

The Cyrus R. Vance Center for International Justice Initiatives

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*“A Profession Supportive of Democracy”*

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## COUNTRY REPORT

### MEXICO

## **1. Introduction. Attitude of the public towards democracy, the state of the law, the practice of the legal profession and the administration of the justice system**

During the 90s, electoral reforms in Mexico created room for a diversity of political parties in the federal Congress, establishing the foundation for the democratic change in government which took place in the year 2000 with the election of President Vincente Fox. However, Mexico still needs to implement systems to promote competition for votes based on the government's results. Likewise, it is still necessary to make the use and source of campaign funds transparent, as certain electoral problems and corruption persist, a situation which makes for little clarity in electoral processes and challenges.

According to the surveys carried out by Latinobarometro<sup>1</sup> from 1996 to 2004, the majority of the Mexican population thinks that democracy is preferable to any other form of government. However, the percentage that believes this has decreased from 63% of the population in 2002 to 53% in 2004. In accordance with the Latinobarometro analysis, Mexicans are disillusioned with the promises of democracy because it has not provided the political results that it had promised.

In the same way, the abovementioned survey reflects the fact that Mexicans perceive that there is a high level of corruption in their institutions. 58% of Mexicans think one has a good chance of successfully bribing a judge; 65% think that one has a high chance of successfully bribing a policeman, and 56% think that one has a high chance of bribing someone from a ministry.

In Mexico there is a very poor perception of lawyers and the courts. Almost 30 years ago, Volkmar Gessner<sup>2</sup> carried out a study that reflects the low level of confidence in the courts, for which reason the majority of cases are not brought to court and alternative methods to resolve them are sought outside the official channels.

## **2. Structure of the Legal Profession**

### **2.1 Composition of the Profession**

According to a study carried out in 2004 (copy attached), by the National Institute of Statistics, Geography, and Information Science,<sup>3</sup> ("INEGI"), in Mexico there are nearly 191,000 practicing attorneys. This number excludes notaries public and judges, who are considered civil servants for purposes of this study. The National Labor Survey recorded around 13 million people who act as lawyers without possessing the corresponding professional title. This is possible because of the fact that in criminal, labor and agrarian cases, it is not a requirement that the parties' representatives be lawyers, as they are permitted to be defended "by a trustworthy person."<sup>4</sup>

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<sup>1</sup> <http://www.latinobarometro.org/Upload/Informe%20LB%202004%20Final.pdf>

<sup>2</sup> Gessner Volkmar, *Los Conflictos sociales y la Administracion de Justicia en Mexico*. Cited by Hector Felix Fierro/Sergio Lopez Ayllon. *El Acceso a la Justicia en Mexico. Una Reflexion Multidisciplinaria*. P. 127. See <http://www.bibliojuridica.org/libros/1/92/8.pdf>

<sup>3</sup> <http://www.inegi.gov.mx/inegi/default.asp>

<sup>4</sup> Mexican Constitution, Article 20

## 2.2 Composition by Gender

In Mexico, 72.5% of lawyers are men and 27.5% are women. According to the INEGI survey by age and sex, 50.2% of female lawyers are 20-29 years old, 30.6% are 30-39, and 19.2% are 40 or older. On the other hand, 23.9% of male lawyers are 20-29 years old, 30.6% are 30-39, and 44.5% are 40 or older.<sup>5</sup>

The legal profession in Mexico differs from other fields as to the child bearing and marital status of the women who work in it. Lower child bearing is observed among female lawyers in comparison with the national average. These percentages indicate that professional women give birth later, possibly due to their professional studies.<sup>6</sup>

## 2.3 Statistics on Universities and Students

According to the statistics of the National Association of Universities and Institutions of Higher Education, (ANUIES), a total of 47,803 students started the study of law in 2003. Of the newly entered students, 24,321 were men and 23,482 were women. Currently there are 203,086 law students in total, of which 102,421 are men and 100,665 are women. In 2002, 32,219 law students graduated from Mexican universities, of which 15,916 were men and 16,303 were women. Similarly, in 2002 17,937 law students received their degrees, of which 9,300 were men and 8,637 were women. In Mexico, more people pursue the legal profession than any other, even when more than 50% of lawyers have left the legal profession and are employed elsewhere in the job market. The minimum period of study to become a lawyer is 16 years.<sup>7</sup>

## 2.4 Geographic Concentration

The majority of lawyers may be found in urban locations and only a small portion of lawyers in Mexico speaks an Indian language (1.3%). 99 out of every 100 lawyers in Mexico live in urban areas (urban area being defined as having a population of 2,500 or more inhabitants). 86.1% of lawyers reside in communities of 100,000 or more, 7.5% in communities of 15,000 to 99,999, 5.3% in communities of 2,500 to 14,999, and 1.1% in communities with fewer than 2,500 inhabitants. Similarly, one out of every four lawyers was born in a different locality from that in which he resided in the year 2000.<sup>8</sup>

## 2.5 Data on private practice, the judiciary, and public service by lawyers.

During the first quarter of 2004, around 443,000 people studied and received a law degree. Of these, 48.1% worked as a lawyer and 51.9% worked in another area. For purposes of this survey, those who work in a different area include judges, notaries public, and bureaucrats. Of every 100 lawyers who do not work as lawyers, 20 work in administrative

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<sup>5</sup> <http://www.inegi.gov.mx/inegi/default.asp>

<sup>6</sup> *Id.*

<sup>7</sup> <http://www.anuies.mx/index1024.html>

<sup>8</sup> <http://www.inegi.gob.mx/inegi/default.asp>

functions, 8 are judges or notaries, 16 are mid-level civil servants and 14 work in other areas. 370,000 of the 443,000 people who studied law work in a different field.<sup>9</sup>

### 3. Information regarding the need for legal services

Various sectors in Mexico are affected by little to no legal representation. Within these segments are people of limited means, women and indigenous peoples.

In accordance with the statistics gathered by Latinobarometro, 37% of people in Mexico think that they are unequally treated by reason of being poor.<sup>10</sup> The same source indicates that Mexico demonstrates a lower level of discrimination towards women in the workplace than other countries. Only 17% of those interviewed responded that they were “very much in agreement” with the statement that women should focus on the home and men on work. Only 14% of those interviewed also agreed that men are better political leaders than women.<sup>11</sup>

Following the recommendations of the United Nations for Guatemala,<sup>12</sup> in the matter of indigenous peoples, it is necessary to foster an indigenous defense project by region in order to assist the different ethnic groups that constitute the indigenous diversity of Mexico. It is necessary to facilitate indigenous peoples’ access to justice, including the protection of indigenous women, to grant scholarships and incentives to increase the number of indigenous lawyers, as well as to train judges, public defenders, and the public ministry in indigenous law, customs and world view. It is necessary to ensure that the Mexican Indian can count on the legal support needed for their defense and that those who would not otherwise have access to justice for lack of knowledge or the means to bring a complaint to court be represented.<sup>13</sup>

### 4. Access to Justice

#### 4.1 Constitution

The Mexican Constitution guarantees the right of the accused to an adequate defense.<sup>14</sup> In the case that the accused is unable to or refuses to appoint his own counsel, the judge must appoint a public defender. The public defender is appointed only for criminal cases; the aid is not extended to civil matters. The public defender is free of cost to the party. However, his or her performance is put into question by the high number of cases that must be handled and the general lack of experience of these defenders.<sup>15</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> <http://www.latinobarometro.org/Upload/Informe%20LB%202004%20Final.pdf>

<sup>11</sup> 2004 Report of the Latinobarometro Corporation, p. 56.

<http://www.latinobarometro.org/Upload/Informe%20LB%202004%20Final.pdf>

<sup>12</sup> United Nations Development Program (UNDP). Project of the United Nations on indigenous peoples, March 28, 2003.

<sup>13</sup> Fix-Fierro, Hector/ Lopez Ayllon, Sergio. *El Acceso a la Justicia en Mexico. Una Reflexion Multidisciplinaria.* <http://www.bibliojuridica.org/libros/1/92/8.pdf>.

<sup>14</sup> Mexican Constitution, Article 20.

<sup>15</sup> Fix-Fierro, Hector/ Lopez Ayllon, Sergio. *El Acceso a la Justicia en Mexico. Una Reflexion Multidisciplinaria.* <http://www.bibliojuridica.org/libros/1/92/8.pdf>.

The work carried out by the majority of public defenders is considered to be poor or lacking. Similarly, there are no public defenders in the areas of civil or family law, because of which in many cases people of limited means lack legal advice or depend on deficient legal advice.

#### 4.2 The Bar

It is not obligatory to be a member of a bar in Mexico.<sup>16</sup> The Mexican Bar Association, A.C. (*Barra Mexicana de Abogados*, “BMA”) is dedicated principally to promoting legal culture and to strengthening ties between lawyers by serving as a meeting point.

The BMA requires that its members observe the Code of Ethics of the association, which code deals with issues of legality, transparency, and assistance to indigent persons. Article 7 of the Code of Ethics establishes that the legal profession is obligated “to defend indigents free of charge, both upon their request or by appointment. The breach of this duty is gross negligence which undermines the very essence of advocacy, if there is no good and sufficient cause to do so related to the professional activity that one practices, the place of offering of services, or other similar circumstances.”<sup>17</sup>

The BMA’s Code of Ethics is imposed on its members by the association, and its violation could even result in expulsion from the BMA. However, expulsion from the BMA, aside from being a shameful event and something socially reprehensible, does not have any civil or criminal consequences for the expelled member. The BMA is only a private authority that only has authority over its members and is not a public authority.

#### 4.3 Supervision of Professional Ethics

Given that membership in a professional body is not mandatory, there is no body that supervises the way in which lawyers carry out their professional practice, and there is no public authority that supervises lawyers.

The law establishes various provisions in the Federal Penal Code and in the Criminal Procedure Code that sanction and fine lawyers who do not behave in an ethical way during court proceedings or with regard to their clients. Although these cases do not deal with ethically reproachable acts but rather with conduct considered a crime, it is still very rare for proceedings to be started against a lawyer or for criminal responsibility to be imputed for such acts. Generally the lack of trust in lawyers and the system of justice escape the attention of the courts.<sup>18</sup>

#### 4.4 Basic Courses in Law School on the legal profession

The basic principle of education in Mexico is that education is free and secular. By constitutional mandate, however, the federal government is only obligated to provide education

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<sup>16</sup> Mexican Constitution. Article 9, Freedom of Association.

<sup>17</sup> Article 7 of the Code of Ethics. [www.bma.org.mx](http://www.bma.org.mx)

<sup>18</sup> Fix-Fierro, Hector/ Lopez Ayllon, Sergio. *El Acceso a la Justicia en Mexico. Una Reflexion Multidisciplinaria*. <http://www.bibliojuridica.org/libros/1/92/8.pdf>.

up to the secondary level. The government has established public universities in which a secular education is provided and the principle of contributing to better human coexistence is imparted. The establishment of private universities is permitted in Mexico, which in observance of academic freedom are recognized by the state. These universities, in particular those with a religious foundation, offer subjects and programs which aim to instill principles of solidarity among students.

Among the principal universities of Mexico City are (i) Universidad Nacional Autonoma de Mexico (ii) Escuela Libre de Derecho (iii) Universidad Iberoamericana (iv) Universidad Anahuac, (v) Universidad Panamericana and (vi) Instituto Tecnologico Autonomo de Mexico (“ITAM”), all of which have different approaches to ethics courses. For example:

- (i) Universidad Nacional Autonoma de Mexico: A state school. It bases its study program on the principle that the human being can be improved through knowledge and liberty, and that it can and should be a bearer of these values to disseminate them throughout society. The education that the school offers promotes a duty of living with ethical values within the bounds of tolerance. The UNAM offers courses on professional ethics.
- (ii) Escuela Libre de Derecho: A private secular school. It does offer ethics courses and courses related to the social responsibility of the profession.
- (iii) Universidad Iberoamericana: A religious school, its aim is to promote social justice through the education of men and women who, conscious of the national situation, commit themselves to contributing to the achievement of the social structural changes that the country needs. It offers ethics courses and professional responsibility courses.
- (iv) Universidad Panamericana: Also a religious school, it promotes and imparts courses on ethics and social problems, trying to involve its students in the community.
- (v) Universidad Anahuac: Also a religious school. It offers courses on ethics and professional responsibility. For some time it has had an office providing free legal advice. Free legal advice is offered here in various areas of law in which clients may have problems. Cases handled in the office include the following: divorce, alimony judgments, contracts, commercial concerns, and even criminal legal advice.
- (vi) Instituto Tecnologico Autonomo de Mexico (ITAM): A private secular school. It bases its educational program on the concept of the free human being, committed to progress, the quest for good, and the perfecting of the ability to serve society. Similarly, it recognizes its role in the development of the community, assumes its loyalty to Mexico, its values, and traditions, which are understood as the collective heritage of society. The ITAM offers courses on professional ethics.

## **5. The provision of pro bono services and legal service to the poor.**

The obligation of lawyers to offer pro bono services is only a moral obligation. The Mexican Constitution prohibits the mandatory provision of personal services without compensation and the consent of the parties, except for the obligation to serve as an elected official when elected, as a juror, or in the provision of social service.

### **5.1 The Bars**

The Mexican Bar Association established the Association of Legal Service, A.C. as a vehicle through which its members may offer free legal guidance to people who do not have due access to justice due to extreme poverty, lack of knowledge, incapacity, or discrimination.

## 5.2 Social Service

Social service is mandatory for all persons who, having completed a certain number of courses, wish to obtain the title or license to work in a profession or career regulated by the state. The aim of social service is to serve as training for the person who is beginning his or her professional life, and for this reason he or she should be supervised by a qualified professional, who can train the newly entered professional. In accordance with the Regulation of Constitutional Article 5 (relating to the practice of professions in Mexico City (Law of Professions), all professionals, including lawyers, are required to offer their services to governmental entities or other entities authorized by the competent authority for a minimum of six months and not more than two years.

There are various Non-Governmental Organizations authorized to draw up the written evidence of social service and in which legal services are provided to people of limited means.<sup>19</sup>

## ANNEX

Basic legal framework relating to social service, public defenders and pro bono work on behalf of the poor, the public interest, and human rights.

1. Constitution of the United Mexican States
2. Regulation of Constitutional Article 5, Relating to the Practice of Professions in the Federal District (Mexico City)
3. Federal Penal Code
4. Federal Criminal Procedure Code
5. Law of the National Commission of Human Rights.

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<sup>19</sup> For more information on the institutions in which social service may be offered, see <http://www.dgose.unam.mx/ss/ss.htm#>