

# The Direction of Criminal Justice Reform in Mexico

Miguel Carbonell\*  
Enrique Ochoa Reza\*\*



Guillermo Pérez/Cuartoscuro

Discussing changes to the Mexican criminal justice system.

## A LOOK INTO THE ABYSS OF THE MEXICAN CRIMINAL JUSTICE SYSTEM

Any analysis of the Mexican criminal justice system must start from a certainty: it is so flawed that we can say without fear of exaggeration that it is completely bankrupt. None of its main actors can be satisfied with their current functioning. All available statistics lead us to the conclusion that the Mexican criminal process is leaking from every side: a) it is useless for trapping the most dangerous criminals; b) it allows for an extremely high level of impunity and corruption; c) it does not guarantee the fundamental rights of either victims or accused; d) it does not set up incentives for professional criminal inves-

tigations; and e) if we take into account its poor performance, it is extremely expensive.<sup>1</sup>

The statistics to back up these conclusions are public knowledge, but perhaps it is worthwhile to remember some of the most outstanding figures in order to later look more closely at some indicators. Eighty-five percent of victims of crime never even file a complaint; 99 percent of offenders are not convicted; 92 percent of criminal hearings take place in the absence of the judge; 80 percent of Mexicans believe that judges can be bribed; 60 percent of arrest warrants are never executed; 40 percent of inmates have not yet been convicted,<sup>2</sup> while 80 percent of detainees have never spoken to the judge who convicted them.<sup>3</sup>

Impunity is a particular matter for concern. The figures are terrifying. According to Guillermo Zepeda, author of the largest study about impunity and ineffectiveness in the Mexican criminal justice system, the possibility that the alleged

\* Researcher at the UNAM Institute for Legal Research.

\*\* Professor of constitutional law at the UNAM Law School.

perpetrator of a crime be brought before legal authorities—just charged, not convicted—is 3.3 percent of the total number of complaints made, which means that there is impunity in 96.7 percent of cases.<sup>4</sup>

To a large extent, what this does is to create low institutional effectiveness of Mexican police forces. Most arrests by police are made when the offender is caught in the act or within the following three hours. According to a 2002 survey of prison inmates, 48 percent of interviewees said they had been arrested just a few minutes (less than 60 minutes) after the commission of the crime. Another 22 percent were detained between the second hour (minute 61 on) and 24 hours after the commission of the crime.<sup>5</sup> That is, 70 percent of the inmates interviewed were arrested in less than 24 hours. This means that the possibility that the police will arrest someone a longer time after the crime was committed is very slight. Based on this, we can conclude that the Mexican police may know how to guard, but not how to investigate.

The short time lapse between the commission of the crime and the arrest brings out a dangerous aspect of the Mexican criminal justice system: often the police arrest someone without a court order. Article 16 of the Constitution allows for the arrest of an individual who is caught in the commission of a crime or in case of emergency, but only in cases of serious crimes in which the corresponding court order cannot be obtained.<sup>6</sup> An estimated 40 percent of arrests occur without fulfilling this requirement.<sup>7</sup> Surveys among the prison population show that 92 percent of people arrested were not shown an arrest warrant.<sup>8</sup> You do not need much imagination to conceive how dangerous it is for a person to be the object of an arbitrary arrest, above all if he/she lives or works in a marginalized neighborhood.

These pieces of data may underscore the idea that the criminal justice system is a wide network of inefficiencies and corruption capable of trapping and prosecuting very few criminals.<sup>9</sup> However, another important factor needed to get a more precise image of that network is still missing: who does the criminal justice system catch?

Most of the people sentenced have committed offenses against property, particularly petty thievery,<sup>10</sup> or what in Mexico are classified as crimes against health, above all small-time drug dealing worth an average of U.S.\$100 (although half of these individuals had drugs in their possession worth less than U.S.\$16).<sup>11</sup> Some analysts think that these figures show that what the police are doing, more than arresting

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real drug dealers, is to arrest consumers, probably to try to fulfill arrest quotas demanded by their superiors.

#### PERCEPTIONS OF CRIMINALITY AND STATISTICAL INDICATORS

For the last few years the media have repeatedly broadcast news about different aspects of the criminal justice system. We have become accustomed to hearing scathing accounts of executions, arrests and police chases and reports about the administration of justice by public prosecutors' police forces and the public prosecutor's office, criminal judges handing down this or that sentence, prison life, jail riots, etc.

Often the media uses as much sensationalism as possible. Naturally, Mexico's crime problem is actually very serious, affecting directly or indirectly a large part of the population. But to that, we must add the anxiety and fear magnified not by the crimes themselves, but by the perception of them spawned from how radio and television cover the facts.<sup>12</sup>

To analyze Mexico's criminal justice system (understood in its broadest possible sense, including everything from preventive policing to jails and prisons), we should take into account a first element: the separation between what is called local or state jurisdiction (including Mexico City's Federal District) and federal jurisdiction (that is, the federal preventive police, the federal Highway Patrol, the federal Attorney General's Office, district judges, federal appellate and collegiate circuit courts, federal prisons, etc.).

If we look at statistics from 1997 to 2005 about crimes reported per 1,000 inhabitants, we see that under local jurisdiction, there has been a slow but perceptible decline. In 1997, 15.8 crimes were reported per 1,000 inhabitants, but this figure dropped to 14.4 the following year, to 13.6 in 2000 and to 13.5 in 2005. By contrast, federal crimes reported remained the same in the same period: in 1997, 0.8 federal crimes were reported per 1,000 inhabitants and in 2005, the figure was 0.9.

If we look at the number of crimes reported daily, we can come to similar conclusions: the number of offenses reported under local jurisdictions dropped and federal offenses reported rose. In 1997, 4,084 local crimes were reported daily, dropping to 3,864 in 2005 and increasing to 3,957 in 2006. In 1997, 202 federal crimes were reported daily, while in 2005, the figure was 241 and in 2006, 300 (see table 1).

These figures lead us to two different hypotheses: either lawbreaking has become more “sophisticated,” focusing on more serious crimes (often coming under federal jurisdiction) or local authorities have taken crime prevention efforts more seriously. We do not have enough empirical evidence to choose either hypothesis, or for that matter, both, since there could have been a combination of factors.

Now, when we review the figures not of crimes reported, but of people being sentenced by criminal judges, we find a paradox. While the number of crimes reported under local jurisdictions dropped year after year, the number of individuals sentenced increased. While in 1996, state court judges sentenced 111,682 people, that figure reached 126,615 by 2005, having increased every year except 1998 and only slightly in 2000. Something similar, though less acute, hap-

pened in federal courts, where judges sentenced 27,263 in 1996 and 29,300 in 2006 (see table 2).

The magnitude of these figures should make us stop and think about the large number of Mexicans who at one time or another and in one circumstance or another are accused of having committed a crime. The number is 2 percent of all the country’s inhabitants, since, according to National Statistics, Geography and Informatics Institute (INEGI) figures, from 1996 to 2005, 1,931,513 individuals were indicted and brought before 1,224 criminal judges in Mexico, an average of 528 preliminary hearings daily in both local and federal jurisdictions.<sup>13</sup> These individuals were charged with 2,312,691 separate counts.<sup>14</sup> Many of these offenses were very violent: for example, 86,500 charges were for homicide, an average of 24 a day.

The figures about the number of offenses processed by the criminal justice system are even more impressive if we take into account the number of unreported crimes and the percentage of reported crimes for which no one is ever indicted.

According to some estimates, what in Mexico is called the “black number” (the number of crimes that go unreported) makes up 75 percent of all offenses committed nationwide. In other words, three out of four are never reported. Of the

TABLE 1  
INDICATORS OF CRIMES REPORTED TO THE PUBLIC PROSECUTOR BY JURISDICTION  
(1997-2007)

YEAR	CRIMES REPORTED PER 100,000 INHABITANTS <sup>a</sup>		DAILY AVERAGE OF CRIMES REPORTED	
	LOCAL AND STATE JURISDICTION	FEDERAL JURISDICTION	LOCAL AND STATE JURISDICTION	FEDERAL JURISDICTION
1997	1 578.1	78.2	4 084.7	202.5
1998	1 436.1	78.2	3 768.9	205.1
1999	1 431.8	78.4	3 809.5	208.7
2000	1 359.7	83.1	3 657.0	223.4
2001	1 442.4	74.3	3 940.6	203.0
2002	1 429.2	73.1	3 951.3	202.2
2003	1 408.5	79.6	3 936.1	222.5
2004	1 382.8	79.2	3 891.6	222.8
2005	1 361.9	86.1	3 878.6	245.3
2006	1 377.2	104.5	3 957.1	300.4
2007 <sup>b</sup>	701.9	64.6	4 102.7	377.6

<sup>a</sup> These are the crimes reported to the Public Prosecutor which led to investigations. A report of this nature can involve more than one offense and more than one perpetrator.

<sup>b</sup> Preliminary figures.

**Source:** Presidencia de la República, *Primer Informe de Gobierno, 2007. Anexo Estadístico* (Mexico City: 2007).

TABLE 2  
INDIVIDUALS SENTENCED BY TRIAL COURTS BY JURISDICTION AND SEX  
(1996-2006)

YEAR	LOCAL AND STATE JURISDICTION				FEDERAL JURISDICTION			
	TOTAL	MEN	WOMEN	UNSPECIFIED	TOTAL	MEN	WOMEN	UNSPECIFIED
1996	123 263	111 682	11 572	9	27 263	25 926	1 335	2
1997	117 471	106 188	11 268	15	24 724	23 401	1 322	1
1998	114 670	104 018	10 643	9	25 642	24 247	1 394	1
1999	118 292	106 611	11 680	1	24 963	23 462	1 501	0
2000	118 181	105 989	12 192	0	23 544	21 847	1 695	2
2001	123 071	110 347	12 723	1	24 742	23 007	1 735	0
2002	125 759	113 145	12 613	1	26 501	24 638	1 863	0
2003	131 005	118 313	12 692	0	27 796	25 724	2 072	0
2004	137 457	124 240	13 216	1	28 940	26 604	2 335	1
2005	139 524	126 615	12 908	1	28 694	26 415	2 278	1
2006	133 689	121 332	12 346	11	29 300	26 782	2 518	0

Source: INEGI, Estadísticas judiciales en materia penal.

25 percent that are, the public prosecutor's office and its police only conclude investigations in 4.55 percent of cases, and someone is brought before a judge in only 1.6 percent of all cases of crimes committed. In only 1.06 percent of cases of crimes committed is anyone sentenced, putting the impunity rate at a horrifying 99 percent.<sup>15</sup>

#### WHERE TO START?

In light of all this, almost any analyst would be willing to recognize the immensity of the challenge and immediately refuse to take on the task of improving any aspect of Mexico's criminal justice system. And that is no surprise: the task seems titanic, and any impulse to reform the system would have to overcome innumerable obstacles. However, we think that Mexico's criminal justice system can be reformed, and for that reform to be successful, there has to be the right combination of political leadership, technical response capability, sufficient financial support and an appropriately designed route for the reform itself. What general objectives should a reform pursue? Obviously, the objectives will be determined by the structural changes required in the entire process. Along the general lines of thinking of Alberto Bovino and Christian Hurtado, we can point to the following as the general objectives of criminal justice system reform:<sup>16</sup>

- a) Setting up a common procedure in which the trial becomes the central stage of the criminal process. In the Mexican system, this presupposes at least two things: 1) eliminating exceptions that allow for non-enjoyment or diminished enjoyment of fundamental procedural rights (that is, the currently existing regime of exceptions applied to organized crime, established both in the Constitution and in the Federal Law against Organized Crime); 2) giving the stage of the criminal investigation the place and importance it should have, reducing the requirements for subpoenaing a person to testify and making what happens before judges the central part of the process.
- b) Strictly separating the public prosecutor's subpoenaing and prosecutorial functions from the justice system's decision-making functions.
- c) Making the investigative stage less formal and simplifying it. In the Mexican case, this would probably put an end to the terrible bottleneck that investigations have become, according to the figures mentioned above.
- d) Regulating a series of alternatives to the application of common procedures and punishments. It should be emphasized that on this point Bovino and Hurtado refer not only to criminal procedures, but also to the regime of substantive criminal law, which should be made much more rational and contained, avoiding the levying of criminal sentences willy-nilly to punish all kinds of behavior.

- e) Strictly respecting the accused, convicted and victim’s fundamental rights and guarantees. This issue, pointed out by Bovino and Hurtado, must become important in Mexico, given the continuing perception that in order for public security to be effective in preventing or prosecuting crime, fundamental rights must be sacrificed; and, finally,
- f) Complying with the international obligations of states party to human rights covenants.

Clearly, these are very general ideas that must be analyzed and discussed in great detail. For the moment, however, we consider that in the light of the statistics presented here and the rest of the empirical and theoretical evidence available to us today, a profound reform of the criminal justice system in Mexico is urgently needed to achieve more justice, full respect for fundamental rights and the degree of public safety necessary to be able to peacefully venture out onto the street. **MM**

NOTES

- <sup>1</sup> More argumentation on this theme can be found in Miguel Carbonell and Enrique Ochoa Reza, *¿Qué son y para qué sirven los juicios orales?* (Mexico City: Porrúa/RENACE-UNAM, 2008).
- <sup>2</sup> Ernesto Canales, “Los juicios orales ante el sistema actual,” *Metrópolis* 2025, October 2006, p. 3.
- <sup>3</sup> Marcelo Bergman, comp., *Delincuencia, marginalidad y desempeño institucional. Resultados de la encuesta a población en reclusión en tres entidades de la República Mexicana* (Mexico City: CIDE, 2003), p. 47.
- <sup>4</sup> Guillermo Zepeda Lecuona, *Crimen sin castigo. Procuración de justicia y ministerio público en México* (Mexico City: CIDAC-FCE, 2004), p. 220.

- <sup>5</sup> Bergman, op. cit., p. 45.
- <sup>6</sup> See the análisis of Article 16 in Miguel Carbonell, *Constitución Política de los Estados Unidos Mexicanos comentada* (Mexico City: Porrúa/UNAM/CNDH, 2007).
- <sup>7</sup> Zepeda, op. cit., p. 245.
- <sup>8</sup> Marcelo Bergman et al., *Delincuencia, marginalidad y desempeño institucional. Resultados de la segunda encuesta a población en reclusión en el Distrito Federal y el Estado de México* (Mexico City: CIDE, 2006), p. 35.
- <sup>9</sup> For data on corruption worldwide, see [www.transparency.org](http://www.transparency.org), specifically the “Global Corruption Report 2007” focusing on corruption in the legal system, available at [http://www.transparency.org/publications/gcr/download\\_gcr](http://www.transparency.org/publications/gcr/download_gcr).
- <sup>10</sup> The second survey carried out by CIDE researchers among the Mexico City’s Federal District and State of Mexico prison population confirms this: 75 percent of those polled said they had been arrested for robbery; half were accused of stealing items or cash worth 2,000 pesos or less (about U.S.\$181), and one-fourth for stealing items or cash worth under 500 pesos (about U.S.\$45). Bergman, op. cit., p. 16.
- <sup>11</sup> Among women, the rate of crimes against health increases: 31 percent of women inmates surveyed in Mexico City and the State of Mexico were imprisoned for drug trafficking and 35 percent for robbery or robbery with the use of violence. Bergman et al., op. cit., p. 19.
- <sup>12</sup> In the future, media experts should cross reference data about the perception of crime, how crime is dealt with in the media and actual crimes committed. The results will undoubtedly include more than one surprise.
- <sup>13</sup> Víctor Fuentes, “Acusan de delitos a 2% en el país,” *Reforma* (Mexico City), April 5, 2007.
- <sup>14</sup> An individual may be indicted on more than one charge, which is why the number of indictments and the number of charges against the accused do not tally.
- <sup>15</sup> All figures in this paragraph are from Zepeda Lecuona’s very important work, op. cit., p. 20.
- <sup>16</sup> Alberto Bovino and Christian Hurtado, “Principio de oportunidad y proceso de reformas en América Latina. Algunos problemas de política criminal.” Alberto Bovino, *Justicia penal y derechos humanos* (Buenos Aires: Editores del Puerto, 2005), p. 222.



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