

## **A Justice Barometer for Mexico**

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It is no secret that Mexico is facing multi-faceted challenges, especially within the areas of security and justice, which perhaps represent the greatest risk to citizen security and the governance of the country. The poor performance and dysfunctionality of the criminal justice system and its inability to effectively face a wide range of crimes has generated serious social damage, including general distrust among citizens. The lack of access to justice for suspects, defendants, victims, offenders, and citizens in general, coupled with the entrenched legal misconduct of judicial authorities, has created a system in which nobody believes in.

The dysfunctionality of Mexico's criminal justice system has taken the shape of certain structural problems, including impunity and corruption, which have been exploited and abused primarily by political and economic elites. These problems of impunity, corruption, influence peddling, and the general inefficiency of the judicial sector have an expansively negative effect, including the frequent failure of victims to report crimes due to little faith in the judicial system's ability to defend their rights.

Although the courts, prosecutors and penitentiary institutions are primarily responsible for this lack of faith, it must also be acknowledged that these institutions significantly suffer from limited resources and personnel, and, in many cases, inadequate training. Moreover, the persistent and deeply rooted problems of the justice system are not exclusive to Mexico, but are rather characteristic of almost all the countries in the region.

However, Mexico's criminal justice system faces serious challenges, including institutional weakness, lack of transparency and accountability and most of all, deeply ingrained institutional corruption across a prolonged insecurity crisis. For these reasons, the rate of impunity in Mexico is extremely high and Mexican society is acutely conscious and frustrated by the large number of crimes in their country that go uninvestigated, denying victims' right to justice.

In this context, a Mexico marked by impunity, corruption and violence, began an important transformation of its judicial sector in 2008, a change which gradually implemented reforms aimed at ameliorating the equitability and transparency of the criminal justice system. This package of ambitious reforms modified all aspects of the judicial sector, including law enforcement, the Ministry of the Public, public defense, the courts, and the prison system. The reforms introduced significant modifications to the criminal process: new methods of promoting greater access to justice (for both defendants and victims of crimes), new procedures for law enforcement and public security agencies in the administration of justice, but also tougher and more questionable methods for combating organized crime.

Almost a decade after the constitutional reform that created the New Criminal Justice System (Nuevo Sistema de Justicia Penal, NSJP) and at a crucial moment in the history of Mexico, it is

essential to investigate the performance of the reform in order to detect its flaws, exploit its benefits, and, to a greater extent, adjust it to the needs and reality of a constantly evolving Mexico. This is rather difficult as studies on Mexico's justice system continue to be insufficient, and the majority of analysis on rule of law in Mexico is concentrated on levels of violence and crime. Moreover, the studies that do focus on the judicial sector tend to overlook the opinions of the citizenry or the perceptions of victims or "users" of the justice system. Although these studies offer some measurement of institutional performance, they do not provide specific information on the internal inefficiencies across the various sectors of the justice system, which ultimately precipitate the poor performance of the system.

Indeed, despite widely available statistics on crime, victimization, public opinion, and even on the experience of the prison population, there have been few systematic and quantitative efforts to study the operators of Mexico's justice system, including judges, prosecutors and public defenders. This is due in part to a lack of knowledge regarding the practitioners of the law, whose internal weaknesses are easy to recognize, but difficult to quantify. Consequently, very few studies have succeeded in shedding light on the nebulous "black box" of Mexico's justice system and its associated operators. The short supply of studies on operators of the judicial system is a reality even at the global level. There is a lack of statistical studies on the role of justice and, in particular, judges around the world. The few that do exist, such as a recent 2015 study developed in the UK, tend to rely on relatively small samples.

In an effort to address the "black box" of Mexico's criminal justice system, the Justice in Mexico project of the University of San Diego launched an initiative in 2009 to study the opinions of various operators within the justice system, including police officers, Ministry of the Public agents, public defenders and judges. This investigative initiative named "Justiciabarómetro" (Justice Barometer) has generated unprecedented analysis of the demographic profile, professional background, and personal opinions of judicial operators, at a critical moment in Mexico's rule of law. With a variety of questions concerning demographic characteristics, professional profiles, perceptions of the functionality of the criminal justice system, perceptions of legality, corruption and due process, and more, the study provides a primary account of informative figures and detailed narratives across various states and professions. In general, Justiciabarómetro discovered a substantial need and potential for improvement within the administration of justice in Mexico.

As a point of reference, the first Justiciabarómetro survey of judicial sector operators published in 2010 was conducted in nine Mexican states (with a response rate of around 24%), in comparison to the latest edition in 2016, which gathered data from 288 judges, 279 Ministry of the Public agents, and 127 public defenders across 11 states: Baja California, Chihuahua, Coahuila, Durango, Guanajuato, Jalisco, Michoacán, Nuevo León, Oaxaca, Yucatán y Zacatecas. This 2016 study had a response rate of 56%, with a 2.4 margin of error and a confidence interval of 95%. By means of a team of international experts on judicial systems, this study has generated useful indicators as to the ability and performance of Mexico's judicial reform, not only to contribute to academic investigation, but also to the improvement of public politics. With more than 120 questions, Justiciabarómetro 2016, documents the profiles and perspectives of judicial sector operators on a variety of topics, including: the effectiveness of the judicial sector, perceptions of salary, and attitudes towards contemporary problems like crime and violence.

The Justiciabarómetro 2016 study discovered significant changes in the operators' attitudes towards the recent reform efforts, including a notable increase in judges' preference for the use of oral and accusatorial judicial proceedings. In the face of wide speculation concerning Mexico's adaptation to the new judicial system, this study helped demonstrate that judges and other operators within the judicial sector are progressively acclimating to the reforms, while also documenting several serious and persisting challenges.

The 2016 study revealed several red flags that should be studied in depth. For example, the surveyed operators still do not have total confidence in the justice system. Even though judges are considered to be the most trustworthy operators by 96% of the study participants, doubts and mistrust still prevail over other operators, with police authorities being the most mistrusted officials of the justice system. Of the 36% of the participants who reported having been victims of a crime in the last year, around 20% admitted that they did not turn to the authorities, principally citing a lack of interest (23%) or mistrust in the authorities (17%).

Another principal concern among the general population is corruption, a sentiment not foreign to the operators of the justice system. Promisingly, however, 80% of the surveyed operators believe that the NSJP will help reduce corruption. Yet certain attitudes remain to be addressed, including the institutionalized perception that, for example, political contacts are the best means by which to remain in office or to be nominated for a higher position, regardless of professional merit. In other words, the majority of the survey participants (64% of the judges, 70% of the Ministry of the Public agents, and 58% of the public defenders) agree that experience and training positively influence the possibility of being ratified or promoted, but more than half of the judges (54%), Ministry of the Public agents (37%) and public defenders (65%) still believe that officials with political contacts are more likely to remain in office or be nominated to a higher position.

Other alarming trends are the inherited habits unique to Mexico's system of justice, for example, the tolerance for authorities acting outside the margins of the law or a certain disdain for human rights. In this regard, 13% of the judges, 48% of the Ministry of the Public agents, and 29% of the public defenders surveyed believe that in certain cases the authorities can act outside of the law to investigate and punish persons for crimes committed. Additionally, 10% of the judges, 29% of the Ministry of the Public agents and 20% of the public defenders opined that human rights hinder justice for victims. It should also be noted that a certain percentage of important officials (21% of the judges, 40% of the Ministry of the Public agents and 24% of the public defenders) contend that the NSJP favors criminal defendants over victims.

The 2016 Justiciabarómetro study includes the detection of criminal justice trends, which include the frequent use of eye witness testimony as primary evidence in trials, a practice questioned by various studies and publicized in the widely-known documentary, *Presumed Guilty* (*Presunto Culpable*). According to the survey, eye witness testimony continues to be the most used form of evidence in the courts (at 68%), followed by physical evidence (53%) and confessions (13%).

These various negative trends contradict the mostly positive perceptions of the new judicial system as collected by the Justiciabarómetro survey. It is clear that while there are progressive changes among the perceptions of Mexico's operators, conservative vestiges of the old justice

system continue to remain. However, it should be noted that in most cases these conservative trends have considerably and encouragingly decreased since 2010, which bodes well for the future of Mexico's justice system.

In fact, the study discovered several especially promising trends. For example, 89% of the respondents agree that the justice system needed to be reformed and that the NSJP has had positive effects since its implementation in 2008. About 90% of the participants responded that the NSJP will generate greater confidence in judicial authorities and 93% believe that the new system will accelerate the judicial process. Furthermore, some of the most important features of the NSJP have been overwhelmingly well-received, with approximately 95% of judicial operators preferring oral procedures over written procedures, 98% preferring the use of alternative methods of conflict resolution (one of the most important changes of the NSJP), and a generally positive opinion on the presumption of innocence by 84% of the judges, 76% of the Ministry of the Public agents and 91% of the public defenders. In comparison to the 2010 Justiciabarómetro study, there were positive increases of perception related to the presumption of innocence and private legal action.

Overall, Justiciabarómetro 2016 offers an important and unprecedented perspective on rule of law and criminal justice reform in Mexico. The survey provides a unique and profound perspective into the inner workings of the Mexican criminal justice system, which traditionally has been shrouded in an obscure black box that few have bothered to open.