia Alternativa.

Each of these legislative actions has since been completed, and the full set of new or reformed laws is now in effect. Notably, the abovementioned laws cover alternative dispute resolution and the transition to the accusatorial system, but they go further than other states in that Chihuahua has a new law on victims' rights (*Ley de Atención a Víctimas u Ofendidos del Delito*), as well as a new law regarding the public defender (*Ley de la Defensoría Pública*). These parts of the reform project in the state make Chihuahua's reform one of the most comprehensive. Indeed, PRODERECHO compliments the state for applying the new reform to all types of crimes, and refers to Chihuahua's new legal framework as one of the most comprehensive and advanced, putting the state at the vanguard of criminal procedure reform in Latin America (PRODERECHO-Proyectos 2009; also TBI 2008b, 11).

Even as the legislative portion of the reform was underway, the judiciary was already improving and expanding its infrastructure to accommodate the new adversarial system. By January 31, 2006, months before the constitutional reform was approved, the first stone was in place for the Judicial Complex in the Judicial District of Bravos (*Complejo Judicial del Distrito Bravos*). This new complex was already projected to house at least two hearing rooms for oral proceedings (PJ-CHI Informe 2006, 11).

Regarding the transition to the accusatorial system, the Code of Criminal Procedure (*Código de Procedimientos Penales*, or CPP) was approved on June 15, 2006, and it took effect and was implemented gradually throughout the state. Unlike Nuevo León, which implemented the reform by subject matter jurisdiction (i.e., by type of crime, or substantive gradualism), Chihuahua implemented the reform at first only in one judicial district, but applied the reform to all crimes. This process of geographic gradualism began in the Judicial District of Morelos (*Distrito de Morelos*), in the city of Chihuahua, on January 1, 2007 (CHIH-CPP, *Transitorios*, Art. Segundo; PJ-CHIH Informe 2007, 20). The reform was scheduled to expand six months later (July 2007) to the Judicial District of Bravos (*Distrito Bravos*), in Ciudad Juárez (CHIH-CPC, *Transitorios*, Art. Segundo; Informe 2007, 20; PJ-CHIH Acuerdo 2009), though there were some delays and the first oral trial in Ciudad Juárez did not take place until September 2008 (TBI 2008d, 13). The remaining 12 judicial districts in the state were complete by July 1, 2008 (Informe 2007, 20; Acuerdo 2009). Thus, the constitutional reform process began in early 2006, related codes were reformed mid-2006, they were first implemented in early 2007, and the implementation phase was complete approximately 18 months after that, by mid-2008 (Informe 2008, 23). From start to finish, the process took approximately two-and-a-half years. Granted, substantial work remains to be done, but Chihuahua's reform is exemplary in terms of its early timing (pre-dating the federal reform), in its comprehensive scope, and in the speed of implementation throughout the entire state. In fact, by the time the federal reform passed in mid-2008, Chihuahua had already passed and implemented its own reform *statewide*.

Notably, the volume of cases in the new accusatorial process was small at first. As of the end of 2007, that is, in the first full year of operation in the Morelos District, only four (4) full oral trials had taken place (Informe 2007, 21-22). Since then, as the system has expanded to other districts the volume of cases has grown steadily. In 2008, there were eight (8) oral trials in the districts of Morelos and Manuel Ojinaga and six (6) more in the districts of Bravos and Galeana. There were no other oral trials in the remaining districts, for a statewide total of 14 (Informe 2008, 76-79). In

2009, the total number of oral trials in the state more than tripled, growing to 59 (Informe 2009, 91).

Like other states after it, Chihuahua has developed not only mechanisms for alternative dispute resolution (e.g., mediation and conciliation), but has also included alternative or early 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). In practice, this might turn out to be very similar to plea bargaining in the U.S. context. As was the case with oral trials, the use of these alternative sentencing options has been increasing since 2008, with 321 cases that year in the districts of Morelos and Manuel Ojinaga, 259 in the districts of Bravos and Galeana, and 51 in the rest of the state (Informe 2008, 76-79). In 2009, there were a total of 1,030 cases resolved via this procedural option (Informe 2009, 91)

Finally, as of 2008 there is a commission supervising the implementation of the reform in Chihuahua. This commission (*Centro Estatal para la Instrumentación del Nuevo Sistema de Justicia Penal*, or CEI) serves as a clearinghouse on the reform and a central node of coordination among the different agencies and branches of government. The state’s website for the new justice system allows an easy way to track activities in this area.⁷

Durango: Among the first group of states, Durango joins Baja California as a relative latecomer to reform, at least in comparison to Nuevo León and Chihuahua. The Court 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 accusatorial 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. Importantly, the expansion to another district must first be requested by the state supreme court and approved by the state legislature (DUR-CPC, Art. Transitorio Primero, sec. II). This provision in the reform may provide flexibility to tailor the pace of reform as needed, but it may also prove ambiguous and therefore open a space for additional disagreements over or challenges to the process of change, delaying the expansion of reform.

Complementary laws passed in Durango include a Law of Alternative Justice (Ley de Justicia Alternativa), a Code of Regulations of Alternative Justice (Reglamento de Justicia Alternativa), and a Public Defender Code (Ley de Defensoría Pública). Notably, the new Penal Code includes new types of offenses that were intended to address the changing landscape of insecurity and public safety in Mexico. Some of the new classifications of offenses include

⁷ See <http://www.chihuahua.gob.mx/justiciapenal> (last visited Feb, 14, 2010).

express kidnapping, prostitution, human trafficking, and forced disappearance (DUR-CP, Considerandos, paras. 18-27). Thus, Durango appears to be legislating against new patterns of criminal behavior.

Morelos: Morelos is another state that began a substantial reform process before the federal reform of 2008. Following consultations with academics and opportunities for public comment, an initiative for reform began to be debated 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 accusatorial 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. Despite some early irregularities,⁸ the reform expanded on June 1, 2009, to the Sixth District (located in Cuautla) and to the Fifth District (Yautepec). As of January 2010, the last phase of implementation was due on February 1, 2010, in the Fourth District (Jojutla), Second District (Tetecala), Third District (Puente de Ixtla), and Seventh District (Jonacatepec). To provide technical support and follow up work on the reform, Morelos created a commission to oversee implementation (*Comisión de Seguimiento a la Reforma Integral del Sistema de Justicia Penal y Seguridad Pública*) on January 23, 2008 (MOR-Gob, 9).

Like Chihuahua and other states, the Code of Criminal Procedure in Morelos includes the opportunity for early or alternative exits from the criminal process. Some of these procedural options are exactly the same as in Chihuahua, including reparative agreements, (*acuerdos reparatorios*; MOR-CPC, arts. 204 et seq.), suspension of proceedings (*suspensión del proceso*; arts. 209 et seq), and the abbreviated process (*procedimiento abreviado*; arts. 388 et seq) if the defendant pleads guilty and waives trial. Also, an ADR law was approved here in August 2008 (TBI 2008c).

Nuevo León: Nuevo León was the pioneer of current trends in criminal procedural reform in Mexico. The first accusatorial 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, long before the 2008 federal reform, and even before President Vicente Fox's reform initiative in 2004 (Presidencia 2004). As such, Nuevo León has been at the forefront of the reform movement, jockeying with its northern neighbor Chihuahua and its southern counterpart Oaxaca to see who advanced farther and faster in the administration of criminal justice.

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 accusatorial 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. Specifically, Decree 118/04, approved July 28, 2004, stated that the accusatorial process only had jurisdiction over crimes in which the degree of culpability was moderate (“culpa”) and

⁸ 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).

which the Penal Code considered not serious (“no grave”).⁹ In short, the Code of Criminal Procedure established that the accusatorial process was reserved for a narrow set of minor offenses (NLN-Dec. 118/04; NLN-CPP 2004, art. 555).¹⁰ However, on December 7, 2005, Decree 279/05 broadened this restriction, expanding the jurisdiction of accusatorial process to include (i) all cases in which there is “culpa”, (ii) a set of cases if pursued by private filing (“querrela”, requiring the victim’s willingness to prosecute), and (iii) a set of cases if pursued “de oficio” (CPP, art. 553).¹¹ In the area of criminal offenses, one last reform was approved on February 20, 2009, and took effect July 1, 2009. This reform expanded slightly the cases under (ii) and (iii) listed above. In sum, the set of criminal cases eligible for the accusatorial model has been broadening steadily.

As of October 2008, there were 31 courtrooms statewide for oral proceedings (TBI 2008c, 13). Nuevo León has also been preparing its legal professionals with trainings and courses on the adversarial process. In a particularly novel development for Mexico and Latin America, the state’s main public university (Universidad Autónoma de Nuevo León, or UANL) hosts an *official* hearing room for accusatorial proceedings as of July 22, 2009 (Armendariz 2009). The location of a courtroom within the law school offers a training space in legal advocacy and trial procedures for law students, but also affords students the opportunity to learn about the reform in the classroom and then step next door to a working courtroom and observe the fruits of the ongoing reform in action.

Nuevo León is among the first states to expand the accusatorial 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 accusatorial process (NLN-Civil Code, art. 989). This civil part of the reform was scheduled to enter into effect conditioned on the creation of new regulatory documents by the judiciary and courtrooms for civil and family matters. By 2007, the accusatorial system was functioning in these civil matters (PJ-NLN 2008, 20-21).¹² Moreover, in February 2008, there was already evidence that the time it took to resolve these cases (time to disposition) was shortening due to the reform (TBI 2008a, 11). Thus, Nuevo León appears to be forging ahead of

⁹ 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.”

¹⁰ Art. 555. “Se seguirá Juicio Oral Penal cuando se trate de un delito culposo no calificado por el Código Penal como delito grave.”

¹¹ Art. 553. “Las normas contenidas en el presente Capítulo serán aplicables para el procesamiento de los siguientes delitos previstos en el Código Penal para el Estado de Nuevo León: I. Los cometidos por culpa; II. Los de querrela previstos en los artículos 189, 262, 280, 282, 284, 285, 291, 338, 342, 344, 360, 381 en relación con el 382 fracción I, 383 en relación con el 382 fracción I, 384 en relación con el 382 fracción I y 385 fracción I; III. Los de oficio previstos en los artículos 166 fracción I, 168, 171, 172 primer párrafo, 178, 180, 182, 183, 184, 198, 205, 215 en relación con el 216 fracción I, 217 en relación con el 218 fracción I, 220 en relación con el 221 segundo párrafo, 222, 253, 255, 278, 323, 332, 336, 353 bis y 373.”

¹² 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).

its counterparts once again. As in 2004, when its criminal procedure reform pre-dated the federal reform by four years, the expansion of accusatorial proceedings into civil law precedes any federal mandate to do so, and may signal patterns of future reforms in other states.

Despite its success, one persistent problem area in Nuevo León is the struggle to get funding for the required reforms. In December 2008, for instance, the president of the state supreme court noted the judicial budget for 2009 would require a 32% increase to meet all the reform's obligations, but the governor's proposed budget only included an 8% increase. Legislators also questioned the governor's commitment to the new justice system (TBI 2008g, 16). The fact that this kind of political and budgetary conflict occurs here – one of the wealthiest states and a state that has advanced far in the reform – does not bode well for the kinds of conflicts that may erupt in other less advanced and poorer states. Indeed, there are already similar budgetary battles brewing in at least two states,¹³ and at the national level a justice of Mexico's Supreme Court joined a recently-formed national judges' association (*Asociación Mexicana de Impartidores de Justicia*, or AMIJ) in calling for President Felipe Calderón's administration to provide greater budgetary support for the reforms in the states (Mosso 2010).

Oaxaca: On September 6, 2006, Oaxaca approved a new Code of Criminal Procedures that enacted the transition to accusatorial proceedings (OAX-CPC, *Transitorio Segundo*). The new process was scheduled to go into effect one year later, in September 2007, and the accusatorial 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. After the Isthmus and Mixteca regions, the remaining ones are Costa, Cuenca, and Valles Centrales, and then simultaneous implementation in Cañada and de la Sierra (North and South) (OAX-CPC, art. *Transitorio Primero*). Presumably, therefore, the reform will be implemented statewide by September 2012.

However, there are already some delays. The 2009 expansion to La Costa, for instance, was postponed six months until March 2010 (Informe 2009, 22). Also, while the judicial leadership and other officials extol the benefits of the new accusatorial process, at least some private attorneys remain skeptical and critical, noting lack of training and sensitivity to the manner in which the new process may clash with customary law in indigenous communities (TBI 2008c; 2009b, 15).¹⁴

¹³ 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).

¹⁴ 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.

In terms of ADR, as of 2007 Oaxaca relies on 27 mediation centers located throughout the state, up from just one three years earlier. Indeed, the annual report notes that in that year no other state had more mediation centers than Oaxaca (Informe 2007, 18). ADR has continued to grow, increasing to 45 centers in 2008 (Informe 2008, 18) and 52 in 2009 (Informe 2009, 22).

The CPP called for the reform of other laws, including the laws regulating police agencies, the public prosecutor, and the public defender. With the exception of the law regulating the public prosecutor (reformed May 1, 2008), these laws have not yet been revised. Notably, the law regulating police agencies has not been changed since 1962 (Ley Orgánica de la Policía del Estado de Oaxaca).

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 accusatorial 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 accusatorial proceedings, which should have been revolutionary (Langer 2007) and particularly notable within Mexico, where only Nuevo León and Oaxaca had approved reforms at that time, and only Nuevo León had proceeded to the implementation phase. Rather than exalting this revolutionary change, the report only mentions in passing that a few “oral courts” (Juzgados Orales) were created in different districts (e.g., Informe 2006: 18, 20, 29).

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 accusatorial proceedings by October 1, 2009, in four judicial districts, including the state capital of Toluca (Decreto 289/09, 2). One day before that target date, on September 30, 2009, the state governor declared that the accusatorial model required by the federal constitution now existed in the state (Decreto 04/09).¹⁵ 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 terms of alternative dispute resolution, the practice of ADR in the state dates back to 2003 (Reglamento 2003). However, the law regulating the mediation center is not the same as a comprehensive law of alternative dispute resolution, which should also regulate who can become a mediator and the process for becoming an official mediator. Thus, one of the changes missing in the State of Mexico is a more comprehensive approach to the reform effort.

Zacatecas: A reform initiative was first proposed in the state on March 28, 2007 (Decreto 511/07).¹⁶ 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 accusatorial case entered the new system four days later,

¹⁵ “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].”

¹⁶ Opening of decree notes that this kind of reform was contemplated in the state as early as 2005.

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).

Along the way, the judiciary has promoted three training programs. First, in 2008, the courts sponsored a seminar on the principles of oral trials (*Actualidad Judicial*, 62). Second, in June 2009, a certificate program in the new system of criminal procedure drew the attendance of 600 lawyers over the course of 110 hours of instruction. Third, the judiciary initiated a master's degree in criminal procedure on August 7, 2009. This master's degree will be completed in four months of instruction over the course of two years, ending mid-2011. According to the court's records, the graduate legal program is the first of its kind in Mexico and will serve as a model for legal education related to the procedural reform throughout the country. Notably, the main instructors for the first seminar in 2008 and this master's degree in 2009 were from Chihuahua: Javier Pineda Sorda, a first-instance judge, and Dr. Heleodoro Emiliano Araiza Reyes, a law professor at the Universidad Autónoma de Chihuahua, respectively. Zacatecas has also entered into exchange programs with Nuevo León (*Actualidad Judicial* 2007, 65). As noted above, Chihuahua and Nuevo León's procedural reforms pre-dated the federal reform, so it appears Zacatecas is leveraging the lessons learned from the experience of these states. Where prior training and legal education efforts drew heavily on the expertise of foreign lawyers and policy experts, these examples in Zacatecas might be the kind of promising domestic, intra-national synergistic activities that will increasingly take shape within Mexico as some states advance in the reform process and other states turn to them, rather than foreign experts, for guidance (though Hidalgo, below, offers a contrasting experience, relying heavily on foreign experts).¹⁷

Category 2

Campeche: According to the Regulatory Code of the Judiciary (LOPJ, last reformed Dec. 18, 2007), there are no trials in the accusatorial model in Campeche. However, a reform initiative is circulating as of September 8, 2009. Indeed, this is the fifth version of such an initiative. The initiative appears to be following the model code of criminal procedure from the National Council of State Courts (*Consejo Nacional de Tribunales de Justicia*, or CONATRI). Campeche also has formed an implementing commission, the *Coordinación para la Implementación del Sistema de Justicia Penal* (CISJUPE), which has a website to track the progress of the reform.¹⁸ Notably, Campeche has enacted an ADR law covering mediation and conciliation, which took effect January 12, 2008 (*Reglamento del Centro de Justicia Alternativa del Poder Judicial del Estado*, Art. Transitorio Único).

Hidalgo: Like Campeche, Hidalgo does not have an approved reform. However, the state formed an implementing commission called the "Interinstitutional Reform Commission" (*Comisión*

¹⁷ 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).

¹⁸ See <http://www.portal.camp.gob.mx/C3/C6/justiciapenal>; also <http://www.tribunalcampeche.gob.mx/cisjupe>.

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). The commission also has a website which citizens and observers can use to track the progress of reform.¹⁹ Preparatory trainings have been taking place throughout 2009, some with the help of external advisors (PRODERECHO, USAID, and Open Society) and national advisors like INACIPE, as well as travels to observe the adversarial process in Santiago, Chile, which has a decade's experience with the accusatorial process (Langer 2007).

Yucatán: The third of the Category 2 “pre-reformers”, 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). Further, a new law governing ADR (*Ley de Mecanismos Alternativos*, or LMA) was motivated by the 2008 federal reform (YUC-LMA, *Exposición de motivos*, Primero). The ADR law entered into effect on January 1, 2010 (YUC-LMA, Transitorios, Art. Primero).

Category 3

The various states that comprise this category share the fact that they practice ADR and have passed formal laws regulating ADR. For instance, Aguascalientes 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*), which systematizes mediation and conciliation. In that year (2008), a total of 2355 cases entered a mediation process; of these, 105 cases were in criminal law (compared with 1338 in family law). In the first nine months of 2009, there were already 126 criminal cases undergoing mediation process (i.e., up 20% with three months left in the year), so use appears to be increasing (Boletín Estadístico 2008). No other criminal procedure reforms are apparent in the state. Similarly, Chiapas, Mexico City, Tamaulipas, and Tlaxcala have laws governing ADR but have not made any other formal efforts in criminal procedure.²⁰

¹⁹ See <http://www.nuevosistemadepenalhgo.gob.mx>

²⁰ 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.

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. For instance, in the small, western state of Colima, meetings were organized to discuss the reform from June 23-29, 2009. The discussion was facilitated by trainers in the accusatorial process from Europe, *Eurosocio-Justicia*, with members from Spain and Germany (COL-PJ Noticias 2009). In the northern state of Coahuila, similar meetings began in June 2008, driven by the imminent federal reform. A public unveiling of the 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 (Fernández Valverde 2008). Indeed, the state's constitution was reformed to include language motivated by the federal reform. For instance, article 115(XXI) states that the prosecutor initiates an adversarial and oral process by presenting an accusation. Also, in a section on mechanisms for enhancing access to justice, article 154(II)(3) includes oral trials and article 154(IV) calls for the creation of a system of alternative dispute resolution.²¹ Further, the state's Commission for Study and Analysis (*Comisión de Análisis y Estudio*), created to oversee the local implementation of the new system of justice, formed and met for first time after the federal reform, on September 17, 2008 (PJ-COA Informe 2008, 26).

Despite these early positive steps, however, the latest reforms to the regulatory documents of the judiciary (LOPJ) date from May 2009 and do not reflect any reform towards the adversarial model, making no mention of oral trials. An examination of other local legislation and the court's annual report for 2008 also does not reveal any other legislative reforms. In fact, 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. Similarly, in Sonora there was a reform initiative (*anteproyecto*) put forward on November 28, 2008. However, given the absence of any evidence of reform since then,²² the project does not seem to have advanced anywhere.

Analogous examples of stalled, failed, or incipient efforts appear elsewhere among states that have existing ADR laws. 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.

Notably, a few states that have ADR laws have taken other steps to promote other goals of the reform. For example, Jalisco passed a new public safety law (*Ley General de Seguridad Pública*)

²¹ Art. 115(XXI): “[Son obligaciones del MP] ... Presentar escrito de acusación ante el Juez de Conocimiento, con el fin de dar inicio al juicio acusatorio adversarial y oral que se regirá por los principios de publicidad, contradicción, concentración, continuidad e inmediación.” (reformed March 16, 2009?); Art. 154(II)(3): “La garantía del breve juicio bajo principios de celeridad, oralidad, oportunidad y expeditéz”; Art. 154(IV): “Se establecerá un sistema de justicia alternativa, a través de la mediación, conciliación, arbitraje o cualquier otro medio de solución alterno para resolver las controversias entre particulares.” (art 154 reformed June 21, 2005?)

²² The LOPJ shows no reforms after Sep 7, 2007, and the CPP shows no reforms since July 12, 2007.

at the end of 2009 (PL-JAL 2009), which also created an assessment and evaluation center (*Centro de Control de Confianza*) similar to the one that provides screening for law enforcement in Baja California.

Finally, Veracruz offers an example of superficial or cosmetic reform. A 2007 reform to the Code of Criminal Procedure, which took effect on August 2, 2007, created the figure of “Summary Oral Trials” (*Juicio Oral Sumario*) (CPP, arts. 279 et seq.). This is an odd legal figure, in that this new criminal process is only available if (a) the average sentence for an offense is less than six years (art. 279, sec. I), or (b) the average sentence is greater than six years and either of the following two conditions holds: (i) the offense was committed in the presence of an officer (“delito flagrante”) or (ii) the defendant confesses before the judge, or the defendant’s previous confession is ratified before the judge (art. 279, sec. II). This reform seems cosmetic compared with the fuller, more comprehensive reforms seen in the Category 1 states like Nuevo León, Chihuahua, Morelos, Oaxaca, or Zacatecas, and is closer to the superficial type of reform first seen in the State of Mexico in 2006, when there was an attempt to implement accusatorial proceedings simply by adding a series of articles to the existing code of criminal procedures (see above).

Vizcaino (2007) also highlights that the Veracruz reform gave only 120 days from the time the reform passed until the time it would take effect and have to be fully implemented (see CPP-VER, *Transitorio Primero*). As he notes, this is very little time for the public in general to become aware of a new criminal procedure, and not enough time to adequately train judges and attorneys for the practice of accusatorial hearings. Vizcaino compared the 120-day implementation window in Veracruz to that of other states with reforms, noting that Oaxaca allowed one year before the reform went into action and that other states allowed up to two-and-a-half years. The speed with which Veracruz implemented this reform only adds to the perception that it is cosmetic in nature.

Beyond this short time period to implementation, the language of implementation is very vague, noting that the reforms take effect in 120 days, but also stating in the same paragraph that the courts shall not start applying the new process until the necessary construction is complete. Thus, the substantive change is cosmetic, and the language of implementation is vague and ambiguous, leaving room for further delays.²³

Category 4

The remaining states do not appear to have any bills or initiatives for transitioning to the accusatorial 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. As stated below regarding Tabasco, these states risk “missing the boat”.

In Baja California Sur, there is mediation available but no formal law governing the practice or its practitioners. In 2006-2007, out of a total of 1144 cases that went to mediation, 185 (16%)

²³ No other major reforms are evident in the LOPJ, which lists reforms through October 30, 2009.

were in criminal law (Informe de Labores 2006-2007, p.16). Notably, the state has pursued other, lesser reforms, and has at least nominally done so in the spirit of the 2008 federal reform.²⁴ In Guerrero, there are no signs of reform but the first national conference on restorative justice and adversarial proceedings will be held there from March 8-13, 2010. In several other states – Michoacán, Nayarit, Puebla, Querétaro, Quintana Roo, San Luis Potosí, and Sinaloa – there is no evidence of any reforms in the *Ley Orgánica* or *Código de Procedimientos Penales*, and no other apparent formal changes. In some of these states there are positive signs of movement in the right direction, e.g., trainings and information gathering, but no formal reform underway. For example, as late as December 15, 2009, Querétaro was still planning a reform strategy and preparing to gather input across the state for an eventual reform project in 2010 or 2011. Indeed, one local legislator was visiting a law school on that day in December for a demonstration of the accusatorial process he and his colleagues would be expected to legislate in the coming months (PL-QUE 2009). 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 accusatorial 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).

Conclusion

As shown by the discussion above, based on information available as of December 2009, the criminal procedure reform is evolving in a highly uneven manner across Mexico’s 32 states. Some states started before the 2008 federal reform and have either fulfilled the requirements of the federal reform or even surpassed them, expanding the accusatorial model to civil proceedings (Nuevo León). Others have yet to begin the reform process and are risking being unable to complete the reform before the 2016 target date set by the federal government.

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. States that have yet to reform, or even states that are still in the process of reforming or have already implemented their reforms, can scan their neighbors and observe a wealth of varying experiences from which to glean practical lessons about improving the administration of justice. For scholars of reform and institutional change, Mexico’s ongoing experience with criminal justice reform affords a living laboratory in which to study the changing shape of institutions 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

²⁴ The *Ley de Justicia para Menores Infractores* (Decreto 1630; Oct 3, 2008) and the *Juzgado para Menores Infractores* (Decreto 1787; Dec 12, 2008) were motivated by the federal reform (“Con motivo de la Reforma al artículo 18 Constitucional y partiendo de su marco conceptual se impartieron los cursos de capacitación y certificación en Justicia para Adolescentes y en cumplimiento a dicha disposición constitucional se instituyeron los Juzgados para Menores Infractores en la Ciudad de la Paz” (PJ-BCS, Historia)).

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.

About the Author:

Matthew Ingram, Ph.D., is a fellow at the Center for U.S.-Mexican Studies. Dr. Ingram earned his B.A. from Pomona College, and obtained his doctoral degree in Political Science and a law degree from the University of New Mexico. His comparative and interdisciplinary research in politics and law seeks a better understanding of the sources of strong institutions, state building, and democracy. Dr. Ingram has written papers including "Trends in Multi-Method Research: Sailing Ahead, Reckoning with Old Risks and New," "Peace by Design: Institutional Choices and the Risk of Armed Conflict in Democracies," and "Rule of Law and Democracy: Conceptual and Causal Issues from a Comparative Perspective." His current research project, "Crafting Courts in New Democracies: The Politics of Sub-national Judicial Reform in Mexico and Brazil," looks at the process of judicial reform in Latin America's two largest democracies.

Acknowledgements:

Linn Hammergren, María Candelaría Pelayo Torres, Octavio Rodríguez, Miguel Sarre, David Shirk, Allen Snyder, and Daniel Solorio provided valuable comments and critiques on this paper. This paper was made possible through the generous financial support of The William and Flora Hewlett Foundation and the TIES Program from Higher Education for Development sponsored by the U.S. Agency for International Development through a grant to the University of San Diego and the Universidad Autónoma de Baja California. Dr. Ingram's research also benefited from the generous financial and institutional support of the Center for U.S.-Mexican Studies at the University of California, San Diego. The analysis and conclusions of the author do not reflect the views of the Trans-Border Institute or its sponsoring organizations.

References

- Actualidad Judicial*. 2007. "Quehacer Judicial." Año 0, No. 1 (Agosto). Zacatecas, Mex.: 64-70.
- Armendáriz, Esperanza. 2009. "Realizan primer juicio oral." Noticias UANL. July 22. Available at: noticias.uanl.mx (last viewed Jan. 18, 2009).
- BC-Decreto 348/10. Periodico Oficial del Estado No. 5, CXVII, January 22, 2010, Mexicali, Baja California.
- Boletín Estadístico 2008, Información Estadística del Poder Judicial del Estado de AGS, Ene-Dic 2008, no. 17, p.60; available at: <http://www.poderjudicialags.gob.mx> (last viewed Jan. 16, 2010).
- Boletín 252/2009. "Aprueban reformas constitucionales en materia de justicia penal y seguridad pública." Comunicación Social, Poder Legislativo de Guanajuato. Available at: <http://www.congresogto.gob.mx/csosocial/boletinesLX> (last viewed Feb. 22, 2010).
- Carrizales, David. 2005. "Concluyó en NL el primer juicio oral del México actual." *La Jornada* (México, D.F.). 24 de febrero.
- Comisión Interinstitucional para la Reforma Integral del Sistema de Justicia Penal en el Estado de Hidalgo (CII). 2009. "1er Informe de Labores." Pachuca, Hidalgo. October 2009.
- Decreto 118/04. (2004). POR EL QUE SE REFORMAN DIVERSAS DISPOSICIONES DEL CÓDIGO PENAL PARA EL ESTADO DE NUEVO LEÓN Y DEL CÓDIGO DE PROCEDIMIENTOS PENALES DEL ESTADO DE NUEVO LEÓN. P.O. July 28: pp. 17-106 (vigente 29 julio 2004).
- Decreto 211/08 (2008). Reforma al art. 50(II) y 59 de la LOPJ. (aprobado March 11, 2008; pub. Mar. 29, 2008). P.O.E. No. 26.
- Decreto 279/05. (2005). POR EL QUE SE REFORMAN EL CÓDIGO PENAL PARA EL ESTADO DE NUEVO LEÓN, POR MODIFICACIÓN DE LOS ARTÍCULOS 16 BIS FRACCIÓN I, 28, 73, 111 EN SU TERCER PÁRRAFO, 321 BIS 3 Y 413 INCISO B; Y POR DEROGACIÓN DEL INCISO C DEL ARTÍCULO 413 Y EL CÓDIGO DE PROCEDIMIENTOS PENALES DEL ESTADO DE NUEVO LEÓN. P.O. Dec. 7: pp. 5-29 (vigente el mismo día, 7 de diciembre del 2005).
- Decreto 397/08 (2008). Reforma a diversos codigos y leyes relevantes. (aprobado Nov. 4, 2008; pub. Feb. 18, 2009). P.O.E. No. 14.
- Decreto 595/06 (2006). Reforma principal (aprobado May 11, 2006; pub. June 10, 2006). P.O.E. No. 46.
- Decreto 611 BIS/06 (2006). (aprobado June 16, 2006; pub. August 9, 2006). P.O.E. No. 63.
- Decreto 611 TER/06 (2006). (aprobado June 16, 2006; pub. August 9, 2006). P.O.E. No. 63.

Decreto 611 TER/06 (2006). (aprobado June 16, 2006; pub. August 9, 2006). P.O.E. No. 63.

Decreto 617/06 (2006). Ley de Atención y Protección a Víctimas u Ofendidos del Delito del Estado de Chihuahua (aprobado Sept. 7, 2006; pub. Oct. 21, 2006). P.O.E. No. 84.

Decreto 618/06 (2006). Ley de Justicia Especial para Adolescentes Infractores del Estado de Chihuahua (aprobado Sept. 7, 2006; pub. Sept. 16, 2006). P.O.E. No. 74. (incluye reformas a las leyes orgánicas del Poder Ejecutivo y Poder Judicial)

Decreto 690/06 (2006). Nuevo Código Penal del Estado de Chihuahua (aprobado Nov. 30, 2006; pub. Dec. 27, 2006). P.O.E. No. 103.

Decreto 691/06 (2006). Ley de Ejecución de Penas y Medidas de Seguridad del Estado de Chihuahua (aprobado Nov. 30, 2006; pub. Dec. 9, 2006). P.O.E. No. 98.

Decreto 948/07 (2007). Reforma al art. 2 del Nuevo Código de Procedimientos Penales. (aprobado May 24, 2007; pub. June 9, 2007). P.O.E. No. 46.

Di Carlo, Roxana. 2010. "Retraso del nuevo sistema de justicia penal no afecta a la PGJE." *SintesisTV*. Available at: <http://www.sintesistv.info> (last viewed Feb. 14, 2010).

Dictamen 901. 2009. *Dictamen, mediante el cual se reforman artículos de la Constitución Política del Estado de Guanajuato*. Aug. 27. Available at: <http://www.congresogto.gob.mx> (last visited Feb. 22, 2010).

Diario Oficial de la Federación. 2008. Decreto por el cual se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos. June 18. Mexico City. pp. 3 et seq.

Fernández Valverde, Hilda. 2008. "Aplicarán juicios orales en Coahuila, previa reforma judicial." June 4. *El Universal* (Mexico City).

Gaucín, Rosy. 2009. "Bienvenido sea el Nuevo Sistema de Justicia Penal." *El Siglo de Durango*. Durango, Mexico. December 14.

Gobierno del Estado de Guanajuato (GUA-Gob). 2008. "Noticias." Nov. 16. Available at: http://www.guanajuato.gob.mx/gto/detalle_noticia.php/10576 (last viewed Jan. 19, 2010).

Gobierno del Estado de Morelos (MOR-Gob). 2009. "Cronología de la Reforma Integral al Sistema de Justicia Penal y Seguridad Pública." Available at: <http://juiciosorales.morelos.gob.mx> (last accessed Jan. 18, 2010).

Instituto Nacional de Ciencias Penales (INACIPE). 2008a. *ABC del nuevo sistema de justicia penal en México*. Mexico City. At: www.reformapenal.inacipe.gob.mx/ABCReforma.html (last viewed Nov. 28, 2009).

Instituto Nacional de Ciencias Penales (INACIPE). 2008b. *Texto constitucional comparado antes y después de la reforma*. Mexico City. At: www.reformapenal.inacipe.gob.mx (last viewed Feb. 11, 2010).

Langer, Máximo. 2007. "Revolution in Latin American Criminal Procedure: Diffusion of Legal Ideas from the Periphery." *American Journal of Comparative Law* 55: 617-676.

Ley de Justicia Alternativa (BC-LJA). 2007. Periódico Oficial No. 43, Oct. 19. 2007.

Ley de Mecanismos Alternativos de Solución de Controversias en el Estado de Yucatán (LMA-YUC). *Diario Oficial del Estado de Yucatán*, Jul. 24, 2009.

Ley que regula el sistema de mediación y conciliación en el Estado de Tlaxcala. Decreto 138/07. Apr. 13, 2007. Periódico Oficial, Extraordinario.

Miranda, Miguel Ángel R. 2009. "Necesario consolidar un nuevo sistema de justicia penal y de seguridad en el Estado." *Sol de Irapuato* (Irapuato, Mexico). Nov. 11.

Mosso, Rubén. 2010. "Sin 300 mdp fracasará la reforma penal: Corte." *Milenio* (Mexico City), Jan. 21.

Pelayo, Candelaria, and Daniel Solorio. 2010. "La justicia penal que viene: El caso Baja California." *Boletín Mexicano de Derecho Comparado* XLIII, no. 127 (Jan.-Apr.), Mexico City, UNAM: 347-357.

PJ-ZAC Consultas. Búsqueda por fecha. Available at: <http://www.tsjzac.gob.mx/consultas/juicios-orales/> (last accessed Jan. 1, 2010).

Poder Judicial de Aguascalientes (PJ-AGS). "Historia." Available at: <http://www.poderjudicialags.gob.mx> (last viewed Jan. 16, 2010).

Poder Judicial de Coahuila (PJ-COA). 2008. Informe.

Poder Judicial de Morelos (PJ-MOR). 2009. "Historia de la Reforma." Available at: http://juiciosorales.morelos.gob.mx/historia_reforma.php (last viewed Jan. 18, 2010).

Poder Judicial de Oaxaca (PJ-OAX). 2007. *Informe Anual de Actividades 2007*. Available at: <http://juiciooraloaxaca.gob.mx/Publicaciones> (last viewed Feb. 15, 2010).

Poder Judicial de Oaxaca (PJ-OAX). 2008a. *Informe Anual de Actividades 2008*. Available at: <http://juiciooraloaxaca.gob.mx/Publicaciones> (last viewed Feb. 15, 2010).

Poder Judicial de Oaxaca (PJ-OAX). 2008b. *Estructura Básica del Sistema Acusatorio Adversarial Adoptado por el Código Procesal Penal del Estado de Oaxaca y Principios Rectores*. Available at: <http://juiciooraloaxaca.gob.mx/Publicaciones> (last viewed Feb. 15, 2010).

Poder Judicial de Oaxaca (PJ-OAX). 2009. *Informe Anual de Actividades 2009*. Available at: <http://juiciooraloaxaca.gob.mx/Publicaciones> (last viewed Feb. 15, 2010).

Poder Judicial de Tabasco (TAB-Pj). 2010. “Comunicación”. Jan. 19. Available at: <http://www.tsj-tabasco.gob.mx/comunicacion> (last viewed Jan. 19, 2010).

Poder Judicial de Yucatán (PJ-YUC). 2009. “Elaboran Plan Rector para Implementar Reforma Penal en Yucatán.” Available at: <http://www.tsjyuc.gob.mx> (last viewed on Nov. 17, 2009).

Poder Judicial de Yucatán (PJ-YUC). 2010. “Anteproyecto del Código Procesal Penal, Elaborado por el Grupo de Trabajo de la Sala Penal (Segunda Versión).” Jan. 4. Available at: <http://www.tsjyuc.gob.mx> (last viewed on Jan. 19, 2010).

Poder Judicial del Estado de Baja California (BC-PJ). 2009. “Informe Anual de Actividades: Periodo de octubre 2008 a septiembre 2009.” Mexicali, Baja California.

Poder Judicial del Estado de Chihuahua (CHI-PJ). 2006. “Informe de Labores.” Chihuahua, Chi.

Poder Judicial del Estado de Chihuahua (CHI-PJ). 2009. “Acuerdo Político.” Available at: [] (last viewed Dec. 27, 2009).

Poder Judicial del Estado de Colima (COL-PJ). 2009. “Reforma Legislativa para Implantación de Oralidad.” June 23, 2009. Available at: <http://stj.col.gob.mx> (last viewed Jan. 19, 2010).

Poder Judicial del Estado de Nuevo León (PJ-NLN). 2008. *Informe de Labores 2007-2008*. Available at: <http://www.pjenl.gob.mx/tsj/Informe2008.htm> (last viewed Feb. 15, 2010).

Poder Legislativo de Jalisco (PL-JAL). 2009. “Aprueban el lo general la Ley de Seguridad Pública.” Dec. 15. Available at: <http://www.congreso.jal.gob.mx/servicios/hoycongreso/cortes/cortedeldia.cfm?fecha=15/12/2009>

Poder Legislativo de Querétaro (PL-QUE). 2009. “El presidente de la Comisión de Administración y Procuración de Justicia asistió a la primera práctica de Juicio Oral, Martes 15 de Diciembre de 2009.” Comisión de Administración y Procuración de Justicia (CAPJ), Noticia 160 (CAPJ/160.09). Available at: <http://legislaturaqro.gob.mx/noticias> (last viewed Feb. 11, 2010).

Presidencia de la República (2004). “Reforma integral al sistema de justicia, anuncia el Presidente Vicente Fox.” 10 de marzo. Los Pinos, México, D.F.

Programa de Apoyo al Estado de Derecho en México (PRODERECHO). 2010. “Proyectos.” Mexico City. Available at: <http://www.proderecho.com/proyecto.inicio.php> (last accessed Jan. 18, 2010).

- Rodriguez, Octavio. 2010. "Una nueva forma de hacer justicia: *Análisis descriptivo de la reforma constitucional de 2008.*" *Working Paper*. San Diego: Trans-Border Institute.
- Shirk, David. 2009. "Justice Reform in Mexico." *Insights on Law and Society*, American Bar Association.
- Trans-Border Institute (TBI). 2008a. *Justice in Mexico News*. No. 28 (Feb.). University of San Diego. Available at: <http://www.justiceinmexico.org/news> (last visited Feb. 20, 2010).
- Trans-Border Institute (TBI). 2008b. *Justice in Mexico News*. No. 30 (Apr.). University of San Diego. Available at: <http://www.justiceinmexico.org/news> (last visited Feb. 20, 2010).
- Trans-Border Institute (TBI). 2008c. *Justice in Mexico News*. No. 34 (Aug.). University of San Diego. Available at: <http://www.justiceinmexico.org/news> (last visited Feb. 20, 2010).
- Trans-Border Institute (TBI). 2008d. *Justice in Mexico News*. No. 35 (Sept.). University of San Diego. Available at: <http://www.justiceinmexico.org/news> (last visited Feb. 20, 2010).
- Trans-Border Institute (TBI). 2008e. *Justice in Mexico News*. No. 36 (Oct.). University of San Diego. Available at: <http://www.justiceinmexico.org/news> (last visited Feb. 20, 2010).
- Trans-Border Institute (TBI). 2008f. *Justice in Mexico News*. No. 37 (Nov.). University of San Diego. Available at: <http://www.justiceinmexico.org/news> (last visited Feb. 20, 2010).
- Trans-Border Institute (TBI). 2008g. *Justice in Mexico News*. No. 38 (Dec.). University of San Diego. Available at: <http://www.justiceinmexico.org/news> (last visited Feb. 20, 2010).
- Trans-Border Institute (TBI). 2009a. *Justice in Mexico News*. No. 39 (Jan.). University of San Diego. Available at: <http://www.justiceinmexico.org/news> (last visited Feb. 20, 2010).
- Trans-Border Institute (TBI). 2009b. *Justice in Mexico News*. No. 40 (Feb.). University of San Diego. Available at: <http://www.justiceinmexico.org/news> (last visited Feb. 20, 2010).
- Trans-Border Institute (TBI). 2009c. *Justice in Mexico News*. No. 43 (May). University of San Diego. Available at: <http://www.justiceinmexico.org/news> (last visited Feb. 20, 2010).
- Trans-Border Institute (TBI). 2009d. *Justice in Mexico News*. No. 44 (June). University of San Diego. Available at: <http://www.justiceinmexico.org/news> (last visited Feb. 20, 2010).
- Vizcaino Zamora, Álvaro. 2007. "La oralidad en los procedimientos penales en Veracruz." Seminario sobre la oralidad en los procedimientos judiciales, Boca del Rio, Veracruz. Sept. 4-5.

APPENDIX

Table 1. Categorical Index of Reforms (as of December 2009).

No.	State	Year	Category	1	2	3	4
1	Aguascalientes	2009	3	0	0	1	0
2	Baja California	2009	1	1	0	0	0
3	Baja California Sur	2009	4	0	0	0	1
4	Campeche	2009	2	0	1	0	0
5	Chiapas	2009	3	0	0	1	0
6	Chihuahua	2009	1	1	0	0	0
7	Coahuila	2009	3	0	0	1	0
8	Colima	2009	3	0	0	1	0
9	Distrito Federal	2009	3	0	0	1	0
10	Durango	2009	1	1	0	0	0
11	State of Mexico	2009	1	1	0	0	0
12	Guanajuato	2009	3	0	0	1	0
13	Guerrero	2009	4	0	0	0	1
14	Hidalgo	2009	2	0	1	0	0
15	Jalisco	2009	3	0	0	1	0
16	Michoacán	2009	4	0	0	0	1
17	Morelos	2009	1	1	0	0	0
18	Nayarit	2009	4	0	0	0	1
19	Nuevo León	2009	1	1	0	0	0
20	Oaxaca	2009	1	1	0	0	0
21	Puebla	2009	4	0	0	0	1
22	Querétaro	2009	4	0	0	0	1
23	Quintana Roo	2009	4	0	0	0	1
24	San Luis Potosí	2009	4	0	0	0	1
25	Sinaloa	2009	4	0	0	0	1
26	Sonora	2009	3	0	0	1	0
27	Tabasco	2009	4	0	0	0	1
28	Tamaulipas	2009	3	0	0	1	0
29	Tlaxcala	2009	3	0	0	1	0
30	Veracruz	2009	3	0	0	1	0
31	Yucatán	2009	2	0	1	0	0
32	Zacatecas	2009	1	1	0	0	0
Totals				8	3	11	10