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STATE LEVEL JUSTICE REFORM INITIATIVES IN MEXICO

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Introduction

Over the past decade, there has been a growing call for reforms to Mexico's ailing justice system in order to address widespread public distrust, case backlogs, systemic corruption, and criminal impunity. In recent years, a number of Mexican scholars, experts and non-governmental organizations have advocated reforms and innovations that would dramatically transform the administration of justice by blending elements of the accusatorial model found in the United States with Mexico's traditionally inquisitorial model, and adding new alternative dispute resolution (ADR) mechanisms that would alleviate the demands on Mexico's court system.

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Proponents believe that these reforms will contribute to a greater degree of transparency, fairness, efficiency, and overall effectiveness in the Mexican justice system. At the same time, critics worry that such reforms will be costly, that the legal community lacks adequate preparation and training, and that such reforms will not ultimately prove to be the panacea that is hoped for by many. While this debate has played out at the national level, the on-the-ground reality has changed dramatically as some states, notably Chihuahua, Nuevo León, and Oaxaca, have introduced elements of the accusatorial model (such as the use of oral trials) and several have adopted ADR mechanisms. Justice sector reforms are now pending in various other Mexican states, and are now under consideration at the national level.

This brief examines the nature, importance, and potential benefits of recent state-level justice reform initiatives in Mexico. In addition to the potential benefits of enhancing the rule of law in Mexico, such reforms may trend toward a gradual harmonization of legal practices, standards, and procedures in the United States and Mexico. This, in turn, could facilitate greater understanding and more effective cooperation between the two countries on legal matters. Regardless of the end result, however, it is clear that the decentralized efforts to reform Mexico's criminal justice reform at the state level have been an important precursor to national-level reform, and a useful illustration of the benefits of policy experimentation within Mexico's federal system.

The Mexican Legal System

There are two major differences between Mexico's justice system and that of the United States that are relevant to our inquiry. The first is that Mexico's legal system is rooted in a "civil law" tradition descended from Roman law, reinvigorated by Napoleonic law, and proliferated throughout Latin America by Spain. The second difference is that, by virtue of its civil law orientation, Mexico has traditionally relied on an inquisitorial model of criminal procedure. This contrasts the accusatorial model used in the United States, and more typically associated with common law systems. In order to contextualize the dramatic reforms currently underway in Mexico at the state level, we outline these key differences below.

Civil Versus Common Law

The defining characteristic of the civil law tradition is the strict application of legal codes or statutes (as written by the legislature) in judicial decisions, with the goal of ensuring that judges interpret the law consistently across all cases. An important advantage of this system is that statutes pertaining to

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a certain subject are clearly codified within a given body of law.

The civil law system differs from the "common law" tradition that the United States inherited from Great Britain. While it also respects the law as written, common law also relies on the principle of *stare decisis* (the Latin term meaning "let the decision stand"). This principle allows judges in a common law system to decide a case based on precedents established by other judicial decisions in cases that have a similar fact pattern. Hence, a major distinction, and a possible disadvantage, of this system is that the law is not as neatly codified as in the civil law tradition, meaning that judges and lawyers must not only examine the law, but also numerous existing cases in order to properly evaluate and apply the law.

In the process, the common law system provides a certain degree of "cross-checking" and a stronger role for the courts in interpreting the meaning and application of the law. Drawing on its common law tradition, the U.S. judiciary was able to assert its role as a check on other branches of government with the Supreme Court's landmark decision in *Marbury v. Madison*, which provided a precedent for judicial review to determine the constitutionality of government decisions.

In contrast, historically, Mexico's judicial branch has been much weaker than the legislative and especially the executive branches, in large part due to factors that hindered Mexican democracy in general in the 19th and 20th centuries. Autocratic regimes, like the 34-year dictatorship of General Porfirio Díaz (1876-1910), and severely restricted terms of democratic competition during 71 years of uninterrupted rule by the Institutional Revolutionary Party (PRI), significantly impeded the development of judicial independence in Mexico. Under the PRI, for example, judicial appointments depended heavily on loyalty to the ruling party and judicial decisions only rarely contradicted the elected branches of government controlled by the party.

Yet, the relative weakness of the Mexican judiciary may also be attributed in part to its adherence to the civil law tradition, which somewhat limits judicial review and interpretation of the law. In Mexico's civil law system, the only way for the judiciary to establish binding precedent is through the *amparo* procedure, a legal innovation that dates back to the 1857 Mexican Constitution, which forms the basis of the current constitution promulgated in 1917.

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An amparo is literally a "protection" that provides an injunction blocking government actions that would encroach on an individual's constitutional rights. However, a court's decision to grant an amparo is only binding for the parties involved in that particular case. Universally binding precedents can only be established after the Supreme Court or collegiate circuit courts make five consecutive and identical majority rulings on the same topic in amparo cases, provided that the collegiate court decisions are not contradicted by the Supreme Court. In such cases, this establishes a legal precedent known as a jurisprudencia, in reference to the published summaries that compile and document modifications in Mexican law. In effect, precedents through jurisprudencia establish a very limited form of stare decisis in the Mexican legal system. Still, generally speaking, while decisions made by judges in other cases can be (and often are) informally consulted and found to be persuasive in determining the outcome in a case, they do not set binding precedents.

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Other reforms introduced in December 1994 expanded the Supreme Court's powers of judicial review by introducing "motions of unconstitutionality" (*acciones de inconstitucionalidad*). This innovation allowed key institutional actors —the executive branch, political parties, and a designated proportion of representatives from the Senate, the Chamber of Deputies, and the Mexico City legislature— to challenge the constitutionality of legislation or other government actions. Moreover, recent decisions (such as the court's June 2007 verdict on the *Televisa Law*) signal a growing sense of autonomy on the part of the Mexican Supreme Court, which may suggest the beginning of a new era of judicial independence and activism in Mexico.

Inquisitorial Versus Accusatorial Criminal Procedure

A second major difference between the U.S. and Mexican legal systems that is relative to our discussion has to do with criminal procedure, and derives from the above noted distinction between civil and common law systems. That is, civil law systems like Mexico's frequently draw on an inquisitorial model of criminal justice, while the United States and many common law systems draw on an accusatorial model.

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The inquisitorial system derives from historical and cultural factors in civil law systems that placed the judiciary in the position of gathering evidence and making determinations of guilt or innocence on behalf of the state. In such systems, the judge and/or representatives of the court —such as the public prosecutor (*ministerio público*) and the judicial police (*policía judicial*) in Mexico— have oversight over criminal investigations, and an active role in the levying of charges against the accused.

Hence, in a civil law system, the court may have compelling indications of guilt in advance of trial and sentencing, and the accused is often held in detention prior to sentencing. Moreover, in Mexico, voluntary pre-trial release of the accused (e.g. through bail bonding) is very rare, in part because of the preponderance of evidence indicating guilt. Thus, while Mexico theoretically maintains a "presumption of innocence" prior to the verdict of the court, defendants are commonly viewed as "guilty until proven innocent." Moreover, because court procedures rely much more on written than oral presentation of information, criminal procedure has tended to lack the degree of public scrutiny found elsewhere.

In contrast, the accusatory system derives from a historical and cultural tradition that challenges the legal position of the state. That is, the accusatorial model allows for a more balanced treatment of the prosecution and the defense, viewing these as equally opposing forces in a criminal case. For this reason, the accusatorial system is sometimes also described as an "adversarial" system. This means that both parties —the prosecution and the defense—are granted the opportunity to present evidence and testimony in support of their positions. Moreover, the accusatory model customarily allows each party to question and contradict the other's case before a judge in a public, oral proceeding. By comparison, the role of the defense in an inquisitorial system is limited to ensuring adherence to proper legal procedure, without the presentation of counter-arguments or evidence.

Both the inquisitorial and accusatorial systems have potential advantages and disadvantages (See Table 1). In the United States, for example, prosecutors and the public often lament the reliance on highly paid defense attorneys who are skilled at subverting the state's evidence in criminal trials through legal technicalities. Similarly, the use of public, jury trials in accusatorial systems sometimes generates public criticism because of "jury rigging" and prejudicial juries. Meanwhile, proponents of the accusatorial system claim that it provides for a more transparent and balanced presentation of arguments and evidence —as well as greater speed and efficiency— than the inquisitorial model.

Table 1: Attributes of Accusatory and Inquisitorial Legal Systems

Accusatory System	Inquisitorial System
• Direct confrontation between the state (prosecutor) and the accused (defendant), with both prosecutors and defendants presenting arguments and evidence.	• Investigative process and presentation of evidence undertaken by the court or its investigative and prosecutorial representatives (e.g., *policia judicial*, *ministerio público*).
• Access to prosecutorial evidence (i.e., "discovery") provided to defendant in advance of proceedings.	• Consideration of evidence and testimony by judge, who serves as impartial evaluator.
• Public forum where the judge serves as an impartial arbitrator in the presentation of arguments and evidence.	• Written proceedings, documentation of evidence, and testimony.
• Oral proceedings that permit contradiction between the parties in the review of arguments and evidence.	• Legal defense of the accused advocates for due process and proper adherence to criminal law procedure.
• Public proceedings are subject to public scrutiny, including the possibility of jury trials in certain cases.	• Proceedings not subject to public scrutiny, and rarely involve juries (Mexico's constitution allows jury trials, but they have not been used for several decades).
• Commonly allows debate on cautionary measures to be applied to the accused during trial, such as the restraint of liberty.	• Commonly restrains liberty of the accused during pre-sentencing phase of trial procedure, upon presentation of compelling indications of guilt.

Elements of both systems can be combined. Indeed, Article 20, Fraction VI of the Mexican Constitution seems to allow for a mix of the two systems; allowing the possibility of jury trials, for instance (though these have been used only rarely in Mexican history). Also, Mexico does use "oral hearings" in the preliminary and adjudication phase. However, these are quite different from the oral, public proceedings found in most accusatorial systems.

In Mexico, preliminary and adjudication hearings are held in an office without outside observers. Moreover, in such hearings, the defense and prosecuting attorneys are frequently heard by a judge's assistant, who is not the presiding judge; despite the

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qualifications of the assistant, legal reform advocates argue that the accused has a fundamental right to appear before the judge that is responsible for their case. Another criticism is that, during the hearing, the defense council often has very little access to the accused, who is frequently relegated to the back of the room, not next to counsel.

In short, while it presently has some elements of the accusatorial model, Mexico's criminal justice system bears strongly inquisitorial attributes: the court's role in the accusing phase is very active, there is very limited use of oral proceedings, and cases are presented primarily in written form. In part because of the manner in which criminal case are handled in Mexico, there can be a lack of fluidity of the proceedings. In some cases, the bureaucratic backlog in the courts can take several months to complete final sentencing in a case. The United Nations Commissioner for Human Rights in Mexico has criticized such delays as detrimental to the rights of the accused, and has urged Mexico to adopt a more accusatorial system for greater efficiency. Similarly, non-governmental organizations like Amnesty International criticize Mexico's criminal justice system due to problems of corruption, a lack of adherence to due process, and significant human rights abuses.

Jan Perlin, an expert on judicial system reform in Latin America interviewed for this brief, notes that both the victim and the defendant often suffer as a result of problems in the Mexican criminal justice system. Criminal investigations frequently fail to identify and/or apprehend the perpetrators of a crime, contributing to a sense of impunity and lawlessness. When a suspect is apprehended, the victim has to wait until the end of lengthy proceedings for restitution of damages (as opposed to the possibility of publicly provided medical services or compensation from a victims' fund). Yet, once a suspect is identified, criminal proceedings often lack due process and adequate protection of the legal rights of the accused. Hence, the ineffectiveness of the criminal justice system results in outcomes that may be neither just for the victim nor fair to the accused. For all of these reasons, the reform of the justice system has become an urgent priority for many in Mexico.

Justice Reform in Mexico

The first major effort to reform Mexico's judiciary in recent history was introduced by President Ernesto Zedillo in December 1994, at the outset of his six-year term. These reforms took place in the midst of serious public concern about the integrity of the justice system and overall public security in Mexico. The reforms sought to insulate the Mexican Supreme Court from political influence by increasing the terms of justices to 15 years, and expanded its role in consulting the legislature on issues of constitutionality. The reforms also sought to promote greater professionalism in the judiciary by introducing new merit criteria and oversight mechanisms for other federal judicial appointments.

However, the reform failed to attack general concerns regarding systemic backlogs, delays, and ineffectiveness of the judiciary. Furthermore, such problems were exacerbated in the 1990s due to a severe economic crisis—the 1994-95 peso devaluation—which brought an escalation of crime and violence, as well as increased public frustration with the Mexican criminal justice system. These concerns became the focus of Zedillo's successor, President Vicente Fox, who in 2000 became the first president from outside the PRI in 71 years. In April 2002, the Fox administration passed a landmark access to public information law, following on the heels of similar transparency legislation in the state of Sinaloa two months prior.

In April 2004, more than halfway through his term, Fox proposed a package of reforms that, if passed, would have produced a major overhaul of the Mexican criminal justice system. The 2004 proposal introduced many innovative concepts: the unification of federal police forces, separation of police investigative functions from the prosecution, greater autonomy for the attorney general and federal prosecutors, due process protections, strengthening of the presumption of innocence, higher standards for public legal defense, oral and public trial proceedings, and alternative dispute resolution (ADR) mechanisms, referred to as "*salidas alternas.*" The Fox proposal also included provisions that public defenders working with indigenous clients should have a basic knowledge of that person's language and culture, as well as access to a translator when needed.

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In theory, transferring investigative capacity from prosecutors to police would ensure that the resulting investigations would be more impartial and opposing counsel would have the same access to

evidence. Meanwhile, the introduction of oral trials (*oralidad*) would have been coupled with other elements that would move Mexico toward a more accusatorial system, allowing live, simultaneous presentation and cross-examination of evidence by both the prosecution and the defense (See Table 2).

Meanwhile, ADR mechanisms would have theoretically helped to relieve case backlogs and resource demands in the courts and Mexico's overcrowded prisons, thereby adding to the overall efficiency of the justice system. Current provisions require Mexican prosecutors to levy formal criminal charges before negotiating alternative sentences (such as community service). ADR procedures, however, would allow the victim to pardon the accused in exchange for appropriate restitution (including the possibility of monetary compensation for damages) without resorting to criminal charges.

Table 2: Perceived Advantages of Key Justice Sector Reforms

Oral / Accusatorial Proceedings	Alternative Dispute Resolution
• Can be more efficient than written proceedings	• voluntary role for opposing parties in resolution of a controversy
• neutrality in the collection and presentation of evidence	• can be more flexible and expeditious than court proceedings
• arbitrating role for the judge allows greater impartiality	• fewer technicalities; less need for lawyers in the procedure
• opportunities for presentation and questioning of evidence by the defense	• relatively low cost for the parties and the courts
• transparency and public access in court proceedings	• opportunity for reducing subsequent animosities between the parties

Proponents have supported the use of ADR mechanisms in the Mexican criminal justice system because, theoretically, the victim would be granted greater control over how damages should be repaired, in accordance with their concept of reparation, which might involve a simple apology, community service, and/or compensation for damages. Proponents generally believe that reconciliation better accommodates the victim's subjective notion of justice, and is more fulfilling than the standard process of prosecution, which limits the victim's involvement or relegates them to the status of a mere spectator. Critics suggest that ADR mechanisms are not sufficiently "tough" on offenders. Rather than reclusion of the accused in a penitentiary, ADR mechanisms place less emphasis on punishment and greater emphasis on identifying corrective measures, on the assumption that many victims may actually prefer an act of contrition, monetary restoration, or other restitution by the offender to achieve what proponents describe as "restorative justice."

In any event, Fox's proposals encountered significant resistance. In part, this was related to the timing and manner in which the reforms were presented, as well as problems of legislative fragmentation. The administration introduced the legislation relatively late into Fox's term, and failed to establish multi-party political support in the opposition-dominated legislature. Furthermore, some skeptics in the legal community viewed the initiative as an effort to "Americanize" Mexico's civil law system. Some opponents cautioned that Mexican jurists and court infrastructure were not prepared for such sweeping changes. Hence, the reforms would require additional legal training (e.g., oral trial procedures) and costly investments (e.g., new publicly accessible courtrooms).

Still, despite these concerns, similar measures have been introduced in other Latin American countries with important successes. Chile, Costa Rica, El Salvador, and Bolivia have fully implemented oral hearings and/or ADR procedures with important results, including the alleviation of prosecutors' caseloads. According to a 2004 study conducted by Mauricio Duce for the *Centro de Estudios de Justicia de las Américas* (Center for Judicial Studies of the Americas), 75% of criminal cases in Chile were being processed by ADR rather than traditional judicial proceedings; 64% in Costa Rica; 40% in Bolivia and 26% in El Salvador.

Change does appear to be on Mexico's horizon. In 2006, Fox was succeeded by Felipe Calderón, who similarly hails from the National Action Party (PAN) and has gained high marks in public opinion polls for his efforts to restore public order in Mexico. Since the start of his term, there has been a series of initiatives in the Mexican federal legislature to implement justice sector reform and adopt aspects of the accusatory model. These proposals also include new provisions intended to help fight organized crime (such as new wire-tapping measures, and mechanisms to allow plea bargaining and turning state's evidence), which raises some concern among civil libertarians. Still, at present,

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there seems to be strong legislative support for justice sector reforms, not only from the PAN but also from both the PRI and the left-leaning Party of the Democratic Revolution (PRD). The Chamber of Deputies approved a new legislative package in December 2007, and the Senate is likely to vote on the package before the end of February 2007.

Meanwhile, many similar reforms have already been successfully passed and implemented in several different Mexican states. In the past, state legislatures were significantly influenced by national legal structures and practices, with state laws and codes closely replicating the federal laws and codes. Thus, recent state level judicial reforms strongly contrast Mexico's long history of federal dominance in policy-making. This shift signals a new era of decentralization and state-level innovation, which have laid the groundwork for subsequent "bottom up" reforms at the national level. Indeed, understanding Mexico's pending judicial reform requires a careful look at developments at the sub-national level. Hence, below we consider some of the important innovations that have been introduced in key Mexican states.

Oral Proceedings in the States

Of the 32 Mexican state level entities (including the Federal District), four are currently utilizing oral trial proceedings and other attributes of the accusatorial system in criminal cases. Several other states have passed "oral trials" legislation that has yet to take effect. Moreover, at the time of writing this brief, the Mexican Congress is considering similar reforms that could take effect in federal court proceedings throughout the country, and open the gates for further state-level reform. Below we look at some of the states that have already adopted the use of oral trials (See **Table 3**).

Nuevo León was the first state to introduce legislation for accusatorial procedures, with the passage of a major judicial reform package in 2003. Nuevo León's use of oral trials began with their application in cases of minor criminal offenses (in 2006 more serious offenses were included), as well as non-criminal proceedings. Nuevo León saw the first oral proceeding in Mexican family law in a February 2007 divorce case.

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Chihuahua also passed a reform in 2006, later implementing accusatorial procedures in January 2007; the first criminal case under such proceedings took place in March 2007. In that case, the indigenous defendant Anselmo Chávez Rivera was assisted by a translator. The results of such drastic changes in the criminal procedure are still to be evaluated, but thus far proponents have praised the speediness, transparency, and fairness of the accusatorial process.

Meanwhile, although also introduced in several other states, in most cases these reforms are not comprehensive or have not yet been fully implemented. For example, the state of Mexico introduced oral trials in August 2006, but has been criticized by judicial reform advocates for the severely limited application of such procedures. Meanwhile, some states —like Coahuila and Morelos— have begun to use oral trials only in cases involving juvenile defendants; Morelos will expand to include other cases by January 2010. Several other states have passed legislation and will implement oral trials over the next few years (to allow adequate preparation for the transition), while high-ranking members of the judiciary in other states (such as Guanajuato and Querétaro) have vocally supported the movement toward oral trials.

Table 3: Justice Sector Reform in Selected States with Date of Implementation

State	*Oral Trials*	*Mediation*
Aguascalientes	*	December 2004
Baja California	January 2009	--
Baja California Sur	--	January 2001
Campeche	--	*
Chihuahua	December 2006	June 2003*
Coahuila	**	July 2005
Colima	--	September 2003
Distrito Federal	October 2008	August 2003
Durango	*	--
Guanajuato	--	May 2003
Mexico State	August 2006	March 2003
Morelos	January 2010 **	--
Nuevo León	January 2004	*
Oaxaca	September 2007	April 2004
Puebla	--	December 2001
Querétaro	--	September 1999
Quintana Róo	--	February 1999
Sonora	--	*
Tabasco	--	*
Veracruz	January 2010	--
Zacatecas	January 2009	--

Note: (*) indicates that reforms are pending in the legislature. (**) indicates current use of oral trials in juvenile cases. States that presently have no major reforms in place or under consideration include: Chiapas, Guerrero, Hidalgo, Jalisco, Michoacán, Nayarit, San Luis Potosí, Sinaloa, Tamaulipas, Tlaxcala, Veracruz, and Yucatán.

ADR Mechanisms in the States

In addition to reforms to judicial proceedings, ADR mechanisms have also been introduced as an alternative to the courts in the resolution of legal controversies and

disputes in civil, commercial, and criminal matters. As indicated in Table 3, several Mexican states have implemented ADRs since the late 1990s. The four most common ADR mechanisms used in most legal systems are negotiation, mediation, arbitration, and conciliation. Through negotiation, the most basic form of ADR, two or more parties simply try to agree on a solution to a given legal controversy, without resorting to the legal system or the assistance of a third party.

In contrast, mediation and arbitration are processes in which opposing parties consult an impartial third person. In mediation, the parties are guided by a mediator who helps broker a common solution through negotiated settlement and/or voluntarily concessions. Whenever parties become irritated or enraged in the process, the mediator can intervene by providing a private intervention, referred to as a caucus, between the mediator and a given party. In order for this process to be handled effectively, though, mediators need to be well trained and aware of when their assistance is absolutely necessary, when caucus is needed, and when to let the parties vent within the mediation context. In arbitration cases, the third party is less focused on steering parties toward a negotiated agreement, and is instead granted the authority to impose a formal, written decision or "award" that is considered final and binding.

Finally, in conciliation, a third party proposes terms for agreement that he or she believes to represent a middle ground for the parties, who can choose whether or not to accept the terms. The conciliator takes a step further than the mediator by actually proposing terms, but does not go as far as the arbitrator who makes a final, binding decision for the parties. While the use of ADR mechanisms may not be applicable to all legal controversies, they can be especially useful in cases where there is a strong possibility for the parties to come to a mutually agreeable solution without resorting to court-administered legal proceedings.

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Among ADR mechanisms, mediation is the one most commonly used in Mexico. Indeed, mediation and conciliation are procedures that Mexico's indigenous cultures have long employed, and still use as a means to resolve disputes. Before the colonial era, many indigenous communities consulted local elders and leaders to resolve disputes through traditional forms of mediation. More recently, some Mexican states have adopted specific legislation for the use of ADRs or "*salidas alternas*." Even in others that have not, existing contract law may already permit such mechanisms. Drawing on a survey conducted for this study in May 2007, Table 4 lists selected states that have implemented mediation, the subject matter for which mediation is allowed, the number of cases then referred to mediation, and the number of cases in process at the time of our study. For example, Oaxaca, —which introduced a major judicial reform package that became effective in September 2007— had already introduced 30 mediation centers, with the principal goal of assisting indigenous communities. Table 4 also indicates the subject matter that is being mediated in these states, the number of cases being referred to mediation, and the number of cases actually being mediated.

Table 4: Cases Handled by Mediation Centers by Subject Area in Selected States Through May 2007

Mediation Center:	Family	Commerce	Community	Other Civil	Criminal	Total cases referred	Initiated or Reinitiated Mediation	Successful agreement
Aguascalientes	169	135	/	34	/	338	339	**n.a.**
Baja Ca. Sur	116	25	70	154	94	472	204	**131**
Coahuila	/	/	/	/	/	2442	1107	**1011**
Colima	119	211	/	456	69	922	908	**855**
Federal District	/	/	/	/	/	285	247	**163**
Guanajuato	998	3693	/	4545	99	n.a.	n.a.	**9335**
Mexico State	71	386	/	296	18	n.a.	1014	**784**
Oaxaca	296	724	45	71	/	2669	1614	**718**
Puebla	/	/	/	/	/	2105	1373	**1318**
Querétaro	80	/	/	55	3	1089	358	**138**
Sonora	189	54	64	264	4	1962	759	**575**

Note: Data include those reported by existing sources for the most recent year or years available, as determined from mediation center websites and direct inquiries in selected states through May 2007, when this survey was conducted. A slash (/) indicates that legal matters in that category were not applicable, while (n.a.) indicates that data were not available. The number of mediation cases initiated or re-initiated may exceed the number referred.

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The use of mediation appears to be growing rapidly. In Quintana Roo, home to the longest operating mediation center in the country, a third of the state's caseload is now handled through mediation. In Guanajuato, where thousands of mediation cases have been concluded successfully, there was a 31% increase in the use of such procedures from 2005 to 2007; mediations are resolved in an average of seven days and are now also used in juvenile justice cases.

According to official reports in these states, the results are encouraging. In Puebla, for example, nearly 95% of cases referred to mediation ended up with an agreement; the rate was 80% in Oaxaca; 60% in Sonora; and 50% in Coahuila. Results were somewhat lower in our survey (because official results track cases through completion), but still impressively high considering the voluntary nature of mediation, which allows parties to withdraw from the table at any moment.

Given successful experiences at the state level, the federal judiciary appears more inclined to adopt similar innovations. Once a zealous advocate of formal judicial proceedings, the Mexican Federal Collegial Circuit Court issued a January 2006 *jurisprudencia* that seemed to strongly favor the option of mediation in some cases. Specifically, the Circuit Court asserted that, in states that provide for mediation, the victim (*querellante*) must be made well aware of the opportunity to utilize such proceedings. In a separate opinion, the court also held that in such cases a victim has the right to request mediation at any time during criminal proceedings. Still, whether mediation will be expanded in use remains to be seen, especially in the case of criminal proceedings, which at the time of this analysis represented a tiny fraction (about 2%) of all known mediation cases.

Conclusion

It is important to note that Mexican states have varied in their timelines and approaches to justice sector reform. For example, in Coahuila, one of the earliest states to adopt ADR mechanisms, these procedures were introduced for criminal cases very gradually in select cases beginning in the early 1980s, and have since been expanded to a broad range of cases. The gradual introduction of these innovative procedures allowed the state's legal community to experiment, adapt, and build consensus over time.

In contrast, in Chihuahua, the 2004 judicial reform introduced simultaneous, sweeping changes as part of a carefully negotiated package that enjoyed broad, multi-partisan support across all three branches of the state government. These experiences suggest that —unless there is a mandate from the federal government— whether and how such reforms are successfully implemented in other states will likely depend on the local political climate, and the degree of consensus among jurists and policy makers in those states. However, overall, what is notable is that the implementation of justice sector reforms has helped to relieve case backlogs and improved the overall efficiency of the administration of justice in several Mexican states.

Presently, the Mexican Congress is considering a major judicial reform package that includes similar innovations, and promises to dramatically transform the entire Mexican justice system. President Calderón and the major parties have signaled their support for such reforms, and experts interviewed for this brief believe that passage of the federal reform package could take place before the end of February 2008. While the Mexican legal system may not shift entirely to an accusatorial legal system or a common law tradition, it appears to be acquiring characteristics that are more internationally accepted.

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