

**JUDICIAL AND POLICE
REFORMS IN MEXICO:
ESSENTIAL BUILDING BLOCKS
FOR A LAWFUL SOCIETY**

A MAJORITY STAFF REPORT

PREPARED FOR THE USE OF THE
**COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE**

ONE HUNDRED TWELFTH CONGRESS
SECOND SESSION

JULY 9, 2012



Printed for the use of the Committee on Foreign Relations

Available via World Wide Web:
<http://www.gpo.gov/fdsys/>

U.S. GOVERNMENT PRINTING OFFICE

74-912 PDF

WASHINGTON : 2012

COMMITTEE ON FOREIGN RELATIONS

JOHN F. KERRY, Massachusetts, *Chairman*

BARBARA BOXER, California	RICHARD G. LUGAR, Indiana
ROBERT MENENDEZ, New Jersey	BOB CORKER, Tennessee
BENJAMIN L. CARDIN, Maryland	JAMES E. RISCH, Idaho
ROBERT P. CASEY, Jr., Pennsylvania	MARCO RUBIO, Florida
JIM WEBB, Virginia	JAMES M. INHOFE, Oklahoma
JEANNE SHAHEEN, New Hampshire	JIM DEMINT, South Carolina
CHRISTOPHER A. COONS, Delaware	JOHNNY ISAKSON, Georgia
RICHARD J. DURBIN, Illinois	JOHN BARRASSO, Wyoming
TOM UDALL, New Mexico	MIKE LEE, Utah

WILLIAM C. DANVERS, *Staff Director*

KENNETH A. MYERS, JR., *Republican Staff Director*

CONTENTS

	Page
Letter of Transmittal	v
Introduction	1
Recommendations	3
The Mérida Initiative	4
Police Reforms	6
Judicial Reforms	9
The Future of Bilateral Security Cooperation	11

LETTER OF TRANSMITTAL

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, July 9, 2012.

DEAR COLLEAGUES: Mexico is one of the United States' most important partners. Recently, bilateral security cooperation has deepened and matured as Mexico and the U.S. seek to address drug trafficking and the violence associated with it.

In April of this year, I dispatched Senate Foreign Relations Committee majority staff to Mexico City and Monterrey where they conducted extensive interviews with Mexican and U.S. officials, top policy thinkers and human rights advocates, closely examining U.S.-Mexico bilateral security cooperation. Their findings are included in this report. I hope these findings and recommendations will inform policy discussions during the forthcoming periods of political transition in both countries.

Sincerely,

JOHN F. KERRY,
Chairman.

JUDICIAL AND POLICE REFORMS IN MEXICO: ESSENTIAL BUILDING BLOCKS FOR A LAWFUL SOCIETY

INTRODUCTION

2012 is a presidential election year for both Mexico and the United States. In December, Mexico's new president, Enrique Peña Nieto, will assume office and the following month the victor of the U.S. presidential elections will commence his term. New leadership brings change, and in the Mexico-U.S. context, a leadership change could alter the existing bilateral security cooperation dynamic. Amidst potential change, this committee report strongly recommends maintaining robust bilateral support for the Mérida Initiative, and calls upon the incoming Mexican and U.S. administrations to expand their support for Mexico's reform of its judicial sector and police as the best means to reduce the high levels of violent crime in Mexico.

For the past five and half years, the Calderón administration has been the architect of Mexico's campaign against organized crime, the primary focus of which has been taking down organized crime bosses (popularly referred to as "capos") and deploying large numbers of military personnel to high crime areas. The U.S. Government has joined Mexico in its effort to combat organized crime through the framework of the Mérida Initiative. To be clear, the strategy is Mexican-led, and U.S. assistance to Mexico is a small fraction of Mexico's own expenditures. Officials in Mexico and the United States stress that Mérida has served as a catalyst for a more profound law enforcement partnership—an acknowledgment that, because the challenges are shared, the burden is best shared as well.

Law enforcement cooperation between Mexico and the United States in the 20th century was hobbled by mutual suspicion; when cooperation did occur, it was generally because officials were willing to buck the prevailing distrust to solve specific, high priority cases. Despite these deeply rooted sensitivities, the Calderón administration has progressively opened the door to greater bilateral law enforcement cooperation, all the while imposing the ground rules governing U.S. support. Eager to institutionalize a cooperative law enforcement relationship with Mexico similar to that enjoyed by the United States with Canada, the U.S. Government took a gradualist, long-term approach to building operational links with Mexican law enforcement and judicial sector officials. Initially, the Calderón administration saw the Mérida Initiative as a way to receive sensitive U.S. law enforcement information to enable Mexican

authorities to more accurately target organized crime and to obtain big ticket counternarcotics equipment; Mexican officials were slower to express openness to receiving U.S. capacity and institution-building training support for their law enforcement and judicial sector personnel. As greater trust developed between both sides, law enforcement cooperation under the Mérida Initiative progressively deepened and broadened. This highly positive momentum has helped facilitate progress on other important issues, including trade, environmental protection and energy.

Despite the Calderón administration's progressively better record at taking down key organized crime bosses, this "capo"-centric anti-crime strategy has been widely criticized for deemphasizing the daily security needs of average Mexicans. Moreover, heavy reliance upon the military to quell lawlessness and directly confront the narcotics syndicates appears to have been largely ineffective—and in some instances to have exacerbated the violence suffered by civilians.

Although President-elect Peña Nieto, like the two other main presidential candidates, expressed support during his campaign for maintaining close bilateral law enforcement cooperation, he will undoubtedly confront immense public pressure to quickly and publicly address wide-spread concerns about violence and insecurity. Since December 2006, when President Calderón launched his campaign against organized crime, Mexico has tallied over 55,000 drug-related homicides. The horrific tactics utilized by the criminal organizations to intimidate both their rivals and the authorities have burned deeply into the Mexican public consciousness. All too frequently mass killings include women and minors. Bodies visibly mutilated are hung from bridges and severed heads are deposited in public places. In at least one instance, a pig's head was sown onto a torso. Unsurprisingly, there is a widespread conviction among Mexicans that bilateral law enforcement cooperation should not just target organized crime, but must also help Mexico reduce its current unacceptably high levels of violence.

The Calderón administration's campaign against organized crime has, for the most part, enjoyed the support of a majority of Mexicans, but large numbers of Mexicans also doubt whether their government will prevail. At the core of these doubts is the government's inability to clamp down on the hyper-violence occurring in certain parts of Mexico. Simply put, most Mexicans mistrust the federal and state authorities' main tools to fight crime, the police and judicial system, given their record of pervasive corruption and ineffectiveness.

The Calderón administration has focused its civilian institutional reform efforts on strengthening its federal law enforcement institutions' capacity to combat organized crime, accompanied by a more modest effort to bolster the federal government's prosecutorial capabilities. By comparison, support for reforming and strengthening the federal judiciary has been halting, and it was not until late in Calderón's tenure that he began addressing the need to reform the state-level police forces.

Seconding the view of many Mexican analysts, this committee report emphasizes that it is vitally important for the incoming Mexican administration to modernize the justice sector and implement

profound reform of police forces, identify sufficient resources to do so effectively, and aggressively seek to secure public support for these reforms. U.S. policy should support Mexico's efforts to this end, as this approach holds the best promise to more effectively combat organized criminal groups in Mexico and, equally importantly, to advance the long-term security and well-being of all Mexican citizens.

RECOMMENDATIONS

- This committee report recommends that the U.S. Congress ensure adequate, sustained funding, ideally at \$250 million a year for the next four years, for the Mérida Initiative to help Mexico, among other things, accelerate the establishment of an accusatorial judicial system at the federal and state levels and to assist, in close coordination with Mexican federal authorities, those Mexican states seeking to reform their state police forces. U.S. funding, though dwarfed by the resources that Mexicans themselves are investing, is nonetheless vitally important. Utilizing the “train-the-trainer” model, U.S. expertise is building Mexican capacity, which is important for both early-stage implementation and long-term sustainability of efforts.
- U.S. officials should stress the importance of police and judicial reforms to the incoming Mexican administration, impressing upon them the high priority that the U.S. Government assigns to the reform efforts. These reforms are long-term, technically difficult, require political cooperation across party lines as well as cooperation between federal and state-level authorities, and therefore do not lend themselves to splashy public relations wins. U.S. encouragement can play an important role in ensuring continued reforms, perhaps at an accelerated pace, under a new Mexican administration.
- The U.S. Government should increase efforts to strengthen the implementation within Mexico's federal and state police forces of accountability mechanisms—such as effective vetting of personnel and the establishment of empowered, autonomous internal investigative units—to prevent corruption and human rights abuses. Accountability mechanisms will ensure that police personnel are held responsible for crimes and abuses they commit, and are essential elements for increasing Mexicans' trust in their country's law enforcement agencies.
- Mexican federal-level police reforms are now generally better-resourced and more advanced than state-level efforts, despite the fact that the majority of crimes fall within state jurisdiction. U.S. support for police reforms should increasingly target state-level efforts.
- Even if previously viewed as a necessary stop-gap given the weakness of the civilian police authorities, military deployments to combat organized crime have achieved limited success and, in some cases, have led to human rights violations. Increased civilian police capabilities will obviate the need to deploy military personnel for domestic security purposes. U.S. efforts to strengthen Mexican police capabilities should simulta-

neously encourage the reduction of the Mexican military's role in the provision of domestic security.

- The U.S. Government needs to continue strengthening the prosecutorial capabilities of the Attorney General's Office and help build the prosecutorial capabilities of its state-level counterparts. Being respectful of the separation of powers, the U.S. Government should work together with the Mexican Government to promote judicial reform at both the federal and state-levels.
- The U.S. Embassy should work with its Mexican counterparts and civil society to promote greater public awareness and understanding of judicial reform efforts. Public misperceptions, and a lack of understanding in some state legislatures, unnecessarily hobble reform efforts. Studies delineating the superior performance of the oral-based, accusatorial judicial system that is being implemented in some Mexican states should be made publicly available.
- Through both the judicial and the police reform efforts, Mexico has the opportunity to increase human rights protections. All U.S. efforts should incorporate a human rights lens. U.S. officials should consult widely with Mexican civil society, and the Secretary of State should use the congressionally mandated reporting process as an avenue to encourage deeper and more rapid progress on the human rights conditions set forth in the FY 2012 Consolidated Appropriations Act (P.L. 112-74).

THE MÉRIDA INITIATIVE

Named after a Mexican city on the Yucatán Peninsula that hosted Presidents Calderón and Bush at the strategy's conception in 2007, the Mérida Initiative has developed into a multifaceted cooperative security effort between the United States and Mexico. Since 2008, the U.S. Congress has appropriated \$1.9 billion for the Initiative. As of April 2012, the U.S. Government had provided approximately \$1 billion worth of equipment, technical assistance and training; after a slow start, the delivery process hit its stride in 2011 with an annual delivery of \$500 million. Reflecting a deliberative bilateral consultative process, U.S. officials have channeled assistance to complement Mexico's own efforts and provide expertise and equipment that both sides judge will add value. Mexican spending dwarfs U.S. contributions; Mexican Government officials estimate that, for every U.S. dollar spent, Mexico has contributed thirteen dollars toward the shared goals of the Mérida Initiative.

In Mérida's earliest phase, bilateral cooperation focused on sharing sensitive law enforcement information to disrupt organized crime as well as on the delivery of costly counternarcotics equipment to military and federal law enforcement agencies (including the provision of helicopters, maritime surveillance planes, major system-wide computer upgrades and non-intrusive scanners). As the cooperative process unfolded, the Mexican Government expressed willingness to receive U.S. institutional capacity building assistance training for its judicial sector and law enforcement personnel.

Under the Obama administration, the Mérida Initiative was formally organized around a four-pillared bilateral structure: disrupt capacity of organized crime to operate; institutionalize capacity to sustain rule of law; create a 21st century border; and build strong and resilient communities. Under this structure, the Obama administration significantly increased its funding for rule of law institutional capacity building and training; maintained robust U.S. support and intelligence sharing for Mexican efforts to disrupt organized crime; deemphasized purchasing big ticket equipment for the Mexican military and federal police; and initiated modest programs to support border cooperation as well as crime prevention programs in agreed upon urban areas in northern Mexico. Reflecting these developments, the largest allocation (perhaps by a factor of three) of the FY2012 Mérida budget will be directed to rule of law capacity building programs, followed by progressively smaller amounts for disrupting organized crime, creating a 21st century border and building resilient communities.

Proponents of the current Mexican security strategy argue that the Calderón administration's determination to prevail over the drug trafficking syndicates, buttressed by a dramatic increase in the government's security budget (up 70 percent over 2006 levels), has begun to yield significant progress in combatting organized crime. Today, Mexico has considerably more capable federal law enforcement agencies and, for the first time in its history, scores of key criminal leaders have been arrested or killed and cartel operations have been disrupted. On an aggregated national basis, drug trafficking-related homicides are no longer skyrocketing and seem to have plateaued, albeit at an extremely high level. Moreover, multifaceted crime prevention programs and better policing have led to reductions of drug trafficking-related homicides in certain hyper-violent locations, notably the border city of Juárez.

Critics argue that the Mexican Government's preoccupation with capturing organized crime leaders has precipitated unacceptably high levels of drug trafficking-related homicides. They also fear that the fragmentation and resulting marginalization of certain previously dominant narcotics trafficking organizations has created a landscape with one or two more formidable national criminal syndicates and a plethora of smaller crime groups which still move large amounts of narcotics and perpetuate a significant percentage of the violence, along with extortion, kidnappings and robberies. The Mexican Government's deployment of large numbers of military forces to reinforce the thinly stretched federal law enforcement agencies has engendered strong criticism, particularly from national and international human rights organizations, given the disturbing increase of allegations of grave human rights violations against civilians by military personnel.

Mindful of U.S. security policy in Latin America in decades past, the U.S. Congress included human rights conditions on Mérida assistance, withholding 15 percent of certain funds to Mexican security forces until the Secretary of State reports that Mexico is taking action on specific human rights concerns such as eliminating the use of torture and ill-treatment to obtain evidence and prosecuting in the civilian justice system police and soldiers alleged to have

committed abuses against civilians. The Secretary's next report will likely be submitted to Congress by the fall of 2012.

There is widespread agreement that without a concerted, coordinated bilateral effort that seriously addresses U.S. demand for narcotics as well as U.S.-based firearm smuggling and money laundering, little can be done to effectively reduce drug trafficking in Mexico. The U.S. Government has devoted major resources to reduce domestic demand for narcotics; the Office of the National Drug Control Policy is funded at about \$25 billion a year, at least a third of which targets domestic demand. While this effort has achieved significant successes,¹ the reality is that this societal ill will bedevil the United States for the foreseeable future. The U.S. Government's efforts to clamp down on arms smuggling into Mexico have been constrained by legal imperatives and undermined by political infighting. Although combating U.S.-based money laundering benefiting Mexican criminal organizations appears to be the easiest of the three challenges, U.S. Government agencies have been slow to devote the resources necessary to develop a robust capability to combat it.

In the committee report's assessment, the Mexican Government can best sustain strong popular support for an aggressive campaign against organized crime if it can demonstrate to the Mexican people that it is also successful at significantly reducing the violence inflicted by organized crime and its allies. The committee report believes that the best way to achieve these two objectives is through the continued promotion of police and judicial sector reform.

POLICE REFORMS

The Mexican Government seeks to regain public trust in the police whose credibility remains badly tarnished by pervasive corruption and ineffectiveness. This will be no easy feat; in a 2010 public opinion poll, only 8 percent of Mexicans surveyed expressed strong confidence in the police.²

The Calderón administration has made significant investments to strengthen its federal law enforcement institutions' capacity to combat organized crime. The primary beneficiary has been the Mexican federal police which has increased five-fold, expanding from 6,500 to over thirty-six thousand, and which qualitatively improved its ranks by recruiting 7,000 university-educated entrants. By comparison, the Mexican Attorney General's Office, which fields a much smaller federal-level police force specializing in investigations, has received less of the central government's largess, and has taken more modest steps to enhance its institutional capabilities. Both organizations have implemented procedures to combat pervasive internal corruption by vetting their personnel through background investigations as well as regular toxicology, medical, psychological and polygraph examinations.

¹The United Nations Office of Drugs and Crime reports that drug consumption in the United States is steadily declining. Among the population aged 15–64, the consumption rate is down from 2.5 percent in 2006 to 1.9 percent in 2009. Approximately 617,000 people aged 12 or older used cocaine for the first time in the past 12 months in 2009, a decrease from 722,000 a year earlier.

²As stated in a General Distribution Congressional Research Service Trip Report from Clare Seelke, Specialist in Latin American Affairs, distributed on May 9th, 2012.

Some analysts argue that the larger and more effective federal entities have thrown organized crime groups on the defensive and that these syndicates do not represent a national security threat to the Mexican Government. They point out that the Mexican Government has killed or captured scores of key organized crime leaders (extraditing many to the United States), precipitating the near demise of some organized criminal networks and the fracturing of others. Nevertheless, it is clear that two formidable organized crime networks, Sinaloa and the Zetas, and their respective local criminal allies, are aggressively battling each other, as well as the federal government, to retain control over their now diversified illicit activities—which also include arms dealing, extortion, human trafficking and money laundering—in their fiefdoms. These criminal organizations wield intimidating influence over certain state and municipal governments, and inflict horrifically high levels of violence whenever their territorial primacy is challenged.

Because of Mexico's federal structure of government, the federal police and the Attorney General's Office's police force are, and will likely remain, too small to reduce the hyper-violence engulfing certain Mexican states. As a result, they look to the Mexican states to take on this responsibility more effectively. However, there is an ongoing jurisdictional debate between Mexican federal and state prosecutors over who should be investigating the lion's share of the drug trafficking-related crimes, especially homicides. The federal police and the Attorney General's Office's claim that they lack the jurisdiction, under the country's federal structure, to take enforcement action against many of the crimes perpetrated by the organized criminal syndicates and their affiliates; they point out that the vast majority of crimes committed in Mexico—92 percent by some estimates—including many crimes committed by organized criminal syndicates, fall under the legal jurisdiction of Mexico's states and municipalities. On the other hand, many state prosecutors argue that homicides tied to organized crime should, according to federal law, be investigated by federal prosecutors. One possible mid-term solution to this jurisdictional conundrum would be for the Mexican Congress to federalize more crimes so that they would clearly fall into the jurisdiction of the presently more capable federal police and the Attorney General's Office. However, given limitations on the ultimate size of the federal law enforcement agencies, this is a second best solution.

Jurisdictional debates aside, this committee report champions the view of many Mexican experts that over the long run the Mexican federal government's anti-organized crime campaign can only succeed if it can enlist the effective cooperation of state and municipal (at least from the larger of the municipalities) police forces. Reflecting the reality that there are over 350,000 poorly trained and inadequately resourced police distributed among the Federal District, 31 Mexican states and over 2,500 municipalities, this is an enormous challenge. The Calderón administration attempted to address this challenge by merging all of the municipal police forces into the state-level police forces; this approach was rejected by the Mexican Congress as many legislators viewed it as a power grab by federal and state authorities.

The United States Government has been keenly interested in forging a cooperative law enforcement relationship with Mexican state-level, and certain municipal-level, authorities. Until very recently, however, highly sensitive sovereignty issues precluded such U.S. involvement with local officials. In 2010, both countries began holding discussions on how the United States could work with Mexican law enforcement authorities in Chihuahua State to counter the violence raging in Ciudad Juárez. These discussions evolved into an understanding that the United States would channel all assistance to Mexican state and municipal police forces through the central government's Executive Secretariat for the National Public Security System (SNSP), an agency charged with coordinating federal public security funding and training to the states. Washington also agreed to follow the Mexican federal government's lead as to which Mexican states would be prioritized to receive U.S. police professionalization assistance. In 2011, both governments identified three high violence states bordering the United States—Chihuahua, Nuevo León and Tamaulipas—as priorities to receive Mérida Initiative assistance to professionalize the state police forces; in 2012, the Mexican Government proposed expanding the priority list to eight states. Reinforcing this effort, both countries agreed to support the establishment of a law enforcement academy to train state police from across Mexico; this facility opened in May 2012 in Puebla.³

There are credible reports that large police cleansing operations designed to publicly demonstrate anti-corruption gains have resulted in unlawful detentions and the extraction of confessions by torture—some of the very abuses they were meant to eliminate. Without accompanying accountability mechanisms, wholesale replacement of police personnel is unlikely to lead to a major reduction of police misconduct. Even when vetting mechanisms are in place, there are instances in which vetted members of newly established police have been charged for serious crimes. To effectively promote police reform at the federal and state levels, Mexican police officials must build and safeguard rigorously effective mechanisms to continuously vet police personnel and to conduct independent internal investigations into crimes and malfeasance committed by police personnel, prosecuting wrongdoers in criminal courts where appropriate. Inculcating a culture of lawfulness in

³ U.S. support to Mexico's strategy of enhancing state-level police professionalization is taking various forms. The United States is placing Senior Police Advisors/Mentors at the state police academies in Chihuahua, Nuevo León, Sonora and Tamaulipas to help channel U.S. training assistance. The U.S. is also helping develop major crimes task forces, known in Mexico as "Accredited State Police Units," that will be created in a minimum of 21 states and in the Federal District. The initial goal is to establish at least one of these task forces in each of the participating states, although Nuevo León is committed to creating three separate units. These "Accredited State Police Units" will be composed of 422 specially vetted and trained personnel who will be the frontrunners of larger police reform efforts within their states, and in the meantime will become their states' trusted partners to the federal law enforcement agencies. This effort is still in its early stages of implementation. Mexico has trained approximately 1,300 investigators, 450 analysts and 1,900 operations personnel. In addition, the United States and Mexico have collaborated to help the states root out corruption within their ranks. The United States has provided training, technical assistance and equipment to help endow priority states with the capabilities to vet their own police forces on a regular basis. The SNSP plays a key role in ensuring that the state-level vetting procedures conform to federal standards. A complementary U.S. initiative helps state police forces establish their own Internal Affairs Units to investigate corruption and other abuses. As required by U.S. law, U.S. officials implementing these programs must be vigilant in ensuring that the Mexican state-level police officials receiving U.S. funded training and equipment have been rigorously screened for human rights violations.

new police units will take time, and this challenge underscores the importance of not reproducing the flaws of Mexico's old law enforcement institutions in the process of forming new ones.

JUDICIAL REFORMS

Mexico's slow and opaque inquisitorial justice system fosters impunity. This paper-based system is hobbled by high pretrial detention rates, prison overcrowding, trials conducted with little to no transparency and the use of tainted evidence; there is considerable evidence of the use of torture to obtain confessions for serious crimes. Mexico's inquisitorial judicial system has proven inefficient and highly vulnerable to corruption. The cumulative result of the system's many flaws is that Mexico has been plagued with an unacceptably high impunity rate—only two percent of reported crimes lead to a conviction.

Recognizing that this system was inadequate to meet the demands of modern-day Mexico, the Mexican Congress launched in 2008 an ambitious transformation of its judiciary. The resulting constitutional amendment requires that, by 2016, all state and federal judicial systems transition from the inquisitorial system to a more agile, transparent, oral-based accusatorial justice system.

Federal and state-level reforms to implement the accusatorial system seek to improve the transparency, efficiency and quality of Mexico's judicial system. Accusatorial trials feature oral arguments in an open court, guaranteed opportunities for witness participation, better protection of evidence, safeguards to prevent against confessions obtained by torture, the use of alternative dispute resolutions and the presumption of innocence until proven guilty.

Many observers fault the Calderón administration for failing to assign to federal-level judicial reform the same urgency as to the take-downs of key criminal leaders. They argue that while the increased effectiveness of the federal police has led to a surge of arrests, a commensurate increase in prosecutions has not occurred, resulting in even more egregious prison overcrowding and the revolving door release of many criminals. Nevertheless, draft legislation to implement a new Federal Code for Criminal Procedures for an accusatorial system has slowly, but surely, gathered support within the Mexican Congress. Although most observers believe that the new code will ultimately be approved by the Mexican Congress, it is not expected to be considered until early 2013 given the electoral calendar and competing congressional priorities. The absence of reform at the federal level means that federal crimes, such as those related to organized crime, are still being prosecuted in the inquisitorial system, with all of its inherent weaknesses. At the same time, while many states have moved forward with reforms independently of the federal government, the failure to approve a new Federal Code for Criminal Procedures has reduced the pressure on states to make the necessary changes in a timely manner. Some of the laggards waited until after presidential elections this year to move forward on reforms, which will inevitably push them against the 2016 deadline.

Reforms' Early Results

State-level implementation of judicial reforms varies widely among the 31 federal states and the Federal District. Only three states—Chihuahua, the State of Mexico, and Morelos—have fully transitioned into the accusatory model, although two others, Oaxaca and Zacatecas, have also made significant progress in implementing the new system. A comparison between the 27 states that have yet to fully implement judicial reforms and the five states that have been implementing the new system for a minimum of one year illustrate the benefits of the accusatorial system. The five reform states generally demonstrate better victim participation, improved accountability for judges, greater use of alternative dispute resolution mechanisms, more selective pre-trial detention, fewer number of days required to resolve a case, increased efficiency and, notably, tougher sentences, over the non-reform states. That said, there is also a significant variation in performance even among the reform states. USAID commissioned the study and it will be released later this year.

An inherently lengthy process, judicial reform will probably require a generation to institutionalize. Instructing lawyers in the new system will require new textbooks, revised law school curricula and training for law school professors. Many legal professionals accustomed to the inquisitorial system are reluctant to shift to the new accusatorial process. Enlisting federal judges, who are given to zealously protecting their independence from the Mexican executive branch, presents a particular challenge. Proponents of judicial reform also face an uphill battle against public opinion, given that many perceive the accusatorial system as overly lenient on the accused. In Chihuahua, where the accusatorial system is fully operational, a murder suspect in a highly publicized case was released because three judges argued that the state prosecutors had not built enough evidence, and the resulting public outcry led to legislative modifications that have undermined protections for the accused.⁴

Getting protection right—both physical and legal protections—for the various legal actors might prove difficult under the new code, but is nonetheless critical. Given that the accusatorial model promotes transparency through open trials, witnesses and judges may find themselves at elevated risk of attacks upon their person. The

⁴ In anticipation of the eventual implementation of the new criminal procedure code, the Mexican Government, with U.S. support, is preparing personnel for the impending reforms. The U.S. Agency for International Development (USAID) focuses on state-level assistance and the Department of Justice (DOJ) concentrates on federal-level reforms. Working with seven Mexican states to implement judicial reforms, USAID has trained prosecutors, engaged civil society, promoted alternative dispute resolutions and facilitated judicial exchanges at the state level. USAID plans to expand assistance and work in a limited capacity with 13 more states. DOJ focuses on teaching Mexican instructors for the federal police and prosecutors about new procedures and roles under an accusatory system. DOJ has trained personnel in the Attorney General's Office on how to combat organized crime, human trafficking, kidnapping, money laundering, as well as refining skills regarding fugitive apprehension and forensic sciences.

new system must incorporate adequate protection mechanisms; intimidation of these actors would grievously undermine the success of the new code. The accused are afforded more protections in that the accusatorial system assumes innocence until proven guilty. However, the constitutional reform passed in 2008 allows for a practice known as “arraigo” where individuals can be detained up to 80 days without charges while they are being investigated. Technically, “arraigo” is only legal in situations where there is a suspicion of involvement in organized crime. Mexican and international human rights advocates decry these detentions as violations of due process guarantees, such as the presumption of innocence, and express concern that those detained under “arraigo” are at greater risk of human rights abuses; U.S. Government programs need to support efforts that eliminate the use of “arraigo.”

FUTURE OF BILATERAL SECURITY COOPERATION

The United States should continue its strong support for Mexico’s efforts to reform and strengthen its federal and state-level police forces and judicial systems. The United States can effectively support Mexico through high-level policy engagement reinforcing developing cooperative anti-organized crime linkages, including partnerships between the U.S. Department of Justice and the Attorney General’s Office, U.S. law enforcement agencies and the Mexican federal police and others, and U.S. federal and state-level courts and their Mexican counterparts. Mexican civil society can make a vitally important contribution to the success of this bilateral cooperation, and the United States needs to continue to solicit its views.

The United States Government must also do more to address U.S.-based crimes associated with violence in Mexico. It has a responsibility to its own citizens, and has made a commitment to the Mexican Government, to reduce U.S. demand for narcotics. U.S. law enforcement efforts should increasingly combat the smuggling of weapons into Mexico and the use of U.S. financial institutions to launder the illicit proceeds of the Mexican criminal organizations.

The United States also has a vital stake in supporting good and effective governance in our immediate neighbor. Mexico’s ability to dismantle organized criminal groups and reduce the hyper-violence occurring in certain portions of its territory depends in large part on whether the federal police and judicial system, together with their state counterparts, can successfully arrest and prosecute dangerous criminals. To its credit, the Calderón administration has launched this effort, but the primary responsibility to consolidate it will fall to its successor and the state governments.

President-elect Peña Nieto has expressed his intention to continue robust law enforcement cooperation with the United States. In all probability, Mexico’s new leader will reconfigure some elements of the current anti-organized crime strategy but will maintain most of the critically important elements of the bilateral Mérida Initiative security cooperation.

This committee report recommends sustained, robust funding and policy support for the essential building blocks of the Mérida Initiative, police and judicial reforms, to ensure the success of this vitally important cooperative effort.

