

## **Context and Positive Implications of the Mexican Judicial Reform**

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I would like to begin my presentation by briefly explaining the context in which the judicial reform has emerged, and then highlight what I believe are the positive implications of the reform for the criminal justice system at the state level.

When President Calderon took office, one of his key objectives was to combat organized crime. Calderon himself commented during meetings with journalists and academics that drug trafficking had advanced at an alarming rate during President Fox's six year term. Mexico found itself in a critical situation. According to his assessment, in some parts of the country drug traffickers controlled the police. That is to say, the police worked for them and they even had an informal tax system. The Mexican government had lost control and authority in some parts of the country.

Given this critical situation, Calderon decided to postpone reforms to the criminal justice system. According to Calderon, his priority would be to combat drug trafficking and reestablish public order before undertaking a reform of the institutions of the criminal justice system. Perhaps, at first glance, his strategy made sense. However, as Calderon himself learned, the reestablishment of public order had to occur hand in hand with a profound reform of these institutions; these efforts had to occur in parallel.

Undertaking a reform of the criminal justice system offered two substantial benefits. On one hand, crime in general – and drug trafficking in particular – can in large part be attributed to the weakness of these institutions. The institutions of the

criminal justice system are characterized by high levels of corruption, poor quality of service, and an acute lack of professionalism. This criticism applies across the board to the police, prosecutors and judges. How does one combat crime when the police work for drug traffickers? Or when criminal investigators do not know how to investigate?

On the other hand, ordinary citizens in many parts of the country confront public safety issues every day that have little or nothing to do with drug trafficking, such as robbery, homicide, and assault. These are the crimes that undermine the quality of life of all Mexicans, and the solution to these crimes cannot simply wait until the government finishes its fight against drug trafficking and other forms of organized crime. These crimes are investigated, prosecuted and punished by criminal justice institutions at the state level and not by the Federal government. Thus, at the state level jurisdiction, it was clear that in order to begin reducing the levels of impunity, criminal justice institutions required dramatic improvements, and reforms that would assure citizens that they could trust their work. Delaying the reforms of these institutions was neither ethically correct nor politically strategic. Mexicans deserve a better criminal justice system and immediate action to achieve this long term goal.

The great challenge that the approval of the constitutional reform posed and that the implementation process will entail is the following: to find an adequate balance between the steps that the Mexican Government will have to take in order to address the immediate crisis posed by drug trafficking, while, at the same time, gradually implementing criminal justice reforms at both the state and federal level.

This will entail a complex restructuring process. The two objectives- combating organized crime and professionalizing the criminal justice system- may exclude each other in the short term and therefore should clearly be differentiated so that one strategy does not contaminate the other. In the end, I believe that Constitutional reforms successfully differentiated the issue of organized crime, which is solely under the Federal jurisdiction, from the reforms that state criminal justice institutions have to undergo. I believe that, at this moment, it is in the state jurisdiction where we should focus our energies, as this is where 95 percent of criminal reports are filed.

Given this context for the reform, which helps us to understand its content and the complexity of the problems that the reform needs to address, I would like to dedicate the remaining time of my presentation to discussing the positive implications of the constitutional reforms for local institutions.

The reform of the criminal justice system at the sub-national level has three main public policy objectives: 1) professionalize criminal investigation; 2) raising due process standards and reduce the arbitrary manner in which public officials currently operate and 3) increase citizens' trust and satisfaction with the system.

How does the reform intend to create the incentives to professionalize criminal investigation? There are several ways in which the reform positively addresses this issue. Due to time constraints I will only mention the aspect that seems to be the most relevant to me. During the investigation phase, the evidence collected by the prosecutor will not have legal weight per se until tested at the trial hearing. This means that the prosecutor can no longer keep the defendant or the witnesses' hostage while conducting his investigation; the prosecutor can no longer

alter nor hide forensic evidence; nor will he be able to manipulate the evidence or distort the written statements to wrongly convict an innocent party.

Today, according to a study conducted by CIDE in Mexico City, 93% of the people that are accused of having committed a crime are detained red handed. This is, they are detained without conducting a prior investigation. According to this study, 47% have been convicted of theft, without violence, of quantities of less than USD\$200. While petty criminals are harshly punished, high profile criminals go free. This is due mainly to the lack of capacity of criminal investigators to investigate more complicated cases.

The reform states that in order for the prosecutor to prove that the defendant is guilty, he will now have to present the evidence in a public hearing, in front of a judge, the defendant, his or her defense attorney, and the public in general. If this system is correctly implemented, it will generate the necessary incentives to force prosecutors to properly investigate crimes; to build a strong case against the defendant that can stand the cross-examination of the defense. This new system will also create incentives to avoid some of the worst abuses: maintaining defendants incommunicado; arbitrary detentions; the presentation of fabricated evidence. The prosecutor now has incentives to professionalize his work because he has to publicly defend his case using forensic evidence and establishing a solid theory of the case which will be rebutted by a strong defense. Today, the piles of paper that prevail in the current system serve only to hide the arbitrary and inefficient work of the prosecutor.

In regard to the second main objective of the reform- raise due process standards and reduce the arbitrary manner in which criminal justice officials usually

work- the improvements are categorical. To begin with, incentives will inhibit the authoritarian practices of the prosecutor during the investigation phase. The reform creates the figure of a “control judge” whose primary task is to verify that both the police and the prosecutors do not infringe the constitutional rights the defendant; in the case they do, the judge has the power to reject any illegally obtained evidence in court and to sanction illegal detentions. Today, according to CIDE’s study, in Mexico City, 70% of the people that have been indicted have been held incommunicado by the prosecutor and 72% have not had an attorney during the police interrogation. If the reform is correctly implemented, these authoritarian practices will be reduced.

Furthermore, article 20 of the Constitution explicitly establishes an improved repertoire of due process the rights of the victims and the defendant, as well as a new process in which these rights are guaranteed. All decisions regarding the legality of the judicial and police processes are established in public hearings, in the presence of a judge and the interested parties. This newly established transparency will make it much harder to hide authoritarian and corrupt practices.

In sum, although the constitutional amendments are far from ideal or perfect, I believe that this is the most serious and substantial attempt to reform Mexico’s criminal justice system and to transform its obsolete institutions in the past three decades. The constitutional framework is only the first step. The implementation process is by far a much complex and long term struggle. According to the reform, the reform process will take eight years. Therefore, it is fundamental that the context of the reform be fully understood through public and academic debate in national and international forums. This is the only way in which effective public

monitoring and evaluation of the progress of the reform's implementation can take place.