CIDAC PRESENTS FINDINGS REGARDING THE CURRENT STATE OF THE NEW CRIMINAL JUSTICE SYSTEM’S IMPLEMENTATION PROCESS WITHIN MEXICO

Since the Constitutional reform was approved, Congress has allocated a total amount of MXN $2,268,852,538.00 to support Mexican states in their implementation of the criminal reform, with the purpose of having a new criminal justice system available within 8 years. Five years later, there is not even a consensus to quantify the progress and results of such an implementation.

This is why CIDAC elaborated a document that reports findings on the current state of the criminal reform’s implementation process, in addition to presenting an independent, objective, homogenous and adequate methodology to assess the state of operations and implementation in local and federal entities.

FINDINGS

The lack of homogenous criteria that is shared by operating institutions at local and federal levels as to measure and supervise the process of implementation and operation of the accusatory Criminal Justice System (CJS).

- Lack of complete, comparable and updated information hinders decision-making that will guarantee the optimal use of financial resources in order to support the implementation process.
- Transitory articles of approved reforms are not in line with the institutions’ reality, that is to say, they are not based in a systematic, broad and detailed knowledge on the real situation of each CJS as well as the challenges they might face and their needs’ outlook.
- Implementation plans are documents that are seldom used, non-existent or elaborated after the criminal reform was approved.
- Institutions are implementing CJS at different paces and quality, which causes asymmetries both in the implementation process as well as operations.
- Regarding operations, criminal procedures mildly adopted all principles of the accusatory criminal systems.
- There is no homogeneity in the sorts of mechanisms of alternative justice in criminal matters.
- Regarding the execution of criminal sanctions, one highlight is the lack of acknowledgement of principles of the accusatory model within audiences in front of an executive magistrate.
- There is a need for developing homogenous and shared follow-up and assessment systems, as well as strengthening the execution of integral plans and improving the institutional coordination mechanisms.
- “Mirror” personnel should be provided for operating institutions with the purpose of doing paperwork and addressing issues of the old and current systems.
- Eleven states do not have available information on the implementation process that is available for the general population; this information ought to be ordered using schemes
of accountability and responsibility for officers that are appointed within security and justice institutions.

Using the methodology developed by CIDAC, a ranking of federal entities was made according to the progress and quality within the implementation process for the criminal reform with the purpose of knowing what place each state has within all procedures.

It can be seen that in the states of Chihuahua, Nuevo León, Baja California, Tabasco, Yucatán and Guanajuato are the ones that present the most progress in their development process and that it has been of better quality compared to the others. On the other hand, Guerrero, Querétaro, Tlaxcala, the State of Mexico, Jalisco and Zacatecas are the ones that have the least progress compared to the rest of the entities, thus, they present a major margin for improvement.

Graphic representation on the federal entities’ ranking as of their progress by October 2013.

In the current report, results on the assessment of the current aspects can be found: 1) conditions for implementation, 2) enabler for results
1) **CONDITIONS.** Necessary circumstances that should be provided within each CJS during the implementation process in order to reach good institutional and systemic results.

**Planning of the process**

- Regarding the National Security Commission (formerly known as the Secretariat of Public Federal Security), there is no document dealing with the implementation process of the criminal reform.

- In April 2012, the Mexican Public Attorney’s Office (PGR) established a “Unit for the Implementation of the Accusatory Criminal System”. The unit started with the implementation practically four years after the Constitutional reform was approved. Currently, there is no plan or information about what is the authority doing to implement the accusatory justice system.

**Institutional Symmetry**

- In the local level, judiciary powers are the ones that present the most progress, well above the Public Attorney’s Offices.

- In general terms, there has been little attention for the adjustments that public security institutions need, despite the fact that they are a cornerstone for the proper functioning of the system.

- Despite that the Offices of the Ombudsman present the greater gaps to achieve their institutional strengthening, in only a small amount of cases necessary support has been provided to address these disadvantages.

**Implementation pace**

- By the time this report was elaborated, the new CJS has been implemented in 16 out of 32 entities. It fully operates within three states: Chihuahua, State of Mexico and Morelos, and partially –for crime or territory – in 13 states: Guanajuato, Zacatecas, Durango, Baja California, Oaxaca, Yucatán, Nuevo León, Tabasco, Chiapas, Puebla, Veracruz, Coahuila and Tamaulipas.

- Only two of the 16 entities have adopted a different implementation strategy: Nuevo León decided to make it by crime, starting with non-serious crimes, and Chiapas chose to it in a combined way, mixing crime and territory.

- Of the 16 states, only two, Chihuahua and the State of Mexico, did not delay their original operating schedule.

**Financial and budgetary resources**

Regarding the criminal reform case, the judicial sector is classified as expenses incurred both to State Justice Procurement Offices (PGJ) as well as local judicial powers or tribunals (TSJ).

**Percentage change in PGJ (CPGJ) expenditure for the 2010-2013 period**

- As an average, the variation rate for budget allocated for justice procurement is 27.4%. There are 12 federal entities above average, that is to say, practically one out of three states has had a larger increase.
Two out of three local Attorney’s Offices have had increases lower than 27.3% - or even, decreases – in the analyzed period. Another important fact is that only five states have increases higher than 50%.

**Percentage change in CJS (CPCJS) expenditure for the 2010-2013 period**

- Yucatán is the state that registers the largest increase (80%) in the budget allocated for justice procurement within the aforementioned period.
- It should be highlighted that Yucatán and Nuevo León are the entities where the highest percentage increase was observed, both in the budget allocated to justice procurement as well as to jurisdictional bodies.
- The states where increases, or even decreases, have been observed are two: Durango and Chiapas; in the rest of the entities, there have been increases that range between 7.9% and 80%. As an average, the 30.1% variation is slightly higher comparing it to the increase in Attorney’s Offices.

**Percentage changes in the average expenditure of PGJ and jurisdictional bodies compared to the total budget allocated for the 2010-2013 period**

- Chihuahua is the state that uses more financial resources, allocating 5.2% of the state’s budget during the analyzed period. On the other hand, Mexico City stands out as the entity that provides the largest amount of resources for the Supreme Court of Justice with 2.7%.
Civil society
- It is evident that human rights and security issues are a high priority in the interests of organized civil society.
- Of 72 organizations identified, only 27 are focused on the study and follow-up of the criminal reform from different angles and of them, 22 are located in Mexico City.
- It is worth asking why if the transformation of criminal justice system is a national issue, the interested is focused only in the capital of the country.

2) **ENABLERS FOR RESULTS** (essential aspects for operations in the accusatory system). For the presentation on the current situation of enablers, it was decided to limit the review to those entities that have been operating under the new criminal justice system for a year or more:
- Institutions do not have enough information to follow-up implementation.
- There are inconsistencies between the number of assistants to capacitation courses and officers.
- There are no standards for administrative staff.
- Capacitation does not involve all operators.
- There is no evidence of an effective and homogenous operation for the professional career service.
- There is not a positioned building typology for the Offices of Public Prosecutor, Public Attorney, evidence depots as well as specialized personnel.

**Structure and administration models adapted for the accusatory system**
- In the context of transition towards the accusatory system, justice procurement bodies have integrated into Offices of Public Prosecutors as well as Public Attorney’s Offices.

**Restorative justice**
- Only Baja California, Chihuahua, Morelos and Zacatecas limit the alternative functions of the Judiciary Power to civil, family or commercial disputes and provide exclusivity in criminal matters for Public Attorney’s Offices.

**Victim Support**
- The state of Nuevo León is a highlight on the issue, due to its “System for care, support and protection for crime victims”.

**Legal framework**
- Differences in the adoption of principles of the accusatory criminal process
- Heterogeneity in the mechanisms of alternative justice and its headquarters
- Laws that do not contemplate alternative punishments rather than prison
- Lack of principles in the accusatory model of executing criminal sanctions
METHODOLOGY

CIDAC presents an integral, systemic, flexible and rigorously designed methodology to assess both the implementation as well as the operations of the CJS in Mexico. The goal of this methodology is to evaluate the performance of local and federal institutions in the implementation and operating stages of the accusatory CJS. This assessment seeks to measure results in an orientation towards users as well as the general population.

The scheme can be applied:
- At federal and local levels
- At institutional levels
- Per type of results
- Per type of enabling condition
- Per type of implementation condition

Comparisons can be made:
- Per federal institution at results level
- Per institution (both federal and local) at enabling conditions level.
- Per institution at implementation conditions level

This rigorously designed, integral, systemic, flexible and easily manageable methodology – based on the best practices – contributes to comprehend the process and channel efforts. Especially now that the approval for budgetary resources in 2014 of 5.9 billion pesos, 3.7 times more than the total amount allocated in 4 years (1.6 billions).

Download the documents “Findings on the progress over the implementation process” and “Methodology for assessment”.

About CIDAC

CIDAC (Centro de Investigación para el Desarrollo) is an independent, non-profit think tank that undertakes research and proposes viable policy alternatives for the medium and long-term development of Mexico. It aims to strengthen the Rule of Law and creating favorable conditions for Mexico’s economic and social development as well as to enrich Mexican public opinion and providing analyses and information for societal decision-making.

Press contact: Lorena Segura. T: (55) 59851010  Ext 130, C: 5516491801, lorena.segura@cidac.org
Twitter: @CIDAC
Facebook: cidac.org
YouTube: CIDAC1