



World Justice Project
México

Mexico's New Criminal Justice System:

Substantial Progress and Persistent Challenges

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Report compiled by:

World Justice Project and Lawyers
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**World Justice
Project**

Researchers:

Alejandro Ponce
Roberto Hernández
Layda Negrete
Juan Botero
Leslie Solís
Jorge Morales
Camilo Gutiérrez
Valentina Pérez Botero
Jeremy Levine Drizin
Daniel Gamboa
Lilian Chapa Koloffon

Executive Editor:

Layda Negrete

Editors:

Lilian Chapa Koloffon
Roberto Hernández
Jeremy Levine-Drizin
Jorge Morales

Photography

Ignacio Miranda
Salvador Reyes

Design:

ICO | Imagen y Comunicación Organizacional

Communications Team:

Amir Galván
Fernando Omedé

Contributors:

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Introduction:

10 years have passed since Mexico's Congress approved a constitutional reform designed to drastically transform the country's criminal justice system.

Seeking to address the widespread problem of wrongful convictions, the principle objectives of the reform were to combat impunity and to curb the flow of innocent people ending up in prison. Referred to colloquially as the New Criminal Justice System (NCJS), the constitutional overhaul enshrined into law new legal protections for those accused of crimes. Among these protections was a formal recognition of the presumption of innocence. For the first time, those accused of crimes would be considered innocent until proven guilty.

In addition to incorporating new legal protections for defendants, the NCJS also sought to address the problem of corruption in the courtroom. Before the reform, Mexico employed an inquisitorial system of written trials where a lack of accountability structures and significant judicial and prosecutorial discretion allowed corruption to flourish. The NCJS scrapped the old system of written trials and replaced it with a new system of oral, adversarial trials in which litigants engage in direct debate in front of a judge in a public courtroom.

Beyond bringing a new degree of transparency to the courtroom, the reform also sought to bring more efficiency to criminal procedure. One of the ways it hoped to accomplish this was by reforming how the arraignment process worked. In the new system, judges now have more power to dismiss erroneous cases early on and they have more latitude to consider alternatives to prison for misdemeanor crimes.

Fixing all of these problems is an ambitious undertaking. The criminal justice system is a large, complex apparatus and reforming it necessarily implies addressing a number of issues in distinct but intertwined institutions including the police, the prosecutor's office, the judiciary, and the defense bar. While the constitutional reform of 2008 significantly transformed trial procedures in Mexico, reforming the police and prosecutor's offices will require additional reforms that target those institutions directly.

The eight-year implementation period for the reform expired in June of 2016. Since then, exactly two years ago, the NCJS has been the law of the land in all 32 Mexican States. In this report, we explore the impacts of the implementation of the NCJS and interrogate to what extent it has transformed criminal justice in Mexico.

To understand the impact of the reform, we rely on information and testimony provided by inmates. Inmates are knowledgeable informants because, as people who have had direct interactions with police, prosecutors, defense attorneys, and judges, they possess a privileged view of the inner workings of the justice system.

In 2016, Mexico's National Institute of Statistics and Geography, INEGI deployed for the first time a national survey to inmates. The survey, known as ENPOL, was deployed to more than 58,000 inmates throughout Mexico in federal, state, and local correctional facilities. The data collected by ENPOL is representative at the state level, allowing us to compare and rank states. It is also representative in the categories of federal and state crimes. Results of the survey were made public in mid-2017.

In addition to collecting basic demographic information on Mexico's incarcerated population, ENPOL asks inmates about their experiences in the justice system, from their initial arrest to their sentencing. The survey includes a number of detailed questions about whether inmates experienced mistreatment, abuse, or torture by authorities. It also measures more procedural aspects of their experiences, such as whether or not they understood the judge, whether or not they were made aware of their rights, the duration

of their case, etc. ENPOL also asked each respondent where and when they were arrested.

With this information, using a national database we constructed that identified the precise date in which each municipality in the country transitioned to the new system, we were able to classify the respondents into two categories: those processed under the old system and those processed under the new system. By dividing the sample into these two groups, we can compare inmate experiences in the old system to those in the new system. This allows us to analyze to what extent criminal justice in Mexico is changing under the NCJS.

In this document, we compare our key indicators in two ways. The first is a simple before/after comparison that shows how inmate experiences are changing at the national level. In the second comparison, we divide Mexico's 32 states into two categories: (1) those that started implementing the reform before 2012 and (2) those that started the implementation between 2012 and 2016. We refer to that first group as the "early adopters." When we categorize the states in this way, the data suggests that the early adopters have shown the best results so far.

Key Findings

NCJS-Before & After

Better judges, better infrastructure

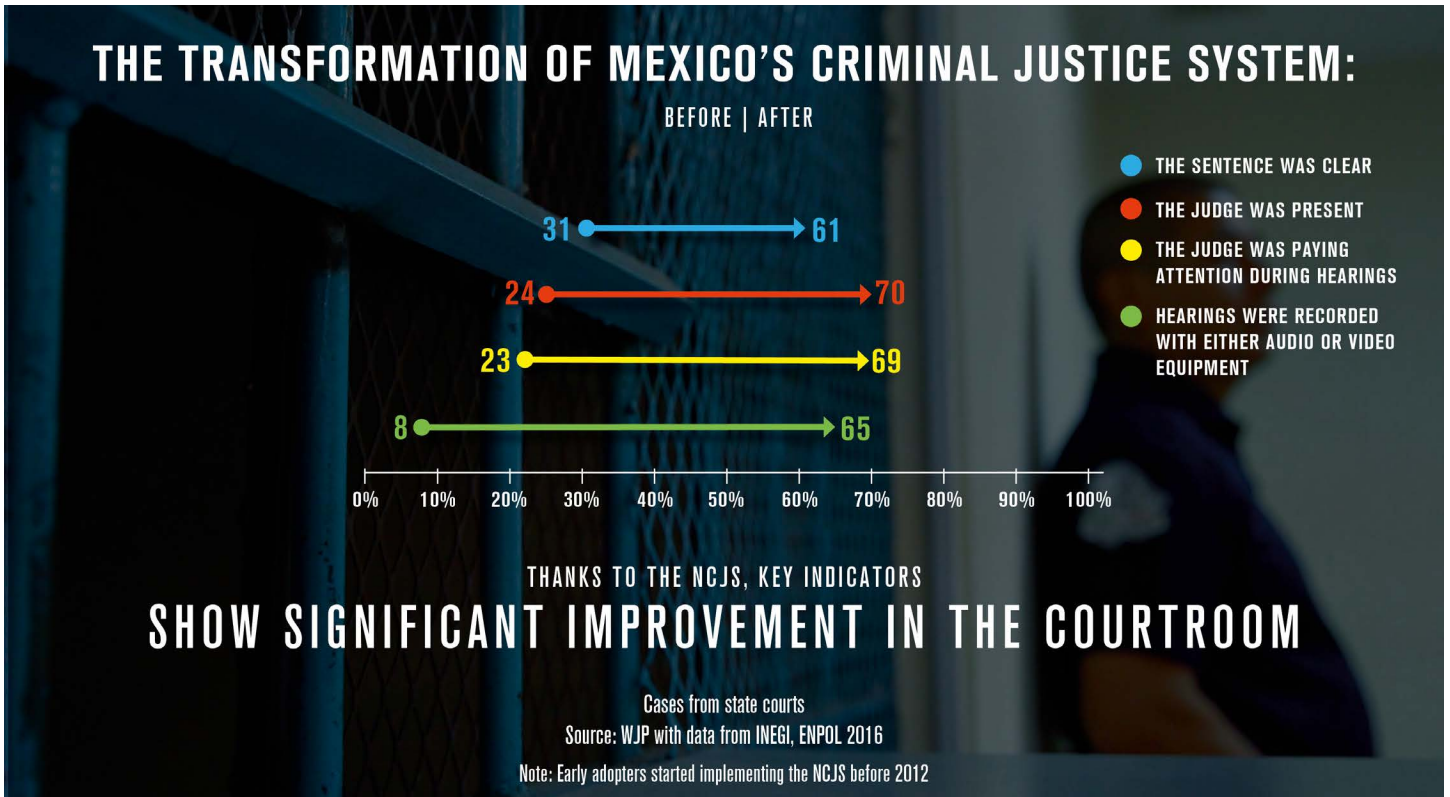
A fair criminal procedure requires that the judge is present in the courtroom and that she plays an active role in determining what evidence is admissible and deciding, in a fair and transparent manner, what –if any– punishment will be imposed. In the old system of written trials, these decisions, including sentencing, often occurred without any meaningful debate. In most cases, the judge was not even present when these decisions were made. Judges often deputized their secretaries to oversee trials and make deals with prosecutors while they sat locked away in cubicles in another room working on other cases.

One of the effects of this problem of judicial absenteeism is that the prosecution lacked an effective counterweight. With the judge nowhere to be seen, prosecutors exercised enormous influence on the outcome of trials. Taking advantage of the lack of supervision, prosecutors could use fabricated testimony, planted or nonexistent physical evidence, or even a mere allegation with no basis in facts to achieve a conviction. Judicial absenteeism was just one of a number of problems that plagued the old system of written trials. Another serious problem was that the physical infrastructure of the courtroom was ill-suited to ensure a fair trial for defendants.

In the old system, trials mostly occurred in cluttered and chaotic office spaces. During proceedings, the defendants would often be placed behind bars in small holding cells, physically separated from the judge and attorneys. Not only did this physical separation make it difficult for defendants to hear and participate in the proceedings that would dictate their future, but the optics of being placed behind bars before a verdict was reached symbolically eliminated the defendant's right to a presumption of innocence.

In addition to denying defendants the ability to meaningfully participate in their own trials, the ill-equipped physical infrastructure of the old system hindered fair trials in two other important ways. For one, while the public was technically allowed to observe hearings, there was no space for them at the cluttered desks where proceedings occurred, so family members and other independent parties interested in observing a trial would have to watch from afar. Secondly, in most cases, no objective record of proceedings would be produced. This lack of an objective record created an additional blind spot in the judicial process where corruption thrived.

Chart 1: Experience in the Criminal Process



The NCJS not only rewrote criminal statutes and redefined legal procedure, but it also sought to address these issues in physical infrastructure. Money was allocated to invest in the construction of new, adversarial style court rooms across Mexico. Recording equipment has been installed in these new courtrooms to create an objective record of proceedings that is then placed in the court archives. Additionally, members of the public interested in observing a case are now provided benches right behind the litigants where they can sit and observe. Furthermore, in an effort to provide relief to the heavy administrative burden judges faced in the old system, a new figure known as the court administrator has been created. This administrator is responsible for the more clerical side of overseeing a criminal procedure: scheduling hearings and ensuring that all parties (defendant, defense attorney, witnesses, and judge) are in attendance before proceedings begin.

Increased presence of judges, litigants, and the public: In the new system, in contrast to the old, the judge is present in the majority of hearings. Additionally, public access to court facilities has improved, which has democratized an important part of the criminal justice process. In the new system, in most cases, family members of the accused and other concerned parties are able to freely observe proceedings without interference.

Judges are more attentive: Not only has judicial absenteeism decreased in the new system, but judges are also playing a more active role in the hearings they oversee.

Judges are more understandable: Respondents were asked how clear the judge was in explaining the reasoning behind their decisions. In the new system, it appears that judges are clearer and doing a significantly better job explaining their reasoning to defendants.

Better system for presenting evidence

A fundamental difference between the old and new systems is how the court handles evidence. In the old system, physical evidence could be described in a paper summary and the court would accept that document as the evidence itself, without ever seeing or confirming the existence of the object described in the document. Prosecutors often submitted stacks of disorganized paperwork to the judge as evidence and the burden for sorting through those stacks of documents fell upon the judge and their clerks. In the new system, the court no longer deals with these types of summaries. When physical evidence is presented by the prosecution, the court admits the physical item rather than a written summary of it. Additionally, the court no longer accepts stacks of disorganized paperwork. If one of the litigating parties wishes the court to admit a piece of evidence, the burden falls upon that party to organize the submission and ensure that all the paperwork is in order.

Better court reporting practices

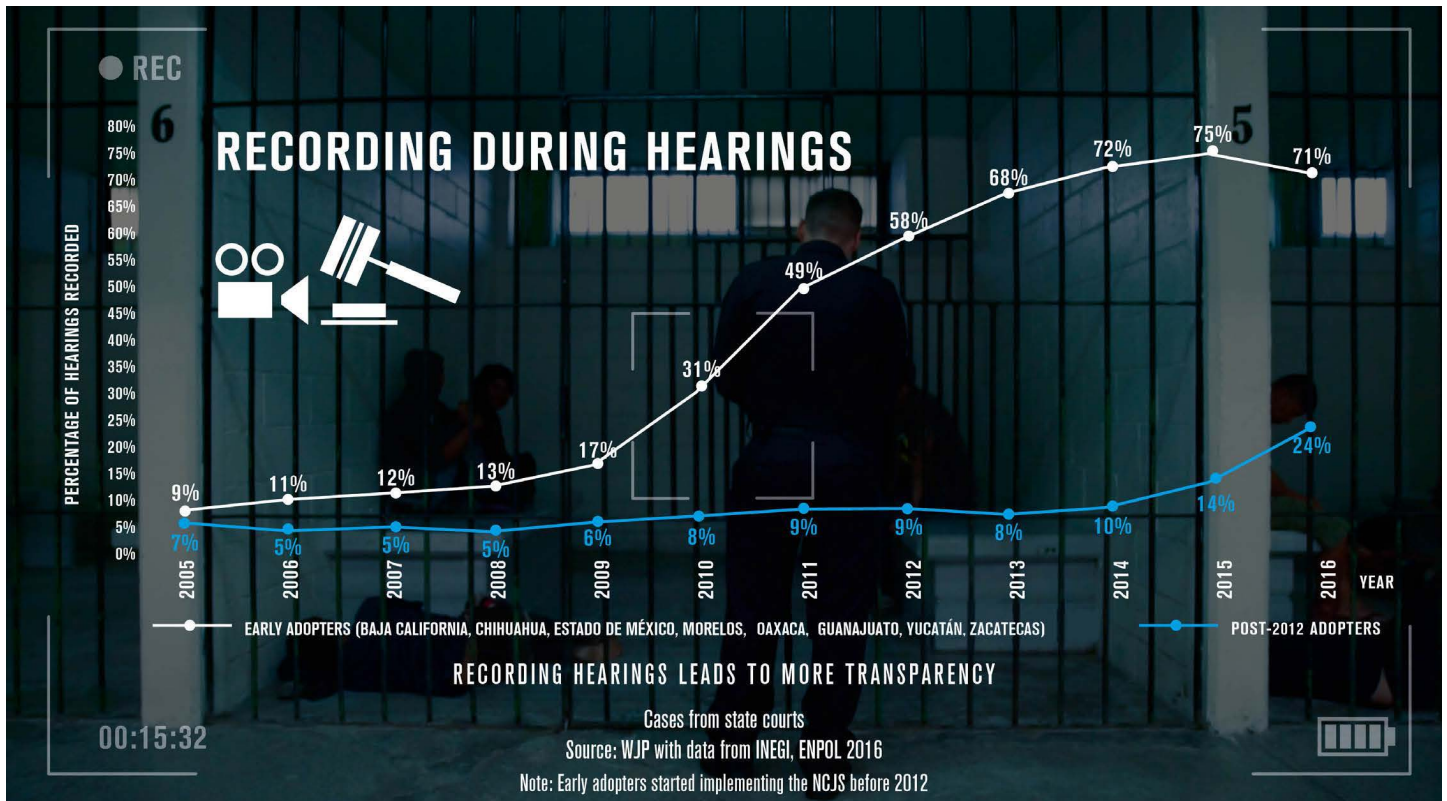
In the old system, court reporting, when it occurred at all, was the responsibility of either a stenographer or a judge's secretary. The official transcripts that were produced in this process were frequently manipulated, sometimes even containing dialogue that never took place. Prosecutors had unrestricted access to these written records and could take out or add pages to advance their case. It was also common for court reporters to report that the judge was present at the proceeding when in fact, they were not.

Under the NCJS, these *ad hoc* written transcripts have been replaced by a system of electronic recording. All hearings are recorded with either video or audio recording equipment, creating an objective record of events that can be referred to later by the parties involved.

A DAY IN THE COURTROOMS OF THE OLD SYSTEM:

The spaces where hearings occurred in the old system were ill-equipped to provide fair trials for defendants. Bearing little resemblance to the stereotypical, wood paneled court rooms seen on television, trials in the old system occurred in hectic, Kafkaesque office spaces. Under the white glow of fluorescent lamps, amidst the cacophony of typewriters, water cooler conversations between workers, droning microwaves where staff heated up their lunches, and the high pitch sound of power drills which secretaries would use to bind together enormous stacks of paperwork, a foreign visitor would be shocked to realize that this was the place where criminal trials take place.

Chart 2: Recording During Hearings



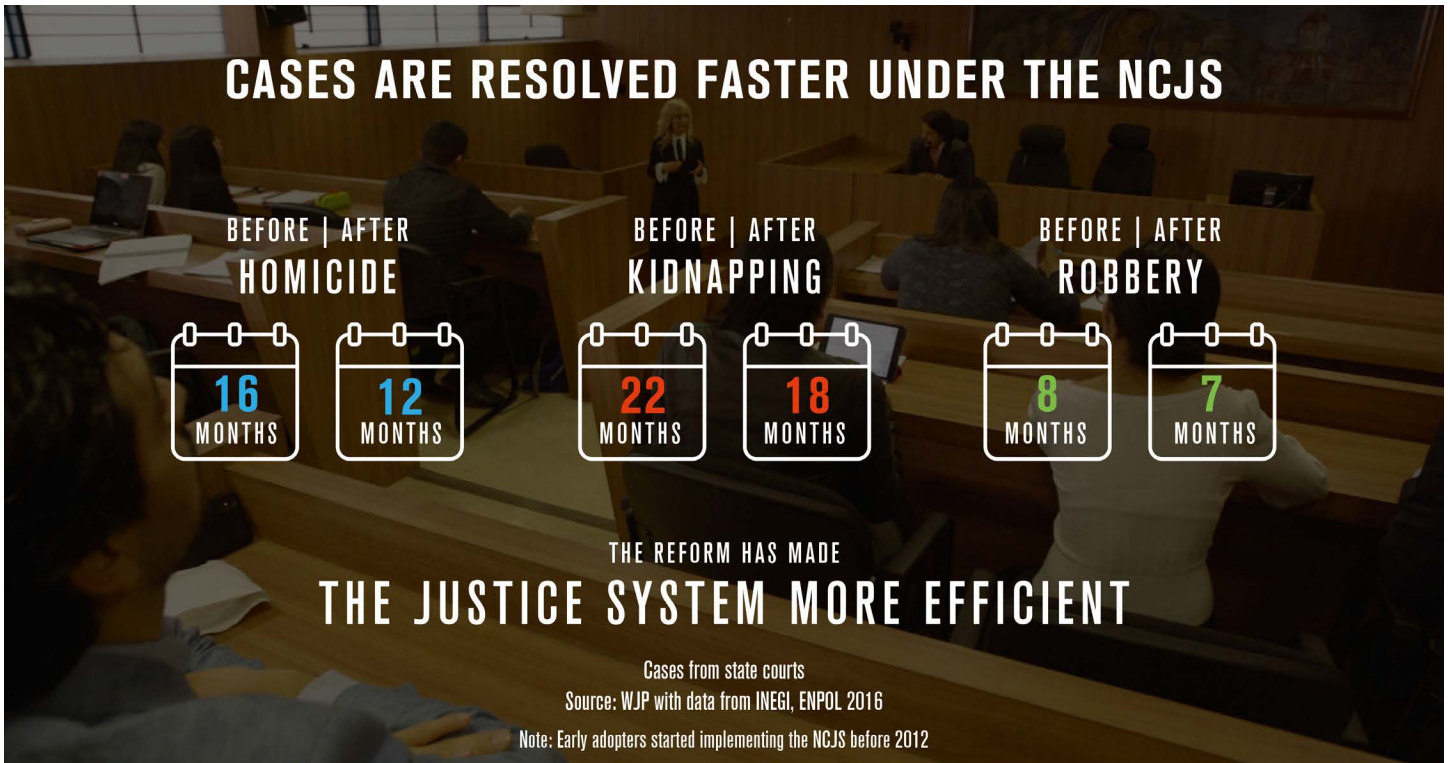
The new procedure of oral argument makes it possible for a judge to hear two or three interpretations of the facts involved in a given case: the prosecutor's, the defense attorney's, and even the victim's. Every word uttered in a proceeding is now registered electronically through a recording device. These new practices add a vital layer of efficiency, openness, transparency, and accountability that was lacking in the old system.

More efficient and faster trial procedures

An efficient justice system, which balances and addresses the conflicting needs of victims and defendants, requires that cases arrive to trial swiftly and in an organized fashion. The old system was notoriously slow. There was no system in place for prioritizing certain cases over others. Whether a given case involved a violent crime or a petty misdemeanor, defendants and victims could expect long and unpredictable wait times before resolution.

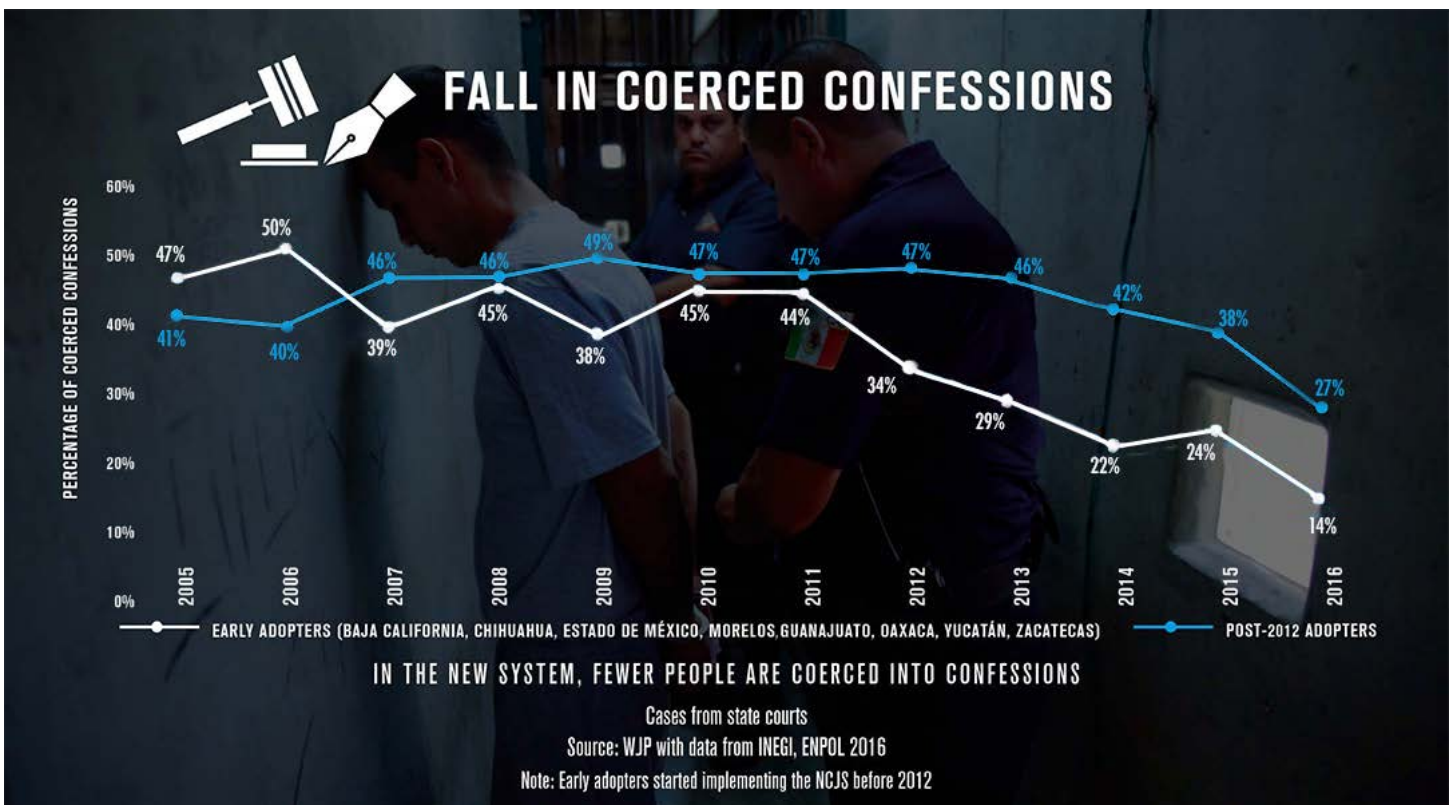
In an effort to address this problem, the NCJS allows for more extensive use of pleading, which has resulted in fewer cases going to trial. In the new system, people accused of committing a crime, most often in non-violent cases, have more freedom to negotiate with prosecutors and avoid long, drawn out trials. Through this more expanded use of pleading, prosecutors can quickly resolve a majority of cases before the trial phase, clearing the docket for more important cases. This new approach of prioritizing certain types of cases over others appears to be working. In comparison to the old system, criminal cases in the NCJS reach resolution, on average, four months faster.

Chart 3: Months between Arrest and Sentence



Less coerced confessions. In the NCJS, there has been a statistically significant decrease in coerced confessions.

Chart 4: Coerced Confessions



"Correction: to avoid a misguided interpretation, the indicator of coerced confessions replaces voluntary confessions. The new indicator comprises all positive responses for any of the following options when asked about the reasons for their confession: I was forced or threatened or I was physically attacked.

Continued challenges: strengthening the police and the prosecutor's office

While the changes that have occurred in courtrooms across Mexico as a result of the NCJS are impressive and laudable, when we examine other institutions in the criminal justice pipeline, the effects of the reform are less clear. This is particularly true when examining how the police and the prosecutor's office have changed under the NCJS.

In the new system, prosecutors now participate in an adversarial system governed by the legal principle that defendants are innocent until proven guilty. Like the old system, if a prosecutor wishes to press charges against a suspect of a crime, they must investigate and prepare a case establishing that suspect's guilt. However, unlike in the old system, anything a prosecutor now says or does can be challenged by an opposing party in open court and dismissed by a judge. For prosecutors, the transparency and accountability of the accusatorial system theoretically make it more difficult to pursue weak cases or engage in misconduct.

The role of investigative police has also changed under the NCJS. In the old system, the job of investigative police officers mainly consisted of following the orders of prosecutors. In the new system, investigative officers have more autonomy. They are responsible for being the first responders at crime scenes and working with forensic teams to collect, transport, and secure evidence. While they still work closely with prosecutors during investigations, the relationship has become more horizontal.

While the NCJS redefined the responsibilities of both prosecutors and investigative police officers, the ENPOL survey data suggest that in comparison to the significant changes observed in the courtroom, behavior among these two actors has not changed significantly under the new system.

Time in the prosecutor's office. According to the Mexican Constitution, persons accused of a crime cannot be detained for more than 48 hours without being presented in front of a judge and formally arraigned. The Mexican Constitution is relatively generous to law enforcement in this respect. In other countries like Chile, and in an increasing number of municipalities in the United States, the police can only detain a suspect for 24 hours before either releasing them or presenting them in front of a judge to be arraigned. Despite Mexico's generous limit of 48 hours, ENPOL data shows that 40% of people arrested sit in jail for more than 48 hours before being arraigned and formally charged.

Mistreatment during arrest and detention in prosecutor's office. At the national level, the data shows little improvement in the reduction of physical mistreatment during the time between arrest and arraignment. In the old system, 63% of inmates reported being physically abused during that time frame. Under the NCJS, that number has decreased only slightly to 59%.

Use of coercive tactics to acquire confessions. Despite insignificant progress in eliminating physical abuse during initial detention, the data does suggest a decrease in the use of coercive tactics to obtain confessions.

As displayed in Graph 4, in early adopter states, there has been a noticeable decrease in coerced confessions.

The risk of counter-reforms

Since the national implementation of the NCJS in 2016, a diverse group of political actors including the National Association of Governors (Conferencia Nacional de Gobernadores, in Spanish) and a number of prominent lawmakers and congressional candidates have advocated reversing key aspects of the NCJS and reverting back to the old system. Arguing that the new system has made it harder for police and prosecutors to effectively respond to rising crime rates, these groups want to bring back the widespread use of pretrial detention (which under the new system can only be used in exceptional cases), weaken the high standards of evidence now required to secure a conviction, and relax or eliminate some of the new responsibilities and accountability measures placed on police officers and prosecutors.

This campaign for counter-reforms has gained steam over the past two years, as crime rates have increased significantly in many areas of Mexico. At the national level, Mexico is observing some of the highest annual homicide rates since officials first started collecting crime statistics decades ago. The security crisis is even spreading to states long viewed to be isolated from the violence related to the Drug War. To adequately respond to these high crime rates, instead of pursuing counter reforms, further reforms should be contemplated that directly address the continued challenges faced by prosecutor's offices and police forces.

Those who believe in reverting to the old system assume that there is a direct, causal relationship between increasing crime rates and the advent of new methods of criminal procedure. While the NCJS may provide a convenient scapegoat, this assumption is false. There is no evidence showing that recent advances in due process rights, made possible by the NCJS, have fed the crime wave occurring in Mexico today.

Considering that a number of the principle advocates for counter-reforms will likely be elected to Congress in the upcoming elections, these calls for reverting to the old system will remain a topic of discussion in the near future.

Final Reflections:

The NCJS, Two years in

The reform has led to significant and observable progress in criminal procedure throughout Mexico

Nationally, as a result of the implementation of the NCJS, Today, Mexico has judges of higher quality than it did under the old system. In the new system, judges are more present, they play a more active role in proceedings, and according to defendants, they are clearer, and do a better job explaining the justifications for their rulings. Additionally, trials today are more transparent than ever before, thanks to better infrastructure and the new practice of recording hearings with audio or video equipment. Finally, due to a new approach of prioritizing high-impact cases over others, trial procedures are faster and more efficient today than in the old system.

Progress takes time

Like a bottle of fine wine, the effects of the NCJS get better over time. The ENPOL data shows that the early adopters of the reform—the eight states that began their transition to the NCJS before 2012—today display the most significant positive trends in the entire country. The states that adopted the reforms after 2012 also show upward trends in many areas, but these positive effects have only become apparent recently. This indicates that the effects of the reform are not visible immediately and that they tend to consolidate over time.

Systemic problems remain unaddressed in the prosecutor's office and police forces

In general, the work of prosecutors and police officers is met with significantly more scrutiny under the NCJS than in the old system. Under the NCJS, prosecutors and the police are required to present high-quality evidence in order to press charges. Additionally, in contrast to the old system, certain standards must be met in order to arrest a suspect. To meet the challenge that the NCJS represents, prosecutors and police officers will have to professionalize and develop stronger investigative abilities. The data show that this has yet to happen. In comparison to the significant progress observed in courtrooms since the implementation of the NCJS, positive change in the police forces and prosecutor's offices has been marginal. Reforming these two key institutions remains a vital and urgent task if we wish to continue increasing the quality of justice in Mexico.

Legislative patience must be cultivated to protect the reform

Reverting to the old system, as a number of prominent political actors wish to do, is the wrong path forward. Only two years have passed since the NCJS went into effect throughout Mexico and we must be patient as the new system takes root and matures. Going back to the old way of doing things would not only eliminate many of the significant improvements in criminal procedure described in this report, but it would distract us from the necessary and urgent task of contemplating new reforms that directly target the police and the prosecutor's office.

Crime and violence cannot be eradicated through the criminal justice system alone. Ensuring citizen security is a complex challenge that also requires addressing the social and economic conditions that often lead to crime. In the face of the current security crisis in Mexico, we must be careful to avoid the pitfalls of the past. Instead of returning to a broken system, we must continue to build on the successes of the NCJS by pursuing additional reforms that further strengthen security and justice in Mexico.