

## Strengthening Rule of Law and Addressing Violence in Mexico

It is not an exaggeration to say that a national movement to transform the Mexican legal system is being carried out in our country. It is loud and clear in the criminal legal system, and from there, it has sprawled to other areas.

Let me explain how all this began:

In Monterrey, almost twenty years ago, a group of friends decided to act against the cruelest atrocity our criminal system had created: the treatment of the Poor; those people unjustly subjected to the Mexican criminal process with no means to defend themselves. There was no possible way out for these individuals or their families.

We set up *Renace*, a nonprofit organization, to defend such cases. It wasn't difficult to find cases that were so emblematic they could call public attention. Cases such as:

- a) A 74 year old man, with a leg prosthesis, sentenced for homicide, supposedly for participating in a gang fight of young men he had not known before; the judge never met or saw him, nor considered his physical condition, the age difference and the lack of any prior contacts with the perpetrators
- b) A young mother in jail with a sentence for seven years accused of stealing diapers for her baby; lost her freedom and her son
- c) An eighteen year old man sentenced to twelve years in prison for stealing two kilos of beef barbecue in a night of many drinks

The list could go on. After reviewing and documenting more than twenty thousand cases it became obvious to us, and to the academicians supporting our work, that most of the injustices were caused by the applicable laws and regulations as they were geared to render unrestrictive powers to the State and therefore to the authorities in charge.

Mexico concentrated its political power under the umbrella of one political party for more than seventy years; the laws therein enacted, with a certain degree, were to enable such a system to retain its quasi absolute power.

Unchallenged power was obtained, among other avenues, through granting vital discretionary power to the executive branch in areas related to criminal prosecution.

These discretionary powers were not only left at the service of the elite for political control, but also disseminated in the laws at all levels in the criminal processes: to Police, District Attorneys and Judges. All received a substantial allocation of discretionary powers.

The one party structure served as a self-controlling instrument to guarantee an orderly and timely utilization of such powers. The arrival of democracy in Mexico had the effect that the discretionary areas enthralled in the criminal laws had lost their original purpose.

What have happen with these “holes”, areas where Justice has not been served, in the last ten years?

In essence they have been grabbed by the state governments, which maintain most of the elements of the one party System within the limits of their respective territory or were left headless, at the mercy of the market forces to be taken by the ablest, not necessary by those seeking justice.

I will use some examples of how laws and regulations have perverted the criminal process in Mexico.

- a) The evidence presented by the District Attorneys at a criminal trial can't be contradicted or challenged nor even evaluated by the judges.
- b) The accused and the victims have very limited rights in the processes: neither accusers nor witnesses can be cross-examined.

- c) More than 90% of the condemnatory sentences have been based solely on the "confession" of the accused not rendered before a judge.
- d) Also, close to another 90% of the cases the presiding judges were not present when the evidences were introduced to the respective process.
- e) *Pre-trial prison* is granted automatically for most crimes making the concept of presume Innocence null; more than 50% of the prisoners are held in jail without having being sentenced by due process.

In the absence of a control, these rules entice criminal authorities to offer their legal muscle to the best bidder. Money or favors would gain favorable resolutions with all the respectability of being "legal".

As a consequence, corruption has been "institutionalized" from the lowest to the highest level of the criminal pyramid.

There is a story of a governor calling his state District Attorney asking to liberate a man accused of a homicide; how come, he said, if all the evidence is against him?; well, the governor responded, you act as always but in this instance without you receiving the 500 thousand pesos payment!

The distortion of our penal system put this vital segment outside the rule of law.

But how did we in Renace managed to make a national movement to change the system departing from an analytical point of view held by a few?

We widely e-mailed a three page letter, to be understood by anyone, stating the five cruelest atrocities of the present system and presented solutions based on changing the system from a written to an oral trial.

Our selling points were: transparency, efficiency, better rights to victims and accused, limiting the District Attorney's powers for a fairer field; and centering the process on an oral and public hearing, presided by the judge, where all the evidence and arguments need to be presented.

Simultaneously we worked with the community in Monterrey on a one-on-one basis. After three years, in 1994, we obtained from the State of Nuevo Leon the first enactment of a criminal reform, although very limited and timid as it covered only minor crimes.

However, due to the legitimacy of state power, this reform was the first official recognition that the criminal system in the country needed to be changed.

The change generated enough interest as to be taken seriously. Soon, Monterrey expanded its coverage to more crimes and expanded to issues of family, real estate, commercial leasing and minors.

The academic world of the country has been the motor of this change; thousands of jobs have been created. Magaloni, Carbonell, Sarre, Rios, Zepeda, Rabasa, Ochoa, Carrasco, Ponce and many others have contributed with talent and time to this cause.

Also it is only fair to mention that Alejandro Marti, Maria Elena Morera and Isabel Wallace, who themselves have been victims of the criminal system, have raised their voice to claim for these changes.

With this vast army the Federal Constitution was amended in 2008 making it mandatory for the country to transform, in a period of eight years, the criminal systems by adopting the concept of an oral trial.

But history proved once again that it is not linear. A tremendous violence has erupted in Mexico and President Calderon made its war a priority. Some within the Federal sphere have taken the position that the new system hinders the authorities' ability to win over the criminal organizations.

Natural resistance to change has been a factor to overcome in the many areas where the implementation of this reform has occurred.

It has taken more than three years to win over such stances; our main argument has been based on the fact that only 15% of crimes are denounced due to lack of trust in the present system.

Only a credible and robust system of justice, erected through the transparency and efficiency of an oral system, can convince people to seek justice through criminal authorities. Force, without a solid justice system can be at the service of a criminal organization.

This has been painfully obvious where most of policemen have worked for the lords of evil. In a credible frame, Police will receive better information to pursue criminals and will have an incentive to behave well since their work will be judged in a public trial.

In spite of this almost mute reaction to the constitutional amendment many tasks have been performed to prepare its implementation. For example:

a) The transformation of the Federal Police and the preparation of the Judiciary to the new rules. Works of enormous proportion in these fields.

b) We took the Streets to gain Public Opinion to our campaign.

The peak of our efforts was the film 'Presumed Guilty', which documented a trial for homicide in a Mexico City court. After more than twenty International Awards, including an Emmy for the best Investigative Report in 2011, it was viewed by more than two million Mexicans

It outraged everybody. 'Presumed Guilty' is another excellent result of the involvement of Academia in a public cause, in this case, the work of Berkeley doctoral candidates Roberto Hernandez and Layda Negrete.

c) Also the Reform process continued to progress for crimes that fall within the competence of State laws: 95% of all crimes. Today, twelve local Governments have embraced the new rules. The overall absence of a Federal model meant some states were well prepared with excellent Laws, but other states required more work.

In all of these states, people perceive that they are receiving better justice; the "acid" test of percentage of crimes denounced has improved from 15% to 25-30%.

d) Our Supreme Court has been much more open in discussing their cases, setting a precedent that is being taken in other areas of government.

Where do we stand now? President Calderon has recently sent to Congress the Initiative to implement the 2008 Constitutional Reform. It shall be The Act of Change: the Rule of Law could conquer the Criminal field and from there it could gain other territories.

We believe that a good portion of corruption shall stop. We envision that good results will continue to follow.

Putting this legal transformation into perspective: yes, it is at an early stage, but it seems irreversible; its complexities imply a cultural change that will correct many errors.

Can you imagine or dream Mexico without corruption? Well, a large group of civil organizations have begun fighting corruption by implementing change where corruption has been rampant. Our Legal System is now being strengthened.

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