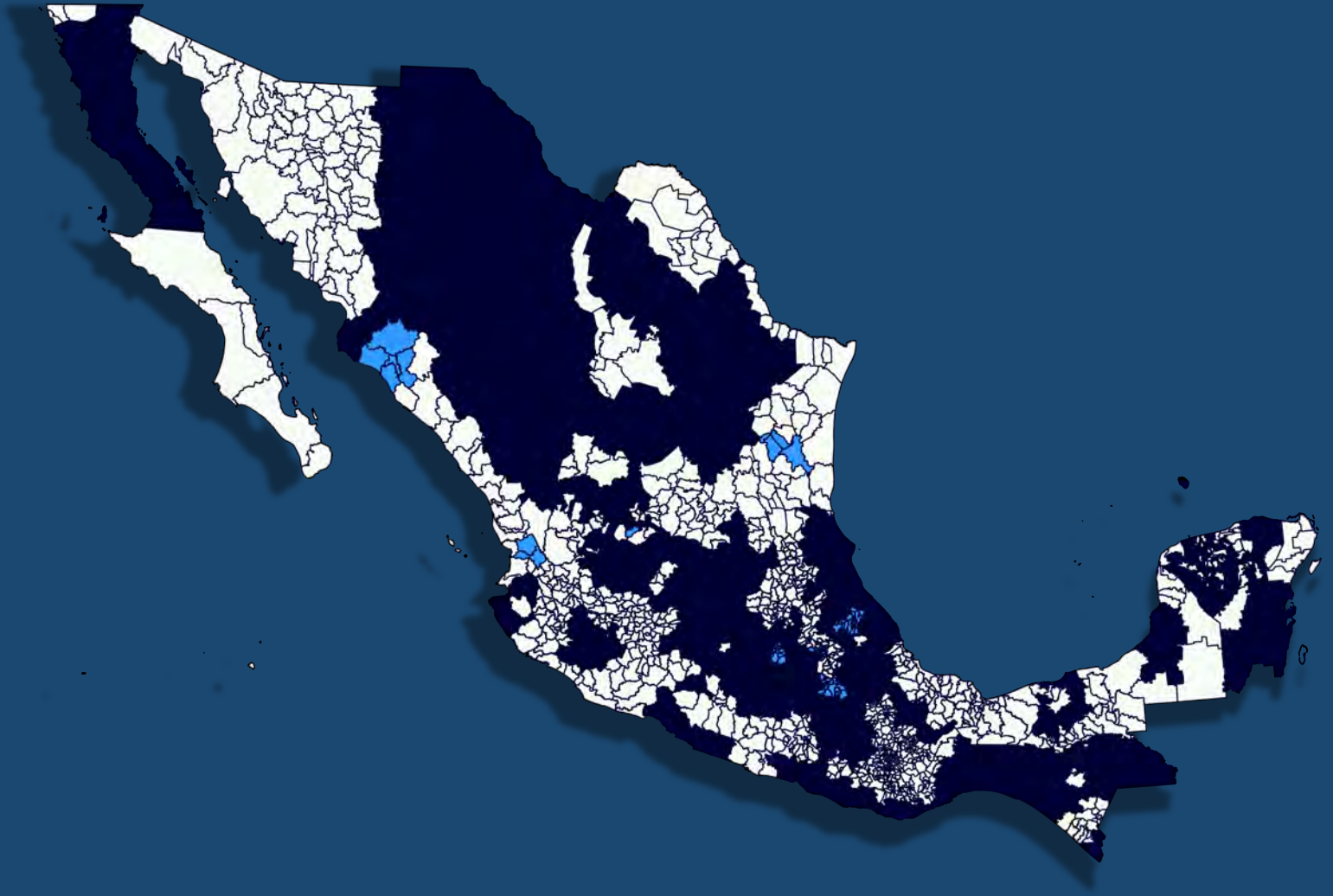


# Criminal Procedure Reform in Mexico, 2008-2016

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*The Final Countdown for Implementation*



## SPECIAL REPORT

By Octavio Rodríguez Ferreira and David A. Shirk



**Justice in Mexico**

University of San Diego

October 2015

## About Justice in Mexico

Started in 2001, Justice in Mexico ([www.justiceinmexico.org](http://www.justiceinmexico.org)) is a program dedicated to promoting analysis, informed public discourse, and policy decisions; and government, academic, and civic cooperation to improve public security, rule of law, and human rights in Mexico. Justice in Mexico advances its mission through cutting-edge, policy-focused research; public education and outreach; and direct engagement with policy makers, experts, and stakeholders. The program is presently based at the Department of Political Science and International Relations at the University of San Diego (USD), and involves university faculty, students, and volunteers from the United States and Mexico. From 2005 to 2013, the project was based at USD's Trans-Border Institute at the Joan B. Kroc School of Peace Studies, and from 2001 to 2005 it was based at the Center for U.S.-Mexican Studies at the University of California-San Diego.

## About the Report

This is one of a series of special reports that have been published on a semi-annual basis by Justice in Mexico since 2010 on issues related to crime and violence, judicial sector reform, and human rights in Mexico. This report examines Mexico's progress toward implementation of the country's "new" criminal justice system, which introduces the use of oral, adversarial proceedings and other measures to improve the handling of criminal cases in terms of efficiency, transparency, and fairness to the parties involved. This report is based on several months of research and data analysis, field observation, and active participation by the authors in the process of training law professors, law students, and attorneys in preparation for implementation of the reforms. The report provides a general background on the 2008 judicial reform initiative, and examines Mexican government efforts to implement the reforms at the federal, state, and judicial district level, relying on a unique dataset and maps generated by the Justice in Mexico program based at the University of San Diego. As an additional resource, this report also contains a translation of the 2008 constitutional changes underlying the reforms. Ultimately, the authors find that there has been significant progress toward the implementation of the new criminal justice system, and offer recommendations to assist the Mexican government and international aid organizations to help Mexico sustain this progress in the years to come. This report does not represent the views or opinions of the University of San Diego or the sponsoring and supporting organizations, and the authors are solely responsible for any errors, omissions, and opinions in the report.

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## Executive Summary

- By many accounts, the Mexican criminal justice system is overloaded, outmoded, and dysfunctional. In 2008, reforms were approved by the Mexican Congress in an effort to correct many of these problems by introducing significant changes to the framework of criminal justice as it has been traditionally conceived in Mexico.
- Mexico's so-called New Criminal Justice System (*Nuevo Sistema de Justicia Penal*, NSJP) establishes a new set of procedures for trying cases, which allow both the prosecutor and the defense attorney for the accused to present evidence and arguments as equal parties before an impartial and independent judge, as well as other changes that protect the rights of the accused and allow for more efficient processing of criminal cases.
- The Mexican government's implementation of the reforms is being conducted by the Coordinating Council for the Implementation of the Criminal Justice System (Consejo de Coordinación para la Implementación del Sistema de Justicia Penal, CCISJP), and its Technical Secretariat (Secretaría Técnica, SETEC) within the Mexican Interior Ministry.
- Implementation of the reforms at the state level has occurred in three stages: early adopters (pre-2008), post-reform adopters (post-2008), and states still pending adoption. Several states had begun to implement oral, adversarial criminal procedures prior to the federally mandated reform in 2008. The three earliest adopters that approved and initiated the use of oral adversarial procedures prior to the federal reform were Chihuahua (2007), Oaxaca (2007), and Nuevo León (2004).
- Transition to this new system has required a major effort and substantial resources to convert court facilities, upgrade technology, and train judicial system personnel. Since 2008, the Mexican federal government has expended roughly \$3 billion dollars to support state governments efforts to transition to the new system, and U.S. government has provided additional aid for these efforts through the Mérida Initiative.
- Initially, reform efforts were plagued by delays and insufficient resources. It took more than six years to start implementing the new system at the federal level. In May 2013, the Federal Judiciary Council (Consejo de la Judicatura Federal, CJF) developed a well-structured, gradual, 3-phase Master Plan, and has been working toward implementation, albeit with some continued challenges and delays.
- In an effort to move the reform to completion prior to a constitutionally binding June 18, 2016 deadline, the current administration of President Enrique Peña Nieto has taken a number of actions to get the reform initiative on track, including the introduction of a new Unified Code of Criminal Procedure (CNPP) in 2014 and a significantly greater allocation of efforts and resources to the reform endeavor toward implementation than under the previous administration.
- In 2013, the first full year of the Peña Nieto administration, only about 630 of the roughly 2,400 municipalities in Mexico—approximately 25%—were fully operating the reforms. However, progress toward implementation by judicial district has accelerated significantly in recent years. By June 2015 over half of the municipalities were in judicial districts fully operating under the new model of criminal procedure,

and over half of all Mexicans lived in municipalities where the reforms had been fully implemented.

- Despite this progress, many states lagged in the implementation of the reforms in some or most judicial districts, and/or some categories of crime. Since some states transitioned to oral adversarial criminal procedures only for some categories of crimes, other categories of crime may still fall under the traditional system. Also, recent progress on judicial reform efforts has been overshadowed by the President's handling of Mexico's security situation and human rights violations, such as the 2014 massacre of dozens of students and protestors from Ayotzinapa, Guerrero.
- Overall, the magnitude of the changes Mexico has undertaken to reform its judicial system is enormous, and the potential implications of this reform effort could yield major improvements over the coming years. The authors offer four main recommendations for sustaining recent progress on judicial reform:
  - The Mexican Congress should bind the country to make continued progress on judicial reform by establishing deadline for a comprehensive review of the National Code of Criminal Procedure in 2024.
  - The Mexican Congress should require all judges, prosecutors, and public defenders to obtain a specific training or a specified number of hours of continuing education each year to practice law under the new system, and act to establish a system of accredited university programs and government scholarships to support training in oral, adversarial litigation.
  - Mexican government agencies—such as the SETEC within the Interior Ministry or the Instituto Nacional de Ciencias Penales (INACIPE) within the Attorney General's Office—should generate and disseminate indicators of judicial system performance, and provide grants to universities, research institutes, and nongovernmental organizations that can assist in the evaluation and assessment of the new criminal justice system.
  - The U.S. government, foreign governments, and international organizations and foundations to provide funding and support for continued judicial reform efforts in Mexico, including funds to support legal watchdog organizations working to advocate for the rights of victims, prisoners, whistle blowers, and even operators in the criminal justice system.

# Criminal Procedure Reform in Mexico, 2008-2016

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## *The Final Countdown for Implementation*

*By Octavio Rodríguez Ferreira and David A. Shirk<sup>1</sup>*

### I. Introduction

Mexico is in the process of implementing a major reform of its criminal justice system. Over the past several years, Mexican officials have been gradually working to put into effect a series of reforms that was passed on June 18, 2008 by the Mexican Congress, which allowed for an eight-year period of implementation. The main thrust of these reforms focuses on the legal procedures employed in criminal cases. Mexico's traditional model of criminal procedure—referred to as a “mixed inquisitorial” system—relies heavily on the formal submission of documents, gives prosecutors the protagonist role, and offers relatively limited protections for the rights of the accused. Critics of Mexico's mixed inquisitorial system contend that the result is an excruciatingly slow and heavily biased process that simultaneously allows too many criminals to evade prosecution while also causing too many suspects to be “presumed guilty.”

Among other significant changes, the new criminal justice system envisioned by Mexico's 2008 criminal justice reforms seeks to achieve a more transparent and efficient procedure for the administration of justice, strengthen the rights of the accused through greater due process, and provide greater transparency and checks and balances in the judicial sector. As part of this reformed system, Mexico's new criminal procedures include provisions intended to reduce the costly reliance on preventive detention for minor offenses; allow for the timely presentation and questioning of evidence; protect the rights of both victims and crime suspects; cut down case backlogs in the judicial system; and generally increase the overall effectiveness of the criminal justice system.

As Mexico now stands within one year of the June 18, 2016 deadline, the final countdown now begins for nation-wide implementation of the new system. The government of Mexican President Enrique Peña Nieto has voiced its strong support for the initiative, describing the successful implementation of judicial reform as a necessary component to resolve the country's ongoing security crisis. Yet, both critics and advocates of the new criminal justice system have long expressed doubts that the Mexican government can achieve full implementation of the reforms within just eight years, at either the federal or the state level. While most states have already begun to implement the new system, a handful of others

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<sup>1</sup> The research for this report was sponsored by a generous grant from the John D. and Catherine T. MacArthur Foundation. The authors also benefited from their ongoing work on judicial reform in Mexico thanks to a grant from the Bureau of International Narcotics and Law Enforcement in the U.S. Department of State as part of the Mérida Initiative under award #SINLEC14GR0068.



have not yet begun and a large number of judicial districts throughout the country are still operating under Mexico's traditional criminal procedural model. Moreover, there remain serious concerns about Mexico's persistent problems of crime and violence, and the capacity of the new system to address these issues effectively. Thus, while many see judicial sector reform as indispensable to achieving rule of law in Mexico, the future of Mexico's criminal justice system—and its possible effects—remain uncertain.

This report examines Mexico's progress toward implementation of the country's "new" criminal justice system, based on several months of data analysis, field observation, and active participation by the authors in the process of training law professors, law students, and attorneys in preparation for implementation of the reforms. To begin, we provide some general background on the 2008 reform package, as well as details on the specific procedural changes that have been introduced. The main body of the report focuses on the authors' analysis of efforts to adopt and implement the reforms at the state and judicial district level, relying on a unique dataset and maps generated by the Justice in Mexico program based at the University of San Diego. As an additional resource, this report also contains a translation of the 2008 constitutional changes underlying the reforms, which to our knowledge have yet to be translated for an English speaking audience. Ultimately, the authors find that there has been significant progress toward the implementation of the new criminal justice system, though many challenges lie in store for Mexico over the coming year and beyond.

## **II. Background on Mexico's Traditional Judicial System**

The criminal justice systems that are familiar to people in Great Britain, the United States, Canada, and other common law systems typically employ what is known as an "adversarial" model of criminal procedure. Under the adversarial model, evidence and arguments are presented by competing parties—a prosecutor and a defense attorney for the accused—before an audience presumed to be neutral (i.e., a judge or panel of judges, and in some cases a jury), which issues a verdict and, if guilt is determined, a sentence. There are roughly 70 common law systems in the world, most of which rely on the adversarial model of criminal procedure, mostly common in former British colonies.

As a result of Roman and later Napoleonic influences, France, Spain, Mexico and well over 100 other countries adhere to the civil law tradition and typically rely on some variant of the "inquisitorial" model of criminal procedure. Under the inquisitorial model an instructional judge leads the investigation of a crime, as well as the process of determining a suspect's guilt or innocence. This system relies on a basic presumption that the judge represents not only the state but also the public interest, and therefore acts in good faith to seek justice. Like other Latin American criminal justice systems, Mexico's system differs significantly from the traditional inquisitorial system used on the European Continent, in part because of legal innovations that occurred after independence on both sides of the Atlantic.



In Mexico, the changes introduced to criminal procedure were such that it is often described as a “mixed” inquisitorial system. Among the most unique and important innovations in the Mexican system is the fact that the role of the instructional judge was eliminated in the early 20<sup>th</sup> century, and—drawing partly from the example of the United States—the role of the prosecutor was greatly expanded in the investigation and administration of justice.<sup>2</sup> Thus, under Mexico’s traditional system, the public prosecutor oversees the functions of police detective work and also plays a central role in Mexico’s accusatory process, as is the case in many adversarial systems. However, under Mexico’s traditional system, the role of the defense attorney remained more limited than is the case under the adversarial model. Mexico’s traditional system has therefore depended on the public’s faith (*fe pública*) that the prosecutor will behave honestly and in the best interest of all parties concerned. However, critics of Mexico’s mixed inquisitorial criminal justice system argue that the role of the prosecutor is too powerful and unopposed to provide for proper scrutiny and checks on authority, resulting in widespread and often serious abuses.<sup>3</sup>

As in other inquisitorial systems, there is also some adversarial presentation of arguments in Mexico’s traditional criminal justice system during the last phase of the process. In that phase, the court makes a final judgment (*juicio*), after receiving final oral arguments (*conclusiones*) from both the prosecution and the defense. However, during most phases of the investigation and trial, the defense has little or no opportunity to interject and challenge the prosecutor’s actions or presentation of evidence. Since jury trials are not used in Mexico, it is left to the judge to determine the guilt or innocence of the accused and decide on the appropriate sentence (*sentencia*) for the crime, but there is a strong tendency to presume guilt because this is often the same judge who found sufficient cause to proceed with the criminal investigation earlier in the process.<sup>4</sup> In passing judgment, his or her decision is based almost entirely on the evidence presented by the prosecutor as a result of that investigation, thereby allowing significant potential for bias.

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<sup>2</sup> Mexico’s departure from traditional inquisitorial systems dates back to reforms initially proposed in the early 20<sup>th</sup> century, under the 1908 Organic Law of the Federal Public Prosecutor (*Ley Orgánica del Ministerio Público Federal y Reglamentación de Sus Funciones*), the 1908 and 1917 Organic Law of the Federal Judicial Branch (*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 Regulatory 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.

<sup>3</sup> That said, Mexican judges often work closely with the prosecutor to continue to compile evidence and testimony during the preliminary hearing for formally indicting the suspect (*pre-instrucción*) and the evidentiary phase (*instrucción*). Judges also have the authority to seek out evidence on their own in the manner of an instructional judge found in other systems.

<sup>4</sup> Inquisitorial systems only rarely use juries to determine guilt or innocence. In Mexico the use of juries has been historically limited, primarily in cases involving treason in the early 20<sup>th</sup> century. Cossio *et al*, *supra* note 44, p. 363.

Meanwhile, there are other concerns. The presentation of much of the evidence is cumbersome because it is reviewed by the judge in the form of written affidavits (*actas* or *actuaciones*), which leads to long delays—in some cases years—in the administration of justice. What is more, because prosecutors are legally obligated to investigate and pursue all cases that cross their desk (and cannot opt to withhold prosecution of cases they consider to be of little importance), the system is further overloaded. Moreover, the use of mandatory, pretrial detention for a large number of crimes, including non-violent offenses, means that many individuals accused of a crime spend the entire process behind bars without a sentence.<sup>5</sup> By official estimates, the “pre-trial” prison population amounts to over 40 percent of all inmates in Mexico.<sup>6</sup> As a result, individuals accused of a crime—whether innocent or guilty—are subjected to often grim prison conditions, including prison overcrowding, deprivation, and other forms of abuse.<sup>7</sup> Also, in too many criminal cases in Mexico, prosecutors abuse their power and violate “*fe pública*” by forcing confessions, extracting bribes, and manipulating evidence. Indeed, as evidenced by surveys of inmates, prosecutors are the judicial sector personnel to most likely engage in acts of torture and physical abuse in the Mexican criminal justice system.<sup>8</sup> When forced confessions and prosecutorial misconduct go unchallenged in court, they are a highly expedient means to obtain a conviction, whether a suspect is innocent or not.<sup>9</sup> Ultimately, the system is also heavily biased against poor people, who too often cannot afford to get decent attorney, let alone bribe their way to freedom.<sup>10</sup>

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<sup>5</sup> The common assertion that in Mexico criminals are “guilty until proven innocent” actually has more to do with the relatively inflexible criteria for pre-trial release. Cossio et al., *Mexican Law* (Oxford University Press, 2005), p. 358.

<sup>6</sup> Zepeda found in 2009 that 95,407 (41.5 percent) out of 229,915 prison inmates in Mexico were pending a sentence. Guillermo Zepeda Lecuona, *Los mitos de la prisión preventiva en México*, Washington, D.C.: Open Society Justice Initiative, 2010, p. 8. <https://www.opensocietyfoundations.org/sites/default/files/mitos-mexico-20100801.pdf>.

<sup>7</sup> A series of prison studies and inmate surveys conducted over the last several years by Azaola and Bergman provide excellent documentation of the difficult conditions facing many prisoners in Mexico. See, for example: Elena Azaola and Marcelo Bergman, “[De mal en peor: las condiciones de vida en las cárceles mexicanas](#),” *Nueva Sociedad*, No 208, marzo-abril de 2007; Catalina Pérez Correa and Elena Azaola, [Resultados de la Primera Encuesta realizada a Población Interna en Centros Federales de Readaptación Social](#), Mexico City: Centro de Investigación y Docencia Económicas, 2012.

<sup>8</sup> State and federal prosecutorial and investigative police agencies exhibit disturbing patterns of corruption and abuse, including the use of bribery and torture, according to surveys of prison inmates. See Elena Azaola and Marcelo Bergman. 2007. “The Mexican Prison System.” in *Reforming the Administration of Justice in Mexico*, edited by Wayne A. Cornelius and David A. Shirk. Southbend, IN; La Jolla, CA: Notre Dame Press; Center for U.S.-Mexican Studies.

<sup>9</sup> Zepeda, *supra* note 11. See also: Clare Naval, *Irregularities, Abuses of Power, and Ill-Treatment in the Federal District: The Relation Between Police and Ministerio Público Agents, and the Population*, (Fundar, Centre for Analysis and Research, 2006).

<sup>10</sup> Here, again, the findings of Azaola and Bergman are among the best evidence of the end results of Mexican criminal justice, such as it is. Elena Azaola and Marcelo Bergman, [Delincuencia, marginalidad, y desempeño institucional](#), Mexico City: Centro de Investigación y Docencia Económicas, 2013.

### III. Overview of the New Criminal Justice System

Mexico's 2008 reforms sought to correct many of the above-noted problems creating what many refer to as the New Criminal Justice System (*Nuevo Sistema de Justicia Penal*, NSJP) by introducing new due process mechanisms and streamlining the handling of criminal cases.<sup>11</sup> The reform consisted of amendments to Articles 16 to 22, 73, 115, and 123 of the Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*, CPEUM).<sup>12</sup> While the reform has many aspects not covered here, the new system changes the framework of criminal justice as it has been traditionally conceived in Mexico.<sup>13</sup> Generally speaking, the NSJP establishes a procedure for trying cases that allows both the prosecutor and the defense attorney for the accused to present evidence and arguments as equal parties before an impartial and independent judge. In this sense, the NSJP can be more properly considered an "adversarial" model of criminal justice, rather than one that draws from the "mixed inquisitorial" tradition described in the previous section.

While the shift to "oral trials" has been much touted as the predominant feature of the reform, in fact the vast majority of cases will be resolved before trial using alternative means, such as mediation or restitution. Also, prosecutors will have greater discretion to prioritize their caseloads, opting not to investigate or prosecute in some cases that appear to have little importance; this will purportedly allow them to direct departmental resources toward other strategic priorities. Prosecutors will also be able to negotiate sentences in exchange for a guilty plea in cases where going to trial would be a poor use of departmental resources and therefore against the greater societal interest. While these changes raise obvious concerns (e.g., the possibility of innocents pressured into plea agreements, or prosecutors selecting or neglecting cases for political reasons), giving prosecutors more options than they have currently should help to reduce problems (e.g., torture and abuse) that are currently rampant in the Mexican criminal justice system. Also, under the new system, victims will serve as yet

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<sup>11</sup> This NSJP was incorporated into the Mexican legal framework on June 18, 2008, with the publication of the Constitutional reform in the Official Journal of the Federation (*Diario Oficial de la Federación*, DOF).

<sup>12</sup> Sergio García Ramírez and Olga Islas de González Mariscal (eds.), *La reforma constitucional en materia penal: Jornadas de justicia penal*. Mexico City: Instituto Nacional de Ciencias Penales (INACIPE), 2009. [http://www.inacipe.gob.mx/stories/publicaciones/temas\\_selectos/reforma.constitucional.pdf](http://www.inacipe.gob.mx/stories/publicaciones/temas_selectos/reforma.constitucional.pdf)

<sup>13</sup> The reform brought about significant changes to the constitution on issues of legality, legal certainty, access to justice, alternative and restorative justice, prison system, pre-trial detention, presumption of innocence, criminal investigation, due process, public security, asset seizure or forfeiture, special detention regimes, labor conditions in public security, and legislative faculties of Congress in public security and organized crime. The reform package also modified the faculties of Congress, and featured municipal development, labor, and public security provisions. The authors address these issues more fully in David A. Shirk, "[Criminal Justice Reform in Mexico: An Overview](#)," *Mexican Law Review*, vol. III, no. 2 (January-June 2011), pp. 199-200; Matthew C. Ingram, Octavio Rodríguez Ferreira, and David A. Shirk. 2011. "[Assessing Mexico's Judicial Reform: Views of Judges, Prosecutors, and Public Defenders](#)." Special Report (June). Justice in Mexico Project, Trans-Border Institute, University of San Diego; and Octavio Rodríguez Ferreira, "El nuevo sistema de justicia penal acusatorio en México: Análisis descriptivo de la reforma constitucional de 2008," in Octavio Rodríguez Ferreira and David A. Shirk (eds.), *La reforma judicial en México*, (San Diego: Justice in Mexico; University Readers, 2013), p. 49-72.

another check on prosecutors, in that they will have the right to appeal a prosecutor's decision on a case (and in some cases prosecute the case themselves).

There are other perceived advantages to the new model of criminal justice being adopted in Mexico. In the fraction of cases (perhaps 10-15 percent) that do wind up going to trial, the use of oral proceedings will reduce the amount of time a judge needs to gain an understanding of the facts, evidence, and arguments of a case. Instead of reviewing enormous volumes of paperwork, court proceedings will be conducted live in real time, and documented by video and electronic recordings. Judges will be able to review and digest the evidence more efficiently, hear any objections from either party immediately, and ask clarifying questions. These changes should allow the courts to be more efficient in dealing with cases and reduce the massive case backlogs and torpid processing of paperwork that plagues Mexico's traditional system.

Another important innovation under the NSJP is that there will be different judges for different stages of the trial. One judge will oversee the constitutional rights and guarantees of the accused during detention and investigation. A judge or panel of judges will then take over for the trial phase. If they issue a guilty verdict, a different judge will oversee and resolve all issues related to the execution and enforcement of the sentence. Separating these roles is intended to prevent a judge from becoming biased toward a particular outcome in the case, based on the initial accusations and evidence presented before a full trial (or, presumably, the possibility that events during the trial would unduly influence the execution of the sentence).

The process of the criminal investigation will be modified as well, since the prosecutor will lose some of his *de facto* powers. Prosecutors will now have to build more solid cases, anticipating that the evidence they present can be challenged in court by the defense attorney. Over time, this should raise the bar for the quality of the investigation and the evidence gathering by both police and prosecutors; under the traditional system, many cases rested on the basis of a confession by the accused (often forced to do so under duress or even torture). To prevent prosecutorial abuses, the reform requires that a defense attorney be aware of and present at every stage of the investigation. Specifically, to prevent coercion, a suspect's confession will not be permissible in court without the presence of their defense attorney. Also, the procedures and conditions used for detention must meet international standards or an inmate's situation can be challenged in court (though it is not clear how "international standards" will be determined). All of these changes will ideally make the investigation phase more transparent and respectful of the basic rights of the accused, while at the same time requiring law enforcement and prosecutors to improve their professional conduct and skills.

Finally, it is often noted that Mexico's reforms draw partly on the U.S. example, though it is also important to note a wave of similar reforms in other parts of Latin America.<sup>14</sup> Thus, for an international audience, it is worth emphasizing the fact that there will be no juries used at any stage in the process, although they have been used in Mexico in the past.<sup>15</sup> Generally speaking, there is considerable debate about the value that juries contribute to legal proceedings. On the one hand, in the determination of a verdict, juries are meant to bring to bear the insights of ordinary citizens from the community in which a crime took place, in order to ensure an adherence to common notions of "justice" in that community. On the other hand, because of the manner in which they are selected, juries are often not truly "peers" of the accused, nor representative of the community in which a crime took place, raising questions about *whose* "justice" is being applied. In Mexico, the authors have found there to be a fairly widespread sentiment that a jury-based system would be infeasible because of the lack of education of the general population, as well as the practical and logistical challenges of operating such a jury system in a country with such widespread poverty, inequality, and informality. These factors would make it difficult to establish a well-informed and representative registry of potential jurors, and could lead to biases in the jury pool that would make it unlikely for anyone to face a true jury of their peers.

#### IV. Mexico's Judicial Reform Implementation Efforts

At the end of the Calderón administration, the prospects for implementation within the 8-year timetable looked fairly dire. The implementation of Mexico's new criminal justice system requires many changes at the federal and state level, including new physical infrastructure for courtrooms, professional training for judicial sector personnel, training for private attorneys, and general public education for citizens and civil society to be well informed about what to expect (and what not to expect) from the new system. Indeed, in 2013, polls found that only 11 percent of Mexicans were aware of the 2008 judicial reform, and only 30 percent of attorneys were aware of the reforms.<sup>16</sup> Moreover, there were significant delays in key aspects of implementation, including approving a new federal code of criminal procedure, adopting key reforms at the state level, and directing financial resources for implementation to the states.<sup>17</sup>

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<sup>14</sup> See Max Langer, "Revolution in Latin American Criminal Procedure: Diffusion of Legal Ideas from the Periphery," 55 *American Journal of Comparative Law* 617 (2007).

<sup>15</sup> Jury trials in Mexico were put into use in Mexico following the promulgation of the Law on Juries in Criminal Matters by President Benito Juárez in 1868, and continued until the 1929 Code of Organization, Competition and Criminal Procedure for the Federal District and Territories. Jury trials were discontinued following a number of cases in which juries issued verdicts that were considered scandalous, as in the noted case of the assassination of General Moises Vidal at the hands of his wife, the first Miss Mexico, Teresa Landa. Many believed that Ms. Landa was wrongly acquitted by the jury based on the persuasive rhetorical arguments of the defense counsel, who emphasized the physical beauty of the accused in making his case.

<sup>16</sup> Antonio Baranda, "Conoce reforma penal solo 11%," *Reforma*, August 7, 2013; Lupita Álvarez, "El 70% de los abogados desconoce los juicios orales," *En Línea Directa*, August 2, 2013.

<sup>17</sup> Notimex, "Senadores prometen Nuevo Código Federal de Procedimientos Penales," *El Economista*, September 24, 2012; Claudia Guerrero, "Urgen Código de Procedimiento Penales," *Reforma*, September 24, 2012; Elena Michel, "Senado retoma análisis de Código para juicios orales," *El Universal*, September 24, 2012.

On the other hand, there is generally strong support for the new criminal justice system among judges, prosecutors, public defenders, jurists, and legal experts. A 2011 survey of judges, prosecutors, and public defenders that was administered by Justice in Mexico in nine Mexican states found widespread agreement with the 2008 reform.<sup>18</sup> Moreover, since the start of the Peña Nieto administration, there has been a major effort by the Mexican government to push the reforms forward at the federal and state level, and continued support from international agencies and nongovernmental organizations working to advance the reforms. Below we consider some of the efforts that have been made to promote the implementation of the 2008 judicial reform in recent years.

### A. Federal Reform Efforts

The Peña Nieto administration has taken a number of actions to get the reform initiative on track to meet the June 18, 2016 deadline. First, and perhaps most important, President Peña Nieto has repeatedly signaled his intention to proceed at full steam ahead on reform implementation. There was some speculation at the outset of his term that the changing of the guard might lead to some reconsideration or delay on judicial reform. However, as we discuss below, the Peña Nieto administration has allocated significantly greater effort and resources to the reform endeavor toward implementation compared to the previous administration. Moreover, while President Peña Nieto has been condemned for his handling of Mexico's security situation—epitomized for many critics by the 2014 Ayotzinapa massacre—he has repeatedly emphasized the need to implement the transition to oral, adversarial criminal procedure as a necessary means to improve the administration of justice in Mexico.

### SETEC and the Coordination of Federal Reform Implementation

At the federal level, Mexico's Ministry of the Interior (Secretaría de Gobernación, SEGOB) is responsible for shepherding the transition to the new system. Interior Minister Miguel Ángel Osorio Chong chairs the 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 Secretariat (Secretaría Técnica, SETEC) who oversees the reform process within SEGOB. Under the administration of President Felipe Calderón, SETEC was plagued by delays and insufficient resources.<sup>19</sup> The Calderón administration ultimately proved unable to achieve its own objective of implementing the reforms in 19 of

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<sup>18</sup> Matthew Ingram, Octavio Rodríguez, and David A. Shirk, *Justiciabárometro: Survey of Judges, Prosecutors, and Public Defenders in Nine Mexican States*, San Diego: Justice in Mexico Project, 2011.

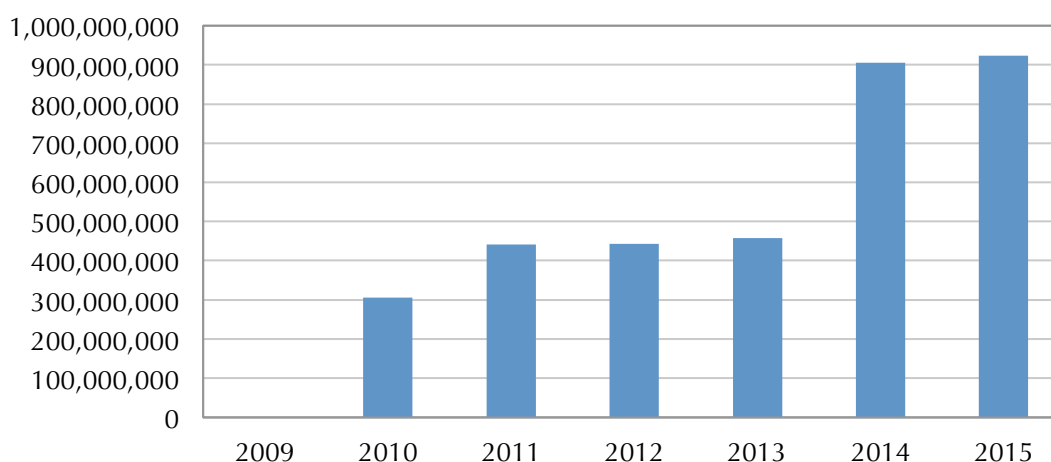
<sup>19</sup> Initial delays were partly attributable to the death of the former technical coordinator of the council, José Luis Santiago Vasconcelos, in a plane crash in Mexico City in April 2008, alongside then-Secretary of the Interior Juan Camilo Mouriño. The Mexican Congress also had to issue a special appropriation to fund SETEC as a newly created agency.



32 federal entities (including 31 states plus the Federal District) by the end of his term on December 1, 2012.<sup>20</sup>

Since the start of the Peña Nieto administration, María de los Ángeles Fromow Rangel has served as head of SETEC. SETEC's primary responsibility is to ensure that the federal government as a whole complies with the legislation and constitutional reforms mandated by the legislature, within the appropriate timetable.<sup>21</sup> SETEC is also responsible for assisting Mexico's 31 states and the Federal District in their transition to the new criminal justice system. In particular, since 2010, federal grants issued by SETEC have been a key mechanism for the Mexican central government to encourage states to transition to the new criminal justice system. SETEC funding is distributed in the form of categorical grants for building new court facilities, upgrading courtroom technology, and providing training programs for operators of the system. Initially, these funds were allocated with few strings attached, though SETEC now obligates the states to provide information to aid the federal government in tracking reform efforts and results.

**Figure 1: SETEC Categorical Grants to Mexican States, by Year, 2010-2015\***



Source: SETEC. Data compiled by Laura Calderón and Octavio Rodríguez.

\*Through June 2015. There is no available data before 2010.

As illustrated in Figure 1, the first round of funding allocated by SETEC in 2010 amounted to roughly \$300 million pesos (approximately USD\$25 million) to 20 states plus the Federal District.<sup>22</sup> By 2012, the last year of the Calderón administration, SETEC had granted nearly 1.2 billion pesos (approximately USD\$95 million) to subsidize judicial reform adoption and

<sup>20</sup> Authors interview with Gobernación's Technical Secretary for Implementation of Criminal Justice Reforms Felipe Borrego Estrada in Mexico City (Mar. 17, 2010).

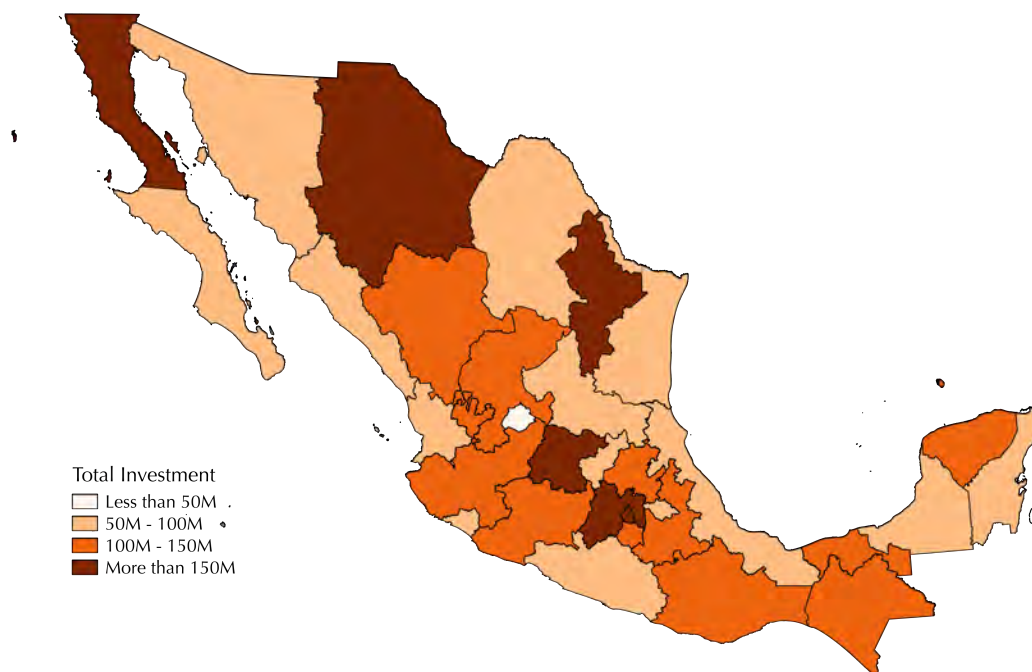
<sup>21</sup> There are also important efforts being made by the judicial branch and other judicial sector agencies of the executive branch, notably the Office of the Attorney General.

<sup>22</sup> In order of the amount received from SETEC in that year, these states included Baja California, Hidalgo, Yucatán, Morelos, Distrito Federal, México, Guanajuato, Nuevo León, Chihuahua, Durango, Tamaulipas, Jalisco, Guerrero, Tabasco, Campeche, Michoacán, Baja California Sur, Puebla, Chiapas, Tlaxcala, and Colima.



implementation in all states and the Federal District. In total funds granted, the top three receiving entities during the last three years of the Calderón administration were Baja California (97 million pesos), Guanajuato (81 million pesos), and the Federal District (75 billion pesos). Controlling for population, the distribution of SETEC funds from 2010 to 2012 averaged around \$21 pesos per capita, with a fairly large range: from roughly \$3 pesos per capita in Nayarit to roughly \$82 pesos in Baja California (a standard deviation of \$30 pesos per capita). As illustrated in Figure 2 and Table 1, the cumulative funding has been most concentrated in those states that have been most advanced in the implementation of the NSJP, though there are a few outliers such as Oaxaca and Zacatecas that have not received as much funding as other advanced states.

**Figure 2: SETEC Categorical Grants to Mexican States through 2015**



Source: SETEC. Map by Octavio Rodríguez Ferreira. \*Through June 2015.

**Table 1: SETEC Categorical Grants to Mexican States, by Year, 2010-2015**

#	State	2010	2011	2012	2013	2014	2015*
01	Aguascalientes		\$4,778,579	\$0	\$7,309,050	\$13,175,300	\$17,667,940
02	Baja California	\$53,692,047	\$22,238,263	\$21,929,167	\$18,144,808	\$32,529,935	\$38,744,801
03	Baja California Sur	\$4,421,640	\$6,762,000	\$8,821,794	\$6,382,760	\$12,967,547	\$16,815,329
04	Campeche	\$5,472,007	\$13,590,237	\$8,531,457	\$10,599,097	\$19,782,150	\$22,065,466
05	Coahuila	\$0	\$5,392,000	\$12,033,497	\$12,709,048	\$32,387,752	\$27,412,055
06	Colima	\$1,463,770	\$13,777,515	\$10,009,563	\$7,641,288	\$19,747,656	\$18,861,436
07	Chiapas	\$3,220,000	\$11,330,472	\$18,839,138	\$16,311,414	\$39,435,462	\$33,017,733
08	Chihuahua	\$11,258,298	\$24,010,226	\$24,446,249	\$18,788,084	\$39,779,284	\$34,063,636
09	Distrito Federal	\$23,051,311	\$27,240,698	\$24,995,490	\$22,034,880	\$47,010,491	\$43,132,365
10	Durango	\$10,927,198	\$25,084,233	\$22,155,817	\$16,442,412	\$35,293,402	\$31,151,671
11	Guanajuato	\$21,573,365	\$24,663,147	\$35,247,843	\$20,211,132	\$39,541,724	\$36,234,072
12	Guerrero	\$5,869,432	\$7,417,672	\$14,802,240	\$13,801,000	\$27,332,097	\$30,136,440
13	Hidalgo	\$35,024,448	\$22,677,446	\$15,359,945	\$11,555,428	\$21,252,035	\$24,726,846
14	Jalisco	\$6,480,943	\$15,763,745	\$13,975,170	\$14,621,814	\$37,198,882	\$34,193,316
15	México	\$21,806,921	\$15,054,523	\$0	\$31,054,000	\$59,178,017	\$60,000,975
16	Michoacán	\$4,754,260	\$8,800,340	\$18,114,070	\$13,973,999	\$27,817,198	\$29,418,304
17	Morelos	\$26,885,840	\$18,812,003	\$16,712,673	\$16,941,006	\$20,267,852	\$29,215,202
18	Nayarit	\$0	\$0	\$4,351,364	\$6,994,135	\$19,913,960	\$19,211,222
19	Nuevo León	\$20,708,031	\$21,129,516	\$20,014,630	\$17,367,549	\$41,899,885	\$33,080,788
20	Oaxaca	\$0	\$9,997,113	\$21,361,331	\$17,962,370	\$31,637,198	\$35,183,859
21	Puebla	\$4,280,560	\$19,700,000	\$17,152,720	\$19,895,889	\$36,195,186	\$38,393,551
22	Querétaro	\$0	\$10,256,626	\$5,708,649	\$8,128,633	\$14,395,064	\$20,716,253
23	Quintana Roo	\$0	\$3,200,000	\$8,101,753	\$7,580,504	\$12,013,166	\$21,325,408
24	San Luis Potosí	\$0	\$6,325,858	\$12,574,377	\$13,189,515	\$13,493,004	\$28,543,679
25	Sinaloa	\$0	\$3,815,089	\$8,845,000	\$10,807,880	\$20,885,610	\$24,900,022
26	Sonora	\$0	\$10,165,978	\$14,824,175	\$12,700,272	\$27,900,264	\$22,655,963
27	Tabasco	\$5,539,064	\$19,194,226	\$13,936,431	\$15,327,105	\$32,392,406	\$28,584,601
28	Tamaulipas	\$6,973,853	\$7,013,651	\$4,390,839	\$13,257,491	\$26,303,788	\$28,721,492
29	Tlaxcala	\$1,765,500	\$6,755,000	\$9,908,124	\$9,120,000	\$13,416,360	\$21,757,688
30	Veracruz	\$0	\$6,470,000	\$8,861,009	\$15,257,998	\$29,744,946	\$17,667,940
31	Yucatán	\$30,532,867	\$23,828,493	\$11,924,660	\$17,898,785	\$33,736,687	\$28,883,221
32	Zacatecas	\$0	\$26,388,675	\$14,818,248	\$14,641,007	\$26,156,425	\$27,494,045
<b>TOTAL BY YEAR</b>		<b>\$305,701,353</b>	<b>\$441,633,324</b>	<b>\$442,747,424</b>	<b>\$458,650,351</b>	<b>\$904,780,732</b>	<b>\$923,977,319</b>

Source: SETEC. Compiled by Laura Calderón and Octavio Rodríguez. \*Through June 2015.

During the Peña Nieto administration, the absolute number and amount of federal grants issued increased considerably, with SETEC awarding \$458 million pesos in 2013 (roughly USD\$35.3 million), \$904 million pesos in 2014 (roughly USD\$72 million), and \$923 million pesos in 2015 (roughly USD\$66 million).<sup>23</sup> This amounted to nearly \$2.3 billion (roughly USD\$169 million) in federal funds allocated to the states for judicial reform implementation, a 90 percent increase over the previous three years of the Calderón administration. It also appears that the per capita funding increased and funds were dispersed more evenly to a

<sup>23</sup> Exchange rates are rough approximations, given the varying rate of the peso against the dollar over the course of any given year. For example, it is worth noting that the value of the dollar increased significantly against the peso and other major currencies over the course of 2015, which primarily explains the reduction in the dollar value of SETEC investments in that year.

greater number of states during the Peña Nieto administration. Indeed, the distribution of SETEC funds from 2010 to 2012 averaged around \$29 pesos per capita and a slightly smaller range compared to the previous administration: from roughly \$6 pesos per capita in Guanajuato to roughly \$70 pesos per capita in Colima (with a standard deviation of roughly \$15 pesos per capita).

It is perhaps worth noting that under both administrations, on a per capita basis, states headed by governors from parties other than the president's were slightly less likely to receive funding than states with governors from the president's own party.<sup>24</sup> This suggests that political relationships *could* have factored into the distribution of SETEC funds. However, because the stages of implementation were also staggered across different states, it is difficult to judge the significance of allocations based solely on party affiliation. In any case, more rigorous analysis is arguably warranted to determine what factors may drive the distribution of SETEC grants, as well as the extent to which this funding has helped to accelerate and improve the process of judicial reform implementation.

Ultimately, as important as they may be to incentivizing and advancing reform efforts at the state level, SETEC subsidies represent only small fraction of the minimum estimated cost of implementation. Thus, to support its efforts, SETEC has worked to leverage resources from the Merida Initiative, the National Infrastructure Fund (Fondo Nacional de Infraestructura, Fonadin) of Banobras, goods seized by the Administration and Transfer of Property Service (Servicio de Administración y Enajenación de Bienes, SAE), and property donated by state governors.

### Unified Code of Criminal Procedure

One of the most important initiatives to advance judicial reform efforts during the Peña Nieto administration was the approval of a new Unified Code of Criminal Procedure, which sets the standard for both federal and state level criminal proceedings.<sup>25</sup> Traditionally, Mexican state codes of criminal procedure were determined locally, but fairly closely modeled on the Federal Code of Criminal Procedure (*Código Federal de Procedimiento Penal*, CFPP). However, since several states made the shift to the oral, adversarial model a few years before the passage of the 2008 reform, their efforts necessarily proceeded in the absence of a federal code upon which to model these efforts. Thus, during that period, the National Council of State Supreme Courts (*Comisión Nacional de Tribunales Superiores de Justicia*, CONATrib) developed a model code that could assist states in their transition to adversarial trials. After the 2008 reform, many states expected the federal government to take the lead in developing a new code of criminal procedure, which could serve as a model for their own transitions. However, delays in passing a new federal code contributed to uncertainty about the prospects for the new criminal justice system into the next administration.

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<sup>24</sup> A simple Pearson's coefficient produces correlation of -0.286 under Calderón and -0.239 under Peña Nieto.

<sup>25</sup> Notimex. "Avalan diputados nuevo Código Nacional de Procedimientos Penales." *La Crónica de Hoy*. February 5, 2014. Cervantes, Jesusa. "Aprueban diputados código penal único para todo el país." *Proceso*. February 5, 2014.

Shortly after taking office, Peña Nieto placed passage of a new code of criminal procedure among the key compromises of a multi-party political accord known as the “Pact for Mexico” (*Pacto por México*). Listed as “Commitment 79,” the proposal made a significant departure from the past by establishing that the new CFPP will be a uniform federal code or “código único,” a longstanding proposal in Mexico and Latin America.<sup>26</sup> The federal government, legal experts, civic organizations, and academics drafted a new National Code of Criminal Procedure (Código Nacional de Procedimiento Penal, CNPP), establishing a common set of courtroom procedures for applying criminal law across Mexico’s 31 states and the Federal District (Distrito Federal, DF). After several months, the new code was approved by the Mexican Senate on December 5, 2013—just days after the one-year anniversary of President Peña Nieto’s inauguration—and by the Mexico’s Chamber of Deputies on February 5, 2014.

The new “uniform” code establishes uniformity for all states to adopt the same procedures for oral, adversarial criminal proceedings. More specifically, the CNPP standardizes procedures involving investigations, arrests, charges, hearings, sentencing, alternative dispute resolution, and reparations, while ensuring the rights of all interested parties throughout the judicial process. It sets guidelines governing home searches, monitoring personal communications, and the issuing of arrest warrants. Procedures involving body searches, witness and suspect questioning, and suspect identification will also be standardized across police agencies. In addition to standardizing processes, the CNPP seeks to provide clarity in legal terminology and includes a glossary in order to avoid disparate interpretations of key legal terms across state and local government and defines responsibilities and limitations of all those involved in the judicial process. While seeking to establish consistency across states in the handling of criminal proceedings, it also establishes some flexibility, particularly in determining reparations as it allows for a mediation process to determine appropriate reparations for damages connected with the crime in question.

The move to a uniform criminal code has advantages and disadvantages. On the one hand, the adoption of a uniform code of criminal procedure created an inconvenience for early-adopter states that had developed their own unique procedural guidelines in the absence of a model federal code. It also created a dilemma for states preparing to move ahead with their reform projects, since they now needed to revise their plans in accordance with the federal code. Moreover, as a general consideration, a uniform code undermines one of basic benefits of federal systems of government, as states will be unable to innovate and experiment with changes that could improve the administration of justice over the longer

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<sup>26</sup> Proposals for establishing a single uniform code of criminal procedure for Mexico and even Latin America date back several decades, as Héctor Carreón Perea pointed out in a February 2013 article for the National Institute of Criminal Sciences (Instituto Nacional de Ciencias Penales, INACIPE). Héctor Carreón Perea, “Hacia la unificación de la legislación procesal penal en México,” *Instituto Nacional de Ciencias Penales*, February 2013.

term. Thus, to the extent that the uniform code has flaws, all states will be stuck with them until there is sufficient political will to change them at the national level.<sup>27</sup>

On the other hand, the uniform code has made it more straightforward—and essentially obligatory—for other states to make the transition to oral trials because it establishes universal guidelines for criminal procedure.<sup>28</sup> Orlando Camacho, the coordinator for the non-governmental organization México SOS, indicated that his group worked with PRI Senator Arely Gómez to propose a move to the uniform code in the Senate. Orlando later emphasized the historic nature of this initiative, noting that “for the first time in 200 years we are going to standardize our criminal procedure.”<sup>29</sup> México SOS founder Alejandro Martí, one of the principal leaders within the network, also argued that one reason to support a common code is that it will help to speed up the process of implementing the new system. Martí emphasized that this is a citizen driven initiative: “The first important characteristic of this new uniform code of criminal procedure is that it has been advanced for some time by civil society; the second is that it has been developed by specialists from the network and elsewhere, who created the code.”<sup>30</sup>

Advocates of the uniform code emphasize the benefits of eliminating the idiosyncrasies that can arise when different states develop their own independent codes of criminal procedure. Speaking to Televisa, Revolutionary Institutional Party (*Partido Revolucionario Institucional*, PRI) Senator Roberto Gil, the president of the Senate’s Commission on Justice, insisted that there is now not a single criminal code, but rather a common set of procedures for dealing with criminal matters: “penalties are not standardized, nor are crimes, that is, every state will be able to establish the crimes and also establish the penalties that correspond to each crime in keeping with local customs.”<sup>31</sup>

### Inauguration of the New System in Federal Courts

It took more than six years after 2008 to start implementing the new system at the federal level. In May 2013, the Federal Judiciary Council (*Consejo de la Judicatura Federal*, CJF)

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<sup>27</sup> According to Matthew Ingram, federal mandates like the 2008 constitutional reform are an important driver of state-level reform. Under this logic, the 2014 code has been an additional impetus to the reform effort at the subnational level. See Matthew Ingram, “Federal Mandates, Spatial Proximity, and Network Affinity: Explaining the Subnational Diffusion of Criminal Procedure Reform in Mexico.” *Latin American Politics and Society*, Forthcoming 2015.

<sup>28</sup> The Mexican newspaper *La Jornada* noted that National Network in Favor of Oral Trials and Due Process (*Red Nacional a favor de los Juicios Orales y el Debido Proceso*, or “the Network”), a coalition of organizations that support the new system, has lobbied strongly for the uniform code.

<sup>29</sup> Ana Téllez, “Congreso expedirá Código Penal Único,” *La Silla Rota*, July 17, 2013.

<sup>30</sup> February 2013. Alfredo Méndez, “Propondrán ONG al Senado código único de procedimientos penales, informa Martí” *La Jornada*, April 24, 2013.

<sup>31</sup> Alfredo Méndez, “Propondrán ONG al Senado código único de procedimientos penales, informa Martí” *La Jornada*, April 24, 2013. Claudia Flores, “Aprueban senadores código único de procedimientos penales,” *Televisa*, April 25, 2013. EFE, “México: Peña Nieto se compromete a impulsar la aplicación de la reforma judicial,” *AméricaEconomía*, May 7, 2013. Claudia Flores, “Senado inicia trabajos para el Código Penal único,” *Televisa*, May 15, 2013.

developed a well-structured, gradual Master Plan for Implementation. This plan was originally designed for a three phase implementation scheme in which circuits with less-complex or fewer cases would start implementing simultaneously in states in the north, center, and south regions of the country, followed by circuits dealing with more complex cases implementing in subsequent phases two and three.<sup>32</sup> By 2016, according to this plan, Mexico would have inaugurated 44 federal courthouses or “Federal Criminal Justice Centers” (Centros de Justicia Penal Federal) operating under the new system, with at least one such center operating in each of Mexico’s 31 states and the Federal District. Depending on the circumstances, some states (e.g., the Federal District and Baja California) were planned to have two centers or even three centers.<sup>33</sup>

However, the plan originally designed was not implemented as expected—possibly due to lack of political will or foresight—and a contingent “Plan B” was adopted.<sup>34</sup> On November 2014, the first of these “Federal Criminal Justice Centers” was opened only in the judicial circuits of San Andrés Cholula, in the state of Puebla, and the circuit of Durango, the capital of the state of Durango. As part of a second stage, two more centers began to operate in March 2015, in the judicial circuit of Mérida in Yucatán, and the judicial circuit of Zacatecas, the state capital of the homonymous state. A third stage was completed by August 2015 when judicial circuits from Baja California Sur, Guanajuato, Querétaro, San Luis Potosí, also opened Federal Justice Centers.<sup>35</sup>

Thus, as of August 2015, federal judicial districts in eight states were operating under the new system: Baja California Sur, Durango, Guanajuato, Puebla, Querétaro, San Luis Potosí, Yucatán and Zacatecas. By November 2015, a fourth stage contemplates implementing the system in judicial circuits of Aguascalientes, Coahuila, Colima, Chiapas, Chihuahua, Hidalgo, Nayarit, Oaxaca and Tlaxcala. According to projections, the remaining judicial districts will start operating in the course of 2016. When the process ends, there will be 86 federal courtrooms in a total of 44 Justice Centers presided over by 205 judges, all operating the new criminal justice system.<sup>36</sup> In total, 485 cases had been processed or were in process at the federal level as of August 2015, as shown in Table 2.<sup>37</sup> Of the 485 cases more than half of them are related to possession of military-grade weaponry and around 14 percent are drug related.<sup>38</sup> The breakdown of crimes is illustrated in Table 3.

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<sup>32</sup> [\*Plan Maestro para la Implementación de la Reforma Penal en el Consejo de la Judicatura Federal\*](#). México: Consejo de la Judicatura Federal, May 2013.

<sup>33</sup> [\*Informe ejecutivo sobre avances en la implementación del Nuevo Sistema de Justicia Penal\*](#). México: Consejo de la Judicatura Federal, August 2015.

<sup>34</sup> *Informe Ejecutivo*, *supra*. p. 3.

<sup>35</sup> [\*“Arrancan hoy Centros de Justicia Penal en cuatro estados.”\*](#) *El Diario*. August 3, 2015.

<sup>36</sup> *Informe Ejecutivo*, *supra*. p. 2.

<sup>37</sup> *El Nuevo Sistema de Justicia Penal y su actividad jurisdiccional en los Centros de Justicia Penal Federal*. México: Sistema Informático de Gestión de Causas, Consejo de la Judicatura Federal, August 2015.

<sup>38</sup> *El Nuevo Sistema de Justicia Penal y su actividad jurisdiccional en los Centros de Justicia Penal Federal*, *supra*. This only represents the number of cases processed. It should be noted that the majority of such cases are crimes typically related to organized-crime groups. For a deeper analysis of institutional capacity of the Mexican judiciary on handling organized crime cases, see Sara Schatz, “The Mexican Judiciary & the



**Table 2: Number of Federal Cases Processed Under the New Criminal Justice System, as of August 2015**

STATE	# of cases
Baja California Sur	1
Querétaro	5
San Luis Potosí	12
Yucatán	20
Guanajuato	34
Zacatecas	50
Durango	91
Puebla	272
TOTAL	485

**Table 3: Type of Federal Cases Processed Under the New Criminal Justice System, by Percentage, as of August 2015**

CRIMES	%
Possession of military-grade weaponry	56.58%
Hydrocarbon stealing	20.07%
Drug trafficking	9.07%
Low-scale selling and drug possession	5.00%
Smuggling	2.49%
Crimes against the environment	2.04%
Counterfeit and destruction of currency	1.02%
Extortion and intimidation	1.14%
Human trafficking, disappearances, disobedience and resistance	1.35%
Fraud, copyright infringement, financial crimes	0.69%
Embezzlement, bribery, crimes against public servants, piracy, battery	0.55%

According to the CJF, the implementation schedule contemplated in the Master Plan mentioned above remains under way, with the exception that by June 2016 there will be at least one Justice Center per federal entity (a total of 32). If for some reason that is not possible in a given location, temporary courthouses will be erected until the construction of a permanent facility is possible. In short, it seems then evident that “full implementation” scheduled by June 2016 at the federal level will mean that every state has at least one federal circuit operating the new system, but not that all circuits in all states will be up and running by the deadline.

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Prosecution of Organized Crime: The Long Road Ahead.” *Trends in Organized Crime*, 14 (2011): p. 347-360; and on the impact of certain narco-related crimes—especially military grade weaponry— see Sara Schatz, *The Impact of Organized Crime on Murder of Law Enforcement Personnel at the U.S.-Mexican Border*. New York: Springer, 2014.

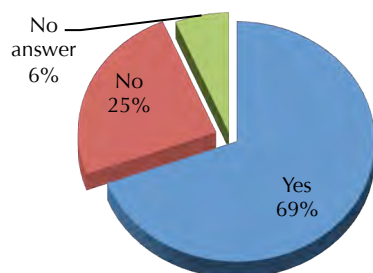


## Other Federal Implementation Initiatives

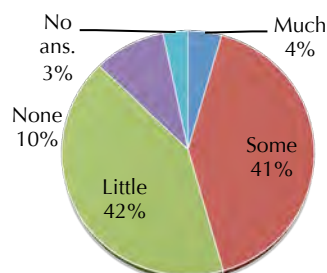
Finally, as the deadline for implementation approaches, it is worth mentioning that SETEC has also begun to expand the breadth of its preparation and training efforts. One example is a new program underway to provide training for law enforcement and other key actors supporting the new criminal justice system. Training for police is particularly important to ensure that evidence is correctly preserved at the crime scene, and so that officers understand and are properly prepared for their role in presenting testimony in court. Particularly important are law enforcement officers at the municipal level, as the more than 330,000 municipal police officers in Mexico are typically the first responders to a crime. Figure 3 shows the results of a Fall 2014 Justiciabarómetro survey of municipal police officers administered by Justice in Mexico in municipality of Tijuana, Baja California—where reforms have started to take place at the state but not municipal level—found that officers are optimistic about the potential benefits of the switch to the adversarial model of criminal justice, but over half of respondents felt that they did not have adequate knowledge or training to properly support the system.<sup>39</sup>

**Figure 3: Results from the Fall 2014 Justice in Mexico Survey of Tijuana Police Department**

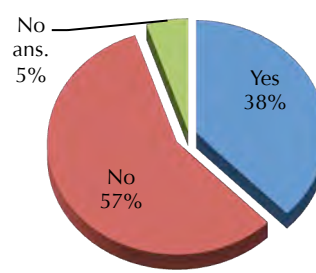
a) Do you consider the new criminal justice system to be more effective in punishing individuals responsible for committing a crime?



b) How much do you know about the new criminal justice system?



c) Do you feel prepared to operate in the new criminal justice system?



Note: This survey was administered to 1,917 municipal police department employees, including both operational personnel (212 individuals) and administrative personnel (1,705 individuals), for a response rate of nearly 90 percent of the Tijuana municipal police department. The specific questions asked in Spanish in the figures above were: a) *¿Consideras que el nuevo sistema penal puede ser más efectivo para castigar a los responsables de cometer delitos?*, b) *¿Qué tanto conoces el nuevo sistema de justicia penal?*, and c) *¿Consideras que estás preparado para operar en el nuevo sistema de justicia pena?* For further details, please see Shirk, Suárez, and Rodríguez (2015). [https://justiceinmexico.org/wp-content/uploads/2015/03/2015\\_JUSTICIABAROMETRO-Tijuana.pdf](https://justiceinmexico.org/wp-content/uploads/2015/03/2015_JUSTICIABAROMETRO-Tijuana.pdf)

<sup>39</sup> Justice in Mexico team directly with the Municipality of Tijuana and the Tijuana Department of Public Security over several months to conduct a comprehensive independent survey of the Tijuana police department in Fall 2014, with roughly 2,000 employees (over 90 percent of the department) participating in the study. This was one of a series of surveys for Justiciabarómetro, an unprecedented independent effort to survey the operators of the criminal justice system in Mexico. See: David A. Shirk, Maria Eugenia Suárez de Garay, and Octavio Rodríguez Ferreira, *Justiciabarómetro: Diagnóstico integral de la policía municipal de Tijuana*, Final Report. San Diego: Justice in Mexico, 2015. [https://justiceinmexico.org/wp-content/uploads/2015/03/2015\\_JUSTICIABAROMETRO-Tijuana.pdf](https://justiceinmexico.org/wp-content/uploads/2015/03/2015_JUSTICIABAROMETRO-Tijuana.pdf)

Ultimately, municipal police and similar actors will need to be properly prepared by the designated authorities at the state and local level. Since the vast majority (approximately 80 percent) of criminal activity falls under state-level jurisdiction (*fuero común*), it is important to consider efforts being made at the subnational level to implement the new criminal justice system.

## **B. Subnational Judicial Reform Implementation Efforts**

Notwithstanding federal initiatives, the judicial reform effort in Mexico has taken root at the subnational level, as a number of states served as the testing ground for the oral, adversarial model of criminal procedure. Because the process began as a bottom-up judicial reform through federalism, efforts to track Mexico's judicial reforms have focused especially on advances at the state level.<sup>40</sup> At the same time, it is important to note that the actual process of implementation within the states has been a patchwork, with most states staggering the implementation of the reforms by judicial district rather than all at once.<sup>41</sup> Some states have also opted to limit the implementation of the reforms by category, starting first with crimes that are less grave and moving toward the inclusion of all categories. Below, we examine the process of judicial reform both at the state and local level.

### **State Level Implementation Efforts**

Implementation at the state level can be temporally divided into three categories: early adopters (pre-2008), post-reform adopters (post-2008), and states still pending adoption. Several states had begun to implement oral, adversarial criminal procedures prior to the federally mandated reform in 2008. The three earliest adopters that approved and initiated the use of oral adversarial procedures prior to the federal reform were Chihuahua (2007),

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<sup>40</sup> See, for example, CIDAC, *Reporte de Hallazgos para el seguimiento y la evaluación de la implementación y operación del nuevo sistema de justicia penal en México*, Mexico City: Centro de Investigación para el Desarrollo A.C. (CIDAC), 2013; Matt Ingram, "Criminal Procedure Reform in Mexico: Where Things Stand Now," Mexico Institute, Woodrow Wilson International Center for Scholars, January 2013; Matthew C. Ingram and David A. Shirk, "Judicial Reform in Mexico: Toward a New Criminal Justice System." Special Report, Justice in Mexico, University of San Diego, May 2010; Matthew C. Ingram, Octavio Rodriguez Ferreira, and David A. Shirk, "Assessing Mexico's Judicial Reform: Views of Judges, Prosecutors, and Public Defenders." Special Report (June). Justice in Mexico, University of San Diego, 2011; Guillermo Zepeda Lecuona, "Seguridad ciudadana y juicios orales en México," Instituto de Investigaciones Jurídicas, <http://biblio.juridicas.unam.mx/libros/7/3064/20.pdf>; Guillermo Zepeda Lecuona, *Seguimiento del Proceso de Implementación de la Reforma Penal en México: Estados de Chihuahua, Estado de México, Morelos, Oaxaca, Zacatecas: 2007-2011. Informe General*. Mexico City: Secretaria de Gobierno de México, CEJA, USAID, 2012; Paul Zwier and Alexander Barney, "Moving to an Oral Adversarial System in Mexico: Jurisprudential, Criminal Procedure, Evidence, and Trial Advocacy Implications." *Emory International Law Review* 26, 2012: 189-225.

<sup>41</sup> Matthew Ingram, "State-level Judicial Reform in Mexico: The Local Progress of Criminal Justice Reforms," Working Paper Series, San Diego: Justice in Mexico, 2010. [www.justiceinmexico.org/uploads/Ingram-State-Level-Reform.pdf](http://www.justiceinmexico.org/uploads/Ingram-State-Level-Reform.pdf)

Oaxaca (2007), and Nuevo León (2004).<sup>42</sup> State level initiatives became the focus of reform efforts as the national proposal promoted by the administration of Vicente Fox Quesada floundered, and their example provided important precedents for reformers elsewhere. Indeed, following their example, several other early adopters—Baja California (2007), Durango (2009), Mexico (2006), Morelos (2007), and Zacatecas (2007)— approved their own state-level reforms (without moving to implementation) before the national reforms were approved by the Mexican Congress in 2008.<sup>43</sup>

**Table 4: State Level Approval and Initial Implementation of Oral Adversarial Trial Reforms by Month and Year**

INEGI CODE	STATE	Reform approved (MONTH)	Reform approved (YEAR)	First implementation (MONTH)	First implementation (YEAR)
01	Aguascalientes	March	2013	November	2014
02	Baja California	October	2007	August	2010
03	Baja California Sur	June	2014	n.a.	n.a.
04	Campeche	August	2009	December	2014
05	Coahuila	February	2012	June	2013
06	Colima	August	2014	December	2014
07	Chiapas	May	2012	November	2013
08	Chihuahua	June	2006	January	2007
09	Distrito Federal	February	2010	January	2015
10	Durango	June	2009	December	2009
11	Guanajuato	June	2010	September	2011
12	Guerrero	April	2014	September	2014
13	Hidalgo	August	2014	November	2014
14	Jalisco	April	2014	October	2014
15	México	August	2006	October	2009
16	Michoacán	December	2011	March	2015
17	Morelos	November	2007	October	2008
18	Nayarit	May	2014	December	2014
19	Nuevo León	June	2004	December	2004
20	Oaxaca	September	2006	September	2007
21	Puebla	July	2012	January	2013
22	Querétaro	February	2012	June	2014
23	Quintana Roo	February	2012	June	2014
24	San Luis Potosí	September	2012	September	2014
25	Sinaloa	January	2013	October	2014
26	Sonora	n.a.	n.a.	n.a.	n.a.
27	Tabasco	August	2012	September	2012
28	Tamaulipas	May	2013	May	2014
29	Tlaxcala	May	2012	December	2014
30	Veracruz	November	2007	May	2013
31	Yucatán	May	2010	May	2011
32	Zacatecas	September	2007	January	2009

<sup>42</sup> Indeed, in February 2005, Nuevo León became the first state to host a criminal trial using oral, adversarial proceedings in the case of the driver in an accident that killed one person and seriously injured another. “Concluyó en NL el primer juicio oral del México actual,” *La Jornada*, February 24, 2005.

<sup>43</sup> It should be noted that in 2006 the state of Mexico initially made only very minor changes to the criminal code (declaring that oral trials would be used), and subsequently revised its code substantially to make a more complete transition to oral, adversarial criminal procedure.

Sources: State Diarios Oficiales and various media reports. Note: As of September 1, 2015, only the state of Sonora had not identified a date for implementation of the new system.

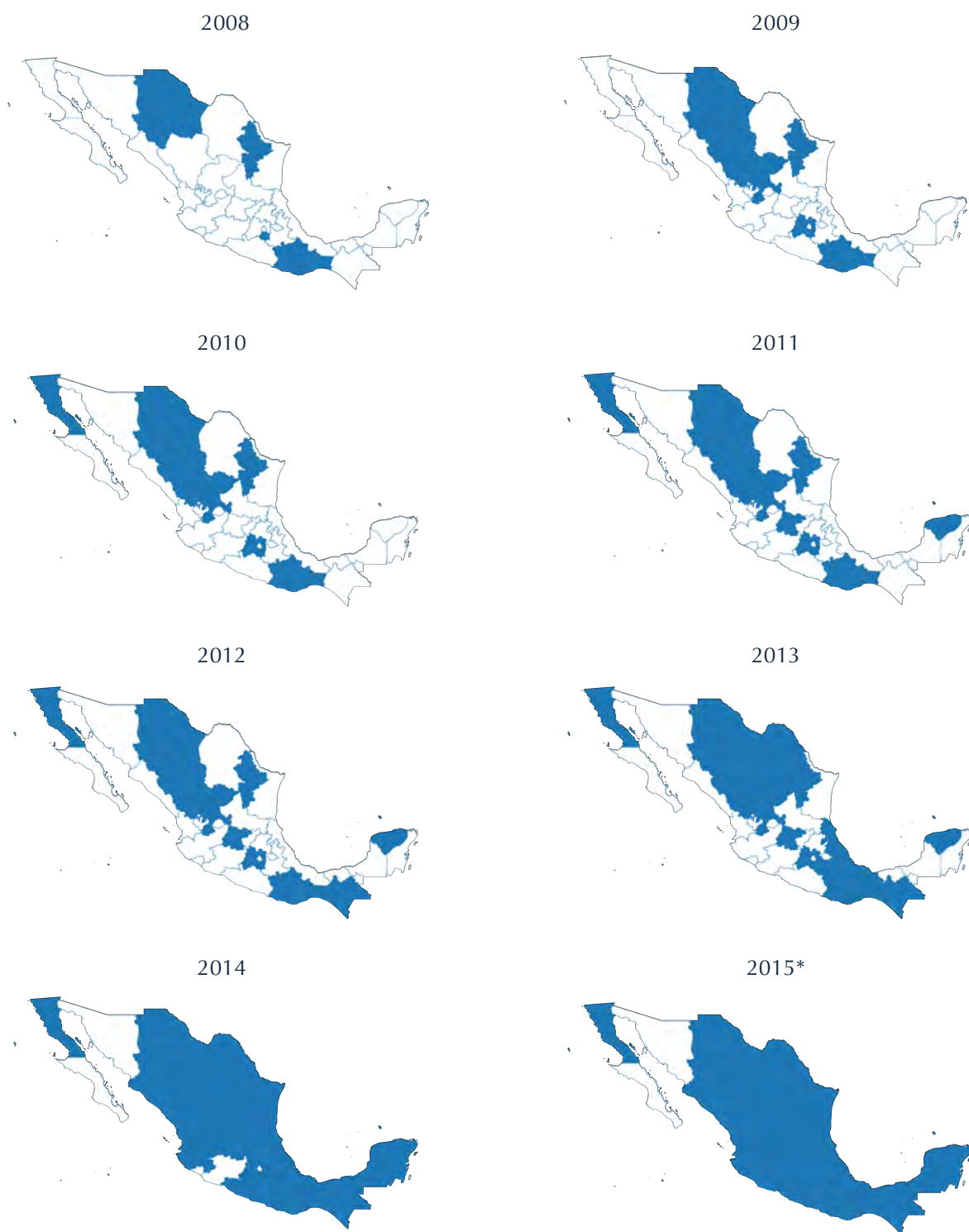
With the constitutionally imposed mandate to introduce oral adversarial procedures by 2016, other states continued to approve revisions to their state codes and other supporting legislation. However, movement to the new system was slow or delayed in many cases, leading to concerns about the feasibility of meeting the 2016 deadline. There were several factors. For example, state and local elections presented political distractions. There was also skepticism and controversy over the need for reform, and the influence of outside forces.<sup>44</sup> Also, although unrelated, the increase in crime and violence in several states that had adopted the reforms—notably, Baja California, Chihuahua, Morelos, and Nuevo León—also made it difficult to hold their experiences up as examples of the virtues of the new system. Finally, in the lead up to the 2012 presidential election, there was arguably some uncertainty about whether the reforms would be upheld by the next administration.

However, since the start of the Peña Nieto administration in December 2012, there has been significant progress. Whereas just one state (Nuevo León) had begun to use oral, adversarial trials during the Fox administration (2000-2006) and ten states followed suite during the Calderón administration (2006-2012), twenty states adopted and began to operate the new system during the first half of the Peña Nieto administration (2012-2018). As of June 2015, one year prior to the deadline established by the 2008 reforms, virtually all states had adopted and begun to implement the new system, as illustrated by Figure 4. This represents significant progress in a very short period of time, and offers reason to believe that—if all goes according to plan—the Mexican federal and state governments will be able to comply with the constitutionally mandated deadline.

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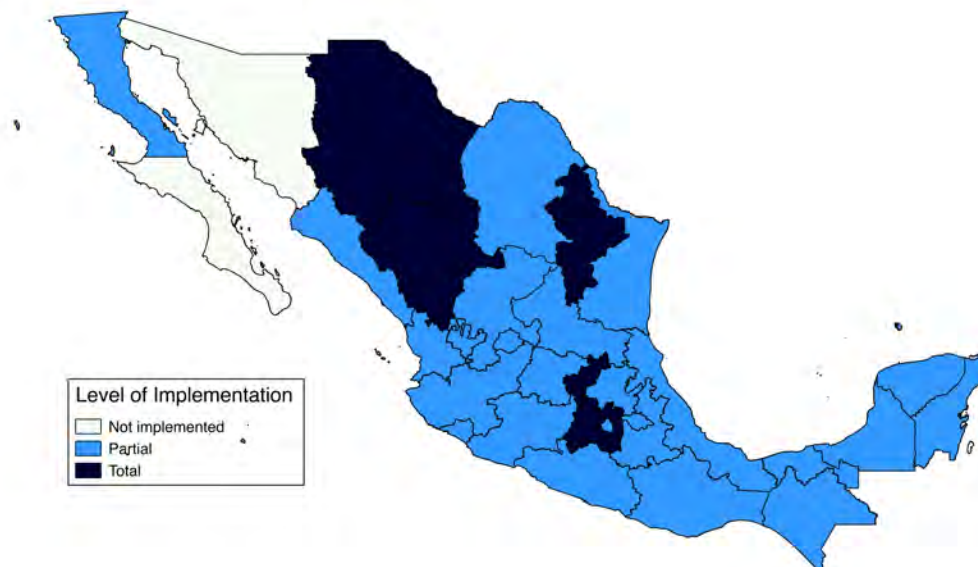
<sup>44</sup> Indeed, the earlier mentioned 2011 survey of judges, prosecutors, and public defenders in nine states found that there was widespread support for Mexico's traditional system among judicial operators, as well as a fairly widespread perception that the reforms were the result of pressure from outside forces, particularly from the United States. Ingram, Rodríguez, and Shirk (2011), p. 97-105. See also: "Reforma judicial con sello gringo." *Proceso*. Mexico City, 2008.

**Figure 4 State-Level Mapping of Oral Adversarial Trial Reform Implementation, 2008-2015**



Source: SETEC and various media sources. Maps by Octavio Rodríguez Ferreira. \*Through June 2015.

Figure 5: Full or Partial Implementation of the NSJP at the State-level as of June 2015



Source: SETEC and various media sources. Map by Octavio Rodríguez Ferreira. \*Through June 2015.

To be clear, launching the new system at the state level has not equated to full implementation. As has been well documented, most states have employed a geographically staggered process of implementation by judicial district, and some states have scheduled the introduction of the new criminal procedures according to specific classifications of crimes.<sup>45</sup> Figure X shows that, despite operation in the vast majority of states as of June 2015, the implementation process has been limited both in terms of the number of districts and the number of crimes in which the new system has been utilized. In order to get a clearer picture of the implementation process, it is therefore necessary to take a closer look at the sub-state level districts that are operating the new system, which we analyze in the next section.

### District Level Implementation Efforts

Until recently, obtaining information on the implementation at the judicial district level was not easy, as this information was reported only sporadically at the state level and the federal government did not report these figures publicly until mid-2015. In the interest of compiling such information, Justice in Mexico began in 2012 to develop an analysis of implementation efforts at the state, municipal, and judicial district-level, focusing mainly on identifying two objective metrics: 1) identifying the districts in each state in which oral adversarial

<sup>45</sup> See Clare Seelke, "Supporting Criminal Justice System Reform in Mexico: The U.S. Role," Congressional Research

procedures are employed, and 2) whether these procedures are applied fully or partially across all official categories of crime. These metrics do not provide an indication of the “quality” of implementation, but they do help to measure the actual progress of implementation at the local judicial district level, providing a clearer picture of where reform has actually taken place and where it has not. They also help provide an independent assessment to complement recently released government figures.

To obtain the necessary data, the authors reviewed federal government data, state legislative bulletins (*Diarios Oficiales*), newspaper articles, and government press releases that specified the judicial districts or municipalities moving to implementation, as well as the schedule for inaugurating the new system in these districts. The authors assigned a scale of 0 to 2 to indicate the level implementation in these districts: 0 = no implementation of the new criminal procedures for any crimes; 1 = implementation of new criminal procedures for some crimes, and 2 = implementation of new criminal procedures for all crimes. Since Mexico has over 2,400 municipalities and approximately 900 judicial districts, this required many painstaking hours of data gathering and coding. The findings provide useful insights on which jurisdictions have become partially or fully operational under the new system.<sup>46</sup>

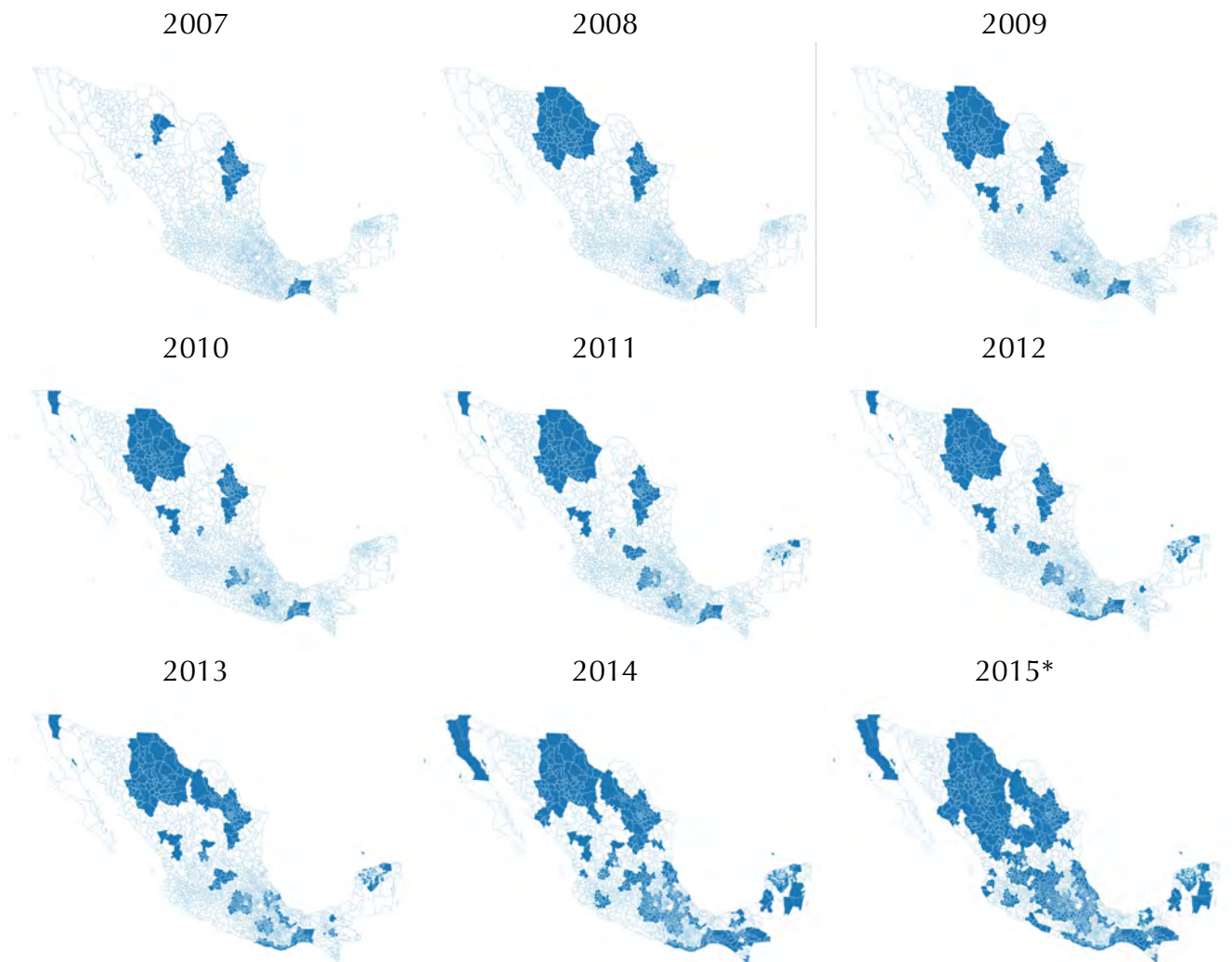
Using the methods described above, the authors found that subnational judicial reform implementation was fairly limited in 2013, the first full year of the Peña Nieto administration. Only about 630 of the roughly 2,400 municipalities in Mexico—roughly 25 percent—were fully operating the reforms by the end of Peña Nieto’s first year in office. However, as has been the case at the state level, progress toward implementation by judicial district has accelerated significantly in recent years, as illustrated in Figure 6.

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<sup>46</sup> In May 2015, SETEC released data at the municipal level, which help to confirm the findings of our research.

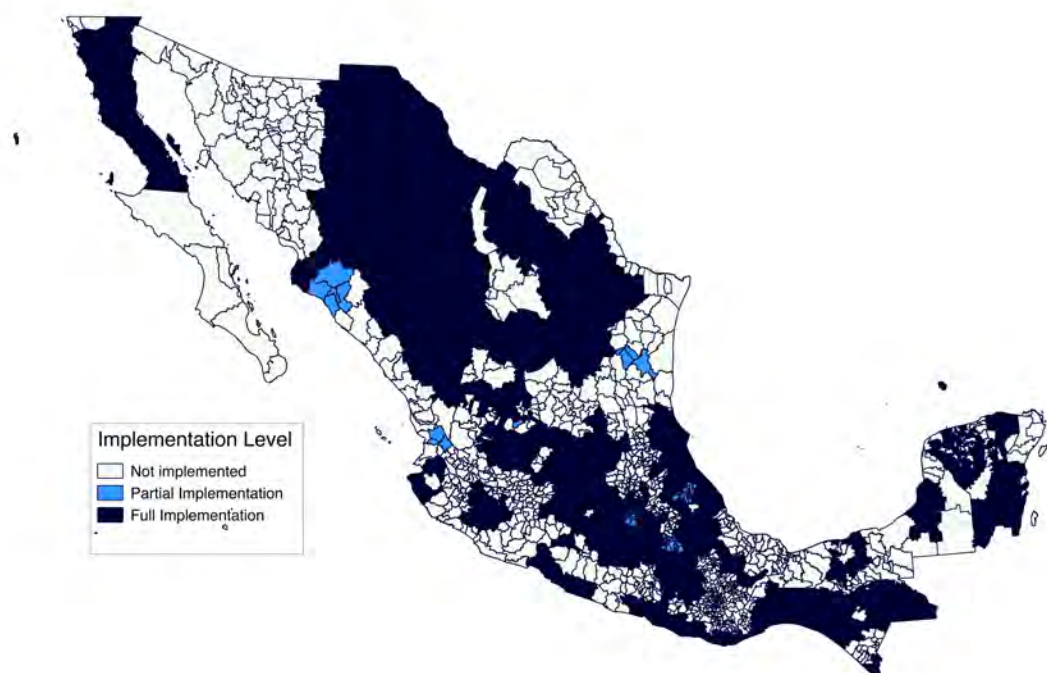


**Figure 6: Judicial District Level Mapping of Oral Adversarial Trial Reform Implementation, 2007-2015**



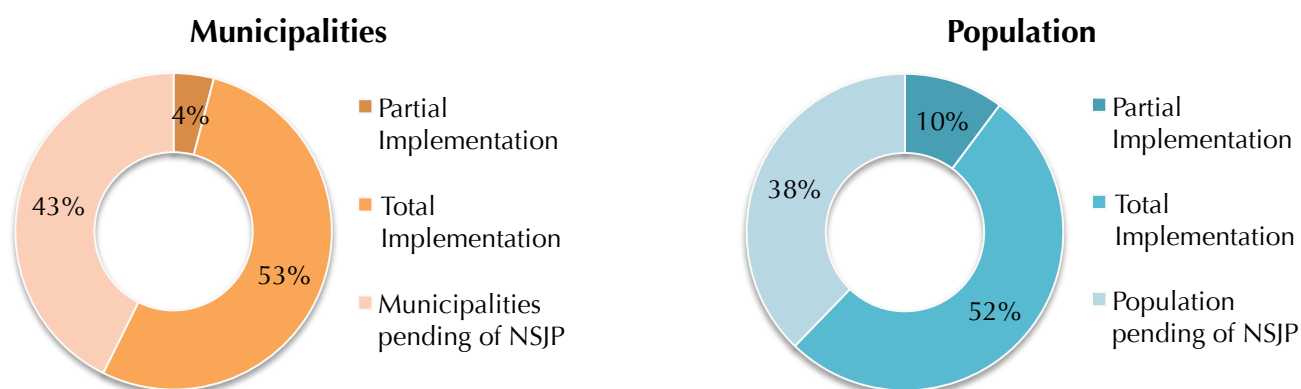
Source: SETEC and various media sources. Maps by Octavio Rodríguez Ferreira. \*Through June 2015.

**Figure 7: Full or Partial Implementation of the NSJP at the Judicial District-level as of June 2015**



Source: SETEC and various media sources. Map by Octavio Rodríguez Ferreira. \*Through June 2015.

**Figure 8: Proportion of Municipalities and Total Population Subject to the New Criminal Justice System as of June 2015**



Source: INEGI.

In short, as illustrated by Figure 8, by June 2015 over half of all municipalities were in judicial districts fully operating under the new model of criminal procedure, and over half of all Mexicans lived in municipalities where the reforms had been fully implemented. Of

course, the glass remains somewhat less than half full. With one year remaining before the constitutionally mandated deadline, many states lagged in the implementation of the reforms in some or most judicial districts, and/or some categories of crime. Since some states transitioned to oral adversarial criminal procedures only for some categories of crimes, other categories of crime may still fall under the traditional system. Thus, as of June 2015, the actual implementation resembled a patchwork quilt of different procedures applied to different crimes in different districts.

Moreover, there are potential obstacles, challenges, and concerns that could derail the implementation process, as several states have seen their original plans for implementation delayed by unexpected contingencies. For example, Michoacán was originally slated to begin operating the new system in August 2013. However, on December 17, 2012, authorities in the state of Michoacán decided to delay its implementation by one year, amid concerns that the state's prosecutors were not prepared for the new system. Then, a series of developments—increased violence from organized crime, the emergence of paramilitary vigilante groups, the resignation of the state's governor, the creation of a federal commission to assist in governing the state—further delayed the implementation process in the troubled state.

Finally, it is essential to remember that the process of implementing oral, adversarial procedures is just the beginning in Mexico's judicial reform efforts, which will no doubt involve several years of learning and adjustment. In the coming years, a great deal of effort and numerous modifications may be needed to continue to improve the administration of justice. There are also some major uncertainties. For example, once SETEC has fulfilled its purpose of completing the process of implementation by 2016, it is unclear what federal agency will continue to coordinate, support, and monitor the development of the new criminal justice system. Likewise, given that there is now a uniform criminal code, as noted earlier, it is not clear how effectively the new system can be tweaked to address particular problems, particularly those identified in certain states. Still, reform efforts have shown encouraging progress in a short period of time and may well continue to do so in the course of the final countdown. Below, we offer some future considerations and policy recommendations that may help to ensure the overall success of judicial reform efforts in Mexico.

## **V. Future Considerations and Policy Recommendations**

The magnitude of the changes Mexico has undertaken to reform its judicial system is enormous, and the potential implications of this reform effort could yield major improvements over the coming years. It is remarkable and important that the reform has enjoyed generally strong support from all major parties, and there is an apparent consensus in favor of the reforms among key operators of the judicial system. That said, there is also real potential for Mexico's judicial reform effort to disappoint, particularly if tangible results are slow to materialize in terms of greater judicial efficiency and effectiveness. Thus, it will

be important for authorities at the federal and subnational level to continue to work to strengthen the administration of justice in Mexico, and also to take pains to monitor and evaluate the results of these efforts to demonstrate the pace of progress and identify areas for improvement. Thus, we offer the following four recommendations for the Peña Nieto administration, the Mexican Congress, and supporters of judicial reform in an effort to help achieving continued progress toward these goals.

### **A. The Institutionalization of Change**

The new system arguably draws from a very different legal tradition than the one to which Mexican judicial system professionals are accustomed. Because adversarial systems are more typically found in common law systems, Mexico is venturing into new territory where the principles and mechanisms for achieving justice are somewhat different. Given Mexico's civil law tradition, judicial decisions will continue to be heavily determined by established legal codes, and less so by precedent-setting decisions in case law. Moreover, as noted above, because the new system will rely on a uniform code of criminal procedure at the national level and in all 32 state level judicial systems, the new system combines elements of the unitary and federal model of governance that could result in certain tensions and contradictions. For example, despite the uniform code of criminal procedure, state criminal codes continue to have different classifications for some crimes, which means that certain cases and sentences will be handled differently in certain states. What this implies is uncertain.

What is clear is that the new criminal justice system will require further modifications and improvements, which may be difficult to achieve because it will require a level of political consensus at the federal level that may not exist when needed. Arguably, the political negotiation of Mexico's recent judicial reforms might not have been possible if not for the widespread perception of a severe public security crisis. As the urgency of Mexico's security crisis diminishes over time, it could become much more difficult for politicians and reformers to make changes to the uniform code of criminal procedure that will allow for continued refinement of the system. While some changes will surely be made over the next few years, the Mexican Congress should act now to establish an 8-year deadline for a comprehensive review of the National Code of Criminal Procedure in 2024, at which point jurists and legislators should work together to make revisions and modifications to address problems of implementation or performance at the national or state level. Such a deadline would cut across administrative terms, and would bind the federal and state governments to revisit the possibility of major constitutional changes that would be required in order to consolidate the reforms.

### **B. The Professionalization of the Judicial Sector**

To be sure, the primary champions of justice and judicial system improvements are those who operate the system: judges, prosecutors, public defenders, police, technical staff, and other judicial system operatives. The new system is designed to challenge these actors by

introducing checks and balances, and pitting interest against interest. Without dedicated measures and resources to increase their professional capacity, they will not be able to stand up to the test. Specifically, it will be important to ensure that judges, prosecutors, and public defenders continue to receive the necessary training to function in their new roles in the criminal justice system. As federal and international funding for such training diminishes over time, law schools and professional associations will need to take on greater responsibility in this regard. The federal and state governments can help to promote the professionalization of the entire judicial sector by beginning to establish incentives for legal professionals to acquire the necessary training and continuing education to properly operate within the oral, adversarial system. For example, the Mexican Congress or state legislatures could mandate that all judges, prosecutors, and public defenders must obtain a specific training to practice law under the new system or a specified number of hours of continuing education each year. To facilitate such training and continuing education, the Mexican government should direct funding to establish a system of accredited university programs that cover relevant aspects of oral, adversarial litigation, and offer government scholarships to support professionals and students who participate in such programs.

### C. Monitoring Judicial System Performance

Lastly, it will be necessary to monitor and evaluate the progress of judicial reform efforts over the long term to identify areas for improvement, and advocate for the necessary policy and administrative changes to achieve the fair and effective administration of justice. In this regard, government officials, judicial system professionals, and civil society will need to collaborate in providing and analyzing the necessary information to ensure that the criminal justice system continues to improve. In the United States, for example, the wave of rights-based criminal justice sector advances of the 1960s—such as *Miranda v. Arizona*—were followed by federal legislation and funding through the 1968 Law Enforcement Administration Act (LEAA), which provided support for continued monitoring and improvement of judicial system functioning through the Bureau of Justice Statistics, the National Institute of Justice, and other government agencies. At the same time, the 1950s and 1960s brought important efforts by lawyers to establish standards for professional practice and ethics, including the introduction of mandatory bar exams and continuing education for attorneys. These specific steps may not be the right ones of Mexico today, but they illustrate the kinds of measures that might help to bolster Mexico's new rights-based, adversarial model of criminal justice that has begun to take root. The Mexican government agencies—such as the SETEC within the Interior Ministry or the Instituto Nacional de Ciencias Penales (INACIPE) within the Attorney General's Office—to generate and disseminate indicators of judicial system performance, and to provide grants to universities, research institutes, and nongovernmental organizations that can assist in the evaluation and assessment of the new criminal justice system.



#### **D. Continuing International Support for Judicial Reform in Mexico**

As Mexico's security situation improves, current international efforts to strengthen the rule of law in Mexico will no doubt lose focus and shift to other priorities. However, it will be important for U.S. government agencies, private foundations, and international funding organizations to sustain their commitment to advancing criminal justice sector reform in Mexico. For one thing, the transformation of the Mexican criminal justice system will be a long term enterprise, perhaps taking as long as a generation to take hold. There will be a need for resources and new ideas to continue the progress that has been made so far. Investments in improving the Mexican criminal justice system will likely need to shift from the current emphasis on infrastructure, capacity building, and training to policy innovation and monitoring to help improve the system over time. For example, there will be a need to provide funding to support and incentivize legal watchdog organizations to advocate on the rights of victims, prisoners, and even operators in the criminal justice system. There will also be a need for support and protections of whistle blowers who call out illegal behavior on the part of government officials, including but not limited to legal representation or even political asylum. In this regard, the U.S. Congress should continue to support the efforts of USAID and other government agencies that have helped to advance the cause of judicial reform in Mexico. Also, international foundations should work to support non-profit organizations working in the field of judicial reform and human rights law, even after it becomes unfashionable to do so.

#### **VI. Conclusion**

In moving to transform its system of criminal procedure, Mexico has undertaken an enormous and challenging task. Short of violent revolutionary change, there are few precedents in the Mexican experience of such a massive reorganization of laws, procedures, and bureaucratic agency functions within such a short timespan. It will be important for Mexico to sustain the momentum of this effort, and continuously monitor the progress of the reform. If this effort is successful, the next generation of Mexican citizens will have a substantially more efficient, transparent, and fair criminal justice system than they have today. This is not to say that the new criminal justice system being built today will be a panacea, or that it will bring an end to crime, corruption, and injustice. Working to achieve a system of justice involves constant process of perfection and adaptation, so achieving justice in Mexico will always be an aspiration that requires constant vigilance and effort.

## Appendix A: Translation of the 2008 Constitutional Reforms\*

Reforma a los artículos 16, 17, 18, 19, 20, 21 y 22; las fracciones XXI y XXIII del artículo 73; la fracción VII del artículo 115 y la fracción XIII del apartado B del artículo 123, todos de la Constitución Política de los Estados Unidos Mexicanos.

Reforms to the Political Constitution of the United Mexican States Articles 16, 17, 18, 19, 20, 21 and 22, sections XXI and XXIII of Article 73, section VII of Article 115 and part XIII of Section B of Article 123.

### ARTÍCULO 16

#### TEXTO ORIGINAL

**Artículo 16.** Nadie puede ser molestado en su persona, familia, domicilio, papeles o posesiones, sino en virtud de mandamiento escrito de la autoridad competente, que funde y motive la causa legal del procedimiento.

No podrá librarse orden de aprehensión sino por la autoridad judicial y sin que preceda denuncia o querrela de un hecho que la ley señale como delito, sancionado con pena privativa de libertad y obren datos que establezcan que se ha cometido ese hecho y que exista la probabilidad de que el indiciado lo cometió o participó en su comisión.

La autoridad que ejecute una orden judicial de aprehensión, deberá poner al inculcado a disposición del juez, sin dilación alguna y bajo su más estricta responsabilidad. La contravención a lo anterior será sancionada por la ley penal.

Cualquier persona puede detener al indiciado en el momento en que esté cometiendo un delito o inmediatamente después de haberlo cometido, poniéndolo sin demora a disposición de la autoridad más cercana y ésta con la misma prontitud, a la del Ministerio Público. Existirá un registro inmediato de la detención.

Sólo en casos urgentes, cuando se trate de delito grave así calificado por la ley y ante el riesgo fundado de que el indiciado pueda sustraerse a la acción de la justicia, siempre y cuando no se pueda ocurrir ante la autoridad judicial por razón de la hora, lugar o circunstancia, el Ministerio Público podrá, bajo su

#### TRANSLATION

**Article 16.** No one may have his person, family, domicile, papers, or possessions disturbed except by virtue of a written order from a competent authority that states the legal grounds and basis for the action taken.

An arrest order may not be issued except by the Court and not before an accusation or charge for an act considered by law to be a crime punishable by deprivation of liberty and evidence is produced that establishes that the act has been committed and that the possibility exists that the accused committed the act or participated in its commission.

The authority that executes a judicial detention order is under strict responsibility to place the accused before the disposition of the Court without delay. Violating the above shall be sanctioned under criminal law.

Any person may detain the accused *in flagrante delicto* or immediately following the commission of the crime, placing the accused without delay at the disposition of the nearest authority, who must, with the same celerity, place the accused at the disposition of the prosecutor. An immediate record of the detention shall exist.

Only in urgent cases, when legally qualified as a serious crime and under a justified risk that the accused may evade justice, and only if an appearance before the Court may not take place because of the time, place or circumstance, the prosecutor may, under its responsibility, order the detention,

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\* Translation by Octavio Rodríguez Ferreira of the Constitutional Reform as published in the DOF, on June 18, 2008. This translation was benefited from the generous assistance of Blaz Gutierrez who committed part of his time to review and correct the translation. Also a special acknowledgement to Chelsea Jensen and Fernando Rodríguez for their research assistance. This publication also benefited for the invaluable input from Allen Snyder, Matthew Ingram, Kimberly Heinle, Cory Molzhan, Sol Angelica Ferreira, Constanza Sanchez, and Janice Deaton



responsabilidad, ordenar su detención, fundando y expresando los indicios que motiven su proceder.

En casos de urgencia o flagrancia, el juez que reciba la consignación del detenido deberá inmediatamente ratificar la detención o decretar la libertad con las reservas de ley.

La autoridad judicial, a petición del Ministerio Público y tratándose de delitos de delincuencia organizada, podrá decretar el arraigo de una persona, con las modalidades de lugar y tiempo que la ley señale, sin que pueda exceder de cuarenta días, siempre que sea necesario para el éxito de la investigación, la protección de personas o bienes jurídicos, o cuando exista riesgo fundado de que el inculcado se sustraiga a la acción de la justicia. Este plazo podrá prorrogarse, siempre y cuando el Ministerio Público acredite que subsisten las causas que le dieron origen. En todo caso, la duración total del arraigo no podrá exceder los ochenta días.

Por delincuencia organizada se entiende una organización de hecho de tres o más personas, para cometer delitos en forma permanente o reiterada, en los términos de la ley de la materia.

Ningún indiciado podrá ser retenido por el Ministerio Público por más de cuarenta y ocho horas, plazo en que deberá ordenarse su libertad o ponerse a disposición de la autoridad judicial; este plazo podrá duplicarse en aquellos casos que la ley prevea como delincuencia organizada. Todo abuso a lo anteriormente dispuesto será sancionado por la ley penal.

En toda orden de cateo, que sólo la autoridad judicial podrá expedir, a solicitud del Ministerio Público, se expresará el lugar que ha de inspeccionarse, la persona o personas que hayan de aprehenderse y los objetos que se buscan, a lo que únicamente debe limitarse la diligencia, levantándose al concluirla, un acta circunstanciada, en presencia de dos testigos propuestos por el ocupante del lugar cateado o en su ausencia o negativa, por la autoridad que practique la diligencia.

Las comunicaciones privadas son inviolables. La ley sancionará penalmente cualquier acto que atente contra la libertad y privacidad de las mismas, excepto cuando sean aportadas de forma voluntaria por alguno de los particulares que participen en ellas. El juez valorará el alcance de éstas, siempre y cuando contengan información relacionada con la comisión de un delito. En ningún caso se admitirán comunicaciones que violen el deber de confidencialidad que establezca la ley.

explaining and expressing the grounds that justify the action.

In urgent or *in flagrante delicto* cases, the judge who receives the detainee's file shall immediately uphold the detention or order release under the reservations of the law.

At the request of the prosecutor, regarding organized crime, the Court, may order the '*arraigo*' (extended pre-trial detention) of a person, setting the place and time established by law, not to exceed forty days, so long as [the detention] is necessary for the success of the investigation, or the protection of persons or legal rights, or when there exists a justified risk that the accused will evade justice. This time period may be extended, if and when the prosecutor shows that the reasons persist that gave rise to the *arraigo*. In any case, the total duration of the *arraigo* may not exceed 80 days.

Organized crime is understood as the *de facto* organization of three or more persons to commit crimes on a permanent or ongoing basis, under the terms of the applicable law.

No accused person may be detained by the prosecutor for more than forty-eight hours, during which time his release shall be ordered or [he shall be] placed at the disposition of the Court; this period may be doubled in those cases that the law considers as organized crime. Any abuse of the above shall be punished by criminal law.

Every search warrant, which can only be issued by the Court at the request of the prosecutor, shall state the place to be searched, the person or persons to be apprehended, and the objects sought; [the warrant] is subject to the limitations thereto; at the conclusion of [the search] a detailed report shall be drawn up in the presence of two witnesses suggested by the occupant of the place searched, or in its absence or refusal, by the official who served the warrant.

Private communications are inviolable. The law will criminally punish any act that undermines freedom and privacy, except when voluntarily provided by one of the individuals involved in the communication. The judge will examine the reach of these, if and when they contain information relating to the commission of a crime. In no case shall communications be admitted that violate the duty of confidentiality as established by law.

Exclusivamente la autoridad judicial federal, a petición de la autoridad federal que faculte la ley o del titular del Ministerio Público de la entidad federativa correspondiente, podrá autorizar la intervención de cualquier comunicación privada. Para ello, la autoridad competente deberá fundar y motivar las causas legales de la solicitud, expresando además, el tipo de intervención, los sujetos de la misma y su duración. La autoridad judicial federal no podrá otorgar estas autorizaciones cuando se trate de materias de carácter electoral, fiscal, mercantil, civil, laboral o administrativo, ni en el caso de las comunicaciones del detenido con su defensor.

Los Poderes Judiciales contarán con jueces de control que resolverán, en forma inmediata, y por cualquier medio, las solicitudes de medidas cautelares, providencias precautorias y técnicas de investigación de la autoridad, que requieran control judicial, garantizando los derechos de los indiciados y de las víctimas u ofendidos. Deberá existir un registro fehaciente de todas las comunicaciones entre jueces y Ministerio Público y demás autoridades competentes.

Las intervenciones autorizadas se ajustarán a los requisitos y límites previstos en las leyes. Los resultados de las intervenciones que no cumplan con éstos, carecerán de todo valor probatorio.

La autoridad administrativa podrá practicar visitas domiciliarias únicamente para cerciorarse de que se han cumplido los reglamentos sanitarios y de policía; y exigir la exhibición de los libros y papeles indispensables para comprobar que se han acatado las disposiciones fiscales, sujetándose en estos casos, a las leyes respectivas y a las formalidades prescritas para los cateos.

La correspondencia que bajo cubierta circule por las estafetas estará libre de todo registro, y su violación será penada por la ley.

En tiempo de paz ningún miembro del Ejército podrá alojarse en casa particular contra la voluntad del dueño, ni imponer prestación alguna. En tiempo de guerra los militares podrán exigir alojamiento, bagajes, alimentos y otras prestaciones, en los términos que establezca la ley marcial correspondiente.

Only a federal Court, at the request of the federal authority that is empowered by the law or of the head of the prosecutor's office of the corresponding federal entity, may authorize the interception of any private communication. In order to do this, the competent authority shall explain and justify the legal grounds for the request, expressing as well, the type of interception, the subjects involved and its duration. The federal Court may not grant such authorization on electoral, fiscal, commercial, civil, labor or administrative issues, nor in the case of communications between the detainee and his counsel.

The Judiciary will have '*Control Judges*' that will resolve, immediately, and by any means, the requests for interim measures, injunctions and the authority's investigative methods that require judicial review, ensuring the rights of the accused, victims and offended. A reliable record of all communications between judges and the prosecutor and other competent authorities shall exist.

Authorized interventions shall comply with the requirements and limits set forth by law. The results of interventions that do not comply with the law will lack all probative value.

Administrative officials may conduct home visits solely to ascertain whether public health and police regulations have been complied with; and to demand to be shown the books and documents required to prove compliance with fiscal rulings, [the administrative officials] in these cases subject themselves to the respective laws and formalities prescribed for searches.

Correspondence that circulates through the mail shall be exempt from all searches; violations shall be punishable by law.

In times of peace, no member of the Army may stay in a private home against the will of the owner, nor demand any services. In time of war, the military may demand lodging, equipment, food and other services under the terms established by the corresponding martial law.

## ARTÍCULO 17

### TEXTO ORIGINAL

**Artículo 17.** Ninguna persona podrá hacerse justicia

### TRANSLATION

**Article 17.** No one may take the law into his own

por sí misma, ni ejercer violencia para reclamar su derecho.

Toda persona tiene derecho a que se le administre justicia por tribunales que estarán expeditos para impartirla en los plazos y términos que fijen las leyes, emitiendo sus resoluciones de manera pronta, completa e imparcial. Su servicio será gratuito, quedando, en consecuencia, prohibidas las costas judiciales.

Las leyes preverán mecanismos alternativos de solución de controversias. En la materia penal regularán su aplicación, asegurarán la reparación del daño y establecerán los casos en los que se requerirá supervisión judicial.

Las sentencias que pongan fin a los procedimientos orales deberán ser explicadas en audiencia pública previa citación de las partes.

Las leyes federales y locales establecerán los medios necesarios para que se garantice la independencia de los tribunales y la plena ejecución de sus resoluciones.

La Federación, los Estados y el Distrito Federal garantizarán la existencia de un servicio de defensoría pública de calidad para la población y asegurarán las condiciones para un servicio profesional de carrera para los defensores. Las percepciones de los defensores no podrán ser inferiores a las que correspondan a los agentes del Ministerio Público.

Nadie puede ser aprisionado por deudas de carácter puramente civil.

hands or resort to violence to enforce his rights.

Every person has the right to have justice administered by courts that are empowered to impart [justice] in the timeframes and conditions set by law, issuing its decisions promptly, completely and impartially. Their services shall be gratuitous and all judicial costs are, consequently, prohibited.

The laws will provide alternative mechanisms for dispute resolution. In criminal matters the law will regulate its implementation, ensure reparation for damages and establish the cases in which judicial oversight will be required.

Resolutions that end oral proceedings shall be explained in a public hearing following a summons to the parties.

Local and federal laws shall establish the necessary means to ensure the independence of the courts and the full implementation of its resolutions.

The Federal government, the States and The Federal District will ensure the existence of a quality public defense service for the population and they will ensure the conditions for a professional career service for defenders. The earnings of defenders shall not be lower than those that correspond to prosecutors.

No one may be imprisoned for debts of a purely civil nature.

## ARTÍCULO 18

### TEXTO ORIGINAL

**Artículo 18.** Sólo por delito que merezca pena privativa de libertad habrá lugar a prisión preventiva. El sitio de ésta será distinto del que se destinare para la extinción de las penas y estarán completamente separados.

El sistema penitenciario se organizará sobre la base del trabajo, la capacitación para el mismo, la educación, la salud y el deporte como medios para lograr la reinserción del sentenciado a la sociedad y procurar que no vuelva a delinquir, observando los beneficios que para él prevé la ley. Las mujeres cumplirán sus penas en lugares separados de los destinados a los hombres para tal efecto.

La Federación, los Estados y el Distrito Federal podrán

### TRANSLATION

**Article 18.** Only crimes that merit a punishment of deprivation of liberty qualify for preventive imprisonment. This place shall be different and completely separate from the place used for the serving of sentences.

The prison system shall be organized on the basis of work, work-training, education, health and sports as a means to achieve the reintegration of the sentenced person to society and ensuring deterrence, noting the benefits that the law provides for this. Women will carry out their sentences in places separate from those destined to be used by men.

The Federal government, the States and the

celebrar convenios para que los sentenciados por delitos del ámbito de su competencia extingan las penas en establecimientos penitenciarios dependientes de una jurisdicción diversa.

La Federación, los Estados y el Distrito Federal establecerán, en el ámbito de sus respectivas competencias, un sistema integral de justicia que será aplicable a quienes se atribuya la realización de una conducta tipificada como delito por las leyes penales y tengan entre doce años cumplidos y menos de dieciocho años de edad, en el que se garanticen los derechos fundamentales que reconoce esta Constitución para todo individuo, así como aquellos derechos específicos que por su condición de personas en desarrollo les han sido reconocidos. Las personas menores de doce años que hayan realizado una conducta prevista como delito en la ley, solo serán sujetos a rehabilitación y asistencia social.

La operación del sistema en cada orden de gobierno estará a cargo de instituciones, tribunales y autoridades especializados en la procuración e impartición de justicia para adolescentes. Se podrán aplicar las medidas de orientación, protección y tratamiento que amerite cada caso, atendiendo a la protección integral y el interés superior del adolescente.

Las formas alternativas de justicia deberán observarse en la aplicación de este sistema, siempre que resulte procedente. En todos los procedimientos seguidos a los adolescentes se observará la garantía del debido proceso legal, así como la independencia entre las autoridades que efectúen la remisión y las que impongan las medidas. Éstas deberán ser proporcionales a la conducta realizada y tendrán como fin la reintegración social y familiar del adolescente, así como el pleno desarrollo de su persona y capacidades. El internamiento se utilizará solo como medida extrema y por el tiempo más breve que proceda, y podrá aplicarse únicamente a los adolescentes mayores de catorce años de edad, por la comisión de conductas antisociales calificadas como graves.

Los sentenciados de nacionalidad mexicana que se encuentren purgando penas en países extranjeros, podrán ser trasladados a la República para que cumplan sus condenas con base en los sistemas de reinserción social previstos en este artículo, y los sentenciados de nacionalidad extranjera por delitos del orden federal o del fuero común, podrán ser trasladados al país de su origen o residencia, sujetándose a los Tratados Internacionales que se hayan celebrado para ese efecto. El traslado de los reclusos sólo podrá efectuarse con su

Federal District may enter into agreements so that those persons sentenced for crimes within their jurisdiction may carry out the sentence in prisons that pertain to a different jurisdiction.

The Federal government, the States and the Federal District shall establish, within the scope of their jurisdiction, a comprehensive justice system, which applies to those who are attributed with performing conduct defined as a crime under the criminal laws and who are between twelve and under eighteen years of age, and in which fundamental rights recognized by this Constitution are guaranteed to every individual, as well as those specific rights that have been recognized for adolescents. Persons under twelve that have performed an act seen as a crime under the law shall only be subject to rehabilitation and social assistance.

Operating the system at each level of government will be the task of institutions, courts and authorities specialized in the procurement and imparting of justice for adolescents. Measures for guidance, protection and treatment that each case merits may be applied attending to the comprehensive protection and best interests of the adolescent.

Alternative forms of justice shall be observed in implementation of this system, whenever appropriate. In all proceedings for adolescents, due process rights shall be observed and so will the independence of the authorities seeking relief and those imposing measures. These must be proportionate to the acts committed and the adolescent's social and family reintegration as well as the full development of his person and capacities will be the aims. Internment will be used only as an extreme measure and for the shortest appropriate time, and may apply only to adolescents over the age of fourteen for the commission of antisocial behavior identified as serious.

Mexican nationals who are carrying out sentences in foreign countries may be transferred to the Republic to serve their sentences based on the reintegration schemes set forth by this article, and foreign nationals sentenced for federal or common crimes may be transferred to their country of origin or residence, subject to international treaties signed to this effect. The transfer of prisoners can only be made with their explicit consent.



consentimiento expreso.

Los sentenciados, en los casos y condiciones que establezca la ley, podrán purgar sus penas en los centros penitenciarios más cercanos a su domicilio, a fin de propiciar su reintegración a la comunidad como forma de reinserción social. Esta disposición no aplicará en caso de delincuencia organizada y respecto de otros internos que requieran medidas especiales de seguridad.

Para la reclusión preventiva y la ejecución de sentencias en materia de delincuencia organizada se destinarán centros especiales. Las autoridades competentes podrán restringir las comunicaciones de los inculcados y sentenciados por delincuencia organizada con terceros, salvo el acceso a su defensor, e imponer medidas de vigilancia especial a quienes se encuentren internos en estos establecimientos. Lo anterior podrá aplicarse a otros internos que requieran medidas especiales de seguridad, en términos de la ley.

Those sentenced under the cases and conditions established by law, may serve their sentences in the prison closest to their domicile in order to facilitate their reintegration into the community as a form of social reinsertion. This provision will not apply in cases of organized crime and for other inmates who require special security measures.

Special centers will be provided for preventive detention and enforcement of judgments relating to organized crime. The competent authorities may restrict the communications of the accused and sentenced for organized crime with third parties, except access to their counsel, and may impose special oversight measures for inmates in these establishments. The preceding may apply to other inmates who require special security measures in terms of the law.

## ARTÍCULO 19

### TEXTO ORIGINAL

**Artículo 19.** Ninguna detención ante autoridad judicial podrá exceder del plazo de setenta y dos horas, a partir de que el indiciado sea puesto a su disposición, sin que se justifique con un auto de vinculación a proceso en el que se expresará: el delito que se impute al acusado; el lugar, tiempo y circunstancias de ejecución, así como los datos que establezcan que se ha cometido un hecho que la ley señale como delito y que exista la probabilidad de que el indiciado lo cometió o participó en su comisión.

El Ministerio Público sólo podrá solicitar al juez la prisión preventiva cuando otras medidas cautelares no sean suficientes para garantizar la comparecencia del imputado en el juicio, el desarrollo de la investigación, la protección de la víctima, de los testigos o de la comunidad, así como cuando el imputado esté siendo procesado o haya sido sentenciado previamente por la comisión de un delito doloso. El juez ordenará la prisión preventiva, oficiosamente, en los casos de delincuencia organizada, homicidio doloso, violación, secuestro, delitos cometidos con medios violentos como armas y explosivos, así como delitos graves que determine la ley en contra de la seguridad de la nación, el libre desarrollo de la personalidad y de la salud.

La ley determinará los casos en los cuales el juez podrá revocar la libertad de los individuos vinculados a proceso.

### TRANSLATION

**Article 19.** No judicially authorized detention shall exceed seventy-two hours after the accused has been placed at its disposition without being justified by an indictment which should include: the crime the accused is charged with; the place, time and details of its [the crime's] execution, as well as the facts that establish that there has been an act considered by law to be a crime and that there exists the probability that the accused committed the act or participated in its commission.

The prosecutor may only request preventive detention to the court when other precautionary measures are not sufficient to ensure the appearance of the accused at trial; the development of the investigation; victim, witness or community protection or when the accused is being prosecuted or has been previously sentenced for committing an intentional crime. The judge shall order automatic preventive detention in cases of organized crime, intentional homicide, rape, kidnapping, crimes committed with violent means such as with weapons and explosives, as well as serious crimes prescribed by law as against national security, the free development of personality and health.

The law will determine the cases in which the judge may revoke the freedom of indicted persons.

El plazo para dictar el auto de vinculación a proceso podrá prorrogarse únicamente a petición del indiciado, en la forma que señale la ley. La prolongación de la detención en su perjuicio será sancionada por la ley penal. La autoridad responsable del establecimiento en el que se encuentre internado el indiciado, que dentro del plazo antes señalado no reciba copia autorizada del auto de vinculación a proceso y del que decreta la prisión preventiva, o de la solicitud de prórroga del plazo constitucional, deberá llamar la atención del juez sobre dicho particular en el acto mismo de concluir el plazo y, si no recibe la constancia mencionada dentro de las tres horas siguientes, pondrá al indiciado en libertad.

Todo proceso se seguirá forzosamente por el hecho o hechos delictivos señalados en el auto de vinculación a proceso. Si en la secuela de un proceso apareciere que se ha cometido un delito distinto del que se persigue, deberá ser objeto de investigación separada, sin perjuicio de que después pueda decretarse la acumulación, si fuere conducente.

Si con posterioridad a la emisión del auto de vinculación a proceso por delincuencia organizada el inculcado evade la acción de la justicia o es puesto a disposición de otro juez que lo reclame en el extranjero, se suspenderá el proceso junto con los plazos para la prescripción de la acción penal.

Todo mal tratamiento en la aprehensión o en las prisiones, toda molestia que se infiera sin motivo legal, toda gabela o contribución, en las cárceles, son abusos que serán corregidos por las leyes y reprimidos por las autoridades.

The deadline for issuing the indictment may be extended only by request of the accused, in the manner provided for by law. Prejudicially prolonging the detention is punishable by criminal law. The authority responsible for the place where the accused is held that does not, within the time indicated, receive an authorized copy of the indictment and of the preventive custody order or the request to extend the constitutional timeframe, should bring the particular issue to the attention of the judge, and if the above mentioned record is not received within three hours, he shall release the accused.

Each trial shall determinedly proceed on the criminal act or acts signaled in the indictment. If, during the course of the trial, it appears as if a crime has been committed that is distinct from the one being pursued, that distinct crime should be the object of a separate investigation, without prejudice to a cumulative order, if appropriate.

If, after ordering an indictment for organized crime, the accused evades justice or is placed at the disposition of a judge abroad, the trial will be suspended as will the statute of limitations.

Any ill-treatment during arrest or while in prison, any harm induced that is not legally justified, any exacting or contribution levied in prison are abuses that will be corrected by the law and suppressed by the authorities.

## ARTÍCULO 20

### TEXTO ORIGINAL

**Artículo 20.** El proceso penal será acusatorio y oral. Se regirá por los principios de publicidad, contradicción, concentración, continuidad e inmediación.

#### A. De los principios generales:

I. El proceso penal tendrá por objeto el esclarecimiento de los hechos, proteger al inocente, procurar que el culpable no quede impune y que los daños causados por el delito se reparen;

II. Toda audiencia se desarrollará en presencia del juez, sin que pueda delegar en ninguna persona el desahogo y la valoración de las pruebas, la cual deberá

### TRANSLATION

**Article 20.** Criminal proceedings will be adversarial and oral. They will be guided by the principles of openness, adversity, concentration, continuity and immediacy.

#### A. General principles:

I. Criminal proceedings shall aim to clarify facts, protect the innocent, to ensure that the guilty will not go unpunished and that damages caused by crime are repaired;

II. All hearings will be held in the presence of the judge who may not delegate to any person the submission, presentation and weighing of the

realizarse de manera libre y lógica;

III. Para los efectos de la sentencia sólo se considerarán como prueba aquellas que hayan sido desahogadas en la audiencia de juicio. La ley establecerá las excepciones y los requisitos para admitir en juicio la prueba anticipada, que por su naturaleza requiera desahogo previo;

IV. El juicio se celebrará ante un juez que no haya conocido del caso previamente. La presentación de los argumentos y los elementos probatorios se desarrollará de manera pública, contradictoria y oral;

V. La carga de la prueba para demostrar la culpabilidad corresponde a la parte acusadora, conforme lo establezca el tipo penal. Las partes tendrán igualdad procesal para sostener la acusación o la defensa, respectivamente;

VI. Ningún juzgador podrá tratar asuntos que estén sujetos a proceso con cualquiera de las partes sin que esté presente la otra, respetando en todo momento el principio de contradicción, salvo las excepciones que establece esta Constitución;

VII. Una vez iniciado el proceso penal, siempre y cuando no exista oposición del inculpado, se podrá decretar su terminación anticipada en los supuestos y bajo las modalidades que determine la ley. Si el imputado reconoce ante la autoridad judicial, voluntariamente y con conocimiento de las consecuencias, su participación en el delito y existen medios de convicción suficientes para corroborar la imputación, el juez citará a audiencia de sentencia. La ley establecerá los beneficios que se podrán otorgar al inculpado cuando acepte su responsabilidad;

VIII. El juez sólo condenará cuando exista convicción de la culpabilidad del procesado;

IX. Cualquier prueba obtenida con violación de derechos fundamentales será nula, y

X. Los principios previstos en este artículo, se observarán también en las audiencias preliminares al juicio.

B. De los derechos de toda persona imputada:

I. A que se presuma su inocencia mientras no se declare su responsabilidad mediante sentencia emitida

evidence, which must be undertaken in an open and logical manner;

III. The only evidence that may be considered for the purposes of sentencing is that which was presented at trial. The law will establish the exceptions and requirements for admitting anticipated evidence at trial, which because of its nature requires prior submission;

IV. The trial shall be held before a judge who has not had previous knowledge of the case. The presentation of arguments and probative elements shall be public, adversarial and oral;

V. The burden of proof to demonstrate guilt corresponds to the party making the accusation and is determined by the type of crime. The parties shall have procedural equality to maintain their accusation or defense, respectively;

VI. No judge may hear matters that are brought to trial with either party without the presence of the other, and must, at all times, respect the principle of adversity, with the exceptions established by this Constitution;

VII. Once the criminal proceedings have begun, so long as the accused has no objection, earlier termination may be ordered for those cases and under the procedures established by law. If the accused voluntarily and with knowledge of the consequences acknowledges his participation in the crime and if there are sufficient elements to corroborate the charge, the judge will schedule a sentencing hearing. The law will establish the rights that may be granted to the accused when he accepts responsibility;

VIII. The judge shall sentence only where there exists a conviction of the guilt of the accused;

IX. Any evidence obtained in violation of fundamental rights is void, and

X. The principles set forth in this Article, shall also be observed in pre-trial hearings.

B. Of the rights of the accused:

I. To be presumed innocent until responsibility is declared by a sentence issued by the sitting judge;



por el juez de la causa;

II. A declarar o a guardar silencio. Desde el momento de su detención se le harán saber los motivos de la misma y su derecho a guardar silencio, el cual no podrá ser utilizado en su perjuicio. Queda prohibida y será sancionada por la ley penal, toda incommunicación, intimidación o tortura. La confesión rendida sin la asistencia del defensor carecerá de todo valor probatorio;

III. A que se le informe, tanto en el momento de su detención como en su comparecencia ante el Ministerio Público o el juez, los hechos que se le imputan y los derechos que le asisten. Tratándose de delincuencia organizada, la autoridad judicial podrá autorizar que se mantenga en reserva el nombre y datos del acusador.

La ley establecerá beneficios a favor del inculpado, procesado o sentenciado que preste ayuda eficaz para la investigación y persecución de delitos en materia de delincuencia organizada;

IV. Se le recibirán los testigos y demás pruebas pertinentes que ofrezca, concediéndosele el tiempo que la ley estime necesario al efecto y auxiliándosele para obtener la comparecencia de las personas cuyo testimonio solicite, en los términos que señale la ley;

V. Será juzgado en audiencia pública por un juez o tribunal. La publicidad sólo podrá restringirse en los casos de excepción que determine la ley, por razones de seguridad nacional, seguridad pública, protección de las víctimas, testigos y menores, cuando se ponga en riesgo la revelación de datos legalmente protegidos, o cuando el tribunal estime que existen razones fundadas para justificarlo.

En delincuencia organizada, las actuaciones realizadas en la fase de investigación podrán tener valor probatorio, cuando no puedan ser reproducidas en juicio o exista riesgo para testigos o víctimas. Lo anterior sin perjuicio del derecho del inculpado de objetarlas o impugnarlas y aportar pruebas en contra;

VI. Le serán facilitados todos los datos que solicite para su defensa y que consten en el proceso.

El imputado y su defensor tendrán acceso a los registros de la investigación cuando el primero se encuentre detenido y cuando pretenda recibirsele declaración o entrevistarle. Asimismo, antes de su primera comparecencia ante juez podrán consultar

II. To testify or to remain silent. At the time of arrest, the reasons for doing so and the right to remain silent, which may not be used against the accused, will be made known. Any *incommunicado* confinement, intimidation or torture is prohibited and will be punished by criminal law. Confessions made without the assistance of counsel lack all probative value;

III. To be informed, both at the time of his arrest and when appearing before the prosecutor or the Judge, of the charges made against him and of the rights that correspond to him. In an organized crime case, the Court may authorize the confidentiality of the name and details of the accuser.

The law will establish benefits for the accused, defendant or sentenced person who provides effective help in the investigation and prosecution of organized crime;

IV. Relevant witnesses and other offered evidence will be accepted, granting the time deemed necessary by law, and aiding to obtain the attendance of persons whose testimony is requested, in the manner signaled by law;

V. To be tried in a public hearing by a judge or tribunal. A public hearing may be restricted only in exceptional cases determined by law, for reasons of national or public security, protection of victims, witnesses and children, when the disclosure of legally protected information is in risk, or when the tribunal considers that sufficient grounds to justify it exist.

In organized crime, actions undertaken at the investigatory phase may have probative value if they cannot be recounted at trial or where a risk to witnesses or victims exists. This is to be taken without prejudice of the right of the accused to object or challenge, and to provide evidence against;

VI. All the information requested for defense and that are part of the trial will be provided.

The accused and his counsel shall have access to the records of the investigation while in custody and for taking declarations or questioning. Likewise, prior to the first appearance before a judge, said records can be consulted with enough time to prepare the

dichos registros, con la oportunidad debida para preparar la defensa. A partir de este momento no podrán mantenerse en reserva las actuaciones de la investigación, salvo los casos excepcionales expresamente señalados en la ley cuando ello sea imprescindible para salvaguardar el éxito de la investigación y siempre que sean oportunamente revelados para no afectar el derecho de defensa;

VII. Será juzgado antes de cuatro meses si se tratare de delitos cuya pena máxima no exceda de dos años de prisión, y antes de un año si la pena excediere de ese tiempo, salvo que solicite mayor plazo para su defensa;

VIII. Tendrá derecho a una defensa adecuada por abogado, al cual elegirá libremente incluso desde el momento de su detención. Si no quiere o no puede nombrar un abogado, después de haber sido requerido para hacerlo, el juez le designará un defensor público. También tendrá derecho a que su defensor comparezca en todos los actos del proceso y éste tendrá obligación de hacerlo cuantas veces se le requiera, y

IX. En ningún caso podrá prolongarse la prisión o detención, por falta de pago de honorarios de defensores o por cualquiera otra prestación de dinero, por causa de responsabilidad civil o algún otro motivo análogo.

La prisión preventiva no podrá exceder del tiempo que como máximo de pena fije la ley al delito que motivare el proceso y en ningún caso será superior a dos años, salvo que su prolongación se deba al ejercicio del derecho de defensa del imputado. Si cumplido este término no se ha pronunciado sentencia, el imputado será puesto en libertad de inmediato mientras se sigue el proceso, sin que ello obste para imponer otras medidas cautelares.

En toda pena de prisión que imponga una sentencia, se computará el tiempo de la detención.

C. De los derechos de la víctima o del ofendido:

I. Recibir asesoría jurídica; ser informado de los derechos que en su favor establece la Constitución y, cuando lo solicite, ser informado del desarrollo del procedimiento penal;

II. Coadyuvar con el Ministerio Público; a que se le reciban todos los datos o elementos de prueba con los que cuente, tanto en la investigación como en el proceso, a que se desahoguen las diligencias correspondientes, y a

defense. Hereinafter, no investigatory information can be held in reserve, except for exceptional cases expressly mentioned in the law when it is indispensable toward safeguarding the success of the investigation and as long as they are promptly disclosed so as to not affect the right of defense;

VII. To be tried within four months for crimes with a maximum penalty that does not exceed two years in prison, and within one year if the sentence exceeds that time, except unless an extension is requested to prepare the defense;

VIII. To be entitled to an adequate defense by an attorney who has been freely chosen from the time of the arrest. If an attorney is not wanted or is unnamed after being requested to do so, the judge will appoint a public defender. [The accused] shall have the right to have his attorney appear at all stages of the trial and the attorney will be obligated to appear as often as requested, and

IX. In no case may imprisonment or detention be prolonged for non-payment of defense fees or for any other civil or analogous.

Preventive detention may not exceed the maximum time set by law as a penalty for the underlying crime and may in no case exceed two years, unless the extension is due to the exercise of the right of defense by the accused. If by that deadline no sentence has been pronounced, the accused shall be released immediately while the trial continues, without interfering with any other protective measures.

In all sentences that impose imprisonment the time since arrest shall be counted.

C. Of the rights of the victim or the offended

I. To receive legal advice; to be informed of the rights in his favor set forth by the Constitution and, when requested, to be informed of the progress of the criminal proceeding;

II. To assist the prosecutor; so that [the prosecutor] receives all the information or evidence in [the victim's] possession, both during the investigation and at the trial, so that all corresponding evidence is

intervenir en el juicio e interponer los recursos en los términos que prevea la ley.

Cuando el Ministerio Público considere que no es necesario el desahogo de la diligencia, deberá fundar y motivar su negativa;

III. Recibir, desde la comisión del delito, atención médica y psicológica de urgencia;

IV. Que se le repare el daño. En los casos en que sea procedente, el Ministerio Público estará obligado a solicitar la reparación del daño, sin menoscabo de que la víctima u ofendido lo pueda solicitar directamente, y el juzgador no podrá absolver al sentenciado de dicha reparación si ha emitido una sentencia condenatoria.

La ley fijará procedimientos ágiles para ejecutar las sentencias en materia de reparación del daño;

V. Al resguardo de su identidad y otros datos personales en los siguientes casos: cuando sean menores de edad; cuando se trate de delitos de violación, secuestro o delincuencia organizada; y cuando a juicio del juzgador sea necesario para su protección, salvaguardando en todo caso los derechos de la defensa.

El Ministerio Público deberá garantizar la protección de víctimas, ofendidos, testigos y en general todas las sujetos que intervengan en el proceso. Los jueces deberán vigilar el buen cumplimiento de esta obligación;

VI. Solicitar las medidas cautelares y providencias necesarias para la protección y restitución de sus derechos, y

VII. Impugnar ante autoridad judicial las omisiones del Ministerio Público en la investigación de los delitos, así como las resoluciones de reserva, no ejercicio, desistimiento de la acción penal o suspensión del procedimiento cuando no esté satisfecha la reparación del daño.

presented, and to intervene at trial and to give notice of appeal under the terms foreseen by the law.

When the prosecutor considers it unnecessary to present evidence, the prosecutor should demonstrate the grounds for doing so and justify the refusal;

III. To receive urgent medical and psychological attention from the moment of the commission of the crime.

IV. To reparation of the harm. In appropriate cases, the prosecutor shall be obligated to seek reparation of the harm, without prejudice of the victim or offended person's ability to do so directly, and the judge can not absolve the sentenced person from said reparation if a prison sentence has been issued.

The law shall establish swift procedures to enforce reparation judgments;

V. To the protection of their identity and other personal information in the following cases: when the victims are children; rape, kidnapping and organized crime, and when in the opinion of the judge protecting identity is necessary, preserving the rights of defense in all cases.

The prosecutor shall guarantee the protection of victims, the offended, witnesses and generally of all subjects involved in the process. The judges shall monitor proper compliance with this obligation;

VI. To request precautionary measures and injunctions necessary for the protection and restitution of his rights, and

VII. To challenge, before the Court, the prosecutor's omissions in the investigation of the crime, reservations, inactions, withdrawal, or suspension when not satisfied with the reparation of the harm.

## ARTÍCULO 21

### TEXTO ORIGINAL

**Artículo 21.** La investigación de los delitos corresponde al Ministerio Público y a las policías, las cuales actuarán bajo la conducción y mando de aquél en el ejercicio de esta función.

El ejercicio de la acción penal ante los tribunales corresponde al Ministerio Público. La ley determinará los

### TRANSLATION

**Article 21.** Investigating crimes is a function of the prosecutor and of the police, acting under the leadership and command of the former in exercise of this function.

Prosecution before a tribunal is a function of the prosecutor. The law will determine the cases in which

casos en que los particulares podrán ejercer la acción penal ante la autoridad judicial.

La imposición de las penas, su modificación y duración son propias y exclusivas de la autoridad judicial.

Compete a la autoridad administrativa la aplicación de sanciones por las infracciones de los reglamentos gubernativos y de policía, las que únicamente consistirán en multa, arresto hasta por treinta y seis horas o en trabajo a favor de la comunidad; pero si el infractor no pagare la multa que se le hubiese impuesto, se permutará esta por el arresto correspondiente, que no excederá en ningún caso de treinta y seis horas.

Si el infractor de los reglamentos gubernativos y de policía fuese jornalero, obrero o trabajador, no podrá ser sancionado con multa mayor del importe de su jornal o salario de un día.

Tratándose de trabajadores no asalariados, la multa que se imponga por infracción de los reglamentos gubernativos y de policía, no excederá del equivalente a un día de su ingreso.

El Ministerio Público podrá considerar criterios de oportunidad para el ejercicio de la acción penal, en los supuestos y condiciones que fije la ley.

El Ejecutivo Federal podrá, con la aprobación del Senado en cada caso, reconocer la jurisdicción de la Corte Penal Internacional.

La seguridad pública es una función a cargo de la Federación, el Distrito Federal, los Estados y los Municipios, que comprende la prevención de los delitos; la investigación y persecución para hacerla efectiva, así como la sanción de las infracciones administrativas, en los términos de la ley, en las respectivas competencias que esta Constitución señala. La actuación de las instituciones de seguridad pública se regirá por los principios de legalidad, objetividad, eficiencia, profesionalismo, honradez y respeto a los derechos humanos reconocidos en esta Constitución.

Las instituciones de seguridad pública serán de carácter civil, disciplinado y profesional. El Ministerio Público y las instituciones policiales de los tres órdenes de gobierno deberán coordinarse entre sí para cumplir los objetivos de la seguridad pública y conformarán el Sistema Nacional de Seguridad Pública, que estará sujeto a las siguientes bases mínimas:

individuals may bring a criminal action before the Court.

The imposition, modification and duration of penalties are exclusively owed to the Court.

The application of sanctions for violations of governmental and police regulations is incumbent upon the administrative authority and shall solely consist of a fine, imprisonment of up to thirty-six hours or in community service, but if the offender fails to pay the imposed fine this shall be substituted by the corresponding arrest that in no case shall exceed thirty-six hours.

If the violator of governmental and police regulations is a day laborer (wage worker), he shall not be sanctioned with a fine greater than the amount of his wages or one day salary.

In the case of unsalaried workers, the fine imposed for infringement of governmental and police regulations shall not exceed the equivalent of one day of income.

The prosecutor may consider criteria for exercising discretion to prosecute criminal cases under the terms and conditions set by law.

The Executive branch may, subject to Senate approval in each case, recognize the jurisdiction of the International Criminal Court.

Public security is a function of the Federal government, the Federal District, the States and municipalities and is understood as the prevention of crime, investigation and proper prosecution, as well as the sanctions for administrative violations under the terms of the law, within the respective jurisdictions that the Constitution signals. The actions of public security institutions shall be governed by the principles of legality, objectivity, efficiency, professionalism, honesty and respect for human rights as recognized in this Constitution.

Public security institutions shall be civil, disciplined and professional institutions. The prosecutors office and police institutions from the three levels of government should coordinate to meet the objectives of public security and combined shall make up the National Public Security System, which is subject to the following minimum bases:

a) La regulación de la selección, ingreso, formación, permanencia, evaluación, reconocimiento y certificación de los integrantes de las instituciones de seguridad pública. La operación y desarrollo de estas acciones será competencia de la Federación, el Distrito Federal, los Estados y los municipios en el ámbito de sus respectivas atribuciones.

b) El establecimiento de las bases de datos criminalísticos y de personal para las instituciones de seguridad pública. Ninguna persona podrá ingresar a las instituciones de seguridad pública si no ha sido debidamente certificado y registrado en el sistema.

c) La formulación de políticas públicas tendientes a prevenir la comisión de delitos.

d) Se determinará la participación de la comunidad que coadyuvará, entre otros, en los procesos de evaluación de las políticas de prevención del delito así como de las instituciones de seguridad pública.

e) Los fondos de ayuda federal para la seguridad pública, a nivel nacional serán aportados a las entidades federativas y municipios para ser destinados exclusivamente a estos fines.

a) Regulating the selection, admission, training, permanence, evaluation, recognition and certification of members of the public security institutions. Operating and developing these actions falls under the jurisdiction of the Federal government, the Federal District, the States and municipalities within the scope of their powers.

b) Establishing criminalistics and personnel databases for public security institutions. No person shall enter public security institutions unless they have been properly certified and registered in the system.

c) Formulating public policies to prevent the commission of crimes.

d) Determining the participation of the community in, among other things, crime prevention policy evaluation and public security institutions.

e) Federal aid funds for public security at the national level will be provided to the States and municipalities to be used exclusively for such purposes.

## ARTÍCULO 22

### TEXTO ORIGINAL

**Artículo 22.** Quedan prohibidas las penas de muerte, de mutilación, de infamia, la marca, los azotes, los palos, el tormento de cualquier especie, la multa excesiva, la confiscación de bienes y cualesquiera otras penas inusitadas y trascendentales. Toda pena deberá ser proporcional al delito que sancione y al bien jurídico afectado.

No se considerará confiscación la aplicación de bienes de una persona cuando sea decretada para el pago de multas o impuestos, ni cuando la decrete una autoridad judicial para el pago de responsabilidad civil derivada de la comisión de un delito. Tampoco se considerará confiscación el decomiso que ordene la autoridad judicial de los bienes en caso de enriquecimiento ilícito en los términos del artículo 109, la aplicación a favor del Estado de bienes asegurados que causen abandono en los términos de las disposiciones aplicables, ni la de aquellos bienes cuyo dominio se declare extinto en sentencia. En el caso de extinción de dominio se establecerá un procedimiento que se regirá por las siguientes reglas:

### TRANSLATION

**Article 22.** The death penalty, mutilation, public humiliation, branding, flogging, beating, torture of any kind, excessive fines, confiscation of property and any other unusual or extreme penalties are prohibited. Any punishment must be in proportion to the crime that it sanctions and the legal rights affected.

A decree ordering the payment of fines or taxes or a Court order for payment of civil liability for the commission of a crime shall not be considered confiscation of property. The seizure of assets ordered by the Court for illicit enrichment under the terms of Article 109, the appropriation of abandoned and seized property by the State under the terms of the applicable provisions, and those properties deemed by the Court to be outside the control of the State shall not be considered confiscations. A procedure shall be established to deal with seizure of assets governed by the following rules:



I. Será jurisdiccional y autónomo del de materia penal;

II. Procederá en los casos de delincuencia organizada, delitos contra la salud, secuestro, robo de vehículos y trata de personas, respecto de los bienes siguientes:

a) Aquellos que sean instrumento, objeto o producto del delito, aún cuando no se haya dictado la sentencia que determine la responsabilidad penal, pero existan elementos suficientes para determinar que el hecho ilícito sucedió.

b) Aquellos que no sean instrumento, objeto o producto del delito, pero que hayan sido utilizados o destinados a ocultar o mezclar bienes producto del delito, siempre y cuando se reúnan los extremos del inciso anterior.

c) Aquellos que estén siendo utilizados para la comisión de delitos por un tercero, si su dueño tuvo conocimiento de ello y no lo notificó a la autoridad o hizo algo para impedirlo.

d) Aquellos que estén intitulados a nombre de terceros, pero existan suficientes elementos para determinar que son producto de delitos patrimoniales o de delincuencia organizada, y el acusado por estos delitos se comporte como dueño.

III. Toda persona que se considere afectada podrá interponer los recursos respectivos para demostrar la procedencia lícita de los bienes y su actuación de buena fe, así como que estaba impedida para conocer la utilización ilícita de sus bienes.

I. Seizure shall be jurisdictional and autonomous of criminal matters;

II. Seizure shall proceed in cases of organized crime, crimes against health, kidnapping, car theft and human trafficking, with respect to the following goods:

a) Those [items] that are instruments, objects or products of the crime, even when a sentence has yet to be decreed that determines criminal responsibility but where sufficient evidence exists to determine that the illegal act occurred.

b) Those [items] that are not instruments, objects or products of the crime, but which have been used or intended to be used to hide or commingle products of the crime, if and when the guidelines of the preceding paragraph are met.

c) Those [items] that are being used to commit crimes by a third party if the owner [of the items] had knowledge of the crime and did not notify the authority or did nothing to prevent it.

d) Those [items] which are registered in the name of a third party, but where there is sufficient evidence to determine that the items are the product of property crimes or organized crime and the person accused of these crimes acts as the owner.

III. Any aggrieved person may bring the respective remedies to demonstrate the lawful origin of the goods, actions in good faith and the impossibility of knowing the criminal use of the property.

## ARTÍCULO 73

### TEXTO ORIGINAL

**Artículo 73.** El Congreso tiene facultad:

I. a XX. ...

XXI. Para establecer los delitos y faltas contra la Federación y fijar los castigos que por ellos deban imponerse, así como legislar en materia de delincuencia organizada.

...

...

XXII. ...

XXIII. Para expedir leyes que establezcan las bases de coordinación entre la Federación, el Distrito Federal, los Estados y los Municipios, así como para establecer y

### TRANSLATION

**Article 73.** The Congress has the power:

I. to XX. ...

XXI. To define crimes and offenses against the Federal government and to proscribe the punishments to be imposed, and to legislate on matters of organized crime.

...

...

XXII. ...

XXIII. To issue laws establishing the basis for coordination between the Federal government, the Federal District, the States and Municipalities, and to

organizar a las instituciones de seguridad pública en materia federal, de conformidad con lo establecido en el artículo 21 de esta Constitución.

XXIV. a XXX. ...

establish and organize federal public security institutions in accordance with the provisions of Article 21 of this Constitution.

XXIV. to XXX. ...

#### ARTÍCULO 115

##### TEXTO ORIGINAL

##### **Artículo 115.**

I. a VI. ...

VII. La policía preventiva estará al mando del presidente municipal en los términos de la Ley de Seguridad Pública del Estado. Aquélla acatará las órdenes que el Gobernador del Estado le transmita en aquellos casos que éste juzgue como de fuerza mayor o alteración grave del orden público.

...

VIII a X. ...

##### TRANSLATION

##### **Article 115.**

I. to VI. ...

VII. Preventive police will be under the command of the Mayor under the terms of the State Public Security Law. The former shall abide by the orders that the Governor of the State issues in those cases that the Governor deems to be force majeure or serious disturbance of public order.

...

VIII to X. ...

#### ARTÍCULO 123

##### TEXTO ORIGINAL

**Artículo 123.** Toda persona tiene derecho al trabajo digno y socialmente útil; al efecto, se promoverán la creación de empleos y la organización social de trabajo, conforme a la ley.

El Congreso de la Unión, sin contravenir a las bases siguientes deberá expedir leyes sobre el trabajo, las cuales regirán:

Apartado A...

Apartado B...

I. a XII. ...

XIII. Los militares, marinos, personal del servicio exterior, agentes del Ministerio Público, peritos y los miembros de las instituciones policiales, se regirán por sus propias leyes.

Los agentes del Ministerio Público, los peritos y los miembros de las instituciones policiales de la Federación, el Distrito Federal, los Estados y los Municipios, podrán ser separados de sus cargos si no cumplen con los requisitos que las leyes vigentes en el momento del acto señalen para permanecer en dichas instituciones, o removidos por incurrir en responsabilidad en el desempeño de sus funciones. Si la autoridad jurisdiccional resuelve que la separación, remoción, baja, cese o cualquier otra forma de terminación del servicio fue injustificada, el Estado sólo estará obligado a pagar la indemnización y demás prestaciones a que tenga derecho, sin que en ningún caso proceda su

##### TRANSLATION

**Article 123.** All persons have the right to a dignified and socially useful job, to that aim, job creation and social organization of labor shall be promoted, according to the law.

The Congress of the Union, without contravening the following rules shall enact labor laws, which will govern:

Section A...

Section B...

I. to XII. ...

XIII. Soldiers, sailors, foreign service personnel, prosecutors, experts and members of police institutions shall be governed by their own laws.

The prosecutors, experts and members of the police institutions of the Federal government, the Federal District, the States and municipalities may be removed from office if they do not comply with the requirements of law in effect at the time of the act to remain in those institutions or may be removed for liability in the performance of their duties. If the jurisdictional authority finds that the separation, removal, demotion, cessation or any other termination of service was not justified, the State is only obligated to pay the entitled compensation and other benefits, but in no case is reinstatement on service applicable no matter what the outcome of the



reincorporación al servicio, cualquiera que sea el resultado del juicio o medio de defensa que se hubiere promovido.

Las autoridades del orden federal, estatal, del Distrito Federal y municipal, a fin de propiciar el fortalecimiento del sistema de seguridad social del personal del Ministerio Público, de las corporaciones policiales y de los servicios periciales, de sus familias y dependientes, instrumentarán sistemas complementarios de seguridad social.

El Estado proporcionará a los miembros en el activo del Ejército, Fuerza Aérea y Armada, las prestaciones a que se refiere el inciso f) de la fracción XI de este apartado, en términos similares y a través del organismo encargado de la seguridad social de los componentes de dichas instituciones.

XIII bis. y XIV. ...

resolution is or the defenses raised.

Federal, State, Federal District and municipal authorities shall implement complimentary systems of social security in order to promote the strengthening of the prosecutor's office, police, and expert social security programs as well as those for their families and dependents.

The State shall provide to active members of the Army, Air Force and Navy, the benefits referred to in paragraph f) of part XI of this Section, in similar terms and through the body responsible for the social security of those institutions.

XIII bis. and XIV. ...

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