

## **Security and Rule of Law in Mexico**

### **Basic Considerations**

In the light of the disruptions of highway traffic and commerce, including vandalism, that took place nationwide in Mexico during the first two weeks of January, a fresh look at the issues of security and rule of law is appropriate. In this report, we take note of Mexico's low international ranking regarding the rule of law and the universal distrust of the police. We examine several aspects of security risk such as the vulnerability of an organization to extortion by organized crime. In parallel, we raise the topic of the behavior of public officials who seek to monetize their position or experience in government service. The report lists familiar and new precepts for personal security.

**MEI Report No. 838**

February 16, 2017

Report updated

February 20, 2017

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## SECURITY RISK AND RULE OF LAW IN MEXICO

### *Basic considerations*

**T**HE NEGATIVE PUBLIC REACTION during the first two weeks in January to the government’s increases in the prices of motor fuel gave rise to widespread civil disobedience that included the blocking of highways and tank farms of Pemex. Criminal elements exploited the angry mood of protesters and looted stores and service stations. Losses from damages and the deployment of extra police may have had a combined cost in excess of US\$100 million, not counting the value of the time lost stopped on the highway from roadblocks and the loss of a half-dozen lives.

This disruption of commerce and everyday life owing to events in the energy sector invites us to again assess the state of security and the rule of law in Mexico.

In this report, we give attention to the personal and professional relationships that could come to compromise one’s own safety and the security of one’s company. We identify ways in which companies could become vulnerable to extortion by organized crime.

We also consider a company’s professional relationship with a government official during—and after—his or her government service.

We conclude that the uncertainties and risks associated with the rule of law and security in Mexico are ones that are normal for most of the world, and, compared to some countries and regions, are substantially superior.

Personal safety in most of the world, including Mexico, is a challenge that must be taken up daily. Corporate security faces threats both from without and from within. As elsewhere, police protection in Mexico is problematic and the rule of law is still patchy.

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## SECURITY AND THE RULE OF LAW IN MEXICO

### *Basic considerations*

### INTRODUCTION

**S**ECURITY AND THE RULE OF LAW are the foundations of commerce and of civil society itself. Together, they mean that one's assets, one's person and one's family are protected by the laws, regulations, customs and institutions of society. In any country or jurisdiction, such security is never accorded equally to all members of society.

Mexico in 2017 offers uncertain assurances of security for residents, visitors (tourists or otherwise) and corporate investors. There is unease at the macroeconomic level: Pemex daily oil production below 2.0 million barrels has not occurred since 1980. The petroleum lease contracts that were awarded in 2015-16 are expected to raise production back to previous levels, but the recovery will be slow. First oil production from the deep water leases issued on December 5, 2016, may not come before eight years or longer.

One interpretation of the deterioration of the Mexican exchange rate over the past four decades is that it reflects ongoing and accumulating concerns. In the fourth quarter of 1982, the Mexican peso traded at 70 to the US dollar. By 1992, the exchange rate had risen to over 3,000 pesos/US\$, and bills circulated in the denomination of \$100,000 pesos. A week's stay at the María Isabel Sheraton hotel would cost in excess of a million pesos. The administration of Carlos Salinas (1988-94) removed three zeros from the currency, effective January 1, 1993. The new peso, then at 3/US\$, currently trades at 21/US\$, a seven-fold loss of parity in nominal terms.

The election of Donald Trump on November 8, 2016, and the policies and disruptions that his election portended, caused the Mexican peso to slide 16% against the U.S. dollar by year-end. Since then, the value of the peso against the dollar has recovered by 6%; but the outlook for the Mexican economy and the stability of the peso continues to be problematic.<sup>1</sup> Were it to become policy, an export-adjustment tax by the U.S. government could provoke a similar response by Mexican authorities, and thereby jeopardizing the supply-chain economics of any investment project.

The rule of law in Mexico is being tested in diverse ways, as we shall discuss in this report.

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<sup>1</sup> *Wall Street Journal*, February 14, 2017. "The Mexican peso: A currency in turmoil."

## BACKGROUND

**A**N ANTI-CRIME PROTEST MOVEMENT IN MEXICO CITY took place a dozen years ago. During the Silent March in Mexico City on June 27, 2004, tens of thousands of residents, many dressed in white, marched down Reforma Blvd. to protest the lack of public security. Many banners and placards gave voice to the public’s distrust of the police. One of these read (translated) “Behind every robber is a police officer.” Another read “The police academy is the best school for gangsters.”

## DISCUSSION

**I**N THIS SECTION, we shall discuss aspects of the rule of law and of dimensions of security. We shall pay special attention to the roles that former public servants might play in the development and execution of corporate strategy.

### RULE OF LAW

In a ranking by the World Justice Project, Mexico ranks 88<sup>th</sup> (tied with Cote d’Ivoire, Lebanon and Madagascar) out of 113 countries (where Denmark, Norway and Finland score at the top and Afghanistan, Cambodia and Venezuela score at the bottom).<sup>2</sup> See insert at right.<sup>3</sup>

The U.S. is ranked 18<sup>th</sup>, just above the Republic of Korea. By this measure, the U.S. is nearly five times safer than Mexico.

The rule of law in Mexico is problematic: effective in some areas, inadequate in others. The disappearance and presumed murder of forty-three students from a teacher’s college in Iguala, Guerrero, in 2014 may never result in the criminal trial of any of the persons who carried out, or were accomplices to, the crimes that were committed. The students’ disappearance has been characterized as “emblematic

COUNTRY/ JURISDICTION	SCORE	GLOBAL RANKING
El Salvador	0.49	75
Guyana	0.49	76
Moldova	0.49	77
Ukraine	0.49	78
Burkina Faso	0.48	79
China	0.48	80
Zambia	0.48	81
Belize	0.47	82
Kyrgyzstan	0.47	83
Tanzania	0.47	84
Dominican Republic	0.47	85
Iran	0.47	86
Cote d'Ivoire	0.46	87
Mexico	0.46	88
Lebanon	0.46	89
Madagascar	0.45	90
Ecuador	0.45	91
Russia	0.45	92
Uzbekistan	0.45	93
Liberia	0.45	94
Sierra Leone	0.45	95
Nigeria	0.44	96
Guatemala	0.44	97
Myanmar	0.43	98
Turkey	0.43	99
Kenya	0.43	100
Nicaragua	0.42	101
Honduras	0.42	102
Bangladesh	0.41	103
Bolivia	0.40	104
Uganda	0.39	105
Pakistan	0.38	106
Ethiopia	0.38	107
Zimbabwe	0.37	108
Cameroon	0.37	109
Egypt	0.37	110
Afghanistan	0.35	111
Cambodia	0.33	112
Venezuela	0.28	113

<sup>2</sup> <http://worldjusticeproject.org/rule-law-around-world>

<sup>3</sup> There’s an expression in Mexico, “Tell me whom you hang around with and I’ll tell you who you are.” The counties that Mexico hangs around with in the World Justice tabulation are not ones that one would associate with the third-largest trading partner of the United States.

of Mexico's inability to provide security to its citizens and its failure to confront the corruption that riddles law enforcement."<sup>4</sup>

Natural gas distributors have encountered weakness in the rule of law in other ways. Having the authority of a franchise issued by the Energy Regulatory Commission (CRE) to provide natural gas service in a given area, the distributor would encounter legal injunctions (*amparos*) against the construction of a pipeline. The perception of franchise-holders was that judges had been bribed by distributors of LPG who wanted to block competition from natural gas.<sup>5</sup>

There is widespread—perhaps universal—distrust of the police in Mexico. Estimates circulate in the Mexican press that only 2-4% of crimes are prosecuted. Most crimes go unreported out of fear of police involvement. In one segment of the film *México, México, México* of the early 1990s, a woman goes to the police station to report her having been raped, but there she is raped again.

The phenomenon of “express kidnapping” emerged in the early 1990s: a person is abducted for 24 hours or fewer, during which time his or her bank account is looted using an ATM card and relatives are called to demand payment for the person's release. There have been “virtual kidnappings” in which a parent or spouse has been called on the telephone by someone who asserts that a loved one has been kidnapped and that immediate payment must be made to avert injury. There have been cases reported in which payment had been made after which it was learned that there had been no kidnapping at all. In this situation, prevention counts much more than does remedy by police or the courts.

An entirely different matter is the gray area in the law in relation to Constitutional Article 33, which gives the president of Mexico the right to expel a non-citizen. This provision is different from the cognate one in the United States, which gives the president the power to expel a class of non-citizens, subject to review in the courts. In Mexico, in contrast, the provision may be applied to individuals, one at a time and without judicial review. It is only required that the non-citizen's presence in Mexico be judged “inconvenient” (see insert). It means that behavior not otherwise defined by law is subject to administrative penalty without protection from the courts.

**PERO EL EJECUTIVO DE LA  
UNION TENDRA LA FACULTAD  
EXCLUSIVA DE HACER  
ABANDONAR EL TERRITORIO  
NACIONAL, INMEDIATAMENTE  
Y SIN NECESIDAD DE JUICIO  
PREVIO, A TODO EXTRANJERO  
CUYA PERMANENCIA JUZGUE  
INCONVENIENTE.**

Art. 33 (Extract)

<sup>4</sup> *New York Times*, Feb. 11, 2017. “Review rejects finding of police misconduct in case of missing Mexican students,” p. A5.

<sup>5</sup> A ruling by the Supreme Court in 2011 disallowed legal standing in local courts of plaintiffs who claimed injury from activities that had been authorized by a federal agency.



## MEI reports related to security and the rule of law

Year	Topic	File #	Pages	Chart
<b>2017</b>				
Jan 16, 17	<b>Gasolinazo 2017</b>	834	18	2
	<p>This report examines the popular backlash against the government's price increases for motor fuel that went into effect January 1, 2017. The government invoked two independent arguments: 1) gasoline prices should be in alignment with international indexes and 2) not increasing gasoline prices would put Mexico's economic stability at risk. Leaders of opposition parties rejected the first argument and blamed any lack of government revenue on incompetent economic management. Absent a full disclosure of the government's financial picture, the wisdom and timeliness of the prices increases cannot be determined. Officials chose to ignore the geopolitical moment of the imminent installation of a U.S. administration whose policies may be hostile to Mexico.</p>			
<b>2015</b>				
Feb 02, 15	<b>Freedom of Speech in Mexico: How does employee misconduct get reported?</b>	774	17	8
	<p>This report examines several dimensions of freedom of speech in Mexico, asking, inter alia, about how the lack of freedom of speech affects public policy and the performance of public servants and employees in the private sector. The report draws on personal and institutional anecdotes as well as on international indexes. The question is asked about the probability that an employee in the public or private sector would report evidence or suspicions of cartel ties by a co-worker or supervisor. A parallel question is asked about the probability that a whistle-blower could appear in Mexican society.</p>			
Jan 21, 15	<b>Blasphemy Clause in the Mexican Constitution?</b>	1000061	2	0
	<p>An attack on a Mexican <i>Charlie Hebdo</i> would not provoke popular protests in Mexico; but, in Constitutional Articles 30 and 33 there would seem to be a species of blasphemy law that allows the President of Mexico, without prior judicial review or the right of appeal, to expel a non-citizen from Mexico. A principle that allows for punitive actions for offenses not set forth in civil or criminal law, once established, applies to all members of society in Mexico, not just to foreigners.</p>			

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**MEI reports related to security and the rule of law**

Year	Topic	File #	Pages	Chart
<b>2012</b>				
Oct 02, 12	<b>Tesis 193/2011 ~ Jurisprudence by Contradiction: The Supreme Court Establishes Case Law</b>	100143	9	3
	For more than a decade, in Guadalajara and in other cities where the CRE has issued permits for natural gas distribution, LPG interests have successfully blocked the local distribution company (LDC) from installing the pipeline infrastructure. Techniques have changed: in the late 1990s there were physical intimidation and misinformation campaigns, then a series of civil suits. At last, the Supreme Court (SCJN) stepped in, overturning a local court's ruling that Jalisco Civil Code could justify blocking LDC construction. In the process, the first case law in Mexico's energy sector was established.			
<b>2010</b>				
Dec 29, 10	<b>Murder She Wrote</b>	100073	7	4
	This report inquires into two of the 30,000 homicides that have taken place in Mexico during the presidency of Felipe Calderón: Marisela Escobedo, 52, a victim's-rights advocate in Ciudad Juárez, Chihuahua; and Silverio Cavazos, 42, a former governor of the State of Colima. Such inquiries may lead to a better understanding of the nature of violent crime in Mexico and of the administration of criminal justice and of the outlook for public safety.			
<b>2004</b>				
Jul 08, 04	<b>The rising cost--and backlash--of insecurity in Mexico</b>	675	14	1
	Insecurity in the Federal District and in border cities such as Tijuana and Cd. Juárez is increasing the cost of doing business in Mexico. The same insecurity is reducing the quality of life in these cities, as average residents and business visitors are often in fear of their personal safety and that of their families. The report narrates experiences of several crime victims, describes the anti-crime protest march of June 27 in Mexico City, and draws lessons for policymakers, businesses, residents and tourists.			
<b>1996</b>				
Feb 15, 96	<b>Personal safety measures in Mexico</b>	87	1	0
	For the middle and upper classes of Mexico City, daily life now includes exposure to the risk of armed robbery, assault and abduction. For most persons of this sector of society (both Mexican and foreign residents), incidents of this kind have happened, if not to them personally, then to persons in their family, social or professional circles. The business traveler to Mexico also needs to be aware of this danger and to take general and special precautions.			



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