

# CONSTITUTIONAL PRINCIPLES OF CRIMINAL PROCEDURE AND SECURITY GOVERNANCE: A CRITICAL DISCUSSION ON THE PRACTICAL APPLICATION OF CONSTITUTIONAL PRINCIPLES IN THE MEXICAN ACCUSATORY CRIMINAL SYSTEM

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**Abstract.** *This paper analyzes the constitutional principles governing criminal procedure in Mexico, understood as human rights and procedural guarantees that ensure respect for the dignity and fundamental rights of defendants, victims, and witnesses. Critically, the article situates these principles within the broader framework of security governance, examining how the 2008 constitutional reform that established the accusatory and oral criminal system was a direct institutional response to the security crisis generated by organized crime, drug cartel violence, and systemic impunity. Using a legal-descriptive methodology, the study reviews normative sources (the Political Constitution of the United Mexican States; the National Code of Criminal Procedure), doctrinal analysis, jurisprudential interpretation (Mexican Supreme Court), and comparative scholarship on criminal justice reform and security. The analysis identifies a fundamental tension between the procedural guarantees enshrined in Article 20 of the Constitution — including the presumption of innocence, publicity, adversarial proceedings, and due process — and the state's operational need to effectively prosecute organized crime, drug trafficking, corruption, and terrorism. The article concludes that the system's effectiveness as a security governance instrument depends on the genuine observance of these principles, institutional adaptation, and the consolidation of a human rights-based judicial culture capable of addressing high-complexity security threats without sacrificing constitutional guarantees.*

**Keywords:** due process; presumption of innocence; human rights; accusatory criminal justice system; security governance; organized crime; constitutional reform; Political Constitution of the United Mexican States.

## 1. INTRODUCTION

The criminal process is the channel through which the State legitimately exercises its *ius puniendi* (right to punish) under constitutional controls that ensure legality, equality, and respect for human rights. In Mexico, Article 20 of the Political Constitution of the United Mexican States stipulates that the process shall be accusatory and oral, governed by the principles of publicity, adversarial proceedings, concentration, continuity, and immediacy, and recognizes the rights of the accused and the victim (Chamber of Deputies, 2025, Art. 20). These requirements align with Article 8.2 of the American Convention on Human Rights, which establishes minimum judicial guarantees such as the presumption of innocence, the right to a defense, and a public trial before a competent judge (OAS, 1978).

However, it is essential to recognize that the transformation toward the accusatory model in Mexico was not merely a procedural modernization; it was a direct institutional response to a profound security crisis. By the mid-2000s, Mexico faced escalating violence from organized crime and drug cartels, systemic impunity, and a criminal justice system that had lost public legitimacy. The constitutional reform of June 18, 2008, which redesigned criminal justice and introduced orality and its governing principles, was explicitly framed as a reform in matters of security and justice (DOF, 2008). The subsequent human rights reform of June 10, 2011, mandated that the entire process be interpreted and applied in accordance with the Constitution and international treaties (DOF, 2011).

Together, these reforms represent Mexico's attempt to reconcile the imperative of effective prosecution of serious security threats with the protection of fundamental rights — a tension that lies at the heart of contemporary security governance. As scholars of comparative criminal justice have observed, the shift from inquisitorial to accusatory systems in Latin America has been driven not only by rule-of-law considerations but also by security imperatives (Langer, 2007; Hammergren, 2007).

The central research question of this article is accordingly framed as follows: how do constitutional procedural guarantees interact with — and at times constrain or enable — the state's capacity to prosecute serious security threats such as organized crime, terrorism, and corruption within the Mexican accusatory criminal system? The general objective is to analyze the constitutional principles of criminal procedure in Mexico, their normative foundation, doctrinal development, and jurisprudential interpretation, with a particular focus on their implications for security governance.

## 2. THE SECURITY CONTEXT OF THE 2008 CONSTITUTIONAL REFORM

The constitutional reform of June 18, 2008, cannot be understood in isolation from the security environment that necessitated it. By the early 2000s, Mexico was experiencing a crisis of criminal violence that had acquired dimensions of a national security emergency. The consolidation of major drug trafficking organizations — including the Sinaloa Cartel, the Gulf Cartel, Los Zetas, and the Jalisco New Generation Cartel — had produced levels of violence that overwhelmed the existing criminal justice infrastructure. Homicide rates escalated dramatically, reaching over 27,000 recorded homicides in 2011 alone, with several northern border states experiencing rates comparable to active conflict zones (Shirk, 2011; Zepeda Lecuona, 2004).

The criminal justice system that existed prior to the reform was widely regarded as incapable of addressing these threats. Under the mixed inquisitorial model, criminal proceedings were largely written, opaque, and heavily dependent on the investigative file assembled by the public prosecutor. Conviction rates were paradoxically low despite high rates of pretrial detention, and the system suffered from chronic impunity: studies estimated that fewer than two percent of crimes resulted in a conviction (Zepeda Lecuona, 2004). As Shirk (2011) has documented, the old system was neither effective in producing security outcomes nor respectful of due process guarantees.

Against this backdrop, the 2008 reform pursued several security-related objectives. First, it aimed to reduce impunity by introducing adversarial proceedings, oral hearings, and stricter evidentiary standards that would compel prosecutors to build stronger cases. Second, the reform sought to improve conviction rates in cases of serious and organized crime by creating a more efficient and transparent process. Third,

the reform aspired to restore institutional trust in the criminal justice system, recognizing that public confidence in the courts and prosecutors is essential for citizen cooperation in reporting crimes — a critical factor in combating organized crime (Magaloni, 2007; Ingram & Shirk, 2012).

The reform also introduced specific provisions targeting security-sensitive cases: arraigo (pre-charge detention for organized crime suspects, up to eighty days under judicial oversight), special rules for wiretapping and witness protection, and mandatory pretrial detention for high-gravity offenses including organized crime, homicide, kidnapping, and crimes against national security. More than fifteen years after the reform's enactment, the assessment of whether these security-related objectives have been achieved is mixed. While the accusatory system has brought greater transparency and procedural fairness, impunity rates remain stubbornly high: the National Survey of Victimization and Perception of Public Safety consistently reports that over ninety percent of crimes go unreported or uninvestigated (INEGI, 2023).

### 3. THEORETICAL FRAMEWORK

The contemporary criminal process is conceived as a set of guarantees for the protection of human rights against the exercise of the state's power to punish. From the perspective of legal guarantees, the legitimacy of punishment depends on the procedure's adherence to principles and rules that limit arbitrariness and ensure reasoned and accountable decisions (Ferrajoli, 2011). At the same time, the international literature on security governance emphasizes that criminal justice systems serve a dual function: protecting individual rights and enabling the state to effectively confront threats to public security and the rule of law (Goldsmith & Sheptycki, 2007; Uildriks, 2010).

Article 20 of the Political Constitution establishes the core principles of the accusatory process: publicity, adversarial proceedings, concentration, continuity, and immediacy. Article 14 establishes the right to due process and conditions the validity of any restriction on personal liberty. The National Code of Criminal Procedure (CNPP) codifies equality before the law (Art. 10), equality of the parties (Art. 11), due process (Art. 12), presumption of innocence (Art. 13), and prohibition of double jeopardy (Art. 14) (Chamber of Deputies, 2024). Inter-American standards under Article 8.2 of the American Convention recognize minimum judicial guarantees including presumption of innocence, adequate defense, and a public trial before a competent judge (OAS, 1978).

Comparative scholarship on criminal procedure reform in Latin America has further emphasized that the transition from inquisitorial to accusatory systems must be understood as a fundamental transformation in the relationship between the state, the citizen, and the security apparatus (Langer, 2007; Duce & Pérez Perdomo, 2003). The core principles are: (a) Presumption of innocence — a multifaceted right serving as rule of conduct, standard of proof, and rule of judgment; (b) Due process — essential formalities, publicity, adversarial proceedings, and adequate defense; (c) Equality and adversarial proceedings — equality of arms between prosecution and defense; (d) Publicity — general rule of the trial with narrow legal exceptions; (e) Immediacy, concentration, and continuity — presence of the judge, oral hearings, and continuous proceedings.

### 4. METHODOLOGY

This research is juridical-descriptive and dogmatic in nature, grounded in constitutional and conventional hermeneutics. The analysis identifies, systematizes, and interprets the constitutional principles of criminal procedure based on primary sources (Constitution, laws, treaties) and jurisprudence of the Supreme Court of Justice of the Nation (SCJN), contrasted with specialized doctrine. The study also draws on comparative and interdisciplinary scholarship on criminal justice reform and security governance to situate the Mexican experience within a broader international context.

The investigation is delimited to the Mexican legal system within the time frame of 2008–2025, covering the implementation and consolidation of the accusatory model. Normative sources include: the Mexican Constitution (latest amendment October 2025); the National Code of Criminal Procedure (latest

amendment December 2024); and the American Convention on Human Rights. Jurisprudential sources include SCJN Isolated Thesis 2018965 and ADR 3457/2013. Doctrinal sources include Ferrajoli (criminal guarantees), Fix-Zamudio and Valencia (constitutional procedure), and Carbonell (Mexican constitutional law). Comparative and interdisciplinary sources include Langer (2007), Shirk (2011), Zepeda Lecuona (2004), Magaloni (2007), Hammergren (2007), Ingram and Shirk (2012), Goldsmith and Sheptycki (2007), and Uildriks (2010).

Validity and reliability are ensured through normative-jurisprudential-doctrinal triangulation, verification of normative validity in official repositories, and corroboration with international comparative scholarship. The analytical technique consists of systematization of each principle by definition, constitutional and conventional basis, and jurisprudential development; and comparative analysis of how procedural guarantees interact with the prosecution of security-sensitive cases.

## 5. RESULTS AND DISCUSSION

The core of the accusatory criminal procedure in Mexico is structured around the principles of publicity, adversarial proceedings, concentration, continuity, and immediacy, as well as the presumption of innocence, equality of arms, and due process. Article 20 of the Constitution establishes that all hearings are conducted in the presence of a judge; only evidence presented at trial is admissible; the burden of proof rests with the prosecution; and evidence obtained in violation of fundamental rights is inadmissible.

- Presumption of innocence

Every person is presumed innocent and shall be treated as such; the judge can only convict if there is a conviction of guilt based on evidence presented at trial. The Supreme Court of Justice of the Nation outlines its multifaceted nature as a rule of treatment, standard of proof, and rule of judgment: if there is insufficient evidence for the prosecution, acquittal is warranted, and the judge must comprehensively assess both incriminating and exculpatory evidence (SCJN, 2019; 2014; OAS, 1978). The application of this principle in organized crime cases, while challenging, is essential for maintaining the legitimacy of convictions and preventing the erosion of public trust.

- Due process and equality of arms

Article 14 of the Mexican Constitution protects the right to a prior trial and essential formalities. Due process limits the power to punish and requires impartiality, reasoned arguments, publicity, and the right to challenge evidence. Articles 10 and 11 of the CNPP specify equality before the law and between the parties, guaranteeing real parity for the prosecution and defense and the dialectical control of evidence. In practice, due process is compromised by material asymmetries: public defenders often face heavy workloads, budget constraints, and limited time to investigate, while prosecutors concentrate resources and have priority access to expert services.

- Publicity, immediacy, concentration, and continuity

Publicity as a general rule of the accusatory trial (Article 20, A, IV) strengthens transparency and social control, with narrow justified exceptions to protect victims, children, or sensitive information. Immediacy, concentration, and continuity require the presence of the judge, prohibition of delegating the evaluation of evidence, and continuous oral hearings. These principles raise the quality of evidence and reduce delays — but in practice face challenges from workload, courtroom scheduling, and technological infrastructure, with fragmented hearings and prolonged intervals affecting evidence quality.

- Exclusionary rule

The nullity of evidence obtained in violation of fundamental rights (Art. 20, A, IX CPEUM) preserves the legitimacy of the trial and discourages rights-violating practices. The exclusion decision must be duly justified, explaining whether the remaining evidence meets the standard for conviction. In organized crime cases, strict application of the exclusionary rule has generated significant debate: there are documented instances in which convictions have been weakened because of evidentiary exclusions related to irregularities in search warrants or unlawful surveillance. As Hammergren (2007) has argued, the solution

is not to weaken procedural safeguards but to strengthen the professional competence of the institutions operating within them.

### 5.1 Procedural Guarantees And Security Effectiveness: Navigating The Tension

The principles analyzed above do not operate in a normative vacuum. A primary area of tension concerns the evidentiary framework in organized crime prosecutions. The adversarial system's requirement that all evidence be presented orally at trial and subjected to cross-examination creates operational difficulties in cases where witnesses face credible threats of violence from criminal organizations. Mexican law has responded with institutional adaptations, including the Federal Law for the Protection of Persons Involved in Criminal Proceedings (2012). However, the tension between publicity and the practical need to protect witnesses in security-sensitive cases remains unresolved in several jurisdictions (Ingram & Shirk, 2012).

The Supreme Court of Justice of the Nation has addressed the tension between presumption of innocence and political and public pressure in high-profile cases, emphasizing that this principle applies with full force regardless of the severity of charges, and that the state's security interests cannot justify its erosion (SCJN, 2019). At the same time, the Court has upheld the constitutionality of mandatory pretrial detention for offenses related to organized crime and national security, acknowledging that the legislature has a legitimate interest in ensuring that defendants accused of the most serious offenses remain available for trial (SCJN, 2014).

Comparative experience supports the approach of protecting procedural safeguards while building institutional capacity. In Colombia, the transition to an accusatory system in 2004 — similarly motivated by the need to combat organized crime — produced analogous tensions between procedural guarantees and security effectiveness, with Colombian courts developing a body of jurisprudence that balances rights with operational needs (Langer, 2007). The European Court of Human Rights has developed a sophisticated proportionality framework for assessing the compatibility of security measures with fair trial guarantees under Article 6 of the European Convention, providing an additional comparative reference point for evaluating the Mexican approach (Duce & Pérez Perdomo, 2003).

In sum, the evidence suggests that procedural guarantees enshrined in the Mexican accusatory system do not inherently undermine the state's capacity to confront serious security threats. Rather, the principal obstacles to effective prosecution lie in institutional deficits — inadequate investigative capacity, insufficient training, resource asymmetries, and corruption within law enforcement — that no amount of procedural weakening would resolve. The challenge for Mexico's security governance is not to choose between rights and security, but to build the institutional infrastructure necessary to achieve both simultaneously.

## 5. CONCLUSIONS

First, the core guarantees of the Mexican criminal process — publicity, adversarial proceedings, concentration, continuity, and immediacy — structure the accusatory model and guide judicial action toward reasoned, transparent, and accountable decisions. These principles must be understood not only as procedural requirements but as foundational elements of security governance, insofar as they determine the legitimacy and effectiveness of the state's response to organized crime and other serious security threats.

Second, the presumption of innocence operates in a multifaceted way as standard of treatment, standard of proof, and rule of judgment. In the absence of sufficient incriminating evidence, the mandate is to acquit. The application of this principle in organized crime cases, while challenging, is essential for maintaining the legitimacy of convictions and preventing the erosion of public trust in the justice system (SCJN, 2019; 2014).

Third, due process, equality of arms, and the exclusionary rule protect the integrity of the trial and prevent arbitrary decisions. These guarantees are particularly important in security-sensitive cases, where the risk of state overreach is highest.

Fourth, constitutional-conventional harmonization with Article 8.2 of the American Convention on Human Rights is essential: Inter-American criteria serve as a parameter for interpreting Mexican procedural principles and ensuring compatibility with international standards on security and human rights.

Fifth, the 2008 constitutional reform, understood as a security governance intervention, has achieved partial success. The principal obstacles are institutional rather than normative: inadequate investigative capacity, resource asymmetries, insufficient training, and corruption. Comparative experience from Colombia and the European Court of Human Rights demonstrates that robust procedural safeguards and effective security prosecution can coexist when supported by adequate institutional infrastructure, professional training, and judicial oversight.

Finally, consolidating the accusatory model as an effective instrument of security governance requires: (a) training of legal professionals in evidentiary standards and human rights; (b) hearing management guaranteeing continuity and concentration; (c) internal controls ensuring judicial immediacy and the consistent application of the exclusionary rule; (d) strengthened witness protection and specialized prosecution units for organized crime cases; and (e) a sustained commitment to institutional reform addressing the root causes of impunity.

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