

resumen

Este es un artículo de reflexión que describe la evolución del proceso de implantación del sistema de justicia penal en México. El método de investigación fue la observación participante y la investigación-acción como resultado de la participación en diecisiete seminarios de prediagnóstico en los estados de la república mexicana. Las categorías de análisis fueron las siguientes: características de organización y desempeño del órgano implementador federal Secretariado Técnico para la reforma del sistema de justicia penal (Setec), modelo de evaluación de avances de la reforma, tipología de implantaciones de la reforma y resultados del seminario de prediagnóstico de implantación en diecisiete entidades.

Como resultado de lo anterior se concluye que la reforma ha avanzado en México a cuatro velocidades, que la Setec ha tenido un bajo desempeño como órgano implementador debido a sus constantes cambios de líderes y a su desestructurada orientación estratégica y su diseño organizativo y que el mejor modelo de implantación es el que se hace por regiones y que los sistemas de justicia estudiados, siendo muy diferentes en tamaño y complejidad, comparten una problemática común.

Palabras clave: sistema acusatorio, sistema de justicia penal, reorganización institucional, modelo de gestión, justicia en México, implantación de un sistema de justicia.

abstract

Implantation of the Accusatory Criminal Justice System in Mexico

This is an article of reflection that describes the evolution of the process of implanting the Criminal Justice System in Mexico. The research method used was that of participant observation and action-research as a result of participation in 17 pre-diagnosis seminars in the states of the Mexican republic. The analysis categories were the following: organizational characteristics and performance of the implementing agency - the Technical Secretariat for Reform of the Criminal Justice System (SETEC), the model for evaluating advances in the reform, typology of implantations of the reform and results of the implantation pre-diagnosis seminar in 17 entities.

As a result of the above, it was concluded that: the reform has advanced at four different speeds in Mexico, the SETEC has had poor performance as an implementing entity due to constant changes of its leaders and its unstructured strategic orientation and its organizational design, and the best model of implantation is that which is done by regions and that the justice systems studied, while very different in size and complexity, share common problematic characteristics.

Key words: accusatory system, criminal justice system, institutional reorganization, management model, justice in Mexico, implantation of a justice system.

resumo

Implantação do sistema de justiça penal acusatório no México

Este é um artigo de reflexão que descreve a evolução do processo de implantação do Sistema de Justiça Penal no México. O método de pesquisa foi a observação participante e a pesquisa-ação como resultado da participação em 17 seminários de pré-diagnóstico nos estados da república mexicana. As categorias de análise foram as seguintes: características de organização e desempenho do órgão implementador federal secretariado técnico para a Reforma do Sistema de Justiça Penal (Setec), modelo de avaliação de avanços da reforma, tipologia de implantações da reforma e resultados do seminário de pré-diagnóstico de implantação em 17 entidades.

Como resultado, conclui-se que: a reforma vem avançando no México em quatro velocidades; a Setec vem tendo um baixo desempenho como órgão implementador devido a suas constantes mudanças de líderes e a sua desestruturada orientação estratégica e seu desenho organizativo; o melhor modelo de implantação é o que se faz por regiões; os sistemas de justiça estudados, sendo muito diferentes em tamanhos e complexidades, compartilham uma problemática comum.

Palavras chave: sistema acusatório, sistema de justiça penal, reorganização institucional, modelo de gestão, justiça no México, implantação de um sistema de justiça.

Recibido: marzo de 2012 / Aprobado: noviembre de 2012

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Rivas Tovar, Luis Arturo; Pérez Rojas, Gustavo Adolfo y Arriaga Huerta, Juan Blas. 2012. 'Implantation of the Accusatory Criminal Justice System in Mexico'. *Administración & Desarrollo* 40(56):11-26.

Implantation of the Accusatory Criminal Justice System in Mexico

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I. Introduction: Description of the Context

One of the major challenges facing the Mexican State is security. In recent years the violence caused by diverse groups of organized criminals has plunged Mexican society into uncertainty and generalized fear and for most Mexicans the country's most important problem is public security (Pew Research Center's Global Attitudes Project, 2012).

Unfortunately, most Mexicans do not trust the municipal, state or federal police. There are objective reasons for this skepticism since fewer than 5 out of every 100 crimes are prosecuted and punished (Federal Government, 2008).

Organized crime operates in diverse modalities every day in Mexico especially in the states along the northern border: narco-trafficking, kidnapping, human trafficking, automobile theft, propitiated prostitution and internal migration to safer states. Organized crime has acquired enormous economic power and is equipped with modern, high-powered weapons, as well as airplanes and vehicles for transporting drugs.

The justice system that has held sway in Mexico presents serious deficiencies, among which the following should be mentioned:

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1. The justice system has been outdistanced by technical and scientific advances, a situation that has prevented efficient investigation.
2. Justice is neither prompt nor expedite and there is an overload of jurisdictional casework, to the detriment of human rights.
3. The medium of writing has been abused, making legal processes slow and bureaucratic.
4. The present criminal justice system has filled Mexico's prisons to the saturation point, but has failed in the task of socially readapting offenders.
5. There is a confusing institutional framework as a result of which federal, state and municipal police act with different criteria, thus making coordinated efforts to combat crime very difficult.

The result is a crisis of credibility regarding the institutions of the justice system, a situation that stimulates impunity and corruption (Calderón, 2008).

There are two major systems for imparting justice in the western world: the inquisitive system, which is rooted in Roman law, and the accusatory system,

which derives from Anglo-Saxon law, i.e., common law (González P., Herrera J., Herman L., Garcia M., Gaona T. 2011).

1.1. Adoption of the accusatory criminal justice system

To solve the problems of justice and security, President Felipe Calderón issued the decree to reform the federal justice system on June 18th, 2008. Said decree reformed and added Articles 16, 17, 18, 19, 20, 21 and 22; fractions XXI and XXIII of Article 73; fraction VII of Article 115, and fraction XIII of section B of Article 123.

A total of 10 articles of the Political Constitution of the United States of Mexico were reformed: seven articles (16 to 22) referring to criminal justice; one regarding the powers of the Congress of the Union (73); one regarding municipal development (115); and one (123) on matters of labor law (Federal Government 2008).

The most significant changes introduced through the reform of the criminal justice system are summarized in Table 1.

Table 1. The 18 Changes Introduced through the Reform of the Criminal Justice System

1.	Alternative mechanisms: The agent of the Public Ministry (PM) may or may not initiate an investigation, thus giving priority to serious crimes, opting for the reparation of damages in minor crimes without need to activate the entire criminal justice apparatus in the case of reparable matters of low impact.
2.	Conduct of criminal proceedings without the intervention of the PM: It is copied from civil or family law matters, in which private attorneys are hired and present the case directly before the judge, who will decide whether there are sufficient elements to initiate a trial; these cases are frequent when it is a question of damages of a patrimonial type.
3.	Public oral trials: this is the greatest and costliest innovation. Nevertheless, the system seeks to resolve most cases by alternative means. By favoring orality, trials are supposed to be briefer and less bureaucratic, as well as to give preference to the evidence and to the trial record preserved in an audiovisual medium. The challenge is the preparation of personnel and lawyers who are not yet accustomed to litigate orally. Criminal cases are still based solely and exclusively on what is registered in "the case-file", which is nothing more than a totally unsystematic pile of papers in which everything relating to the case is transcribed, often adding up to thousands of pages or even entire volumes of paperwork.
4.	Abbreviation of the procedure: Abbreviation measures are determined by the judge, who can shorten the periods required for resolution, depending on the flagrancy of the crime and/or an admission of guilt.
5.	Expansion of the rights of the victim: The victim can request reparation of damages directly with no need of approval by the PM, can request judicial review of actions and omissions on the part of the PM, and can also ask the judge to apply preventive measures for his or her protection.
6.	Protection of the human rights of the accused: the rule of presumed innocence versus presumed guilt that prevailed in the previous system. The PM can no longer carry out any search without a judicial order, and only duly licensed lawyers can assume the defense. On many occasions the accused could be defended by an acquaintance, which would probably worsen their situation due to the poor quality of the defense.
7.	Publication of the results: Any conviction or absolution decided by a judge must be explained through a public hearing. In the previous system it was common for a sentence to be appealed and for the Collegiate Tribunal subsequently to dictate an absolution or reduced sentence, while the victim was hardly ever notified of the situation. Publication notably reduces the appealing of sentences, to the degree that only 10% are now appealed. In the new system there are practically no surprises after sentencing.

8. Strengthening of investigation. The police will have technical and functional autonomy in investigating crimes, while the PM will have command and the legal management, i.e. the "handling of the case", while the police obtain the evidence in the investigation. This is also intended to make investigation and the division of work more efficient, because in the previous system there was no tacit separation of tasks, a situation that causes friction between the two institutions.
9. Restriction of preventive imprisonment: In Mexico one can be sent to prison without having been declared guilty, and be confined in direct contact with criminals sentenced for serious crimes, since there is no division in the jails for those who have been convicted and those who are being held as a preventive measure. Preventive imprisonment will not be applied to minor crimes, but it remains in effect for serious offenses such as organized crime, rape, murder, armed felonies, etc. On the other hand, an effort will be made to apply different preventive measures, especially the use of electronic anklets for localization.
10. Creation of the figure of the *juez de control* (control judge): This new figure is responsible for seeing that the rights of persons involved in a crime are not violated, by verifying the legality of all actions taken prior to trial. The juez de control can issue written orders or restrictive measures at the request of the PM, and oversees the fulfillment of conciliatory agreements and other alternative measures.
11. Creation of the figure of *jueces de ejecución de sentencias* (sentencing judges): Any decision regarding the imposition or reduction of sentences remains reserved to the judicial branch of government, which was nonetheless deprived of attributions that it used to take administratively and discretionally in the social re-adaptation centers. For example. It was very common to grant reductions of sentences for good conduct with no need for a contrasted opinion on the part of the judicial power. Therefore, this figure was created to ensure fulfillment and modification of sentences, with the intention of reducing opportunities for corruption.
12. Strengthening of rules against organized delinquency: The applicability of local norms issued in the states is reserved, under federal law, which is in charge of combatting organized crime. Although not made explicit, the opinion of the federal Executive Power includes that at the local level criminals have the advantage of operating in different localities, under laws that vary among the different states, as well as having the economic power and weapons to damage local institutions easily.
13. Special measures regarding those convicted of organized crime: It remains at the discretion of the federal normative system to designate the reclusion of those sentenced, in most cases interning them as far away as possible from their contacts and centers of operation. In addition to substantially increasing special vigilance and communicative restrictions with external persons.
14. Modification of the scope of arraigo (In Mexico, a type of informal detention when there is not enough evidence): Incredibly, the question of arraigo was not well defined in the constitution, so that now it can only be decreed by a judge in cases of organized crime, and cannot exceed a period of 40 days, deferrable up to a maximum of 80 days at the legally justified solicitude of the PM.
15. Extinction of domain: It is created to prevent the accused from using the money obtained through criminal activities. The judge will be able to decide that those economic goods will become the property of the State. Previously, many criminals placed their fortunes in the name of their spouses or children in order to prevent the government from freezing their accounts, but with the reform, no matter whose name the money is in, the judge will have the authority to evaluate whether or not it is illicit based on the evidence, and will be able to apply extinction of domain when it is.
16. Strengthening of the National System of Public Security: The aim is to create rules for the selection, entry and training, recognition and evaluation of the members of public security institutions. This system also continues to build up a database on criminals, to be shared with local investigative agencies. The most advanced current database of this type at present is called "Plataforma México," which is federally controlled and provides local agencies with access to it for the identification of criminals.
17. Determination to prevent crime: The reform recognizes the need to prevent crime in the Constitution, even though the type of concrete actions required to achieve this purpose has not been defined.
18. Proportionality of sentences: This obliges States to review the applicability and the definition of crimes in their criminal code, as well as the corresponding punishments. This is a task for discussion, because there is no homologation or establishment of equivalencies among the states, so crimes are often judged differently from one state to another and in some cases, acts that are punishable as crimes in one state are not considered as such in others (e.g. the penalization of abortion).

Source: NACIPE-PGR. (2008)

In Mexico the criminal justice system consists of five institutions: the police, the prosecutors (agents of the public ministry), the judges, the public defenders and the social reinsertion centers popularly known as CERESOS.

Unfortunately, most Mexicans do not trust the prosecutors, either local or federal. Nor do they trust either state or federal judges. In practice, those accused

of having committed a crime are considered guilty and are obliged to demonstrate their innocence. This is so because the preliminary investigation undertaken to solve a crime mainly aims to identify the victim and this is done by establishing a relation of motive with the accused. At the opening of the trial, the accused is presented as guilty by the prosecutor. The judge then issues an *Auto de Formal Prisión* (judicial

decision to send the accused to prison at any point in the process), which usually leads to a condemnatory sentence. Furthermore, the public defenders' offices are professional institutions that are held in very low social esteem despite the important role they play in such an extremely inequitable country.

A record of the entire criminal justice procedure, including the trial itself, is kept in written form in enormous court files, and proceedings are carried out in offices behind closed doors, in which very often it is not the judge, but rather the court clerk who is familiar with the entire process.

The accused (even those who are not dangerous criminals) must face trial while in jail or, when the offense is not considered serious, they must post bail in order to be at liberty as they face trial. They are very often unable to make bail because of their social situation, and the parties are not allowed to present their arguments face to face in front of the judge during the trial.

The difficulties encountered in implanting the reform are rooted in, among other things, the quantity and diversity of institutions involved because, due to the federated nature of Mexican government, federal, state and municipal authorities must all interact. Among the institutions participating in these three levels of government, the following stand out:

- **Federal:** a) the Federal Secretariat of Public Security; b) Office of the General Public Prosecutor of the Republic, including its areas of expert services; c) Federal Institute of Public Defenders; d) the judicial branch of the federal government.

- **Federative Entities:** a) public security secretariats; b) general public prosecutors; c) areas of public defenders' offices; d) expert services institutions; e) judicial authorities.

- **Municipalities:** local judges, agents of the municipal public ministry, municipal CERESOS, municipal police defenders.

Given the weakness of the police, above all at the state and municipal levels, the army and the navy should assist the police in fighting organized crime.

1.3. State of the art

Research studies in scientific journals on the topic of the accusatory system in Mexico are scarce. A mega-analysis carried out on the different databases

identified only 20 studies, among which some should be mentioned on the following topics:

Studies on discrimination in the justice system: (Gómez, 2000 and 2002), (Miguel, Miller, Kwak, Lee-Gonyea & Gonyea, 2011).

Reflections on procedure in the new justice system highlight the work of: (Benavente, 2010), (Hernández, 2010), (Benavente, 2012), (Kaliebe, Heneghan & Kim, 2011), (Lloyd, 2003).

Studies on administrative tools and their impact on improvement of the justice system: (Ortiz, Romano & Soriano, 1989), (Romero, Rogers, Winfree, Walsh & Garcia, 1999), (Scardaville, 2003).

Studies on advances in specific parts of the justice system, such as the case of justice for adolescents in Mexico (Vasconcelos, 2011).

Nevertheless, not one single study was found published in scientific journals on the implantation of a justice system.

While no articles were found published in scientific journals, diverse studies on the implantation of the above-mentioned system were found in other bases such as Google Scholar, and still others published in books, book chapters and articles for dissemination. Among them the following should be mentioned:

The work of Pastrana and Benavente (2009) on implementation of the adversarial accusatory criminal justice process in Latin America.

The book by Bardales (2010) that presents a guide for understanding the study of the criminal justice reform in Mexico.

García's reflective article (2010) on implementation of the adversarial system in Mexico, that reflects on the process in the state of San Luis Potosí.

The article by Servin Z. (2012) that reflects on implantation of the accusatory system in the Federal District.

There are other studies, such as those by Hidalgo Murillo, who has advised on the implantation process in the state of Campeche (Poder Judicial de Campeche, 2012).

There are also some reflective studies on implantation of the reform promoted by the SETEC, which point out the reflections of García Ramírez (former president of the Inter-American Human Rights Court),

Magistrate Óscar Vázquez Marín, Martín Carlos Sánchez Bocanegra and Miguel Ángel Mancera Espinosa, among other specialists who deal with the issue from different perspectives (SETEC 2010). However, even though these are valuable documents, they constitute material for dissemination written by officials on active duty.

II. Method

This is an article of reflection. The research method used was participant observation and research-action, and it is the result of the participation of 17 pre-diagnostic seminars in different states of the Mexican republic. The categories used in the analysis were the following: organizational characteristics of the implementing agency (SETEC), the model for evaluating progress of the reform, and the typology of implantations of the reform. The results of the implantation seminar in 17 entities were presented.

III. Results

This section will describe the organizational characteristics of the agency in charge of implementing the reform (SETEC) and the evaluation model for measuring the progress of the reform of the accusatory system in Mexico, the two models of implantation that have been developed in different states of the country (by regions and by zones), and the results of the pre-diagnosis seminar on the management model for the criminal justice system.

III.1. Organizational characteristics of the implementing agency (SETEC)

Implantation of the new accusatory justice system implies a formidable challenge. In countries such as Chile and Colombia that have preceded Mexico in the process, implantation has involved 10 years of work, even when said countries are centralized states with a single criminal procedure code that is in force throughout the country. In the case of Mexico there are 34 different criminal procedure codes (32 state, one federal, one military) and 32

constitutions, a situation that results in a multiplicity of visions and formidable difficulty in undertaking such implantation. For this reason, most entities have adopted a gradual approach to introducing the reform, which in practice has meant an implantation at several different velocities.

The Technical Secretariat for Implementation of the Criminal Justice System (SETEC) was created in 2008 as an agency that depends on the Ministry of the Interior and which is the institution in charge of coordinating implantation of the accusatory system throughout the country.

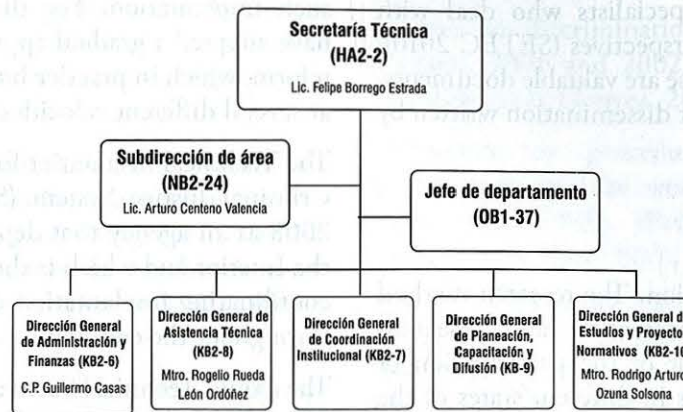
The name "Technical Secretariat" seems unfortunate. The executive position in all committees and commissions in Mexico is also denominated "technical secretariat", which usually refers to a post occupied by an official with a technocratic profile who presides over the respective commission.

Commissions have a poor image in Mexico since they are usually perceived as bureaucratic elements that delay the government's executive decisions and, when they do function well, they are empowered by their power to provide resources.

In the case of the SETEC, this power exists because it is the institution that manages and provides the states with federal resources to promote the accusatory system reform. Nevertheless, this role has not been fulfilled in the technocratic profile of the Secretariat, since the three individuals who have held the post have all had a clear political profile, and this political profile of the technical secretariat has been copied in most states of the Mexican republic, with few exceptions. Said politicization has operated to the detriment of rational decision-making since implantation is more a technical process than a political one.

The basic task of the SETEC has been the implantation of the system, and for this purpose it was provided with an organizational structure consisting of 5 general directorships, as mentioned in Figure 1. Said Secretariat, which depends on a Coordinating Council for Implementation of the Criminal Justice System, is the government agency in charge of coordinating actions carried out at the three levels of government (SETEC 2012).

Figure 1 Organizational Structure of the SETEC



Source: SETEC <http://www.setec.gob.mx/es/SETEC/Estructura>

In summary, we can say that the functions of these directorships include receiving and evaluating projects that apply for subsidies from the federative entities. In addition to granting technical assistance to states, based on infrastructure and equipment requirements, information technologies and institutional reorganization. It also provides support to the entities in terms of training, since the SETEC administers examinations for the certification of licensed lawyers who have mastered the new system. It also advises local offices on the design and/or modification of local laws, renders judgments and makes recommendations in this respect, in addition to coordinating both the internal and external planning of the SETEC by evaluating both the progress and the deficiencies of the different entities.

The functions of each directorship of the SETEC were established upon publication of the Model Accusatory Criminal Process Code by the National Commission of Superior Courts of Justice in 2009. Many academic experts on criminal law collaborated in reviewing said code and it has received the approval of the presidents of the superior courts of justice throughout the country. It is a very important document because it has also served as a reference point for the modification of laws in local congresses and has therefore brought clarity to the objectives both of the local institutions and of the SETEC itself in the design of their strategies of proximity to the states.

In this way, each SETEC directorship began to develop its own plans and initiation documents. Each one of these units found that it would have

to undertake the difficult task of initial approach to the entities. It should be pointed out that at the moment the reform was approved in 2008, the states of Chihuahua and Nuevo León had moved already advanced towards the transformation of their institutions, due to the fact that they were both states with high rates of criminality. The Training Directorship began to promote introductory seminars on the new criminal justice system in different states to gain the attention of the officials involved, a situation that had a positive effect because in some states where absolutely nothing was known about the matter, the word “reform” began to appear in the lexicon of public officials.

The General Directorate of Technical Assistance (DGAT, for its initials in Spanish) has three directorships: Infrastructure; Information Technologies and Equipment; and Institutional Reorganization. It has taken charge of designing the management model with the support of the National Public Administration Institute (INAP, for its initials in Spanish) in the state of Morelos. Although the DGAT has carried out a valuable task, it was mistakenly assumed that there should be a single model that could be reproduced in other states based on the Morelos case.

The structure of the SETEC contrasts with that of the implementing agency in Chile called the Coordinating Unit of the Criminal Process Reform (UCRPP for its initials in Spanish) which is composed of a multidisciplinary team of professionals and technicians, with a modern organizational structure, the objectives of which are the diagnosis, design,

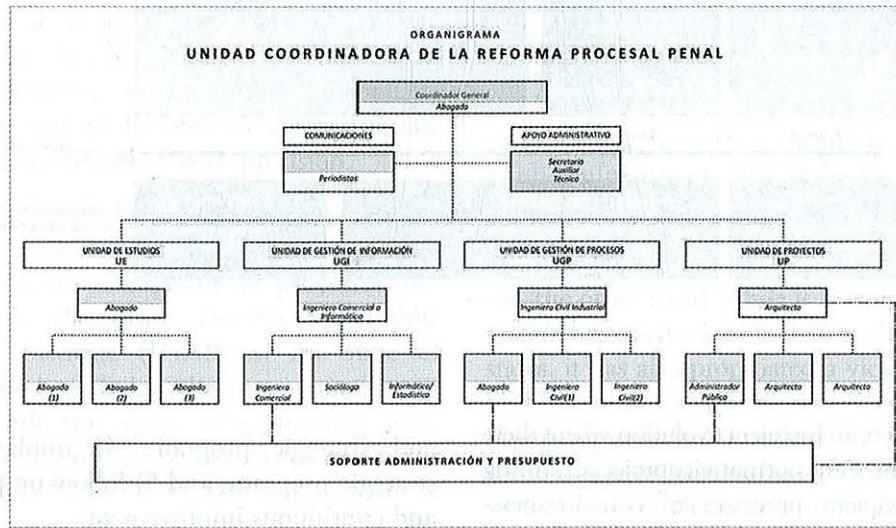
planning, implementation, coordination, diffusion and follow-up of the new criminal justice procedural system, with full respect for constitutional guarantees and ensuring of efficient and high-quality operation.

There has been a prevalence of professionals from the social sciences in the SETEC and the first difference that stands out in comparison with Chile is that the highest official in charge of implantation there is called the *general coordinator*, which is a more

appropriate name for the tasks involved than the vague name of technical secretary used in Mexico, that has already been criticized above.

The second relevant difference, which can be seen in Figure 2, is that there are four units in Chile, with the respective tasks of elaborating studies, gathering information, carrying out processes and projects, all of which is more in accordance with the tasks of implementation.

Figure 2 Organizational Structure of the Implementing Agency in Chile



Source: Manke A. (2010)

Another aspect of interest in the Chilean model is the strict professional profile of those who fill public posts. The general coordinator and the head of the studies unit must be lawyers; those in the communications area must be journalists; the head of the systems area must be an information engineer; the head of the processes area must be an industrial engineer; and the head of the projects area must be an architect. This type of specialization was not found in Mexico.

A comparison between the two organizational structures indicates that while a flexible structure with a high degree of technical specialization emphasizing coordinated action was adopted in Chile, a rigid vertical structure of a functional type was chosen in Mexico, with considerable overlapping e.g., as in the case of planning, which is a function that extends horizontally through all tasks. A brief review of the official SETEC website reveals the poverty of its content since the institutional coordination area

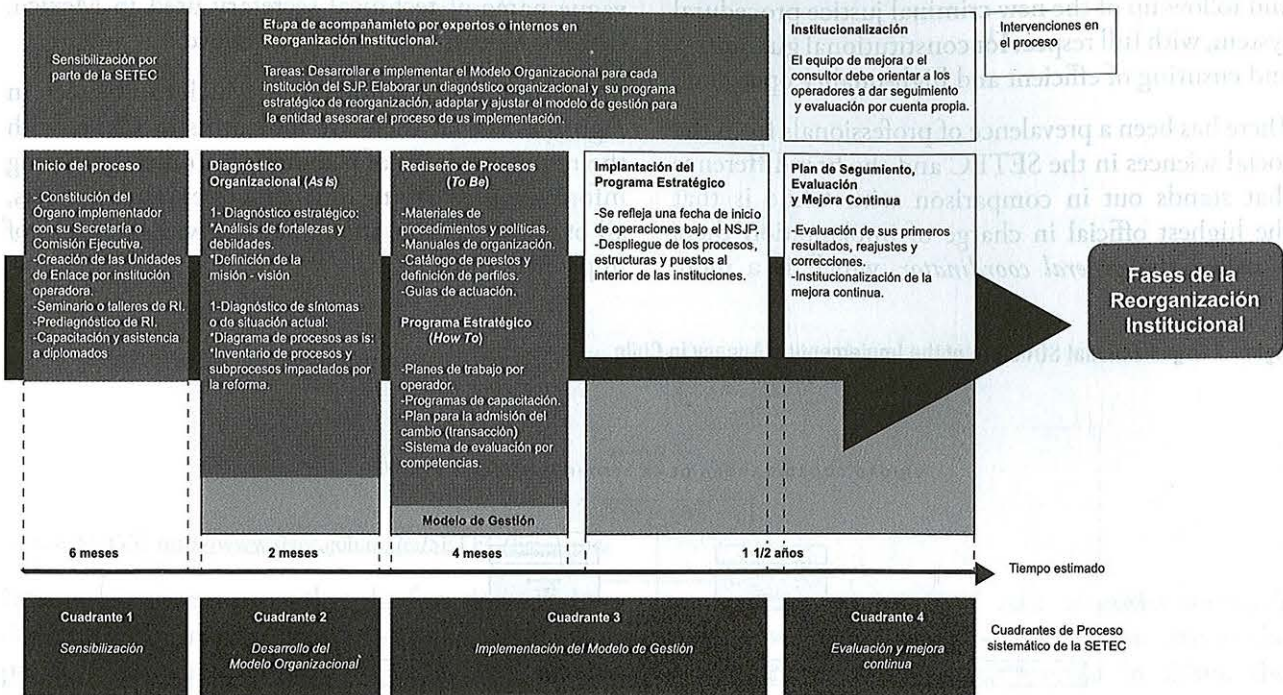
has appeared with the notice “this page is under construction” for several months (see [http://www.setec.gob.mx/es/SETEC/Coord Inter](http://www.setec.gob.mx/es/SETEC/Coord_Inter)).

Although the role of the SETEC has been an appreciable one in many ways, the objective of this study is to make a critical contribution to evaluate its performance and to suggest ways to improve its management.

III.2. Model for evaluating the progress of the reform

The SETEC has developed a criterion for evaluating the progress of the reform which evaluates the following 9 aspects: planning, normativity, training, institutional reorganization, infrastructure and equipment, evaluation and follow-up, and the provision of resources (SETEC 2011). With these 9 elements the SETEC has created a model of four quadrants that is shown in Figure 1.

Figure 3 Model of Evolution of the New Criminal Justice System



Source: SETEC 2011.

Quadrant 1 considers an incipient evolution where there is political agreement, some normativity projects, training initiatives and incipient processes of consciousness-raising regarding reorganization in the five institutions.

Quadrant 2 already presents a diagnosis, planning and indications for institutional reorganization. There is a basis for normativity that has been socialized. There is also widespread diffusion of the reform and acceptable infrastructure and equipment.

Quadrant 3 includes infrastructure and equipment in the operating units, as well as training programs. The complementary normativity is in its final adjustments. There is diffusion and a process of institutional reorganization.

Quadrant 4 is found in states where the system is operating. Infrastructure and equipment, information technology and a communications platform already exist here. The normativity is in the phase of complementary reforms and there is a level of training called "Interiorization 2", as well as ample diffusion and continuous improvement.

The five phases included in the model of evolution are the following: 1) initiation of the process; 2) organizational diagnosis; 3) redesign of processes

and strategic program; 4) implantation of the strategic program; and 5) follow-up plan, evaluation and continuous improvement.

Phase 1, the initiation of the process, considers the need for the entity to be organized on the basis of consensus of the institutions involved and for them to select a representative and someone responsible for coordinating implementation efforts at the local level, a replica of the SETEC itself but at the state level, i.e., the "local implementing agency." This agency is the negotiator of resources before the executive, legislative and judicial branches at the local level, as well as the entity in charge of negotiating and presenting the projects and corresponding progress reports to the Federal SETEC and the Coordinating Council in search of federal resources.

More elaborate studies are done within phase 2, called "Organizational Diagnosis", with the participation of officials of all the institutions involved so as to create an organizational diagnosis, in which a catalogue of the present processes is shown with precision, the frequent duplication of bureaucratic procedures and even of functions is identified, and current processes are contrasted with the changes announced in the reform, thus identifying which part of each process will be

subject to modifications. Furthermore, in the same organizational diagnosis, a strategic diagnosis should be created and general objectives should be defined on the basis of the joint elaboration of the project's mission and vision of the process, that indicates how the officials are envisioned in the future and the effort that will have to be made in order to achieve said vision. The fundamental objective of this diagnosis is to elaborate an analysis of the gaps between the present situation and the change envisioned.

When the entity completes the organizational diagnosis, it applies to the SETEC for economic resources that will permit the elaboration of its own management model (phase 3, Design of the Management Model), which will be based on that same diagnosis to determine the realities of each locality and to be able to determine the implementation methodology with precision.

During 2009 and 2010 the SETEC sought a way to come up with a concrete proposal for the planning and localization of the changes in the processes that were envisaged for the future. The National Public Administration Institute (INAP) in the state of Morelos was hired to design the first management model. The result was quite disappointing since said prestigious organization subcontracted other consultants for the task. They did a mapping of the processes and proposed an organizational structure very similar to those that function presently with a poor definition of the key posts that would change with the reform. Notwithstanding this disappointing work, the same institution was hired in other states of the republic due to the institution's prestige and fear of making mistakes, but this simultaneous over-demand has exacerbated the insufficiencies of the diagnostic work and generated dissatisfaction that has been detected in the interviews conducted in different states (Rivas, 2012).

One of the criticisms of the work done in the state of Morelos was that the diagnostic mechanism was based on interviews of second-level personnel, thus sketching an incomplete vision of reality with excessive emphasis on organizational aspects. It was erroneously assumed that a management model is equal to the organizational implementation process when an implantation process implies a system

of planning, information, infrastructure, human resources, strategy, remuneration and incentives and coordination and interdependence, and not just a manual of processes, procedures and organization, which is what has been delivered as final products.

This error has generated wastefulness in consultancies with very disappointing results. In the state of Puebla, for example, 1.3 million dollars was paid for a work of diagnosis and design of organic structures that is a copy of the work done by the INAP in Morelos (Rivas, 2012).

It is in this phase 3 of the process where the lack of SETEC leadership is perceived, which has led to serious errors such as paying for competence profiles in different states when the functions are identical for the key posts. The fact that the criminal procedure code changes does not mean that the profile of a public ministry or of a defender will be different. An enormous amount of money has thus been spent with no technical justification.

On the other hand, while it is true that the quadrant system has clarified the way to evaluate progress in the states, it has also propitiated a vicious circle since the SETEC conditions the resources it grants to completion of the steps described in the system and, for example, if the diagnosis has not been properly done, it is made mandatory in order to release economic resources.

What was perceived in the interviews carried out in the different states is the fact that no local operator is considered to have the authority to question the work of an institution as prestigious as the INAP. On the other hand, it is also clear that they need the resources of the federation, which is why they prefer to withhold their criticisms in the face of political pressure to see that the reform progresses. Questioning the mapping done of the processes and the general structures that have been proposed does not form part of the methodology and this often leads to a waste of money on useless consultancies in the effort to advance. The methodology requires the incorporation of an evaluation phase **in each stage** in order to propitiate adjustments and corrections to the work performed in the previous phase.

The changes involved will have the five system operators described in Table 2.

Table 2 Institutional Reorganization Changes for the New Criminal Justice System

Judicial Branch	In this case, the change affects the totality of the work methods, both those referring to administration of justice and those oriented to providing administrative support. The structures also change in their totality as well as the infrastructure in which they have to carry out the operation. This is therefore the greatest cultural and organizational change within the system.
Public Prosecutor's Offices	The changes for this institution do not affect all of its activity, but fundamentally the most important elements of its operational level: the public ministries and the investigating police. To this are also added new actors and structures, derived from the alternative methods of justice, that must be incorporated into this institution with a systemic focus. However, unlike the public ministries, the case of the experts and the areas of support for victims is different, given that more than modification of work methods, what is required is professionalization, higher quality and the equipment needed to perform its duties.
Public Defenders' Offices	The transformation of the Public Defender's Office stems basically from the professionalization of its activity adapted to the new legal requirements and the provision of infrastructure and necessary equipment.
Public Security	The scope of the reorganization fundamentally proposes the creation of two areas: The Policía Procesal (Procedural Police) and the area in charge of supervising the new preventive measures, as well as the conditions of suspension of process a probe (evidence process). While both structures pose significant changes in work methods, the most important change is seen in the new tasks of extramural supervision, which is of a totally different nature than the intramural supervision of the prison systems.

Source: SETEC 2011 p.43

One forgotten area in the changes mentioned in the SETEC document is social reinsertion, which presents a high degree of overcrowding in the country's federal and state CERESOS. It is hoped that the reform will strengthen the preventive measures and thus improve social reinsertion.

In phase 4 (initiation of the strategic plan) initiation of the management model is considered, taking different variables into account, including the following: crime rates, population, type of surface, climate, territorial extension, connectivity, anthropologically defined criminal elements, etc.

In phase 5 (plan for follow-up, evaluation and continual improvement), it is expected that the most advanced states will begin to institutionalize the changes, correct the mistakes and foment continuous improvement of the system. Introduction of the concept of continuous improvement implies a novelty in the lexicon of officials since public institutions have rarely had the possibility of reevaluating their work, or of offering services focused on quality and user satisfaction.

Advances in implantation of the accusatory system in the country are described in Table 3.

Table 3 Progress of the Reform in Mexico

Reforms that have already begun in some part of the national territory	Reforms on the way to implementation	Start of the reform process (constitution of the implementing agency and discussion of legislative projects)	Progress in the initial phase
Nuevo León*	Yucatán	Tabasco	
Chihuahua	Puebla	Tlaxcala	
Oaxaca	Hidalgo	Coahuila	Sinaloa
Zacatecas	Chiapas	San Luis Potosí	Veracruz
Estado de México**	Colima	Sonora	Quintana Roo
Morelos	Aguascalientes	Tamaulipas	
Oaxaca		Nayarit	
Durango		Michoacán	
Baja California		Baja California Sur	
Guanajuato		Guerrero	
		Jalisco	
		Querétaro	
		Federal District	

Source: Adapted by the author based on LART interviews, August 2011

It is important to mention that this advance is equivalent to a photograph taken on the date mentioned and based on SETEC documents and interviews carried out by the authors, and that there may be inconsistencies in an enormously dynamic process which is difficult to integrate with precision.

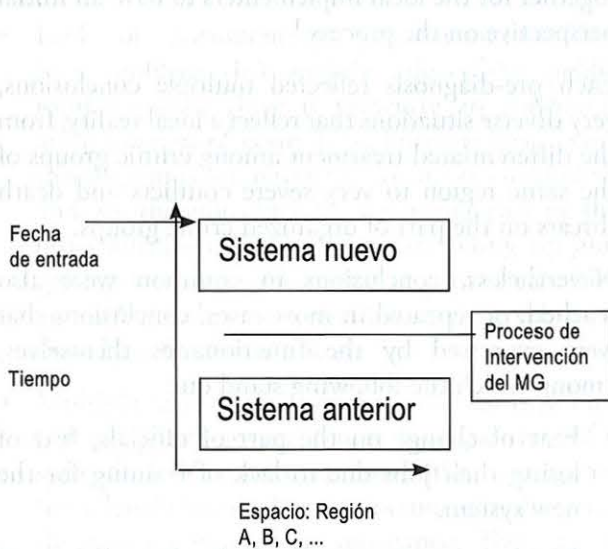
Implantation types of the Accusatory Criminal Justice in Mexico

Two types of implantation have been carried out in Mexico: The type found in the state of Nuevo León, which is classified *by type of crimes*, and the type found in Chihuahua, which is organized *by regions*. Figure 3 summarizes the characteristics of both models.

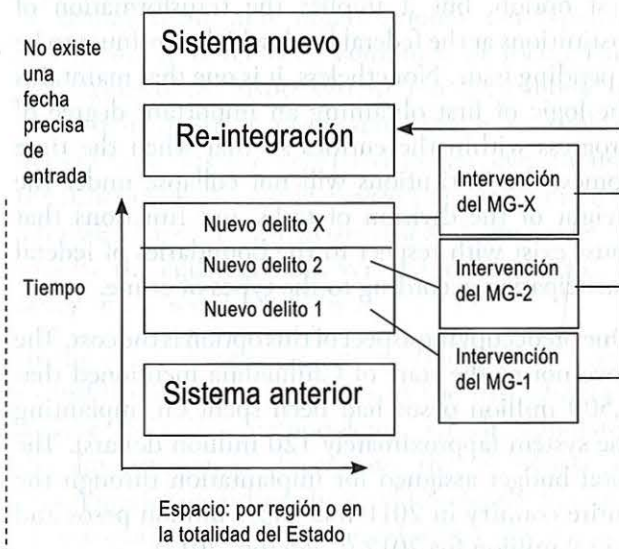
Implantation based on the type of crimes: In Nuevo León, it was seen that implementation based

on the type of crimes can be very costly and take a very long time since the methodology does not set any critical date for introducing the new system and it is therefore practically impossible to define a time limit. Instead, the aim is to "introduce it bit by bit." Consequently, the design for programming budgets and strategies could prove to be too late and even mistaken since this system in particular will not be the same between starting point A and finishing point B, although the number of interventions needed for the management model can be as extensive as the quantity of crimes that are being modified, one by one. The most serious problem is that there is no definite timeline and the process may be endless. With this mechanics, it will be necessary to subsidize the existence of both systems, i.e., the old and the new, and this means that costs will double in many institutions.

Figure 4. Types of Implementation: by Regions and by Crimes



Implementación por regiones



Implementación por delitos

Source: SETEC 2011. p. 46

Another problem with implantation according to type of crimes is that planning is very imprecise because the transformation required for the reform not only involves organizational aspects but, as mentioned at the beginning, it also involves the construction and modification of buildings, equipment and necessary software, as well as training. That is to say, implementation according to type of crimes can lead to mistakes, starting with the way in which physical spaces are laid out, because minor crimes may be reformed momentarily, but it remains to be seen what

will happen if there is a budget for the construction of a building at that time. The implications of transporting extremely dangerous criminals might not be considered in exact detail, nor how they would be taken to hearings. What would happen if there were no adequate plans for this and it were necessary to use a corridor where victims and probable perpetrators of crimes would encounter each other face to face? Architects and engineers are not jurists and they can only imaginatively interpret what has not been written, the laws or modifications of laws that do not yet exist.

The system of implantation by regions: In the light of the evidence observed, this is the easier and more recommendable approach to implantation. With this model of implantation it is necessary to develop a strategic plan in which a municipality with easy conditions is selected so that the reform can advance gradually, but from a geographical and anthropological point of view. In this case, to the extent that the system is replicated in the remaining municipalities, the system itself will also be perfected, so that when the time comes for it to be introduced in the major cities or the most dangerous regions, it will have developed and acquired a good degree of experience at both the state and municipal level.

The Chilean case was also implanted in this way, but by regions rather than by states, due to Chile's centralized form of government (Mahnke, 2010).

The implementation strategy of promoting reform from the local to the federal level seems to be the best option, but it implies the transformation of institutions at the federal level, which continues to be a pending issue. Nonetheless, it is one that maintains the logic of first obtaining an important degree of progress within the entities so that when the time comes, the institutions will not collapse under the weight of the division of tasks and functions that must exist with respect to the boundaries of federal participation according to the types of crime.

One preoccupying aspect of this option is the cost. The governor of the state of Chihuahua mentioned that 1,500 million pesos had been spent on implanting the system (approximately 120 million dollars). The total budget assigned for implantation through the entire country in 2011 was 443.4 million pesos and 442.9 million for 2012 (Calderón, 2012).

Altogether, in two and a half years 1,200 million pesos (100 million dollars) have been assigned for all entities. Although this is a substantial amount, it is considered insufficient since it does not even cover the amount that has been allocated to the state of Chihuahua for its implantation.

Results of the Seminar on Designing a Management Model for the Criminal Justice System

The Reorganization Seminar included a presentation of the Management Model in its contents, which constitutes only the introduction to the concept; the

route to change and the transformation of paradigms; introduction to strategic planning; elaboration of a SWOT analysis; construction of the mission and vision of each institution and of the system in general; elaboration of a matrix of objectives; introduction to the creation of indicators, forms of measurement and goals; and in some cases it was possible to elaborate the chain of systemic value (Rivas, 2010; 2011).

Eight states were visited in 2010: Morelos, Guanajuato, Yucatán-Campeche, Nuevo León, Puebla-Tlaxcala, Chiapas, Zacatecas and Guerrero, while seven states were visited in 2011: Aguascalientes, Baja California Sur, Coahuila, Tabasco, Sinaloa, Jalisco and San Luis Potosí. With the gathering of data contributed by the functionaries themselves, the support of the different consultants hired by the SETEC was requested, so that at the end of each seminar a simple but substantial document titled "Pre-diagnosis of Institutional Reorganization" would be put together for the local implementers to have an initial perspective on the process.¹

Each pre-diagnosis reflected multiple conclusions, very diverse situations that reflect a local reality, from the differentiated treatment among ethnic groups of the same region to very severe conflicts and death threats on the part of organized crime groups.

Nevertheless, conclusions in common were also reached, or repeated in most cases, conclusions that were expressed by the functionaries themselves, among which the following stand out:

- Fear of change on the part of officials, fear of losing their jobs due to lack of training for the new system.
- Rigid structures and little knowledge of administration
- Lack of resources (a common complaint in any public institution)
- Very slow processes and procedures, with frequent duplication of efforts detected among the different institutions. There is no clear division of labor in some institutions, such as the public defenders' office, which have practically no

¹ A total of 17 pre-diagnoses were done for each participating state. It should be noted that because it had not been considered at first, there was no pre-diagnosis in Morelos, while two seminars were carried out with the participation of some neighboring state, as was the case in Yucatán with Campeche, and in Puebla with Tlaxcala.

administrative personnel, and the lawyers who should be defending the accused have to perform other functions.

- Self-criticism, for having many people assigned to posts that do not correspond to their training
- Low prestige: The officials of the 5 institutions involved know that they presently have a bad reputation in the opinion of society.
- Human capital with high potential: all the institutions believe they have good elements.
- Practically all the institutions recognized that corruption is a problem, although no one pointed to any specific act of corruption.
- Lack of planning in all institutions of the executive branch. The majority of the courts have an absolutely major part in prevision regarding budgets and control in contracting of new jobs and a generally more solid infrastructure.
- Lack of documentary systematization: This is a problem that mainly affects the public ministry since there is presently an enormous accumulation of court files. Furthermore, many investigations are never closed, never concluded, and are therefore literally becoming part of the office furniture because they are piling up and getting in the way. In the new system, case files are no longer kept on paper because everything is done by office automation.
- Multiple accusations among the institutions, but everyone accepts that it is a question of a systemic failure since an institution sometimes has a hard time drafting a document and retains the information out of vengeance. These types of conduct exist but until the seminar was implemented they found relief face to face on the part of those responsible.
- Lack of indicators: Functionaries were always asked in advance to bring their indicators to the seminar, but nobody brought them because they did not exist in many cases. Functionaries cannot measure work or effectiveness without contrastable data. Only the police keep more or less uniform records because they are interested in justifying the number of detentions and crimes attended in order to request more equipment each year.
- Work overload: The workloads are excessive in many entities, above all for agents of the public

ministry, public defenders and the police. It was also detected that this occurs due to poor distribution and obstruction of functions, as well as to particular problems such as absenteeism or turnover of personnel.

- The most common answer was the lack of inter-institutional coordination. All the officials recognized that they had never before sat down at the table to discuss the problems that afflict the present justice system at the local level. This can be noted as a functional achievement of the seminar-workshop.

The workshop activities concluded in 2011 because upon verifying its success as an initiation tool, some states that had not had the opportunity to do it with the SETEC obtained federal resources to carry it out themselves with consultants who had a certain knowledge of the subject. It was also a new experience for the consultants because knowledge of management and organizational development had naturally never been combined or focused on institutions of the justice system. Finally, it should be noted that absolutely all the states that were involved in these seminars were very participative, even though the functionaries initially viewed the introduction of administrative terms with distrust and reluctance, so that by the end there was very large attendance, as noted in the records held by the SETEC.

In the states mentioned, the workshop also served to fulfill one of the requisites of the first quadrant in the SETEC methodology, which stipulated the importance of increasing the awareness of functionaries regarding the need for change in terms of reorganization. Thus, practically everyone has proceeded to carry out the respective organizational diagnoses. The above does not mean that the workshop has been crucial, nor that it was the best of tools. Nevertheless, this was what was in fact done, and it produced positive results and commentaries.

The main author of this study designed the first seminar and conducted three of the fifteen workshops, whereas the second author attended most of the seminars as an official of the SETEC.

Conclusions

Implantation of the new criminal justice system has progressed at an uneven pace of four different speeds

that definitely depends on the political will of the governor in each state of the Mexican republic.

Unlike the implementing agency in Chile, which is a co-ordination, the SETEC has a rigid, vertical organizational structure that propitiates confrontation among its different areas and does not favor specialization. Both the title of the official in charge and the structure of the entity have the anachronistic name of Technical Secretariat in Mexico, which should be modified as soon as possible.

As implementing agency, the SETEC has suffered a high degree of rotation of its leaders that has impeded strategic continuity, as well as the difficulty involved in implanting the system in a federated State like Mexico. Outstanding among the multiple problems this agency faces are the lack of unified direction as seen in the fact that the SETEC was still in the process of defining its internal strategic diagnosis, mission, vision, key processes and post profiles as late as 2012, four years after its initiation. Although lack of experience in such a complex process seems to be an attenuating circumstance, it is debatable that it would seek to orient the entities in doing things that it has not yet undertaken internally itself.

The model of evolution by quadrants, although it is Manichean and leaves out important aspects such as criminal profiles, is nonetheless a good mechanism for evaluating the progress of the process in different states of the Mexican republic. However, the model should be more flexible and should make it possible to evaluate the products of the previous phase since based on a questionable first study done by the INAP in the state of Morelos, the proposed structures and post profiles has multiplied in other states of the republic.

Two different types of implantation model are identified: that which is done according to the types of crimes, the most emblematic case being Nuevo León, and that which is done by regions, best exemplified by Chihuahua. The evidence indicates that the region-based system is better since it permits

control of the planning process and greater control of costs and synergies.

The result of the seminar on the design of the management model which was carried out in the SETEC, that is pre-diagnostic carried out in 17 states of the republic, outlines the characteristics that they have in common. Said aspects are: centralized administrative structures, structures resistant to change, unclear division of labor among the different institutions, lack of inter-institutional communication and coordination among the institutions of the Criminal Justice System, lack of specialization among Criminal Justice System operators, concentration of administrative functions in the substantive units, slow bureaucratic work processes and procedures, barely automated procedures, lack of teamwork schemes, absence of documentation on processes and procedures, disconnection between the work post, the functions and the profile of the operator, absence of planning and follow-up systems in the institutions of justice, lack of indicators to measure the results and performance of the institutions and the work of their operators, work overload, poor results of the institutions of justice, lack of indicators to measure the results and performance of the institutions and the work of their operators, work overloads, poor results of the institutions of justice, lack of continuous improvement processes and application of the quality focus in the services and products of the institutions, low salaries and inadequate systems for evaluating performance and incentives, bad image and reputation in the eyes of society.

The preparation of a workshop on strategic alignment is recommended before each one of the phases of the model proposed by the SETEC. This will make it possible to correct errors and detect deficiencies in performance during the process of implanting the management model in the entities, while updating those in charge of the different operating units that experience a high turnover rate because of their political profile.

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para citar el presente artículo:

Estilo Chicago autor-fecha:	Estilo APA:	Estilo MLA:
Rivas Tovar, Luis Arturo; Pérez Rojas, Gustavo Adolfo y Arriaga Huerta, Juan Blas. 2012. Implantation of the Accusatory Criminal Justice System in Mexico. <i>Administración & Desarrollo</i> 40(56): 11-26.	Rivas Tovar, L. A.; Pérez Rojas, G. A. y Arriaga Huerta, J. B. 2012. Implantation of the Accusatory Criminal Justice System in Mexico. <i>Administración & Desarrollo</i> , 40(56), 11-26.	Rivas Tovar, L. A.; Pérez Rojas, G. A. y Arriaga Huerta, J. B. "Implantation of the Accusatory Criminal Justice System in Mexico". <i>Administración & Desarrollo</i> 40.56 (2012): 11-26.