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# Supporting Criminal Justice System Reform in Mexico: The U.S. Role

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## Summary

Fostering security, stability, and democracy in neighboring Mexico is seen by analysts to be in the U.S. national security and economic interest. Reforming Mexico's often corrupt and inefficient criminal justice system is widely regarded as crucial for combating criminality, strengthening the rule of law, and better protecting citizen security and human rights in the country. Congress has provided significant support to help Mexico reform its justice system in order to make current anticrime efforts more effective and to strengthen the system over the long term.

U.S. and Mexican officials assert that fully implementing judicial reforms enacted through constitutional changes in June 2008 is a key goal. Under the reforms, Mexico has until 2016 to replace its trial procedures at the federal and state level, moving from a closed-door process based on written arguments presented to a judge to an adversarial public trial system with oral arguments and the presumption of innocence until proven guilty. These changes are expected to help make the system less prone to corruption and more transparent and impartial. In addition to oral trials, judicial systems are expected to adopt means of alternative dispute resolution, which should help them be more flexible and efficient, thereby ensuring that cases that go to trial involve serious crimes.

More than halfway into the reform process, judicial reform efforts in Mexico are at a critical juncture. As of December 2012, 22 of Mexico's 32 states had enacted new criminal procedure codes (67%), but only 12 states (36%) had begun operating at least partially under the new system. Reform states have seen positive initial results as compared to non-reform states: faster case resolution times, less pre-trial detention, and tougher sentences for cases that go to trial. Daunting challenges remain, however, including counter-reform efforts and opposition from some key justice sector operators (including judges). Although reform efforts have lagged at the federal level, President Enrique Peña Nieto, inaugurated in December 2012 to a six-year term, has said that advancing judicial reform will be a top priority. U.S. policymakers are likely to follow how the Peña Nieto government moves to enact a unified penal code and code of criminal procedure to hasten reform at the federal level and to increase support to states transitioning to the new system.

The United States has been supporting judicial reform efforts in Mexico since the late 1990s, with assistance accelerating since the implementation of the Mérida Initiative in FY2008, an anticrime assistance program for which Congress has provided \$1.9 billion. While the Mérida Initiative initially focused on training and equipping Mexican security forces, it now emphasizes providing training and technical assistance to help reform Mexico's justice sector institutions. Funding for "Institutionalizing the Rule of Law" now dwarfs other types of U.S. assistance to Mexico.

This report provides an overview of Mexico's historic 2008 judicial reforms and an assessment of how those reforms have been implemented thus far. It then analyzes U.S. support for judicial reform efforts in Mexico and raises issues for Congress to consider as it oversees current U.S. justice sector programs and considers future support to Mexico. Also see CRS Report R41349, *U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond*, by (name redacted) and Kristin M. Finklea.

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## Introduction

Since 2007, violence perpetrated by warring criminal groups has wreaked havoc on Mexico, partially as a result of the weakness of the justice sector institutions responsible for combating them.<sup>1</sup> Ineffective and often corrupt police forces, weak and unaccountable prosecutors, and an overcrowded and disorganized prison system have undermined anticrime efforts. Recent spikes in violence and criminality have overwhelmed Mexico's justice sector institutions, with record numbers of arrests rarely resulting in convictions. On average, fewer than 20% of homicides have been successfully prosecuted with convictions, suggesting high levels of impunity.<sup>2</sup>

Over the last five years, Congress has devoted considerable resources—close to \$2 billion—and oversight attention to supporting Mexico's efforts to address a security crisis that has been fueled in part by U.S. drug demand and illicit southbound flows of weapons and money. U.S. assistance under the Mérida Initiative<sup>3</sup> has increasingly focused on supporting Mexico's efforts to reform its justice sector institutions in order to reduce corruption and impunity. Judicial reform is one part of that effort. Policy analysts contend that until Mexico's judicial system is able to prosecute and punish crime, the effects of law enforcement efforts against criminal groups will be limited.<sup>4</sup>

The U.S. government is providing significant support for judicial reform efforts in Mexico at a time when those reforms are at a critical juncture. Progress has moved forward in many states, but is stalled at the federal level. Without political will and investment from the new Enrique Peña Nieto Administration, both the federal government and the states may not meet the 2016 constitutional deadline for implementing judicial reforms enacted in 2008. Should the reforms move forward, the U.S. Congress may consider how best to support them. Should the reforms falter, Congress may question the value of continuing U.S. assistance for judicial reform.

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<sup>1</sup> From 2007-2011, homicides, kidnappings, and other violent crimes increased dramatically in Mexico, with those increases largely due to violence perpetrated by drug trafficking organizations (DTOs) and other organized crime groups. While the violence leveled off or decreased in 2012, it likely resulted in some 64,000 deaths during the Felipe Calderón Administration (December 2006-November 2012). See: Cory Molzahn, Octavio Rodriguez Ferreira, and David A. Shirk, *Drug Violence in Mexico: Data and Analysis Through 2012*, Trans-Border Institute (TBI), University of San Diego, February 2013. Targets of the violence in Mexico have often included rival criminal organizations, but also included Mexican security forces and public officials, journalists, and civilians. For background, see: CRS Report R41576, *Mexico's Drug Trafficking Organizations: Source and Scope of the Rising Violence*, by (name redacted).

<sup>2</sup> See: Guillermo Zepeda, *Seguridad y Justicia Penal en los Estados: 25 Indicadores de Nuestra Debilidad Institucional*, Mexico Evalua, March 2012, available at: [http://mexicoevalua.org/descargables/979b28\\_Seguridad-y-Justicia-Penal-en-los-estados.pdf](http://mexicoevalua.org/descargables/979b28_Seguridad-y-Justicia-Penal-en-los-estados.pdf). Hereinafter: Zepeda, March 2012.

<sup>3</sup> The Mérida Initiative is a U.S.-Mexico security partnership focused on four pillars: (1) disrupting organized criminal groups, (2) institutionalizing the rule of law, (3) building a 21st century border, and (4) building strong and resilient communities. For background, see: CRS Report R41349, *U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond*, by (name redacted) and Kristin M. Finklea.

<sup>4</sup> Vanda Felbab-Brown, *Peña Nieto's Piñata: The Promise and Pitfalls of Mexico's New Security Policy Against Organized Crime*, Brookings Institution, February 2013, Hereinafter Felbab-Brown, 2013, available at: <http://www.brookings.edu/research/papers/2013/02/mexico-new-security-policy-felbabbrown>.

# Judicial Reform in Mexico: Key Elements

## Weakness of the Traditional Criminal Justice System

Mexico's traditional criminal justice system evolved during a period when Mexico experienced 70 years of one-party rule under the Institutional Revolutionary Party (PRI) and presidential power predominated over a weak Congress and judiciary. Although the 1917 Mexican Constitution contained individual guarantees (for victims and the accused) and provided for the presumption of innocence and jury trials, many of those provisions were never implemented.<sup>5</sup> Mexico developed a hybrid criminal justice system containing elements of inquisitorial criminal procedures<sup>6</sup> but with the public prosecutor, rather than a judge, taking a central role in overseeing investigations and in determining a suspect's guilt or innocence. Without due process guarantees and an independent judiciary, some argue that the executive branch, acting through the public prosecutor, used the courts as a means of political control (i.e., a way of punishing its opponents).<sup>7</sup>

Under the traditional system, prosecutors have wide latitude during the investigatory stage of a case to gather evidence however they deem appropriate that is then submitted to judges in a written dossier that is rarely challenged. Dossiers often center on the confession of the accused, with potentially coerced confessions frequently occurring<sup>8</sup>, or on unverified eyewitness identifications. Judges then render their decisions behind closed doors. Although 85-90% of crimes brought to trial result in a conviction, in fact, less than 25% of crimes in Mexico are reported and, of those, only a small number are investigated and prosecuted, implying that only a small portion of the country's crimes are seriously addressed (see **Figure 1**).<sup>9</sup> The likelihood of a guilty verdict is particularly high for cases involving poor people who have committed minor offenses.<sup>10</sup>

The Mexican criminal justice system has been widely criticized for being opaque, inefficient, and corrupt. Two of its key actors—police and public prosecutors—are viewed by 66% and 43% of Mexicans respectively as frequently engaged in corruption.<sup>11</sup> The judicial system itself has long been plagued by long case backlogs, high pre-trial detention rates, and an inability to secure convictions for serious crimes (see **Figure 1**). On average, fewer than 13% of cases are resolved

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<sup>5</sup> The Mexican Constitution is available in Spanish at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>. For information on individual guarantees, see Articles 14, 16, and 18-23. For more on the legal foundations for Mexico's criminal justice system, see: David Shirk, "Criminal Justice Reform in Mexico: An Overview," *Mexican Law Review*, vol. III, no. 2 (January-June 2011), pp. 199-200. Hereinafter: Shirk, 2011.

<sup>6</sup> Inquisitorial criminal procedures are common in countries with civil law traditions. They generally involve a judge supervising the investigatory phase of a case and playing an active role in questioning witnesses at hearings and trials.

<sup>7</sup> CRS phone interview with Ernesto Canales, Chairman of the Board of RENACE (the National Network of Civic Organizations in Support of Oral Trials and Due Process), November 15, 2012.

<sup>8</sup> Shirk, 2011.

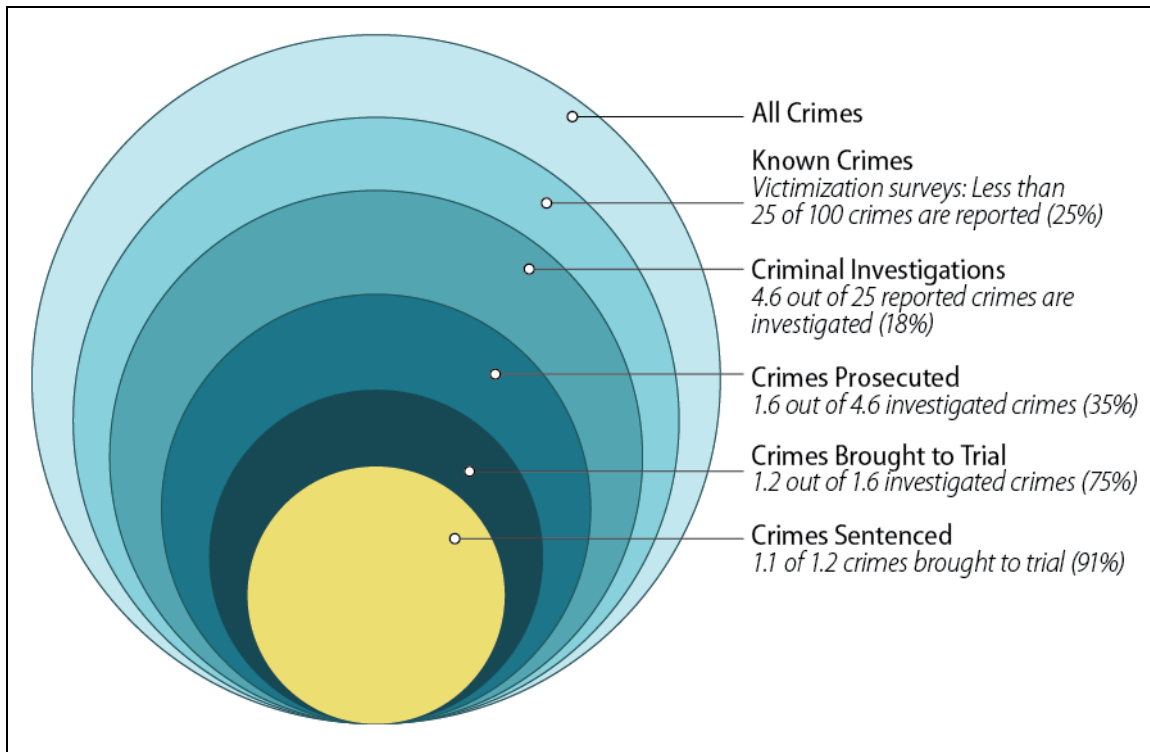
<sup>9</sup> The 85% estimate is from Mexico's Center for Investigation and Economic Research as cited in: David Luhnow, "Presumption of Guilt," *Wall Street Journal*, October 17, 2009. The 91% estimate is from: Guillermo Zepeda Lecuona, *Crimen Sin Castigo: Procuración de Justicia Penal y Ministerio Público en México* (Fondo de Cultural Económica, 2004). This calculation is still widely cited. See: Shirk, 2011, p. 195.

<sup>10</sup> Shirk, 2011, p. 196.

<sup>11</sup> Gobierno Federal de Mexico, Instituto Nacional de Estadística y Geografía (INEGI), "Presenta Inegi Encuesta Sobre Calidad de Trámites y Servicios del Gobierno," press release, October 16, 2012.

at the state level (where more than 90% of cases are prosecuted).<sup>12</sup> During the Felipe Calderón Administration (December 2006–November 2012), Mexico extradited record numbers of criminals to the United States, but its Attorney General’s Office (PGR) proved unable to convict any major leaders of Mexican drug trafficking organizations.<sup>13</sup> The PGR has also been unable to secure charges in many high-profile cases involving the arrests of politicians accused of collaborating with organized crime.<sup>14</sup>

**Figure I. Life Cycle of Crimes in Mexico**



**Source:** David Shirk using data gathered by Guillermo Zepeda Lecuona, *Crimen Sin Castigo: Procuración de Justicia Penal y Ministerio Público en México* (Fondo de Cultural Económica, 2004).

**Note:** This graphic is still widely cited as a representation of the life cycle of a crime in Mexico under the traditional justice system. It depicts data from before any states had begun operating under the new system.

Dysfunction in the judicial system has resulted in overcrowded prisons, particularly at the state level, that are in significant need of reform. Increasing arrests have caused prison populations to swell, as has the use of preventive detention. (See “Provisions on Organized Crime”). Some 40% of inmates in Mexico’s prisons are awaiting trials, as opposed to serving sentences.<sup>15</sup> As of July 2011, prisons were at 23% over-capacity.<sup>16</sup>

<sup>12</sup> Zepeda, March 2012.

<sup>13</sup> William Booth, “Mexico’s Crime Wave has Left About 25,000 Missing, Government Documents Show,” *Washington Post*, November 29, 2012.

<sup>14</sup> Patrick Corcoran, “Mayor Goes Free, Mexico Fails Again to Prosecute ‘Corrupt’ Politicians,” *In Sight Organized Crime in the Americas*, July 21, 2011.

<sup>15</sup> U.S. Department of State, *2011 Country Report on Human Rights Practices: Mexico*, May 2012.

<sup>16</sup> *Ibid.*

These problems in Mexico's judicial and penal systems are not new. They have been problematic for decades, but have been exacerbated by the recent uptick in violence and criminality in the country. For example, crime victimization surveys that have typically shown that fewer than 25% of crimes are reported in Mexico, evidence of the Mexican people's lack of faith in their justice system (see **Figure 1**). Surveys from 2012 show an even lower percentage of crimes being reported—just 13%.<sup>17</sup> Communities in some states where the police and judicial systems are particularly weak have begun to form armed “self-defense” groups, which many, including Mexico's National Human Rights Commission, view as a worrisome development.<sup>18</sup>

## The Reforms

The push for judicial reform in Mexico began in the 1990s at the federal and state level. Reforms enacted by President Ernesto Zedillo in 1994 aimed to strengthen the power and independence of the federal judiciary vis-à-vis the other branches of government. At the state level, reformist lawyers became increasingly concerned about the lack of due process in Mexico's judicial system, particularly for poor individuals who lacked access to legal counsel.<sup>19</sup> The movement included lawyers, academics, and human rights advocates. It proved to be particularly strong in Nuevo León, which became the first state to introduce adversarial procedures in 2004. Chihuahua and Oaxaca states soon followed. Each of those early reform states received significant technical assistance from the U.S. Agency for International Development (USAID).<sup>20</sup>

In 2004, the first National Action Party (PAN) Administration of Vicente Fox (2000-2006) proposed comprehensive federal judicial reforms. Those reforms failed to pass, but drew popular attention to the weaknesses in Mexico's traditional criminal justice system. Support for federal level judicial reform grew over the next few years until it was enacted with broad, multiparty support in March 2008 under the PAN Administration of President Calderón. The reforms, which involved several constitutional changes, took effect on June 18, 2008. Both U.S. and Mexican officials assert that fully implementing the 2008 judicial reforms is a key goal and a focus of bilateral efforts under the Mérida Initiative, the bilateral security program begun in FY2008. (For more on the Mérida Initiative, see: “U.S. Assistance” section below).

Under the judicial reforms, Mexico has until 2016 to replace its trial procedures at the federal and state level, moving from a closed-door process based on written arguments to an adversarial public trial system with oral arguments and the presumption of innocence until proven guilty. These changes should make the system more transparent, participatory (including a greater role for victims, judges, and defense attorneys), and impartial. In addition to oral trials, judicial systems are expected to adopt means of alternative dispute resolution, which should help make them more flexible and efficient, thereby relieving backlogs and ensuring that cases that go to

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<sup>17</sup> Gobierno Federal de México, *INEGI, 2012 Encuesta Nacional de Victimización y Percepción Sobre Seguridad Pública*.

<sup>18</sup> “Mexico: Mixed Reactions to Spread of ‘Self-Defense’ Groups,” *Latin America Weekly Report*, February 21, 2013.

<sup>19</sup> Octavio Rodríguez Ferreira, “Civic Engagement and the Justice System Reform in Mexico; the Role of Civil Society in Reforming Criminal Justice,” in forthcoming volume: *Building Resilient Communities: Civic Responses to Violent Organized Crime in Mexico* (Woodrow Wilson Center's Mexico Institute and the Trans-Border Institute at the University of San Diego, Expected in 2013).

<sup>20</sup> From 2004-2007, U.S. Agency for International Development (USAID) assistance to states transitioning to a new criminal justice system totaled roughly \$15.5 million. For background, see: USAID, *Mexico Rule of Law Strengthening: Final Report to USAID, July 6, 2004 to September 30, 2007*, December 31, 2007.

trial are for serious crimes. In order to be successful, Mexico's transition to this New Criminal Justice System (NCJS) will require structural, cultural, and systemic changes to Mexico's law enforcement and judicial institutions, including fundamentally retraining justice sector operators. The transition could take decades to fully take hold. The NCJS will have to be carefully adapted in states with indigenous populations that have their own traditional justice systems.<sup>21</sup>

Mexico's judicial reforms seek to create a system that involves a more equal balance of power between prosecutors and defense attorneys and a more active role for judges. The reforms aim to check some of the discretionary power formerly held by public prosecutors. Under the NCJS, prosecutors are expected to present and defend the evidence they and the police whom they oversee have gathered at a public trial where it may be challenged by the defense. Defense attorneys are given the opportunity to challenge the evidence presented by the prosecution, cross-examine witnesses, and present evidence to support their client's innocence. The reforms also envision a more active and high-profile role for judges by, for example, requiring sentencing judges to arbitrate trial proceedings and then render their decisions out in the open.

Key elements of the reforms include:

- **Investigation.** A greater role will be given to police in investigations under the guidance of the public prosecutor; evidence gathered can be contradicted in an oral, public trial, and convictions can no longer be made based upon confessions alone. This phase of the judicial process will be abbreviated and less formal.
- **Pre-trial detention.** The use of this will be limited to violent crimes.
- **Creation of new judgeships for each stage of criminal proceedings.** This aims to strengthen judicial impartiality by ensuring that the judge who decides that there is enough evidence to send a case to trial (the due process judge) is not the same judge who presides over the trial phase and issues the final verdict (the sentencing judge). While one judge will preside over most trials, some will function as grand juries and have three judges presiding. The reforms also create a sentencing implementation judge who is to determine when a prisoner has fulfilled the terms of his or her sentence and to monitor processes of restorative justice (including agreements between victims and perpetrators reached through alternative dispute resolution). Individual judges can play all three roles as part of their duties, but not on the same case.
- **Alternative methods of resolving cases.** This includes plea bargaining and alternative justice mechanisms that may result in compensation agreements between victims and perpetrators.
- **Hearings and trials.** Under this reform, hearings and trials are to be conducted in public; attended by judges, prosecutors, and public defenders; based on oral arguments; and videotaped for the record.

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<sup>21</sup> The Due Process of Law Foundation (DPLF) is working to ensure that indigenous rights are protected during the criminal procedure reform process. For their recommendations, see: DPLF, *La Protección de los Derechos de los Pueblos Indígenas a Través de un Nuevo Sistema de Justicia Penal: Estados de Oaxaca, Chiapas, Guerrero*, 2012, available at: <http://dplf.org/uploads/1337272027.pdf>.



- **Open trials and decisions.** This reform requires judges to render decisions in public based on evidence presented at a public trial rather than issuing decisions behind closed doors based on written dossiers.
- **Victim rights.** This gives greater procedural rights to victims (including the ability to participate in the prosecution and/or to challenge a prosecutor who has declined to take up a case in court); requires that a victim be consulted before a case is suspended or concluded; makes restitution a requisite for alternative justice to be pursued; creates specialized units to protect and assist victims; and prioritizes efficiency.
- **Defendant rights.** introduces the presumption of innocence, prohibits torture, guarantees access to public defenders and requires that those defenders be lawyers, provides that only judges can issue search orders, excludes evidence obtained through illegal means, states that confessions made without the presence of a defendant's attorney lack evidentiary value, and provides for alternative sentencing (such as probation) with the goal of rehabilitating prisoners and reincorporating them into society.<sup>22</sup>

## Provisions on Organized Crime

Mexico's 2008 constitutional reforms also included a number of measures aimed at strengthening the government's ability to combat organized crime that paved the way for subsequent legislation allowing wiretapping and asset forfeiture. Article 16 of Mexico's Constitution defines organized crime as an organization of three or more individuals whose goal is the commission of crimes in a permanent or repeated way, "as provided by the law on the matter," a reference to Mexico's Federal Statute Against Organized Crime.<sup>23</sup> Under the constitutional reforms, those suspected of involvement in organized crime can be held by the authorities for 40 days without access to legal counsel, with a possible extension of another 40 days, a practice known as *arraigo* which has led to serious abuses by authorities.<sup>24</sup> The law also permits prosecutors in organized crime cases to submit evidence gathered from witnesses during the investigatory phase of a criminal process; that evidence does not need to be presented in front of the judge and defense attorney at trial. Some analysts maintain that these new reforms created a system in which "normal" criminals have their rights protected, whereas those suspected of organized criminal activity have few constitutional rights or guarantees.<sup>25</sup>

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<sup>22</sup> For more detail, see: Shirk, 2011. The reforms do not impact the way that military tribunals are conducted. For background on how military tribunals are handled, see: Catherine Daly, Kimberly Heinle, and David A. Shirk, *Armed with Impunity: Curbing Military Human Rights Abuses in Mexico*, Trans-Border Institute, July 2012.

There are also certain exceptions to their provisions for cases involving organized crime (see "Provisions on Organized Crime").

<sup>23</sup> Article 2 of the Statute against Organized Crime provides a list of certain crimes that may be classified as organized crime. It is available in Spanish on the website of Mexico's House of Representatives at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/101.pdf>.

<sup>24</sup> *Arraigo* first came into existence in the 1980s, and was formally incorporated into the Mexican Constitution through a constitutional amendment passed in 2008 as a legal instrument to fight organized crime. Its use has been criticized by several United Nations bodies, the Inter-American Commission for Human Rights of the Organization of American States, and international and Mexican human rights organizations. For more, see Janice Deaton, *Arraigo and Legal Reform in Mexico*, University of San Diego, Paper prepared for the Western Political Science Association, March 2013.

<sup>25</sup> Gillian Reed Horton, "Cartels in the Courtroom: Criminal Justice Reform and its Role in the Mexican Drug War," *Mexican Law Review*, vol. III, no. 2 (January-June 2011).

# Status of Judicial Reform Implementation at the Federal and State Levels

## Federal Level: Reform Remains Stalled

Many analysts had predicted that progress in advancing judicial reform in Mexico was “likely to be very slow as capacity constraints and entrenched interests in the judicial system delay any changes.”<sup>26</sup> Others expressed concerns that the Calderón government appeared to be devoting more funding and political will toward modernizing the police than strengthening the justice system (including the courts and the PGR).<sup>27</sup> Some analysts questioned whether it would be feasible to revamp the judicial system at a time when the government was under pressure to get tough on organized crime since accountability and due process within the judicial system are sometimes portrayed as impediments to law enforcement efforts.

Almost five years into the reform process, judicial reform efforts at the federal level remain stalled. Former President Calderón did not propose a new federal criminal procedure code—a key element needed to guide reform efforts—until September 2011, three years after the reforms were enacted. The Mexican Congress did not enact a criminal procedure code during his term. Funding for the PGR lagged behind that of other agencies, as did budgetary support for SETEC, the Technical Secretariat of the Interior Ministry charged with overseeing implementation of the reforms. SETEC responded to requests for assistance from the states, but did not have the authority to push federal and state institutions to support the reform effort, although it did provide \$34 million in subsidies to states to support judicial reform in 2012.<sup>28</sup>

Inaugurated in December 2012, President Enrique Peña Nieto of the PRI has vowed to advance judicial reforms at the federal level by introducing legislation to establish a new unified penal code (so that crimes would be classified uniformly across the country) and a code of criminal procedure that would annul all state codes.<sup>29</sup> During Peña Nieto’s governorship, the state of Mexico became one of only three states fully operating under the NCJS, albeit with some problems.<sup>30</sup> According to the Pact for Mexico agreement<sup>31</sup> that Peña Nieto signed with the two main opposition parties in December 2012, the President plans to introduce legislation to create a unified penal code and code of criminal procedure during the first legislative session of 2013, which runs through April 30, 2013. President Peña Nieto also included a budget increase for 2013 for SETEC’s efforts to coordinate implementation of the NCJS and support states with their transitions to the new system. The Mexican Congress is also drafting legislation that would

<sup>26</sup> “Mexico Risk: Legal and Regulatory Risk,” *Economist Intelligence Unit-Risk Briefing*, January 8, 2010.

<sup>27</sup> Eric L. Olson, *Police Reform and Modernization in Mexico, 2009*. Woodrow Wilson Center, September 2009, <http://www.wilsoncenter.org/news/docs/Brief%20on%20Police%20Reform%20and%20Modernization.pdf>.

<sup>28</sup> Presentation by Hugo Concha, Former Chief of Staff for SETEC, at the Woodrow Wilson Center, December 4, 2012.

<sup>29</sup> For background on the Peña Nieto government, see: CRS Report R42917, *Mexico’s New Administration: Priorities and Key Issues in U.S.-Mexican Relations*, by (name redacted).

<sup>30</sup> CRS interview with Guillermo Zepeda, April 25, 2012.

<sup>31</sup> Signed on December 2, 2012, the Pact between President Enrique Peña Nieto and the leaders of the conservative National Action Party (PAN) and leftist Party of the Democratic Revolution (PRD) contains legislative proposals for implementing an agenda that includes judicial reform. The agreement can be found in Spanish at: <http://pactopormexico.org/>.

restrict the use of preventive detention for organized crime cases (*arraigo*) and the granting of *amparos*<sup>32</sup> during this legislative session.<sup>33</sup>

## State Level: Advancing Reform

In contrast to this lack of progress at the federal level, reforms have moved forward in many Mexican states. Since 93% of crimes in Mexico are prosecuted at the state level, observers have welcomed this progress as a positive sign. As of December 2012, 22 of Mexico’s 32 states (67%) had enacted new criminal procedure codes, the first major step in the reform process (see **Table 1** below).<sup>34</sup> According to SETEC, the only two entities that did not have a criminal procedure code reform bill in their legislatures as of October 2012 were Nayarit and the Federal District that encompasses Mexico City. The Federal District may be waiting to enact its own code until a federal code passes, as some legal experts maintain that the federal code might cover the local courts there as well.<sup>35</sup>

**Table 1. Status of Criminal Procedure Code Enactment in Mexico’s States**  
December 2012

Year Reform Approved	States
Pre-2005	Nuevo León
2005-2007	Chihuahua, Morelos, Oaxaca, Zacatecas
2008-2011	Baja California, Durango, Guanajuato, Hidalgo, Puebla, State of Mexico, Yucatán
2012	Chiapas, Coahuila, Michoacán, Quintana Roo, San Luis Potosí, Sonora, Tabasco, Tamaulipas, Tlaxcala, Veracruz
None Approved	Aguascalientes, Baja California Sur, Campeche, Colima, Guerrero, Jalisco, Nayarit, Querétaro, Sinaloa

**Source:** Matthew C. Ingram, *Criminal Procedure Reform in Mexico: Where Things Stand Now*, Woodrow Wilson Center’s Mexico Institute, December 2012.

According to an index developed by Professor Matthew Ingram of the University at Albany, while only 12 states (36%) had begun operating at least partially under the new system as of December 2012, most of those states are roughly on track to follow Chihuahua’s pace to reach implementation (see **Figure 2** on the next page). Chihuahua is often considered a model state in terms of implementing judicial reform due to its early adoption of a criminal procedure code and related reforms, its comprehensive approach to the reform process, and the speed at which it implemented the reforms across the state.<sup>36</sup> From start to finish, Chihuahua’s transition to the

<sup>32</sup> An *amparo* is a means by which individuals or corporations can challenge administrative or judicial errors by Mexican authorities in court that they believe have violated their constitutional rights. This constitutional right has been abused, however, under the old system by powerful individuals and entities seeking to avoid sanctions for their actions.

<sup>33</sup> Israel Navarro, “A Más Tardar en 15 Días Ley de Amparo: PRI-PVEM,” *Milenio*, January 30, 2013.

<sup>34</sup> Matthew C. Ingram, *Criminal Procedure Reform in Mexico: Where Things Stand Now*, Woodrow Wilson Center’s Mexico Institute, December 2012.

<sup>35</sup> CRS correspondence with Professor Matthew Ingram, January 30, 2013.

<sup>36</sup> *Ibid.* Ingram uses Chihuahua as the exemplary case to which all other states’ progress in implementing the reforms is compared.

NCJS took roughly two and a half years. Some may consider Ingram’s assessment too optimistic, however, given that there have been significant implementation delays in several states (such as Durango, Nuevo León, and Zacatecas) that have now been partially operating under the system for many years.

**Figure 2. Stages of Judicial Reform Implementation in Mexico’s States**  
November 2012



**Source:** Government of Mexico, Ministry of the Interior, Technical Secretariat of the Coordinating Council for the Implementation of the Criminal Justice System (SETEC), November 2012.

## Preliminary Outcomes and Obstacles

### Positive Outcomes

A study commissioned by USAID, released in November 2012, compared the performance of five states that had operated under the reforms for at least one year (Chihuahua, Oaxaca, Zacatecas, State of Mexico, and Morelos) to states that had not yet implemented the reforms.<sup>37</sup>

<sup>37</sup> USAID, Justice Studies Center of the Americas, and Coordination Council for the Implementation of the Criminal Justice System and its Technical Secretariat (SETEC); *Executive Summary of the General Report: Monitoring the Implementation of the Criminal Justice Reform in Chihuahua, the State of Mexico, Morelos, Oaxaca, and Zacatecas: 2007-2011*, November 2012. Hereinafter USAID, November 2012.

Although outcomes have been uneven among states that have implemented the reforms, the study found positive effects of the new system on certain key indicators. The study found:

- Pre-trial detention rates have been reduced in reform states, while they have risen in non-reform states. Some 25,000 individuals have avoided pre-trial detention under the new system in the five reform states.
- Prosecutors in Chihuahua, Oaxaca and Zacatecas proved twice as efficient at resolving criminal cases as in non-reform states (40% of cases resolved vs. 20%);
- Reform states have been able to significantly reduce the time it takes to resolve a case. It takes less than 40 days to resolve a case through alternative justice mechanisms and 100 days to resolve a case in the courts compared to 170 days in non-reform states.
- Alternative Dispute Resolution (ADR) settlements are being fulfilled (89% in Oaxaca and 93% in Chihuahua) and are freeing up the courts to handle more serious crimes. Some 52% of rulings in reform states are for serious crimes compared to 37% in non-reform states.
- The system has helped increase the role of public defenders in trials and resulted in 100% of judges being present at trials, including at initial hearings. (Some 71% of victims in non-reform states say that a judge was not present at their initial hearing).

## **Obstacles to Reform**

Significant obstacles to state-level reform remain, both in terms of the level of support that the federal government has provided to back state-level efforts and in how the reform is being implemented in the states. In general, a lack of progress and leadership at the federal level has left states without clear guidance on how the reforms should be implemented.<sup>38</sup> A failure to communicate the goals and prepare the Mexican people for the likely outcomes of the new system—including the possibility that some criminals would plea for lesser sentences—has led the public to believe the new system has been too “soft” on crime. Some commentators suggest that opposition to the new system from some justice operators, including judges and prosecutors fearful that the new system will cut into the power they now hold, has also proved challenging. At least until recently, federal funds available for the construction of new courts and other infrastructure and for technical assistance to states implementing the reforms had been limited.<sup>39</sup>

Implementing these judicial reforms has brought major challenges, including the need to revise federal and state criminal procedure codes, build new courtrooms, retrain legal professionals, update law school curricula, and improve forensic technology.

At the state level, since there is no re-election in Mexico, some governors have been reluctant to invest in new court systems that they will not be around to see in operation. Others have delayed implementation of the new system due to concerns that it may hurt their popularity if it is perceived as being too “easy” on crime. This perception is understandable given that several state

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<sup>38</sup> Felbab-Brown, February 2013.

<sup>39</sup> CRS interview with the Governor of Puebla, Rafael Moreno Valle, April 26, 2012.

legislatures have rolled back aspects of the reform by, for example, broadening the scope of crimes that require pre-trial detention.

There have also been some operational challenges in states that have implemented the new system. A reluctance to use plea bargaining and to refer even simple cases to ADR is overwhelming the court systems in some states.<sup>40</sup> Weak police and prosecutorial capacity to gather the type of evidence required to build strong cases, combined with various institutions' unwillingness to work together, has kept conviction rates low.<sup>41</sup> Courts are particularly ill-equipped to handle large numbers of serious crimes. For example, due to capacity constraints, Chihuahua can only process a few hundred homicide cases each year. The prosecution rate for homicide has actually *declined* in that state in recent years.<sup>42</sup>

## Survey Data on the Reforms

Recent survey data gathered from the Mexican public as a whole,<sup>43</sup> and from justice sector operators (judges, prosecutors, and public defenders) in nine states,<sup>44</sup> provide important insights into the challenges facing the reform effort. In general, the surveys revealed a need for more public awareness campaigns, as well as outreach to system operators, on why the reforms were enacted and what positive changes they seek to bring about. While the general public expressed questions about what effects the reforms will have on violence and criminality, justice sector officials were divided about whether they would help reduce crime. The public seemed less concerned about protecting the rights of the accused (presumption of innocence and pre-trial release) than about protecting victims' rights and ensuring that guilty criminals are punished.

The general public survey also revealed that 74% of those polled had little or no faith in the criminal justice system and that a similar percentage did not cooperate with law enforcement by reporting crime or participating in crime prevention programs. Some 89% of those surveyed knew nothing about the 2008 judicial reforms, much less how they seek to rectify problems in the old system. In Chihuahua and Morelos, two states that have already implemented the NCJS, the percentage of respondents who did not know their states had implemented a new justice system stood at 30% and 60% respectively, still rather high. When people are told about some of the key elements of the reforms (such as oral trials), 80% of those surveyed said they think the new system will function better than the old. However, there is still a perception that the new system favors the rights of the accused over those of the victims. Some 64% of victims surveyed who had been through the NCJS said that they did not feel treated in an impartial way as compared to 54% who had experienced the old system. Victims also expressed concern that the NCJS moved slower at the beginning than the old system, another challenge that needs to be addressed. Ensuring that people know how to access the justice system and that those whom they encounter when they do so are professional and courteous is another issue that merits attention.

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<sup>40</sup> CRS interview with U.S. officials in Mexico City, April 24, 2012.

<sup>41</sup> USAID, November 2012.

<sup>42</sup> CRS interview with Guillermo Zepeda, April 25, 2012.

<sup>43</sup> Gobierno Federal de México, Secretaría de Gobernación, *Análisis de los Resultados Cuantitativos y Cualitativos del Estudio de la Percepción del Sistema de Justicia Penal en México (ENSUUP)*, October 2012.

<sup>44</sup> Matthew C. Ingram, Octavio Rodriguez Ferreira, and David Shirk. *Justiciabárometro: Survey of Judges, Prosecutors, and Public Defenders in Nine Mexican States*, TBI, University of San Diego, May 2011.

A majority of justice sector operators surveyed thought that the traditional system functioned adequately, with judges more likely to express that sentiment than prosecutors or public defenders. In fact, 40% of justice operators thought that the passage of judicial reforms in 2008 was the result of pressure from “foreign governments and organizations” that sought to discredit the old system. While those findings are disconcerting, 84% of those surveyed expressed some level of support for the 2008 reforms, with 79% of respondents agreeing with the importance of oral trials and 94% approving of the use of alternative dispute resolution. Although 70% of justice sector operators felt that the NCJS would help reduce corruption, they were evenly divided about whether the reform will help reduce criminality.

## **U.S. Assistance**

Since the 1980s, Congress has provided significant funding for judicial reform projects in Latin America, with Mexico being one of the last countries to seek U.S. assistance. Mexico’s federal structure makes its transition from an inquisitorial to an accusatorial system more complicated than in other countries where the United States has previously supported reform efforts. Some view Mexico’s federalism as an advantage, however, as states can serve as incubators for reform, with successful experiences in certain states serving as models for others to follow. Mexico’s middle income status also means that it is better equipped to scale up U.S.-funded efforts than other countries in Latin America should it choose to make judicial reform a top priority.

Although USAID has been providing judicial reform assistance to Mexico since the late 1990s, U.S. support for judicial reform has increased significantly as a result of the Mérida Initiative, a bilateral security effort for which Congress appropriated \$1.9 billion from FY2008-FY2012.<sup>45</sup> The strategy behind the Mérida Initiative has evolved over time. That initial strategy was designed in response to the Calderón Administration's request for specific forms of U.S. equipment, training, and technical assistance to help Mexico combat drug trafficking and organized crime. In 2009, U.S. and Mexican officials began to revise the strategic framework underpinning bilateral efforts in order to seek to address some of the deeper causes of criminality in the country— institutional weakness, corruption, and a weak social fabric. The Mérida strategy now focuses on four pillars: (1) disrupting organized criminal groups; (2) institutionalizing the rule of law; (3) building a 21<sup>st</sup> century border; and (4) building strong and resilient communities.

Funding for “institutionalizing the rule of law” (pillar two) now dwarfs other types of U.S. assistance provided to Mexico under the Mérida Initiative. Nevertheless, while spending plans state that \$590.5 million of the \$1.9 billion in Mérida funding appropriated from FY2008-FY2012 went to support the purchase of aircraft and helicopters for security forces, it is difficult to parcel out how much of the \$1.9 billion in aid has gone to support judicial reform. According to the State Department, total deliveries under pillar two of the Mérida strategy (which includes support for judicial reform) stood at \$146.2 million as of November 2012.<sup>46</sup> That total does not include the \$104 million in Mérida pillar two aid that USAID is administering (discussed below).

Ensuring that U.S. agencies are supporting judicial reform as part of broader justice sector reform efforts in Mexico has been a priority for congressional appropriators. In the first appropriation for

<sup>45</sup> See: CRS Report R41349, *U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond*, by (name redacted) and Kristin M. Finklea.

<sup>46</sup> CRS correspondence with the Department of State, November 26, 2012.

the Mérida Initiative, for example, Congress earmarked funding to support Mexico's transition from an inquisitorial justice system to an accusatory system.<sup>47</sup> Congress has since increased funding for rule of law programs; asked the State Department to report on how U.S. programs are helping to achieve judicial and police reform in Mexico (H.Rept. 112-331), and expressed support for future rule of law funding.<sup>48</sup> Congress has also conditioned Mérida assistance to the police and military on ensuring that the Mexican government is enforcing prohibitions against using evidence obtained through torture that were codified in Mexico's 2008 judicial reforms.

U.S. rule of law programming is now focusing on supporting Mexico's transition to an oral, accusatorial justice system and helping Mexico address institutional weaknesses in its justice sector institutions. U.S. assistance is geared toward: 1) helping the federal and state governments adopt legislative frameworks to underpin the reform process; 2) providing in-depth training for justice sector operators on their roles in the new system at all levels of government; 3) building support for the reforms in Mexican civil society; and 4) addressing institutional and operational problems at all levels of government that may not directly relate to the reform process. It is also focusing on improving the analytic and quality control capacity of justice sector institutions and on expanding access to justice and victims' assistance. Since high turnover rates of personnel in justice sector institutions has limited the effectiveness of past U.S. training programs, future assistance may focus on helping institutions change their incentive structures, policies, and cultures so that the reforms can be sustained.

The three main implementing agencies for the U.S. rule of law programs in Mexico are the State Department, the Department of Justice (DOJ), and USAID. The State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) is the lead funder and coordinator of rule of law programs. INL also implements law enforcement reform (police, forensics, and prisons) and anti-corruption efforts (helping institutions install better vetting and internal controls), while DOJ and USAID have been the lead implementers for justice reform. U.S. law enforcement training and equipment efforts initially focused largely on the Federal Police, but then expanded to support the Attorney General's police force and state-level academies in Chihuahua, Nuevo León, Puebla, and Sonora. State Department funding has helped provide training and equipment to build the forensic capacities of the Federal Police and the Attorney General's Office and to expand and improve the country's federal penitentiaries. The State Department is training Mexican federal and state police for the new investigatory roles they will be called upon to play in the NCJS. Anti-corruption efforts have spanned the full range of Mexican law enforcement and judicial institutions.

DOJ is administering some \$46 million in State Department funding. DOJ has supported justice reform at the federal level, including the adoption of a federal criminal procedure code. In 2012, DOJ worked with the PGR to design and implement a national training program known as *Project Diamante* through which prosecutors, investigators, and forensic experts were trained to work as a team rather than in isolation (as was customary). Upon completion of Phase I, in August 2012, 7,700 PGR prosecutors, investigators and forensic experts had been trained to work together to manage cases in the current inquisitorial system as well as together to function once Mexico

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<sup>47</sup> In June 2008, the 110th Congress appropriated the first \$400 million in supplemental assistance for Mexico under the Mérida Initiative in P.L. 110-252, the FY2008 Supplemental Appropriations Act. Congress earmarked \$73.5 million of that funding for judicial reform, institution building, rule of law, and anti-corruption activities

<sup>48</sup> U.S. Congress, Majority Staff Report, *Judicial and Police Reforms in Mexico: Essential Building Blocks for a Lawful Society*, prepared for Sen. John Kerry, Chairman, U.S. Senate, Committee on Foreign Relations, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., July 9, 2012, S. Prt. 112-36.



transitions to an accusatorial system. *Project Diamante* also established a cadre of over 200 instructors capable of replicating this and other training to new PGR personnel.

Until recently, U.S. assistance did not provide significant training and assistance for judges, a key constituency that must be convinced about the value of the reforms. DOJ has recently established the Judicial Studies Training Institute, a training program in Puerto Rico for Mexican federal judges. The nine-day training program focuses on building practical experience in the accusatory system with the goal of educating judges about the advantages that it provides.

The future of DOJ programming in Mexico may depend upon the extent to which Mexico's Attorney General Jesús Murillo Karam embraces the *Diamante* model that began late in the Calderón Administration. Some states have reportedly expressed an interest in DOJ replicating the training they provided to federal officials at the state level, but it remains to be seen whether that will take place. Training for federal judges could also potentially be increased.

USAID has concentrated most of its work in support of justice reform at the state level, but also sought to strengthen the capacity of SETEC, the federal entity coordinating the federal and state reform efforts, and ProVíctima, the federal entity providing victims' assistance services under the NCJS. USAID had been supporting code reform, judicial exchanges, alternative dispute resolution, and Citizen's Participation Councils, as well as training justice sector operators in five Mexican states since 2004. USAID has helped law enforcement and attorney generals in those states form partnerships with their U.S. counterparts that have involved training and mentoring.<sup>49</sup> USAID expanded its rule of law efforts with roughly \$104 million in FY2008-FY2012 Mérida assistance, a significant portion of which is supporting comprehensive judicial reform programs in seven of Mexico's 32 states.<sup>50</sup> USAID has provided more limited help with drafting legislation and implementing policy changes in four additional states.<sup>51</sup> USAID has also provided support to the American Bar Association to help Mexican law schools and bar associations change their curriculums and professional standards to reflect the new system.

USAID appears to be trying to strike a balance between providing enough assistance to certain key states to demonstrate the merits of the NCJS and providing more limited assistance to a larger number of states to help Mexico reach its 2016 implementation targets.<sup>52</sup> Although some have urged USAID to continue concentrating its efforts in key states, the agency is in the process of expanding its programs and activities into no less than 20 states.<sup>53</sup> This state-level work will be

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<sup>49</sup> USAID/Mexico, "U.S.-Mexico State Alliance Partnership," available at: <http://transition.usaid.gov/mx/partnershipeng.html>.

<sup>50</sup> Those states include: Baja California, Chihuahua, Hidalgo, Morelos, Nuevo León, Oaxaca, and Puebla.

<sup>51</sup> Those states include: Durango, Mexico, Tamaulipas, and Zacatecas.

<sup>52</sup> A January 2011 USAID Inspector General's audit of USAID/Mexico's Rule of Law programs criticized the Mission for lacking a strategic focus and for using output rather than outcome based measures for evaluating the impact of its training programs. By January 2012, however, a follow-up audit praised the Mission for having narrowed the geographic focus of its programming, required its implementing partner to develop performance measures that capture training's effectiveness, and improved coordination with other agencies, namely DOJ. USAID, Office of the Inspector General (OIG), *Audit of USAID/Mexico's Rule of Law and Human Rights Program*, Audit Report No. 1-523-11-001-P, January 12, 2011. Hereinafter: USAID, OIG, January 2011; USAID, OIG, *Follow-up Audit of USAID/Mexico's Rule of Law and Human Rights Program*, Audit Report No. 1-523-12-007-P, September 7, 2012.

<sup>53</sup> States are being selected based on consultations with the Mexican government, with state-level political will and whether or not a state is a "priority state" for the Mérida Initiative's broader programming factoring into the decision.<sup>53</sup> Assistance will then be tailored to the particular stage that a state is at in implementing the NCJS, with states expected to advance at least one stage roughly every two years. This information was gleaned from USAID/Mexico's request for (continued...)

accompanied by continued technical assistance to SETEC and ProVÍctima, as well as increased support for civil society organizations.

## Implications and Potential Questions for Congress

Mexico enacted historic judicial reforms in 2008 that have the potential to dramatically revamp the country's criminal justice system. Whether or not those reforms are fully implemented is ultimately up to the Mexican government and Mexican society as a whole to decide. The depth and breadth of U.S. assistance provided for judicial reform will in part depend upon whether the Peña Nieto government makes judicial reform a priority.

Should Mexico make judicial reform more of a priority, as security experts have long recommended, U.S. technical assistance and training could play a significant role in supporting the reform process. During his confirmation hearing, Secretary of State John Kerry vowed to try to protect U.S. assistance under the Mérida Initiative from budget cuts, including support for judicial reform.<sup>54</sup> However, if Mexico does not prioritize the judicial reforms, Congress may question whether funding for such programs in Mexico should be discontinued, scaled back, or made contingent upon the federal and state governments demonstrating political will to implement the reforms.

Should the reforms continue to move forward, congressional funding and oversight of judicial reform programs in Mexico could continue for a number of years. As Congress considers President Obama's FY2014 budget request for Mexico, it may question how funding for judicial reform in particular, and justice sector reform more broadly, fits into bilateral security priorities, including efforts to combat criminal groups and punish corruption. Is the new criminal justice system more effective than the old system at convicting DTO leaders and corrupt politicians? Have any emblematic cases been resolved that might help improve Mexicans' perception of their criminal justice system and its capacity to deter and sanction crime?

When faced with funding decisions, Congress may seek to balance the need to ensure that U.S. funds are provided in a way that is flexible enough to respond to changing events in Mexico, while also retaining adequate control over the way those funds are being spent. Congress may also consider weighing in on how implementing agencies divide the assistance provided for judicial reform between the federal and state level reform efforts. Finally, Congress may examine the extent to which U.S. agencies are balancing "top down" support for government entities engaged in the reform process with "bottom up" support to civil society groups. Many argue that the award-winning documentary film, *Presumed Guilty*, which was theatrically released in 2011, did more to galvanize support for the reforms than any government-sponsored efforts.<sup>55</sup> The State

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(...continued)

proposals No. SOL-523-12-000003 for the "Promoting Justice Project" issued on October 19, 2012.

<sup>54</sup> Senate Foreign Relations Committee, *Confirmation Hearing on the Nomination of Massachusetts Democratic Sen. John Kerry to be Secretary of State*, 113th Cong., 1st sess., January 24, 2013.

<sup>55</sup> In *Presumed Guilty*, Layda Negrete and Roberto Hernandez, two lawyers who are currently PhD candidates at the University of California at Berkeley, document how they tried to help free Antonio Zúñiga, a man who was wrongly convicted for murder in Mexico's justice system. Originally released in 2008, the film became a hit in Mexico upon its release in 2011. Elizabeth Malkin, "A Free Man Still Looks Over His Shoulder in Mexico," *New York Times*, March 4, 2011.

Department used roughly \$100,000 in International Narcotics Control and Law Enforcement (INCLE) funding to help promote the film in Mexico. Another area that could be expanded is U.S. support for culture of lawfulness programs that seek to educate all sectors of Mexican society on the importance of upholding the rule of law.<sup>56</sup>

Congress has closely monitored human rights conditions in Mexico and compliance with human rights conditions on Mérida assistance.<sup>57</sup> Congress has an oversight interest in ensuring that, as implemented, the new criminal justice system is strengthening human rights protections. Some have urged Congress to make future conditions more specific by, for example, conditioning aid on whether Mexico is videotaping confessions and interviews with witnesses so as to prove that torture or other ill treatment is not occurring.<sup>58</sup> Others have argued against changes to the conditions on U.S. assistance, preferring that the current conditions be more strictly enforced.

Congress may also examine how best to ensure that U.S. implementing agencies correctly sequence and coordinate support to key actors within the criminal justice system (police, prosecutors/defense attorneys, courts). At the federal level, is the amount of assistance being provided to the PGR and the courts adequate when compared to the aid provided to the Interior Ministry (which now includes the Federal Police and penitentiary system)? If one federal entity seeks U.S. cooperation more aggressively than another, should that entity receive more assistance? At the state level, are USAID's judicial reform efforts being coordinated with the police assistance that the State Department is providing? Are police in states that have adopted or are close to adopting the new criminal justice system being adequately trained to carry out investigations in support of the public prosecutor?

As foreign aid budgets tighten, congressional scrutiny of U.S. programs in Mexico may intensify. Past reports by the Government Accountability Office (GAO)<sup>59</sup> and the Inspector General of USAID<sup>60</sup> have criticized U.S. agencies for failing to develop "outcome" rather than "output" measures to gauge the efficacy of U.S. programs. USAID has adjusted its indicators in response to those criticisms and the State Department is in the process of establishing a Metrics Office in Mexico City that will develop indicators for its ROL programs. The results of those efforts to improve metrics may prove useful for congressional appropriators as they oversee current programs and consider future support for judicial reform in Mexico. Congress might also consider providing funding for more polling and surveys regarding attitudes toward the reforms, since this is an important means of evaluation and assessment of progress toward the reform.

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<sup>56</sup> Culture of Lawfulness (CoL) programs seek to involve law enforcement, security forces, and other public officials; the media; schools; and religious and cultural institutions. The U.S. government is supporting school-based "culture of lawfulness" programs, as well as "culture of lawfulness" courses that are being taught to federal and state police.

<sup>57</sup> The FY2012 Consolidated Appropriations Act (P.L. 112-74) withheld 15% of certain military and police assistance until the Secretary of State could report in writing that Mexico is taking action to ensure that: civilian prosecutors and judicial authorities are investigating and prosecuting members of the federal police and military forces who have been credibly alleged to have committed violations of human rights, and the federal police and military forces are fully cooperating with the investigations; and to enforce the prohibition, in accordance with Mexican and international law, on the use of testimony obtained through torture or other ill-treatment.

<sup>58</sup> CRS correspondence with Roberto Hernandez, PhD candidate at the Goldman School of Public Policy, University of California at Berkeley and Co-Director of *Presumed Guilty*, October 22, 2012.

<sup>59</sup> Government Accountability Office (GAO), *Mérida Initiative: The United States has Provided Counternarcotics and Anticrime Support but Needs Better Performance Measures*, 10-837R, July 21, 2010, available at: <http://www.gao.gov/new.items/d10837.pdf>.

<sup>60</sup> USAID, OIG, January 2011.

In sum, policy experts continue to recommend that Mexico hasten implementation of judicial reforms enacted in 2008 that are aimed at making its judicial system more transparent, efficient, and impartial. Implementing the reforms is a stated priority of both the Mexican and U.S. Administrations. Nevertheless, nearly five years into the reform process, implementation has lagged at the federal level and faced significant challenges in states that have begun operating under the new system. Congress is likely to closely monitor the actions taken by the Peña Nieto government and state governments in Mexico to advance the reform process as it oversees current U.S. justice sector programs and considers future support to Mexico.

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