



Criminal Procedure Reform in Mexico: Where Things Stand Now

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1. Introduction: Criminal Procedure Reform in Mexico

On June 18, 2008, a federal reform in Mexico mandated a package of changes to the criminal justice system throughout the country, covering 33 jurisdictions: the federal justice system and all 32 states (including the Federal District of Mexico City). Although portions of the reform dealt with changes to the criminal justice system in general, the emphasis on investigatory and adjudicatory practices – and on improving due process in general – justifies referring to the reform as principally one of criminal procedure.¹

This paper assesses progress in the implementation of the 2008 reform across the 33 jurisdictions mentioned above. The content and significance of the changes have been covered widely by both policy analysts and legal scholars (e.g., Shirk 2010; Ingram, Rodriguez-Ferreira, and Shirk 2011; Zwier and Barney 2012; Ingram and Shirk 2012), especially since it is part of a broader global and regional transformation in criminal procedure that dates back at least to Italy's prominent 1988 reform (Grande 2000; Amodio 2004) and started spreading through Latin America in the early 1990s (Langer 2007). Given existing attention to these aspects of the reform, I only briefly summarize the reform's content within this paper. The main focus in policy and academic circles is quickly shifting to the implementation of the reform and to questions about whether the reform, even when completely implemented, is achieving its anticipated results, why it is doing so, or why not. The attention here to the progress of implementation is part of this new focus.

Key to the assessment of implementation and the performance of the new system is measurement. This is true of any assessment project: we need to know both where we have been and where we are now in order to know where we are going and whether we need to change course. Measurement challenges are ubiquitous in program evaluation, policy assessment, or in gauging the trajectory, causes, and consequences of any institutional change. These challenges are particularly acute in the Mexican justice system, as data from this system are historically unavailable, incomplete, or incorrect. With some exceptions, Mexican courts remain persistently weak in their ability to generate, analyze, and disseminate systematic information on the quantity and characteristics of cases that flow through their institutions. Indeed, the ability to generate, analyze, and disseminate systematic data should be a priority in building institutional capacity within the justice system, a point to which I return in the conclusion.

With these data challenges in mind, this paper has three goals: (1) provide an overview of implementation across all Mexican states and the federal justice system; (2) provide a closer view of implementation in the 12 more advanced states, including the three states in which, at the close of 2012, the reform was fully operational across the entire state (Chihuahua, State of Mexico, and Morelos); and (3) an even closer look inside the most advanced state, Chihuahua, by examining the progress of implementation across the state's 14 judicial districts.

In doing so, I generate several measures of implementation for the new criminal procedure system: (i) a simple measure of reform approval; (ii) a simple measure of reform implementation, capturing the date on which the new system became at least partially operational in the relevant jurisdiction; (iii) the proportion of criminal cases entering the new system relative to all new criminal cases in both the traditional and new systems; and (iv) a reform index, composed of the three previous measures plus additional measures of the geographic coverage of the new system and the age of the local implementing legislation. Some of the states began a reform process long before the 2008 federal reform (e.g., Nuevo León in 2004), so the measures stretch back in time to 2003. Ultimately, the measures developed here are comparable both spatially (across states) and temporally (over

¹ In Mexico, the reform is frequently referred to as “*reforma penal*”, translating as either penal or criminal reform.

time), offering both a comparative view of the reform process across all 33 criminal jurisdictions – all 32 Mexican states and the federal justice system – and a longitudinal view of the reform process within any given jurisdiction. The temporal and spatial coverage of the measures also offer numerous opportunities to examine causes and consequences of the reform.

Looking ahead, the next section offers a brief summary of the content of the 2008 federal reform. Next, I explain the data and methods relied upon to generate the measures of reform implementation. In the third section, I present the measures using both mapping software and longitudinal graphs to visualize the progress of implementation. This section culminates with the main measure of progress in implementation – a reform index. Identifying Chihuahua as the leading state in implementing the reform, the index ranges from 0-100 (Chihuahua = 100), sorting all states according to how they compare to Chihuahua in 2011. Subsequently, I examine Chihuahua in greater detail, conducting an analysis of implementation within the state at the level of judicial districts. The final section offers some conclusions, returning to the issue of building greater institutional capacity for courts to generate, analyze, and disseminate their own data.

2. Summary of Reform Content

In broad terms, the 2008 reform sought to bring about a transition from a mixed-inquisitorial system of criminal procedure historically associated with the civil law tradition of the European continent to an accusatorial system of criminal procedure historically associated with the common law tradition of England and its colonies, including the United States.²

Table 1 summarizes the areas of reform. As becomes evident from even a cursory reading of the table, this revolutionary transformation (Langer 2007) means dramatic changes in the daily operation of the criminal process, from policing, investigations, and prosecutions, to the full range of court procedures (pre-trial, trial, and sentencing), and even post-sentencing supervision of compliance and enforcement.

In policing, greater emphasis is placed on investigatory capacity.³ The reform explicitly seeks to protect both victim rights and defendant rights. The protection of victim rights is guided by general principles that seek to restore the victim and community to the status quo ante, and by alternative procedures that seek a speedier resolution. Restorative and alternative justice also protect defendant rights, along with an explicit commitment to the presumption of innocence as a guiding principle, the strengthening of public defenders, and requirements that all defense attorneys be licensed⁴ and search warrants be issued by judges (prosecutors used to be able to do this). Also, the 2008 reform narrowed a previously expansive definition of flagrante, and established the inadmissibility of evidence that was derivative of unlawful actions (“fruits of the poisonous tree” doctrine).

² For additional discussions of the criminal procedure reform and its consequences, see Shirk 2010; Ingram and Shirk 2012; Ingram, Rodriguez-Ferreira, and Shirk 2011. On Mexico’s mixed-inquisitorial style of criminal procedure prior to 2008, see Sarre and Jan Perlin (2007). On comparative legal traditions and criminal procedure, see Shapiro (1980), Damaska (1986), and Glendon et al. (2008).

³ A pending issue remains where exactly to strike the balance between police and prosecutorial autonomy. Historically, police in Mexico and other civil law countries are subordinate to prosecutors, and the 2008 reform explicitly retains this structural relationship. Some observers argue the subordination of police is necessary given the history of arbitrary force and corruption among Mexican police. However, this argument overlooks the roots of this institutional design in the civil law tradition (e.g., Thaman 2008, ch.2). Separately, the misuse of power among prosecutors and judges does not prevent efforts to reform these institutions, so it is difficult to justify leaving the issue of police autonomy aside based on this history alone. A more relevant but difficult question pertains to the process of how exactly a police force that is both weak and dependent is made both strong and autonomous, and whether to promote these goals sequentially or simultaneously.

⁴ Previously, defendants could be represented by a “trusted person” (*persona de confianza*), someone who need not be a licensed attorney or even trained in law.

Table 1. Summary of Reform Content

1	police training	enhance investigatory capacity; still subordinate to prosecutors
2	victim rights	make reparation/restitution explicit goal; restorative justice; private prosecution also afford victims a mechanism of accountability if prosecutor does not pursue case (see below)
3	defendant rights	presumption of innocence, access to public defenders, defense attorneys must be lawyers (no more "persona de confianza"), flagrancia redefined and narrowed (no more "flagrancia equiparada"), search orders must come from judge, poisonous fruits doctrine (exclusionary rule)
4	preventive or pre-trial detention	limit use to certain enumerated crimes and unusual circumstances
5	prosecutorial discretion	now allowed (principio de oportunidad) in some cases, e.g., minor cases, informant cases
6	alternative exits	plea bargaining (proceso abreviado); also reparative agreements (acuerdo reparatorio) and ADR: mediation, conciliation; principle of alternative justice
7	alternative sentencing options	suspended process ("procesos suspendido"; i.e., diversion, probation, suspended sentences)
8	private actions	"acción particular", or "acción privada"; also see "acción popular" (diffuse or collective rights, e.g., Brazil); afford greater participation, as well as mechanism to hold prosecutor accountable if case is not prosecuted
9	due process judge	juez de control/garantías; oversees pre-trial phases; institutionalizes separation between accusing and sentencing judges, ensuring that no single judge will hear all phases of court proceedings
10	adversarial process (oral hearings and trial)	in <u>all</u> phases, including the public explanation of sentence
11	compliance judge	juez de ejecución de sentencias/penas; oversight of enforcement of sentence transferred from executive to judiciary
12	organized crime	defined as 3 or more people acting in concert; house arrest, or "arraigo" (increased to 40 days, renewable once); asset forfeiture (extinción de dominio, aplicación de bienes); wiretaps

Turning to other issues, the grounds for using preventive or pre-trial custody were narrowed, and the reform adopted the "principle of opportunity", or prosecutorial discretion. Previously, once a criminal action was initiated, the contrasting "principle of legality" required that, barring rather exceptional circumstances, the prosecution would be carried out in full and to its final conclusion. Put informally, once a case or investigation got on the "highway" of traditional criminal procedure, the prosecutor had to see the case all the way to the road's end. Under the new system, the prosecutor has much more discretion about whether to enter this "highway" in the first place, but

even once on it, the reform provides for multiple “alternative exits”, including plea bargaining. Private prosecutions – a legal action that does not exist in the U.S. but that is not uncommon in other countries, even Canada and England – enhances victim rights by affording victims the ability to hold prosecutors accountable for decisions not to prosecute, balancing against improper use of prosecutorial discretion.

At the start of the process, the reform creates a new figure – the due process judge (*juez de garantia* or *juez de control*). This judge exercises a function similar to a judge at first court appearances or preliminary hearings in the U.S., establishing that sufficient grounds exist for the criminal action, handling all pre-trial court procedures, including plea bargaining or other negotiations, and essentially certifying the case for trial, if necessary. If the case goes to trial, it does so before a different judge. Separating out the pre-trial and trial functions among different judges was important because previously the same judge would be responsible for the case from start to finish. Given that judges often worked closely with prosecutors during the investigatory phase, and that once a judge made a decision to hold a defendant over for trial the same judge was unlikely to reverse himself and find the defendant innocent, this aspect of the reform strengthened judicial impartiality, independence, and the separation of powers.

At the end of the process, the reform creates another new figure – the compliance judge (*juez de ejecución de sentencias* or *juez ejecutor*). The key issue here is that supervision of the sentence and sentence conditions is transferred from the executive branch to the judicial branch. Thus, rather than having the executive branch decide whether the terms of a judicial sentence have been met, or whether an inmate should receive good-time or work-time credit, this power is now in the hands of the judiciary itself. Given this new oversight role for judges, observers expect improvement in the enforcement of sentences and perhaps even spillover effects in the improvement of prison conditions now that the judicial eye is trained more closely on how exactly sentenced individuals are serving their sentences.

At all hearings, proceedings are now oral. Orality is inextricably linked with principles of immediacy, publicity, contradiction, continuity, and concentration. For instance, orality implicitly requires the physical presence of the judge (*juez natural*) to moderate proceedings among adversarial parties, and this physical presence of a moderator-judge constitutes *immediacy*. This is significant in Mexico and other civil law countries because traditional court procedures were often processed in written format within a dossier (*expediente*). The fact that proceedings were largely written or document-based meant that the judge did not need to be present, so hearings and trials were usually handled by clerks and secretaries. The reform’s requirement of orality also ensures that evidence is aired and entered into the record in an open, *public* forum – enhancing transparency – and where the defendant and defense counsel are required to be present, ensuring that the right to *contradiction* is effective. Past practice allowed the prosecutor to enter evidence unilaterally, building the dossier, and this evidence had probative value at trial. Further, the defense generally only had access to the dossier right before trial. These features of the criminal process led to what Sarre and Perlin (2007, 374-375) refer to as a powerful “prosecutorial advantage”. Orality in proceedings is also linked with principles of *continuity* and *concentration*, meaning that court procedures are condensed in time rather than being broken up over weeks or months while the dossier moves from one office to another.

The reform also has far reaching implications for law schools and legal education. At a minimum, the reform requires all actors in the criminal justice system – police, prosecutors, defense attorneys, judges, clerks, law professors, and correctional officers – to learn a new way of doing business. In broader terms, the reform has the potential to improve the overall performance of the justice system and change how this system is perceived, both by institutional insiders and the public, thereby promoting a much deeper change in legal culture and the overall sense of rule of law. Given

Mexico's current security challenges and persistently weak justice institutions, this promise is highly attractive. In short, it is hard to overstate the significance of the criminal procedure transformation taking place in Mexico.

3. Data and Methods

The 2008 constitutional reform can properly understood as a watershed moment. However, this reform did not install a new system of criminal procedure. Rather, it required the states and federal justice system to approve implementing legislation in order for the reform to become operational. Aside from police training and some exceptional measures aimed at fighting organized crime (e.g., extended *arraigo*,⁵ electronic surveillance, and asset forfeiture), all other aspects of the 2008 constitutional reform are governed primarily by two key pieces of implementing legislation that must be passed in each of the 33 jurisdictions: (1) a new code of criminal procedure (called either "código procesal penal" or "código de procedimientos penales"; hereafter CCP), and (2) a new sentencing oversight law (called either "ley de ejecución de sanciones" or "ley de ejecución de penas"; hereafter LES).

The new CCP is undoubtedly the centerpiece of the reform, and the LES supplements the CCP with guidelines on the supervision of sentences once these are handed down. On occasion, the new LES is passed as a chapter of the new CCP. The new CCP is not just the heart and soul of the new procedural regime; its effective date also marks the end of the effectiveness of the old procedural regime. Given that all crimes need to be processed under the old code as long as the new code is not yet effective, this means that long lags exist until all the cases initiated under the old system are taken care of. In Chihuahua, for instance, which by all accounts is the leading state in implementing the reform, the new code took effect in the first judicial district in January 2007 and was effective in the entire state by the end of 2008. Still, four years later, in late 2012, there are cases entering under the old procedural regime.⁶ And this is the most advanced state, where one district (Rayón) already has 100% of new criminal cases entering under the new procedural regime, and the state as a whole was hearing 87% of all new cases under the new system by the end of 2011! If these kinds of lags are present in the most advanced state, what will happen in states where the reform has been approved but not yet taken effect, or worse, where it is still being debated and not even approved? Thus, the evaluation of progress in the implementation of the reform requires assessing the extent to which each jurisdiction has passed these two laws and made them operational.

The unit of analysis for the generated measures of reform implementation is the "state-year". That is, the measure captures progress in implementation for each state and the federal government (33 justice systems), and for each year in the time span from 2002 through 2012 (November 30, 2012). Thus, a comparison between states in the same year can be made, as well as developments within states over time. For example, comparing Chihuahua-2008 with Morelos-2008, as well as compare Chihuahua-2004 to Chihuahua-2011 is thus possible.

Progress in implementation is assessed in three steps. First, those states that have approved the key piece of local legislation, the CCP, and the year in which they did so are identified. Second, those

⁵ *Arraigo* is an exceptional and controversial form of pre-trial, investigatory custody reserved for persons suspected of involvement in organized crime. Under the terms of the 2008 reform, a suspect can be held, virtually incommunicado, for a period of 40 days, also renewable once (i.e., a total of 80 days; see revised art. 16 of Constitution).

⁶ These cases are likely crimes that occurred prior to the effective date of the reform but were not discovered until after that date, crimes that are "continuous", "permanent", or "ongoing" until they cease completely (e.g., kidnapping, disappearance), and other crimes where the date on which formal court procedures start can sometimes be far removed from the real, temporal beginning of the criminal activity. These long lags or "tails" of traditional cases are to be expected. In Chile, for instance, which installed a new criminal procedure system between 2000-2005 and is the regional standard for successful implementation of criminal procedure reform, new criminal cases were entering the traditional system through 2010, five years after the reform was fully operational throughout the entire country (Tiede 2012).

states that, beyond approving the reform, have proceeded to implementation are also identified. This measure captures the year in which the new system became at least partially operational in the state.

Third, a Reform Index is constructed. The Index is a composite measure of various developments, including the two mentioned above, that captures progress in reform implementation. The 11 components of the index include:

- (1) **Presence of CCP reform bill**, or *iniciativa* (1 if a reform bill is circulating in the state legislature, 0 otherwise);
- (2) **Presence of LES reform bill** (1 if a reform bill is circulating in the legislature, 0 otherwise);
- (3) **Approval of CCP** (1 if new CCP approved, 0 otherwise);
- (4) **Approval of LES** (1 if new LES approved, 0 otherwise);
- (5) **Full reform of CCP** (1 if new CCP represents a completely new law, not merely minor, cosmetic adjustments to existing CCP, and new CCP regulates all crimes in the jurisdiction in which it will take effect; 0 otherwise; e.g., State of Mexico receives a 0 prior to 2009 because its reform consisted of simply adding or adjusting a small set of articles to the existing, traditional CCP; also, Nuevo León receives a 0 because its reform initially applies only to a subset of crimes);
- (6) **Full reform of LES** (1 if new LES represents a completely new law, not merely minor, cosmetic adjustments to existing LES, and new LES passed separately from new CCP, i.e., not simply included as extra chapter at end of CCP; 0 otherwise);
- (7) **Implementation of CCP** (1 if new CCP is at least partially operational in the state, 0 otherwise);
- (8) **Implementation of LES** (1 if new LES is at least partially operational in the state, 0 otherwise);
- (9) **Age of CCP implementation** (years that CCP has been at least partially operational in state; 0 if not implemented; normalized relative to maximum value that year so that range is 0-1);⁷
- (10) **Geographic coverage** (proportion of judicial districts or municipalities, as percentage of total, in which new CCP has been implemented; 0 if not implemented; normalized relative to maximum value that year so that range is 0-1);
- (11) **New cases** entering new, reformed system (as a percentage of all new criminal cases entering both reformed and traditional system; 0 if not implemented; normalized relative to maximum value that year so that range is 0-1);

To gather the data above, the research relied mainly on archival sources (state and federal). Primary documents include state constitutions and legislation, including internal regulatory documents of the courts (*Leyes Orgánicas*) and annual “state of the courts” reports (*Informes Anuales*). Secondary sources supplement these documents, and consist of government reports, policy briefs, academic research, and journalist accounts. The main secondary source consisted of official reports and updates issued by SETEC (*Secretaría Técnica del Consejo de Coordinación para la Implementación del Sistema de Justicia Penal*), a federal agency within the Interior Ministry (*Secretaría de Gobierno, SEGOB*) that tracks and promotes the reform’s implementation. SETEC’s information on the reform’s progress was used primarily to fill in gaps in the data where official state documents were unavailable or inaccessible.

A few cautions are in order given the nature of multiple data sources. Annual court reports

⁷ Regarding age of implementation, comparative studies often use the longevity of institutions to assess the degree of institutionalization or the depth of an institution’s roots in society (e.g., Mainwaring and Scully 1995, 13-14). All else being equal, we should expect that a reform that has been operational longer, even if only partially, should be more rooted or established than a reform that began implementation more recently.

Informes) are published irregularly across states. Some states publish them in January or February of a new year and the resulting document refers to all work completed during the previous calendar year (e.g., Chihuahua, Michoacán). From the perspective of analysts tracking progress on a year-to-year basis, this publication calendar makes the most sense as the annual data can be cross-referenced with other annual data sets (e.g., economic, crime, or population data from INEGI, the national statistics office). Other states, however, publish *Informes* in the spring, mid-year, or towards the end of the year, and it is frequently unclear what time period is covered by the report, reducing transparency and accountability. For instance, the judiciary in the State of Mexico publishes its annual reports in the first week of December, yet some of the activities reported take place late in the previous year (e.g., Informe 2006 covers activities as far back as November 23 and December 15, 2005). This reporting structure makes cross-state comparisons difficult and also impedes cross-referencing judicial statistics with separate, existing data sets.

Also, many official sources do not keep updated or centralized records on the new criminal justice system, even regarding the basic laws governing the system. For instance, in the state of Sonora a new CCP was published in the state's official newspaper on January 30, 2012; however, as late as November 30, 2012 – a full 10 months after the law was published – this document was not available on either the legislature's website or on the official website explicitly dedicated to disseminating information regarding the new criminal justice system!⁸

Lastly, the process of criminal procedure implementation in Mexico changes rapidly. Indeed, 2012 saw a doubling in the number of states with approved CCPs compared with 2011. Given the pace of change and the multiple jurisdictions involved, the landscape of criminal procedure reform in Mexico is highly uneven, unstable, and can alter quite quickly over the span of just a few months, depending on budgetary conditions, federal incentives, legislative calendars, local political conditions, media coverage, societal support, and other factors. Again, the measures reported here are intended to capture the state of implementation as of November 30, 2012.

4. Overview of State-Level Progress

Figures 1-6 summarize the progress of implementation in the Mexican states. These figures and the discussion below present measures of reform approval, implementation, and the composite reform index, in that order.

4.1 Reform Approved

Figure 1 offers an overview of the approval of new CCPs over time across the states. Darker colors identify frontrunners who approved the new system early on, and lighter colors identify those states that have taken longer and approved the reform only recently. White identifies states whose legislatures have not yet approved a new CCP.

Several states led the reform process, even pre-dating the federal reform of 2008, starting with Nuevo León in 2004, and including Chihuahua, Morelos, Oaxaca, and Zacatecas. The prominence and mandatory character of the 2008 reform led many observers to anticipate that other states would quickly follow suit, especially since there were existing models for reform in the abovementioned states, but the next three-and-a-half years (Jun. 2008-Dec. 2011) saw only seven more states approve the reform, bringing the total to 12. Thus, at the close of 2011, there was substantial pessimism about the pace and progress of implementation. This concern continued through June 2012, as the country crossed the halfway mark of the eight-year reform period between 2008 and

⁸ Accessible at <http://reformapenalsonora.gob.mx> (visited Nov. 30, 2012). The only place where the new CCP was available to the public was on the judiciary's website, under a link listing "recent reforms" (<http://www.stjsonora.gob.mx/>).

2016 set by the constitutional reform. However, 2012 saw nearly a doubling of the states with approved CCPs, with nine new codes of criminal procedure approved in this year. The lightest blue identifies these states in the map in Figure 1.

Figure 1. New CCP approved.

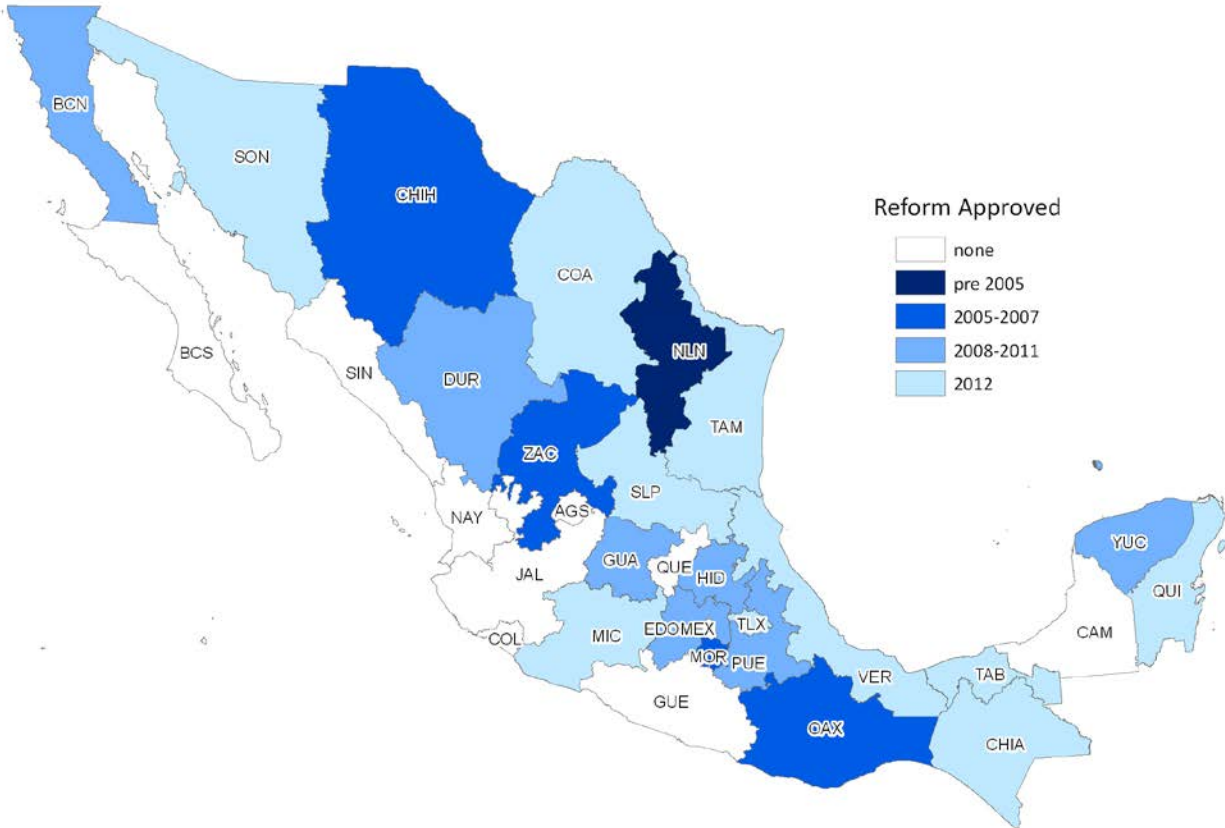
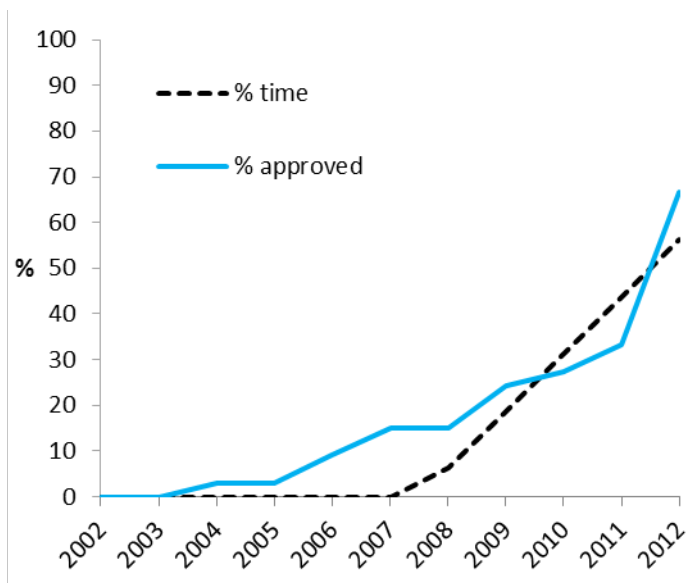


Figure 2. Pace of approval of new CCPs.

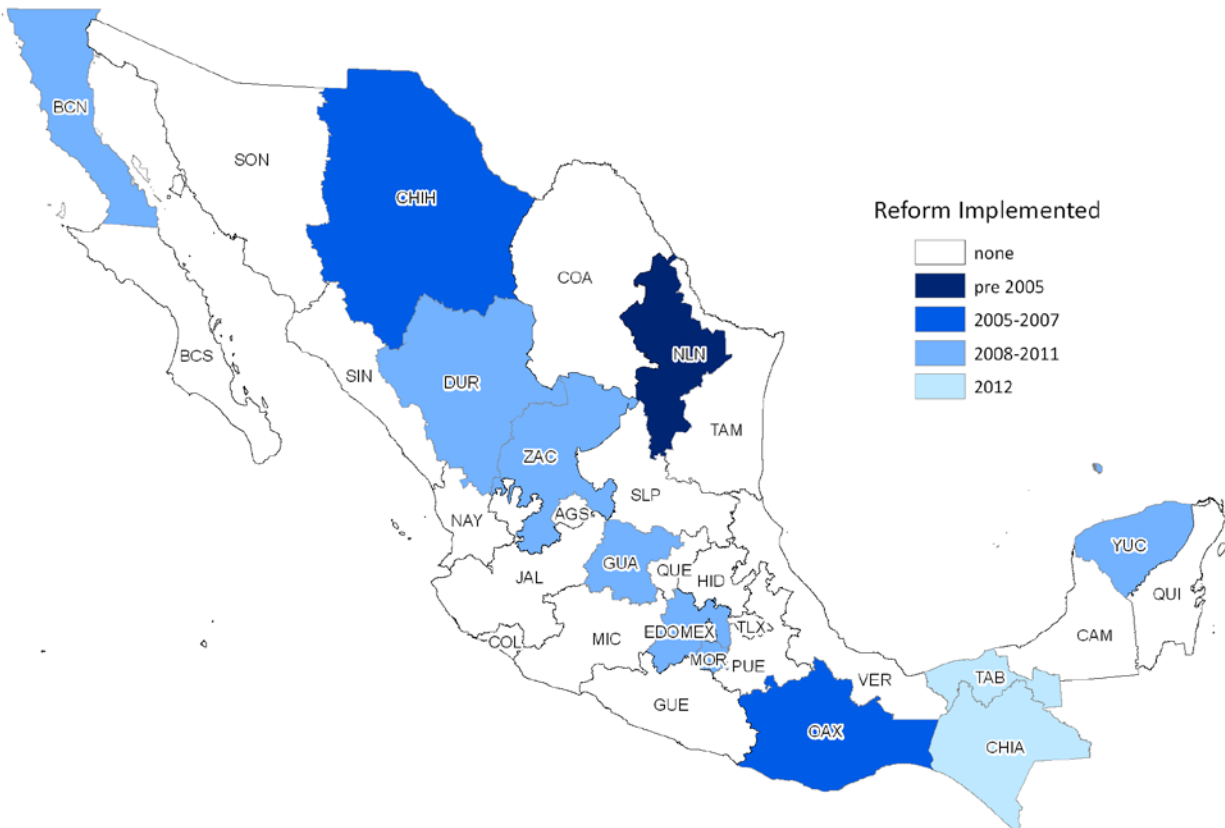


Thus, at the close of 2012, 22 of 33 jurisdictions had new CCPs, or 67% of the total (69% if the federal jurisdiction is excluded and only states and Mexico City are considered). Figure 2 shows the proportion of the eight-year time period that has elapsed (dotted line) and the proportion of the 33 jurisdictions with approved reforms (blue line). Where the blue line is above the black line, the approval of new CCPs is ahead of schedule; where the blue line drops below the black line, the approval of new CCPs is behind schedule. The graph visualizes the cause of pessimism between 2008-2011, as the blue line dipped below the black. Conversely, at the close of 2012, the blue line rises back above the black. Given that the reform period is 56% complete (four-and-a-half years into eight-year period), the fact that the approval of new CCPs is 67% complete is good news, especially in light of the concerns in 2011 regarding the pace of reform.

4.2 Reform Implemented

Beyond the formal approval of the reform, it must take legal effect and become operational. Figure 3 offers an overview of the 12 states where, at the close of 2012, the new CCP was legally effective, i.e., those states where the new CCP was at least partially operational. Again, darker colors identify those states where the new CCP became operational early on, and darker colors identify states where the new CCP became operational only recently.

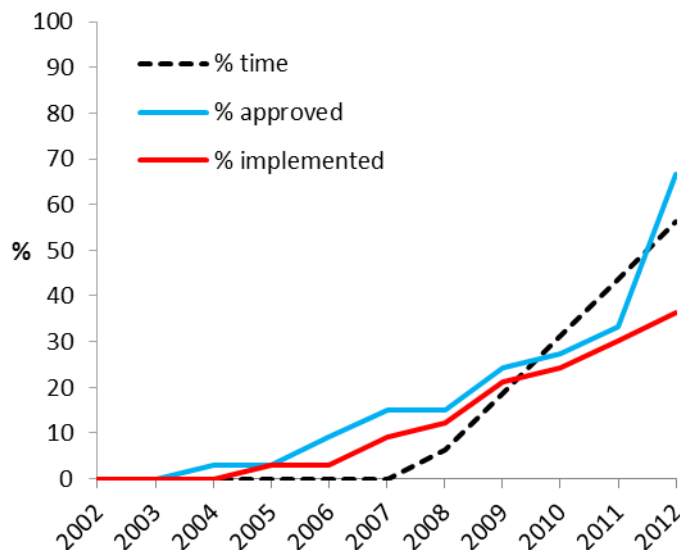
Figure 3. Reform Implemented.



The picture that emerges from this map gives renewed cause for concern regarding the pace of reform. Specifically, 56% of the way through the reform time period only 36% of Mexico's 33 jurisdictions have a new and operational CCP (this proportion remains only 38% even if the federal

justice system is excluded).⁹ Figure 4 offers another visualization of this phenomenon, adding a red line for the pace of implementation to the data previously reported in Figure 2.

Figure 4. Pace of implementation of new CCP.



The delay in making the new justice system operational is what is generating concern among observers of the reform. Justice Juan Silva Meza of the Mexican Supreme Court articulated this concern on June 5, 2012, pointing out that since only three states have fully implemented the reform throughout all judicial districts and for all crimes (Chihuahua, State of Mexico, and Morelos), the reform process is really less than 10% complete (Aranda 2012: 15).

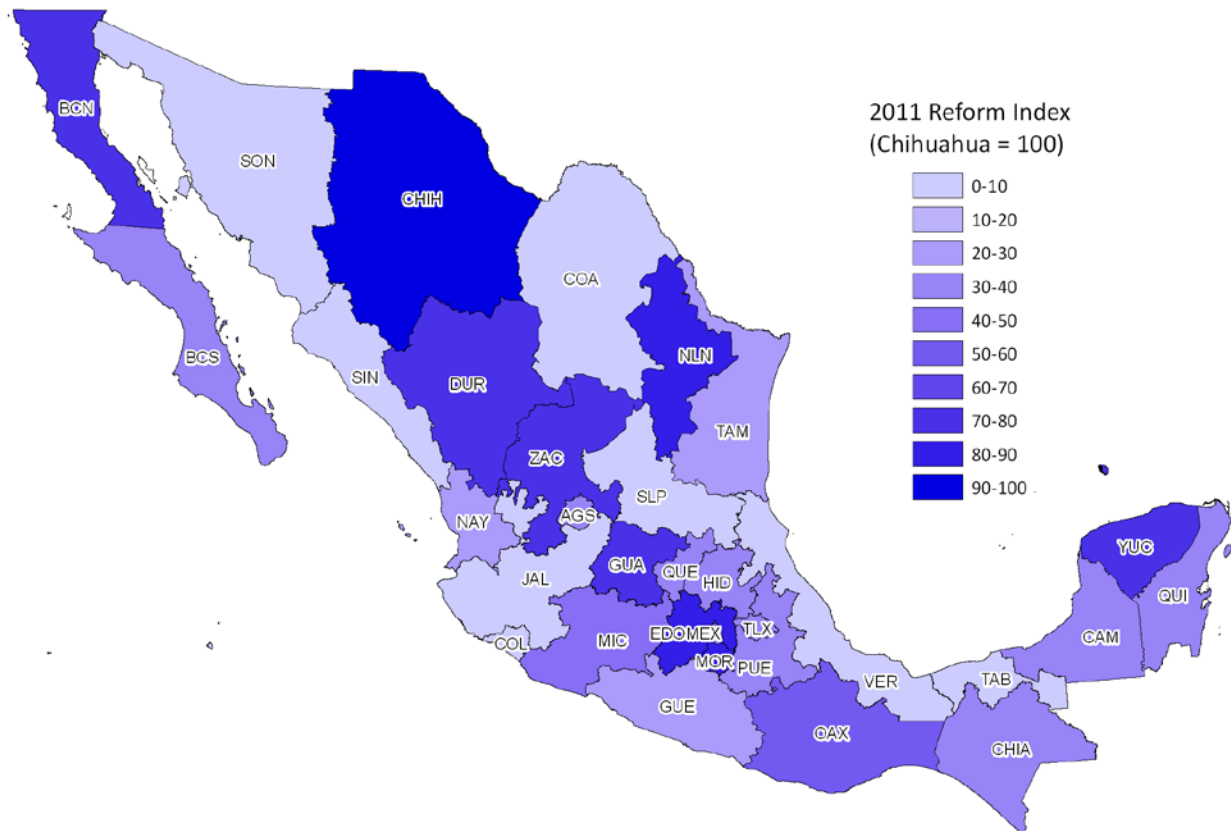
4.3 Reform Index

Figure 5 offers an overview of the progress of implementation based on an index of reform for the year 2011. As discussed earlier, this index captures the presence of bills for CCP and LES, the approval of both a new CCP and new LES, the real operation of the new CCP and LES, and three other variables: the geographic coverage of the new CCP, the age of the new CCP, and the volume of new criminal cases entering the new justice system, as a percentage of all new criminal cases entering both the traditional and new systems (see Data and Methods section for details). All values are normalized relative to the maximum value of Chihuahua, to give the index a range of 0-100 (Chihuahua = 100). Based on this Index, darker colors identify those states where implementation has advanced the farthest, and lighter colors identify those states that are farther behind.

To demonstrate the external validity of this measure, Table 2 compares the index values to SETEC’s June 2011 measures of the progress of implementation (SETEC 2011, 29-30). The correlation between the Index and the SETEC data for 2011 is high (corr = 0.80). That is, quite apart from the internal validity of the index as constructed (i.e., there are logical reasons to anticipate the index measures what it intends to measure, namely, progress in the implementation of reform), the correlation with the SETEC measure supports the conclusion that the Index is measuring the same concept that others have tried to measure.

⁹ Several states with approved CCPs are scheduled to make these codes operational in 2013 (e.g., Michoacan, Puebla). However, in previous years, almost every state has experience some delay in implementing their CCP, due to construction delays, training delays, funding availability, or other reasons. Indeed, on Dec. 11, 2012, Michoacan postponed the implementation of its new CCP from January 2013 until February 2014 (Quadratin 2012). For these reasons, any state that planned implementation for 2013 was excluded from this report.

Figure 5. 2011 Reform Index (Chihuahua = 100)



Beyond being a valid measure, however, the rank of states within each measure suggests the Index is doing a better job of capturing the overall progress of the reform. For instance, SETEC ranked Durango #1. While Durango started strong in 2009, the reform there stalled quickly. Whatever the measure, it would be difficult to rank Durango first in either 2011 or 2012. Indeed, the conventional view by the end of 2011 was that Chihuahua, Morelos, and the State of Mexico were frontrunners, yet SETEC ranks these three states third, fourth, and ninth, respectively. In contrast, the Index ranks these states first, second, and fourth. Nuevo León continues to elicit conflicting evaluations and remains a controversial case of reform, primarily due to two factors: (1) an early start (indeed the first reformer) yet an inability to complete the reform process throughout the state and for all crimes; and (2) choosing the unusual strategy of implementing the reform by subject matter, i.e., by type of crime (*implementación por delito*). Nuevo León is discussed further below, but readers should note that the Index ranks Nuevo León third at the close of 2011 while SETEC ranked it tenth.

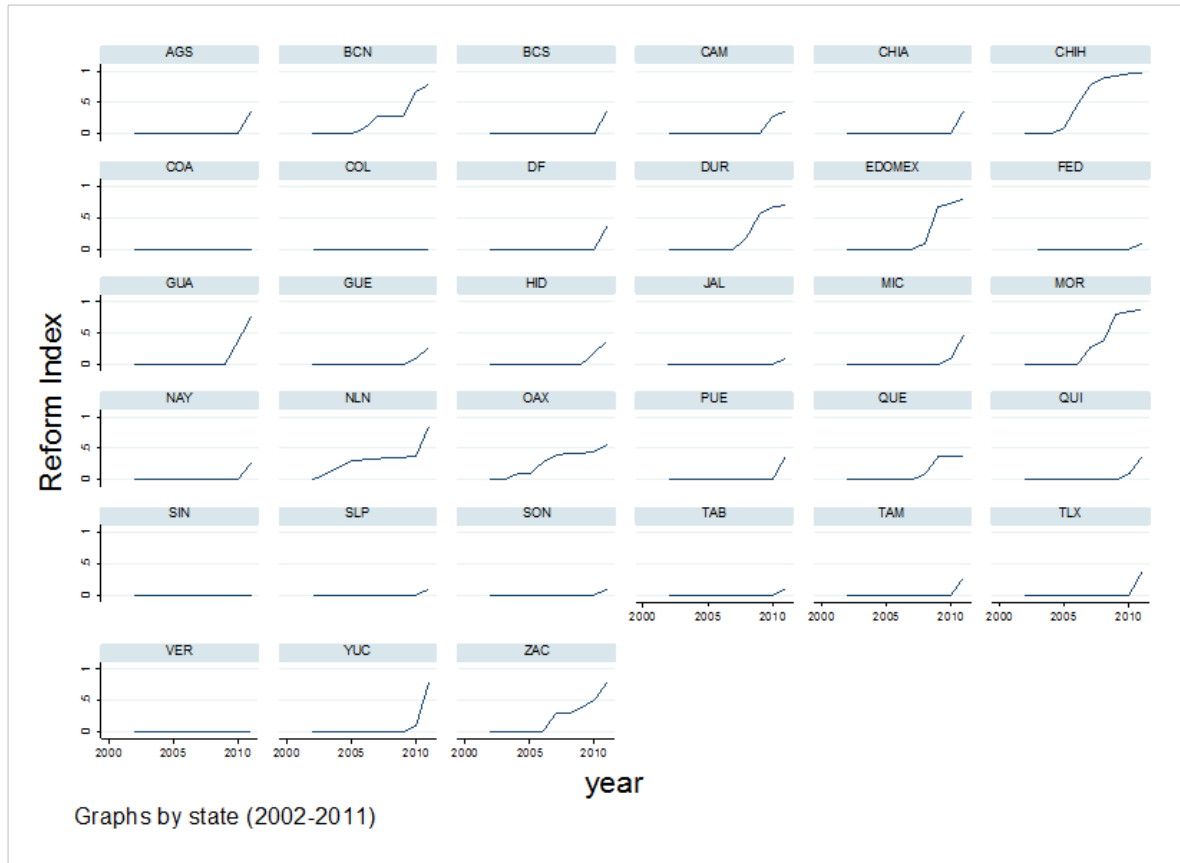
Lastly, at an aggregate level, the median score of the Index is 38.1. That is, at the close of 2011, half of the jurisdictions were less than 38.1% of the way to Chihuahua's advanced status, and half were more than 38.1% of the way there. The average jurisdiction was 41.4% of the way there, i.e., less than halfway there. Overall, SETEC's data was slightly more optimistic.

Table 2. Reform Index (12/2011) vs. SETEC Data (6/2011)

State	SETEC	SETEC (rank)	Index	Index (rank)
CHIH	85	3	100	1
MOR	79	4	89	2
NLN	56	10	87	3
EDOMEX	63	9	81	4
BCN	87	2	80	5
ZAC	79	5	80	6
YUC	77	6	80	7
GUA	66	8	79	8
DUR	89	1	72	9
OAX	77	7	57	10
MIC	53	15	48	11
CHIA	51	16	38	18
PUE	45	18	38	13
QUI	14	30	38	16
TLX	24	27	38	21
AGS	24	26	38	17
BCS	39	22	38	15
CAM	56	11	38	12
QUE	56	12	38	14
DF	41	20	38	19
HID	54	14	38	20
TAM	45	19	29	24
GUE	55	13	29	22
NAY	18	29	29	23
TAB	47	17	10	28
SON	27	25	10	26
SLP	36	24	10	27
JAL	37	23	10	25
FED	.	.	10	29
VER	41	21	0	33
COA	14	31	0	32
COL	22	28	0	31
SIN	7	32	0	30
Median	49.0		38.1	
Mean	48.9		41.4	

Figure 6 offers a longitudinal view of the Index across all states from 2002-2011. This is the most complete view of the measure of implementation offered in this paper. This graph shows the stark temporal (over time) and spatial (across states or jurisdictions) variation in the Mexican reform process.

Figure 6. Reform Index, 2002-2011



Highlights from the above graph include leading and lagging jurisdictions. Among the leaders, we see Chihuahua's early and steady reform process, putting it at the vanguard of criminal procedure reform in Mexico. Leading states also include, in alphabetical order, Baja California, Durango, State of Mexico (EDOMEX), Guanajuato, Morelos, Nuevo León, Oaxaca, Yucatán, and Zacatecas. Notably, Nuevo León shows the early start mentioned before but then a long, flat line between 2005-2010. This lack of improvement or consolidation in the reform process led many observers to be disappointed with the state. However, the sharp rise in the last two years reflects the writing and approval of a new, comprehensive CCP, replacing the piecemeal changes of previous years. I return to Nuevo León in the following section. Lagging jurisdictions include Coahuila, Colima, the federal justice system (FED), Jalisco, Nayarit, Sinaloa, San Luis Potosi, Sonora, and Veracruz.

The Reform Index can be updated for 2012, but with some incomplete data. It should be noted that a 2012 version of the index is complete with regard to approval and implementation of CCPs and LESs, as well as age and geographic coverage. It is incomplete only with regard to new criminal cases entering the new procedural regime since most states will not report the statistics necessary to calculate this value until 2013. Still, even a cursory review of the 2012 Index can offer useful insights. A graph similar to that shown in Figure 6 is included in the Appendix, titled "Reform Index, 2002-2012". Notably, by the close of 2012, the median Index score was 57.1 and the mean 59.0. Thus, half of jurisdictions were more than 57.1% of the way to Chihuahua's status, and the average jurisdiction was 59% of the way there. Given that the time window for reform is 56% complete at the close of 2012, the 2012 Index values suggest the overall reform process is roughly on track.

Summarizing this section, a different picture emerges of the progress of implementation depending on what measure is used. If the assessment of progress is based on the formal approval of

implementing legislation, the reform is ahead of schedule, with 67% of jurisdictions having approved a new CCP. If the assessment is based on the legal effectiveness and real operation of the new procedural regimes, the reform is behind schedule since only 36% of jurisdictions have new CCPs that are at least partially operational. If the assessment is based on the Reform Index, establishing Chihuahua as a standard against which to measure other jurisdictions, then by 2011 the average jurisdiction was 41.4% of the way there and by 2012 the average jurisdiction was 59% of the way there. The following sections take a closer look at the leading states in this process, and a more detailed look at Chihuahua.

5. A Closer Look at the 12 Leading States

The 12 leading states are those that have approved new CCPs and where this new procedural regime is at least partially operational: Baja California, Chiapas, Chihuahua, Durango, State of Mexico, Guanajuato, Morelos, Nuevo León, Oaxaca, Tabasco, Yucatán, and Zacatecas. All 12 of these states are exceptional for a variety of reasons. Some of their reforms preceded the federal reform by several years. For instance, the federal reform did not pass until June 2008; by that time, Chihuahua had passed and implemented its reform in the entire state! Morelos, Nuevo León, Oaxaca, and Zacatecas also approved reforms prior to 2008. It is worth noting that these states advanced in multiple ways without the guidance of a federal model. The federal government did not even propose a federal code of criminal procedure until September 22, 2011, and more than a year later, towards the end of 2012, this bill was still being debated in Congress.¹⁰ Thus, the states have drafted and passed their own CCPs without a federal benchmark like the Federal Rules of Criminal Procedure in the U.S.¹¹

New System Cases

One of the components of the Reform Index above – and which does not appear in the SETEC assessments or any other assessments of which this author is aware – is the volume of criminal cases entering the new procedural regime as a proportion of all new criminal cases entering both the traditional and new regimes. Recalling the discussion in the section on Data and Methods, higher values of this measure capture the new system phasing in and the old system phasing out.

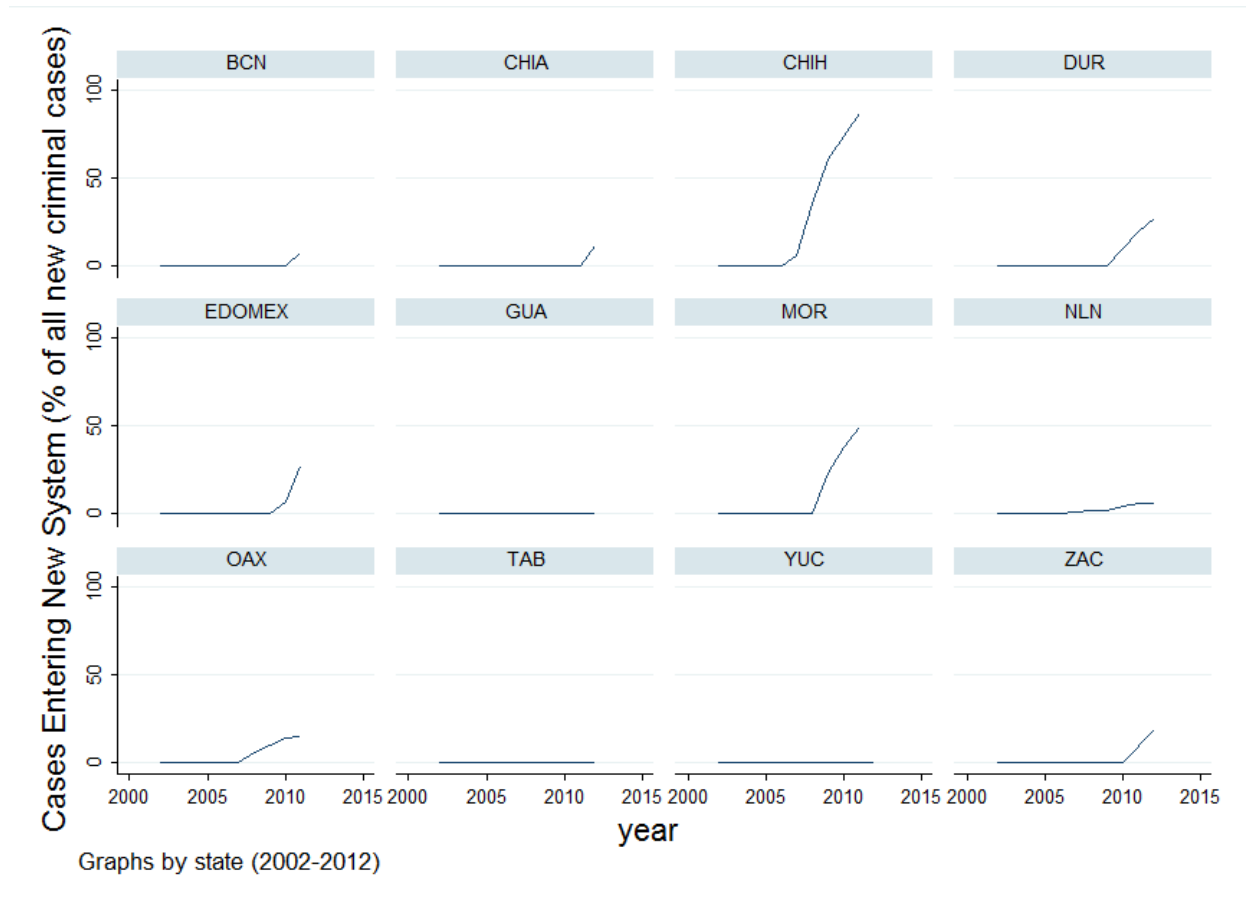
Focusing on this metric of the progress of implementation, Figure 7 provides an overview of all 12 leading states. The graph offers new data to support the conclusion that Chihuahua should be considered the frontrunner in the reform process, with more than 80% of all new criminal cases entering the new justice system at the close of 2011 (2012 data not available until 2013). Specifically, 86.76% of all cases entering both the new and traditional justice systems entered under the new system. No other state even comes close! Morelos comes in second on this measure with 49.26%. Thus, Chihuahua provides a good benchmark against which to measure the progress of other states. In other words, it would be good to see other states not only approximate or equal the legislative and operational successes seen in Chihuahua, but also see them approximate the progress in phasing the old system out and the new system in throughout the state. The paragraphs below take a closer look at this phasing in of the new system in several of these states, starting with the three

¹⁰ Presidencia 2011; see <http://www.presidencia.gob.mx/el-blog/proyecto-de-codigo-federal-de-procedimientos-penales/> (visited Nov. 3, 2012).

¹¹ At the close of 2012, newly elected president Enrique Peña Nieto was proposing a unified CCP that would replace all of the local CCPs. There are arguments for and against this kind of project (e.g., Carbonell 2012). This author would hope that if the project for a unified CCP moves forward that there would be substantial effort to identify best practices developed in the states and include these in the national CCP. Given different priorities both across regions and across state and federal jurisdictions, it is not immediately clear that a unified CCP is the best way forward. One option would be to set this unified CCP as a minimum “floor” of procedural guarantees below which no jurisdiction could go, but allow states to provide more protections than the federal standard.

states where the new system is operational throughout the entire state: Chihuahua, State of Mexico, and Morelos.

Figure 7. New Criminal Cases Entering New Justice System



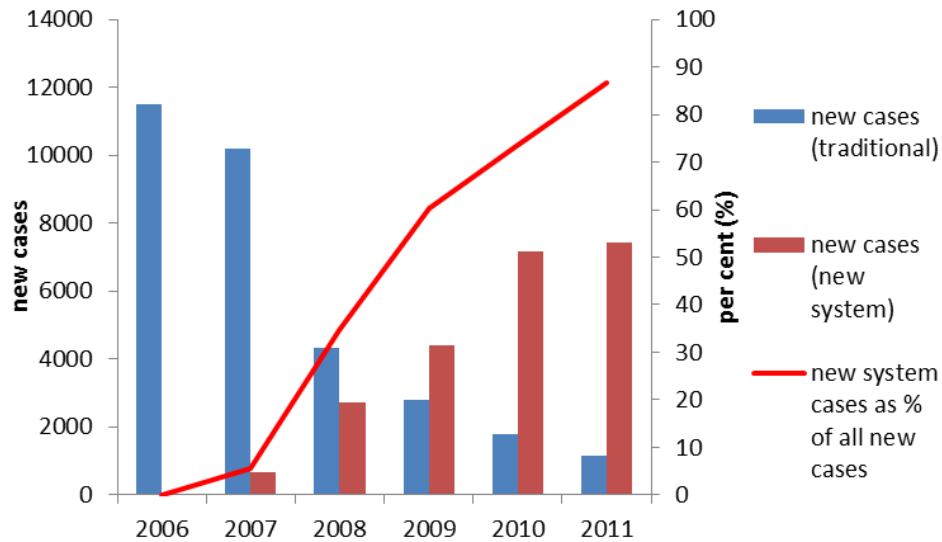
Chihuahua

On January 18, 2006, more than two years before the federal reform, a legislative initiative proposed reforming criminal procedure in the state. The constitutional portion of the reform was approved on May 11, 2006 (CHI-Decreto 595/06, 5), which entered into effect on June 11, 2006 (CHI-Dec. 603/06 II; Periódico Oficial No. 46, pag. 4775-4778). This reform altered four articles of the state constitution (arts. 6, 93, 105, and 117), and these changes required the alteration (or wholesale creation) of multiple other local laws, including the new Code of Criminal Procedure (CCP), which was approved on June 15, 2006. Chihuahua implemented the reform at first only in one judicial district, but applied the reform to all crimes. This process of centrifugal, geographic gradualism began in the Judicial District of Morelos (Distrito de Morelos), seat of the capital city of Chihuahua, on January 1, 2007 (CHIH-CPP, Transitorios, Art. Segundo; PJ-CHIH Informe 2007, 20). The reform expanded six months later, on July 1, 2007, to the Judicial District of Bravos (Distrito Bravos), based in city of Ciudad Juarez (CHIH-CPC, Transitorios, Art. Segundo; Informe 2007, 20; PJ-CHIH Acuerdo 2009), though there were some delays and the first oral trial in Ciudad Juarez did not take place until September 2008 (TBI 2008d, 13). The remaining 12 judicial districts in the state initiated the new system by July 1, 2008 (Informe 2007, 20; Informe 2008, 84; Acuerdo 2009). Thus, the constitutional reform process began in early 2006, related codes were reformed mid-2006, they were first implemented in early 2007, and the implementation phase was complete approximately 18 months after that, by mid-2008 (Informe 2008, 23). From start to finish, the process took approximately two-and-a-half years. For these reasons, Chihuahua’s reform is

exemplary in terms of its early timing (pre-dating the federal reform), its comprehensive scope, and the speed of implementation throughout the entire state. In fact, by the time the federal reform passed in mid-2008, Chihuahua had already passed and implemented its own reform *in the entire state*.

Although the volume of cases in the new accusatorial process was small at first, the volume of cases has grown steadily as the system has expanded to all districts. Figure 8 summarizes this growth.

Figure 8. New System Cases in Chihuahua.



Blue bars identify the number of cases entering the traditional system, red bars identify the cases entering the new, reformed system, and the red line represents new system cases as a percentage of the total number of cases filed in both the new and traditional systems (cases filed in new system/all cases filed in both systems). To be clear, the red line is the same measure that was incorporated into the Reform Index and which is represented for all 12 leading states in Figure 7.

The decreasing height of the blue bars shows that the old system persists, but is steadily attracting fewer new cases and people are increasingly turning to the new system, indicated by the increasing height of the red bars. The persistence of the blue bars even after the effective date of the new CCP is due primarily to two reasons. The first reason is the implementation calendar. All crimes committed prior to January 1, 2007, will need to be heard in the traditional courts throughout the state. After that date, all crimes committed in the districts of Bravos and Morelos will have to be heard in the new court system, and similar jurisdictional rules apply to courts in the new system as the new CCP becomes effective in all districts. After July 2008, all new crimes committed throughout the state will have to be heard in the new courts. Second, all crimes carry some statute of limitation, which generally begins to run from the time the crime is discovered, and not all crimes are discovered right away. Thus, we can anticipate some cases to continue to enter the traditional system long after the reform has been implemented and made effective throughout the entire territory. Comparatively, the persistence but steady disappearance of the traditional system is not surprising. In Chile, for instance, cases continued to be processed in the traditional courts through 2010, five years after the reform was complete (Tiede 2012, 9). Thus, even if all states complete the transition to the new system by June 17, 2016, we should not be surprised to see cases in the traditional system at least through 2021.

Still, cases entering the new system have come to dominate the total volume of new cases entering the criminal courts. The red line captures this pattern. At the close of 2007, cases entering the new

system accounted for less than 10% of the total volume of new cases; by the end of 2011, cases entering the new system accounted for almost 90% of this volume.

State of Mexico

An initial, cosmetic reform in January 2006 was very superficial, essentially adding a series of articles to the existing CCP (articles 275-A through 275-R). This layering of several articles onto the existing code seemed a shallow effort to create an accusatorial process. Indeed, the law referred to the new process as trials that were not oral but “predominantly oral” (“Juicio Predominantemente Oral”; see PJ-MEX 2008). Symptomatically, the annual “state of the courts” report (Informe Anual 2006) did not have a separate section on the creation of accusatorial proceedings, which would have been revolutionary (Langer 2007) and particularly notable within Mexico, where only Nuevo León and Oaxaca had approved reforms at that time, and only Nuevo León had proceeded to the implementation phase. Thus, if the state had indeed implemented this kind of reform, it should have received substantial attention. Rather than exalting this revolutionary change, the report only mentions in passing that a few “oral courts” (Juzgados Orales) were created in different districts, but it is unclear if these are dedicated criminal courts in the adversarial model, small claims courts, or mixed civil and criminal courts (e.g., Informe 2006: 18, 20, 29). Indeed, it appears that most of these courts were for small claims (e.g., Informe 2006, 87).

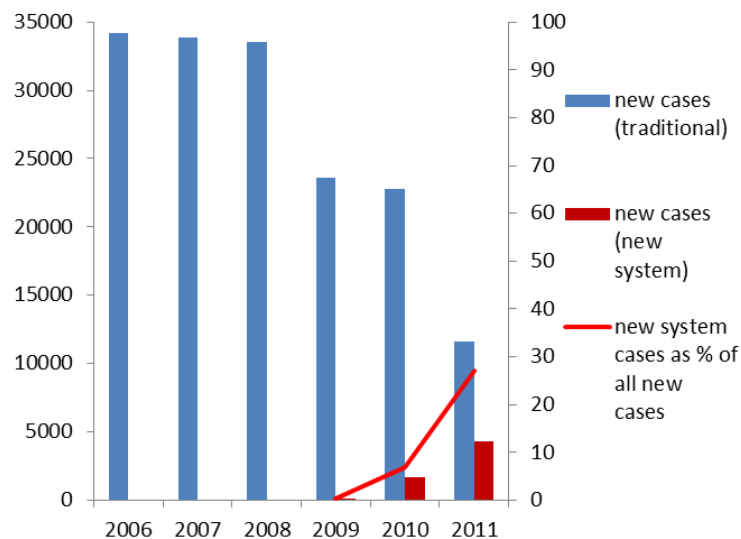
This confusion remained at least through 2008, when the judiciary reports aggregate statistics for units that are called both “oral small claims courts” and “criminal small claims and oral courts” (Informe 2008, 76, 79).

Accentuating the superficial and unclear character of the modifications in 2006, a reform bill was presented on June 25, 2008 – just one week after the federal reform – aiming to install a “new criminal justice system” in the state, thus raising the question of what exactly had been reformed in 2006. This bill was approved on January 26, 2009, (Dec. 266/09), bringing about a more serious change by approving a full, new code of criminal procedure modeled after the accusatorial systems promoted by the federal initiative. The 2009 reform implicitly acknowledged a need for deeper changes by seeking a fuller transformation to take effect by August 1, 2009. However, the reform calendar was restructured four months later, on June 30, 2009, calling for the establishment of accusatorial proceedings by October 1, 2009, in four judicial districts, including the state capital of Toluca (Decreto 289/09, 2). One day before that target date, on September 30, 2009, the state governor (and now president-elect), Enrique Peña Nieto, declared that the accusatorial model required by the federal constitution now existed in the state (Decreto 04/09).¹² Since then, the reform expanded progressively throughout the remaining districts in the state. In a centrifugal pattern of geographic gradualism, the new CCP was applied first in the state capital of Toluca, and in the districts of Lerma, Tenancingo, and Tenango del Valle (starting Oct. 1, 2009), in Chalco, Otumba, and Texcoco (starting April 1, 2010), in Nezahualcóyotl, El Oro, Ixtlahuaca, Sultepec and Temascaltepec (starting October 1, 2010), in Tlalnepantla, Cuautitlán and Zumpango (starting April 1, 2011), and in Ecatepec de Morelos, Jilotepec, and Valle de Bravo (starting October 1, 2011). Thus, at the end of 2011, the State of Mexico was one of only two states that had fully implemented the new system.

The annual “state of the courts” reports since 2009 reflect these new changes. In 2009, the new accusatorial courts are clearly distinguishable as separate working units in the summary statistics of the report (Informe 2009, 80). However, since the new system did not become operational until October 1, 2009, 2010 is the first year in which new accusatorial system has its own section in the court’s annual report (Informe 2010, 3). In the last couple of months of 2009, there were 66 new

¹² “El sistema penal acusatorio, adversarial, y oral ... ha sido incorporado [en la Constitución del Estado, el Código de Procedimientos Penales, y la Ley Orgánica del Poder Judicial].”

Figure 9. New System Cases in State of Mexico.

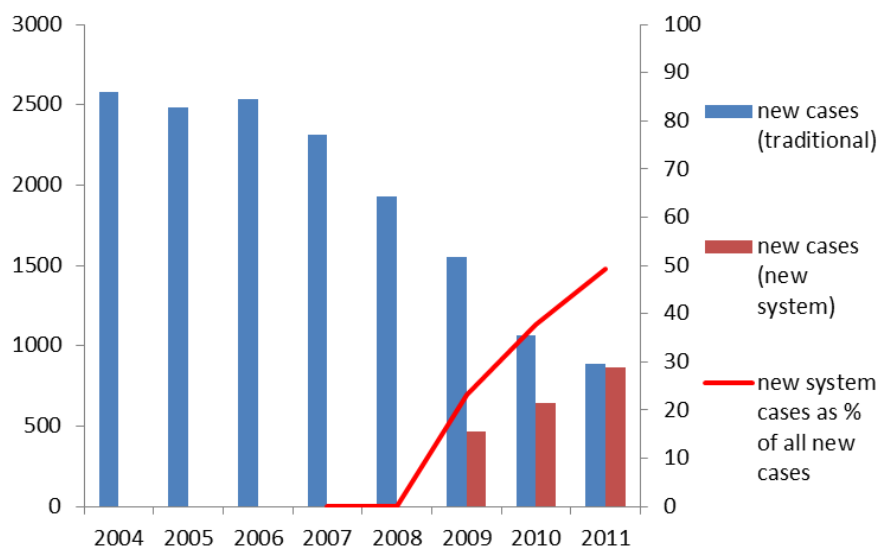


system cases, rising to 1666 in 2010, and 4303 in 2011. Given that in the same time periods the total number of criminal cases was 23,654, 24,449, and 15,900, respectively, new system cases constituted 0.28%, 6.81%, and 27.06% of the total in those years (2012 data will not be available until mid-2013). Figure 9 graphs these values, showing the slow phasing in of the new system.

Morelos

A new CCP was approved here on November 19, 2007, laying the foundation for the accusatorial process in the state. It was implemented in a geographically gradual manner throughout the state, following the example of Chihuahua. The First Judicial District saw implementation beginning on October 30, 2008. Despite some early irregularities,¹³ the reform expanded on June 1, 2009, to the Sixth District (located in Cuautla) and to the Fifth District (Yautepec).

Figure 10. New System Cases in Morelos



¹³ At the second oral trial, there were complaints that it was a closed proceeding (doors were closed to prevent overcrowding after a large number of people came to watch), and that eight of the ten other oral trial judges were also in the audience, creating the potential for future bias or the appearance of partiality if the case needed to be retried (TBI 2008e, 15).

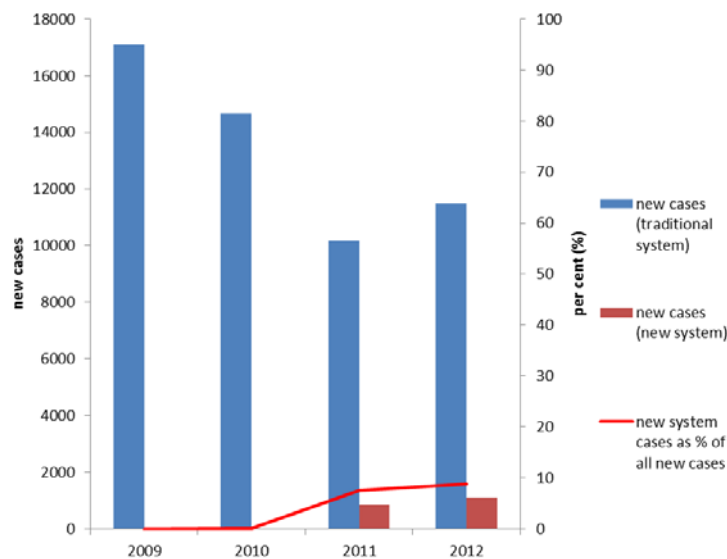
As of January 2010, the last phase of implementation was due on February 1, 2010, in the Fourth District (Jojutla), Second District (Tetecala), Third District (Puente de Ixtla), and Seventh District (Jonacatepec). There were some delays, and the reform was not implemented in the entire state until 2012 (Zepeda Lecuona 2012). Figure 10 shows that new system cases constitute nearly 50% of all new criminal cases. The graph is missing data from 2008 since the Informe was unavailable, but the reform became operational at the end of October 2008, so this missing data consists of only two months of cases from one judicial district.

Other Leading States with Partial Implementation

Baja California initially approved a package of reforms on October 19, 2007 but these failed to go into effect in 2009 as planned. Thus, a second set of reforms were approved on November 13, 2009, scheduling the implementation to take effect in February 2010 (BC-PJ Informe 2008-2009, 47). This set of reforms was delayed twice more: on January 22, 2010, the effective date of the reform was rescheduled to May 3, 2010 (Decreto 348/10, reforming art. Transitorio Primero; Di Carlo 2010), and finally the start date was changed to August 11, 2010 (Decreto 360/10, reforming art. Transitorio Primero). The new timetable established that the reform would be geographically gradual, taking place first in the capital district of Mexicali. Next, the reform was scheduled to be implemented in the district of Ensenada on May 3, 2012, and finally in the districts of Tijuana, Tecate, and Playas de Rosarito on May 3, 2013.

Since the new system first became operational in August 2010 and the state’s Informes are issued in October, data for that year cover only two months (August and September). Figure 11 below reports this data and the relevant figures for 2011 and 2012.

Figure 11. New System Cases in Baja California.



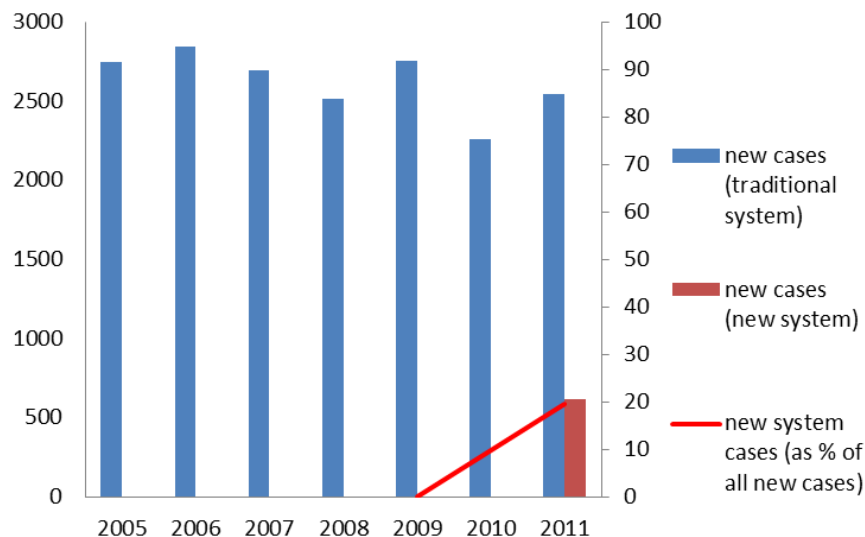
Chiapas approved a new CCP on February 9, 2012, and this became effective May 21 (Transitorio Primero). Very few cases are flowing through the new system at the close of 2012, but Chiapas is most notable at this stage for its comparatively unusual implementation strategy, even in comparison with Nuevo León. Specifically, Chiapas has chosen a strategy that is both geographically and substantively gradual. The state is divided into three regions: (1) Tuxtla Gutierrez, where only about 11% of the population lives; (2) several districts, and (3) the remaining districts. The new system will first apply only to minor crimes (“delitos no graves”), following Nuevo León’s substantive

gradualism, and only in Region 1; this will be the case through the end of 2012. Then, from January 2013 to April 2016, the new system will apply to minor crimes in Regions 2 and 3. Lastly, starting May 2016 (“second trimester” of 2016), the new system will also apply to major crimes in all three regions, i.e., to all crimes throughout the state.

Aside from mixing aspects of both substantive and geographic gradualism, this implementation calendar is rather vague, leaving a large, three-year window (May 2012-April 2016) in which to apply the new system in a very large territorial area, but only to minor crimes. Meanwhile, all major crimes will continue to be investigated, prosecuted, tried, and sentenced under the traditional system through mid-2016. While the reform technically complies with the federal mandate to implement the new system by June 17, 2016, the unusually open-ended implementation calendar should cause concern. Nuevo León is still the only state to implement the new system via substantive gradualism (though Guerrero appears to be considering the same model), and it is far behind Chihuahua, State of Mexico, Morelos, and Oaxaca (Nuevo León saw only 6% of all new criminal cases entering the new system by the end of 2011), despite having started before them. Chiapas departs from the other, more successful states by following Nuevo León’s strategy of substantive gradualism, and further complicates the process by mixing this strategy with geographic gradualism. In short, the implementation in Chiapas will be uneven in multiple ways.

Durango approved a new CCP on June 21, 2009. The reform was originally scheduled to enter into effect no later than December 31, 2009 (DUR-CPC, Art. Transitorio Primero, sec. I), and the court’s website reported the inauguration of the new installations for accusatorial proceedings on December 14, 2009 (DUR-PJ 2009). As in other states that have opted for a geographically gradual process of implementation, Durango’s reform first took effect in the state’s capital city, Durango, making it part of the centrifugal group of geographic gradualists. The reform then expanded to other districts. Importantly, the expansion to another district must first be requested by the state supreme court (Tribunal Superior de Justicia) and approved by the state legislature (DUR-CPC, Art. Transitorio Primero, sec. II). This provision in the reform may provide flexibility to tailor the pace of reform as needed, but it may also prove ambiguous and therefore open a space for additional disagreements over or challenges to the process of change, delaying the expansion of reform. Indeed, by the end of 2010, the next phase of implementation had not been established (SETEC 2011, 22), and by the end of 2012, the reform in Durango remained stalled, covering only the capital district. At the end of 2011, new system cases constituted only about 20% of all criminal cases (Figure 12).

Figure 12. New System Cases in Durango.



Guanajuato approved its new CCP on September 3, 2010, and began implementation on September 1, 2011 (Decreto 80/10; Decreto 80, Dictamen). Guanajuato follows the centrifugal version of geographic gradualism, implementing the reform first in the northern part of the state, bounded on the west by the municipalities of Guanajuato (capital), Ocampo, and San Felipe, and on the south by Guanajuato and San Miguel de Allende. The reform will then expand progressively to the other municipalities in three phases starting January 1, 2013, January 1, 2014, and January 1, 2015, finishing in the western part of the state between Leon and Manuel Doblado (Decreto 80/10, Transitorio Primero). Thus, the state anticipates meeting the federal deadline of 2016.

Only 2011 data were available, so data here reflect only the first couple months of operation in Guanajuato. In that time, new system cases constituted less than 1% of all criminal cases (60 out of 10,806) (Informe 2011, 18-19).

Nuevo León was the pioneer of current trends in criminal procedural reform in Mexico. Indeed, the reform process may have begun here as early as October 2003, long before the 2008 federal reform, and even before President Vicente Fox's reform initiative in 2004 (Presidencia 2004). As such, Nuevo León has been at the forefront of the reform movement, along with its northern neighbor Chihuahua.

A 2004 reform to the CCP initiated the process of legal change in the state. The CCP identified which types of cases were eligible for the accusatorial model, defining a process of *substantive gradualism (implementación por delito)* contrasting with the geographic gradualism of most other states. Early in the post-reform era – from July 2004 to December 2005 – the kinds of cases were limited. Specifically, Decree 118/04, approved July 28, 2004, stated that the accusatorial process only had jurisdiction over crimes in which the degree of culpability was moderate (“culpa”) and which the Penal Code considered not serious (“no grave”).¹⁴ In short, the CCP reserved the new system for a narrow set of minor offenses (NLN-Dec. 118/04; NLN-CPP 2004, art. 555).¹⁵ However, on December 7, 2005, Decree 279/05 broadened this restriction, expanding the jurisdiction of accusatorial process to include (i) all cases in which there is “culpa”, (ii) a set of cases if pursued by private filing (“querrela”, requiring the victim’s willingness to prosecute), and (iii) a set of cases if pursued “de oficio” (CPP, art. 553).¹⁶ In the area of criminal offenses, one last reform was approved on February 20, 2009, and took effect July 1, 2009. This reform expanded slightly the cases under (ii) and (iii) listed above. In sum, the set of criminal cases eligible for the accusatorial model broadened steadily from minor offenses to include an increasingly larger set of more serious offenses, but through mid-2011 did not include all crimes.

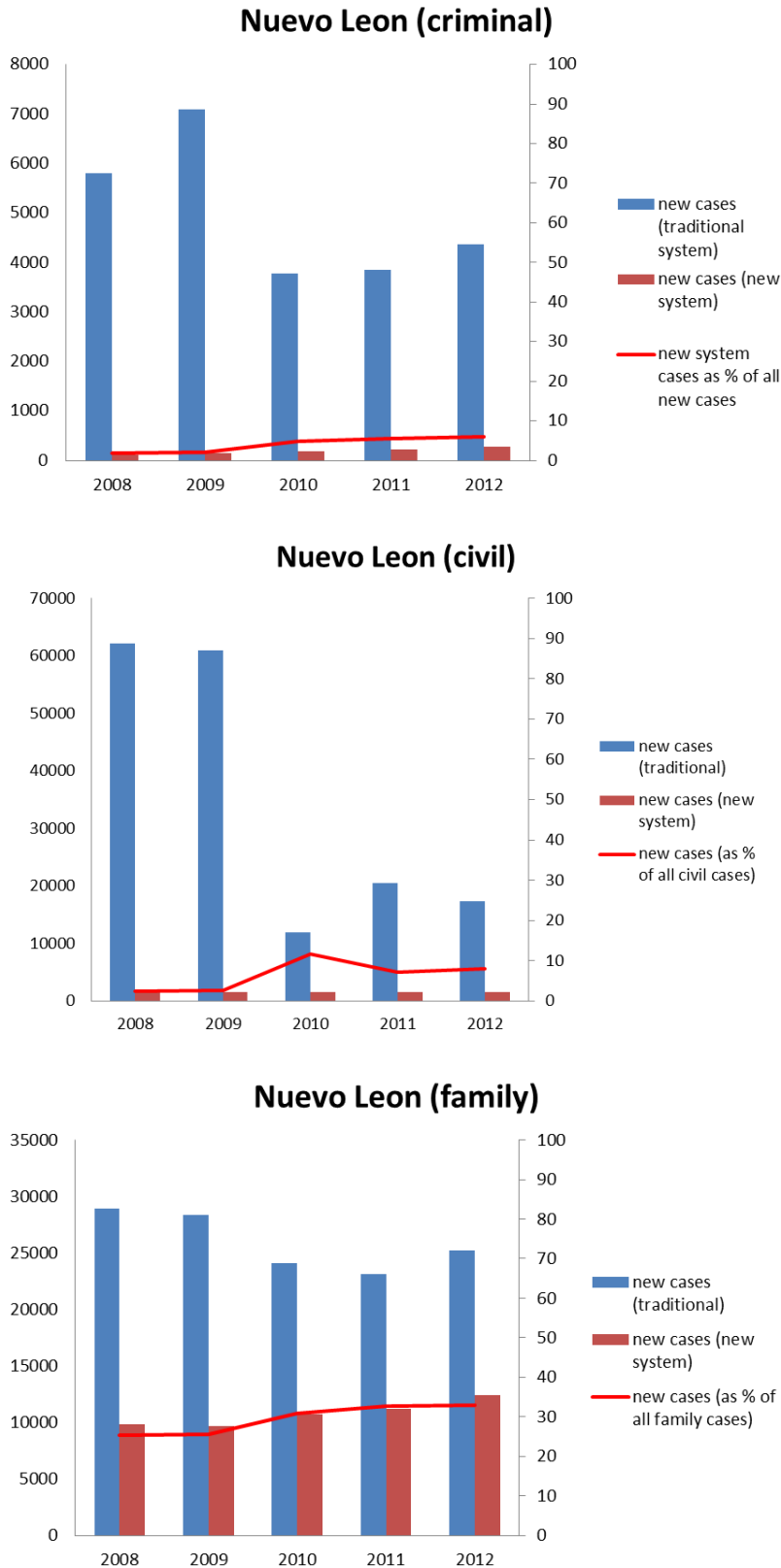
In 2011, a new reform generated a new CCP, published on July 5, 2011. This new code appeared to be an effort to consolidate all of the prior partial reforms into a single, fuller reform.

¹⁴ The Penal Code of Nuevo León identifies three degrees of culpability: (1) dolo, (2) culpa, and (3) preterintentionality. Culpa most closely resembles negligence or an act of omission in the U.S. language of *mens rea*. Article 28 of the Code reads as follows: “Obra con culpa quien realiza el hecho legalmente descrito, por inobservancia del deber de cuidado que le incumbe de acuerdo con las leyes o reglamentos, las circunstancias y sus condiciones personales, o las normas de la profesión o actividad que desempeña. Así mismo en el caso de representarse el hecho como posible y se conduce en la confianza de poder evitarlo.”

¹⁵ Art. 555. “Se seguirá Juicio Oral Penal cuando se trate de un delito culposo no calificado por el Código Penal como delito grave.”

¹⁶ Art. 553. “Las normas contenidas en el presente Capítulo serán aplicables para el procesamiento de los siguientes delitos previstos en el Código Penal para el Estado de Nuevo León: I. Los cometidos por culpa; II. Los de querrela previstos en los artículos 189, 262, 280, 282, 284, 285, 291, 338, 342, 344, 360, 381 en relación con el 382 fracción I, 383 en relación con el 382 fracción I, 384 en relación con el 382 fracción I y 385 fracción I; III. Los de oficio previstos en los artículos 166 fracción I, 168, 171, 172 primer párrafo, 178, 180, 182, 183, 184, 198, 205, 215 en relación con el 216 fracción I, 217 en relación con el 218 fracción I, 220 en relación con el 221 segundo párrafo, 222, 253, 255, 278, 323, 332, 336, 353 bis y 373.”

Figure 13. New System Cases in Nuevo Leon (criminal, civil, and family cases).



However, this new CCP – which took effect on January 1, 2012 – essentially restates what all the prior reforms have done in the state. In fact, the new CCP keeps the model of substantive gradualism but recasts it within the framework of this new CCP. Thus, the newly approved CCP

applies only to a subset of crimes during 2012, expanding successively to a larger set of crimes in 2013, 2014, and 2015, with the stated goal of applying to all crimes by January 1, 2016 (Transitorio Primero), thereby complying with the federal deadline of June 17, 2016.

Data on new system cases were not available back to 2005, but the slow, substantive gradualism in Nuevo León is evident in the rather flat line in the top graph of criminal cases in Figure 13. Indeed, even though this was the first state to make the reform operational more than six years ago, new system cases constitute less than 10% of all criminal cases at the end of 2011.

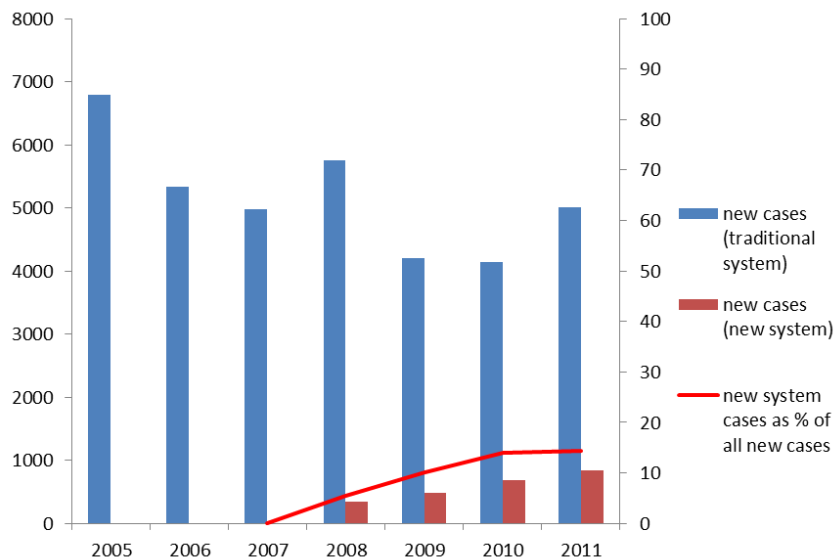
Yet, Nuevo León was among the first states to expand the accusatorial process beyond criminal cases to include civil and family matters. Decree 360/06, approved on August 11, 2006, established that rental disputes, child custody, and divorces that were initiated by mutual consent would be the jurisdiction of the accusatorial process (NLN-Civil Code, art. 989). This civil part of the reform was scheduled to enter into effect conditioned on the creation of new regulatory documents by the judiciary and courtrooms for civil and family matters. By 2007, the accusatorial system was functioning in these civil matters (PJ-NLN 2008, 20-21).¹⁷ Moreover, in February 2008, there was already evidence that the time it took to resolve these cases (time to disposition) was shortening due to the reform (TBI 2008a, 11). Thus, Nuevo León appears to be forging ahead of its counterparts once again. As in 2004, when its criminal procedure reform pre-dated the federal reform by four years, the expansion of accusatorial proceedings into civil law precedes any federal mandate to do so, and may signal patterns of future reforms in other states. This expansion is evident in the lower graphs in Figure 13.

On September 6, 2006, **Oaxaca** approved a new CCP that enacted the transition to accusatorial proceedings (OAX-CPC, Transitorio Segundo). The new code has been debated since at least 2004, seeking to increase efficiency, immediacy, and, transparency (Informe 2004, 10), as well as a balance between “procedural truth” (verdad procesal) and “valid acts” (Informe 2005). The new process was scheduled to go into effect one year later, and the accusatorial model was first implemented on September 9, 2007, in the judicial district of the eastern region of the Isthmus of Tehuantepec (Istmo), which encompasses 46 municipalities and a population of 600,000 (Informe 2007, 14). One year after that, on September 9, 2008, the model was expanded to the districts in the western Mixteca region (PJ-OAX 2008a, 15; PJ-OAX 2008b). The process of expansion is supposed to continue gradually across the state, one region per year, until the reform reaches all eight regions of the state. After the Isthmus and Mixteca regions, the remaining ones are Costa, Cuenca, and Valles Centrales, and then simultaneous implementation in Cañada and Sierra (North and South) (OAX-CPC, art. Transitorio Primero). Presumably, therefore, the reform should be implemented statewide by September 2013.

However, there are already major delays. The 2009 expansion to La Costa, for instance, was first postponed six months until March 2010 (Informe 2009, 22), and then delayed several times until the new system finally reached La Costa on May 8, 2012 (Zepeda Lecuona 2012, 100). Court reports listed the economic crisis as one of the reasons for the delay, as there were difficulties acquiring the necessary resources for the expansion (Informe 2009, 21-22). In part, these delays account for the flattening out of progress in the entrance of new system cases, as shown in Figure 14.

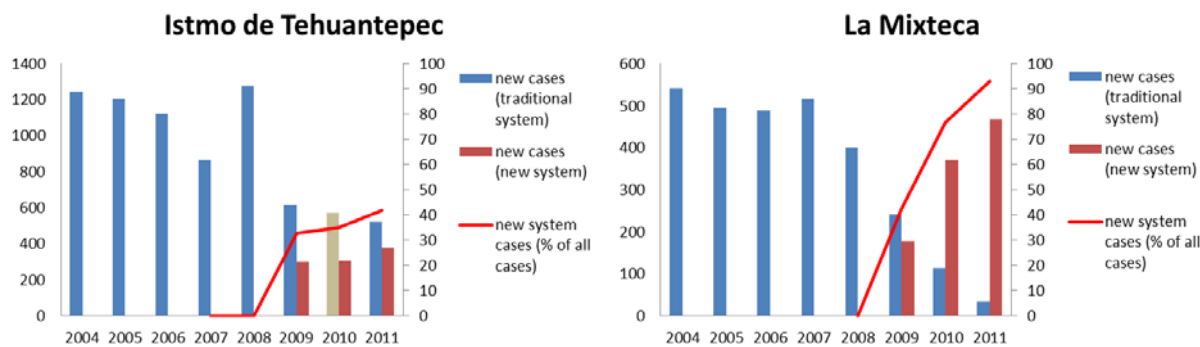
¹⁷ Oral proceedings may have already been taking place as early as late 2006, but the court’s report for 2006-2007 covers the time period from August 2006 to July 2007, and it is not clear in which year the reported cases took place (PJ-NLN 2007, 20).

Figure 14. New System Cases in Oaxaca.



Setting the recent implementation in La Costa aside, the new system has been steadily gaining traction in the two regions where the new procedural system has been operational for more than four years. Figure 15 reports data on these two regions.¹⁸

Figure 15. New System Cases in Two Regions of Oaxaca.



The main pattern in both regions is the steady decline in cases entering the traditional system and the increase in new system cases as a percentage of all criminal cases. However, this progress is most evident in La Mixteca, where new system cases are quickly approaching 100% of all criminal cases. Thus, this Oaxacan region is showing the kind of success seen only in Chihuahua. Ironically, Istmo was the first region to implement the new system, yet it is showing much slower progress. After five years of operation, new system cases constitute less than 50% of all criminal cases. This may be the result of poor or inconsistent planning, or poor data. For instance, the 2010 court report states two traditional-system courts were closed in this region in 2010 and there were only 193 traditional system cases left to resolve (Informe 2010, 21-22). Yet, the 2011 court report shows 525 new, traditional-system cases arose in this region (Informe 2011, 46-47). This inconsistency suggests poor or unsystematic treatment of data, but the persistent volume of traditional cases in this region suggests either the traditional courts should not have been closed or other sources of delayed reporting and investigation that generate so many cases in the traditional system four and five years

¹⁸ In the Istmo region, the bar for 2010 is grey because data on new cases entering the traditional system were missing for this year. The height of the bar represents the average of the two adjoining years.

after the new system became operational. Again, the experience of Chile (Tiede 2012) and other states in Mexico shows that it is not unusual for new cases to enter the traditional system up to five years after the new system was implemented. However, what is unusual is for the volume of traditional-system cases to remain persistently high.

Tabasco approved a new CCP on August 28, 2012, and was scheduled to begin implementation in first judicial district one month later, on September 28, 2012. At the end of November 2012, there was no data available on how the new system has been operating.

Yucatán approved its new CCP on June 8, 2011, and this became legally effective on November 15, 2011. The judiciary initiated a reform project (*anteproyecto de reforma*), the first version of which circulated in 2009, and a second version on January 4, 2010. As was the case in Campeche, this code is based off the model code of criminal procedure generated by the National Council of State Supreme Courts (*Consejo Nacional de Tribunales Superiores de Justicia*, or CONATRIJ; PJ-YUC 2010). The implementation follows a centripetal (margin-to-center) geographical gradualism, starting in less populated districts away from the state capital on November 15, 2011, and ending in the state capital in September 2013. At the close of 2012, implementation was underway in four of five districts in the state (PJ-YUC, Oct. 22, 2012).

Zacatecas published its approved reform on September 15, 2007, but it did not enter into effect until almost a year-and-a-half later, on January 5, 2009 (Código Procesal Penal, Transitorio Primero). The first accusatorial case entered the new system four days later, on January 9, 2009. As of December 29, 2009, in the first full year of operation, the judiciary had processed 205 oral trials (PJ-ZAC Informe de Audiencias; PJ-ZAC Consultas), which indicated a strong start considering that Chihuahua, in its *third* year with the new system, processed only 59 oral trials.

However, multiple delays have followed, leaving the new system implemented in only the first judicial district (capital). As late as June 20, 2012, courts were asking for another postponement until 2013 before expanding new system into two more districts (Calera and Fresnillo), which would then leave the remaining expansion to the rest of the 18 judicial districts until 2014 and 2015 (La Jornada 2012). Detailed data on the operation and outcomes of the new system are unavailable. Given the new system is only relevant in a single district and that it has been operational here for four years, this level of transparency is remarkably low.

6. Focus on Frontrunner: Chihuahua by Judicial District

Chihuahua had approved both a new CCP and new LES, and both of these were fully operational in all judicial districts throughout the state by the end of 2008. Given that crimes that occurred prior to the effective date of the new CCP continue to enter the criminal justice system and be processed under the traditional code of criminal procedure, not all cases in the criminal justice system fall under the new CCP. Thus, as stated above, a good metric of the progress of implementation is “new system cases” – the quantity of new cases entering the criminal justice system under the new CCP, or more specifically, the quantity of these cases expressed as a percentage of the total number of cases entering both the new and traditional criminal justice systems (see Data and Methods and discussion in previous section). In 2011, 86.76% of all cases entering both the new and traditional justice systems entered under the new system. No other state even comes close! Morelos comes in second on this measure with 49.26%. Thus, Chihuahua provides a good benchmark against which to measure the progress of other states. In other words, it would be good to see other states approximate or equal the legislative and operational successes seen in Chihuahua, and the progress in phasing the old system out and the new system in throughout the state.

Figure 16 shows new system cases in four judicial districts in Chihuahua that process the largest

volume of criminal cases. What is evident in all four districts is the steady reduction in cases entering the criminal justice system under the old (blue bars), traditional CCP, and an equally steady, encouraging increase in the number of cases entering the justice system under the new CCP (red bars). Stated otherwise, the cases entering the new system are an increasingly larger proportion of the total volume of cases entering the criminal justice system. The red line captures this proportion, expressed as a percentage. The rising height of the red line shows how the traditional system of criminal procedure slowly phases out while the new, reformed system of criminal procedure phases in. Ultimately, the red line should flatten out at 100% at the top, right portion of the graph.

Figure 16. New System Cases in Four Districts of Chihuahua.

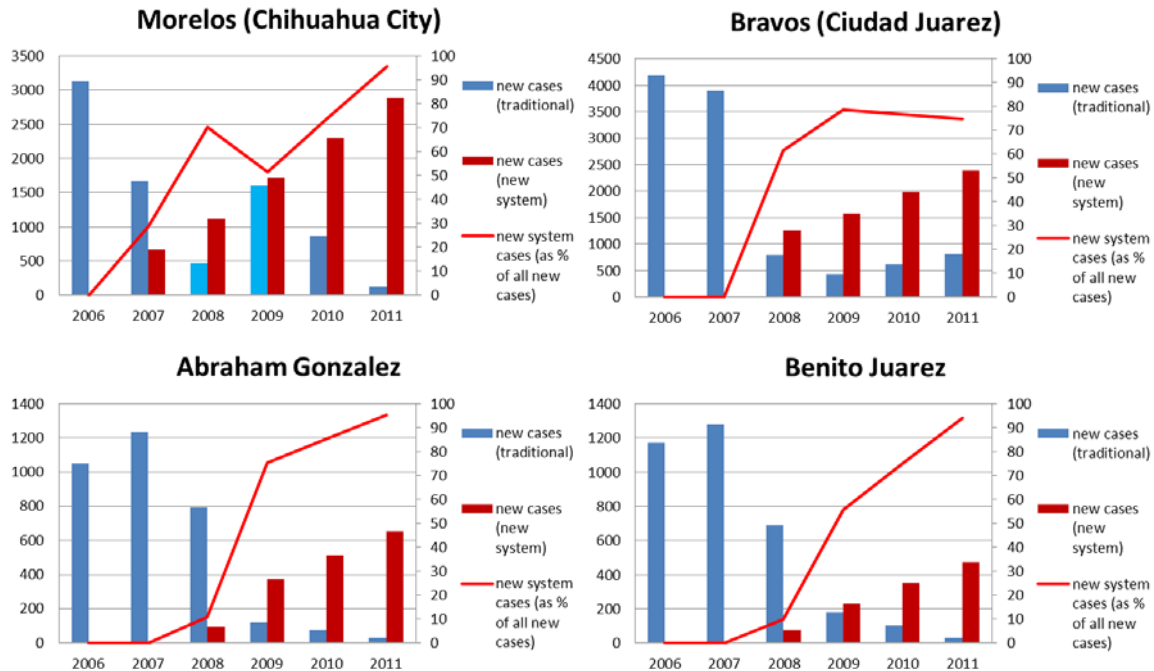


Figure 17 shows this pattern for all 14 judicial districts in Chihuahua. The same pattern appears across all of them. Indeed, in the district of Rayon, the implementation of the reform has already advanced to the point that 100% of all new criminal cases are entering the justice system under the new CCP. Keeping in mind that these data are from 2011 since the 2012 Informe would not be available until early 2013, it is reasonable to anticipate that many more districts will join Rayon in 2012, processing 100% of new criminal cases under the new CCP.

The one worrisome pattern in the state is in the district of Bravos, which is where Ciudad Juarez is located. New criminal cases entering under the new CCP still constitute a majority of all new criminal cases, but this is the one district where there was a downturn in 2010 and this downward trend continued in 2011. This will be a district to watch, with perhaps important lessons for why the new system can encounter obstacles or what kinds of older crimes might continue to enter the system. For instance, if there is a large volume of kidnappings, disappearances, or other kinds of “permanent” or “ongoing” crimes, these may continue to enter the criminal justice system long after the new CCP became operational.

Finally, Figure 18 below reports the data from the figures above in the form of a map of Chihuahua’s judicial districts. As the map shows, there is not a single district below 68% on this measure, and the vast majority of the state is above 80%.

Figure 17. New System Cases in All Districts of Chihuahua.

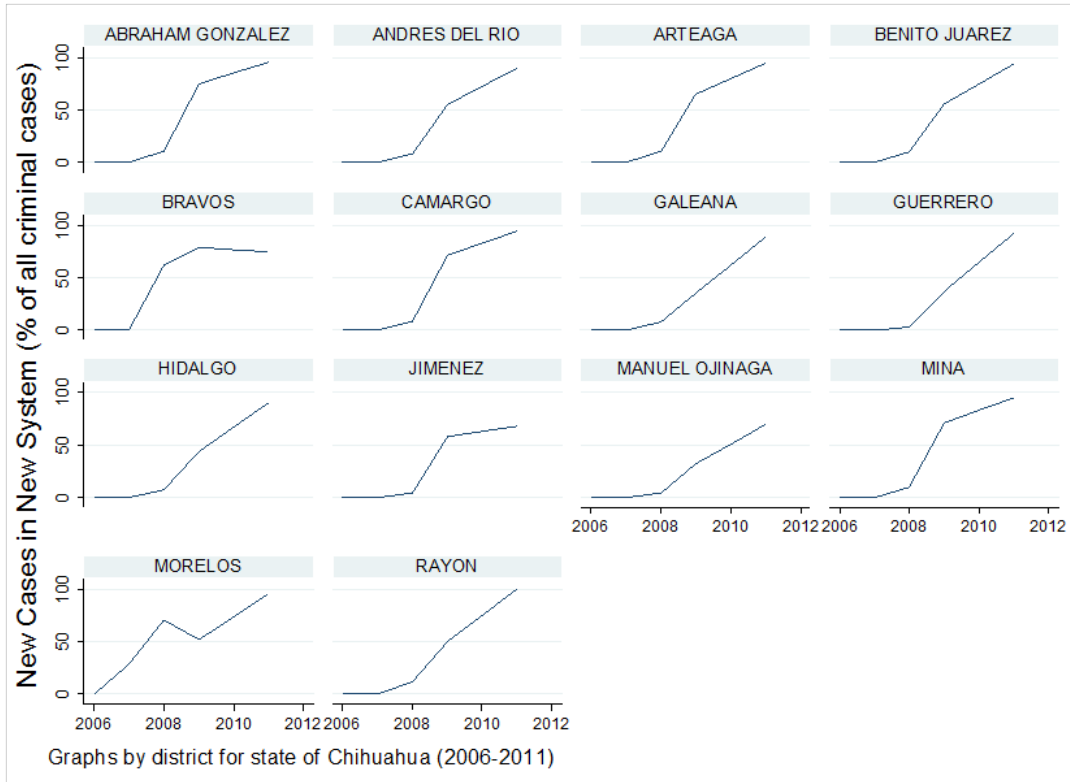
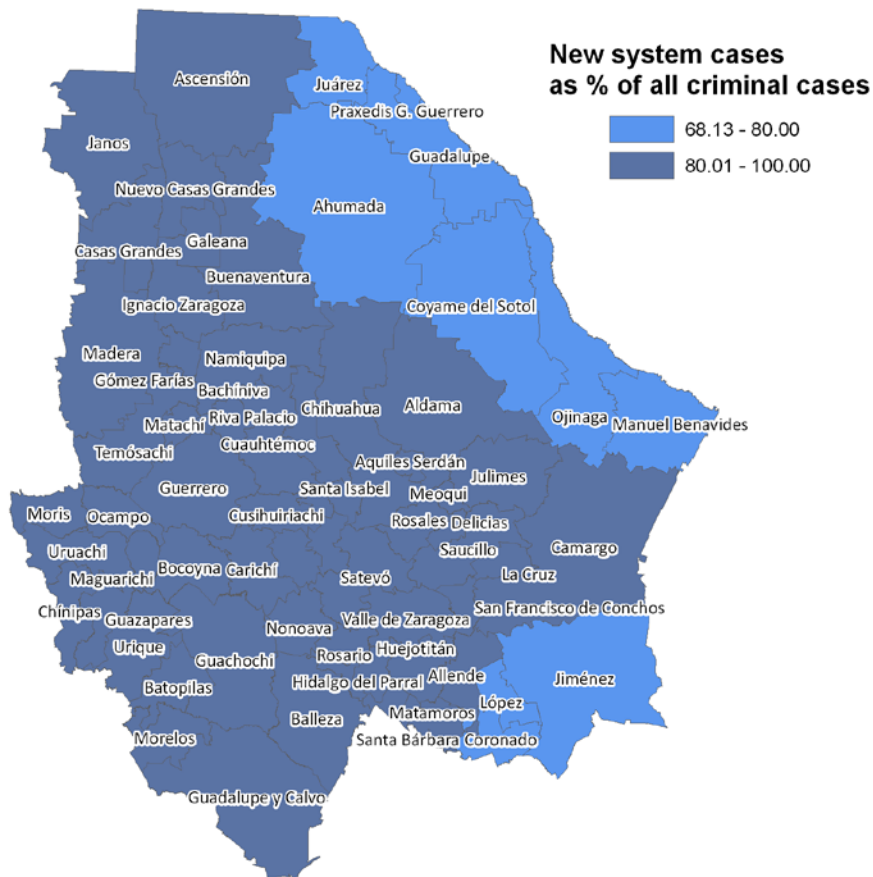


Figure 18. Map of New System Cases: Chihuahua 2011



7. Conclusions and Future Challenges

In sum, 2012 was good year in terms of the progress in implementing the 2008 criminal procedure reform. At year's end, 22 states (67%) have approved the necessary implementing legislation, and 12 states (38%) have new systems that are at least partially operational. Further, in 2013 at least five more states with approved CCPs will make these new laws operational (Coahuila, Puebla, Quintana Roo, Tamaulipas, and Tlaxcala; Michoacan has postponed its implementation until 2014,¹⁹ joining San Luis Potosí in that year). Chihuahua continues to set the pace, with new system cases constituting close to 100% of all new criminal cases.

Ongoing challenges in implementing the reform include the persistent public perception that the reform is too protective of defendant rights, i.e., "soft on crime". Also, resistance to the reform continues to emanate from senior legal elites who are most likely to see the procedural transformation as a challenge to their status and prestige. To be sure, there are also reasonable disagreements with certain aspects of the reform that have roots in core principles of different legal systems. For instance, it is not immediately clear that plea bargaining and prosecutorial discretion, as embodied in debates regarding the adoption of the "principle of opportunity", inevitably lead to better or more "just" outcomes. Proponents of the "principle of legality" can fairly advocate that justice should not be negotiated or discretionary, and that perhaps there is value in retaining some of the traditional system's principles like the search for material truth. Similar debates extend to the boundaries of police and prosecutorial autonomy, and the role of law enforcement agencies in moving beyond reactive models of policies to develop programs designed not simply to prevent crimes from being committed, but also to prevent individuals from becoming delinquents in the first place. Most operators within the justice system think of prevention in terms of preventing an imminent crime from happening (i.e., interceding to keep the crime from being executed or completed). In contrast, a thicker, fuller concept of prevention means preventing anti-social and criminal behavior more generally. In the example of organized crime, should the justice system play a role only in responding to the crimes planned and committed by these organizations, or does it also have a role to play in preventing individuals from being attracted to and joining these organizations in the first place? The absence of a fuller, more serious preventive mindset has long been a criticism of criminal justice reforms in Mexico, but there is also some resistance to taking on this mission from within the justice sector itself, especially among law enforcement, who see this fuller kind of preventive model as the responsibility of civil society or social development organizations.

A major pending issue is the federal CCP. A federal bill (*iniciativa*) has been pending since September 22, 2011. In December 2012, incoming president Enrique Peña Nieto (EPN) expressed interest in promoting a single, unified penal code (which would generate a uniform classification of crimes for the entire country) and a unified CCP, doing away with all the state CCPs that have been approved and implemented over the last six years and replacing them with a single, national code that would regulate the criminal process uniformly in the entire country. Also, EPN has promoted the centralization of various powers, including public safety and internal security, within the already powerful interior ministry (Secretaría de Gobernación, SEGOB). The legal centralization reflected in the new push to unify criminal codes is not necessarily unreasonable, but it does risk ignoring or overlooking best practices and experiences in each of the reformed states, at least in those 12 where the new system is already at least partially operational. If this unification goes ahead, it should do so based on a careful assessment of the best practices and lessons learned from each of the leading states. Beyond legal centralization, however, many observers see the centralization of political

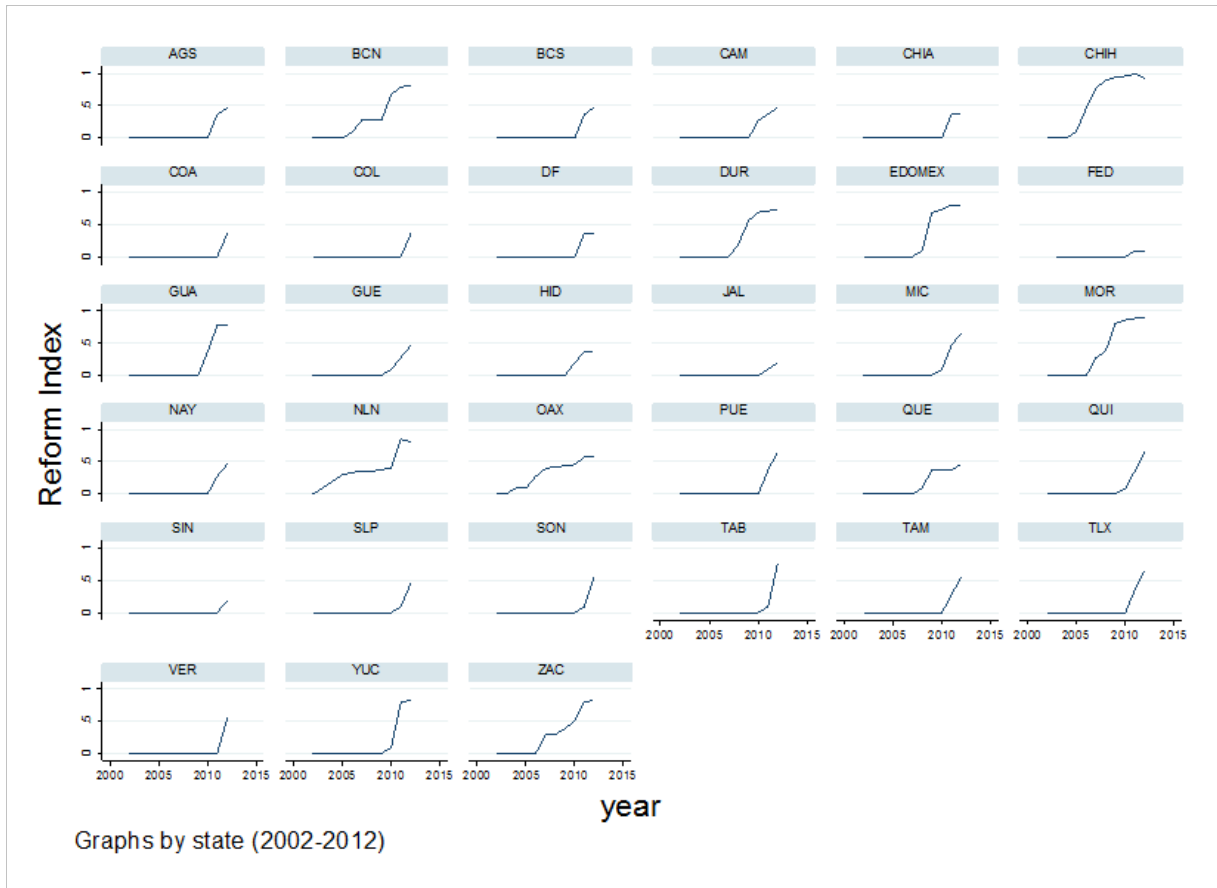
¹⁹ Quadratin 2014.

decision making in SEGOB as a step in the direction of returning to the ultra-powerful, unaccountable SEGOB of previous PRI eras. Steps should be taken to ensure transparency and accountability in order to allay fears and prevent abuses.

Lastly, measurement of the inputs and outputs of the criminal justice system continues to be weak, uneven, and unsystematic. Poor data availability, data uniformity, and data quality make assessing the progress of reform that much more difficult. Thus, greater emphasis needs to be placed on developing the institutional capacity within each jurisdiction to generate, analyze, and disseminate systematic data. Uniform crime reports (UCRs) are part of this data-generating project (e.g., Vizcaino Zamora 2012), but only one part. A more complete project would identify and build on best practices in data generation, analysis, and dissemination – including some of the practices in the Mexican states (e.g., Chihuahua) – to re-tool and strengthen the measurement and analytic capacities of statistics units within justice institutions themselves. The long-term benefits of this kind of data-generating project are hard to overstate, including the ability to track the performance of justice institutions before and after reforms, and the ability to engage in a variety of longitudinal and cross-sectional analyses of the causes and consequences of reform. As noted previously, any data-generating project should be designed in a way that maximizes the overlap with existing datasets generated from other official sources, e.g., social and economic data generated by INEGI.

In sum, 2012 offered some good news in terms of the approval of new laws relevant to criminal procedure reform. However, the real operation of these laws is still behind schedule, and 2012 continued to highlight some persistent weaknesses in both the implementation of the reform and in the ability of policymakers, scholars, and other interested parties and stakeholders to track this progress effectively due to the absence of systematic data. In a bright spot, Chihuahua continues to set the pace of reform – both in terms of content and operation – and in its data generation and transparency offers some of the best practices for other jurisdictions to follow.

APPENDIX
Reform Index, 2002-2012



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Government Sources

Official State Reports

Annual state court reports (*Informes Anuales*), state constitutions, codes of criminal procedure (CCP), sentencing oversight laws (*leyes de ejecución de sanciones*, or LES) were consulted from every state. In many states, each of these laws has seen multiple changes, amendments, and revisions since 2002. These reports, constitutions, and laws are generally available from the web sites of the judiciary or legislature in each state, and are too numerous to list here.

Additional reports and data were drawn from separate, official court web sites dedicated to the new justice system. Internet addresses for the dedicated sites that were identified in the course of research are listed below.

State	URL of site dedicated to new system
BCN	http://www.justiciabc.gob.mx/
CHIH	http://www.chihuahua.gob.mx/justiciapenal/Canal.asp?cve_canal=11291
COL	http://www.justiciapenalcolima.mx/?p=1
DUR	http://www.justiciapenaldurango.gob.mx/index.php?option=com_content&view=article&id=26&Itemid=19
GUA	http://www.justiciapenalguanajuato.gob.mx/index.php/construyendo-un-nuevo-sistema
HID	http://www.nuevosistemadejusticiapenalhgo.gob.mx/
MIC	http://www.justiciapenalmichoacan.gob.mx/index.aspx
MOR	http://juiciosorales.morelos.gob.mx/
NLN	http://www.pjenl.gob.mx/tsj/Juicios.htm
OAX	http://www.juiciooraloaxaca.gob.mx/
PUE	http://nuevosistemadejusticiapuebla.mx/
SLP	http://www.reformapenalslp.gob.mx/
SON	http://reformapenalsonora.gob.mx/wp/
TAM	http://reformapenaltamaulipas.gob.mx/
VER	http://pgjiveracruz.noip.es/consejoreformaver/
YUC	http://www.poderjudicialyucatan.gob.mx/?page=reformapenal
ZAC	http://187.174.173.99:8080/oralesP.php?pagorales=p1

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