

# LEGAL PROFESSION REFORM INDEX

FOR

# MEXICO

*June 2011*

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# TABLE OF CONTENTS

<b>Introduction</b> .....	i
<b>Executive Summary</b> .....	1
<b>Mexico Background</b> .....	4
Legal Context.....	4
Historical Context.....	7
Overview of the Legal Profession .....	8
Organizations of Legal Professionals .....	9
<b>Mexico LPRI 2011 Analysis</b> .....	11
<b>Table of Factor Correlations</b> .....	11
<b>I. Professional Freedoms and Guarantees</b> .....	12
Factor 1: Ability to Practice Law Freely .....	12
Factor 2: Professional Immunity .....	15
Factor 3: Access to Clients .....	18
Factor 4: Lawyer-Client Confidentiality .....	21
Factor 5: Equality of Arms.....	23
Factor 6: Right of Audience .....	24
<b>II. Education, Training, and Admission to the Profession</b> .....	27
Factor 7: Academic Requirements.....	27
Factor 8: Preparation to Practice Law .....	29
Factor 9: Qualification Process .....	30
Factor 10: Licensing Body .....	33
Factor 11: Non-Discriminatory Admission .....	34
<b>III. Conditions and Standards of Practice</b> .....	35
Factor 12: Formation of Independent Law Practice.....	35
Factor 13: Resources and Remuneration.....	36
Factor 14: Continuing Legal Education.....	39
Factor 15: Minority and Gender Representation.....	40
Factor 16: Professional Ethics and Conduct.....	42
Factor 17: Disciplinary Proceedings and Sanctions .....	44
<b>IV. Legal Services</b> .....	47
Factor 18: Availability of Legal Services .....	47
Factor 19: Legal Services for the Disadvantaged.....	48
Factor 20: Alternative Dispute Resolution .....	51
<b>V. Professional Associations</b> .....	54
Factor 21: Organizational Governance and Independence .....	54
Factor 22: Member Services .....	57
Factor 23: Public Interest and Awareness Programs .....	59
Factor 24: Role in Law Reform .....	60
<b>List of Acronyms</b> .....	62



## Introduction

The Legal Profession Reform Index (LPRI) is an assessment tool implemented by the American Bar Association's Rule of Law Initiative (ABA ROLI). It was developed by the ABA's Central European and Eurasian Law Initiative (ABA/CEELI), now a division of ABA ROLI, together with its other regional divisions in Africa, Asia, Latin America, and the Middle East/North Africa. Its purpose is to assess the process of reform among lawyers in emerging democracies. The LPRI is based on a series of 24 factors derived from internationally recognized standards for the profession of lawyers identified by organizations such as the United Nations and the Council of Europe. The LPRI factors provides benchmarks in such critical areas as professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations. The LPRI is primarily meant to enable ABA ROLI or other legal assistance implementers, legal assistance funders, and emerging democracies themselves to implement better legal reform programs and to monitor progress towards establishing a more ethical, effective, and independent profession of lawyers. In addition, the LPRI, together with ABA ROLI's companion Judicial Reform Index (JRI), Prosecutorial Reform Index (PRI), and Legal Education Reform Index (LERI) also provides information on such related issues as corruption, the capacity of the legal system to resolve conflicts, minority rights and gender equality, and legal education reform.

ABA ROLI embarked on this project with the understanding that there is no uniform agreement on all the particulars that are involved in legal profession reform. In particular, ABA ROLI acknowledges that there are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after more than a decade of working on this issue in the field, ABA ROLI has concluded that each of the 24 factors examined herein may have a significant impact on the legal profession reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the LPRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department's Country Reports on Human Rights Practices and Freedom House's Nations in Transit. This assessment will not provide narrative commentary on the overall status of the legal profession in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country's legal system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, it should be noted that this analytic process will not be a scientific statistical survey. The LPRI is based on an examination of relevant legal norms, discussions with informal focus groups, interviews with key informants, and on relevant available data. It is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system at a particular moment in time through the prism of the profession of lawyers.

## Scope of Assessment

Assessing legal profession reform faces two main challenges. The first is defining the terms "legal professional" and "lawyer." The title Legal Profession Reform Index is somewhat of a misnomer. The LPRI focuses its attention on lawyers; however, most of the world's legal professions are segmented into various categories. For example, the Council of Europe lists several distinct categories of legal professionals, including judges, prosecutors, lawyers, notaries, court clerks, and bailiffs. ABA ROLI could have included all of these professions, and perhaps others, in its assessment inquiry; however, the resulting assessment would likely become either overly complex or shallow.

In order to keep the LPRI assessment process manageable and to maintain its global applicability and portability, the LPRI focuses on professions that constitute the core of legal systems; i.e.,



professions that are universally central to the functioning of democratic and market economic systems. As a result, ABA ROLI excluded from the LPRI such professions as notaries, bailiffs, and court clerks, because of variations and limitations in their roles from country to country. In addition, ABA ROLI decided to exclude judges and prosecutors from the scope of the LPRI assessment, in order to focus this technical tool on the main profession through which citizens defend their interests vis-à-vis the state. Independent lawyers, unlike judges and prosecutors, do not constitute arms of government. Furthermore, ABA ROLI has developed the JRI, which focuses on the process of reforming the judiciaries in emerging democracies, the PRI, an assessment tool for prosecutors, and the LERI, an assessment tool for assessing the state of legal education in a given country.

Once ABA ROLI determined which category of legal professionals would be assessed by the LPRI, the remaining issue was to define the term “lawyer.” In the United States and several other countries, lawyers constitute a unified category of professionals. However, in most other countries, lawyers are further segmented into several groups defined by their right of audience before courts. For example, in France, there are three main categories of advocate lawyers: *avocats*, *avoués à la Cour*, and *avocats aux Conseils*. An *avocat* is a lawyer with full rights of audience in all courts, who can advise and represent clients in all courts, and is directly instructed by his clients and usually argues in court on their behalf. An *avoué à la Cour* has the monopoly right to file pleadings before the Court of Appeal except in criminal and employment law cases, which are shared with *avocats*. In most cases, the *avoué à la Cour* only files pleadings but does not argue before the court. He has no rights of any sort in any other court. The *avocat aux Conseils* represents clients in written and oral form before the Court of Cassation and the *Conseil d'Etat* (the highest administrative court of France). See Sanglade & Cohen, *The Legal Professions in France*, in *THE LEGAL PROFESSIONS IN THE NEW EUROPE: A HANDBOOK FOR PRACTITIONERS* at 127 (Tyrrell & Yaqub eds., 2nd ed. 1996). In addition to rights of audience, other factors further complicated efforts to define the term “lawyer,” including the large number of government lawyers and corporate counsel who are not considered independent professionals and the practice in some countries of allowing persons without legal training to represent clients.

These issues posed a dilemma, in that, if ABA ROLI focused exclusively on advocates (generally understood as those professionals with the right of audience in criminal law courts), it could potentially get an accurate assessment of perhaps a small but common segment of the global legal profession, but leave the majority of independent lawyers outside the scope of the assessment, thus leaving the reader with a skewed impression of reform of the legal profession. For example, according to the Council of the Bars and Law Societies of the European Union (CCBE), there were 22,048 lawyers practicing law in Poland in 2002. Of that number, only 5,315, or 24%, were advocates. If, on the other hand, the LPRI included all persons who are qualified to practice law, that might also produce an inaccurate picture, in that it would include non-lawyers and lawyers who are not practicing law. In order to keep its assessment relatively comprehensive yet simple, ABA ROLI decided to include in the universe of LPRI lawyers those advocates and civil practice lawyers that possess a law degree from a recognized law school and that practice law on a regular and independent basis, therefore excluding government lawyers and corporate counsel if necessary. In addition, because some of the factors only apply to advocates, ABA ROLI decided to expand and contract the universe of lawyers depending on the factor in question.

## Methodology

The second main challenge faced in assessing the profession of lawyers is related to substance and means. Although ABA ROLI was able to borrow heavily from the JRI in terms of structure and process, there is a scarcity of research on legal reform. The limited research there is tends to concentrate on the judiciary, excluding other important components of the legal system, such as lawyers and prosecutors. According to democracy scholar Thomas Carothers, “[r]ule-of-law promoters tend to translate the rule of law into an institutional checklist, with primary emphasis on the judiciary.” CAROTHERS, *PROMOTING THE RULE OF LAW ABROAD: THE KNOWLEDGE PROBLEM* at 8,

(CEIP Rule of Law Series, Working Paper No. 34, Jan. 2003). Moreover, as with the JRI, ABA ROLI concluded that many factors related to the assessment of the lawyer's profession are difficult to quantify and that "[r]eliance on subjective rather than objective criteria may be ... susceptible to criticism." ABA/CEELI, *JUDICIAL REFORM INDEX: MANUAL FOR JRI ASSESSORS* at ii (revised ed. 2006).

In designing the LPRI methodology, ABA ROLI sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on fundamental international and regional standards, such as the *United Nations Basic Principles on the Role of Lawyers*; the International Bar Association's *Standards for the Independence of the Legal Profession*, *General Principles of the Legal Profession*, and *International Code of Ethics*; the Union Internationale des Avocats' *Turin Principles of Professional Conduct for the Legal Profession in the 21st Century*; the Council of Europe's *Recommendation R(2000)21 on the Freedom of Exercise of the Profession of Lawyer*; and the CCBE's *Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers*. In addition, ABA ROLI was able to rely on best practices ascertained through more than ten years of its technical legal assistance experience reforming the profession of lawyers in emerging democracies.

Drawing on these sources, ABA ROLI compiled a series of 24 aspirational statements that indicate the development of an ethical, effective, and independent profession of lawyers. To assist assessors in evaluating these factors, ABA ROLI developed a manual that provides a guiding commentary of the factors and the international standards in which they are rooted, clarifies terminology, and provides flexible guidance on areas of inquiry. A particular effort was made to avoid giving higher regard to common law, as opposed to civil law concepts, related to the structure and function of the profession of lawyers. Thus, certain factors are included that a common law or a civil law lawyer may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading legal traditions have to offer rather than model the LPRI on one country's legal profession system. The main categories incorporated address professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations.

In creating the LPRI, ABA ROLI was able to build on its experience in creating the JRI and the newer CEDAW Assessment Tool<sup>1</sup> in a number of ways. For example, the LPRI borrowed the JRI's factor "scoring" mechanism and thus was able to avoid the difficult and controversial internal debate that occurred with the creation of the JRI. In short, the JRI, and now the LPRI, employ factor-specific qualitative evaluations; however, both assessment tools forego any attempt to provide an overall scoring of a country's reform progress since attempts at overall scoring would be counterproductive.<sup>2</sup> Each LPRI factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of a factor statement to a country's regulations and practices pertaining to its legal profession. Where the statement strongly corresponds to the reality in a given country, the country is given a "positive" score for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways but not in others, it is given a "neutral."

The results of the 24 separate evaluations are collected in a standardized format in each LPRI country assessment. As with the JRI, the PRI, and the LERI, there is the assessed correlation and a brief summary describing the basis for this conclusion following each factor. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits users to easily compare and contrast the performance of different countries in specific areas and – as LPRI's are updated –

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<sup>1</sup> CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination Against Women. ABA ROLI developed the CEDAW Assessment Tool in 2001-2002.

<sup>2</sup> For more in-depth discussion on this matter, see C.M. Larkin, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L. 605, 611 (1996).



within a given country over time. There are two main reasons for borrowing the JRI's assessment process, "scoring," and format. The first is simplicity. Building on the tested methodology of the JRI enabled a speedier development of the LPRI. The second is uniformity. Creating uniform formats enables ABA ROLI to cross-reference information generated by the LPRI into the existing body of JRI, PRI, and LERI information. This gives ABA ROLI the ability to provide a much more complete picture of legal reform in target countries.

Two areas of innovation that build on the JRI experience are the creation of a correlation committee and the use of informal focus groups. In order to provide greater consistency in correlating factors, ABA ROLI forms an ad hoc committee that includes the assessor, relevant Country Director and local staff, and select ABA ROLI D.C. staff. The concept behind the committee is to add a comparative perspective to the assessor's country-specific experience and to provide a mechanism for consistent scoring across country assessments. The use of informal focus groups that consist of not only lawyers, but also judges, prosecutors, NGO representatives, and other government officials is meant to help identify issues and increase the overall accuracy of the assessment.

Social scientists might argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Being sensitive to the potentially prohibitive cost and time constraints involved, ABA ROLI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of lawyers, judges, journalists, and outside observers with detailed knowledge of the legal system. Overall, the LPRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

The LPRI was designed to fulfill several functions. First, the LPRI provides governments and legal system stakeholders with a comprehensive assessment of the state of legal profession in the country, thus enabling them to prioritize and focus reform efforts. Second, ABA ROLI and other rule-of-law assistance providers will be able to use the LPRI's results to design more effective programs that help improve the quality of independent legal representation. Third, the LPRI provides donor organizations, policymakers, NGOs, and international organizations with hard-to-find information on the structure, nature, and status of the legal profession in countries where the LPRI is implemented. Fourth, combined with the JRI, the PRI, and the LERI, the LPRI contributes to a comprehensive understanding of how the rule of law functions in practice. Finally, the LPRI results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of lawyers in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally established standards for the legal profession.

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## **Assessment Team**

The 2011 Mexico LPRI assessment was conducted by Linn Hammergren, an international justice reform expert, and Alonso González Villalobos, ABA ROLI's Mexico Country Director, with substantial support of Jessie Tannenbaum, Senior Legal Analyst in ABA ROLI's Washington, DC office. ABA ROLI's Research Coordinator Olga Ruda and Legal Analyst Tessa Khan served as overall project coordinators and editors of the report. The team received strong support from ABA ROLI's staff in Mexico City, including Deputy Country Director Katia Ornelas Nuñez, Law Schools and Bar Associations Coordinator David Fernández Mena, and Field Financial Manager Gabriela Cruz Ortiz; and in Washington, D.C., including Director of Research and Assessments Office Simon Conté, Director of Latin America and Caribbean Division Michael McCullough, Program Manager Chantal Agarwal, Program Officer Jeremy Biddle, Administrative Assistant Cynthia Arévalo, and Intern Carl Patchen. The conclusions and analysis contained in this report are based on interviews that were conducted in the states of Baja California and Yucatan, as well as the Federal District in Mexico in March 2011, and relevant documents that were reviewed at that time and through the end of June 2011. Records of relevant authorities and a confidential list of individuals interviewed are on file in the Washington, D.C. office of ABA ROLI. The assessment team is extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project.

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## Executive Summary

### Brief Overview of the Results

The 2011 Legal Profession Reform Index (LPRI) assessment for Mexico reflects a legal profession that is largely decentralized, unregulated, and fraught with challenges resulting from the lack of a clear organizational structure and meaningful oversight. Mexico does not have a framework law specifically directed at regulating the legal profession; rather, there are 32 separate laws issued by each constituent unit of the federation, which apply to all professionals generally. The only specific references to lawyers are found in substantive and procedural codes, which regulate certain aspects of practice in the context of litigation and general client-lawyer relations. These deficiencies are reflected in the fact that, of the 24 factors analyzed in this assessment, only three (non-discriminatory admission, formation of an independent law practice, and resources and remuneration) were assigned positive correlations, while seven factors (access to clients, preparation to practice law, qualification process, disciplinary proceedings and sanctions, availability of legal services, and bar associations' organizational governance and independence, as well as their involvement in public interest and awareness programs) received negative correlations. The remaining 14 factors were given neutral correlations.

The current status of Mexico's legal profession must be analyzed in the context of recent constitutional amendments, promulgated in 2008 to facilitate the adoption of an accusatorial criminal justice system and scheduled to be fully implemented throughout the country by 2016. These are widely seen as paving the way for the strengthening of professional freedoms and guarantees available to Mexican lawyers, as well as expanding access to quality legal services for people of limited economic means by reforming the existing public defender systems. In addition, there has been considerable discussion concerning the introduction of mandatory membership in a professional association as a condition of practicing one's profession in the fields that affect life, health, security, freedom, and property, along with a professional certification system under the auspices of these associations. In an important development, a motion to amend the Federal Constitution and adopt a federal framework law was introduced in the Senate in October 2010, but it is hard to estimate how long it will take to produce any real change.

### Concerns Related to Lack of Standards for Exercise of Legal Profession

- ***Admission to the practice of law is essentially automatic*** upon an applicant's presentation of a valid diploma of completion of university legal education. There is no bar examination or required apprenticeship, and the ***bureaucratic licensing process does not attempt to ensure that an applicant is adequately qualified***. The Federal Constitution has been interpreted to impede the introduction of a mandatory professional certification system and prohibit compulsory membership in an official bar association. ***Although Mexico has a voluntary national framework for professional certification, the legal profession has not opted to participate in that process.***
- ***Mexico does not have a mandatory ethics code applicable to all lawyers***. Some ***voluntary bar associations have elaborated their own***, quite comprehensive, ***codes of conduct***; however, these apply only to the few lawyers who choose to join the associations and are non-binding. Lawyers' conduct is also subject to restrictions contained in criminal codes and state laws on the exercise of professions (LEPs). Despite this nominal framework, there is a ***general impression that ethical violations are common and frequently go unsanctioned***.
- ***Lawyers are licensed for life*** and can have their ***licenses suspended or revoked by court order only for engaging in certain criminal actions or violating LEPs' rules***. A number of bar associations have created mechanisms for enforcement of their ethics codes and may expel violators, but they lack the authority to revoke their licenses. This

means that **a lawyer expelled from one association may continue to practice and even join another association**. The consensus is that instances of disciplinary misconduct are not infrequent in practice and that the rules are generally not enforced.

- There is **no requirement that lawyers undergo recertification or participate in continuing legal education (CLE)** as a condition of maintaining their professional licenses. Despite this lack of formal incentives, **most bar associations claim that provision of trainings is their major service** to members. Numerous training opportunities are also offered through universities, NGOs, and international donors. The quality of these offerings varies greatly and, beyond the participation records kept by CLE providers, **there is no unified system for registering a lawyer's participation**.

## Concerns Related to the Role of Professional Bar Associations

- The Federal Constitution has been interpreted to prohibit: recognizing only one official professional association, preventing the formation of additional associations, or requiring lawyers to become members in a bar association as a condition of licensing. As a result, **there is no single national professional association of lawyers in Mexico**, the existing numerous (official and unofficial) **bar associations are voluntary**, and it is unclear whether membership in an association offers any legal or practical advantages. **It is estimated that less than 6% of the country's licensed lawyers have joined one or more of the bar associations**.
- **Only a handful of nationally recognized bar associations**, mostly located in the capital, operate under an independent, self-governing regime and are actively **engaged in promoting the interests of their members**. Services may include provision of CLE and networking opportunities, ethics enforcement, and protection of lawyers from harassment by the government. **The vast majority of bar associations act as clubs for advancing interests of local political or social establishments** that frequently finance their activities. Some reportedly even pay members to join, primarily for the purpose of creating political connections that would help their leadership and members obtain government positions. Most associations **do not engage in public interest and awareness programs** and are **largely disengaged from the law reform processes**.

## Concerns Related to Insufficient Professional Freedoms and Guarantees

- Despite the **elaborate constitutional guarantees for access to counsel by detained individuals**, authorities reportedly rely on the longstanding, **informal and often corrupt practices that impede implementation of these provisions**. Illegal detentions, often for the purpose of extracting bribes from a detainee, as well as formally legal detentions where a detainee is held incommunicado by the police, are reportedly common. These problems apparently diminish once the detainee appears before a judge, but even then **attorneys may have to pay small bribes to detention center guards**. The 2008 constitutional reforms reiterate the commitment to defendants' access to counsel, but there are concerns as to whether this would succeed in eliminating the existing obstacles to access that are already outside the law.
- Once a lawyer is able to gain access to a detained client, **confidential communications are logistically difficult**. **Detention facilities may lack space for private conversations**, prison authorities reportedly rely on **cameras and guards to facilitate eavesdropping**, and **written communications with a detainee must be reviewed by prison officials**. The situation is even more dire for detainees accused of organized crime. It is unclear whether these issues are a result of an official policy, a deliberate attempt by state authorities to monitor communications, or an unintended consequence of the condition of the facilities in prisons.

- Lawyers **generally have the freedom they need to independently exercise their profession**, but **some reportedly experience intimidation, interference, and harassment** from the government, opposing parties, and even their own clients. Although these are **mostly isolated occurrences**, their nature is still a significant concern for the legal profession. Lawyers defending alleged drug traffickers, as well as representing victims of alleged human rights abuses by the government face particular dangers in their practice. Another concern, limited to lawyers practicing in the Federal District, is related to the expanded definition of the crime of procedural fraud. The latter interferes with ordinary litigation strategies in civil cases by giving the losing party greater opportunities to file criminal charges against their opponent's attorney.
- Despite the **constitutionally guaranteed right of audience before a court**, in many cases tried in the first instance and at the state level, **judges fail to give sufficient attention to the cases** that are assigned to them. An even more significant problem has to do with Mexico's **deeply entrenched practice of allowing parties or their lawyers to have ex parte conversations with the judge who will be hearing their case**. These communications, which are neither endorsed nor prohibited by the law, may be the determining factor in the outcome of some cases. The introduction of an accusatorial criminal justice system might help reduce the incidence of these conversations.

### Concerns Related to Quality and Availability of Legal Services

- Mexico has experienced a proliferation of law schools in the past 20 years, which has resulted in the establishment of **many sub-optimal law degree programs**, whose graduates are considered legitimate when it comes to applying for a license to practice law. Moreover, most law schools provide students with **few opportunities to develop their practical skills**, which is **largely left to students' voluntary, extracurricular activities**. The quality of skills acquired through these endeavors depends on the level of professionalism of the supervising lawyer. As a result, many lawyers enter the labor market without adequate preparation to provide quality legal services to their clients.
- Mexico has an adequate number of licensed lawyers, but **many rural areas have few or no lawyers**. There is also **no enforceable requirement for lawyers to provide legal assistance to the disadvantaged**. Law firms, bar associations, universities, and NGOs offer some pro bono legal services. However, these are inadequate to meet the needs of Mexico's large numbers of indigent citizens, many of whom live in regions with no providers of these services or are unaware of their availability or how to access them. The absence of lawyers who provide reasonably priced, reliable legal services leaves **the poor vulnerable to unscrupulous lawyers**, and with **little recourse if they are unsatisfied with the service provided**.
- The use of different forms of **alternative dispute resolution remains at an incipient stage**. Many prosecutor's offices and courts have set up alternative justice centers to mediate criminal, family, civil, and commercial disputes. Unfortunately, their use is limited, in part because **lawyers do not recommend them, ostensibly out of fear it will reduce their incomes**. There are also concerns about record-keeping and whether parties are made adequately aware of implications of the process. **Arbitration is typically limited to settling of business disputes by large multinational companies**.
- The 2008 constitutional reforms have resulted in **a number of notable positive developments in this area**. These include the requirement that **court representation in most cases be provided by a licensed lawyer**, the **guaranteed access to a public defense attorney** for all those charged with crimes who cannot afford to pay for private representation; and the **renewed emphasis on the creation of alternative mechanisms for dispute resolution**, restorative justice, and arbitration.

## Mexico Background

The United Mexican States [hereinafter Mexico] is a large country bordering the United States of America [hereinafter US] to the north and Guatemala and Belize to the southeast, with ocean borders including the Caribbean Sea, the Gulf of Mexico, and the North Pacific Ocean. The population in 2010 was approximately 112.3 million people. There are a total of 52 recognized indigenous groups that comprise approximately 15% of the entire population. See INSTITUTO NACIONAL DE ESTADÍSTICA Y GEOGRAFÍA, PRINCIPALES RESULTADOS DEL CENSO DE POBLACIÓN Y VIVIENDA 2010 (NATIONAL INSTITUTE FOR STATISTICS AND GEOGRAPHY, PRINCIPAL RESULTS OF THE 2010 POPULATION AND HOUSING CENSUS) at 1, 67 (2011), available at <http://www.inegi.org.mx/est/contenidos/Proyectos/ccpv/cpv2010/Principales2010.aspx> [hereinafter 2010 POPULATION CENSUS]; see also Comisión Nacional para el Desarrollo de los Pueblos Indígenas, *Nombres de lenguas, pueblos y distribución* (National Commission for the Development of Indigenous Peoples, *Names of Languages, Peoples, and Distribution*) (Jan. 2010), available at [http://www.cdi.gob.mx/index.php?option=com\\_content&view=article&id=758&Itemid=68](http://www.cdi.gob.mx/index.php?option=com_content&view=article&id=758&Itemid=68).

Historically, Mexico was the site of advanced Amerindian civilizations. It was colonized by Spain for three centuries before achieving independence in 1821. In 1910, a civil war broke out in Mexico, which ultimately led to the adoption of the current Federal Constitution in 1917. The same political party, the Institutional Revolutionary Party (IRP) ruled Mexico from 1929 until 2000, when the National Action Party (NAP) won democratic elections and put an end to more than 70 years of one-party rule. The NAP is currently in its second presidential term, with a National Congress controlled by three principal parties: the IRP, the NAP, and the Revolutionary Democratic Party. The current political situation is characterized by national debates regarding tackling poverty and organized crime (particularly drug trafficking); enhancing public security; and the reformation of the criminal justice system, as well as of fiscal and labor legislation.

Mexico has a market economy and is a member of all major political, economic, and other supranational structures and international organizations, including the United Nations [hereinafter UN], the Organization of American States, the Organization for Economic Cooperation and Development, and the World Trade Organization. It is also a party to free trade and customs agreements with more than 50 countries, including the North American Free Trade Agreement [hereinafter NAFTA].

While Mexico's gross domestic product is one of the largest in Latin America and its macroeconomic environment is reasonable, the country is yet to achieve equitable wealth distribution. Many indigenous, minority, or otherwise disadvantaged communities lack equal opportunities for education, employment, health services, and political participation.

## Legal Context

Mexico's Federal Constitution, which was promulgated in 1917 to procure the establishment of an advanced democratic federal republic, incorporates important principles of the 1910 revolution, such as the multi-party system, the prohibition of presidential reelection, and various categories of individual and social rights. See generally POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES (*adopted* Feb. 5, 1917, *last amendments published* Jun. 10, 2011) [hereinafter FEDERAL CONST.].

Governance in Mexico is constitutionally based upon the principle of separation of powers and a system of checks and balances. *Id.* art. 49. It is a federal republic having 31 states and a Federal District (Mexico City) [hereinafter DF].<sup>3</sup> *Id.* art. 43. The latter, apart from hosting the seats of federal power, in the mid-1990s was granted a partially autonomous legal status similar to that of

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<sup>3</sup> For the purposes of this assessment, DF is hereinafter included in the category of "states."

the constituent states. *Id.* arts. 44, 122. The federal legislative power is exercised by a bicameral National Congress, which consists of the Chamber of Deputies and the Senate. *Id.* art. 50. The Chamber of Deputies is elected by popular vote for a three-year term and consists of 300 deputies that represent electoral districts and 200 deputies elected through a proportional representation system of regional lists. *Id.* art. 52. The Senate consists of 128 senators elected for a six-year term, including two senators per each state elected by popular vote, one minority senator per state, and 32 senators elected from a single nationwide circuit according to a proportional representation principle. *Id.* art. 56. Deputies and senators may not hold office for two consecutive terms. *Id.* art. 59. The National Congress is entitled to issue laws and decrees on a broad range of subjects. *Id.* arts. 70, 73-76. The federal executive power is vested in a President elected by popular vote for a non-renewable six-year term. *Id.* arts. 81, 83. Among other duties, the President appoints the Cabinet members, nominates candidates for positions of justices of the Supreme Court of Justice [hereinafter SCJ] and of Attorney General (subject to confirmation by the Senate), oversees the country's international policy, and serves as a commander-in-chief of the armed forces. *Id.* art. 89. The President also has the power to veto laws and decrees passed by the National Congress. *Id.* art. 72.

Mexico's federal judiciary consists of the SCJ, circuit courts, and district courts, all of which exercise original jurisdiction over matters derived from federal law or international treaties, as well as secondary legal jurisdiction, reviewing decisions of state courts. *Id.* arts. 94, 103-104. The SCJ also has jurisdiction over constitutional controversies between various government entities, as well as possible contradictions between the Constitutional norms and other laws. *Id.* art. 105. In addition, the SCJ may issue general orders aimed at resolving controversies in the interpretation of the law or the application of mandatory precedents. *Id.* art. 94. The SCJ consists of 11 judges appointed for a non-renewable 15-year term by the Senate from a shortlist of three candidates submitted by the President. *Id.* arts. 94, 96. Circuit and district court judges are appointed by the Federal Judicial Council, which also acts as a disciplinary and administrative body for these courts. *Id.* arts. 94, 97. The federal judiciary also includes specialized tribunals in areas such as electoral matters, as well as tax and administrative matters; the latter were established by the National Congress pursuant to express constitutional authority. *Id.* arts. 73, 99; *see also generally* ORGANIC LAW ON FEDERAL TRIBUNAL FOR FISCAL AND ADMINISTRATIVE MATTERS (*adopted* Apr. 26, 2007, *last amendments published* Jun. 3, 2011). Labor-related disputes are initially adjudicated by a three-member Board for Conciliation and Arbitration, and its decisions may be challenged before a federal court. FEDERAL CONST. arts. 103, 107, 123.

Mexico has a civil law legal system that allows for judicial review of administrative and legislative acts. International treaties signed by the President and approved by the Senate, together with the Federal Constitution and the laws adopted by the National Congress, constitute the supreme law of the nation. *Id.* art. 133. Mexico has ratified the vast majority of international instruments related to human rights and due process,<sup>4</sup> including: American Convention on Human Rights (Pact of San Jose, Costa Rica); International Covenant on Civil and Political Rights [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination Against Women; Convention on the Rights of the Child; International Convention on the Elimination of All Forms of Racial Discrimination; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Inter-American Convention to Prevent and Punish Torture; and Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Para). In 1999, the SCJ clarified that international treaties fall immediately below the Federal Constitution but above

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<sup>4</sup> According to constitutional amendments promulgated in June 2011, human rights-related provisions of international treaties appear to be afforded the same legal force as the Federal Constitution, and any potential conflicts are to be interpreted in light that is most favorable towards the person. FEDERAL CONST. art. 1. Moreover, international human rights norms have been made directly applicable in the jurisprudence of state courts, in the event those provisions are in conflict with state legislation. *Id.*



federal and local laws in the legal hierarchy. See *SCJ Plenum Decision Reviewing Amparo No. 1457/98, Filed by National Syndicate of Air Traffic Controllers* (May 11, 1999).

Despite being a federation, the constituent states were traditionally controlled by the federal authorities. As a result, the state power architecture largely emulates the federal system, with some minor variants: executive power is vested in a governor; legislative power is exercised by a single state chamber of deputies; while the judiciary consists of trial courts and appellate courts of general jurisdiction over state matters, along with labor boards. FEDERAL CONST. art. 116. The Constitution establishes that all powers not vested in the federation shall be retained by the constituent states (see *id.* art. 124), and efforts have been made in the last decades to further empower the states.

The underlying social and political realities of Mexico's history help explain why, traditionally, all major decisions (including legal decisions) were concentrated in the capital city and did not always correspond to the goals aspired to by the broader Mexican public. Indeed, all laws passed by the National Congress were applicable to the DF (before it was granted its present semi-autonomous status) and to the entire country, to the extent they concerned federal matters, while state laws were modeled on their federal counterparts. As an illustration, at some point, there was a federal Civil Code applicable to Mexico City and to federal civil matters, and all 31 states had their own civil codes that largely resembled the federal one.

### ***The Implementation of the Accusatorial Criminal Justice System***

In June 2008, the National Congress amended the Federal Constitution to facilitate the adoption of an accusatorial criminal justice system which, according to the transitional provisions, must be in effect throughout the country by 2016. See DECREE ON REFORMING AND ADDING VARIOUS PROVISIONS OF THE POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES transitional art. 2 (*adopted by* National Congress, May 28, 2008). The amendment aims at fully incorporating the due process requirements set forth, amongst others, in the various international human rights treaties ratified by Mexico. The transition will require the enactment of a number of pieces of implementing legislation, including, but not limited to, new criminal procedure codes compliant with the new constitutional standards.

The federal government has been measuring progress made by all states in their paths towards the full implementation of the constitutional reform. As of January 2011, seven states had already promulgated the implementing legislation, while the remaining states were at different preliminary stages in the implementation process. Gobierno Federal, Consejo de Coordinación para la Implementación Sistema de Justicia Penal, Secretaría Técnica, *Avances en la implementación de la reforma de justicia penal* (Federal Government, Coordination Council for the Implementation of Criminal Justice System, Technical Secretariat, *Progress in Implementing Criminal Justice Reform*) at 6 (Jan. 2011), available at [http://www.setec.gob.mx/docs/Presentacion\\_25-1-11.pdf](http://www.setec.gob.mx/docs/Presentacion_25-1-11.pdf). Of the four jurisdictions covered by this assessment – Baja California, Yucatan, the DF, and the federal government – only Baja California has passed a revised criminal procedure code, approved in 2007. However, the new code is not yet in effect throughout the state. It entered into force only in the judicial district of Mexicali in August 2010, and is scheduled to enter into force in May 2012 in the judicial district of Ensenada and in May 2013 in the rest of the state. CRIMINAL PROCEDURE CODE FOR THE STATE OF BAJA CALIFORNIA transitional art. 1 (*adopted* Sept. 20, 2007, *last amended* Jun. 1, 2011) [hereinafter NEW BAJA CALIFORNIA CRIM. PROC. CODE]. Therefore, outside Mexicali, the 1989 Criminal Procedure Code remains in effect in Baja California. CRIMINAL PROCEDURE CODE FOR THE STATE OF BAJA CALIFORNIA (*adopted* Aug. 10, 1989, *last amended* Dec. 13, 2004) [hereinafter 1989 BAJA CALIFORNIA CRIM. PROC. CODE]. Additionally, Yucatan has a draft criminal procedure code which has been approved by the Commission on Justice and Public Security at the request of the executive and judicial branches and, at the time of writing of this report, was expected to be approved by the state legislature in its next session. See, e.g., Comunicado, *Se aprueba la iniciativa del Código Procesal Penal* (Press Release, *Criminal Procedure Code Initiative is Approved*), DIARIO DE YUCATÁN, May 16, 2011, available at



[www.yucatan.com.mx/20110516/nota-9/121521-se-aprueba-la-iniciativa-del-codigo-procesal-penal.htm](http://www.yucatan.com.mx/20110516/nota-9/121521-se-aprueba-la-iniciativa-del-codigo-procesal-penal.htm).

It must be noted at the outset that it is currently unclear whether all the rights created by the 2008 constitutional reforms apply at the state and federal level in the absence of revised criminal procedure codes. Some provisions clearly require each jurisdiction to pass implementing legislation to carry out the reforms; in jurisdictions that have not implemented the reforms by passing a new criminal procedure code, the old criminal procedure codes remain valid, despite any lack of conformity with the Constitution. Other provisions, such as a two-year limit on pretrial detention, are less clear, and human rights defenders argue that, even if a state has not passed a revised criminal procedure code that conforms to the 2008 reforms, its old code would no longer apply insofar as it was inconsistent with the Constitution. This issue could ultimately be resolved if a prisoner or detainee in a state using an old code files for *amparo* (a constitutional remedy against illegal or unconstitutional conduct of public officers) and the matter reaches the SCJ. However, as of the date of this assessment, the question remains unresolved.

## Historical Context

The legal profession has deep roots in Mexico's history. Dating back to Spanish colonization, it was Mexico City in which the oldest legal professional association in the Americas, which is still in operation to this date, was formed in the 18th century. Throughout the 19th century, important contributions were made to the constitutional debate, including the advent of *amparo*, which was subsequently adopted by various countries. The 1917 Federal Constitution was among the first of its kind to incorporate social rights.

Among other rights, the Federal Constitution expressly provided for the free exercise of one's chosen lawful profession, which can only be restricted by a court order in the event it violates the rights of third parties or by a government resolution if the society's rights are affected. FEDERAL CONST. art. 5. Each state is authorized to determine, by its own law, the practice of which professions requires a degree certificate, along with the requirements and procedures for obtaining such a certificate. *Id.* As a result, Mexico does not have, at either the federal or the state level, a framework law specifically directed at regulating the legal profession. Instead, all 32 constituent units of the federation have issued corresponding laws necessary to implement these constitutional provisions, which apply to all professionals generally, as do all currently proposed modifications. To a large extent, most of these laws are modeled after the 1945 REGULATORY LAW FOR ARTICLE 5 OF THE CONSTITUTION RELATING TO THE EXERCISE OF PROFESSIONS IN THE FEDERAL DISTRICT (*adopted* by National Congress, May 26, 1945, *last amendments published* Aug. 19, 2010) [hereinafter LEP/DF], which applies to both DF and all federal matters throughout the country. In all cases, the practice of law is one of the fields requiring degree certificates. *See, e.g.*, LEP/DF transitional art. 2; LAW ON THE EXERCISE OF PROFESSIONS FOR THE STATE OF BAJA CALIFORNIA art. 11 (*adopted* Aug. 15, 2002, *last amended* Jun. 1, 2006) [hereinafter LEP/BC]; LAW OF PROFESSIONS OF YUCATAN STATE art. 2 (*adopted* Feb. 20, 1989) [hereinafter LEP/Y]. Beyond that, the only specific references to lawyers are found in substantive and procedural codes, and while they do regulate certain aspects of practice, they do so only in the context of litigation and general client-lawyer relations.

As is the case with any other regulated profession, in order to become authorized to practice law, one must obtain a license to practice law (*cédula*), which is granted by the General Directorate of Professions [hereinafter DGP], a federal entity operating under the Secretariat of Public Education [hereinafter SEP]. *See* LEP/DF art. 25. Almost all the states chose to simply rely on the licensing procedure established by LEP/DF. The implication of this approach is that a candidate needs only show that he/she received a degree certificate in order to obtain a federal *cédula*, which is valid for the entire country (all 32 constituent units and the federal level) and allows the holder to practice law in any forum. No further requirement is set, although certain states call for the federal *cédula* to be registered with the corresponding state authority.

## Overview of the Legal Profession

Mexico's legal profession includes the following categories of practitioners:

- **Abogados** or **Licenciados en Derecho**, which is the largest segment of the legal profession and includes individuals who have graduated from a university with at least a Bachelor's degree in law and obtained their *cédula* in accordance with their state's respective LEP. They are entitled to represent clients in any proceeding before any tribunal or administrative authority, including in criminal judicial proceedings. In addition to trial and transactional attorneys, this category of professionals includes in-house counsel.
- **Prosecutors**, who work for one of 33 Attorney General's offices (one per each of 32 constituent entities and the federal level) and oversee the investigation and prosecution of criminal suspects and defendants. Traditionally, a candidate for a prosecutor position needed to be licensed in law, and the hiring decision was typically of a political nature. In the last decade, serious effort has been made to raise the level of qualification among the country's prosecutors. Almost all Attorney General's offices now require that the candidate undergo further training and testing before becoming a prosecutor.
- **Public defenders**, who work for one of 33 Public Defender's offices (one per each of 32 constituent entities and the federal level) and represent defendants unable to afford private counsel (mainly, but not exclusively, in criminal cases). Similarly to prosecutors, a candidate for a public defender position traditionally needed only to be licensed in law, and the hiring decision was typically of a political nature. Their salaries were notably below those of prosecutors. The 2008 constitutional reforms have resulted in serious efforts being made to both raise the level of qualification among the country's public defenders and to equate their compensation to that of prosecutors.
- **Judges**, who sit on all types of federal and state courts. Traditionally, only candidates for the federal SCJ judgeships needed to meet requirements in addition to holding a valid license to practice law. See FEDERAL CONST. art. 95. Over the past 10-15 years, however, significant efforts have been made to subject all candidates to further training, screening, and examination, both at the federal and state levels, before appointing them as judges.
- **Public notaries**, who authenticate deeds, document parties' agreements, and certify signatures of those who sign transactional documents, as well as any factual events occurring within their jurisdiction. Notaries are regulated by the states and must hold a license to practice law and pass a series of exams before receiving their patent to act as notaries from the state in which they are licensed. The notary license is thus geographically constrained to the issuing state. A related category of practitioners is that of **corredores públicos**, who have powers similar to those of notaries but are jurisdictionally limited to commercial acts.<sup>5</sup>

Methodologically, the scope of this assessment is limited to the first class of legal professionals, who are referred to as lawyers or attorneys, interchangeably, throughout this report.

In addition, it should be noted that the practice of labor law in Mexico is not restricted to licensed attorneys; anyone with legal capacity appointed by a litigant may act on his/her behalf. FEDERAL LABOR LAW arts. 692-695 (*adopted* Dec. 2, 1969, *last amendments published* Jan. 17, 2006) [hereinafter LABOR LAW]. Until the 2008 constitutional amendments, a similar standard also

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<sup>5</sup> Mexico's legal system distinguishes purely civil from commercial law and includes an entire set of federal commercial laws, specialized commercial tribunals, and, among other institutions, the *corredores públicos*.

applied to criminal proceedings, where any lay person could represent a criminal defendant. Once the new accusatorial criminal justice system becomes fully effective throughout the country in 2016, all legal counsel in criminal cases will have to be provided by a licensed attorney. FEDERAL CONST art. 20.

## Organizations of Legal Professionals

LEP/DF, as well as almost all of the corresponding state LEPs, foresees the creation of legal professionals' associations (*colegios de profesionistas*). The *colegios*' general purpose is to supervise the exercise of the profession, in order to ensure the members' compliance with the highest ethical and legal standards. The *colegios* are also authorized to suggest modifications to law school curricula, to mediate conflicts among their members or between members and their clients, and may expel any member for cause. Further, the *colegios* are entrusted with keeping record of their members' pro bono services.

One key characteristic of the *colegios*, however, is that their membership is entirely voluntary. Licensed attorneys are not legally obligated to become members in any of these associations in order to practice law.<sup>6</sup> As a result, the ability of *colegios* to fulfill their statutory objectives highly depends on the will of their members. There are two important consequences of this arrangement. First, it is estimated that over 90% of licensed legal professionals are not affiliated with any *colegio*, as there is no legal incentive to do so. Second, there is a relatively large group of organizations that purport to be *colegios*, but that in fact operate to advance particular social or political interests that may have little to do with the intellectual and ethical strengthening of the legal profession.

Nevertheless, there are a number of well-respected and highly regarded professional associations of lawyers operating in Mexico, which have largely fought for the profession's independence, the advancement of its members' academic and ethical standards, and the strengthening of the legal profession as a whole. Among others, these include the DF-based College of Advocates "National Association of Business Advocates" [*Asociación Nacional de Abogados de Empresa, Colegio de Abogados*; hereinafter ANADE], College of Advocates "Mexican Bar Association" [*Barra Mexicana Colegio de Abogados, A.C.*; hereinafter BMA], and Illustrious and National College of Advocates of Mexico [*Ilustre y Nacional Colegio de Abogados de México*; hereinafter INCAM]. Some of the legal professionals' associations operating in Mexico have strong ties with foreign and international bar associations and have been instrumental in the implementation of legislative reforms. For example, the commitment of these associations was critical to the introduction in the Senate in late 2010 of a motion to amend the Federal Constitution to introduce mandatory membership in a professional association as a condition for a licensed attorney to be authorized to practice law. This motion would also require the revision of the existing licensing procedures.

As regards geographic coverage, none of the *colegios* qualifies as a nationwide association of lawyers, although an umbrella Confederation of Mexican Bar Associations [*Confederación de Colegios y Asociaciones de Abogados de México*; hereinafter CONCAAM] comes close to fitting this description. It claims to represent 54,000 lawyers from 390 associations, including more than 10 associations per state and roughly one-quarter of lawyers in practice. However, it is not afforded a special status by the federal government and is not subject to state law.

It should be noted that other segments of the legal profession have established their own voluntary membership organizations, such as the Mexican Judges Association (*Asociación Mexicana de Impartidores de Justicia*), the Attorneys General Conference (*Conferencia Nacional*

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<sup>6</sup> By law, only public notaries and *corredores públicos* need to be affiliated with their respective *colegios*. There is one such *colegio* for notaries per state, and most states (except those with fewer than three *corredores*) also have one *colegio* for the latter category of professionals.



*de Procuración de Justicia*), the National Association of Notaries Public (*Asociación Nacional del Notariado Mexicano*), and the National Association of *Corredores Públicos* (*Colegio Nacional de Correduría Pública*).

## Mexico LPRI 2011 Analysis

While the correlations drawn in this assessment may serve to give a sense of the relative status of certain issues present, ABA ROLI would underscore that these factor correlations and conclusions possess their greatest utility when viewed in conjunction with the underlying analysis. ABA ROLI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA ROLI invites comments and information that would enable it to develop better or more detailed responses to future LPRI assessments. ABA ROLI views the LPRI assessment process as part of an ongoing effort to monitor and evaluate reform efforts.

### Table of Factor Correlations

Legal Profession Reform Index (LPRI) Factor		Correlation
<b>I. Professional Freedoms and Guarantees</b>		
<b>Factor 1</b>	Ability to Practice Law Freely	Neutral
<b>Factor 2</b>	Professional Immunity	Neutral
<b>Factor 3</b>	Access to Clients	Negative
<b>Factor 4</b>	Lawyer-Client Confidentiality	Neutral
<b>Factor 5</b>	Equality of Arms	Neutral
<b>Factor 6</b>	Right of Audience	Neutral
<b>II. Education, Training, and Admission to the Profession</b>		
<b>Factor 7</b>	Academic Requirements	Neutral
<b>Factor 8</b>	Preparation to Practice Law	Negative
<b>Factor 9</b>	Qualification Process	Negative
<b>Factor 10</b>	Licensing Body	Neutral
<b>Factor 11</b>	Non-Discriminatory Admission	Positive
<b>III. Conditions and Standards of Practice</b>		
<b>Factor 12</b>	Formation of Independent Law Practice	Positive
<b>Factor 13</b>	Resources and Remuneration	Positive
<b>Factor 14</b>	Continuing Legal Education	Neutral
<b>Factor 15</b>	Minority and Gender Representation	Neutral
<b>Factor 16</b>	Professional Ethics and Conduct	Neutral
<b>Factor 17</b>	Disciplinary Proceedings and Sanctions	Negative
<b>IV. Legal Services</b>		
<b>Factor 18</b>	Availability of Legal Services	Negative
<b>Factor 19</b>	Legal Services for the Disadvantaged	Neutral
<b>Factor 20</b>	Alternative Dispute Resolution	Neutral
<b>V. Accountability and Transparency</b>		
<b>Factor 21</b>	Organizational Governance and Independence	Negative
<b>Factor 22</b>	Member Services	Neutral
<b>Factor 23</b>	Public Interest and Awareness Programs	Negative
<b>Factor 24</b>	Role in Law Reform	Neutral

## I. Professional Freedoms and Guarantees

### Factor 1: Ability to Practice Law Freely

***Lawyers are able to practice without improper interference, intimidation, or sanction when acting in accordance with the standards of the profession.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
<p>The Constitution and laws guarantee the right of lawyers to freely practice their profession. In practice, however, lawyers report interference from the government, from interested parties, and from opposing counsel. Defense attorneys representing defendants accused of participating in organized crime and representatives of victims in cases of human rights abuses are reported to face especial interference with their practice of law.</p>	

#### Analysis/Background:

The Federal Constitution, which provides a legal framework affecting the practice of all professions, prohibits any interference with an individual's legitimate performance of his/her "profession, industry, commerce or work." FEDERAL CONST. art. 5. Free exercise of one's profession may only be impeded by judicial orders when the work attacks the rights of third parties or by government order when the rights of society are affected. *Id.* This guarantee is not explicitly repeated in the Constitutions of the two states reviewed (Baja California and Yucatan),<sup>7</sup> but both state constitutions guarantee "all rights elaborated" in the federal document. See POLITICAL CONSTITUTION OF THE STATE OF YUCATAN art. 1 (*adopted Jun. 27, 1938, last amended Nov. 17, 2010*); POLITICAL CONSTITUTION OF THE FREE AND SOVEREIGN STATE OF BAJA CALIFORNIA art. 7 (*adopted Aug. 16, 1953, last amended Jul. 12, 2007*). The Federal Constitution leaves to the states the further responsibility for regulating its contents as regards the definition of professions covered, the conditions for licensing, and other responsibilities and duties of the same. FEDERAL CONST. art. 5.

The state laws on the exercise of professions [hereinafter, collectively, LEPs] include lawyers, sometimes implicitly and sometimes explicitly, with sub-categories, within their coverage. Baja California, for example, specifically includes graduates in law and in international corporate law while the DF includes law graduates among its 23 covered professions. *See, respectively*, LEP/BC art. 11; LEP/DF transitional art. 2. Yucatan defines a professional as any person who has obtained a Bachelor's level post-secondary degree or its equivalent from an institute of higher education or earned an equivalent degree in another country. *See* LEP/Y art. 2.

Until recently, the only legal restrictions on the practice of law were included in the various state and federal substantive codes defining criminal actions by attorneys; these are further discussed, along with the sanctions, in Factors 16 and 17 below. However, a 2002 amendment to the DF Criminal Code and proposed federal anti-money laundering legislation, intended to help fight white collar and organized crime, can be considered legally intimidating. The former, which criminalizes obtaining undue profits for oneself or another by falsifying a judicial act or order or by altering evidence presented at trial, also prohibits any other act tending to induce error by a judicial or administrative authority. CRIMINAL CODE FOR THE FEDERAL DISTRICT art. 310 (*adopted Jul. 3, 2002, last amended Jun. 29, 2011*) [hereinafter DF CRIM. CODE]. Observers perceive this amendment as too open-ended and such that may facilitate accusations against lawyers for

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<sup>7</sup> The DF does not have a constitution of its own, but operates on the basis of a Governing Statute (*Estatuto de Gobierno*), whose foundational principles are set forth in the Federal Constitution. FEDERAL CONST. art. 122.

“procedural fraud.” Although criminal codes in other states and at the federal level cover procedural fraud or its equivalent, concerns regarding the DF’s provision arise because only in the DF is it prosecutable via a *querrela* (a process by which the offended party can make a complaint and participate in its prosecution, exercising greater control over the case). While the modification was reportedly introduced to help the DF government prosecute cases against lawyers working on tax cases, the general fear seemed to be that it would interfere with ordinary litigation strategies by giving opposing private counsel greater opportunities to register a complaint. Where a crime is not subject to a *querrela*, even where a complaint is made, it is up to the public prosecutor to determine whether to go forward with the legal action. On the other hand, the proposed federal anti-money laundering legislation, which would have nationwide impact if enacted, would hold lawyers, and possibly their employees, responsible for not reporting on certain financial transactions of their clients or for receiving moneys derived from illegal activities.

As several of those interviewed noted, both the proposed legislation and the modification to the DF Criminal Code make them even more reluctant to accept cases that might trigger these actions. In fact, as reported by several respondents in the DF, it has become almost impossible to bring an important civil case that would not lead to the filing of criminal charges for procedural fraud by the losing party, and most law firms simply came to anticipate this as a contingency of their work. Reportedly, there are civil litigators who have been convicted and are currently serving prison terms under Article 310’s expanded definition of procedural fraud. Thus, lawyers in the DF operate with a frequent, and well-grounded, fear of incurring criminal liability. It should be noted, however, that interviewees outside the DF seemed less concerned about any possible consequences of the proposed draft law. Moreover, it was mentioned that although notaries (who are attorneys by training) are required to report transactions over a certain amount registered with them to the respective Secretariat of Finance or tax agency, it is unlikely that this either inhibits their actions or causes them any problems with either their clients or the government.

Criminal codes contain other sections referring to crimes that may be committed by public employees that might affect a lawyer’s ability to carry a case forward. For example, Baja California criminalizes intimidation by a public employee who uses physical or moral violence to prevent an individual from filing a report or a lawsuit or from providing other information relevant to a crime, as well as a public official’s involvement in licit or illicit conduct detrimental to the interests of that individual. CRIMINAL CODE FOR THE STATE OF BAJA CALIFORNIA art. 306 (*adopted* Aug. 10, 1989, *last amended* May 12, 2011) [hereinafter BAJA CALIFORNIA CRIM. CODE]; *see also* DF CRIM. CODE art. 269; FEDERAL CRIMINAL CODE art. 219 (*published* Aug. 14, 1931, *last amendments published* Oct. 24, 2011) [hereinafter FEDERAL CRIM. CODE].

In practice, Mexican lawyers are increasingly subject to intimidation, interference, and harassment from the government, from opposing clients and counsel, and even from their own clients, even though it is essentially impossible to estimate how frequently this takes place. Even if it is an infrequent occurrence, the nature of the intimidation is still a significant concern for the legal profession. Most interference with the free practice of law is clearly illegal or constitutes abuse of legitimate powers (i.e., is taken under judicial orders or within an agency’s legitimate powers), but that makes it no less intimidating. However, many of the intimidating actions are usually not directed at the lawyer and thus only interfere with his/her work by making it more difficult (as when, for example, a client is illegally detained, access to a client is denied, or witnesses are encouraged to give false testimony). This type of secondary interference not only obstructs a lawyer’s performance of his/her work, but also prevents or dissuades him/her from carrying on – which, in practice, is seriously detrimental to the free practice of law.

Of much greater concern is the perception, voiced by several interviewees, that the legal profession may currently be second only to journalism in terms of the dangers that lawyers face when involved in drug trafficking or organized crime cases, or in human rights defense work. In fact, nearly all lawyers interviewed by the assessment team mentioned that accepting a case from an alleged participant in drug trafficking or other types of organized crime could result in several kinds of genuine threats. For example, depending on the notoriety of the case, lawyers

might expect to be targets of wiretapping, special audits, and police surveillance. There was no suggestion that this was usually done illegally (i.e., without a judicial order), but it was considered intimidating and was often initiated with intimidation in mind. In more severe cases, lawyers and their families might be threatened or physically harmed by an opposing drug cartel or even by their own clients, should they not win the case or refuse to abide by the client's wishes. These concerns about the increasing violence in connection with organized crime cases were also echoed in a report by the Special Rapporteur on the Independence of Judges and Lawyers on her recent mission to Mexico, as directly affecting the work of all legal professionals in the country. See UN SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS, MISSION TO MEXICO: ADDENDUM TO THE REPORT TO HUMAN RIGHTS COUNCIL, SEVENTEENTH SESSION at 12 (Apr. 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.30.Add.3\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.30.Add.3_en.pdf).

Another equally disturbing category of threats reportedly occurs when lawyers who represent victims of alleged human rights abuses by governmental officials (especially by the military and police) have their offices broken into, are physically threatened, or even assassinated. Interviewees suggested that these actions may be carried out by the accused officials or their agencies, or they may also come from non-governmental actors, such as friends of the accused or groups who, for whatever reason, believe the alleged abuse to be "justified and necessary." Lawyers often find themselves unprotected from such intimidation, as the responsible government actors are either unwilling to offer protection or are themselves complicit in the violent actions. For example, representatives of human rights NGOs interviewed by the assessment team described a case where a group of threatened female lawyers lodged a formal complaint about the threats they received and were even granted protection by federal agents; however, the investigation of these threats then stalled, and the lawyers were forced to shut down their organization and move to another location. There have also been instances of forced disappearances of lawyers, allegedly carried out by the military, as well as of break-ins into offices of anti-torture organizations, presumably conducted by federal police agents. Reportedly, a number of defense lawyers have even been granted protective measures by the Inter-American Court of Human Rights.

Although the most serious drug crimes and allegations of abuse by government actors are tried in the federal jurisdiction, it was generally believed that violent forms of interference and related action also occurred at the state level and, to a lesser extent, in the DF. In some states, civil and criminal cases might result in threats and reprisals from powerful local actors, including the governors in states where *caciques* (local strongmen) still prevailed. This may encompass cases in which a local politician or his/her relatives were involved, cases involving business interests of politicians, including those officially operated by other individuals (*prestanombres*, or those who lend their names), or anything else where local leaders have a stake in the outcome. This is arguably consistent with the current insecure situation in several regions of the country, where lawyers are involved in matters that have a real impact on local communities and, therefore, are likely to create tension or conflict. Yet, despite the severity of these pressures, most interviewees emphasized that, while incidents of violence against lawyers do happen and are well-publicized, these are mostly of an exceptional, isolated nature. In general, though, most lawyers have the freedom they need to independently practice law.

Although interference with the free practice of law is frequently related to the escalating levels of violence and drug trafficking, these are not the only factors restricting the legal profession's ability to practice freely. For example, lawyers involved in labor cases, particularly but not exclusively when representing employees, reported veiled threats, as well as outright interference in their work. Employment lawyers also noted that in some instances, employees may engage in vigilante-style conduct and attack employers they considered especially abusive, when they believed normal legal recourse might not succeed. While this does not pose a direct personal threat to lawyers, it certainly presents an obstacle to carrying out their work.



Similarly, tax lawyers, known as *fiscalistas*, also reportedly face intimidation, albeit more subtle than the harassment described above. In recent years, the federal and state governments have apparently become especially sensitive about the use of *amparos fiscales*, or the practice of using constitutional writs to challenge the constitutionality of taxation of specific individuals and firms.<sup>8</sup> For example, it was reported that the SCJ had recently ordered the DF to refund more than MXN 300 million (more than USD 25 million)<sup>9</sup> in unconstitutionally collected excessive taxes, as a result of reviewing multiple *amparos fiscales* filed over the course of several years. *Ordena Corte al GDF devolver 300 mdp (Court Orders DF Government to Repay 300 Million Pesos)*, MILENIO, Mar. 2, 2011, at 1, available at <http://impreso.milenio.com/node/8920181>. Tax lawyers are thus likely candidates for special audits by the tax agency or Secretariat of Finance, presumably as a disincentive to take on these cases. Further, the aforementioned amendment to the DF Criminal Code, targeted at what the DF authorities believed was malpractice in one such very expensive case, has caused concern among attorneys specializing in purely civil matters that there is now potential for losing parties to charge them with procedural fraud. One lawyer specializing in commercial law said he would be very careful in the future about the clients he took on and the identity of opposing counsel. In fact, the only attorneys stating that they faced no intimidation at all were corporate lawyers who did not engage in litigation.

While several bar associations have attempted to offer attorneys some protection, this appears to have been minimal and not very effective. One limitation of the protection that may be offered by these associations is that they tend to focus on their members, which leaves non-members (who constitute the vast majority of lawyers) without any support. On the whole, lawyers seem to be more or less responsible for protecting themselves in this context. However, the assessment team interviewed one lawyer involved in human rights litigation and advocacy who had moved from her home to the DF and had received a protective order from the court prohibiting certain parties from approaching her.

## Factor 2: Professional Immunity

***Lawyers are not identified with their clients or the clients' causes and enjoy immunity for statements made in good faith on behalf of their clients during a proceeding.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>By law, any professionals may be held criminally liable for crimes committed in the exercise of their profession. Lawyers can be subject to criminal responsibility for a number of actions taken in prejudice of their clients, even when those actions are taken in good faith. Additionally, procedural fraud provisions in the DF are perceived to put lawyers at risk of lawsuits and prosecution for actions taken in good faith on behalf of their clients. In practice, however, none of this appears to pose problems in lawyers' representation of their clients. The law does not prohibit identification of lawyers with their clients, and certain groups of lawyers reportedly face stigmatization commonly.</p>	

<sup>8</sup> The *amparo* may only be dealt with by federal courts and is regulated by the LAW ON AMPARO, REGULATING ARTICLES 103 AND 107 OF THE POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES (*adopted* Dec. 30, 1935, *last amendments published* Jun. 24, 2011).

<sup>9</sup> In this report, Mexican pesos [hereinafter MXN] are converted to United States dollars [hereinafter USD] at the average rate of conversion at the time when the LPRI interviews were conducted (USD 1.00 = MXN 12.00).

## Analysis/Background:

Professionals and their assistants shall be held responsible for crimes committed in the exercise of their profession and, in addition to the punishment permitted by law, the offender's professional license shall be suspended for a period of one month to two years if the crime was committed willfully. See FEDERAL CRIM. CODE art. 228; see also DF CRIM. CODE art. 322; CRIMINAL CODE OF THE STATE OF YUCATAN art. 269 (*adopted* Mar. 28, 2000, *last amended* Sept. 15, 2009) [hereinafter YUCATAN CRIM. CODE]. The equivalent provision in the Baja California Criminal Code applies only to professionals in the medical field. See art. 269.

Mexico's legal framework leaves open for interpretation what is meant by an inadequate defense and procedural fraud. The criminal codes applicable in the states and at the federal level criminalize certain actions taken by lawyers that may be prejudicial to their clients, in some cases without a requirement that the lawyer acted knowingly or in bad faith. For instance, the following acts are illegal in the DF:

- abandoning representation of a client or business, without justification and in prejudice of either;
- assisting or helping two or more parties with opposed interests in the same affair or in connected affairs, or accepting the representation of one and then another in the same affair;
- knowingly alleging false facts or basing one's arguments on non-existent or derogated laws;
- putting forward a motion, recourse, or request for nullification that is notoriously inappropriate, for the purposes of creating delays;
- as the defender of an accused person, requesting conditional release for the client without developing evidence or other actions tending to advance his/her defense;
- as the defender of an accused person, not offering or participating, within the legal time limits, in the review of evidence fundamental to the defense, despite having the possibility to do so;
- as the defense attorney or representative of the victim of an offense, accepting the charge without taking the actions necessary to support the interests of his/her client.

See DF CRIM. CODE art. 319.

Similar provisions exist in other jurisdictions covered in this assessment. For instance, the Federal Criminal Code penalizes the following actions committed by a lawyer:

- knowingly alleging false facts, or non-existent or abrogated laws;
- asking to prove something that cannot be proved or is not to the advantage of the party, bringing about incidents that lead to the suspension of the trial or manifestly improper appeals, or otherwise causing illegal delays;
- knowingly undertaking or opposing an action before a judicial or administrative authority that is without merit or based on false documents;
- falsifying a judicial or legal act or altering evidence presented at trial for the purpose of obtaining a disposition contrary to the law;
- assisting or helping two or more parties with opposed interests in the same affair or in connected affairs, or accepting the representation of one and then another in the same affair;
- abandoning representation of a client or business, without justification and causing harm;
- as the defender of an accused person, requesting conditional release for the client without developing evidence or other actions tending to advance his/her defense.

See FEDERAL CRIM. CODE arts. 231-232; see also BAJA CALIFORNIA CRIM. CODE arts. 337-338; YUCATAN CRIM. CODE arts. 273-275.

In addition, as discussed in Factor 1 above, the DF Criminal Code criminalizes any act tending to induce error by a judicial or administrative authority. See DF CRIM. CODE art. 310. There is no exception enumerated for good faith actions taken by attorneys in defense of their client. Moreover, the prosecution of this crime can be initiated by a *querrela*, an action filed by a private party, leaving lawyers vulnerable to prosecution at the whim of individuals. Procedural fraud is criminalized in Baja California, but it does not include acts tending to induce error by a judicial or administrative authority. See BAJA CALIFORNIA CRIM. CODE art. 325. Procedural fraud is not specifically covered by the Yucatan Criminal Code or the Federal Criminal Code.

Although previously lawyers and others could be held criminally liable at the federal level for crimes against honor, including defamation, calumny, and other damaging statements, these acts were decriminalized by the National Congress in 2007. Nevertheless, these actions may still result in the requirement to pay moral damages. A total of 25 states, including DF, have removed criminal penalties for crimes against honor, but they remain criminalized in Baja California and Yucatan. See BAJA CALIFORNIA CRIM. CODE arts. 185-194; YUCATAN CRIM. CODE arts. 294-305. Neither state makes an exception for lawyers acting in representation of a client, although both states require that defamation (but not calumny) must have been willful in order to be considered a crime.

Lawyers may also be sanctioned for violations of procedure or disrupting orderly proceedings before a court. These sanctions are an extension of the judges' procedural power to maintain order in their courtrooms and to discipline any participant in a trial who violates this principle. See, e.g., FEDERAL CRIMINAL PROCEDURE CODE art. 33 (*published* Aug. 30, 1934, *last amendments published* Oct. 24, 2011) [hereinafter FEDERAL CRIM. PROC. CODE]; CRIMINAL PROCEDURE CODE FOR THE FEDERAL DISTRICT art. 18 (*adopted* Aug. 6, 1931, *last amended* Jul. 20, 2011) [hereinafter DF CRIM. PROC. CODE]; CIVIL PROCEDURE CODE FOR THE FEDERAL DISTRICT art. 61 (*adopted* Aug. 29, 1932, *last amended* Jun. 14, 2011) [hereinafter DF CIV. PROC. CODE]; 1989 BAJA CALIFORNIA CRIM. PROC. CODE art. 100; CIVIL PROCEDURE CODE FOR THE STATE OF BAJA CALIFORNIA art. 61 (*adopted* May 4, 1995, *last amended* Apr. 22, 2010) [hereinafter BAJA CALIFORNIA CIV. PROC. CODE]; CODE OF PROCEEDINGS IN CRIMINAL CASES OF THE STATE OF YUCATAN arts. 23, 44-45 (*adopted* Dec. 13, 1994, *last amendments published* Jul. 6, 2004) [hereinafter YUCATAN CRIM. PROC. CODE]; CIVIL PROCEDURE CODE OF YUCATAN arts. 51, 58 (*adopted* Dec. 18, 1941, *last amended* Jun. 5, 2007) [hereinafter YUCATAN CIV. PROC. CODE]. Baja California appears to be the only jurisdiction reviewed for this assessment that allows the appellate court to impose sanctions on a lawyer whose written submissions objecting to a trial judge's decision demonstrate a lack of respect. See BAJA CALIFORNIA CIV. PROC. CODE art. 61. Additionally, the author of a written or oral statement using defamatory expressions may be sanctioned by a court in accordance with the gravity of the case. 1989 BAJA CALIFORNIA CRIM. PROC. CODE art. 187.

In practice, none of those interviewed seemed to believe any of these legal provisions constituted a problem in their representation of their clients, or that their colleagues felt threatened by potential accusations related to any of the issues mentioned above. However, the possibility of prosecution for procedural fraud, as discussed in Factor 1 above, was causing significant, and well-grounded, concerns among practicing civil litigators in the DF.

The legal framework appears to have done little to lessen the extent to which lawyers are publicly identified with their clients; indeed, many individuals, including some high-ranking judges, refer to lawyers who "represent drug traffickers." The most likely groups of attorneys to be stigmatized are those who represent alleged drug traffickers, victims of alleged human rights abuses, and possibly *fiscalistas* attempting to argue against "unconstitutional taxes." Lawyers litigating labor cases did not report any instances of stigmatization, although that may be because those interviewed claimed to represent both employers and employees.

Although negative perceptions of lawyers among the public and the government are not seen as leading to direct harm, several lawyers did mention that this may limit the type of clients they are able to attract in the future. Namely, they may be more likely to attract the same kinds of clients

as they are perceived to be representing, and to deter different ones. The apparent willingness and, most particularly, success in defending a notorious case or client can quickly lead to an attorney being labeled as a particular type of lawyer, thereby driving away clients who do not want to be associated with this category of professionals. This, together with the more damaging repercussions mentioned in Factor 1 above, seems to be a particular problem for those taking on drug-related cases.

### Factor 3: Access to Clients

***Lawyers have access to clients, especially those deprived of their liberty, and are provided adequate time and facilities for communications and preparation of a defense.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
Despite constitutional and legal guarantees, access to clients in detention is a longstanding problem. Authorities reportedly do not always comply with the procedural requirements for access to counsel during arrest and pretrial detention. Although the 2008 constitutional amendments reiterate the commitment to defendants' access to counsel, many of the existing obstacles to access are already outside the law and interviewees were not convinced that the reforms would lead to practical improvements.	

#### Analysis/Background:

The Federal Constitution, as amended in 2008, guarantees that defendants have the right to an adequate defense by a lawyer of their choosing from the moment of arrest. FEDERAL CONST. art. 20(B)(VIII). If a defendant does not want, or is unable, to hire an attorney, the judge will appoint a public defender. To this end, the federal government, states, and the DF are required to establish a quality public defender system and ensure the necessary conditions for a professional, career public defender service. *Id.* art. 17; *see also* Factor 19 below. Defendants have the right to have their lawyer appear at every proceeding, and the lawyer is required to appear as often as the defendant requires. *Id.* art. 20(B)(VIII). Additionally, all private communications (including, but not limited to, attorney-client communications) are considered confidential and cannot be admitted in court. *Id.* art. 16; *see also* Factor 4 below.

Generally, Mexican laws emphasize a client's access to a lawyer, rather than a lawyer's access to clients. Of the jurisdictions covered by this report, the one exception is the 1989 Baja California Criminal Procedure Code, which states that defense attorneys have the right to communicate directly and personally with the accused at their convenience. *See* art. 27(II). However, the constitutionally guaranteed right to counsel from the moment of arrest necessarily implies that the lawyer should also have the right to access his/her client.

Procedural laws at the federal and state level provide for the parties' right to be represented by a lawyer or another representative in both criminal and civil cases, but criminal procedure laws that do not incorporate the 2008 reforms do not necessarily guarantee that representation would be provided by the state to criminal defendants who cannot afford a lawyer. For example, at the federal level a defendant may either defend himself/herself at hearings or be represented by a lawyer. FEDERAL CRIM. PROC. CODE art. 86. The defendant is guaranteed the right to communicate with his/her lawyer during hearings. *Id.* art. 89. Additionally, any person making a declaration as part of the prosecutorial investigation also has the right to be assisted by a lawyer. *Id.* art. 127(2). In the DF, the defendant is guaranteed the right to counsel while making a declaration or at hearings, and the defendant may also communicate with his/her lawyer, but not with the public, during hearings. DF CRIM. PROC. CODE arts. 59, 66. In Yucatan, the defendant has the right to defend himself/herself or to appoint a lawyer or a personal representative of his/her

choosing, and also has the right to communicate with counsel and court staff during hearings. YUCATAN CRIM. PROC. CODE arts. 43, 46. Finally, under the former criminal procedure system in Baja California, the defendant is guaranteed the right to name an attorney or a personal representative from the time of his/her arrest or voluntary surrender. 1989 BAJA CALIFORNIA CRIM. PROC. CODE art. 26.<sup>10</sup>

The revised criminal procedure rules in Baja California include the right to a defense only from the moment of detention before the prosecutor's office, leaving open a loophole in the right to counsel, although police are required to present a detainee to the prosecutor's office or *juez de garantia* immediately upon his/her arrest. See NEW BAJA CALIFORNIA CRIM. PROC. CODE arts. 7, 122(VI). The defendant must have counsel when making a declaration; if he/she does not have one, or an attorney fails to appear at the declaration, a public defender will be appointed. *Id.* art. 131. Defense counsel must be admitted to all proceedings at all stages. *Id.* art. 138.

Laws on arrest procedure and judicial supervision are also relevant to the issue of access to clients because, as further discussed below, lawyers reported significantly less difficulty in gaining access to clients once the client has been brought before a court. Only persons apprehended *in flagrante delicto* or in urgent cases (defined as grave crimes as specified by law, where there is a risk the suspect will abscond) may be arrested without a warrant; such arrests must be immediately registered. FEDERAL CONST. art. 16. Persons arrested without a warrant must be immediately delivered to a judge<sup>11</sup> within 48 hours of detention, or within 96 hours in cases of alleged organized crime. Those arrested based on a warrant must be immediately brought before the judge who issued the warrant. *Id.* Similar requirements are present in other jurisdictions covered by this assessment. See FEDERAL CRIM. PROC. CODE arts. 193-194; DF CRIM. PROC. CODE arts. 266-268; YUCATAN CRIM. PROC. CODE arts. 235-238; 1989 BAJA CALIFORNIA CRIM. PROC. CODE arts. 108, 110; NEW BAJA CALIFORNIA CRIM. PROC. CODE arts. 159, 162, 165. Additionally, individuals suspected of involvement in organized criminal activities may be detained for the duration of investigation (*arraigo*), which must be authorized by a judge and initially lasts for 40 days, with a possibility of extension for up to 80 days. See FEDERAL CONST. art. 16.7; see also FEDERAL LAW AGAINST ORGANIZED CRIME arts. 13-14 (*adopted* Oct. 28, 1996, *last amendments published* Nov. 15, 2011) [hereinafter ORGANIZED CRIME LAW].

In practice, the timing and manner of a lawyer's access to a detained client or a potential client presented a number of concerns, both prior to the 2008 constitutional amendments and the resulting criminal justice reforms, and continuing today. Interviewees reported that many problems have occurred at the federal system or in states that continue to operate under pre-2008 criminal procedure rules and have not introduced the new procedures. These problems, however, are not the result of a lack of adequate provisions for access to a lawyer in the codes, but rather are due to decades of informal and often corrupt practices that had impeded implementation of the spirit, or even the letter, of the law. While interviewees were generally very positive about the 2008 reforms, even Baja California's new criminal procedure framework has only been in effect in Mexicali for eight months at the time of the interviews, giving too short a time to evaluate its effect in practice. A number of interviewees felt that, although the new codes reemphasize the right to a defense of one's choosing from the moment of arrest, the question remains as to whether the old, illegal practices will prevail despite the new legal framework.

One issue identified by interviewees was that police do not always comply with the procedural requirements for access to counsel during arrest. Respondents spoke of two common scenarios: illegal detention, often for the purpose of extracting bribes from the detainee; and detention which

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<sup>10</sup> Under pre-2008 criminal procedure, once a defendant was turned over to the public prosecutor by the police, his/her declaration was to be taken. As this statement constituted evidence, it was extremely important that the detainee be advised by a lawyer.

<sup>11</sup> Under the new criminal justice system, there is a specialized judge (known as *juez de control*, or *juez de garantia* in Baja California) who is responsible for overseeing preliminary criminal procedure stages.

is formally legal, but during which the police prohibit or prevent the detainee from communicating with anyone (in violation of FEDERAL CONST. art. 20) and fail to deliver him/her to the prosecutor's office in a timely manner. Although the detainee's representative could file a petition for *amparo*, if a detainee is prevented from communicating with others or no one knows that he/she has been detained, the detainee will be effectively prevented from exercising the right to *amparo*. Moreover, one interviewee working in a prosecutor's office indicated that there were too many arrests and too many detention centers for the prosecutors to be able to immediately provide a registry of all newly arrested individuals.

In all three jurisdictions visited, the assessment team was provided with examples of cases where the clear intent of the police or the prosecution was simply to extract a bribe from the victim of their actions. There is no way to measure how common such incidents are but, at the very least, they appear to be one of the reasons citizens have some reluctance to approach the police. Moreover, police in Mexico seem to be under pressure to apprehend someone when a crime is committed. The arrested person may have nothing to do with the crime, but the arrest is a way for police to respond to pressures from their superiors and from the public at large. This practice rarely has negative repercussions for the arresting officer or any other authority involved. According to interviewees, attorneys consider it a victory when they obtain the release of a detained person, which is often accomplished by working behind the scenes and using informal contacts with the police and prosecutors. They mentioned that there is an entire class of jailhouse lawyers (so-called *coyotes*) who promise to secure the release of detainees for exorbitant fees and rely on networks of influence and the payment of bribes to obtain release. Notwithstanding such extra-legal practices, respondents also recounted cases in which legal maneuvers resulted in an arrestee's release, including cases in which the detainee was a relative or an acquaintance of a lawyer who called the authorities to protest an illegal detention and threaten to file a petition for *amparo*. In these cases, the threat of *amparo* was by itself sufficient to obtain the release.

Even in the case of formally legal detentions, access to a lawyer is often denied. For example, interviewees reported that a lawyer who has been notified by the detained person's family may arrive at the holding cell or prison and not be allowed to enter and consult with his/her presumed client because the latter has not yet designated the lawyer as representative. Since a lawyer must legally be present when a suspect's statement is taken, the authorities may simply assign one from among the public defenders or the many *coyotes* present. To facilitate this, the authorities sometimes would, reportedly, misinform the private attorney as to when the statement would be taken or delay the interview until late in the investigation. In the states that have not created adequate public defense systems, the "appointed" attorney might then simply sign off on the statement without providing any advice to the suspect. Even if the police, prison guards, or prosecutors eventually allow the private attorney entry, this may only be after he/she has paid a bribe. Interviewees also expressed particular concerns with respect to access to clients detained for alleged involvement in organized crime acts. They were worried that, in practice, the problems with gaining adequate access to these clients would be even more acute than for clients accused of ordinary crimes, due to both legally allowed and extra-legal obstacles.

The one legitimate justification for controlling the free entry of anyone claiming to represent the defendant was an effort to limit the activities of unscrupulous freelancers (*coyotes*). These individuals, who are sometimes not even lawyers, loiter around prisons and charge large sums to families of detainees, with an often unfulfilled promise to get their relative out of prison. Most of these *coyotes* are reported to simply take the money, and the few that are actually able to follow through their promises do so through contacts and bribes rather than by legal means.

Finally, as further discussed in Factor 4 below, even once a lawyer is able to gain access to his/her client, private communications are logistically difficult. Problems with access to clients apparently diminish once the detainee appears before a judge. However, even though access to detained clients is generally permitted, conversations are still likely to be overheard, and attorneys may have to pay small bribes to detention center guards.

It should be noted that official public defenders appear to encounter fewer problems with accessing their clients, and public defenders working under the new system reported no problems with access to clients.

#### **Factor 4: Lawyer-Client Confidentiality**

***The State recognizes and respects the confidentiality of professional communications and consultations between lawyers and their clients.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
<p>The confidentiality of professional communications between lawyers and their clients is protected by law and generally respected in practice, with the exception of communications with detained clients, especially those accused of organized crime. Concerns were also raised about the pending federal anti-corruption and anti-money laundering legislation, which would require lawyers to disclose certain information about their clients to designated authorities.</p>	

#### **Analysis/Background:**

Constitutionally, all private communications (including, but not limited to, attorney-client communications) are considered confidential and cannot be admitted in court. FEDERAL CONST. art. 16. All of the LEPs emphasize the responsibility of any professional to respect the confidential nature of communications with his/her client. See LEP/DF art. 36; LEP/Y art. 17; LEP/BC art. 23. All professionals are obligated to guard the secrets communicated to them by their clients, except as provided by law. The ethics codes of professional bar associations also use similar language. Professional secrecy is defined as both the duty to a client and the right of a lawyer, which extends to information received not only from a lawyer’s client, but also from third parties and from other lawyers. A lawyer must refuse revealing such information, except as necessary for a defense in light of serious and unjustified accusations by a client and to report a client’s intent to commit a criminal act. See CODE OF PROFESSIONAL ETHICS OF THE COLLEGE OF ADVOCATES “MEXICAN BAR ASSOCIATION” arts. 10-12 (*adopted by BMA Extraordinary General Assembly, January 2006*), *available at* <http://www.bma.org.mx/Documento.aspx?CveTipoDocumento=2&CveDocumento=158> [hereinafter BMA CODE OF ETHICS]; CODE OF PROFESSIONAL ETHICS OF THE COLLEGE OF ADVOCATES “NATIONAL ASSOCIATION OF BUSINESS ADVOCATES” arts. 10-12, *available at* <http://www.igofwd.com/anac/docs/base/cetic/CODIGO%20DE%20ETICA%20Documento%20Completo.pdf> [hereinafter ANADE CODE OF ETHICS]; CODE OF ETHICS OF THE ILLUSTRIOUS AND NATIONAL COLLEGE OF ADVOCATES OF MEXICO sec. 2.3 (*adopted in 2008*), *available at* <http://www.incam.org.mx/codigoEtica-l.php> [hereinafter INCAM CODE OF ETHICS]. Criminal procedure codes also contain exemptions preventing professionals from having to disclose secrets revealed to them in their professional capacity. See FEDERAL CRIM. PROC. CODE art. 243; DF CRIM. PROC. CODE art. 288; YUCATAN CRIM. PROC. CODE art. 161; 1989 BAJA CALIFORNIA CRIM. PROC. CODE art. 336; NEW BAJA CALIFORNIA CRIM. PROC. CODE art. 284.

Further, most jurisdictions criminalize the revelation of a client’s private secrets by an attorney. See, e.g. FEDERAL CRIM. CODE art. 210, 211; DF CRIM. CODE art. 213; BAJA CALIFORNIA CRIM. CODE art. 175; YUCATAN CRIM. CODE art. 218. For example, according to the DF Criminal Code, anyone who reveals a secret or a confidential communication, without the consent of the person involved and in prejudice of someone else or to his/her own advantage, faces a prison sentence

of six months to two years and a fine of up to 120 minimum daily wages.<sup>12</sup> If the party revealing the secret is an agent who learned the secret due to his/her work, responsibilities, profession, or office, the prison sentence increases by half, and the convicted person will also be suspended from the exercise his/her professional practice for a period of six months to three years. Similar provisions exist in the other criminal codes, with the range of sanctions in various jurisdictions including prison sentences between two months and four years, community service of one to five years (available only at the federal level), fines between 3 and 500 minimum daily wages, and suspension of professional practice from two months to three years.

The civil codes in jurisdictions covered by this assessment also provide that attorneys who reveal their clients' secrets to the opposing party or give the opposing party documents or information that may harm their clients will be responsible for damages and subject to the provisions of the Criminal Code. See FEDERAL CIVIL CODE art. 2590 (*adopted* Aug. 30, 1928, *last amendments published* Aug. 30, 2011) [hereinafter FEDERAL CIV. CODE]; CIVIL CODE FOR THE STATE OF BAJA CALIFORNIA art. 2464 (*adopted* Apr. 28, 1972, *last amended* Dec. 20, 2010) [hereinafter BAJA CALIFORNIA CIV. CODE]; CIVIL CODE FOR THE FEDERAL DISTRICT art. 2590 (*adopted* Aug. 30, 1928, *last amended* Jun. 29, 2011) [hereinafter DF CIV. CODE].<sup>13</sup>

In practice, there does not appear to be a concerted state effort to undermine the principle of confidentiality in the course of ordinary communication between lawyers and their clients. In the course of interviews, a few examples were given of lawyers allegedly violating attorney-client privilege, including a recent example of a lawyer who had apparently agreed to participate in a sting operation to help federal agents apprehend his client. However, such occurrences seem rare, and if lawyers occasionally do indulge in practices of this nature, it appears to be more for personal gain and a result of unethical conduct by attorneys than because of deliberate pressure from the authorities.

The situation is different, however, for detained clients – although this occurs not because lawyers are pressured to disclose their communications, but because of the circumstances under which communication must occur when a client is in prison, which make it difficult not to be overheard. In police detention facilities, there may be no place at all to converse without others present, and even in prisons, there will be cameras, guards, and others listening. Lawyers spoke of having to cover their mouths and speak in whispers, so as not to be overheard and not to have cameras capture their lip movements. Moreover, authorities often reportedly place guards and observers to facilitate eavesdropping. Furthermore, any written communication with a detainee, including papers they were to sign, has to be reviewed by prison officials, which could take days and violates lawyer-client privilege. Reportedly, the situation for detainees accused of organized crime and placed under *arraigo* is even more dire. It is not clear whether this may be an official policy, a deliberate attempt by state authorities to monitor communications, or an unintended consequence of the condition of the facilities in prisons. And even though problems with privacy of communications apparently diminish once the detainee appears before a judge, it is still impossible to avoid having all conversations overheard.

Interviewees also expressed concerns about the recent amendments to the federal Organized Crime Law and several proposed legislative initiatives related to anti-corruption in public procurement and anti-money laundering, which potentially may interfere with the confidentiality of

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<sup>12</sup> Mexico has multiple minimum wage ranges, which are determined by the federal government annually for different geographical areas and occupations. Generally, the country is divided into three geographical zones, with daily minimal wage for 2011 set at MXN 59.82 (USD 5) for residents of zone A, MXN 58.13 (USD 4.84) for zone B, and MXN 56.70 (USD 4.73) for zone C. Of the jurisdictions covered in this assessment, DF and Baja California are included within geographical zone A, while Yucatan is included within geographical zone C. See <http://www.misalarario.org/main/salario-minimo/mexico-salarios-minimos/mexico-salarios-minimos>.

<sup>13</sup> There is no specific provision to this effect in Yucatan's Civil Code; however, attorneys would still be liable for civil damages by virtue of Yucatan's general provisions on damages.



lawyer-client communications for these cases. The proposed legislation, in particular, provides for a specific exception to the principle of professional confidentiality by requiring lawyers to report to fiscal authorities information regarding certain transactions undertaken by their clients on which they provided professional advice. The goal of these provisions, which were pending before the federal Senate at the time of this assessment, is to help identify potential activities financed with the proceeds of crime and to prevent the financing of terrorism. Some interviewees felt that these provisions were drafted quite ambiguously, but even more respondents were less concerned about the wording and more about how these new laws would be applied in practice, if adopted.

## Factor 5: Equality of Arms

***Lawyers have adequate access to information relevant to the representation of their clients, including information to which opposing counsel is privy.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>The Constitution and procedural codes allow both parties access to relevant information and case files. In practice, private attorneys reported difficulties in gaining access to the case files in criminal cases.</p>	

### Analysis/Background:

Defendants and their representatives have the constitutional right to access all information that is included in the trial record and is relevant to the defense. When the defendant is detained, he/she or the attorney shall be given access to the investigation records and shall have the opportunity to consult the records prior to the defendant's first appearance before a judge, for the purpose of establishing a defense. FEDERAL CONST. art. 20(B)(VI). However, the prosecution may keep certain information in reserve in exceptional cases, as explicitly permitted by law – to the extent this is necessary for the success of investigation and provided all information is released in a timely manner so as to not affect the defense rights. *Id.* Similarly, criminal procedure codes allow the defense attorney access to the case file maintained by the prosecutor; under the non-reformed procedures, defense attorneys also have access to the file kept by the judge for his/her pretrial review of evidence (such review no longer takes place under the 2008 reforms). See FEDERAL CRIM. PROC. CODE art. 128(d); DF CRIM. PROC. CODE art. 269(III); YUCATAN CRIM. PROC. CODE art. 241; 1989 BAJA CALIFORNIA CRIM. PROC. CODE art. 27; NEW BAJA CALIFORNIA CRIM. PROC. CODE art. 148. In civil cases, the plaintiff must provide evidence when he/she files the claim. Both parties may request certified copies of all documents submitted to the court or read the originals in judicial offices. See, e.g., FEDERAL CIVIL PROCEDURE CODE arts. 322, 323, 278 (*published* Feb. 24, 1943, *last amendments published* Jan. 16, 2012) [hereinafter FEDERAL CIV. PROC. CODE]; DF CIV. PROC. CODE arts. 95, 71; BAJA CALIFORNIA CIV. PROC. CODE arts. 95, 65-71; YUCATAN CIV. PROC. CODE art. 15. A similar right to evidence exists for cases brought under the commercial, labor, and administrative codes.

Certain limitations exist with respect to access to information gathered during the investigation of organized crime cases. In those cases, the law provides for secrecy of the investigation, requiring the prosecutors to maintain the confidentiality of the investigative file. The limitations on a defendant and his/her attorney's access may not prejudice the ability to provide a defense. To this end, the defense will have access to information that will be used in making the accusation. ORGANIZED CRIME LAW art. 13. The identity of witnesses may be kept confidential when it is alleged that disclosing their identity would put them at risk. *Id.* art. 14.

In practice, there were a number of issues reported with the exercise of access rights under the traditional criminal justice system. Prosecutors reportedly often delayed adding new evidence to

the case file, and attorneys who wished to have access to the files, even for reading in a prosecutor's office, often had to wait for hours or days for someone to attend to their request. Further, getting official copies of documents required an exchange of letters and, not infrequently, the approval of higher authorities – usually in violation of constitutional or legal standards. In some instances, attorneys found it necessary to resort to the Attorney General or even to file an *amparo* petition, which would result in a delay of a few months. In addition, prosecutors might have postponed the interrogation of the suspect until the very end of the investigation as a means of restricting defense counsel's access to the case file altogether.

Under the new criminal procedures system, the process is reported to work out very well for public defenders, who are given very direct access to the prosecution's record on evidence collected, as well as scanned copies of documents and depositions. In Baja California, for example, the prosecutors put all the information into an electronic file, to which public defenders have permanent access via Intranet. Their only problems were when an overworked prosecutor forgot or did not have the time to update the file, but this was reportedly not that common. Unfortunately, private attorneys still cannot access this internal system, and thus have to rely on the previous method of frequent visits to the prosecutors' offices to get certified copies or read the file there. This approach is also required when the case has been deemed sensitive by a prosecutor or a judge. Finally, as noted above, in a limited number of cases, prosecutors may withhold some evidence because of a concern that its disclosure would hinder an ongoing investigation.

Interviewees had few complaints regarding the equality of arms in non-criminal cases (e.g., civil, family, labor, and administrative). They were confident that the procedure in practice was consistent with the law and believed they were adequately informed of the other party's evidence. Even when evidence was introduced at a later stage, they felt they had adequate notice, and no examples were given of parties presenting a critical piece of evidence at the last moment without notifying the opposing counsel. Nevertheless, a number of respondents commented that the law makes it difficult to get information on assets and bank accounts in ordinary civil cases. This is especially essential for the enforcement of judgments or precautionary measures, to ensure the opponent will not transfer the assets to other parties. Attorneys also note that they had difficulty accessing certain types of official or protected information when litigating cases against the government. Despite these concerns, a problem that was cited far more frequently and elaborated under Factor 6 below has to do with unequal access to the judge, either through illegal means or through the common practice of *ex parte* conversations.

## Factor 6: Right of Audience

***Lawyers who have the right to appear before judicial or administrative bodies on behalf of their clients are not refused that right and are treated equally by such bodies.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>The law guarantees lawyers' right to appear before judicial and administrative bodies on behalf of their clients, and this right is respected in practice. However, interviewees reported that the practice of <i>ex parte</i> communications with the judge is widespread and influences the outcome of proceedings.</p>	

### Analysis/Background:

No one may be deprived of liberty without a trial before the judiciary, and defendants have the right to have their attorney appear at every proceeding. FEDERAL CONST. arts. 14, 20(VIII). All of the criminal procedure codes in jurisdictions covered by this assessment protect the defendant's

right to counsel at hearings. At the federal level, a defendant may defend himself/herself at hearings or be represented by a lawyer, and has the right to communicate with his/her lawyer during hearings. FEDERAL CRIM. PROC. CODE arts. 86, 89. In the DF, the presence of defense counsel is mandatory when the defendant is to make a statement or at the final hearing, in order to make an oral defense of the defendant; the only person whose presence is required at other hearings is the prosecutor. DF CRIM. PROC. CODE art. 59. In Yucatan, only the prosecutor is unconditionally required to be present at hearings, but the defense counsel may only be absent with the express permission of his/her client. YUCATAN CRIM. PROC. CODE art. 41. In Baja California, the 1989 Criminal Procedure Code enumerates the obligations of the defense lawyer, which include being present at all proceedings during the prosecutorial investigation and the trial. 1989 BAJA CALIFORNIA CRIM. PROC. CODE art. 28. The reformed criminal procedure requires that defense counsel be admitted to all proceedings at all stages. NEW BAJA CALIFORNIA CRIM. PROC. CODE art. 138.

The civil procedure codes also provide the right for parties to either appear at trial themselves and/or be represented by an attorney during hearings. The attorney's attendance at civil hearings is usually deemed optional. See FEDERAL CIV. PROC. CODE art. 1; DF CIV. PROC. CODE art. 46; BAJA CALIFORNIA CIV. PROC. CODE art. 46; YUCATAN CIV. PROC. CODE art. 3. Similarly, parties and their representatives have the right to appear at trial in commercial cases. See FEDERAL COMMERCIAL CODE art. 1055 (*adopted* Sept. 15, 1989, *last amendments published* Jan. 9, 2012) [hereinafter FEDERAL COMM. CODE].

A number of respondents voiced their frustration with the fact that, in many cases tried in the first instance and at the state level, the exercise of the right of audience, in the sense of having a verbal exchange with a judge, is impeded by a judge's minimal presence throughout the case. Most commonly, parties and their lawyers find themselves dealing with judges' secretaries – until they reach the higher courts at the state level or the federal courts, where interviewees felt the right to audience does exist in practice. Some also stressed the importance of *amparo* petitions as an alternative means of obtaining the right of audience at the first instance.

A much more significant problem, however, has to do with unequal access to the adjudicator, commonly referred to as the *alegato de oreja* (literally, "pleading to the ear," but in reality, an extra-legal, personal audience). There is a longstanding practice in Mexico of allowing parties or their lawyers to have *ex parte* conversations with the judge who will be hearing their case. These communications are not prohibited by any of the procedural codes, although a number of ethics codes promulgated by various bar associations (such as BMA, ANADE, and INCAM) do state that lawyers are not to have private conversations with judges in order to try to influence their decisions on a pending case. In the absence of a legally binding ban on such communications, though, state and federal judges are customarily expected to devote a part of their time to having conversations with the parties, often *ex parte*. Even though there is no legal basis to this practice, some judges reportedly spend up to a quarter of their time attending meetings with the parties, in large part because they feel that to deny parties the chance to speak with a judge privately would run contrary to court users' expectations. The upcoming shift from the inquisitorial to the adversarial, largely oral proceedings might reduce the incidence of *ex parte* communications, or at least the perceived need to speak with a judge privately. However, given how deeply entrenched this practice is within Mexico's justice system, it is likely to take more than legal change to bring this about.

Most judges view these meetings simply as an avenue for attorneys to state their position on a particular case, listening to and taking note of their arguments, so that they can later consider them when deciding the case. However, the natural lack of publicity in which these conversations take place may easily create opportunities for corruption. To this end, several attorneys interviewed by the assessment team noted their suspicions that, in certain cases, judges had been offered bribes or other inducements during these private meetings, common examples of the latter included invitations to clubs or to travel. Further, interviewees spoke of some lawyers leveraging the influence of well-connected third parties (for example, a former state or federal



judge, an ex-government official, or a member of a political party), who might invite the adjudicator to a private meal or a drink. Whether these are outright bribes or a more subtle kind of influence, it was commonly believed that such *ex parte* conversations could have a decisive effect on the outcome of a case. Thus, while access to formal audiences and hearings is usually not denied, the determining factor in the outcome of some cases may still be extra-curricular conversations that occur in practice, but which are neither endorsed nor prohibited by the law.

## II. Education, Training, and Admission to the Profession

### Factor 7: Academic Requirements

**Lawyers have a formal, university-level, legal education from institutions authorized to award degrees in law.**

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>In order to receive a license to practice, lawyers must have an undergraduate degree in law from a duly authorized university. Until recently, non-lawyers were permitted to represent defendants in criminal cases. This provision has been revoked as part of the 2008 constitutional amendments, although non-lawyers are still able to represent parties in labor disputes. The practice of partially trained <i>coyotes</i> representing detainees in exchange for exorbitant fees is diminishing with the strengthening of the public defender system.</p>	

#### Analysis/Background:

The Federal Constitution leaves the regulation of conditions for entrance into any profession to the constituent states. FEDERAL CONST. art. 5. In turn, the relevant state LEPs require, at a minimum, the presentation of a valid degree from an authorized educational program. See LEP/DF arts. 1, 3, 8, 9; LEP/BC arts. 3, 17; LEP/Y arts. 2, 8. For law, as for most other professions, this is an undergraduate degree (*licenciatura*) in the relevant subject matter. Some lawyers elect to pursue graduate-level degrees, but these are not required for licensing.

Law degrees in Mexico can only be awarded by universities that are part of the national education system. GENERAL LAW ON EDUCATION art. 60 (*adopted* Jul. 9, 1993, *last amendments published* Nov. 16, 2011). Public universities, which make up approximately 10% of law schools in Mexico but enroll almost half of all law students, become part of this system from the moment they are established. *Id.* art. 10.V. Private universities may either seek to obtain an Official Recognition of the Validity of Studies [*Reconocimiento de validez oficial de estudios* – hereinafter RVOE] from the President of Mexico, the federal SEP, or its state-level equivalent; or to incorporate their programs within certain decentralized public universities that are specifically authorized by their charters to grant incorporations. See *id.* art. 14; LAW ON THE COORDINATION OF HIGHER EDUCATION art. 17 (*adopted* Dec. 26, 1978); AGREEMENT NO. 243, ESTABLISHING GENERAL BASES FOR AUTHORIZATION OR RECOGNITION OF THE OFFICIAL VALIDITY OF STUDIES art. 3.X (*adopted by* SEP, May 18, 1998) [hereinafter AGREEMENT NO. 243]. The criteria for granting such authorizations are very similar across the states and the incorporating universities. They are typically focused on ensuring that law schools meet minimum formal requirements in relation to their facilities, curricula, and faculty. See *generally* AGREEMENT NO. 243; see also AGREEMENT NO. 279, ESTABLISHING THE FORMALITIES AND PROCEDURES RELATED TO THE RECOGNITION OF THE OFFICIAL VALIDITY OF STUDIES IN HIGHER EDUCATION arts. 10, 12, 15 (*adopted by* SEP, Jun. 16, 2000) [hereinafter AGREEMENT NO. 279]. Each state's LEP may contain additional specific requirements. Baja California, for example, also requires a list of persons to whom professional titles have been granted. LEP/BC art. 13. In Yucatan, an applicant university must first undergo registration with the national DGP, which is part of the SEP. LEP/Y arts. 35-36. See also *generally* ABA ROLI, LEGAL EDUCATION REFORM INDEX FOR MEXICO, Factor 2 (June 2011) [hereinafter MEXICO LERI] for additional details about these standards.

To comply with these requirements, a university must submit an application that includes, among others, the proof of lawful occupancy and condition of facilities, the list of academic personnel along with proof of their educational credentials, and general information concerning the study programs, plans, and teaching methodologies. The authority responsible for issuing an RVOE or an incorporation will make an inspection visit to verify the information provided by the university in its

application. See *generally* AGREEMENT NO. 279 title 2. In practice, however, the information submitted is usually not subject to a thorough review. One of the main reasons for this is the lack of personnel capacity and expertise to conduct such reviews. For example, at the federal level, where most RVOEs are granted, there are currently only 12 people responsible for analyzing the hundreds of academic programs that are presented each year. These staff are charged with evaluating all types of degree programs, whether it is law, engineering, computer science, or literature. The situation is reportedly very similar in the constituent states, although there are exceptions. In Yucatan, for instance, the assessment team was informed that the state's SEP equivalent did a more thorough review of the content of an applicant's law program and actually asked for improvements, but that a school that cannot be accepted there could simply apply for recognition at the federal level. The procedure for granting incorporation by public universities is also seen as more rigorous, which is due to both a smaller number of applicants and a concern among the incorporating public universities about their own reputation. See MEXICO LERI, Factor 3 for a more thorough analysis of RVOE and incorporation procedures.

Despite the extensive legal framework, it is generally agreed that there are many sub-optimal law programs currently operating. The graduates of these schools are considered legitimate when it comes to applying for a license to practice law (*cédula*). The problems have been compounded by the proliferation in the last 20 years of law schools throughout the country, with a particular concentration in the DF. Whereas there were fewer than 100 law schools operating in Mexico in 1990, their current number is estimated at approximately 1,100. Law schools have little problem attracting students, as law is commonly acknowledged to be one of the easier courses of study. Indeed, as one interviewee noted, it has become so easy to get a law degree in Mexico that there is no longer any point in falsifying a diploma. While there are certainly excellent lawyers and law schools in Mexico, students of limited financial means who cannot access the scarce financial aid that is available tend to gravitate towards less expensive, and usually less demanding, programs. Not all of these students finish their courses; or if they do, not all of them go through a bureaucratic process to obtain a *cédula* and find law-related employment. The assessment team heard frequent jokes about *juritaxistas* (lawyers who drive cabs) being a common occurrence.

In most types of cases, parties who wish to receive legal assistance in the course of court proceedings may only be represented by a licensed attorney. See, e.g., DF CIV. PROC. CODE art. 46. Prior to the 2008 constitutional amendments, non-lawyers were able to represent defendants in criminal cases. This provision has now been revoked, and defendants have the right to representation by an attorney. FEDERAL CONST. art. 20(VIII). Nevertheless, jurisdictions that are operating under non-reformed criminal procedure codes still permit defendants to appoint non-lawyer representatives, who are not subject to professional licensing requirements, including educational requirements. See FEDERAL CRIM. PROC. CODE art. 154; DF CRIM. PROC. CODE art. 290; YUCATAN CRIM. PROC. CODE art. 109; 1989 BAJA CALIFORNIA CRIM. PROC. CODE art. 269. Interviewees reported that many partially trained "lawyers" (so-called *coyotes*) make their living by hunting for clients among families looking for their relatives in prison facilities. Charging often exorbitant fees, *coyotes* promise to get the detainee out of prison, using their legal "skills" and contacts. They often renege on these promises, causing additional hardships to those who might sell their belongings or houses to pay them for services eventually not rendered. Respondents hoped that the 2008 reforms strengthening the professional public defender service would gradually put an end to this practice.

There are other instances where a non-lawyer may exercise legal functions. One example is student interns, who may perform some services under the supervision of a licensed professional, for periods lasting from one to three years, although in practice, law student interns do not generally represent clients in court. See LEP/Y arts. 14, 15; LEP/DF art. 30; LEP/BC arts. 3, 10, 19. Another example relates to Mexico's system of administrative labor boards, which use the combination of law, arbitration, and conciliation to decide cases. Each board has three members: a president representing the state, one representative from workers, and one from employers. Only the president must be a lawyer. LABOR LAW art. 612. A valid *cédula* to practice law is also not required in order to represent parties in these disputes. *Id.* arts. 692-695. As one interviewee

noted, non-lawyer labor board members are often as well versed in the law as any well-trained attorney, and there were no particular problems associated with this practice. At the same time, it was reported that problems similar to those posed by the operation of *coyotes* in criminal matters also exist in labor controversies.

## Factor 8: Preparation to Practice Law

***Lawyers possess adequate knowledge, skills, and training to practice law upon completion of legal education.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
Legal education in Mexico is heavily theoretical, and there is no requirement that would-be lawyers engage in practical training as a condition for being granted a professional license. Students are required to perform social service, but the type of service is not defined and the requirement is not enforced in practice. Many students do engage in internships or clerkships as an extracurricular activity.	

### Analysis/Background:

There is no requirement that students preparing to enter a profession, including the profession of law, receive any practical training as a condition of being licensed. The closest requirement is that, as a condition of receiving their diploma, all undergraduate students must complete a period of social service, consisting of 480 hours of temporary work that serves the interests of the society and the state and is performed over the course of six months to two years. See LEP/DF arts. 53, 55; LEP/BC arts. 14, 27; LEP/Y art. 34. The schools are supposed to monitor compliance with the social service requirement; however, there is no requirement that the social service work be related to a student's chosen degree or specialization.

In practice, legal education in Mexico tends to be highly theoretical, with few opportunities for students to develop their practical skills. One of the most common reasons is that practical skills courses, such as clinics, are much more expensive and time-consuming to run, and most faculty lack the time and training to develop and commit to teaching such courses. A few law programs try to emphasize other teaching methodologies that incorporate more practical exercises and include in their curricula clinics, workshops, forensic practice, or some other practically-oriented courses. For example, the Center for Economic Research and Teaching (*Centro de Investigación y Docencia Económicas*), a small public university located in the DF, has been using the case study method and has a public interest clinic. However, participation in clinical courses is voluntary, and only a small proportion of students choose to enroll – although those who do speak enthusiastically about their experience, and some even repeat the program over several semesters. In addition, in response to the introduction of an adversarial criminal justice system, a few schools have started to introduce oral advocacy courses or classes with mock trials in which students have an opportunity to role-play. In the vast majority of practically-oriented courses, though, students simply spend time analyzing the content of various legal documents under a professor's guidance.

With respect to social service requirement, the fulfillment of a school's duty to supervise students' compliance appears to be limited to ensuring that students fulfill the minimum six months of service, and does not involve reviewing the content or quality of the program. In addition, this requirement is only indirectly linked to the development of professional skills, as some students may engage in activities that are not law-related. In fact, a number of universities interpret this obligation mostly in a socially-oriented, community service context. In practice, law students most frequently engage in social service work as unpaid interns (*meritorio*) in the government offices,

the courts, or the public prosecutor or public defender offices. However, even when it is undertaken in a legal environment, the sponsoring entity is concerned only with the students' performance of their assigned duties and does not necessarily intended to promote the practical skills that a future lawyer will require in later legal practice. In addition, a number of larger universities have pro bono law firms or legal clinics, participation in which can also fulfill the social service requirement and, as students indicated, may provide a better opportunity to learn relevant skills. The practical skills students pick up in clinics were usually given as the primary reason that students chose to enroll for more than the obligatory six months.

Overall, there is a general perception within the legal community that law schools do convey sound theoretical knowledge and introduce students to the vocabulary they need to practice law. However, the development of professional skills is largely left to students' voluntary, extracurricular activities. It is estimated that nearly half of all law students in Mexico work independently as interns or clerks (*pasantes*) under the supervision of a licensed lawyer. Many schools reportedly even adjust their schedules and shifts to accommodate this external work by students. Interviewees expressed a strong belief that the realities of the labor market demand that law students begin working during their third or fourth semester, and that everyone is expected to have some prior work experience by the time they reach their seventh or eighth semester. Some students even begin to offer independent legal advice before they have graduated, contrary to the law. Respondents felt that, even though such internships are not a substitute for mandatory practical training, they are a good supplement that compensates for deficiencies in theoretical education. Some interviewees even went as far as suggesting that the prevalence of these internships is sufficient to qualify them as a de facto practical training component. Others were more critical, stating that there is no guarantee of the quality of skills students will acquire, as this depends entirely on the level of professionalism of the supervising lawyer.

Another common way for future lawyers to obtain practical experience, usually post-graduation and post-licensing, is to take an unpaid or poorly paid job in a court, in some other government office, with an NGO, or in a private law firm. In addition to gaining experience, students often hope to secure a permanent position through this arrangement. Many courts use *meritorios* as a means of getting ordinary work done, and some interns may stay for years in that position in the hope of eventually being given a paid job, usually as one of many types of professional assistants to the judge. Licensed attorneys who cannot or do not want to take one of these low or non-paying positions often gain experience by simply setting up a solo practice and finding clients any way they can. As very few law schools keep records of what graduates ultimately do, it is difficult to verify the path that many students take after graduating.

**Factor 9: Qualification Process**

***Admission to the profession of lawyer is based upon passing a fair, rigorous, and transparent examination and the completion of a supervised apprenticeship.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Admission to the legal profession is an essentially automatic, bureaucratic procedure which does not attempt to verify applicants' qualifications for legal practice. There is no professional examination for lawyers and no requirement for the completion of an apprenticeship. Although Mexico has a voluntary national framework for professional certification, the legal profession has not opted to participate in that process.</p>	



## Analysis/Background:

The only requirements for admission to the profession of lawyer are the educational requirements discussed in Factor 7 above, and certain bureaucratic requirements imposed by some states. For example, to exercise any profession, a person must be in full exercise of his/her civil rights (i.e., not have had them affected by a judgment in a legal action). See LEP/DF art. 25; LEP/Y art. 11. There is no bar examination or a required apprenticeship for law graduates wishing to obtain a professional *cédula*. Similarly, membership in a bar association is not required for licensing.

As discussed in greater detail in Factor 10 below, the DGP and its state-level equivalents (commonly referred to as Directorates of Professions) are charged with issuing *cédulas* to practice any profession, including that of a lawyer. *Cédulas* awarded by one states must be recognized by all other states pursuant to the Constitution's reciprocity provisions. See FEDERAL CONST. art. 121.

In practice, the presentation of a law degree from an authorized academic program is the only factor taken into consideration by the DGP and its state-level counterparts in their determinations of whether to award a *cédula* to a particular applicant. There is no attempt to verify that an applicant for a law license is adequately qualified. This purely bureaucratic procedure is essentially automatic and simply serves as a mechanism to confirm the authenticity of a degree. In other words, anyone who has completed a law degree will automatically receive a *cédula* to practice law. Interviewees believed that denials are so rare in practice that it would be improper to speak of having to make a real decision as part of the qualification process. Once accredited, a lawyer's right to practice is permanent unless officially suspended or revoked through a judicial process as a result of a criminal conviction or breach of ethical conduct. See Factors 16 and 17 below for additional details on these procedures.

The DGP maintains a national registry of licensed attorneys, which incorporates attorneys licensed under state law. Since 2007, the registry for lawyers has been automated and is accessible on the DGP's webpage, <http://www.cedulaprofesional.sep.gob.mx/cedula>, so that potential clients and courts can verify that those presenting themselves as lawyers are, in fact, accredited. Interviewees believed that the list, in addition to including many lawyers no longer in practice, might not be completely up to date, because some lawyers first register with, and get their *cédulas* from, a state body and only later take this to the DGP to receive their federal *cédula* and a spot on the registry. However, such instances appear to be rare and are purely the result of certain inconsistencies between rules issued at the state level and the inter-governmental agreements.

According to the DGP, Mexico does have a voluntary national framework for professional certification, under which professional associations can apply to the DGP to obtain an authorization to certify members of a relevant profession to practice. Thus far, approximately 100 professional associations have been granted such authority. Unfortunately, the legal profession appears to have opted out of participating in this framework, as no bar association has applied to date to receive the appropriate authorization.

The arguments for a more stringent certification process and the importance of requiring lawyers' credentials to be periodically updated have been strengthened since the passage of NAFTA in 1994, as the treaty contains provisions on professional certification for lawyers. See generally Victor Everardo Beltrán Corona, RECAUDACIÓN FISCAL Y CERTIFICACIÓN PROFESIONAL: ENLACE DE DOS POLÍTICAS PÚBLICAS (TAX COLLECTION AND PROFESSIONAL CERTIFICATION: LINKING THE TWO PUBLIC POLICIES) at 33-36 (2009). Among others, each party must strive to adopt licensing and certification processes for service providers that are based on objective and transparent criteria, such as capacity and aptitude. NAFTA art. 1210 (*signed* Dec. 14 and 17, 1992, *effective* Jan. 1, 1994). While the treaty only refers to the parties' responsibility for promoting mutually acceptable norms and criteria for this purpose (see *id.* art. 1210.5), it also includes a representative list that mentions examinations, preparatory experience, and other similar standards. The list largely

coincides with current standards applicable to legal professionals in Canada and the US, but not those in Mexico.

A number of provisions in the Federal Constitution have been traditionally interpreted in a way that impedes the introduction of a mandatory professional certification system for all professionals and prohibits compulsory membership in an official bar association. These include the right to practice one's chosen profession subject only to the requirements defined by each state (see FEDERAL CONST. art. 5), the freedom of association (*id.* art. 9), and the prohibition of monopolies (*id.* art. 28). Taken together, these articles can be perceived as limiting the efforts at instilling greater, more centralized control over the professions. Unless states agree to relinquish regulatory powers over the professions to the federal government, each state would have to agree individually to adopt a common certification process.

Despite the obstacles to reform, there has been some progress towards reform in the past few years, although it is hard to estimate how long it will take to produce any real change. One of the proposed strategies for reform envisions amending the Federal Constitution, followed by introducing a federal framework law.<sup>14</sup> This approach is favored by the major bar associations, including BMA, ANADE, and INCAM. In October 2010, the main political parties represented in the Senate introduced a joint motion to amend the Constitution and to pass a framework law, so as to begin the implementation of these ideas. In particular, it is proposed to modify art. 5 of the Constitution to allow federal or state law to specify which professions require membership in a professional association and how the latter would operate. Art. 28 would also be modified to reflect that such professional associations would not be considered monopolies. The proposed framework law, in turn, would make it mandatory for all individuals practicing in the fields that affect life, health, security, freedom, and property to join a professional association that will be charged with certifying that their members are sufficiently qualified to practice.

Most of those who are promoting a move towards greater control over the professions agree on the key constitutional provisions to change, although the question remains whether they can gain sufficient support for the proposal. It is likely to be even more difficult to reach consensus on the next step of devising a federal framework law on professions. The assessment team was provided with one draft version of such a law, which was developed by BMA. The major changes suggested are compulsory membership in a professional association (without there being a numerical limit on the number of associations in any state or nationally); a greater role for the DGP and for a new inter-institutional committee in setting and monitoring standards for entry; and a re-certification process every five years. The latter would be based on two principal criteria: proof of completion of social service and proof that the professional has remained up to date on professional preparation. Compliance with both criteria would be verified by the relevant authorized associations. There has also been some discussion about introduction of the equivalent of a bar examination or a standardized test to be awarded a law degree, but no mention of a compulsory supervised apprenticeship for future lawyers.

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<sup>14</sup> This law would not necessarily eliminate the state LEPs, but would include obligatory provisions for each of them.

## Factor 10: Licensing Body

***Admission to the profession of lawyer is administered by an impartial body, and is subject to review by an independent and impartial judicial authority.***

### ***Conclusion***

***Correlation: Neutral***

Since the 1970s, a series of agreements between the states and the federal governments has assigned to the federal DGP the responsibility for granting professional licenses and registering licensed attorneys, although each state may maintain separate registries of attorneys licensed in that state. In practice, most lawyers opt for obtaining a federal *cédula*.

### **Analysis/Background:**

The responsibility for admitting individuals to any profession is constitutionally conferred to the states. See FEDERAL CONST. art. 5. In the 1970s, however, a series of agreements between the states and the federal government gave the latter the ability to issue professional *cédulas*. States may maintain a separate registry for the professions, and the *cédulas* they issue are, in theory, sufficient for a lawyer to practice as such anywhere in the country under the Constitution's reciprocity provisions. *Id.* art. 121. Nevertheless, most law graduates intending to practice obtain a federal *cédula*, in order to avoid possible problems of non-recognition of documents issued by one state by the federal judiciary or by another state. The majority of lawyers registered with the DGP would submit their federal *cédula* for registration with the relevant state authority only if this is necessary for appearance before local courts.

The body responsible for the admission of lawyers at the national level is the SEP through its DGP. The functions of their state-level equivalents are typically limited to registering the federal *cédulas* obtained from the DGP. All of these bodies are staffed by public servants and, as discussed in Factor 9 above, follow an entirely bureaucratic procedure for reviewing license applications and issuing professional *cédulas*.

In order to practice in any court district, a lawyer must register with that court, but this only requires presenting the *cédula* already obtained from the DGP or the relevant state body. Courts and other interest parties may also check the DGP's online registry to ensure the would-be litigator actually has a *cédula*.

It is so rare for someone to be denied a *cédula* that no interviewee could recall a single instance of this happening. However, in the event that an applicant is denied a *cédula* at the federal level, he/she could seek administrative review. Every executive agency, including the SEP, must have an internal process for reviewing any disputes over its resolutions. See generally FEDERAL ADMINISTRATIVE PROCEDURES LAW arts. 82-96 (*adopted* Jul. 14, 1994, *last amendments published* Dec. 15, 2011). At the state level, in Baja California, the rejected applicant must request a reversal of the decision; if denied, he/she may file a complaint with the state Administrative Tribunal. See LEP/BC art. 63. There is also the possibility of arbitration, but the state Directorate of Profession, which is the very same body that would have denied the *cédula*, would serve as the arbiter. *Id.* arts. 40-46. Other states covered by this assessment have no explicit provisions for reconsideration of a license denial. However, submission to the federal or state administrative tribunals and, upon denial, a writ of *amparo* to the federal courts would be available in those states as well.

Interviewees believed that the major problem was not in the procedure for awarding or revoking *cédulas* itself, but rather, as discussed in Factor 9 above, in the failure to ensure that individuals who receive *cédulas* are adequately qualified. While there has been considerable discussion in Mexico about the need for a better certification process for lawyers, there seems to be little



consensus on the nature of the body that would be responsible for implementing these new standards.

## Factor 11: Non-Discriminatory Admission

***Admission to the profession of lawyer is not denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, ethnic or social origin, membership in a national minority, property, birth, or physical disabilities.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Positive</i></b>
Discrimination is prohibited by the Constitution and the federal law, and interviewees reported no discrimination in admission to the profession of law.	

### Analysis/Background:

Discrimination because of “ethnic or national origin, gender, age, disability, social condition, health conditions, religion, opinions, preferences, civil status, or any other reason that undermines human dignity and has as its purpose the partial or full denial of access to fundamental rights and liberties” is expressly forbidden. FEDERAL CONST. art. 1. A federal law has been enacted to implement this constitutional provision. See *generally* FEDERAL LAW FOR THE PREVENTION AND ELIMINATION OF DISCRIMINATION (*adopted* Apr. 29, 2003, *last amendments published* Nov. 27, 2007) [hereinafter ANTI-DISCRIMINATION LAW]. Among others, it prohibits discrimination impeding access to education or to financial aid for education, as well as impediments to the free selection of employment or other job-related matters. See *id.* art. 9. None of the LEPs reviewed for this assessment address discrimination.

In practice, the assessment team received no reports of discrimination in the admission to practice law. If one has a valid degree, he/she will get a *cédula* to practice from the DGP or from its state-level equivalent. None of the interviewees was able to provide any examples of discrimination in this context. To the contrary, the Director of the DGP offered an anecdote that, in an instance when one applicant’s gender appeared to be ambiguous, the Director explicitly instructed his staff that this was not a relevant consideration in the issuance of a *cédula*.

A small number of respondents spoke of so-called market discrimination, stating that there is a degree of segregation within the labor market that is based on a lawyer’s academic background and which law school he/she graduated from. This selection, however, occurs at the time of hiring and has nothing to do with the issuance of a professional *cédula*.

### III. Conditions and Standards of Practice

#### Factor 12: Formation of Independent Law Practice

*Lawyers are able to practice law independently or in association with other lawyers.*

<b>Conclusion</b>	<b>Correlation: Positive</b>
There are no special requirements for, or limitations on, lawyers' ability to practice law independently or in association with other lawyers.	

#### Analysis/Background:

The state LEPs govern the ability of lawyers to form law practices, but there are few requirements for, or restrictions on, the formation of independent or joint law practices. In the DF and Yucatan, lawyers, like other professionals, can form any associations they wish for the practice of their profession, limited only by other relevant laws. LEP/DF art. 40; LEP/Y art. 16. These laws typically include state Civil Codes (and related laws and regulations) that set forth requirements for the formation of partnerships and associations; laws or regulations governing the inclusion of an association into the public registry; and fiscal laws that regulate corporate registration for tax purposes. Baja California also requires that the professional exhibit his/her diploma or *cédula* in a visible spot at his/her place of work, and that diploma and licensing information be included in any advertisements and on stationery. LEP/BC art. 23. Regardless of the chosen form of practice, professional responsibilities will always be imputed to the individual, not the association or the group practice. LEP/DF art. 40; LEP/Y art. 16; LEP/BC art. 16.

Similarly, professional ethics rules promulgated by a number of bar associations state that lawyers are free to form associations with other lawyers in order to practice their profession, provided that such associations do not have an implicit or explicit intent of unduly influencing the processing of cases. If established, a group law practice may only include the names of its constituent members in its title. An association may be able to maintain the name of a retired or deceased partner in its title; however, it must remove the name of, and otherwise disassociate itself from, any partner who assumes an office inconsistent with the practice of legal profession. BMA CODE OF ETHICS art. 49; ANADE CODE OF ETHICS art. 49. Lawyers are also permitted to exercise their profession in associations with other professionals, provided that they make such an association clear to their clients and the public and take steps to ensure that their non-lawyer partners comply with the applicable professional conduct rules for lawyers. BMA art. 50; ANADE CODE OF ETHICS art. 50. While the INCAM Code of Ethics is silent on the subject of associations between lawyers for the purpose of carrying out their practice, it does prohibit the sharing of fees between lawyers and non-lawyers. See sec. 3.6.1.

Beyond the mandatory compliance with relevant incorporation provisions, there are no special requirements or rules regulating how lawyers choose to organize themselves for the purpose of practicing law. Interviewees estimated that approximately 60% of lawyers operate their own independent practices. Whether this is by choice or because of a lack of other opportunities, it does not seem to be the outcome of any legal impediments to practicing in association with others. Some lawyers also share office space, but their work is not otherwise connected to each other. Additionally, because law often is a vocation that runs through families, there seem to be a number of small firms in which family members are associates and/or partners. For the most part, large firms are rare; several of them appear to be affiliates of international or multinational companies. None of the latter reported any specific problems in terms of their ability to create offices in Mexico. However, in addition to the laws affecting incorporation of any enterprise in Mexico, foreign lawyers or firms also need to comply with the terms of the federal foreign investment legislation and applicable international treaties. Thanks to NAFTA, this process is



facilitated for the US and Canadian entities, but it still can be time-consuming and requires advice of one or more local legal specialists to ensure compliance with the relevant procedures.

### Factor 13: Resources and Remuneration

***Lawyers have access to legal information and other resources necessary to provide competent legal services and are adequately remunerated for these services.***

#### ***Conclusion***

***Correlation: Positive***

Laws, regulations, and other official acts are published in official gazettes and usually available on the Internet. Judicial decisions are also available in regularly published bulletins and online. Although some outdated laws address legal fees, in practice, lawyers' remuneration is determined by supply and demand, as well as the lawyer's own ability to attract clients.

#### **Analysis/Background:**

All information managed by any government authority is, in principle, public and can only be restricted, temporarily or permanently, by explicit exception. FEDERAL CONST. art. 6; *see also generally* FEDERAL LAW ON TRANSPARENCY AND ACCESS TO PUBLIC GOVERNMENTAL INFORMATION (*adopted* Apr. 30, 2002, *last amendments published* Jul. 5, 2010) [hereinafter FOIA]. Each state and the federal government also has an official gazette, which is freely available online and by a fee-based subscription for hard copies. *See, e.g.,* FEDERAL GAZETTE, *available at* <http://dof.gob.mx/index.php>; BAJA CALIFORNIA GAZETTE, *available at* [http://www.bajacalifornia.gob.mx/portal/gobierno/periodico\\_indice.jsp](http://www.bajacalifornia.gob.mx/portal/gobierno/periodico_indice.jsp); DF GAZETTE, *available at* <http://www.df.gob.mx/index.php/gaceta-oficial>; YUCATÁN GAZETTE, *available at* [http://www.yucatan.gob.mx/servicios/diario\\_oficial](http://www.yucatan.gob.mx/servicios/diario_oficial). By law, the gazettes must publish federal and state laws, regulations, decrees, and other dispositions; executive decrees, regulations, agreements, and orders; municipal regulations and agreements; agreements, circulars, and orders of executive branch agencies; general interest agreements issued by the state supreme court; notifications and warnings from the judicial branch; and acts and resolutions constitutionally or legally required to be published in the gazette. *See generally* LAW ON THE OFFICIAL GAZETTE OF THE FEDERATION AND GOVERNMENT GAZETTES (*adopted* Dec. 9, 1986); LAW ON THE OFFICIAL GAZETTE OF THE GOVERNMENT OF THE STATE OF YUCATAN (*adopted* Mar. 10, 2009); LAW ON THE OFFICIAL JOURNAL OF THE STATE OF BAJA CALIFORNIA (*adopted* Aug. 26, 1992, *last amended* Jan. 26, 1999); AGREEMENT FOR THE REGULATION OF THE OFFICIAL GAZETTE FOR THE FEDERAL DISTRICT (*published* Sept. 21, 1987).

In addition to the official gazettes, the federal and state authorities make legal materials available free of charge on a number of other websites. Thus, federal laws can be accessed on the websites of the federal government (*see* <http://www.ordenjuridico.gob.mx>), the legislature (*see* <http://www.diputados.gob.mx> and <http://www.senado.gob.mx>), and the SCJ (*see* <http://www.scjn.gob.mx>). Most state governments and legislatures similarly publish state laws on their respective websites. Unfortunately, the information on all of these websites is sometimes incomplete and may not be regularly updated, nor is it consolidated to incorporate amendments – even though the quality of information available through federal databases is considered somewhat better. Moreover, the technology behind some of the websites may be occasionally slow.

Access to court judgments and other information originating from the judiciary is more complicated, in large part because the application of FOIAs to this information remains somewhat contested. In fact, in some jurisdictions, such as Baja California or the federal level, judgments are not included among the information that the agencies are instructed to make publicly

available. Both DF and Yucatan, however, include this information within the coverage of their FOIAs. See LAW ON TRANSPARENCY AND ACCESS TO PUBLIC INFORMATION OF THE FEDERAL DISTRICT art. 1(I)(g) (*adopted* Feb. 6, 2008, *last amendments published* Jun. 16, 2011); LAW ON ACCESS TO PUBLIC INFORMATION OF THE STATE AND MUNICIPALITIES OF YUCATAN art. 9(XXI) (*adopted* May 15, 2004). As a result, judiciary-related information is often difficult to obtain, especially as regards judgments issued by lower-level courts, where notions about the privacy of judgments common to most civil law countries still exist. Where publication does occur, judgments are published anonymously, with all personal information deleted, in compliance with the constitutional and international standards. See ICCPR art. 14 (*adopted by UN General Assembly Resolution 2200A (XXI)*, Dec. 16, 1966, *ratified by Mexico on Mar. 23, 1981*); AMERICAN CONVENTION ON HUMAN RIGHTS arts. 11, 13 (*adopted Nov. 22, 1969, ratified by Mexico on Mar. 2, 1981*); FEDERAL CONST. art. 16.

By law, Mexican courts are also required to publish daily judicial bulletins, listing all recent actions relative to specific cases. See, e.g., DF CIV. PROC. CODE art. 11; BAJA CALIFORNIA CIV. PROC. CODE art. 11. Traditionally, these were published only on paper (as required by law), but courts are also increasingly choosing to make these bulletins available electronically. For example, in Baja California, daily judicial bulletins are posted on the judiciary's official website (see <http://www.poder-judicial-bc.gob.mx/boletin/boletin.htm>). Some courts, however, charge fees for hard copies of their bulletins, which respondents believed was contrary to the law. In addition, not every jurisdiction has a separate judicial bulletin. Yucatan, for instance, resorts to the state's official gazette for publication of judicial decisions (see YUCATAN CIV. PROC. CODE art. 34), while the federal courts are required to post their decisions and actions on the notification boards (*rotulón*) that are found in each courtroom (see FEDERAL CIV. PROC. CODE arts. 303-321). An unofficial copy of these lists is published on the website of the Federal Judicial Council, [http://www.dgepj.cjf.gob.mx/internet/acuerdo/acuerd\\_ini.asp](http://www.dgepj.cjf.gob.mx/internet/acuerdo/acuerd_ini.asp).

Notwithstanding these caveats, there is an increasing tendency for state and federal courts to post rulings by higher instances on their websites, albeit with some delay, especially in the states. Courts and legislatures are making advances in this area not only as a result of constitutional and legal requirements for transparency, but also because they believe that Internet publication is modern and more economical. For example, the SCJ not only includes on its website (see <http://scjn.gob.mx>) case law and isolated decisions of the federal judicial branch, but has also rolled out a IUS database of Isolated Jurisprudence and Theses (see <http://200.38.163.161>), which contains the decisions of federal courts and related material. Up-to-date hard copies of legislation may be harder to obtain, but this is a consequence of the cost of such materials rather than of a legal restriction, and financial constraints may delay the publication and limit the editions and circulation of the official gazettes. It is also common to have informal kiosks outside court buildings and in other public places selling copies of laws, but they are often unauthorized and the laws themselves are not necessarily current. Kiosks increasingly offer CD-ROMs with compilations of legislation, but these may be similarly out-of-date. Those who can afford it, subscribe to paid online services for a reasonable fee (Terra Legal is one example, see <http://legal.terra.com.mx>), while others rely on the free web versions mentioned earlier.

Lawyers also have free online access to certain basic secondary legal materials. Most notably, the National Autonomous University of Mexico, through its Institute for Legal Research, hosts a Virtual Law Library (see <http://biblio.juridicas.unam.mx>), which provides access to the content of approximately 3,000 books, 22,000 scholarly articles, 18,000 contributions to collective works, and 40 research journals, as well as to a largely comprehensive database of federal and state laws and international treaties.

Remuneration for lawyers' services is governed less by law than by supply and demand for legal services. Lawyers' fees are typically determined by agreement between a lawyer and his/her client, which is expressly permitted by law. See, e.g., 1989 BAJA CALIFORNIA CRIM. PROC. CODE art. 56(iv); LEP/DF art. 31. Most states have Tariffs Laws (*Leyes de Aranceles*) that set fees for basic legal services and provide for a system to estimate the amount to be charged depending on

the nature of the case. However, virtually all of these are long out of date, not having been amended for several decades. By way of illustration, the Baja California *arancel* has not been updated since its passage on Jan. 31, 1977, while the Yucatan *arancel* has not been amended since its adoption on Jul. 23, 1971. All of them also predate the oral system of litigation. The fees in Baja California range from MXN 150 (USD 12.5) for reviewing a document to MXN 12,500 (approximately USD 1,050) for a very complicated written consultation; while in Yucatan, there is a fee of MXN 50 (USD 4) for the review of a document under 10 pages and MXN 5 (USD 0.42) for every additional page. In the DF, the costs that can be imposed on a litigant ordered to cover his/her opponent's legal fees are set in minimum salaries rather than in specific MXN amounts. See ORGANIC LAW ON THE SUPERIOR TRIBUNAL OF JUSTICE OF THE FEDERAL DISTRICT arts. 126-132 (*adopted* Dec. 20, 1995, *last amendments published* Jun. 17, 2011).

Fees are also mentioned in a similarly non-binding fashion in some of the bar associations' codes of conduct and statutes. For example the Ethics Code used by two of the associations in the DF, ANADE and BMA, instructs lawyers to realize that their fees are not the main purpose of their work and thus should not be excessive. See BMA CODE OF ETHICS art. 34; ANADE CODE OF ETHICS art. 34. Lawyers' fees should be estimated on the basis of a series of 13 factors, which include: importance of the service; the amount at stake; success of the service; novelty or difficulty of the task; lawyer's experience and reputation; economic capacity of the client; local custom; whether the services are salaries, isolated, or constant; the responsibility assumed by lawyer; the time required; lawyer's degree of participation in the study and development of the matter; lawyer's business relationship with the client; and whether participation in this matter will cause impediments as regards other work. See BMA CODE OF ETHICS art. 35; ANADE CODE OF ETHICS art. 35. The use of contingency fees is limited by the instruction that a lawyer's share should never be larger than the client's and that a lawyer is entitled only to reimbursement of expenses for lost cases. See BMA CODE OF ETHICS art. 36; ANADE CODE OF ETHICS art. 36. Another association, INCAM, forbids the use of contingency fees except where a part of the fees is based on the value at stake. See INCAM CODE OF ETHICS sec. 3.3. INCAM reportedly has a fee schedule that can be used in the absence of an agreement between client and lawyer (*see id.* sec. 3.4.2); however, it is unclear whether such a schedule has actually ever been used.

In practice, the *aranceles* referred to above are typically used only by judges in attributing costs between parties in final judgments. Lawyers reported that they negotiate fees with their clients and charge whatever the market will permit, and do not normally use the fee guidelines set forth in the *aranceles* as a basis for client charges. Instead, their charges and earnings depend on the clients they can attract. One lawyer interviewed by the assessment team said he "would not look at a [civil] case worth under 10 million pesos" (approx. USD 833,333), referring to the amount at stake rather than the fee, although he only dealt with wealthy clients. Trial attorneys generally charge up to 30% of the value of a particular case, although this figure diminishes as the value of the case increases. Lawyers specializing in criminal matters typically do not charge their clients by the hour, but rather agree on an amount with the client on the basis of the time their case is likely to take, as well as the attorney's own experience and reputation. Interviewees also spoke of jailhouse lawyers (*coyotes*), who might charge as much as MXN 480,000 (approximately USD 40,000) for attempting to get a detainee out of prison, even if they were not ultimately successful in doing so.

Overall, it is very difficult to estimate the average remuneration that Mexican lawyers receive for their services, as the legal profession, like other professions in Mexico, is highly stratified. There are lawyers who earn considerable incomes from wealthy clients and others who earn so little that they either abandon the profession or supplement their incomes with other work (such as the *juritaxistas* referred to in Factor 8 above).



## Factor 14: Continuing Legal Education

***Lawyers have access to continuing legal education to maintain and strengthen the skills and knowledge required by the profession of lawyer.***

### ***Conclusion***

***Correlation: Neutral***

There is no requirement for lawyers to complete continuing legal education [hereinafter CLE]. Some bar associations offer courses for their members, as do universities, independent actors and international donors. The quality of these programs varies widely, and there is no way of estimating how many lawyers actually make use of the available opportunities.

### **Analysis/Background:**

Lawyers in Mexico are not required to undergo recertification or participate in CLE as a condition of maintaining their professional *cédulas*. Most of the voluntary bar association ethics codes are similarly silent on the subject of lawyers' duty to maintain their professional competence. INCAM Code of Ethics is the only exception of the codes reviewed by the assessment team. It requires its members to keep up-to-date on their legal knowledge and to attend training and refresher courses with this purpose. See INCAM CODE OF ETHICS sec. 2.8.1.

Despite the absence of legal framework, however, there is no shortage of potential professional development opportunities that are available to lawyers who may be interested in taking advantage of them. Bar associations in jurisdictions covered by this assessment are not explicitly required, by law, to offer trainings to their members, with the exception of Baja California, where the associations should promote the professional development of their members. See LEP/BC art. 37(ii). Despite the lack of legal duty, though, associations frequently include provision of CLE courses in their statutes. See, e.g., STATUTE OF THE COLLEGE OF ADVOCATES "NATIONAL ASSOCIATION OF BUSINESS ADVOCATES" art. 4, available at <http://www.igofwd.com/anac/docs/base/estat/ESTATUTOS%20Completo.pdf> [hereinafter ANADE STATUTE]; STATUTE OF THE COLLEGE OF ADVOCATES "MEXICAN BAR ASSOCIATION" art. 2(iv) (adopted by BMA Extraordinary General Assembly, Jan. 2006, as amended Jan. 11, 2007), available at <http://66.51.172.136/Documento.aspx?CveTipoDocumento=2&CveDocumento=157> [hereinafter BMA STATUTE]; STATUTE OF THE ILLUSTRIOUS AND NATIONAL COLLEGE OF ADVOCATES OF MEXICO art. 3(ii) (adopted in 2008), available at <http://www.incam.org.mx/estSocial-cap1.php> [hereinafter INCAM STATUTE]. Bar associations often cite professional improvement as one of their aims and offer voluntary courses for members. Indeed, most bar associations interviewed for this assessment claimed that provision of courses and seminars was their major service to their members, which appeared to be accurate in many cases.

The three bar associations visited by the assessment team in the DF (ANADE, BMA, and INCAM) and the Yucatan College of Advocates seemed to offer some of the most credible courses. Those associations with larger size, membership, and financial resources are able to provide the widest variety of educational options on practically all subject matters. For example, recent topics have included labor law, commercial contracts, real estate, rights of the child, and oral trials. Their events are typically open to members and non-members alike, although the latter are usually charged a higher fee for attending. They can also occur in a variety of formats, from a keynote presentation over lunch or dinner, through day- and week-long courses that provide an extremely thorough training on a particular topic, and through semester-long programs offered in conjunction with one of the universities and leading to a certificate in a particular area of the law. Some associations, such as ANADE and BMA, also sponsor two-to-four day annual meetings that feature presentations on various legal topics. The cost of these events also varies significantly, ranging from approximately MXN 250 (USD 20) for a luncheon all the way up to MXN 12,000 (USD 1,000) for longer events. In turn, CONCAAM, also claims to sponsor



nationwide seminars and, while participants are charged a fee for attending and must pay for their own travel and lodging, these appear to be well-attended. Trainings are also offered by large public and private universities, most frequently as a service to their alumni, with the quality depending on that of the offering institution.

By contrast, smaller associations, especially in less privileged states, may be less likely to offer CLE programs of higher quality and variety. This is due to a combination of lower interest among their members and the associations' lack of financial and personnel capacity to organize and deliver such courses. Further, some less reputable associations, mostly those created for the purposes of advancing certain political interests, do not include the provision of CLE among their activities.

The major bar associations in Mexico cooperate with numerous international, regional, and foreign entities, such as the American Bar Association, the Inter-American Bar Association, the International Bar Association, and the International Union of Advocates, in co-sponsoring their training activities, especially the larger seminars and meetings. In addition, international donors, such as the US Agency for International Development (USAID), the Canadian International Development Agency, and the Delegation of the European Union to Mexico, also finance some CLE courses. However, these focus mostly on public officials, such as judges, prosecutors, and public defenders, rather than on lawyers in private practice. Donors may also fund NGOs to implement programs in the areas of interest to the donor organization, and some of these may include working with private lawyers.

Finally, for attorneys simply interested in collecting certificates (which may be the only record of their attendance), there are a multitude of local, regional, and international seminars and meetings, although they are arguably designed mostly to facilitate networking than real education or training.

Given the number of courses offered by both official and unofficial bar associations, universities, and other organizations, there is clearly a demand for training, although there is no clear method to determine how many practicing lawyers actually make use of the available opportunities. Interviewees speculated that most lawyers who are members of one of the largest associations, most likely, do take advantage of the seminars that are offered. However, beyond the participation records that are kept by each of the CLE providers, there is no unified system for registering an individual's participation in continuing education. An even broader problem is the varying quality of the education offered, the general difficulty someone considering enrolling in a course has ascertaining the content and price of the course, and, more fundamentally, the lack of formal incentives to undertake such education. Respondents viewed this as an attitude problem on the part of some lawyers, who simply have no interest in attending CLE events.

**Factor 15: Minority and Gender Representation**

*Ethnic and religious minorities, as well as both genders, are adequately represented in the profession of lawyer.*

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>Women represent the majority of law students enrolled in Mexican law schools and are receiving an increasingly greater number of new <i>cédulas</i> to practice law. Nonetheless, they are underrepresented in the upper reaches of the profession. Ethnic minorities, including indigenous Mexicans, are extremely underrepresented in both areas. Interviewees believed this is only partly an issue of prejudice, but largely a consequence of socio-economic factors.</p>	

## Analysis/Background:

Discrimination based on ethnic or national origin, gender, age, disability, social condition, health conditions, religion, opinions, preferences, civil status, or any other reason that undermines human dignity and has as its purpose the partial or full denial of access to fundamental rights and liberties is illegal in Mexico. See FEDERAL CONST. art. 1; see also generally ANTI-DISCRIMINATION LAW. Any impediments to the free selection of employment or restrictions on opportunities for access to, continuation of, or promotion in employment, as well as establishing differences in salary, benefits, and working conditions for equal work and limiting access to training and professional education, are prohibited. ANTI-DISCRIMINATION LAW art. 9. The law also provides for special protections for Mexico's indigenous populations. State authorities are charged with enacting programs, largely socio-economic in nature, to foment the development of indigenous communities. Among others, this includes educational grants for members of indigenous populations. FEDERAL CONST. art. 2(B). The government should also promote opportunities for indigenous people to gain basic skills and to provide awareness training for public employees, with the goal of improving the socio-economic status of indigenous people. ANTI-DISCRIMINATION LAW art. 14.

In practice, the situation for women's participation in Mexico's legal profession is improving rapidly, as indicated by the growing proportion of female students in law schools and of applicants for law licenses. Interviewees reiterated that women now represent over 50% of students enrolled in law schools, even though the assessment team was unable to obtain any official data to verify this point. The DGP's list of all those receiving law *cédulas* since 1945 indicates that women received 42%. Nearly no women were represented in law practice at the beginning of this period; however, starting in 2008, women have come slightly ahead of men in terms of the annual number of *cédulas* awarded. Yet, despite the clear positive change in this area, the Mexican legal profession, overall, continues to be dominated by middle class men of European or mixed heritage. A group of mostly female representatives of NGOs interviewed in the DF contended that the profession, as a whole, has a sexist (*machista*) bias, which is reflected in broader Mexican society, although there has been some progress. They were not contradicted by their male colleagues on this point.

Women continue to be underrepresented in the higher levels of the profession, both in private practice and in government and judicial positions on appellate and higher courts. For example, only two out of eleven judges on the federal SCJ are female. In law firms, women traditionally tend to hold positions as partners only when the firm is a family business, although this may be changing. Female students also reported that professors sometimes directed them toward certain areas of practice seen to be more appropriate for women – such as civil, family, and commercial law, as opposed to criminal or labor law. However, female interviewees who worked both as labor and criminal lawyers did not report any particular problems, although women with families may themselves choose not to enter these fields because of the irregular hours and their perceived “roughness.”

The situation for other minorities is more complicated and less positive. The most pressing issue in this context is the indigenous population. Currently, there are a total of 52 recognized indigenous groups in Mexico, which comprise approximately 15% of the country's population. See 2010 POPULATION CENSUS at 67. Although following the 1910 Revolution, Mexicans traditionally considered themselves as a mixed race (*mestizo*) nation, the Constitution now recognizes its multi-cultural composition, “originating in its indigenous peoples, the descendents of populations who inhabited the country prior to colonization and who retain their own social, economic, cultural and political institutions.” See FEDERAL CONST. art. 2 (*as amended in 1992 and 2001*). The Constitution further protects the cultural identity and integrity and guarantees further development for indigenous groups who remain in their traditional communities, which at present are largely rural and very poor. Once they leave those communities, they, like other minorities – Afro-Mexicans, Roma, certain religious groups, those with mental or physical handicaps, and others – are protected by the general legal prohibition on discrimination. For the most part, though, they pass below the radar in terms of the need for special consideration. Despite efforts to give study grants to the underprivileged (which are required by law of all private universities), most universities are only able

to afford a small number of these grants, and the portion given to indigenous students is reportedly minimal. This is largely a factor of poor quality education that indigenous students receive in secondary schools, which is insufficient to qualify them for university admission, with or without grants. Additionally, many individuals from economically disadvantaged communities are unable to afford the cost of moving to the cities where universities are located. And the few indigenous and other disadvantaged students that do get admitted and choose to attend law schools, including those who get scholarships, may face certain types of discrimination from the clients in their future legal practice.

There are lawyers specializing in indigenous legal issues, but they are, for the most part, not members of indigenous groups. The assessment team interviewed one self-identifying Maya lawyer in Yucatan, but he did not specialize in indigenous affairs. It should also be noted that the right of indigenous groups to practice their own traditions, and thus to use their own conflict resolution mechanisms for some disputes, is recognized in Mexico (see FEDERAL CONST. art. 2(A)), and that these do not require, or sometimes allow, the presence of legal representation.

## Factor 16: Professional Ethics and Conduct

***Codes and standards of professional ethics and conduct are established for and adhered to by lawyers.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
Ethics codes have been created by several voluntary professional associations, but there is no mandatory ethics code applicable to all Mexican lawyers. Lawyers are subject to the requirements of the LEPs and the criminal codes, which contain some ethical standards. Reportedly, ethical violations are common and frequently go unsanctioned.	

### Analysis/Background:

There are three main sources of norms regulating professional conduct of lawyers in Mexico: the criminal codes, the LEPs, and the ethics codes created by a number of voluntary bar associations. Taken together, these sources provide ample foundation upon which to regulate and monitor the conduct of lawyers; however, many of the provisions on illegal or unethical conduct are written in fairly vague terms.

The relevant criminal code provisions are discussed in Factor 2 above. As stated in that Factor, these provisions typically penalize certain actions taken by lawyers that may be prejudicial to their clients, in some cases without a requirement that the lawyer acted knowingly or in bad faith.

The LEPs in the three states covered by this assessment include some responsibilities for all professionals, the violation of which the DGP or its state-level equivalents may, in theory, sanction. The most significant amongst these are keeping their clients' confidences and diligence in applying all their skills and knowledge in the service of a client. See LEP/BC arts. 22, 56; LEP/Y arts. 17, 20; LEP/DF arts. 33, 36. Infractions vary from failing to include one's name, profession, education, registration number, and office address in publicity materials or stationery; to failure to commit their full effort into fulfilling an agreement with a client; to practicing law without a *cédula*.

There is no mandatory ethics code applicable to all lawyers in Mexico. State LEPs list supervising the member's professional behavior and activities as one of the functions of officially recognized professional associations, but it does not appear that the DGP or its state-level equivalents, which are responsible for overseeing professional association's formation and activities, supervise compliance with this function. See, e.g., LEP/BC arts. 34, 37, 39 (which specifically requires the

elaboration of an ethics code); LEP/DF arts. 45, 50; LEP/Y arts. 26-28. To this end, some of the bar associations have elaborated their own professional ethics codes. In particular, the three main associations in the DF, which also have national affiliates and members (BMA, INCAM, and ANADE) all have ethics codes that are published on their respective websites. See *generally* BMA CODE OF ETHICS; INCAM CODE OF ETHICS; ANADE CODE OF ETHICS. Other associations interviewed, Yucatan College of Advocates and Mexicali College of Advocates, only occasionally mentioned ethics codes as part of their activities, but those associations that are officially recognized do, reportedly, have them. It should be emphasized that any ethics codes promulgated by bar associations apply only to that association's members and are not binding.

In reviewing the ethics codes from the three main bar associations in the DF, the assessment team found their contents to be quite similar, including a mixture of possible criminal actions, items already included in the LEPs, and additional guidelines on proper behavior. The largely identical ethics codes used by ANADE and BMA each have 50 articles divided into four sections: general norms (arts. 1-19); relations with the courts and other authorities (arts. 20-25); relations with the client (arts. 26-40); and relations with colleagues and opposing counsel (arts. 41-50). Among others, these documents address such issues as professional honor and honesty; prohibitions against the abuse of judicial process and bribery; rules governing the acceptance and rejection of cases; confidentiality; advertisement and other personal publicity by lawyers; prohibitions on aiding in unauthorized practice of law and on influencing judges; conflicts of interest; withdrawal from representation; lawyer's fees; management of client funds and property; relationships with opposing attorneys and witnesses; and professional collaboration with other lawyers. Violations of any of these provisions should be resolved and, if necessary, sanctioned by the respective association's National Directive Council or the General Assembly of members, following recommendations from the National Council of Honor. See art. 51. INCAM has a slightly longer, but similarly organized code: statement of purpose (Sec. 1); general principles (Sec. 2); relations with clients (Sec. 3); relations with judicial and other authorities (Sec. 4); and relations with other lawyers (Sec. 5). The INCAM Code is largely based upon the Code of Conduct for European Lawyers developed by the Council of Bars and Law Societies of Europe, as adapted to Mexico's circumstances. See sec. 1.3.1. Among others, it covers such aspects of a lawyer's professional conduct as: independence; moral integrity; professional secrecy; personal publicity; priority of client interests; continuing professional education; commencing and terminating representation; conflicts of interest; lawyer's fees; handling of client funds and property; respect towards judges and professional colleagues; and communications with other parties. Nonobservance of the rules could lead, as a last resort, to a sanction. See *id.* sec. 1.2.3.

Generally, the associations' codes are quite complete in their coverage, and there was no criticism expressed by interviewees (many of them association members) as to their contents. There was, however, a general impression among interviewees that, despite the extensive legal framework on criminal conduct, ethical standards, and related responsibilities, it was not uncommon for these rules to be violated; not by all lawyers all the time, but by an unknown number of lawyers that either deliberately flaunted the rules or, in some cases, were not aware of them at all, especially the ethical standards. As elaborated in Factor 17 below, the inadequate mechanisms for detecting and sanctioning these practices are the principal explanation for why they continue to occur. There is no means of determining what percentage of Mexican legal practitioners abide by the legally binding professional responsibilities or by comparable, less formal ethical standards, but the level of non-compliance is apparently high.

## Factor 17: Disciplinary Proceedings and Sanctions

***Lawyers are subject to disciplinary proceedings and sanctions for violating standards and rules of the profession.***

### ***Conclusion***

***Correlation: Negative***

Lawyers convicted of certain crimes related to their professional activities may have their *cédulas* suspended or revoked. The DGP and its state-level equivalents may sanction lawyers for violations of the LEPs, although they must obtain a judicial order in order to revoke or suspend a *cédula*. Professional associations may also sanction members and refer them to the DGP or state equivalent for further disciplinary action. In practice, sanctions are rarely imposed, and when they are, they may not be communicated to the appropriate authorities to ensure their entry in the public registry of lawyers.

### **Analysis/Background:**

Lawyers in Mexico are licensed for life, although certain criminal behaviors, as specified in the criminal codes, can result in the suspension or revocation of professional *cédulas*. As discussed in greater detail in Factor 2 above, conduct resulting in criminal sanctions against lawyers in the DF may include abandoning a client or business, without justification and in prejudice; representing or assisting two or more parties with opposing interests; knowingly making false allegations or basing arguments on nonexistent or repealed laws; putting forth frivolous motions for the purpose of creating delays; or failing to review evidence fundamental to the defense or to take the actions necessary to support the client's interests. See DF CRIM. CODE art. 319. The range of possible sanctions against a convicted attorney includes a fine of 50-300 minimum daily wages, imprisonment for a period of six months to four years, and suspension of a professional *cédula* for the duration equivalent to prison sentence. *Id.* Similar provisions exist in other criminal codes reviewed for this assessment, with the range of sanctions that include imprisonment from three months to five years, fines from 10 to 300 minimum daily wages, and suspension of a professional *cédula* for periods that range from three months to three years. See FEDERAL CRIM. CODE arts. 231-233; BAJA CALIFORNIA CRIM. CODE arts. 331, 332; YUCATAN CRIM. CODE arts. 273-275. Baja California also permits permanent disbarment for an attorney convicted of a repeated offense.

A client, opposing counsel, or judicial authority who believes that a lawyer has broken the law can, as with any other criminal action, report this to the prosecutor's office for further action, or a prosecutor can initiate an action against the lawyer of his/her own volition. If civil damages are involved, the affected party can also initiate a civil action. There are no separate legal proceedings for crimes or damages perpetrated by a lawyer, and the accused lawyer has the same procedural rights to defense and to appeal any decision as does any other citizen. The DGP and its state-level equivalents are responsible for registering the sanctions imposed on a lawyer and either removing the lawyer from the registry of licensed attorneys or making the appropriate note of the sanction in the registry.

For non-criminal acts, the LEPs all charge the DGP and state equivalents with supervising compliance with the rules they establish for licensing and professional behavior. The DGP and its state counterparts have the ability to sanction any infractions of the contents of the applicable LEPs, aside from those specifically mentioned. See *generally* LEP/BC chap. XII; LEP/DF chap. VII; LEP/Y chap. VII. Sanctions range from small fines through suspension or revocation of the *cédula* to practice, although the DGP or the relevant state bodies must obtain a judicial order for any deprivation of the right to practice.

A number of professional associations have created their own mechanisms for enforcement of their ethics codes, although a recommendation of suspension of a professional *cédula* must be forwarded to the DGP or state equivalent for enforcement, as the bar associations do not have the authority to revoke or suspend *cédulas*. See LEP/BC art. 37; LEP/DF art. 50(d). For example, ANADE has established an honor commission made up of seven ex-presidents of the association, elected by the body of ex-presidents, who receive and review written complaints presented by a member regarding another member's alleged violation of ANADE's ethics code. The accused lawyer may present a defense, and if the commission finds the complaint valid, it presents the complaint to the National Directive Counsel or the General Assembly of the organization. There are three possible sanctions: warning, temporary suspension from membership, and expulsion from membership. See *generally* ANADE STATUTE Chap. VII. BMA has an identical procedure, except that its commission has 11 members, including the sitting President and First Vice President, six ex-presidents, and three members designated by the Council of Directors. The commission must notify the Council of Directors of its decision, and if sanctions are applied, the DGP is notified. See *generally* BMA STATUTE Chap. VI. INCAM has a commission made up of the current President and up to six ex-presidents, which is authorized to impose sanctions that include private warning, public warning, and expulsion from the association upon the decision of an Extraordinary Assembly convened for that purpose. See *generally* INCAM STATUTE Chap. VII.

Although all associations have the power to expel members caught in violation of their codes, unless the DGP or the relevant state authority is notified and decides to suspend or revoke the *cédula* of the attorney involved, the individual may continue to practice and even join another association. As stated above, the provisions of the LEPs governing professional associations generally require the associations to make such a notification; however, this does not appear to occur in practice. If it does, it is rare, possibly because so few sanctions are applied. Moreover, this requirement does not extend to lawyers who live in a jurisdiction that does not require such notification, or approximately 94% of attorneys who do not belong to any officially recognized bar association. These lawyers will not have their disciplinary sanctions noted in either the national or the state registry of professionals.

Bar associations are also required to make a report to the prosecutor's office if their investigation of malpractice complaints suggests that a crime has occurred. The investigation and prosecution of an alleged crime is the sole responsibility of the prosecutorial bodies, and while any findings made by the bar association during its own investigation would be included as part of the complaint, they would not constitute legal evidence until further investigated by the prosecutor.

Despite the existence of a broad legal framework that enables regulating and monitoring the conduct of lawyers, the general consensus among interviewees was that violations of the ethical rules are not infrequent in practice and that the rules are generally not enforced. Each of the three possible avenues for enforcement – formal court proceedings, administrative proceedings through the DGP or its state-level equivalent, and disciplinary proceedings at the bar associations' level – faces a number of impediments.

First, with respect to the formal justice system, in theory, any lawyer (not just members of the bar associations) may be subject to prosecution or to actions for civil damages. According to interviewees, each of the criminal offenses is apparently committed by lawyers with some frequency. At the same time, it was generally agreed that taking a lawyer to court for violation of any of these laws is, unfortunately, extremely rare. It is possible that those most often affected by the unethical or criminal actions of their lawyers are the least able to defend themselves or to even recognize that a crime has been committed against them. However, attorneys who were interviewed and familiar with the relevant law tended to agree that the best recourse for a client who is confronted by his/her lawyer committing a crime against the administration of justice or a breach of ethics is to simply change the lawyer. It is quite likely that there are lawyers who have been tried and even convicted for criminal violations in the course of their professional duties. However, none of the respondents was able to refer to any examples, nor was the assessment

team able to obtain any formal statistics on this subject from the judiciary or public prosecution. Further, interviewees voiced a concern that such proceedings, when they do occur, may be initiated arbitrarily. For example, some lawyers were concerned that unsuccessful parties could use the DF's amendment to broaden the application of the offense of procedural fraud against their lawyers, unethically or illegally, as a last resort. See Factor 1 above for more information concerning these amendments.

Second, if the DGP or its state-level equivalent receives notification from a court or a bar association of a lawyer's alleged misconduct, and the conduct in question violates the rules in the applicable LEP, this should presumably lead to a lawyer being disbarred and having his/her *cédula* to practice revoked. Yet, despite this theoretical ability to monitor and sanction violations of standards incorporated in the LEPs, there is no indication that the DGP or its state counterparts do so in practice. The observations of the assessment team suggest that this may be a result of the lack of practical capacity to do so and the staff being over-burdened with administrative tasks. While the assessment team was not given any examples of sanctions being imposed, it can be suspected that this would most likely happen as an extension of a disciplinary proceeding conducted by a bar association or on the basis of a judicial determination.

Finally, with respect to enforcement of bar associations' ethics codes, the general consensus among interviewees was that most associations did not pursue the reportedly frequent violations of these codes. This appears to be exacerbated by the lack of a culture within the legal profession (and the public at large) to bring formal complaints, coupled with professional courtesy (i.e., the reluctance among lawyers to take action against their colleagues). Furthermore, the most serious sanction that could be imposed is expulsion from the bar association; in theory, this should be accompanied by a notification to the DGP or the state equivalent, but it is unclear how common such notifications are in practice. Another difficulty is that, even once the notification is given, it does not appear that there exists a formal procedure for removing the lawyers from the professional registry. In addition, the assessment team did not find any examples of associations investigating or imposing sanctions for lesser violations of their codes. The most relevant example given was the legal action reportedly being taken against a former president of CONCAAM, but this was for misuse of funds, not crimes or unethical actions that took place in the course of his duties as a lawyer. Despite these difficulties, some associations have made attempts at enforcing the compliance with their ethics codes. For example, BMA has undertaken several procedures against both members and non-members for violations of the code of ethics, and has publicized its resolutions and sanctions imposed in these cases.



## IV. Legal Services

### Factor 18: Availability of Legal Services

*A sufficient number of qualified lawyers practice law in all regions of a country, so that all persons have adequate and timely access to legal services appropriate to their needs.*

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Mexico has an adequate number of lawyers licensed to practice, but there are many rural areas of the country with few or no lawyers. As a result, persons seeking legal assistance are often unable to secure affordable service of adequate quality.</p>	

#### Analysis/Background:

Mexico's lawyer-to-population ratio is relatively modest when compared to other Latin American countries. For example, in 2003, Mexico had 196 lawyers per 100,000 inhabitants, which was well below the median number of 255 in 19 other countries surveyed. Centro de Estudio de Justicia de las Américas, REPORTE SOBRE LA JUSTICIA EN LAS AMÉRICAS, 2004-2005 (Justice Studies Center of the Americas, REPORT ON JUSTICE IN THE AMERICAS, 2004-2005) at 23 (2005). However, the total number of lawyers in Mexico appears to be less problematic than the location, cost, and quality of legal services.

There is little in the way of a relevant legal framework, as is normal in a country where professions follow free-market logic in terms of where professionals locate, what services they provide, and at what cost. As for location, only the DF mentioned anything about the adequate distribution of legal services, and then only as something the DGP might suggest. See LEP/DF art. 23. In any event, it would clearly be in violation of the constitutional right to practice one's profession freely for the DGP to do more than this. Lawyers exist where there is a market for their services, and in many parts of the country (such as remote rural regions which may not even have a court), they may be absent or their presence limited to one or two part-time practitioners who, in all likelihood, do not belong to an official bar association. Absent constitutional reform, no government agency can tell lawyers or other professionals where they should set up shop.

With respect to the cost of legal services, as noted in Factor 13 above, unless they receive pro bono or state-subsidized services, clients pay the fee that they negotiate. There are constitutional and legal stipulations as to the professionals' responsibility for providing a certain, undefined quantity of social service (presumably, pro bono), but there are no sanctions for those who do not comply with this exceedingly vague requirement. See FEDERAL CONST. art. 5; see *also* LEP/DF arts. 52-53; LEP/BC arts. 3(XII), 24; LEP/Y arts. 31-32. Further, this does not alleviate the difficulties faced by those who live in areas where there are no lawyers. To the extent the social service requirement is regulated in the various LEPs, its effective application seems to extend only to students (as a condition for receiving an undergraduate degree) and to members of officially recognized associations that are required to monitor social service by their members. See LEP/DF art. 50; LEP/BC art. 37; LEP/Y art. 28. There is no indication, however, that the fulfillment of this requirement by individual lawyers or the monitoring efforts of bar associations are audited or evaluated in any way.

In practice, this situation has important implications given that, with the exceptions of labor and, until recently, criminal cases, a party that requires legal assistance can only be represented by a licensed attorney. See DF CIV. PROC. CODE art. 46. The same legislation also notes that if only one party is not represented in the final stages of a trial, the judge will call for a one-time adjournment to task the public defense services with providing a lawyer. However, it has been

suggested that defendants in civil and commercial cases who cannot afford representation, and thus assume they will lose their case, simply choose not to appear in court.

The 2008 constitutional amendments that paved the way for the universal adoption of new criminal procedures should, by the 2016 deadline, guarantee a public defense attorney for all those charged with crimes who cannot afford to pay for private representation. See FEDERAL CONST. art. 17(VII). However, this only takes care of criminal cases. This prioritization seems to reflect the approach of the government, NGOs, and even the bar associations in their provision of subsidized representation. For example, ANADE and BMA appear to emphasize lawyers' ethical responsibility for providing assistance to indigent persons, especially in criminal cases. See ANADE CODE OF ETHICS arts. 7-8; BMA CODE OF ETHICS arts. 7-8.

Generally, there appear to be very few lawyers who offer legal assistance with simple legal problems of a reasonable quality for a reasonable price. As discussed above, there reportedly exist unscrupulous lawyers (*coyotes*), who charge clients excessive fees for services of a deficient standard, or those that may not be rendered at all. On the other end of the spectrum, there are a number of individuals who are not technically qualified as lawyers and who offer much less expensive basic legal advice. Some sit outside courtrooms or administrative offices with typewriters or laptops, offering to draft documents that are required to comply with standard regulations. The legality of these activities is unclear.<sup>15</sup> It is clear, however, that the absence of lawyers who provide reasonably priced, reliable legal services leaves people of limited economic means vulnerable to unscrupulous lawyers, and with little recourse if they are unsatisfied with the service provided. As more than one interviewee noted, the best option in these cases may be to hire another lawyer to complete the necessary work, rather than sue the previous lawyer.

The situation described above is most common in urban centers, and especially in the DF. The choice is more limited in smaller cities and in rural areas. While clients may be able to more accurately predict the kind of service they are paying for, there is also very little room for negotiation of fees. There are also less reputable bar associations whose main service to members is client referral. They are often based in areas where undiscerning clients are likely to be located, such as a main street in a poor neighborhood in the DF.

## Factor 19: Legal Services for the Disadvantaged

***Lawyers participate in special programs to ensure that all persons, especially the indigent and those deprived of their liberty, have effective access to legal services.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
<p>There is no enforceable requirement for lawyers to provide legal services for the disadvantaged, despite a vague reference to the professionals' duty to engage in social service. Law firms, professional bar associations, and universities do organize some voluntary pro bono work, but the scope of these efforts is very limited. The 2008 constitutional reforms have increased access to public defenders' services in criminal cases and promise further improvement as they are implemented nationwide.</p>	

<sup>15</sup> In the absence of a single law on professional legal practice, Mexico has not exhaustively defined the full range of services that can only be provided by a lawyer. It is true that the procedural codes often note services that must be performed by a licensed professional, but ambiguity arises where the person providing the service (e.g., drafting documents) does not present himself/herself as a lawyer.

## Analysis/Background:

There are several sources of legal services for the disadvantaged in Mexico: pro bono (social service) work, carried out by law students, lawyers, or law firms, or channeled through bar associations; legal clinics run by universities and NGOs; and various kinds of state-sponsored services which are currently being consolidated as modern public defense offices.

With respect to pro bono service, the relevant legal framework is vague. The Constitution lists performing social service among the professionals' responsibilities. See FEDERAL CONST. art. 5. The LEPs also require professionals to engage in social service work, generally defined as "temporary and free work performed by professionals and students in the interest of society and the state." LEP/BC arts. 3(XII), 24; see also LEP/DF arts. 52-53; LEP/Y arts. 31-32. The LEPs do not define what type or how much social service is required, nor do they envision a system to keep track of the actual social service work that is performed.

Professional associations generally realize the importance of performing social service work by their members; however, few of them maintain any record of the work performed, and the DGP and its state-level equivalents reportedly do not monitor these programs. See Factor 23 below for additional information on these efforts. The associations operating in the DF and Baja California are required to compile annual work plans and to keep a list of social services performed by members, which must be provided to the DGP and the state Directorate of Professions, respectively. See LEP/DF art. 50; LEP/BC art. 30. However, neither the associations interviewed nor the relevant government agencies mentioned the requirement in this context, and it is not clear whether this requirement is complied with in practice or whether associations face any sanctions for failure to comply. The only exception is BMA, which has a section devoted to channeling to its affiliates requests for pro bono assistance received from disadvantaged clients and keeping records thereof. It is also unclear if this data is transmitted to the DGP. In fact, some practicing lawyers interviewed by the assessment team were of the misapprehension that LEP/DF required a minimum number of hours of service, and admitted that they were probably in violation of this (non-existent) requirement.

Some law firms have pro bono programs and may hire a lawyer specifically to do pro bono work or coordinate the program. It is worth noting, however, that on the rare occasion that the leadership of firms interviewed would speak about pro bono work, they referenced specific cases rather than the number of hours of service provided or individuals that participated in their pro bono program.

A number of NGOs also provide legal representation or are able to refer those in need to lawyers who work pro bono. Those who work for the NGOs themselves normally provide services to the needy without charging fees, because their salaries are paid by other means (for example, by donors). NGOs also generally specialize in particular areas of the law (with human rights being one common focus), and thus the direct and referred services they provide may be limited to a few substantive issues, despite the broad geographical coverage of the work done by such organizations. Another limitation of this work is that, largely due to financial constraints, NGOs tend to focus on high-profile cases that have the potential for broad social and legal impact, and do not have the capacity for less strategic cases. Examples of NGOs that provide the kinds of services outlined in this paragraph include the Mexican Commission for the Promotion and Defense of Human Rights (*Comisión Mexicana de Promoción y Defensa de los Derechos Humanos*) and the Miguel Agustín Juárez Center for Human Rights (*Centro de Derechos Humanos Miguel Agustín Pro Juárez*). Their activities are funded by donors such as the Ford Foundation, the McArthur Foundation, the Soros Foundation, the UN, the European Union, and the Konrad Adenauer Foundation.

Overall, the total volume of the pro bono legal services provided by law firms, bar associations, universities, and NGOs is clearly inadequate to meet the needs of Mexico's large numbers of indigent citizens, many of whom live in regions where there are no universities or firms that may

provide these services. Moreover, even in areas such as the DF and the capital cities of Yucatan and Baja California, where these organizations do exist, they are still not sufficient to meet the demand. Further, those in need of legal services may not be aware of their availability or how to access them. As a result, the services that are available appear to benefit only a minority of potential customers.

The 2008 constitutional reforms reinforce the right for defendants in criminal cases who are unable to hire a private attorney to have a public defender appointed to represent them. FEDERAL CONST. art. 20(B)(VIII). All four of the jurisdictions covered by this assessment have public defender systems and guarantee the right to a public defender to those defendants unable to afford counsel. The public defender system in each of these jurisdictions consists of an organization staffed by permanent, state-employed attorneys. See *generally* FEDERAL LAW ON THE PUBLIC DEFENDERS' OFFICE (*adopted* Apr. 28, 1998) [hereinafter FEDERAL PUBLIC DEFENDERS LAW]; LAW ON THE PUBLIC DEFENSE INSTITUTE OF THE STATE OF YUCATAN (*adopted* Oct. 26, 2010) [hereinafter YUCATAN PUBLIC DEFENDERS LAW]; ORGANIC LAW ON THE PUBLIC DEFENDERS' OFFICE OF THE STATE OF BAJA CALIFORNIA (*adopted* Feb. 26, 2009, *last amended* Apr. 20, 2010) [hereinafter BAJA CALIFORNIA PUBLIC DEFENDERS LAW]; LAW ON THE APPOINTED DEFENDERS' OFFICE OF THE FEDERAL DISTRICT (*adopted* Apr. 30, 1997, *last amended* Feb. 26, 2008) [hereinafter DF APPOINTED DEFENDERS LAW]. The process of requesting a public defender is identical to that of requesting a private attorney, and the relevant right attaches from the moment of arrest or, under the New Baja California Criminal Procedure Code, from the moment of detention before the prosecutor's office. The public defender systems also provide assistance in civil cases, albeit reportedly limited. As a result of 2008 reforms, public defenders will receive the same salary as prosecutors. FEDERAL CONST. art. 17.

Not all jurisdictions restrict representation by a public defender to persons unable to afford a private attorney. Proof of inability to pay is not required for criminal cases in Baja California and Yucatan, and anyone requesting a public defender can be assigned one. See BAJA CALIFORNIA PUBLIC DEFENDERS LAW art. 16; YUCATAN PUBLIC DEFENDERS LAW arts. 25-26. In the DF, proof of inability to pay is required in all cases except those involving minor defendants. DF APPOINTED DEFENDERS LAW art. 28. The federal system gives preference to those demonstrating financial need, but does not exclude others from using a public defender. FEDERAL PUBLIC DEFENDERS LAW art. 28. Some interviewees noted that providing a review of each potential client's economic means could cost more than simply providing the requested service.

Numerous interviewees stated that the public defenders operating under the traditional system (pre-2008 reforms) suffered from an extremely heavy caseload and therefore were hardly able to deliver quality legal assistance. Moreover, it is not evident how far the various jurisdictions have come in implementing their new public defender systems. Baja California has reached the point where public defenders working under the new criminal justice system can, and do, handle any criminal case, regardless of the means tests. These public defenders also earn more than public defenders working under the 1989 system, an equivalent of about USD 2,000 per month.

Thus, the situation appears to be improving in the case of criminal proceedings, but this still leaves a large gap as regards needs for other cases. Further, it remains unclear how the creation of public defense systems will affect pro bono or salaried private attorneys, especially as the new public defenders are generally viewed as exceptionally well-trained in the new laws. Possibly, it means that any pro bono services will be directed to other areas of the law, where they are certainly needed.

Despite the positive trends, especially as seen in Baja California, improved access to legal services is still under development. For other states, it is not clear that the existing organizations already fulfill their legal mandates. In the meantime, potential clients still rely on the host of for-profit services supplied by *coyotes*, or simply do without any legal assistance. For the reform's potential to be realized, not only will the constitutional provisions and the new laws have to be implemented in full, but the disadvantaged will have to be made much more aware of what these

services offer. Otherwise, they will continue to be unrepresented or remain victims of the many unscrupulous attorneys offering them very costly services that they often do not deliver.

## Factor 20: Alternative Dispute Resolution

***Lawyers advise their clients on the existence and availability of mediation, arbitration, or similar alternatives to litigation.***

### ***Conclusion***

***Correlation: Neutral***

Both civil and criminal procedure codes allow for alternative dispute resolution [hereinafter ADR], although it is rarely used and reportedly actively discouraged in civil cases. Only a handful of disputes in the business sector, most notably those involving large multinational companies, appear to be resolved by means of ADR, despite the absence of legal impediments to the use or arbitration. The 2008 criminal justice system reforms encourage mediation and restorative justice in criminal cases.

### **Analysis/Background:**

The 2008 constitutional amendments include a mandate for the creation of alternative mechanisms for dispute resolution, especially, but not exclusively, in criminal matters. FEDERAL CONST. art. 17. State civil procedure codes already provided a chance for the parties to reconcile their differences. For example, Baja California allows the court to suspend proceedings when a party requests conciliation or mediation. See BAJA CALIFORNIA CIV. PROC. CODE art. 33(IV); see also DF CIV. PROC. CODE art. 55; FEDERAL COMMERCIAL CODE art. 1051. However, interviewees reported that these provisions were not used in practice, and that judges did not typically encourage their use. Interviewees explained that the judge usually asks if the parties want to conciliate, they say “no,” and the case then moves on.

In line with the 2008 constitutional reforms, Baja California’s criminal procedure legislation now provides for restorative justice, which is defined as a process by which the victim or complainant and the accused or convicted actively participate together in the resolution of issues derived from the crime, seeking a restorative result. The latter is defined as an agreement leading to meet the individual and collective needs and responsibilities of the parties and to achieve the integration of the victim and offender in the community, seeking reparation, restitution, and community service. The prosecutor’s office can use measures such as negotiation, conciliation, and mediation to achieve restorative justice. See NEW BAJA CALIFORNIA CRIM. PROC. CODE art. 22. Although ADR can be applied to a number of crimes, including willful crimes where the victim has forgiven the offender, economic crimes committed without violence, crimes where substitution or suspension of penalties are allowed, and crimes punishable by less than five years of imprisonment, willful homicide is specifically excepted. *Id.* arts. 196-197.

Interviewees reported that there have been some abuses of this new system, and that some prosecutor’s offices have set up “alternative justice centers” to handle disputes that may be suitable for mediation before a charge has even been filed. They are often staffed by personnel who have been trained through donor-financed mediation training programs. The prosecutors only keep reports on the number of disputes that were subject to mediation and the number of agreements reached. There is usually no subsequent investigation to determine whether the dispute was, in fact, permanently resolved. The lack of a record of a mediated complaint may be a concern to a victim, who will not be able to invoke a record if the offense in question is repeated and the victim wants to take the new case to court. This criticism has been voiced by NGO lawyers interviewed in the DF who were concerned, in particular, about gender-based violence. However, because these claims referred to individual cases, the assessment team was unable to



substantiate them or to determine whether they were common enough to constitute a broader concern.

A number of courts are also promoting mediation, and some states have passed alternative justice laws for this purpose. For example, the Law on Alternative Justice of the Superior Justice Tribunal of the DF (*adopted* Dec. 13, 2007, *last amended* Dec. 7, 2010) has the purpose of establishing and regulating a court-annexed mediation center. However, the use of such alternative justice centers remains limited, in part because lawyers do not recommend them any more than they encourage the use of the existing provisions for pretrial conciliation of civil disputes.

Arbitration, usually by commercial firms, has a longer history. Rules for its application to commercial cases have existed for some time as part of the Federal Commercial Code (see Title IV). To some extent, however, arbitration is independent of national law, as companies may include arbitration clauses and rules in the agreements they sign with each other. Moreover, unlike other types of ADR services, arbitration is not free of charge and thus has a limited clientele. In particular, large Mexican or multinational firms typically have a preference for national or international arbitration in settling their business disputes. Nevertheless, these subjects are continuing to receive significant attention. Many universities, especially in larger cities, are incorporating commercial arbitration courses into their curricula, and a number of specialized arbitration centers have been established to satisfy the demand for these services. Since 2008, one of these centers has been running an innovative pilot project to offer ADR for resolution of small claims cases, and this initiative is starting to attract increased attention from small and medium-sized law firms.

Nonetheless, aside from its use in the context of the new criminal proceedings and arbitration of certain commercial disputes, ADR has not progressed far in Mexico.<sup>16</sup> While this may be partly a result of the lack of knowledge about the available procedures, the reason most commonly given in interviews was that lawyers believe that ADR will reduce their own income. Since lawyers commonly charge per action, whether it involves filing a document or entering a motion, taking a case to ADR threatens to abruptly curtail their income.

Overall, while there is a generally positive trend towards the use of different forms of ADR in Mexico, it remains predominantly at an incipient stage. The number of cases mediated in the early stages of criminal complaints by the alternative justice centers operated by prosecutor's offices is often quite large. However, it is unclear whether alleged victims are made adequately aware of the implications of the process. By contrast, the number of mediated cases that was given for court-run alternative justice centers remains relatively low. Although it would be misrepresentative to draw broad conclusions about the use of ADR in Mexico from its use in isolated cities or districts, the assessment team was provided with several illustrations of the extent to which ADR has been incorporated into the legal process for criminal, civil, commercial, and family matters over the last few years. Thus, the DF prosecutor's office registered only 37 ADR proceedings out of more than 170 thousand criminal cases filed in 2008; 75 ADR proceedings out of nearly 190 thousand cases in 2009; and 81 ADR proceedings out of more than 195 thousand cases in 2010. On the opposite end of the spectrum is the judicial district of Morelos in the state of Chihuahua, which had 10,788 ADR proceedings for 30,957 criminal cases in 2008, 10,891 ADR proceedings for 38,940 cases in 2009, and 11,053 ADR proceedings for 40,834 cases in 2010. Between September 2003 and December 2010, the DF Superior Justice Tribunal's Mediation Center had registered a total of 9,413 family cases, of which 2,572 had further action taken and 1,674 concluded with agreements. Civil and commercial cases reflected roughly similar figures: 10,117 cases registered, 2,692 had further action taken, and 1,756 agreements reached. Of this total number of mediated cases, 244 family cases and 143 civil/commercial cases were registered in 2008; 301 family cases and 638 civil/commercial cases

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<sup>16</sup> Another context in which mediation and conciliation are often used is in traditional dispute resolution, but this rarely involves lawyers, and thus is not relevant to this analysis.

were registered in 2009; and 525 family cases and 1,095 civil/commercial cases were registered in 2010. The assessment team was not provided with a more detailed breakdown as to the outcomes of these recent mediated disputes, despite having specifically requested this information.

## V. Professional Associations

### Factor 21: Organizational Governance and Independence

**Professional associations of lawyers are self-governing, democratic, and independent from state authorities.**

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>By law, the ability to form a professional association is relatively unconstrained. State law often limits the number of associations that may be officially recognized, but this does not appear to impede the formation or activities of de facto operating unofficial bar associations. In practice, however, most bar associations operating throughout the country act as clubs for advancing contingent interests of local political or social establishments that frequently finance their activities. Only a handful of associations are in fact independent from state authorities and operate under a self-governing regime, charging and collecting fees from their membership.</p>	

#### Analysis/Background:

Professional associations are voluntary, and the right to join them is protected by the Constitution. See FEDERAL CONST. art. 9. Most states have limited the number of associations that may be officially recognized, relying in so doing on the current wording of art. 5 of the Constitution. This apparent limitation may be seen as an obstacle to the free and independent formation of professional associations. Nonetheless, the Constitution's prohibition on the establishment of monopolies (see *id.* art. 28) has been judicially interpreted both to prohibit the states from recognizing only one association as the official or preventing the formation of additional associations and to prohibit requiring lawyers to become members in a bar association as a condition of obtaining a *cédula* to practice law.

The state LEPs define the means for forming a professional organization (*colegio de profesionistas*) and the activities expected of each association. For example, in Baja California, professionals in the same field may organize and constitute an association for the exercise of their rights and defense of their professional interests. LEP/BC art. 32. Professional associations meeting the requirements set forth in the law may call themselves "associations" and include the name of the profession and specialization (if applicable) in their name. *Id.* art. 33. Professional associations must be constituted as a civil association under the Civil Code; make a written request to the state's Directorate of Professions; have at least 30 members who are registered with the Directorate of Professions; have a written charter; and have a code of ethics. *Id.* art. 34. Professionals may join only one group. *Id.* art. 38. In Yucatan, licensed professionals may form a maximum of three *colegios* for each professional group, called colleges of [the type of professionals]. LEP/Y arts. 24-25. *Colegios* must be subject to art. 9 of the Federal Constitution and satisfy the requirements of the state Civil Code to constitute as a civil association; they must have a charter and a membership directory, disclose the salary of their board members, and register with the DGP. *Id.* arts. 26, 27. The DF has substantially similar requirements, but limits the number of *colegios* to five. LEP/DF art. 44.

Membership fees for associations are generally not onerous. The highest reported fees, for BMA, consist of a one-time registration fee of MXN 4,360 (approximately USD 363) and an annual fee of MXN 7,140 (approximately USD 595). BMA also offers special, significantly reduced rates to certain groups of members, such as lawyers younger than 30, students, and full-time academics. In the case of ANADE, there is only an annual fee of MXN 6,000 (approximately USD 500). However, given the voluntary nature of membership of these organizations, the willingness of members to pay the fees and to volunteer the required time leads to an assumption that there are some advantages associated with membership.



The three largest associations in the DF are nationally recognized and also have members and affiliates, or affiliated associations, in other states. There is a large number of state-based associations, but only a few of them appear to actually operate on a continuing basis. Further, only a handful of associations offer CLE programs for their members or have instituted ethical supervision mechanisms. Those that do often sponsor seminars and conferences and, while attendees are charged a fee for participation and must pay for their own travel and lodging (where applicable), many events are well-attended.

Although some states, such as the DF and Yucatan, do limit the number of officially recognized associations for each profession, this limit was successfully challenged by ANADE in the DF, which now constitutes the sixth officially recognized association in the District. In any case, the limit does not affect the number of associations that have been created in the DF in an “extra-official” capacity,<sup>17</sup> nor is it clear whether there is any particular legal or practical advantage to being a member of one of the DF’s six official bar associations. Membership in the official associations is voluntary and does not affect licensing or the ability to practice, and may not help in attracting more clients. Official associations have some specific functions under the law, such as a theoretical likelihood that they would be consulted on matters affecting the profession, and are also entitled to certain benefits, such as receiving public funding for some activities or enjoying tax exemptions. However, many of these functions, such as the creation of training programs or input to debates on proposed changes to the profession, can also be performed by unofficial associations. This, combined with the reality that most clients would be unaware of these potential benefits, has meant that the legal framework has hardly halted the proliferation of additional organizations.

The procedure for joining an association and the internal governance structure of associations varies. With respect to the former, the organizations reviewed by the assessment team, all of which were relatively well-established, prestigious associations, typically required nomination by one or more members as well as payment of an initial registration fee and of annual fees. However, the Yucatan College of Advocates made a distinction between active members, who continued to pay fees, and inactive ones, who stopped paying dues. No such distinction was made by the three associations reviewed in the DF. Given their national recognition and importance, and despite their higher fees, members were more likely to continue paying their dues. These associations also had the most complex internal structures of those associations reviewed by the assessment team. For example, BMA has 16 internal commissions, most of which specialize in specific legal areas and associated educational programs. Each of these associations also has ethics codes and commissions that enforce these, although, as discussed in Factor 17 above, none of the latter seemed particularly active. In addition, INCAM and ANADE have defined admission procedures and mechanisms for election of leadership, as well as a network of active internal commissions that meet periodically to discuss specific legal areas. All three associations offer regular CLE programs. A handful of state-based bar associations operate under similar structures.

The vast majority of organizations, however, lack a formal procedure for admission of new members. It is, in fact, rather typical for these associations to emerge and disappear along with a specific lawyer or group of lawyers that heads them. Most of them also appear to align their activities to specific interests of their leadership which, not infrequently, is connected to contingent political circumstances. Interviewees expressed an opinion that professional associations are often used as political platforms to support, or even promote, certain candidates for public offices in the local administration. In other cases, these groups reportedly operate under the control of political parties and even demand party affiliation as a condition of membership, or may serve as springboards for their leaders to be appointed to the positions of public prosecutors or judges. Many such organizations wane from public view once the political goal has been

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<sup>17</sup> The limit only refers to organizations entitled to represent a specific profession under the respective LEP, and does not prevent others from forming their own informal (not officially recognized as such) professional associations.

accomplished, only to reemerge when the next suitable opportunity comes up. Further, at least one association is reported to have openly acknowledged that it received funds from state authorities. Other interviewees reported that many associations are often viewed only as social clubs, where members meet over meals to be seen as part of the elite, but where no real engagement in CLE or ethics supervision takes place.

There is no single national professional association of lawyers in Mexico. There is an umbrella organization, called CONCAAM, which claims to bring together 390 professional associations throughout the country. The organization, however, is not open to membership by individual lawyers and has no permanent organizational structure. Its presidents serve two-year terms and, during that time, rely on whatever structure their own association has to carry out their activities. This arrangement suggests that organizational policies may be dependent on the identity of the current president, and therefore susceptible to considerable fluctuation over time.

These phenomena may serve as a partial explanation why an important majority of practicing attorneys, as well as law students interviewed by the assessment team, were reluctant to the idea of instituting mandatory membership in professional associations. They may also explain why membership in the associations reviewed varied between roughly 50 and 6,000 individuals, which is a very small figure if compared to the over 200,000 lawyers that appear to be licensed. Indeed, while the top-tier associations convene fairly high-profile attorneys, this represents only a very small proportion of the universe of lawyers that are actively practicing in Mexico. The numbers provided by the DGP indicate that less than 6% of the country's licensed lawyers have joined one or more of the associations. Among the approximately two dozen law students interviewed in the DF and Baja California, none expressed any real interest in joining an association, nor did they have any clear idea of the advantages of doing so.

While the legal framework appears to be consistent with the principles of freedom of association and sets an appropriate ground for a fairly independent, democratic, self-governing regime for professional associations, the factual circumstances in which most of these entities are formed or joined seem to be completely unrelated to the development of the profession. As suggested above, it is commonly believed that many organizations, particularly the unofficial ones, may be formed for a purely political purpose – namely, to build links with whichever party or faction is in power in the respective state and to secure government positions for their members. Unrecognized associations may also be formed in order to generate income for their leadership, by charging people for certificates of completing courses or degrees of suspect quality or for enabling contact with potential clients in need of legal assistance. For instance, one unofficial association operating in the DF reportedly offered a discounted doctorate program. Further, the entirely voluntary nature of membership, and the ability of members to easily shift from one organization to another, make it difficult for existing organizations to enforce their codes of ethics (where these exist) and to otherwise monitor their members' conduct. Moreover, associations have virtually no authority over non-members, although a proposed new federal law put together by BMA (discussed in Factor 9 above) would extend associations' oversight to non-members. Thus, all of these considerations appear to suggest that factual conditions are not entirely conducive to an environment respectful of the independent, democratic, and self-governing formation and operation of professional associations.

In October 2010, a motion to amend the Constitution was introduced in the federal Senate and is currently being debated. Among others, the proposal involves revising basic approaches to the operation of bar associations, including introducing mandatory membership, CLE certification, and ethics training. The opinion of older generation of practicing attorneys regarding the proposed reform is highly divided. Those who already belong to prestigious associations that would most likely benefit from the proposed reforms clearly support them. Other practitioners interviewed by the assessment team, who have never been affiliated with bar associations, tend to be highly reluctant, suspicious as to the underlying motivation for the reform, and skeptical that it would actually be approved. On the other hand, some of the law students interviewed by the assessment team, especially those enrolled at well-respected schools, were adamant that the

principles of freedom of association and prohibition of monopolies enshrined in the Constitution continue to be respected. This suggests that there may be some resistance to change among the next generation of lawyers, although this appears to be based more on an inherited mistrust that would call for further clarification regarding the real implications of the reform.

## Factor 22: Member Services

***Professional associations of lawyers actively promote the interests and the independence of the profession, establish professional standards, and provide educational and other opportunities to their members.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
<p>The services provided by professional associations vary greatly with the interests of the members and the association leadership. The LEPs require associations to carry out a number of functions of benefit to their members, including promoting legal reforms related to the profession or providing opportunities for professional training and for social service work. In practice, however, only very few associations actually engage in actively supporting, sponsoring, and promoting the interests of their members.</p>	

### Analysis/Background:

In theory, professional associations perform a number of services for their members. As discussed extensively throughout this report, these may include, *inter alia*, establishing standards of professional behavior and professional ethics codes; promoting legal reforms related to the profession; providing opportunities for social service and pro bono work; conducting CLE courses; and offering disciplinary proceedings for members. Some professional associations in the three states covered by this assessment generally have similar purposes. For example, in the DF, the goal is to oversee the exercise of the profession with the objective of realizing the highest legal and moral behavior; promoting laws, regulations, and reforms relating to the profession; proposing professional fees; arbitrating conflicts among professionals or between professionals and clients; promoting relations with similar associations in the country and abroad; representing members before the DGP; helping elaborate courses of study; forming lists of professional experts; supporting the public sector through consultative or advisory bodies; sanctioning professionals who fail to carry out their professional duties; expelling members who carry out acts that discredit the profession; and reporting violations of the law to the appropriate authorities. See LEP/DF art. 50; see also LEP/BC art. 37; LEP/Y art. 28.

Notwithstanding these legal norms, what the associations do in practice depends on what their members, and particularly their leadership, consider to be important. Only a few of the existing associations offer frequent courses and discussion groups on substantive topics, allowing members to improve their professional performance, especially in new areas of law, and to enhance their standing with clients. As discussed in Factor 14 above, participation in these courses may be certified, but there is no official registry that documents lawyers' participation in CLE, which is supervised by the DGP. For example, in the DF, only ANADE and BMA reported to run an internal registry of their members' attendance in CLE programs. Courses are often financed through a combination of general membership dues and course attendance fees. Members are frequently given a discount for the latter, with a higher rate charged to non-members. Some of the associations also have standing discussion groups, which allow members to exchange ideas less formally and which function as a kind of intellectually-oriented social club or forum. For example, BMA has 16 such groups, many with their own subcommittees, on topics that include administrative and constitutional law, civil and commercial law, foreign trade, environmental law, intellectual property, criminal law, tax law, labor law, human rights, and



international law. Attending meetings of these groups may count towards CLE, for those handful of institutions that keep track of their members' involvement in these activities. Similar activities are also sponsored by the more elite associations in the states visited by the assessment team, although on a smaller scale. Some associations that do not organize their own courses claimed to make members aware of course offered by other organizations and to sponsor attendance at these courses by their leadership.

One of the more obvious functions of all but the smallest organizations is the opportunity for networking and the development of contacts with other legal professionals that have similar interests and concerns. However, only a small number of the associations operating in the country appear to actually engage in promoting the broader interests of the profession (for example, by proposing legislation relating to the exercise of the profession itself).

Some associations offer services in the professional interests of their members. The very few organizations with codes of ethics (which are required of official associations by law) have ethics commissions that review the cases of alleged misconduct by members, although these commissions are reported to be fairly inactive. A few other member services have been offered sporadically, such as the "Defense of the Defense" (*Defensa de la Defensa*) program, an effort to protect lawyers harassed by the government. There have also been a number of successful efforts by the bar associations to offer some protection to their members, although this appears to have been minimal and not very effective. The most successful example reported to the assessment team comes from Mexicali in Baja California, where a local bar association complained to the federal SCJ about corruption among several federal judges. The SCJ investigated and developed sufficient evidence to transfer, but not remove, the judges.

Nonetheless, it is surprising that the vast majority of the associations are generally not more openly engaged in promoting the professional interests of their members, especially given the often similar interests of their largely homogenous membership. One possible reason for this, discussed further in Factor 24 below, is that even though members may have broadly similar interests, there are still often divisions within the associations on particular topics, such as proposed legal reforms, which make it difficult for the associations to represent a genuine consensus.

As explained in Factor 21 above, some associations reportedly pay members to join, primarily for the purpose of creating political connections that would ultimately assist their leadership and members to obtain positions in government, regardless of the party in power. In the interests of objectivity, it should be mentioned that these impressions were voiced by interviewees who are not members of these associations. Other associations, which did not necessarily charge members to join, were reported to act as a kind of a referral service that linked members to potential clients. Interviewees also mentioned some institutions that, due to their name, would appear to be associations of lawyers (e.g., the *Barra Nacional de Abogados* in the DF), which ran commercial activities, such as offering academic degrees at a discount. It needs to be emphasized that none of these organizations are officially recognized as bar associations or otherwise registered as representing the legal profession under the state law.

The assessment team also learned that, depending on the person interviewed, most professional associations were characterized in one of two ways: either as intellectual forums and social clubs where (largely elite) lawyers could discuss issues of interest, notably those of a more intellectual bent, or as groups largely oriented at securing political contacts and employment for their members (most notably, their leadership) or simply operating as business enterprises.

Overall, the prevailing factual situation suggests that, with the notable exception of a couple of professional associations, the majority of them do not truly engage in supporting, sponsoring, and promoting the interests of their members, let alone those of the legal profession at large.

## Factor 23: Public Interest and Awareness Programs

***Professional associations of lawyers support programs that educate and inform the public about its duties and rights under the law, as well as the lawyer’s role in assisting the public in defending such rights.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
<p>Most professional organizations do not engage in public interest and awareness programs, and are not encouraged to do so by law. Even fewer associations support or supervise their members’ individual involvement in social service activities, such as pro bono work, despite being required to do so by law.</p>	

### Analysis/Background:

Neither the Constitution nor any of the state LEPs reviewed for this assessment mention public education and awareness programs as part of the activities to be carried out by professional associations, beyond the promotion of undefined social services to be performed by their members. In other words, while the applicable legal framework does not encourage bar associations to engage in public interest activities, it also does not prohibit their involvement in such efforts.

In addition to not being mandated by the law, it is significant that only the three leading bar associations based in the DF (INCAM, ANADE, and BMA) mentioned public education as one of their activities. Others were silent, even when expressly questioned on this point. It seems that, for the vast majority of associations, such activities are not considered a necessary service, and members of the organizations that were interviewed certainly did not seem to view this topic as part of their institutional purpose, or as something that the DGP or its state-level equivalents would monitor. The only notable exception to this general environment of disinterest would be the Judicial Channel on the national television, where ANADE, INCAM, and BMA each run periodic programs that aim at helping inform the general public about ongoing legal debates.

As regards the universal requirement for promoting social service, laws in all three jurisdictions visited by the assessment team expressly mandate that professional associations ought to encourage their members to provide such service on a constant basis, and even keep a periodic record (annual, in most cases) regarding each members’ social service performance. See LEP/DF art. 50; LEP/BC art. 37; LEP/Y art. 28. It is unclear, however, whether these provisions refer only to pro bono work or also encompass a larger set of activities that would cover disseminating to the public information about their legal rights.

In practice, however, it appears that most of the associations, official and informal alike, do not abide by this requirement. Even though representatives of organizations interviewed by the assessment team mentioned that social service was important, none suggested that they actively keep track of what their members do in this capacity, nor do they seek out opportunities for lawyers to undertake this service. BMA is reportedly the only institution that seems to monitor their members’ involvement in social service, in the form of pro bono work, and it has even established an internal committee dedicated solely to this function. None of the other associations that were visited, though, appeared to consider carrying out public interest or social service work as a condition for remaining a member in good standing in the association.



## Factor 24: Role in Law Reform

***Professional associations of lawyers are actively involved in the country's law reform process.***

### ***Conclusion***

***Correlation: Neutral***

Professional associations are encouraged by law to promote the development and reform of laws related to the profession and to act as advisors to the public sector, but in practice, this does not seem to be a major activity.

### **Analysis/Background:**

The LEPs in the three jurisdictions covered all include some sort of provision encouraging professional associations to support or advocate before government bodies, which may include working on law reform. For example, associations in Yucatan are encouraged to promote the development and reform of laws and regulations related to the exercise of professions, and are required to act as consultants or advisors to the public sector. See LEP/Y art. 28; see also LEP/DF art. 50; LEP/BC art. 37. In practice, however, professional associations apparently do not fulfill these aims.

There appears to be a twofold explanation to this. First, as explained throughout this report, there is only a very small number of serious associations, those which are actually focused on promoting the technical and ethical improvement of their membership and on further advancing their interests. Although it is apparent that some of the most respected practitioners are members of these organizations, it is also clear that, even taken together, they convene only a relatively small proportion of the nation's lawyers. Hence, all of their efforts could hardly be described as representative of the professional guild at large.

Secondly, and perhaps more importantly, interviewees suggested that even in the case of the efforts undertaken by the most respected institutions, very few, if any, state authorities afford real weight to their opinion, and even fewer consult with them in a formal, parliamentary hearing mode. Apparently, it is not uncommon to find that, after exhausting advocacy efforts, decisions are ultimately based upon political agreements or negotiations and the associations' suggestions are not taken into consideration. That is, political reasons often prevail over in-depth legal analysis.

Ordinary bar association members interviewed by the assessment team, as well as the leadership of the associations, were all aware of proposed judicial and legal reforms, including those that would specifically affect the legal profession, and understood the need for other reforms. However, with a few notable exceptions, there was no specific reference to past or ongoing campaigns conducted by the associations for the purpose of advocating for legal change. In fact, while many independent attorneys, some of whom are members of associations, have been actively advocating for broader reforms, this does not seem to be the case with the associations themselves.

INCAM, BMA, and ANADE appear to be some of the only associations seriously engaged in law reform process. One recent high-profile example of their active participation relates to the constitutional reform proposal submitted in October 2010, which aims at introducing mandatory bar association membership for legal professionals and entrusting the associations with certifying their members' professional qualifications. See Factors 9 and 21 above for additional details. The assessment team was informed that these three institutions have been fully engaged in drafting the proposal, although it is unclear to what extent they have been involved in further lobbying efforts. The 2008 constitutional amendments, which incorporate the accusatorial criminal justice

system, were mentioned as another example of efforts on the part of a handful of associations, although much doubt exists as to the degree of their participation and whether their advice was actually followed.

The overall trend among bar associations to remain largely disengaged from the law reform processes may be a result of the associations' strategic choice. Taking a position on broader legal issues may risk alienating prospective members and may divide already existing members since, as discussed in Factor 21 above, there is not necessarily a consistent political allegiance among members. One further impediment at work within the most prestigious associations is that a certain proportion of their members could be perceived by some as conservative and generally resistant to change. For example, in publications financed by INCAM, there were articles opposing the recent criminal procedures reforms, based on arguments that were more indicative of a general resistance to change than an objective evaluation of the advantages and disadvantages of the new procedures. While the same publications also included articles in favor of the reforms, this serves to confirm the perception that members can be divided on issues in a way that makes it difficult for an association to take one position in relation to a particular reform. Furthermore, with respect to potential reform of the legal profession, there is arguably a risk that any change advocated for by a bar association would be seen as self-interested by lawyers who are not members of that association, as well as by other associations.

One final point to be considered is that since many associations are seen as nothing more than political clubs, their involvement in any decision-making process, be that electoral, legislative, or administrative, could hardly be described as a serious, legitimate effort to inform the law reform process in a manner that corresponds to a democratic, free, and transparent society. Rather, their role is limited to advancing particular interests of certain individuals or groups.



## List of Acronyms

<b>ABA ROLI</b>	American Bar Association's Rule of Law Initiative
<b>ADR</b>	alternative dispute resolution
<b>ANADE</b>	College of Advocates "National Association of Business Advocates" ( <i>Asociación Nacional de Abogados de Empresa, Colegio de Abogados</i> )
<b>BMA</b>	College of Advocates "Mexican Bar Association" ( <i>Barra Mexicana Colegio de Abogados</i> )
<b>CLE</b>	continuing legal education
<b>CONCAAM</b>	Confederation of Mexican Bar Associations ( <i>Confederación de Colegios y Asociaciones de Abogados de México</i> )
<b>DF</b>	Federal District (Mexico City)
<b>DGP</b>	General Directorate of Professions
<b>FOIA</b>	Freedom of Information Act
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>INCAM</b>	Illustrious and National College of Advocates of Mexico ( <i>Ilustre y Nacional Colegio de Abogados de México</i> )
<b>LEP</b>	law on the exercise of professions
<b>LERI</b>	Legal Education Reform Index
<b>LPRI</b>	Legal Profession Reform Index
<b>MXN</b>	Mexican pesos
<b>NAFTA</b>	North American Free Trade Agreement
<b>SCJ</b>	Supreme Court of Justice
<b>SEP</b>	Secretariat of Public Education
<b>UN</b>	United Nations
<b>US</b>	United States
<b>USAID</b>	United States Agency for International Development
<b>USD</b>	United States dollars