

# Measuring Attitudinal Changes Among Judicial Sector Professionals Towards Criminal Justice Reform in Mexico

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## 1. Introduction

Like many other countries in Latin America, Mexico has been part of a wave of criminal justice system reforms that have coincided with the shift toward more democratic governance over the last few decades. The latest wave of reforms in Mexico has focused especially on modernizing the rules of criminal procedure, strengthening the standards of due process, and protecting the rights of the accused. The reforms were introduced amid a period of widespread crime and violence that has increased public pressure on the Mexican government to strengthen the rule of law. Yet, for this very same reason critics in the “counter-reform” movement have expressed concerns that strengthening due process will make it more difficult to prosecute and convict dangerous criminals, thereby exacerbating the problem of violent crime.

Hence, there is an urgent need to assess Mexico’s recent criminal justice system reforms and the attitudes of those who operate it. In particular, understanding the attitudes of judges, prosecutors, and public defenders toward the reforms is important in order to get a sense of whether the changes are actually helping to improve the criminal justice system, and also of how committed these key actors are to the reform effort. This paper explores these questions by drawing on an unprecedented set of surveys of Mexican judges, prosecutors, and public defenders conducted in 2010 and 2016. As the authors demonstrate in this paper, the responses of these key judicial sector operators indicate that Mexico’s recent reforms were sorely needed, are helping to improve the criminal justice system, and have substantial support among key actors.

Below, as background, we provide an overview of the issue of criminal justice reform in Mexico, and the relevant research questions that emerge for this study. We then describe the methodology used to conduct the above-mentioned surveys of judicial sector personnel, and lay out the relevant findings. Finally, we draw on these results to address the concerns presented by critics of recent judicial reforms, and offer some observations about the major challenges ahead for the Mexican criminal justice system.

## 2. Background on Judicial Reform in Mexico

Beginning in 1980s, revelations of deeply-rooted problems of police corruption led to a series of still ongoing efforts to restructure, modernize, and professionalize Mexico's law enforcement and public security institutions. In the 1990s, during a period of newfound political uncertainty in Mexico, the federal government worked to strengthen the judiciary by introducing higher professional standards for judges, stronger powers of judicial review, new standards for judicial precedent, and greater judicial independence, as well as new criminal statutes to deal with the mounting threat of organized crime.

By the 2000s, elevated levels of crime and violence led to further measures focused specifically on revamping the Mexican criminal justice system. Although the administration of President Vicente Fox Quesada was able to pass reforms to the juvenile justice system in 2003, the Mexican Congress declined to pass a major judicial reform package that Fox introduced in 2004.<sup>1</sup> Nevertheless, this federal initiative and the continental wave towards more effective justice systems inspired some Mexican states to enact their own reforms at the state level, specifically Nuevo León, Chihuahua, and Oaxaca.

Thanks in part to the success of these state level initiatives, the Mexican Congress revisited the issue and approved a package of legislative and constitutional reforms in June 2008 to establish a new model of criminal procedure, providing stronger due process mechanisms while also streamlining the handling of criminal cases.<sup>2</sup> Collectively, these changes were intended to produce a shift from Mexico's traditional "mixed inquisitorial" model of criminal procedure to an "oral, adversarial" model.<sup>3</sup> The new oral-adversarial model of criminal procedure is described as such because it allows both the prosecutor and the defense counsel for the accused to present evidence and arguments orally in public trial proceedings before three impartial and independent judges.

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<sup>1</sup> In April 2004, the Fox administration proposed a series of constitutional and legislative changes to modernize Mexico's criminal justice system. For a more complete discussion of the 2004 judicial reform package proposed by the Fox administration, See David A. Shirk & Alejandra Ríos Cázares, "Introduction: Reforming the Administration of Justice in Mexico," in Wayne A. Cornelius & David A. Shirk (eds.) *Reforming the Administration of Justice in Mexico*. (Notre Dame: University of Notre Dame Press, 2007).

<sup>2</sup> The oral-adversarial model was incorporated into the Mexican legal framework on June 18, 2008, with the publication of the constitutional reform in the Official Journal of the Federation (*Diario Oficial de la Federación*, DOF).

<sup>3</sup> The reform brought significant changes to the Constitution on issues of legality, legal certainty, access to justice, alternative and restorative justice, the prison system, pre-trial detention, presumption of innocence, criminal investigation, due process, public security, asset seizure or forfeiture, special detention regimes, labor conditions in public security, and legislative faculties of Congress in public security and organized crime. The reform package also modified Congress' responsibilities, and featured municipal development, labor, and public security provisions.

## Advantages of the New Oral-Adversarial Model

Proponents of the oral-adversarial model identify three principal advantages over Mexico's traditional mixed inquisitorial model. The first significant benefit is the introduction of **greater transparency**. In Mexico's traditional mixed inquisitorial system, in most cases the presentation of evidence was cumbersome because it was reviewed by the judge behind closed doors, in the form of written affidavits (*actas* or *actuaciones*). This led to long delays—in some cases years—in the administration of justice, and often meant that judges engaged in *ex parte* communications with one of the parties, normally the prosecutor, to gain an understanding of the case. Under Mexico's new adversarial model, the review of evidence will now take place primarily in public court proceedings, or "oral trials," complete with gavels—an instrument once unfamiliar in Mexico. These proceedings will allow both the prosecutor and defense counsel to present and challenge the evidence and arguments brought before a panel of three judges. Court proceedings will be conducted live in real time with documented audio and video recordings; the defense attorney and prosecutor will have equal opportunity to litigate their cases; judges can review and digest evidence more efficiently; and there will be more participation from judges in the process (e.g., asking clarifying questions). Also, contributing to greater transparency, the new system requires that a defense attorney be informed about every stage of the criminal investigation.

While much public attention has been paid to the oral trials component of the reform, the reality is that only about 10-15% of cases will wind up in court. The vast majority of cases will be resolved before trial through use of alternative means, such as mediation or restitution. This is important because it contributes to the second principle of the reform: **efficiency**. The traditional system required prosecutors to pursue all cases on their docket, which led to the long delays and enormous backlogs in prosecutorial investigations that have contributed significantly to the malfunctioning of the criminal justice system. Under the new system, prosecutors will be given more discretion in their prioritization of cases, thus allowing them to focus on more serious crimes while disregarding minor infractions that would place an unnecessary drain on departmental resources and undermine the public's greater interest. Also, contributing to the efficiency principle, the new system will allow prosecutors to negotiate sentences in exchange for a guilty plea, ideally allowing the prosecutor to secure an appropriate punishment without having to allocate the time and resources necessary to go to trial.

The third principle of the reform is **due process**, which lends greater fairness to the administration of justice. In Mexico's traditional system, the procedures were heavily stacked against the accused such that, once a suspect was detained, there was an effective presumption of guilt. In too many cases, prosecutors abused their power, forcing confessions, extracting bribes, manipulating evidence, and ultimately the public's trust (*fe pública*) that they would conduct their duties in the best interest of both the victim and the

accused.<sup>4</sup> Moreover, the system was heavily biased against the poor, who too often could not afford to get a decent attorney, let alone bribe their way to freedom.<sup>5</sup> Meanwhile, the use of mandatory, pretrial detention for a large number of crimes, including non-violent offenses, meant that most individuals accused of a crime—whether guilty or innocent—spent the entire criminal investigation and trial process behind bars.<sup>6</sup> By official estimates, about 40% of all inmates in Mexico are in the “pre-trial” phase.<sup>7</sup>

Under the new system, defense attorneys and even victims will serve as a check on prosecutors. Anticipating that their actions and evidence presented could be challenged in court by the defense attorney, prosecutors will need to avoid violating suspects rights and build more solid cases. As another means to curtail prosecutorial abuse (e.g., undue duress, coercion, torture), the 2008 reforms denied the admissibility of a suspect’s confession in court if the defense attorney was not present. At the same time, the reform gives victims new rights to appeal a prosecutor’s inaction or decisions on a case, which will help to ensure that they prioritize cases in the public’s interest. Thus, the strengthening of due process rights for both the defendant and the victim is an important element to promote greater adherence to due process under the new system.

In sum, the 2008 reforms introduce key elements of the adversarial model of criminal procedure to Mexico’s traditionally mixed inquisitorial system, with the goal of increasing transparency, efficiency, and due process. While it is often asserted that the new criminal justice system is similar to the adversarial model used in the United States, there are some important differences. As noted above, trials will be heard by a panel of three judges, rather than one, which could have the effect of increasing the cost and ability to detect corruption. Any suspect hoping to bribe a judge would have to pay at least of two of the three individuals hearing the case, and if any of them refuses it will help to identify and curb such corruption efforts. Another difference is that Mexico’s new system will not include the use of juries at any stage of the process, though juries were used in Mexico in the early 20<sup>th</sup> century.<sup>8</sup>

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<sup>4</sup> State and federal prosecutorial and investigative police agencies exhibited disturbing patterns of corruption and abuse, including the use of bribery and torture, according to surveys of prison inmates. See Elena Azaola and Marcel Bergman. 2007. “The Mexican Prison System.” in *Reforming the Administration of Justice in Mexico*, edited by Wayne A. Cornelius and David A. Shirk. Southbend, IN; La Jolla, CA: Notre Dame Press; Center for U.S.-Mexican studies.

<sup>5</sup> Elena Azaola and Marcelo Bergman, *Delincuencia, marginalidad, y desempeño institucional*, Mexico City: Centro de Investigación y Docencia Económicas, 2013.

<sup>6</sup> The common assertion that criminals in Mexico are “guilty until proven innocent” has more to do with the relatively inflexible criteria for pre-trial release. Cossio *et al.*, *Mexican Law* (Oxford University Press, 2005), p. 358.

<sup>7</sup> Zepeda found in 2009 that 95,406 out of 229,915 (41.5%) prison inmates in Mexico were pending a sentence. Guillermo Zepeda Lecuona, *Los mitos de la prisión preventiva en México*, Washington, D.C.: Open Society Justice Initiative, 2010, p. 8. <https://opensocietyfoundations.org/sites/default/files/mitos-mexico-20100801.pdf>.

<sup>8</sup> There are important concerns and criticisms about the use of juries even in the United States, and there are many factors—limited education, economic hardships, and potential threats to jurors from organized

## Criticisms and Concerns about the Oral-Adversarial Model

Nevertheless, some in Mexico have criticized the reforms as a result of foreign interference or imposition. Moreover, the reforms have also faced a number of other criticisms, including complaints that they expand the rights of the accused in an era of heightened crime, violence, and public frustrations with widespread criminal impunity. Adding in the prosaic logistical challenges of implementing such a sweeping change—the need for new physical courtrooms, new technologies, professional training, etc.—there is ample cause for doubt about the prospects for this bold effort to reform Mexico’s criminal justice system.

Given the need for improving the judicial system as a key component in the rule of law in Mexico, it is imperative to assess the prospects of the reform and the challenges it may face. However, getting a look inside Mexico’s judicial system is very difficult. Meaningful indicators of judicial system performance are fairly scarce. While the Mexican court system reports the outcomes of criminal cases, there is no national reporting system to track the volume of court caseloads, the length of criminal proceedings, or other important indicators of judicial efficiency.

Those studies that focus on judicial sector performance in Mexico tend to focus on the experiences and perceptions of the “users” of the criminal justice system. Indeed, despite widely available statistics on crime, victimization, public opinion, and even on the experience of the prison population, there have been few systematic and quantitative efforts to study the operators of Mexico’s justice system, including judges, prosecutors and public defenders. Although these studies offer some important indicators of institutional performance, they do not provide specific information on the internal inefficiencies across the various sectors of the justice system, which ultimately precipitate the poor performance of the system.

In fact, most studies of the judiciary generally ignore the characteristics, experiences, and opinions of the personnel who operate the criminal justice system. This is in part because many judicial scholars are lawyers themselves, not social scientists, and they tend to focus on legal theory and analysis. Meanwhile, social scientists and other outside analysts often have a lack of knowledge regarding the practitioners of the law, which can make it difficult to properly evaluate such a highly-specialized and technical area of study. Thus, the short supply of empirical studies on operators of the judicial system is a reality even at the global level. Indeed, there is a lack of statistical studies on the role of judicial system personnel and, in particular, judges around the world.

In an effort to gain a glimpse inside the “black box” of Mexico’s criminal justice system, the authors conducted a series of surveys of judicial sector personnel in 2010 and 2016.

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crime—that would make it difficult to establish a well-informed, representative, and independent body of jurors in Mexico.

The research initiative titled “Justiciabarómetro” (Justice Barometer) was launched by the Justice in Mexico program at the University of San Diego as a means to collect data on various operators within the justice system, including police officers, prosecutors, public defenders and judges. With a variety of questions concerning demographic characteristics, professional profiles, perceptions of the functionality of the criminal justice system, perceptions of legality, corruption and due process, and more, the Justiciabarómetro survey provides useful account insights on many aspects of the criminal justice system. For the purposes of this paper, the authors draw on the Justiciabarómetro survey to evaluate a set of fundamental questions about how key judicial sector personnel—specifically prosecutors, public defenders and judges—view recent criminal justice sector reforms, and how these views have changed over time. Below we discuss the methodology behind the survey, and then proceed to analyze the key findings from the survey.

## 2. Methodology

This paper draws on data from two major surveys of Mexican judicial sector personnel that were administered in 2010 and 2016. Known as the Justiciabarómetro” (Justice Barometer), these surveys were administered by authors as part of the Justice in Mexico program at the University of San Diego. These surveys consisted of over 100 questions administered to then-current judges, prosecutors, and public defenders working in criminal courts at the trial and appellate level in several different Mexican states. The questions address various aspects of each respondent’s personal and professional profile (e.g., years of experience, educational background, etc.), working conditions in the judicial system (e.g., caseloads, hours worked, etc.), and their perceptions of various criminal justice issues (e.g., crime, corruption, etc.).

The first survey was administered to 276 respondents in nine of Mexico's 32 states between October and December 2010. The states included Baja California, Coahuila, Chihuahua, Jalisco, Michoacán, Nuevo León, Oaxaca, Yucatan, and Zacatecas. These states were specifically selected to ensure variation on several key attributes that characterize the diversity of Mexico’s 32 states. The selected states represent different geographic regions, including the south (Oaxaca and Yucatan), the center (Jalisco, Michoacán, and Zacatecas), and the north (Baja California, Coahuila, Chihuahua, Nuevo León). The states also vary in population and economic structure, as some are highly urbanized and industrialized (e.g., Baja California, Jalisco, Nuevo León) while others are more rural and have broader agricultural or mining sectors (e.g., Michoacán, Oaxaca, Yucatan, Zacatecas). Politically, the states included in this study represented different experiences and perspectives at the time, as they were governed by the three main parties in Mexico, the Institutional Revolutionary Party (PRI), National Action Party (PAN), and the Party of the Democratic Revolution (PRD). At the time of the survey the PRI was



dominant in some states like Oaxaca and Coahuila, the PAN in Baja California and Jalisco, and the PRD in Michoacán and Zacatecas.<sup>9</sup>

Beyond regional, economic, and political factors, these states varied in the extent to which they had adopted the reforms in criminal procedure as of 2010. Even before the 2008 federal reform, Oaxaca, Chihuahua and Nuevo León had working reforms implemented by 2007; Zacatecas followed soon thereafter with implementation in 2009, and Baja California in 2010. The rest of the targeted states had not implemented the new system at the time of the study, and only Yucatán had approved the reforms but not yet implemented them. Also, while the main focus of this study was on criminal trial judges, the survey also solicited responses from prosecutors and public defenders from a handful of states to get a sense of how these actors' views compare to those of judges

The survey captured attitudes among legal professionals about a range of legal and institutional issues in the criminal justice sector, and across a variety of regional, economic, political, and reform contexts. Many questions were drafted specifically for this survey, but others built on existing surveys and prior questionnaires. For instance, earlier Justiciabarómetro surveys of police officers in the cities of Guadalajara and Ciudad Juárez generated several questions that were used in the JABO survey for analytical comparability. Also, questions were borrowed from Vanderbilt University's Latin American Public Opinion Project (LAPOP) surveys, a survey of judges in Bolivia (Perez-Liñan, Ames, Seligson 2006), and also from a survey of legal elites regarding judicial performance in Latin American countries (Staats, Bowler, and Hiskey 2005).

Judges were identified by working in collaboration with state court administrators, typically by contacting the office of president of the state supreme court. Prosecutors were identified by contacting the offices of the state attorneys general, while public defenders were contacted through the state public defenders office. After compiling lists and contact information for the three groups, the survey was conducted by telephone and email between October 11 and December 17, 2010. A total of 2,858 calls were made to 1,098 contacts across the three professions in nine states. The primary focus of this study was on judges with jurisdiction over criminal matters. However, to complement these perspectives, the survey design called for the inclusion in the sample of both public prosecutors and public defenders. Data collection efforts generated 276 completed interviews, or an overall response rate of 22.4%. Dropping responses for which the state or professional identifying information was missing, the usable total amounted to 268 respondents, with 65.9% men versus 34.1% women. This total includes 171 judges, 38 prosecutors, 59 public defenders. The number of respondents by state and profession, and the respective response rates, are listed in Table 1.

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<sup>9</sup> See: Ingram, Rodriguez Ferreira and Shirk (2011), *Justiciabarómetro: Judicial Survey. Attitudes of Mexican Judges, Prosecutors, and Public Defenders*. San Diego, University of San Diego: Ingram, Rodriguez Ferreira and Shirk (2011), *Assessing Judicial Reform in Mexico: Attitudes of Legal Professionals in Nine Mexican States on the 2008 Judicial Reform*. San Diego: University of San Diego.

**Table 1: Respondents and Response Rates by State and Profession 2010 Survey**

State	Prosecutor			Public Defender			Judge		
	<i>r</i>	<i>n</i>	%	<i>r</i>	<i>n</i>	%	<i>r</i>	<i>n</i>	%
Baja California	6	10	60	36	115	31.30	12	27	44.44
Coahuila	0	—	—	15	46	32.61	17	25	68.00
Chihuahua	0	—	—	0	[na]	[na]	21	86	24.42
Jalisco	0	—	—	0	[na]	[na]	30	132	22.73
Michoacán	0	—	—	0	—	—	33	39	85.62
Nuevo León	12	76	15.79	8	116	6.90	20	54	37.04
Oaxaca	20	[na]	[na]	0	—	—	20	61	32.79
Yucatán	0	—	—	0	—	—	5	12	41.67
Zacatecas	0	—	—	0	—	—	13	42	30.95

The 2016 survey consisted in the first repeated iteration of the 2010 survey of judicial sector operators in Mexico, and appears to be the first comparative legal survey that has evaluated judicial sector opinions at two different points in time. As such, this survey provides important new information about how Mexico has responded to the transition to the oral-adversarial model, and offers unique insights on how such changes take place over time among judicial sector personnel, that may have broader generalizability beyond Mexico. The 2016 study consisted of a large-scale survey that was conducted in 11 Mexican states, including all nine of the states originally included in 2010 plus Durango and Guanajuato. The process of implementation had two stages: the first from April 21 to June 17, 2016, and an extended period from July 5-17 that was opened to incorporate the surveys in the state of Zacatecas.

The survey was implemented in different phases due to the significant variation in the time it took the research team to recruit participants from institutions in different states to take part in the study, as well as differences in the speed at which different institutions were able to produce the contact information of participants and to familiarize their personnel with the terms of participation in the voluntary study. Furthermore, Baja California, Chihuahua, Durango, Oaxaca and Zacatecas had electoral processes on June 5, 2016, so the planning process in those states had to be especially careful to avoid the politicization of the implementation of study.

While the 2016 study was again specifically designed to include the participation of the judges in each state, this was not achieved in all cases. In some instances, the relevant state offices did not respond to formal communications or the negotiations failed to persuade the different institutions to allow their operators to voluntarily participate in the study. In other cases, despite having initially expressed interest in the study, some institutions simply refused to participate or did not complete the necessary work—such as informing potential participants—in time to facilitate the implementation of the study.

However, as in 2016, the survey team had a particular interest in the opinions of the criminal judges, which allowed for the participation of the judges in 10 of the 11 states that participated in the final implementation. Jalisco was the only state in which the



participation of judges was not achieved. In this case, despite initial approval by the State Judicial Branch, at the last minute and without further details, the investigation team was informed that the participation of its operators in our study was not authorized. Given that the participation of the prosecutor's office in Jalisco was not achieved either, the surveys of Jalisco represent only the opinions of public defenders. In Guanajuato and Zacatecas, the opinions of the judges were complemented with the opinions of public prosecutors and public defenders, while in Baja California and Oaxaca the opinions of the judges were complemented only by the opinions of the public defenders.

The 2016 study was again conducted by a team of academic researchers from Mexico and the United States and by the polling company Data Opinion y Mercados (Data OPM) and consisted of a survey of 146 questions, which was implemented by telephone from April 21 to July 17, 2016. A total of 3,997 calls were made with an average duration of 35 minutes per survey to 1,252 participants, whose contact information was compiled and verified through public directories and with the support of officials of the different institutions. Data OPM tried to contact all possible participants at least once.

In total, 706 surveys were completed—equivalent to a 56% response rate - of which 288 were to judges, 279 to prosecutors, 127 to public defenders and 12 to others, including jurisdictional, operational and administrative. The responses of the participants classified as “others” have been excluded in the evaluation of opinions of the operators by function, limiting the analysis to 694 interviews conducted with judges, public prosecutors and public defenders.

**Table 2: Respondents and Response Rates by State and Profession 2016 Survey**

State	Judges			Prosecutors			Public Defenders		
	R	N	%	R	N	%	R	N	%
Baja California	27	51	52.9				16	23	69.6
Chihuahua	55	132	41.7						
Coahuila	11	28	39.3						
Durango	20	37	54.1						
Guanajuato	22	52	42.3	189	281	67.3	56	125	44.8
Jalisco							16	77	20.8
Michoacán	37	48	77.1						
Nuevo León	11	49	22.4						
Oaxaca	62	90	68.9				15	17	88.2
Yucatán	11	27	40.7						
Zacatecas	32	54	59.3	90	120	75.0	24	41	58.5
<b>TOTAL</b>	<b>288</b>	<b>568</b>	<b>50.7</b>	<b>279</b>	<b>401</b>	<b>69.6</b>	<b>127</b>	<b>283</b>	<b>44.9</b>

More than two thirds of the questionnaire consist of opinion questions with answers on the Likert scale from one to seven, where one generally means “strongly disagree,” and seven means “totally agree.” In addition to being able to choose four as an option of neutrality, respondents had the option of not responding without having to provide an explanation. This option was selected by participants who did not know the answer or who simply refused to answer the question. In order to present the information in a

concise way, when talking about the percentage of respondents in disagreement, the study refers to the sum of the responses from one to three of said scale, and when speaking of a level of agreement, it refers to the sum of the answers from five to seven. The percentage that did not respond, because it is minimal, is usually excluded in graphic representations. However, when the “unanswered” responses are equal to 10% or more in any of the represented categories, this representation is included.

The margin of error of the complete sample was calculated at 2.4%, with a confidence level of 95%. The margin of error per function was calculated at 4.4% for judges, 3.3% for public prosecutors and 6.5% for public defenders.

### 3. Survey Results

The 2010 and 2016 surveys generated important findings on a number of issues related to the general profile, workplace conditions, and attitudes of judges and other judicial sector operators in Mexico. In this section, we summarize several of the key findings related to participants’ perceptions of the criminal justice system, and particularly their views of the traditional inquisitorial system and the new oral-adversarial model of criminal procedure. We find that attitudes on the bench—and among prosecutors and public defenders—changed substantially over the six-year period between surveys.

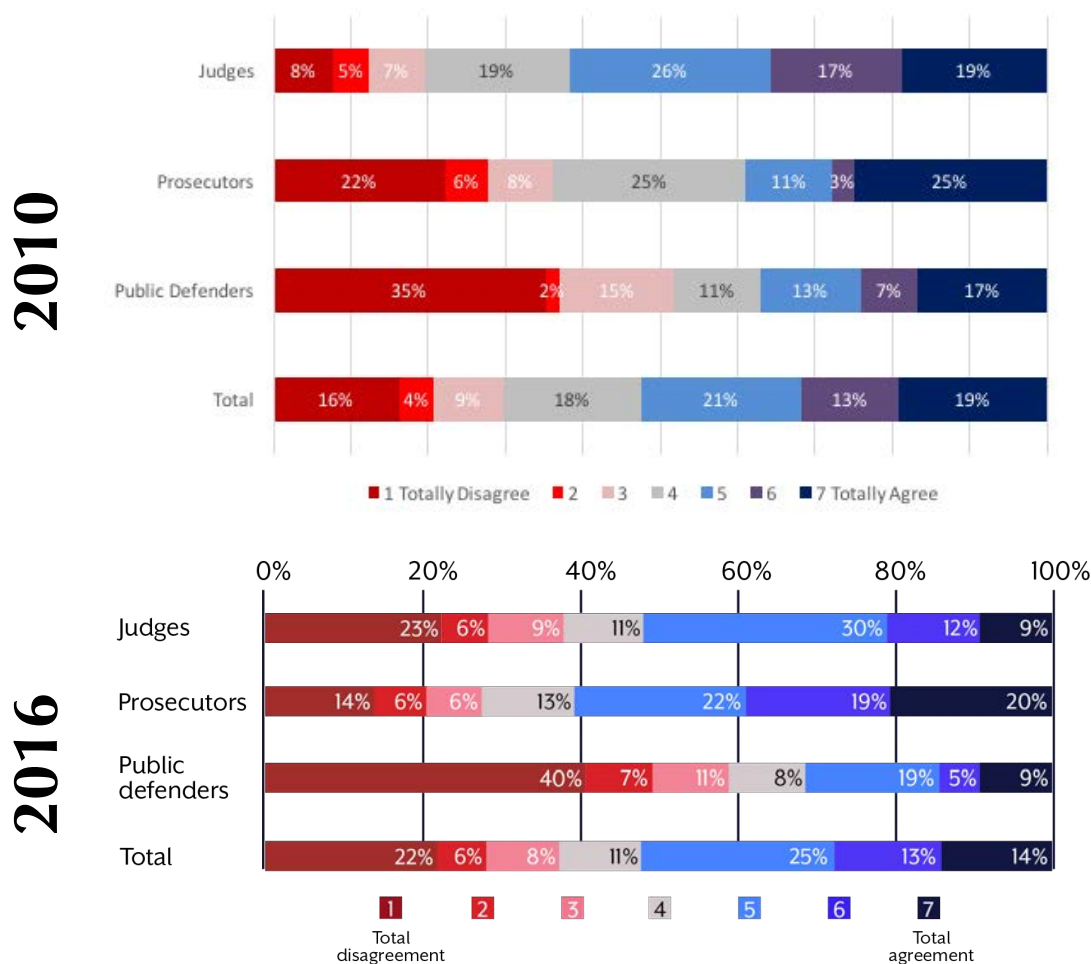
For example, in the 2010 survey, 59% of judges considered that the traditional justice system was effective and efficient (*eficaz y eficiente*).<sup>10</sup> These results suggested that judges were more conservative—in that they viewed the traditional system quite favorably—than prosecutors and public defenders, only 43% and 37% of whom (respectively) held the same view. Six years later, the proportion of judges that viewed the traditional justice system as effective and efficient dropped to 52% of judges. Meanwhile, 61% of prosecutors and 32% of public defenders expressed this view, suggesting that only prosecutors had strongly favorable views of the old system. Among judges, the highest

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<sup>10</sup> Across professions, there was greater variation. Those that expressed some level of agreement that the old system was effective and efficient included 59% of judges, 44% of prosecutors, and 37% of defenders. Among judges, the modal response was mild agreement (26%) and the next most frequent response category was “totally agree” (17%) (=4.69). Among prosecutors, the modal response was neutral (25%) and the next most frequent response was “totally agree” (23%) (=4.35). Among defenders, the modal response was “totally disagree” (37%) and the next most frequent response was mild agreement (15%) (=3.42). In sum, judges seem to be the most likely to think the old system was performing well, prosecutors were fairly evenly split, and defenders were most likely to believe the old system was performing poorly. The approval of 2008 reform and opinion of the traditional system was: chi-square=11.66;  $p < .05$ , and the results of the 2008 reform and opinion of the traditional system: chi-square=14.56;  $p < .01$ . See: Ingram, Rodriguez Ferreira and Shirk (2011), *Justiciabárometro: Judicial Survey. Attitudes of Mexican Judges, Prosecutors, and Public Defenders*. San Diego, University of San Diego; Ingram, Rodriguez Ferreira and Shirk (2011), *Assessing Judicial Reform in Mexico: Attitudes of Legal Professionals in Nine Mexican States on the 2008 Judicial Reform*. San Diego: University of San Diego.

level of satisfaction with the traditional system was found in the state of Baja California (78%) and the highest level of dissatisfaction (64%) was found in Coahuila.

**Figure 1: Perceptions Among Judges, Prosecutors, and Public Defenders that Mexico's Traditional System Was Effective and Efficient, Comparing 2010 and 2016**

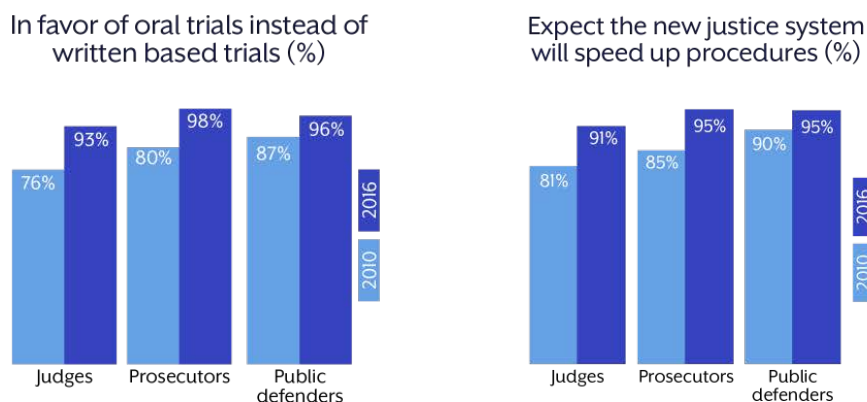


Meanwhile, one of the most important findings in comparing the results of the two surveys is that views toward the 2008 reform were remarkably positive across all three professions. In the 2010 study, approximately 84% of respondents expressed some level of agreement with the oral-adversarial model. Indeed, in all three professional categories, more than half of respondents reported high levels of agreement with the system, with opposition registered only among prosecutors (12.5%) and judges (8.8%), and *none* of the 59 public defenders interviewed, expressed any level of opposition to the reform. In 2016, the portion of respondents affirming that the traditional justice system needed to be reformed remained high (89%). This response rate was consistent across the three professions (87%

of judges, and 91% of both prosecutors and public defenders), with a considerable variation among judges at the state level.

Overall, in the 2010 survey, 76% of judges (and 80% of prosecutors and 87% of public defenders) agreed that the traditional inquisitorial criminal process should be replaced with the use of oral trials, a key component of the reform. The proportion of operators that held favorable opinions about the oral-adversarial model increased in the 2016 survey across all three professions, with 93% of judges, 98% of prosecutors, and 96% of public defenders reporting agreement that trial proceedings should be “oral,” rather than “written.”

**Figure 2: Support for Use of Oral Trial Proceedings and Expectations of Greater Efficiency Among Judges, Prosecutors, and Public Defenders**

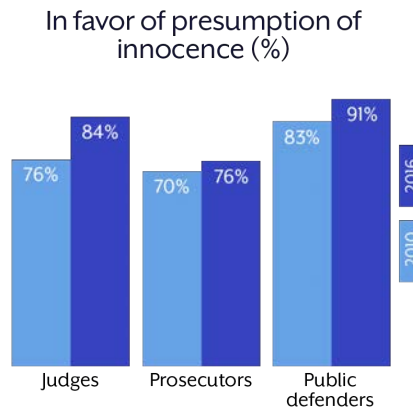


Indeed, a key reason why judicial system operators appeared to support the transition to the oral-adversarial model is the greater efficiency with which trial proceedings can be conducted in a public hearing. When conducted properly, oral litigation allows for greater efficiency, since all parties can obtain information, request clarification, and raise questions and objections in real time, rather than wait for written documentation to be generated, distributed, and reviewed. However, it should be noted that focus groups and interviews suggest that some court attorneys have not developed strong litigation skills and simply read aloud from prepared statements, instead of engaging in a more fluid oral presentation. This suggests a need for continued training and preparation to improve litigation skills in order to properly operate the new system.

One of the other central pillars of the 2008 reform was the strengthening of the presumption of innocence. Overall, in the 2010 survey about 76% of respondents agreed that the presumption of innocence should be respected, even if that means releasing suspects in cases involving minor offenses. Perhaps the most striking aspect of the answers to this question is that there is any major variation in responses at all. The question asked clearly whether the presumption of innocence should be observed by freeing pre-trial detainees in minor cases until their guilt or innocence is determined. In the 2016 survey

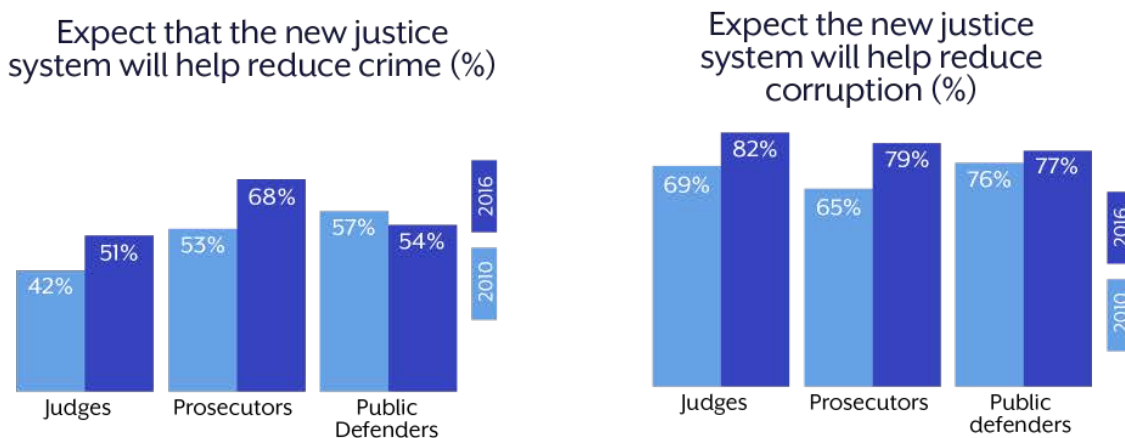
84% of judges, 76% of prosecutors, and 91% of public defenders indicated that the presumption of innocence should be respected, which corresponds to an increase of eight percentage points for both judges and public defenders.

**Figure 3: Support for the Presumption of Innocence Among Judges, Prosecutors, and Public Defenders**



While judges are more or less divided in 2016 about how much the new criminal justice system will help to reduce crime (34% disagreed and 51% agreed), 82% of them agree that the new system will help to reduce corruption, the proportion actually increased compared to 2010. Meanwhile, there were increases in the proportion of judges (+13%), prosecutors (14%), and public defenders (1%) who felt that the oral-adversarial model will help to reduce corruption.

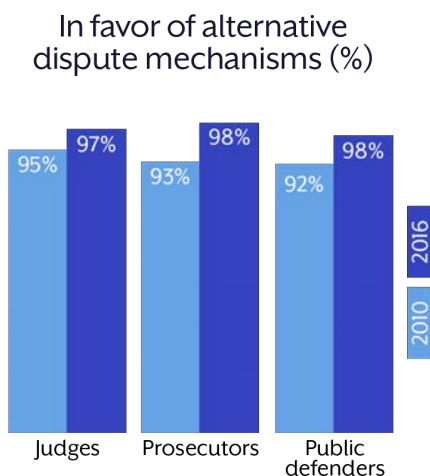
**Figure 4: Perception Among Judges, Prosecutors, and Public Defenders that the New System Will Reduce Crime and Corruption**



Finally, there is very broad support for mechanisms of alternative dispute resolution (ADR). In 2010, about 94% of respondents expressed approval of ADR. Indeed, 77.9% of respondents (215 of 276) expressed the highest level of agreement ("totally agree").

Support for alternative dispute resolution (ADR), which had received high levels of approval in the 2010 survey, was reaffirmed by the three professions: 97% of judges, and 98% of prosecutors and public defenders in 2016 indicated their support for using ADR.

**Figure 5: Support for the Use of ADR Mechanisms Among Judges, Prosecutors, and Public Defenders**



In effect, 91% of judges, and 95% of both prosecutors and public defenders believe the oral-adversarial model will result in quicker judicial proceedings. Although it is generally difficult to determine what successes the new system will have, based on the positive opinions regarding the speed of processes and ADR, these may be among the most important achievements of the reform.

#### 4. Analysis of Survey Results

Opponents of the new system have long expressed concern that more rights for criminal defendants will lead to more acquittals and greater impunity. However, the protection of these rights is specifically intended to force police and prosecutors to improve the quality of criminal investigations and prosecutions to ensure that justice is served. A strong legal defense for the accused helps limit the punitive discretion of both.

Though, the 2010 and 2016 surveys revealed significant changes in the operators' attitudes towards the recent reform efforts, including a notable increase in judges' preference for the use of oral and accusatorial judicial proceedings. In the face of wide speculation concerning Mexico's adaptation to the new judicial system, this study helped demonstrate that judges and other operators within the judicial sector are progressively acclimating to the reforms, while acknowledging several serious and persisting challenges.

Indeed, considering that it was administered at the moment that the new system was taking effect throughout the country, the 2016 survey raised several red flags that are worthy of mention. For example, judicial sector personnel do not themselves have a high



level of confidence in the justice system. Even though judges are considered to be the most trustworthy operators by 96% of the study participants, doubts and mistrust still prevail over other operators, with police authorities being the most mistrusted officials of the justice system. Of the 36% of the participants who reported having been victims of a crime in the last year, around 20% admitted that they did not turn to the authorities, principally citing a lack of interest (23%) or mistrust in the authorities (17%).

Another principal concern among the general population is corruption, a sentiment not foreign to the operators of the justice system. Promisingly, however, 80% of the surveyed operators believe that the oral-adversarial model will help reduce corruption. Yet certain attitudes remain to be addressed, including the institutionalized perception that, for example, political contacts are the best means by which to remain in office or to be nominated for a higher position, regardless of professional merit. In other words, the majority of the survey participants (64% of the judges, 70% of the Ministry of the Public agents, and 58% of the public defenders) agree that experience and training positively influence the possibility of being ratified or promoted, but more than half of the judges (54%), Ministry of the Public agents (37%) and public defenders (65%) still believe that officials with political contacts are more likely to remain in office or be nominated to a higher position.

Other alarming trends are the inherited habits unique to Mexico's system of justice, for example, the tolerance for authorities acting outside the margins of the law or a certain disdain for human rights. In this regard, 13% of the judges, 48% of the Ministry of the Public agents, and 29% of the public defenders surveyed believe that in certain cases the authorities can act outside of the law to investigate and punish persons for crimes committed. Additionally, 10% of the judges, 29% of the Ministry of the Public agents and 20% of the public defenders opined that human rights hinder justice for victims. It should also be noted that a certain percentage of important officials (21% of the judges, 40% of the Ministry of the Public agents and 24% of the public defenders) contend that the oral-adversarial model favors criminal defendants over victims.

The 2016 survey included questions the use of eye witness testimony as primary evidence in trials, a practice questioned by various studies and publicized in the widely-known documentary, *Presumed Guilty* (*Presunto Culpable*). According to the 2016 survey results, eye witness testimony continues to be the most used form of evidence in the courts (at 68%), followed by physical evidence (53%) and confessions (13%).

Hence, it is clear that while there are progressive changes among the perceptions of Mexico's operators, serious concerns remain.<sup>11</sup> Yet, these concerns pale in comparison with those that persisted under Mexico's traditional criminal justice system, in which the vast majority of crimes went uninvestigated, rights of criminal defendants were frequently

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<sup>11</sup> However, it should be noted that in most cases these conservative trends have considerably and encouragingly decreased since 2010, which bodes well for the future of Mexico's justice system.

violated, and victims rarely found satisfaction. That is why most Mexican judges strongly supported the transition to the oral adversarial system. As the new system went into effect, a large majority of judges indicated that the justice system needed to be reformed, mainly due to lengthy trial delays and other persistent problems like corruption. Meanwhile, their support for the new system grew from 76% in 2010 to 93% in 2016, and indicated that it would help to reduce corruption thanks to the greater transparency and accountability mechanisms of the new system.

In fact, the study discovered several especially promising trends. For example, 89% of the respondents agree that the justice system needed to be reformed and that the oral-adversarial model has had positive effects since its implementation in 2008. About 90% of the participants responded that the oral-adversarial model will generate greater confidence in judicial authorities and 93% believe that the new system will accelerate the judicial process.

Furthermore, some of the most important features of the oral-adversarial model have been overwhelmingly well-received, with approximately 95% of judicial operators preferring oral procedures over written procedures, 98% preferring the use of alternative methods of conflict resolution (one of the most important changes of the oral-adversarial model), and a generally positive opinion on the presumption of innocence by 84% of the judges, 76% of the Ministry of the Public agents and 91% of the public defenders.

Overall, the survey results discussed in this study provide a unique and profound perspective into the inner workings of the Mexican criminal justice system, which traditionally has been shrouded in an obscure black box that few have bothered to open. The survey offers "a snapshot" of the profiles and perspectives of judges, prosecutors and public defenders at a critical moment in Mexico's history, which can serve-the authors hope-as a point of reference for future studies that evaluate the challenges and the advances of these efforts.

## **Conclusions**

Judicial sector operators who participated in this study have contributed their views and assessments on a wide range of issues, from their professional development to working conditions, and their concerns and hopes for the future state of justice in Mexico. . Participants demonstrated considerable commitment to the exercise, answering more than 140 questions with almost twice the response rate of the first edition of the study.

While there is a large amount of information available on the institutions and outcomes of the judicial sector (for example, budgets, staff numbers, crime rates, etc.) and on the opinions of the public in relation to the judicial sector (for example, victimization surveys), studies are needed on how the judicial sector operators and the system in which they operate are seen. Carrying out such studies is difficult for a number of reasons, including historically and by its nature the judicial sector is a very secretive area of

government. As a result, we know surprisingly little about those actors that are central to the functioning of the judicial system itself. Judges, in particular, are naturally evasive creatures, of which little is known. However, because judges will play a central role in the new criminal justice system in Mexico, it is especially important to closely examine their opinions and experiences in working within this new framework.

The few studies that analyze the perceptions and attitudes of judges tend to be based mainly on qualitative analysis, based on interviews with small groups of individuals, instead of systematic surveys with quantifiable indicators obtained from a large sample of the total population. In part, this is because large survey projects of this nature are extremely laborious, have many technical considerations, and are time-consuming.

These studies require a substantial long-term commitment of resources that is only possible with ample funding and a high degree of organization. In addition, conducting a long-term study that compares the attitudes of the judicial sector over several years requires a degree of institutional capacity and a commitment that is difficult to achieve and maintain. Thus, the Justiciabarómetro study reflects the culmination of many fortunate circumstances - and the generous support of current and previous donors such as the MacArthur Foundation, the Tinker Foundation, the Open Society Foundation and the Hewlett Foundation - that have made possible a sustained effort to monitor the administration of justice in Mexico. The authors hope to make good on these investments and continue to monitor and assess future shifts in attitudes among Mexico's judicial sector personnel.