Reforming the Administration of Justice in Mexico

Dr. David A. Shirk, University of San Diego
TBI Justice in Mexico Project

Multi-disciplinary policy focused research on public security and the rule of law in Mexico with support from William & Flora Hewlett Foundation, Open Society Institute, and Tinker Foundation.

www.justiceinmexico.org
The Problem of Impunity

All Crimes / Cifra negra

Known Crimes
Only 25 of 100 crimes are reported (25%)

Criminal Investigations
4.6 of 25 reported crimes (18%)

Crimes Prosecuted
1.6 of 4.6 investigated crimes (35%)

Crimes Brought to Trial
1.2 of 1.6 prosecuted crimes (75%)

Crimes Sentenced
1.1 of crimes tried (91%)

WELCOME TO THE JUSTICE IN MEXICO PROJECT

This blog provides access to current events and information related to the rule of law in Mexico, and is maintained by the Justice in Mexico Project a research initiative sponsored by the Trans-Border Institute at the University of San Diego. The Justice in Mexico project generates a variety of original research outputs that are available on this site, including books and working papers, monthly reports on judicial sector developments in Mexico, publicly accessible databases, and state-level GIS maps on crime and violence. This project currently benefits from the generous financial support from The William and Flora Hewlett Foundation, The Tinker Foundation, and The Open Society Institute.

52% OF THE NATIONAL POLICE FORCE IN MEXICO HAS NOT BEEN SUBMITTED TO “CONFIDENCE” TESTS

09/29/10 – According to data provided by the federal Secretariat of Public Security (Secretaría de Seguridad Pública), more than half of the active police force at the national level has not been subjected to confidence control tests. Of the 427,354 agents that compose all the government levels, in only 206,298 of the cases was “trustworthiness” ... Read more

Filed under Accountability, Data, Police
Crime and Violence Statistics
Elevated Violence Since 2008

Cartel Related Homicides by Week and by Year

www.reforma.com.mx
Cartel Related Killings in Mexico

2006

2007

2008

2009
Cartel Related Killings in Mexico

2010
Cartel Related Killings in Mexico

80% of the 28,000 killings since December 2006 concentrated in 162 municipalities

www.reforma.com.mx
Mexican Violence in Perspective

2007 Homicides Per 100,000 People

Mexico
2009-10 Judicial Sector Surveys

- Major surveys of personnel working in judicial sector:
  - 5,422 officers in GDL
  - 2,400 officers in Juárez
  - 2,000 judges in 10 states, and prosecutors and public defenders in 4 states
ZMG: What is your monthly salary in the police department?

Indicate the degree to which you agree or disagree with the following statements:

- Processes to decide raises and promotions are fair:
  - Strongly disagree: 7.8%
  - Somewhat disagree: 6.2%
  - Disagree: 11.4%
  - Somewhat agree: 12.0%
  - Agree: 9.4%
  - Strongly agree: 53.1%

- Processes to decide raises and promotions are clear:
  - Strongly disagree: 10.8%
  - Somewhat disagree: 8.2%
  - Disagree: 11.6%
  - Somewhat agree: 12.8%
  - Agree: 8.8%
  - Strongly agree: 47.7%

- The work schedule is currently adequate:
  - Somewhat disagree: 37.8%
  - Disagree: 17.4%
  - Agree: 16.6%
  - Strongly agree: 7.4%
  - Somewhat agree: 3.8%
  - Strongly disagree: 17.0%

- The processes of assigning work shifts is fair:
  - Somewhat disagree: 32.2%
  - Disagree: 18.6%
  - Agree: 14.6%
  - Strongly agree: 10.6%
  - Somewhat agree: 5.0%
  - Strongly disagree: 19.0%

Moloeznik, Shirk, & Suárez, Justiciabarómetro: Zona Metropolitana de Guadalajara, Trans-Border Institute, 2010.
USD-UABC Legal Training Program

With support from USAID and Higher Education for Development (HED), the University of San Diego and the Universidad Autónoma de Baja California are working to train lawyers to operate Mexico’s new judicial system.
Judicial Reform in Mexico
2008 Judicial Reforms

A package of constitutional reforms and supporting legislative modifications.
Inquisitorial vs. Adversarial

The **judge** leads effort to gather information about a criminal matter, with assistance from the prosecutor, in **closed evidentiary proceedings**.

**Prosecutor** represents the state, and assists the judge testimony from victims, witnesses, and experts.

**Defense counsel** reviews prosecutorial actions, with limited role in court.

**Victim** may offer a formal complaint on their own behalf (*querella*).

The **judge** (or **jury**) hears testimony from victims, witnesses, and experts in **live, oral evidentiary hearing**.

The **prosecutor** builds a case on behalf of the state, shares evidence with defense, and presents arguments in court.

**Defense counsel** reviews has equal access to state evidence, & presents argument in court.

**Accused** is presumed innocent before the law.

The police gather evidence regarding the crime, which is used by both parties in court.
Prosecutor has highly independent role in pre-trial phase.

Investigative police directly assist the prosecutor.

The judge oversees prosecution’s presentation of evidence in mostly closed and written evidentiary proceedings.

Defense counsel reviews prosecutorial actions, with limited role in court.

Victim may offer a formal complaint on their own behalf (querella).

Accused is presumed innocent before the law.

- Prominent, unsupervised role for the prosecutor in pre-trial phase
- Direct prosecutorial oversight of police investigators
- Closed, primarily written evidentiary phase
- Use of querella as in other inquisitorial systems
Mexico’s New System: Efficiency

**PRE-TRIAL PHASE**
(juez de garantía)
- Use of principle of opportunity, plea bargaining, or mediation among parties.

**TRIAL PHASE**
(juez de sentencia)
- Oral hearing with MP & defense

**POST-SENTENCE**
(juez de ejecución)
- Works to ensure proper execution

Prosecutor may opt **not** to prosecute (principle of opportunity), confessions inadmissible.

The victim can file a suit against the prosecutor for failure to prosecute a criminal matter.

Strong role for defense council —must be lawyer— throughout the criminal proceedings.

The police gather evidence regarding the crime, which is used by both parties in court.
**Mexico’s New System: Due Process**

<table>
<thead>
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<th><strong>PRE-TRIAL PHASE</strong></th>
<th><strong>TRIAL PHASE</strong></th>
<th><strong>POST-SENTENCE</strong></th>
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Reform Implementation

The Consejo de Coordinación para la Implementación del Sistema de Justicia Penal (CCISJP) in the Mexican Interior Ministry (Gobernación) is charged with the coordination of the reforms.
Consejo de Coordinación para la Implementación del Sistema de Justicia Penal

- **Secretario de Gobernación** José Francisco Blake Mora
- **Proc. General de la Rep.** Arturo Chávez Chávez
- **Sec. de Seguridad Pública** Genaro García Luna
- **Consejero Jurídico** Miguel Alessio Robles Landa
- **CNSSP (Seguridad)** Marco Tulio López Escamilla
- **CNPJ (Procuradores)** Alfredo Higuera Bernal
- **CPTSJ (Tribunales)** Rodolfo Campos Montejo
- **SETEC** Felipe Borrego Estrada
- **Senador** Ricardo Fidel Pacheco Rodríguez
- **Diputado** Carlos Alberto Pérez Cuevas
- **Ministro** José de Jesús Gudiño Pelayo *
- **Consejo de la Judicatura** Oscar Vázquez Marín
- **Academia** Miguel Sarre Iguíniz
- **Sociedad Civil** Alejandro Martí García
State Level Judicial Reforms

Calderón administration plans to have reforms in process in all 32 states, and implemented in 19 states by 2012.

State Level Judicial Reforms

<table>
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<tr>
<th>Tier 1:</th>
<th>Advanced stages of implementation</th>
<th>Nuevo León, Chihuahua, Oaxaca, Morelos, Zacatecas, Durango, Mexico State, Baja California</th>
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<tr>
<td>Tier 2:</td>
<td>Legislation recently approved or under debate, but implementation pending</td>
<td>Aguascalientes, Yucatán, Campeche, Veracruz, Guanajuato, Sonora</td>
</tr>
<tr>
<td>Tier 3</td>
<td>Some progress, but pending debate and approval of reforms</td>
<td>Chiapas, Distrito Federal, Colima, Tamaulipas, Tabasco, Jalisco, Michoacán, San Luis Potosí, Hidalgo, Nayarit, Querétaro, Quintana Roo, Coahuila</td>
</tr>
<tr>
<td>Tier 4</td>
<td>Few signs of significant effort</td>
<td>Puebla, Baja California Sur, Tlaxcala, Guerrero, Sinaloa</td>
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Challenges for Judicial Reform
Rule of Law and Development

According World Bank studies, improving the rule of law and economic development are critically intertwined.
Three Big Challenges

• **Cost:** $750 million pesos each in NL & Chihuahua (roughly $70 million USD)

• **Impunity:** Perception that “oral trials only protect the criminals."

• **Political Uncertainty:** 2012 elections will break continuity of effort
Falling Presidential Approval

Source: Mitofsky Poll.
Return of the PRI

3.4 Preference electoral hacia la Presidencia en 2012
(Sin Candidatos)

Source: Mitofsky Poll.
How the U.S. Can Help

• Clean up our own house (guns and drugs)
• Targeted assistance to strengthen institutional capacity and community building
• Think big about our future partnership
Concluding Observations
More Information:

www.justiceinmexico.org

Dr. David Shirk
Trans-Border Institute
University of San Diego
5998 Alcalá Park, San Diego, CA 92110
www.sandiego.edu/tbi
dshirk@sandiego.edu
The National Institute on Drug Abuse (NIDA) and the Substance Abuse and Mental Health Services Administration (SAMHSA) of HHS have sponsored several national surveys to track drug use trends. One of the most widely known is the National Household Survey on Drug Abuse (NHSDA), which interviews persons age 12 and older living in households about drug and alcohol use. In 1991, the survey was expanded to include civilians living on military installations, persons living in college dormitories, and persons living in homeless shelters. Since October 1, 1992, the survey has been sponsored by SAMHSA. Earlier surveys were sponsored by NIDA. In 1999, the survey methodology changed, therefore making data from previous years incomparable. According to NHSDA (Table A), in 1979-10.1% of the population age 12 and older reported using an illicit drug in the past 30 days. Between 1999 and 2001, past month illicit drug use for persons age 12 and older increased from 6.3% to 7.1%. http://www.whitehousedrugpolicy.gov/publications/factsht/druguse/