

# **SEMINAR ON THE CONSTITUTIONAL REFORM TO THE JUSTICE SYSTEM IN MEXICO**

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It happened in Monterrey, down Mexico way, fourteen years ago a group of Lawyers and private practitioners from different fields decided to form a non-profit organization to assist those who had been unjustly accused of committing a crime and did not have the means to defend themselves.

We called the organization Renace, which in English corresponds literally to Re-birth, emphasizing that our mission was to try to provide another opportunity in life to those deprived of means that we considered innocent of the crimes that they were being accused of.

As Mexican lawyers we were aware that our criminal system was a very corrupt arena where, by definition, the most deprived had an insurmountable disadvantage for not having the oil that makes the system work. We wanted to be there to reverse the horrific situation where being poor was in itself was the strongest reason why someone loses their freedom and therefore is deprived any possibility for them and their families to leave poverty. More than 50% of prisoners in Mexico are accused of stealing less than one hundred US dollars and serve an average term of more than one year. Away from work, family, friends, and surrounded by criminals in inhumane conditions, they are in fact damned for life.

Renace organized and supported a group of criminal lawyers to analyze cases where strong evidences existed that the accused person was in fact innocent of the crime claimed. We were able to obtain freedom in a number of cases that caught public attention for the gross injustice that was being committed. More importantly, it provided to us a front row to watch the system working in real life and we were able to document what we experienced:

A 74 year old man with a leg prosthesis sentenced on first instance to 14 years in prison for participating in a gang fight with young men he did not know which resulted in a death. The judge never saw the accused and never considered his physical condition, the age difference with the perpetrators, or the lack of previous contact or knowledge of them.

An 18 year old sentenced to 12 years for stealing two kilos of beef barbecue after a night of drinking.

A young mother in jail for seven years for stealing diapers for her baby.

A farmer who used a rifle to hunt rabbits for the family dinner sentenced, also in first instance, to 16 years under the accusation that he was using a gun that an appointed expert classified as for the exclusive use of the army. He had inherited the gun from his grandfather and it was just an old rifle. Renace demonstrated that the appointed court expert did not have the expertise to make such classification. The judge never saw neither the supposed expert nor the rifle.

The list could go on. After reviewing more than twenty thousand cases, Renace decided to initiate a campaign for a radical change of the Mexican Criminal System.

Although it was pathetically obvious that corruption was an ever present element in all stages of the criminal judicial process, Renace focused its argument on reforming the enacted rules that apply to the judicial process, which permitted or facilitated the persistence of bribes.

For strategic purposes we limited the scope of the reform to changing only the procedural rules to avoid aligning the actors of the system, criminal lawyers, District Attorneys and judges. We demanded new laws to provide the process with more transparency and to eliminate the buying and selling of justice. Not many could oppose it, at least in public.

The following are examples of the changes we promoted:

a) Limiting discretionary powers in the investigation: The present system grants the District Attorney many discretionary powers to conduct the investigation. Among them, not only does the DA decide which evidence should form part of the process, but also what is presented has to be taken by the judge as is and cannot be contradicted. Not surprisingly, we showed that more than 95% of those accused received a guilty sentence, and that more than 85% were based on the confession of the person accused obtained by the District Attorney with no judicial intervention.

b) Formal process: The rules prescribe that the entire criminal process must be in writing, which implies, among many other negative consequences, that the evidence of a case is not presented before the judge. Statistics showed that in 90 % of the cases the presiding judge never had any kind of contact with the person being accused, the victims, the witnesses or the experts.

c) No preventive prison: More than 50% of prisoners were held in jail without having been sentenced. The constitutional guarantee that every man is innocent until proven guilty has been practically inexistent.

The combination of all these causes has had the effect that only 15% of the victims go to the authorities to denounce the crimes they've suffered. Eighty-five percent of the crimes committed in Mexico are not even sensed by radars of the anti crimes officials. The main source of impunity in México is the lack of confidence people have in the authorities.

With no political party having control in any of the two chambers of the legislature, a group of important non-profit professional organizations, with the support of academia, formed a large coalition of civil institutions to take to the people the message: the criminal process requires a total reform in order to receive the confidence and trust from the public necessary to denounce crimes in our communities.

The legislators took this agenda as a theme they all could work together on. They sensed a consensus from society at large that action was required.

The recently approved constitutional reform was the product of a civilian movement. We have great expectations that once the benefits of this reform are seen many

others changes in our legal system could occur and bring our country to higher standards of justice.

However, there are many obstacles that must be overcome before a good implementation of the constitutional text can be achieved. We have to work with 32 states and make a homogenous juris corpus together with the federal sphere, and we have to substitute centuries of old practices with a new code of conduct.

It requires not only huge educational changes but more importantly, new standards of morality.

Exposing the scandalous faults of the present system thoroughly has served as recognition of a reality no one wants anymore. It is a good starting point.

Presenting alternative laws that address these faults has had the effect of raising the level of tolerance at which people are willing to accept. There is a movement of “the no more” in this field in Mexico.

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