



# Mexico's *Petite Révolution*: Justice and Security Implications of Approving a Fully New Code of Judicial Procedures

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Mexico's Federal Congress is about to vote on a bill that represents the most profound change to Mexico's judicial procedures since its revolution<sup>3</sup>. This is a silent but quite consequential change, happening right at our border, which will powerfully affect how justice is secured and executed. The bill proposes the creation of a Single Code of Penal Procedures, a single law that will regulate all judicial procedures in Mexico. While this was unthinkable just a couple of years ago, the bill has ignited a profound debate about the future viability of Mexico's federalism, a country that, as of today, allows each of its 32 states to have their own independent code. Indeed, Mexico's federal logic, according to which each state-level congress dictates the rules of their justice system, is facing a revolution.

This paper analyzes the implications of the approval of a Single Code, the fundamental ways in which it will change judicial procedures in Mexico, the main arguments given by its detractors and supporters, and the main benefits and challenges that its approval will pose for a country that faces large-scale criminal violence and low citizen's trust in their authorities.

## ***A Petite Révolution That Could Not Wait***

The creation of a new Code of Penal Procedures in Mexico is an overdue task for its federal legislators. In June of 2008, Mexico approved a reform to transform its judicial system from inquisitorial to accusatorial thus requiring all Mexican penal procedures codes to be adapted (Ingram and Shirk 2010). A period of 8 years was given for changes to take place in all 33

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<sup>2</sup> The rest of her work is available here: <http://www.gov.harvard.edu/people/viridiana-rios-contreras>

<sup>3</sup> There have been four codes in all Mexico's history (1880, 1894, 1908 and 1934), and only one after Mexico's 1917 revolution (López-Betancourt 2011). If approved, the new code will be the first judicial change of such magnitude in almost a century.

Mexican codes (32 states and one federal). Yet, three years before the deadline, about 60% of the codes have not been changed and no serious discussion about how to change the federal code has taken place (Gutiérrez-Muñoz 2013).

After Mexico's judicial reform of 2008, there were many judicial procedure rules that needed to be changed. Today's Mexico is still ruled by a federal code written in 1934, under the rules of a judicial system that is rapidly expiring. Rules need to be created for a new judicial system that, unlike the previous one, privileges oral litigation and foments restorative justice via mediated solutions. Procedures need to provide legal foundations to use preventive prison only as an exceptional mechanism, and most importantly, to fully endorse the now explicit "innocence presumption," i.e. the obligation of Mexican authorities to presume as innocent everyone charged with a criminal offence, as long as their responsibility has not been declared in a sentence issued by the judge.

### **The Need for a Single Code of Judicial Procedures**

Yet, even if a redefinition of Mexico's Code of Penal Procedures was fully expected, what was not expected was that such redefinition would come in the form of a single code<sup>4</sup>.

Voices favoring the creation of a unified penal code had long been part of legal debates without success<sup>5</sup>. Detractors were fast to argue that a single code would violate Mexican states' sovereignty and the country's federal pact. States defended their right to dictate their own laws and to prosecute their criminals in the ways that better reflected the needs of their own citizens (Ontivero-Alonso 2013). Until now.

In a somehow unexpected move, in September of 2013, Mexico's senate approved a constitutional reform to bestow the Federal Congress the faculty to create a single code, setting the legal terrain for a *petite révolution*. In just a couple of months, three initiatives for a single code were sent to the congress and by November of 2013, a single proposal that fused these three was under consideration.

The reason why detractors' voices had become increasingly quiet (and supporters had gone viral) was simple: pragmatism.

After Mexico's 2008 reform, some states had already started to change their local codes of penal procedures to implement accusatory systems, but changes were uncoordinated and unordered thus allowing for much judicial experimentation and many failures. Until June of 2013, only 3 out of 32 states (i.e. Chihuahua, Mexico State and Morelos) had an accusatory code operating in all of its territory. Another 10 states had a code that was partially accusatory, either only allowing oral trials for some crimes or in only in operation in some regions (mostly urban) (Gutiérrez-Muñoz 2013).

Furthermore, each state's code was different, creating much confusion and promoting a system where criminals were judged with different procedures depending on where or when the crime had

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<sup>4</sup> Internationally, there are many nations with a unified code (Germany, Venezuela, Czech Republic and Brazil) and many more without it (Switzerland, Canada, the U.S. and Argentina) (IJ 1960).

<sup>5</sup> Actually, even before 2008's judicial reform, a serious discussion about the unification of penal and civil codes happened in 1960, and again in 2007 (Nader-Kuri 2013).

been committed. While Chihuahua had implemented accusatorial procedures for all its crimes, Nuevo Leon allowed oral trials just in civil cases. Further, Chihuahua implemented its rule change homogeneously across the state while Hidalgo did not. Hidalgo's rules depended on population density.

Support for a single code in Mexico has increased because without it, local experimentation would continue, not only affecting Mexico's capacity to impart justice but also its ability to change laws in a timely fashion. For example, a potential risk is that some states do not approve their required new codes on time for the end of the 2008 reform's *vacatio legis*. Indeed, by 2013, 55 civil organizations in Mexico had publicly accepted the move toward a single code (Mexico SOS 2013), and it is expected that by the end of the year, the single code will finally be voted on and approved in Congress.

### **Benefits and Challenges of a Single Code**

Approving a single code in Mexico entails repealing 33 codes and will have many positive outcomes.

First, very preliminary evidence seems to point toward accusatorial procedures (rules like the ones the single code will implement) being fairer to defendants and to reducing overall wrongful convictions (Nichols 2011). If this evidence is true, we should expect short-term improvements in justice in Mexico as soon as a single code rules all its territory.

Second, a single code will homogenize the processes used to judge criminals, reducing incentives for crime tourism and for the strategic migration of crime to states with less efficient penal procedures. It will allow all Mexican states to rely on the same criteria to implement preventive measures, and to have the same number of judicial process steps, the same criteria for mediation and restorative justice, and equal rules to judge crimes (Nader-Kuri 2013).

Third, a single code will also facilitate the professionalization of Mexico's judicial authorities and will reduce the crimes that affect Mexico the most. Training programs for prosecutors, public defenders and judges will be a blue print, a course imparted in all Mexican states creating economies of scale and reducing costs. Most importantly, with similar training, coordination between authorities will be facilitated<sup>6</sup>. Recent research has shown that coordination is crucial to deter the crimes that affect Mexico the most, increasing the probability of enforcement operations against organized crime (Dell 2010), reducing drug trafficking (Rios 2014), and drug-related violence (Gutierrez 2014).

Finally, by creating a single procedure for justice, the single code will make processes simpler to understand and avoid procedural holes that promote impunity. As of now, each one of the 33 existing codes adds to 16,500 articles regulating judicial procedures that are significantly different across the territory. For example, investigations differ in length. While investigations last 8 months in Chihuahua, they only last 6 months in the State of Mexico (Alday 2012). Furthermore, some procedures are regulated in some codes and not in others. Cassation, a legal form to nullify a

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<sup>6</sup> Coordination will be indirectly promoted by the single code but not regulated by it. Important efforts will be needed to teach authorities to better cooperate (Nader-Kuri 2013).

judicial sentence because of procedural or interpretation errors, is regulated in the code of Chihuahua, and not in many more codes within Mexico (Alday 2012).

Yet, the implementation of the single code will face some challenges.

First, as usual, the devil will be in the details. The details of the organization of judicial institutions will be dictated locally as state-level regulations. States may create institutions, like tribunals and institutions to impart restorative justice, with different levels of quality—even if all are based on the single code.

Moreover, if the single code does not regulate all judicial procedures with an adequate level of detail, states may use their discretion to regulate legal gaps, creating important regional imbalances in access to justice. A clear example of perverse state differences created by federal legal gaps is “investigative detention.” Investigative detention is a practice that Mexico is fighting to eliminate due to its negative consequences for human rights protection (CMDPDH et al 2011). Yet, because such practice is not fully regulated through federal laws, states have regulated the details of its application, making it very difficult to eradicate (Nader-Kuri 2013). In 2010, there were 364 investigative detentions at the state level, meaning more than three hundred people who were *de jure* innocent, were detained while evidence of their culpability was being gathered by state prosecutors (CMDPDH et al 2011).

Second, the public acceptance of the single code will not be easy. The single code tries to avoid costly and long trials by relying more on mediation and justice resolution. These “alternative” judicial procedures are generally perceived as inefficient by Mexican citizens. In a country where preventive imprisonment is the norm, the idea of allowing criminals to leave prosecutor’s offices without being at least temporally imprisoned is perceived as a failure of justice. Such has been the experience of Chihuahua, one of the pioneering states in changing its local code of penal procedures. Chihuahua citizens even tried to create a counter-reform, to avoid further implementation of adversarial judicial procedures.

Third, prosecutors and lawyers will not accept changes easily, and it will be costly to re-train them. At some point after the approval of a single code, most of Mexico will likely resist the new rules of its judicial system, because the single code will create a new set of rules that many states had never followed before. Everybody will need to catch up and learn how to conduct a trial again. All Mexican lawyers will need to learn adversarial procedures and, even more difficult, will need to develop skills that they have never cultivated, such as oral argumentation. The amount of resources to train them and to create adequate physical spaces to conduct oral trials has been calculated by Mexican authorities to be about 5 billion dollars (64,900 million Mexican pesos). This amount of resources is only possible with the help of the United States (Lee 2010).

Finally, even if a single code is approved, all 33 older codes and their recent adaptations will be valid until all cases that started under such legislations come to an end. As a result, for an undetermined period of time, Mexico will have up to 80 valid procedural codes, causing much temporal confusion (De la Rosa 2013). Implementation timing thus will be crucial to define when and where the new code will be implemented. It is unclear which will be the best outcome. Implementation times for these new codes will be defined legally, but in practice, fully endorsing

these new procedures will take a much longer and be will no doubt meet unexpected challenges along the way.

Overall, the main reason why Mexico needs a new code is simple: Mexican criminal justice system is simply not working. The old inquisitorial procedure is secretive, slow, and prone to corruption (Shirk 2011). There are many human rights issues raised by the current rules of Mexican trials, which lack transparency and have indiscriminately extended the use of preventive imprisonment, a mechanism that keeps presumed criminals (de facto innocents) in prison while evidence about their presumed crimes is gathered by state prosecutors. A new code of procedures is needed to regulate and put into practice the good reforms that Mexico approved in 2008, to reduce the number of people in prison without sentence, to give priority to the prosecution of the most harmful crimes, and to stimulate transparency by promoting public trials. Without a doubt, times are changing in Mexico – let the times of its *petite judiciaire révolution* begin.

## References

Alday, Fernando “Cuadro Comparativo Códigos de Procedimientos Penales” en De Derechos y Otras Perversiones. Mayo 1, 2012.

CMDPDH et al. “Informe sobre el impacto en México de la figura del arraigo penal en los derechos humanos, presentado ante la Comisión Interamericana de Derechos Humanos” document by CMDPDH, CEJIL, COMDH, CCDH, FIDH, I(dh)eas, IMDHD. Washington, D.C.: March 28th, 2011.

De la Rosa, Carlos “Códigos vemos, transitorios no sabemos” por CIDAC Tanque Pensante, Animal Politico, September 19th, 2013.

Dell, Melissa. "Trafficking networks and the Mexican drug war." Unpublished manuscript, MIT (2013).

Gutiérrez-Muñoz, Jorge Arturo “El Código Único de Procedimientos Penales en México: Tres Iniciativas, Una Respuesta.” Instituto de Justicia Procesal Penal. Mexico City: July 9th, 2013.

IJJ (Instituto de Investigaciones Jurídicas) Revista de la Facultad de Derecho de México. UNAM. No 37-38-39-40 Jan-Dec, 1960

Ingram, Matthew C., David A. Shirk, Trans-Border Institute, and United States of America. "Judicial Reform in Mexico: Toward a New Criminal Justice System." Special Report (2010).

Lee, Zachary J. "Wrestling with Mexican Criminal Procedure: How Law Schools in the United States and Mexico Can Team up to Rebuild Mexico's Criminal Trial." Hous. J. Int'l L. 33 (2010): 53.

López-Betancourt, Eduardo “Breve Historia de la Codificación Penal en México” in Transición Mexico: November 11th, 2011.

Mendoza-Mora, Carlos et al. Analisis costo-beneficio del nuevo sistema de justicia penal en los ámbitos federal y estatal. Secretaría Técnica de Coordinación para la Implementación del Sistema de Justicia Penal. SEGOB, 2012, pg. 39.

Mexico SOS “Codigo Procesa Penal Unico” Documento Interno, Mexico SOS: 2013.

Nader-Kuri, Jorge. Member of Mexican Academy of Penal Sciences, Interviewed in Mexico City, November 2013.

Nichols, Denton Patrick (May 2011). Justicia en reforma: a diagnostic of Mexico's criminal procedure reform in early-implementer jurisdictions. Doctoral dissertation, University of Texas at Austin. Available electronically from <http://hdl.handle.net/2152/ETD-UT-2011-05-3539>

Ontiveros-Alonso, Miguel “La unificación penal en México” Consejo Para el Nuevo Sistema de Justicia Penal. Michoacán, Mexico: June 17th, 2013.

Rios, Viridiana. "How Government Structure Encourages Criminal Violence: The causes of Mexico's Drug War." PhD diss., Harvard University, Department of Government. Cambridge, Massachusetts, 2012.

Shirk, David A. "Justice Reform in Mexico: Change & Challenges in the Judicial Sector." In Olson, Eric L., David A. Shirk, and Andrew Selee. Shared responsibility: U.S.-Mexico policy options for confronting organized crime. Woodrow Wilson International Center for Scholars, 2011.