



STUDIES OF THE AMERICAS

# MEXICO'S STRUGGLE FOR PUBLIC SECURITY

ORGANIZED CRIME AND STATE RESPONSES

Edited by

George Philip and Susana Berruecos



## STUDIES OF THE AMERICAS

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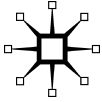
# **Mexico's Struggle for Public Security**

## **Organized Crime and State Responses**

*Edited by*

George Philip and Susana Berruecos

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MEXICO'S STRUGGLE FOR PUBLIC SECURITY

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## Preface

For some years, it has been customary for the Government Department of the London School of Economics to hold an annual conference on some aspect of Mexican politics or economic policy. A number of prominent Mexicans are invited to give presentations, and students are encouraged to attend and participate. In 2011 the chosen theme had to do with the progress (or otherwise) of Mexico's so-called war against organized crime. It was felt that some of the media coverage of organized crime in Mexico and the violence associated with it lacked balance and that there was space for an interpretation of the problem that, while not minimizing problems, avoided exaggeration. Accordingly, the conference, held in March 2011, invited a set of presentations and discussions from a range of speakers including academics, some Mexican, some British, and some from the United States, and also some members of the Mexican government.

This book is loosely based on the presentations at that conference but with some changes and a significant degree of updating. We are grateful to the LSE's Annual Fund for its sponsorship of the original conference. This is the first time that the LSE's annual conference on Mexico resulted in a publication, and we are especially proud of this.



## **Acknowledgments**

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GEORGE PHILIP AND SUSANA BERRUECOS



## Abbreviations and Acronyms

CARSI	Central American Regional Security Initiative
CBSI	Caribbean Basin Security Initiative
CENAPI	<i>Centro Nacional de Planeación, Análisis e Información</i> (National Center for Planning, Analysis, and Information)
CISEN	<i>Centro de Información de Seguridad Nacional</i> (Center for Research on National Security)
CNDH	<i>Comisión Nacional de Derechos Humanos</i> (National Human Rights Commission)
CONAMUP	<i>Coordinadora Nacional del Movimiento Urbano Popular</i> (National Coordinating Committee of the Urban Popular Movement)
DEA U.S.	Drug Enforcement Administration
DFS	<i>Departamento Federal de Seguridad</i> (Federal Directorate of Security)
DTO	Drug trafficking organization
ENVIPE	<i>Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública</i> (National Victimization and Public Perception Survey)
FASP	<i>Fondo de Aportaciones para la Seguridad Pública</i> (Public Security Support Fund)
FDI	Foreign direct investment
FEADS	<i>Fiscalía Especializada en Atención de Delitos contra la Salud</i> (Special Office to Prosecute Drug Crimes)
GCE	<i>Grupo de Coordinación Ejecutiva</i> (Executive Coordination Group of the National Security Cabinet)
GDP	Gross Domestic Product
ICESI	<i>Instituto Ciudadano de Estudios Sobre la Inseguridad</i> (Citizens' Institute for Studies on Insecurity)
IFAI	<i>Instituto Federal de Acceso a la Información y Protección de Datos</i> (Federal Access to Information and Data Protection Institute)



IFE	<i>Instituto Federal Electoral</i> (Federal Electoral Institute)
INCD	<i>Instituto Nacional para el Combate a las Drogas</i> (National Institute for the Combat of Drugs)
INEGI	<i>Instituto Nacional de Estadística y Geografía</i> (National Institute for Statistics and Geography)
LSE	London School of Economics and Political Science
MXN	Mexican peso
NAFTA	North American Free Trade Agreement
PAN	<i>Partido Acción Nacional</i> (National Action Party)
PGR	<i>Procuraduría General de la República</i> (Attorney General's Office)
PND	<i>Plan Nacional de Desarrollo</i> (National Development Plan)
PRD	<i>Partido de la Revolución Democrática</i> (Democratic Revolutionary Party)
PRI	<i>Partido Revolucionario Institucional</i> (Institutional Revolutionary Party)
PT	<i>Partido del Trabajo</i> (Labor Party)
SCT	<i>Secretaría de Comunicaciones y Transporte</i> (Ministry of Communications and Transportation)
SEDENA	<i>Secretaría de la Defensa Nacional</i> (Ministry of Defense)
SEDESOL	<i>Secretaría de Desarrollo Social</i> (Ministry for Social Development)
SEGOB	<i>Secretaría de Gobernación</i> (Ministry of the Interior)
SEMAR	<i>Secretaría de Marina—Armada de México</i> (Naval Ministry)
SEP	<i>Secretaría de Educación Pública</i> (Ministry for Public Education)
SFP	<i>Secretaría de la Función Pública</i> (Ministry of the Civil Service)
SHCP	<i>Secretaría de Hacienda y Crédito Público</i> (Ministry of Finance)
SIEDO	<i>Subprocuraduría de Investigación Especializada en Delincuencia</i> (Deputy Attorney General's Office for Special Investigation into Organized Crime)
SNSP	<i>Sistema Nacional de Seguridad Pública</i> (National System of Public Security)
SPA	<i>Sistema de Policía Acreditable</i> (Accredited Police System)
SSA	<i>Secretaría de Salud</i> (Ministry of Health)

SSP	<i>Secretaría de Seguridad Pública</i> (Ministry for Public Security)
SRE	<i>Secretaría de Relaciones Exteriores</i> (Foreign Ministry)
STC	Specialized Technical Committees of INEGI
Subsemun	<i>Subsidio de Seguridad Pública Municipal</i> (Municipal Public Security Subsidy)
UEDO	Especial contra la Delincuencia Organizada (Special Unit against Organized Crime)
UNODC	United Nations Office for Drugs and Crime
USD	US dollar

# Introduction: Mexico's Struggle against Organized Crime

*George Philip*

Among his first acts in office in December 2006, Mexican president Felipe Calderón sent the army into his home state of Michoacán to combat the state's criminal gangs. The result was not at all what the Mexican government had hoped for. Although there have been many indications of what might be considered to be progress, including increased seizures of illegal drugs and illegally held weapons and the arrest of drug traffickers, gang-related violence has increased sharply. Particularly sinister and disappointing has been the fact that this increase reversed a previous trend in which gang-related killings were stable or even falling. It is possible that drug-related violence may be leveling out as of late 2011,<sup>1</sup> but even if this turns out to be true, the level of violence would still be much higher than when Calderón took over as president. Unfortunately, although a reasonably successful period for Mexico in a number of respects, the Calderón presidency is likely to be remembered above all for the growth in violent organized crime.

There are many aspects to Mexico's struggle against crime. This book concentrates mainly on three major perspectives on this issue. One of them is understanding the causes of this recent upward spike in violence. The second is to evaluate the performance of Mexico's principal anticrime institutions defined in the broadest way. This evaluation includes chapters on the military, the criminal justice system, and some elements of the Mexican national bureaucracy, such as the national statistics agency, INEGI. The third perspective looks at Mexican political society, broadly defined, in order to understand the social and in some cases historical frameworks within which Mexican policy has been conducted.

The struggle against organized crime in Mexico is both complex and multidimensional. This book seeks to provide a degree of

balance. It seeks to avoid exaggerating a situation that is already serious enough. Mexico is not a failed state or in danger of becoming one in the near future. Apart from its violent criminality, Mexico has been performing well in recent years. The past decade has seen positive economic growth with little inflation. Mexico's last serious macroeconomic upset, the so-called tequila crisis of 1994–95, took place almost twenty years ago. The Mexican state enjoys a much better fiscal balance today than it has for decades, and its macroeconomic stability and control over its debt is superior to that of at least some—officially first-world—European countries. Because of its comparative economic strength, the Mexican state has the means of combating organized crime, at least in purely financial terms. It has found the necessary resources to be able to increase spending on police and the military quite significantly since 2006—though whether it has spent these additional resources with optimal wisdom is another story.

Most of Mexico's social indicators have also been on an improving trend, with longer life expectancies, better education, and some recent reduction in extreme poverty. There has even been a limited decrease in Mexico's historically high levels of inequality. This progress would not have been possible without at least a certain degree of institutional strength. In virtually every respect except for the struggle against violent crime, the Mexican state has been reasonably successful.

Finally, Mexico has democratized effectively over the past generation. While fears that criminal violence may pose a threat to Mexico's democratic institutions—indeed, that it may already be doing so—are to some extent valid, this does not alter the fact that Mexican democracy is both legitimate and robust. It will not break down anytime soon.

### **The Nature of the Problem**

Yet, the struggle against crime presents the state with some serious problems. It is true that two well-regarded ex-presidents of Mexico—Zedillo and Fox—have called for legalization of all currently prohibited drugs in the case of Fox and of marijuana in the case of Zedillo. However, drug-related violence is not a problem that can be resolved by the stroke of a pen. One reason for this is that the legalization of some currently illegal drugs is no longer central to the problem of combating violent organized crime. One of the main problems today is that Mexico's organized crime syndicates are involved in large-scale racketeering, with

activities that include kidnapping for ransom and preying on undocumented migrants from Central America. Legalization of marijuana, even if there are legitimate arguments for taking this step, will not solve the problem of racketeering.

The authors of this volume tend to a different view and consider the key problems to be mainly institutional. There are many references in subsequent chapters to particular institutional problems in Mexico, which clearly persist even though reform is under way. It is also worth mentioning that effective institutional reform may not only weaken organized crime directly but may enhance the general quality of governance in other ways. For example, a more honest and better prepared police force may have positive effects in dealing with casual as well as organized crime. A more effective judicial system may imprison fewer innocent people. An effective policy to reduce youth unemployment is surely desirable for a variety of reasons, including crime reduction. This potential for better governance in general, however, lies somewhat beyond the scope of this book. This volume deals largely with institutional and policy issues and—where there are persistent problems—attempts to relate these to broader historical or cultural factors.

There is no shortage of critiques of Mexican institutions that show more impatience than judgment. For example, in a document dated January 29, 2010, marked “secret” and leaked to the British newspaper *The Guardian* on December 2 of that year, the US ambassador expressed his frustrations about Mexico. “It is a challenging moment to address some of the institutional weaknesses that dot the Mexican political landscape and which periodically impede our larger efforts.”<sup>2</sup> The ambassador then went on to point to the political weakness of the Mexican presidency and to the “unwieldy and uncoordinated” structure of the Mexican state. He then claimed that “Mexican security institutions are often locked in a zero-sum competition in which one agency’s success is viewed as another’s failure, information is closely guarded, and joint operations are all but unheard of. Official corruption is widespread.” The statement is followed by detailed criticisms directed at the courts, police, and military.

The picture drawn by the US ambassador is certainly not a total caricature. Indeed, several chapters in this volume discuss weaknesses in the Mexican state. For example, the police and army can be effective in shoot-outs with gangs, but the system has been much less effective at marshalling evidence against suspects and bringing them to court. The US embassy was right to complain in the above-cited *Guardian* article of December 2, 2010, that “prosecution rates for

organized crimes are dismal... only 2% of those arrested in Ciudad Juárez have even been charged with a crime.” Though the embassy did not say so directly, there is also good evidence that a significant proportion of those arrested were not guilty. Even those who may be guilty of something are often relatively petty offenders, whose disposition will not have been improved by a few years in a Mexican jail—especially if the time was mostly spent on remand and awaiting trial. There have also been media reports of high-profile drug busts collapsing in embarrassment due to lack of evidence. While critical of the role played by the military, the embassy noted that there were not enough trained police officers available to replace the soldiers.

### **The Legacy of the Past**

However, focusing on institutional weaknesses in a vacuum is to disregard the constraints imposed by Mexican history and also the efforts of the Mexican government to achieve reform. It also disregards complexity. To take one example of a complex interaction among many—the issue of corruption—it is evident that some agents of the Mexican state have shown themselves to be corruptible. However, one problem with reform is that the country has relatively recently undergone an as yet incomplete transformation from lawless authoritarianism to constitutional democracy. In this transformation, institutions have changed faster than political values.

Nobody doubts that authoritarian Mexico was based on a series of payoffs to politicians and other state employees. Virtually every Mexican is aware of President Obregon’s possibly apocryphal reply to the question of how he maintained political stability in the army in the 1920s: “I know of no general who can withstand a broadside of 50,000 pesos.” The temptation for the political leadership of authoritarian Mexico in a more recent period—in the 1970s and 1980s—to quietly ignore the drug trade or even to enjoy a share of its proceeds was strengthened by the observation that ordinary political corruption in Mexico was common enough. The result of using payoffs as instruments of government was political cynicism and a loss of public confidence in state institutions. Data published by Latinobarometro in 2006<sup>3</sup> on the relative degree of confidence in law enforcement agencies bodies puts Mexico somewhere below the average for Latin America—which in itself is none too demanding. Unfortunately, this lack of confidence has greatly complicated progress with genuine law enforcement. It also provides a spurious rationale for counterpropaganda by the gangs themselves.

History is not the whole story. An additional problem with drug-related corruption in Mexico is a matter of magnitude. The profits from drug trafficking are very high and illegality enhances them further. Estimates of the total annual revenues brought in by drug trafficking range as high as USD 30 billion. Payoffs can easily amount to tens of millions of dollars. Not only does this provide a powerful incentive to illegal behavior, but it also means that the gangs are big enough to enjoy many of the benefits of economies of scale and organization.

In comparison, in a case of “ordinary” corruption, after the 2000 elections in Mexico, the PRI was fined what seemed an enormous sum of USD 65 million for illegally accepting a campaign donation from the state company union. This donation was seen as scandalous, and it undoubtedly damaged the PRI in subsequent elections. However, in comparison with the money entering Mexico every day from drug-related operations, this sum is trivial. Even though it is true that Mexican electoral arrangements are designed to protect its legitimate political parties, some of its most important institutions are vulnerable to the amounts of money that the drug trade can generate.

There is some truth in this picture of institutional weakness, corruption, and lawlessness. Yet it is also one-sided and unsympathetic to the obstacles the Mexican authorities face. That is nothing new in US perceptions of Mexico, which sometimes fluctuate between complacency and undue alarm. Historically, exaggerated US concerns about Mexico have certainly not been unusual. For example, in 1989 Sol Sanders wrote a book entitled *Chaos on our Doorstep* that expressed many of the same fears of state failure that are still discussed today.<sup>4</sup> In 1989, however, the fear was of economic collapse rather than (as it is today) of criminal violence. The tequila crisis of 1994–95, serious though it was, also led to some rather exaggerated speculations as to the future of the Mexican economy and its political order. As mentioned above, notwithstanding these high-profile concerns, the Mexican economy is today in much better shape than it was in 1986 or 1994, and the focus of anxieties has shifted to drugs and violent crime.

### **Structure of the Book**

This book seeks to provide a balanced view of some complex issues, giving due weight to the fact that these have multiple causes and consequences. The first two chapters set out the main reasons for

the sharp increase in violence after 2006. One of them comes from a prominent member of the Mexican government. Alejandro Poiré, who has served as a key figure on the security front during the entire Calderón administration, places the blame for increased violence on the changed nature of Mexico's organized crime. One aspect of this change has been the diversification of organized crime from simple drug trafficking to other forms of criminality. He also characterizes certain shortcomings of the Mexican state, particularly the limitations of local policing, which are slowly being overcome. Finally, like many Mexicans, he attaches some blame to the United States for allowing the ban in the sale of assault weapons to lapse in 2004. The connection between better-armed criminals and more criminal violence is one of the few simple verifiable hypotheses in a generally complex field.

However, Poiré's chapter also makes it clear that the government's anticrime strategy has tended to consume more resources and more political effort over time. Whereas Calderón may initially have hoped that a high-profile show of force would have a positive moral effect, what has happened instead has been for the state to reform itself around responses to violent crime in a variety of ways. Among these responses are not only those directly related to combating violent crime, such as reforms of the legal system, but also more indirect ones, such as pursuing an effective antipoverty policy. Most, if not all, of these goals would be worthwhile even in the absence of a threat from organized crime.

In the second general overview chapter, Eduardo Guerrero puts his finger on a central paradox. Why should the adoption of state policy giving priority to combating organized crime coincide with a significant increase in violence by organized criminals when the trend before then had been for killings to fall? Some explanations for the prevalence of criminal violence, such as poverty or demographics, may explain why organized crime should exist but not the upward spike in violence since 2006. Guerrero's argument is that state policy has been significantly effective in terms of seizing drugs and arresting or otherwise eliminating crime bosses, but this very success has also produced unwanted side effects. Vacuums of power have been created, and these, in turn, have led to turf fights, which have led to the spike in killing. If Guerrero's analysis is correct, then anticrime policy will have to take into account the internal Hobbesian logic of maintaining order within outlawed organizations and also the logic of competition between them. Neither of these is self-limiting by nature. Unfortunately, the supply of gangsters' cannon fodder is



virtually limitless. If Guerrero is right, Mexico has as long way to go before it can hope to achieve major results in the fight against organized crime.

Clearly, the character of the criminal gangs has also changed over time. They have become bigger, more violent, and more autonomous of the drug trade as such. They are also starting to have a significant impact on politics in some regions in the country though they are not (at least not yet) a threat at the national political level. They are also, by comparative standards, unusually violent. This violence might prove a source of weakness in the long run, but it has shocked and demoralized at least some of Mexican public opinion in the short run. The same US embassy that complained about poor Mexican organization early in 2010 only a few months earlier had referred to the La Familia gang as having launched “a sustained and deadly reprisal campaign against Mexican law enforcement unprecedented in its brutality. . . . La Familia is a complete organized crime syndicate, not only involved in drug trafficking but also in extortion, money laundering, kidnapping, and corruption.”<sup>5</sup> In other words, the Mexican state has to face some formidable adversaries. In comparative terms, the intensity and horror of the violence in Mexico and its autonomous character distinguishes the situation in Mexico from that in Colombia.

Poiré looks principally at the role of the Mexican state. Guerrero reminds us of the importance of the internal workings of the criminal gangs. Piccato focuses on the role of a profession that in Mexico to some extent serves as a bridge between the state and the general public—namely, journalism. Adopting a historical perspective, he shows how the popular press has in the past played an active role in reporting crime and hunting down criminals. In doing so, Piccato raises the issue of what is new about the current criminal violence and what is not. Criminal violence, especially in its more lurid forms, can be seen—at least in part—as a means of communication between criminals. Piccato goes so far as to refer to a “media strategy” pursued by the gangs. The chapter then goes into detail (some of it gruesome) about the way in which notes pinned on the bodies of murder victims and the trademark symbols of gangland killings are intended to get the attention of crime journalists. In other contexts, criminals target the journalists directly because they know too much.

The chapter by López considers the role of the military. His approach, too, is essentially historical and begins with Mexico’s authoritarian past. The issue of how best to inhibit illegal drug exports from Mexico to the United States goes back more than a generation. The Mexican authorities first used the military to destroy

illegal drug plantations as far back as 1938. Moreover, in 1969 the Nixon administration organized “Operation Intercept”—a unilateral attempt by the US government to force the Mexican authorities to clamp down on the illegal drug trade. The operation largely failed due to a lack of enthusiasm on the Mexican side, and in the end a good relationship between the United States and Mexico was given a higher priority in Washington (even in Nixon’s Washington) than counternarcotics policy. Nevertheless, after Mexico’s democratization, one consequence of the weaknesses in the legal system has been the tendency of the presidency to overuse the military. As López points out, the Mexican military has for decades been highly loyal to the executive branch. At any rate, since the end of the Second World War, the military has done what the president of the day asked it to do and has been protected from serious scrutiny and enjoyed growing institutional influence in return. An important aspect of the excessive presidentialism of the old Mexican authoritarian system was the conviction that the military would do as ordered without scruple or reservation. This attitude enabled the military to enjoy considerable public prestige despite its involvement in some egregious acts of internal repression.

Since democratization, the Mexican government has had to tread a fine line between operational effectiveness and repeating the kinds of authoritarian practices for which Mexico became notorious in the 1960s and 1970s. At that time the issue was “subversion” rather than criminality as such. However, the Mexican authorities responded according to a ruthlessly understood mentality of *raison d’état*. For example, the successful resistance put up by the government of Díaz Ordaz to Operation Intercept, which originated with the US government, had nothing to do with peace and everything to do with the authorities’ desire to keep Mexico’s drug traffickers and political insurgents separate. In the 1970s the Mexican state fought an undeclared war against insurgents that was only slightly less harsh than the dirty wars for which the Southern Cone militaries in Latin America became justly notorious.

Since the 1980s the Mexican state has gradually become more benign. Nevertheless, it has remained authoritarian in some important ways. The spectacular arrest of famous persons suspected of corruption or worse was very much a feature of the transition to democracy. It would be hard to deny that most those of those arrested in this way probably deserved their fate, but the evidence against them was not always conclusive. Meanwhile, the military has remained a powerful actor at the heart of the system, with President

Salinas in 1989 deliberately using the military in roles that in other countries would likely have been considered essentially falling within the remit of the police. One of the paradoxes of democratization in Mexico is that while the role of the military has mostly been in decline in most of democratic South America, it has been on the increase in democratic Mexico.

Landman deals more with what we might call the legitimacy aspect of the conflict. He is particularly concerned with the violations of human rights that have resulted—directly or indirectly—from the way in which the Mexican state has allowed its efforts to be characterized in terms of a “war.” Landman’s point is that conceptualizing an anticrime policy in this way conveys the wrong message, not least to police officers, soldiers, and those responsible for prosecuting violators of human rights. One should not forget that agents of the state are themselves capable of criminality and must be governed by law, no matter what dangers they face and however honorable their objectives. Moreover, unpunished criminality discredits the Mexican state and so undermines its potential to garner support. Landman suggests that the democratic Mexican government might be able to mobilize civil society against organized crime if it were not itself tarnished by the unpunished overreactions of the security forces. Landman’s central claim is that “fighting crime and upholding human rights is not only possible but compatible.”

The theme of uneven institutional capacity is also highlighted in the chapter by Ingram and Shirk, which focuses on the Mexican justice system. Their discussion of this topic provides evidence of the way in which issues of organized crime spill over into broader issues of governance and public confidence in Mexico’s institutional system. Because the judicial system has generally worked badly, public confidence in it has been low. This, in turn, makes it difficult to tackle issues of incompetence and corruption within the system, both in the police and the judiciary. In turn, this handicaps the Mexican authorities in their struggle against organized crime. Ingram and Shirk quote eloquently from the findings of opinion polls relating to public confidence in the police and judiciary. Not only is this confidence low, but public skepticism is evidently justified. Petty criminals with the misfortune to be poor can languish in jail for years while major criminals have much better chances of enjoying impunity or at least access to expensive lawyers. Indeed, there is an additional point to be made about this, which has to do with prison conditions. It seems that for inmates with money prison holds little terror. According to press reports, prostitution, consumption of illegal drugs, and gambling are

common in some jails. In the jails, as in the rest of the country, everything comes down to having money.

Ingram and Shirk then look at the impact of the 2008 judicial reform. Admittedly, the effects of institutional reforms can take years to make themselves widely felt, and any verdict on a law passed in 2008 would have to be considered premature at this time. Nevertheless, there have been some real reservations about the short-term consequences of the reform, and these show how difficult it is to reform the Mexican system.

One factor holding back the pace of reform is the decentralized character of Mexico's institutions. Ingram and Shirk point out that some 90 percent of presumed criminal offences fall under state or municipal rather than federal jurisdiction. There is considerable variation in the judicial practice of different states, and this is a source of the states' weakness in the struggle against organized crime. Gangs can penetrate the weakest and most corrupt authorities while bypassing the others.

The reason for this decentralization comes from the nature of Mexico's democratic transition. It is no longer appropriate to regard Mexico as still in transition to a democracy considering that the decisive changes took place more than a decade ago. However, it seems entirely reasonable to point out that democratization has had significant consequences for policy making and that these are still making themselves felt. The key point is that Mexico democratized gradually rather than experiencing a decisive moment when the old authoritarian order gave way to a new democracy. Even with a decade or more of hindsight, it is difficult to pinpoint the moment when Mexico finally became a democracy.

Mexico's Constitution of 1917 has therefore not been significantly amended since democratization—even though it has been amended several times during authoritarian days. Today, no party has sufficient votes to prevail in what would inevitably be a contested process of significant institutional reform. Instead, vested interests stand in the way of political change. This constitution, while of great value in asserting a sense of national unity, contains a number of provisions (some of them due to later constitutional amendments) that stand in the way of the state's effectiveness in the twenty-first century. An important example of dysfunctionality is the existence of sweeping limits on the principle of reelection at the municipal, state, congressional, and presidential level. For example, municipal presidents serve for three years and cannot succeed themselves. There are excellent reasons for

prohibiting presidential reelection, but the cost-benefit calculus of this prohibition becomes less convincing at lower levels of government.

This prohibition did not much matter when Mexico was an authoritarian state and virtually all power was centralized in a dictatorial presidency, but it is a handicap now that democratization has been accompanied by a significant degree of decentralization. Local governments have been given a lot of legal and financial responsibility without acquiring the human or even financial capital necessary to discharge them effectively. Before the federal government took an interest, local police departments were undertrained, underequipped, or even absent altogether. The provision against reelection gave local authorities short time horizons and a bias against undertaking long-term projects, such as collecting statistics or training police officers. Because of this distorted incentive structure, the faults of municipal and state governments in Mexico are similar to those of the federal government, only more serious.

While there are broad issues of history and culture relevant to combating organized crime, much of the task of dealing with it has to be bureaucratic in nature and to some extent mundane. Palma's discussion of INEGI, while at one level an account of a statistics-gathering agency, also shows clearly the way in which the Mexican state was initially unprepared to cope with the sophisticated operations of organized criminals. The most basic management information was lacking. Here, too, there was a potentially important reform in 2008 whose effects are still in the process of making themselves felt.

Reading these chapters together, one has the feeling that President Calderón declared war in 2006 when heading a state that was in many ways ill-equipped to fight one. The result has been a learning process that has been costly in terms of human life and economic resources. However, it does seem that this learning process is slowly enhancing the effectiveness of the Mexican state at a variety of levels. The balance may slowly be tipping against organized crime in Mexico.

### Notes

1. "Mexico's Drugs War: Lessons and Challenges," BBC, January 1, 2012, <http://www.bbc.co.uk/news/world-latin-america-16337488>.
2. Rory Carroll, "US has lost faith in Mexico's ability to win drugs war, WikiLeaks cables show," *The Guardian* (London), December 2, 2010.
3. Cited in Guillermo O'Donnell, *Democracy, Agency, and the State: Theory with Comparative Intent* (Oxford: Oxford University Press, 2010), 158–60.

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5. U.S. embassy cable dated July 17, 2009, full text available at [http://www.elpais.com/articulo/internacional/Cable/escalada/violencia/Familia/elpepuint/20110308elpepuint\\_14/Tes](http://www.elpais.com/articulo/internacional/Cable/escalada/violencia/Familia/elpepuint/20110308elpepuint_14/Tes).

## Chapter 1

# Mexico's Fight for Security: Actions and Achievements

*Alejandro Poiré*

The most important thing to keep in mind when looking at Mexico's security challenges today is that profound structural changes have occurred in the criminal environment. Many changes followed the defeat of the hegemonic political party in 2000. The *Partido Revolucionario Institucional's* (PRI) loss of its majority in congress opened the door to political change and to democracy, and a fundamental and coordinated response was required from the Mexican state. Sadly, the Mexican authorities failed to introduce all of the necessary changes at the right time to prevent a crisis in public security. That is why since his election five years ago, President Felipe Calderón and his administration have implemented a very direct, comprehensive, and structured strategy to deal with this problem.

This chapter begins with a general description of the main causes of changes in the drug market and criminal activities. It seeks to answer why, given that the drug market has a long history in Mexico, criminal activities and drug-trafficking organizations (DTOs) have become so problematic in recent years. This overview aims to show why a complete transformation of security institutions, of the legal framework, and even of the fabric of society has become necessary. The chapter then examines the national security strategy implemented by Calderón's government and discusses the components of the strategy and some of its achievements and challenges.

### Background and Context

From the middle of the twentieth century to the 1970s and 1980s, producers—mainly of marijuana and poppy seed—largely ran the

drug trafficking business and exported most of their product to the United States. The drug trafficking business changed dramatically in the 1980s and 1990s due to several changes affecting both the domestic and the international drug markets as well as their interaction.

The main trigger of the transformation of the Mexican drug market was the extensive aerial and maritime interdiction effort of the United States in the Caribbean in the 1980s and early 1990s, which closed or at least significantly diminished the use of this trafficking route for cocaine from Colombia to the United States. This did not prevent cocaine from coming into Florida, however, as DTOs found an alternative route: traffickers began to smuggle great quantities of cocaine through Mexican territory. Recently, US authorities have expressed concern about the possible reopening of the Caribbean route and the increasing importance of Central America as a strategic trafficking hub; the Caribbean Basin Security Initiative (CBSI) and Central American Regional Security Initiative (CARSI) have been established to counter these threats.<sup>1</sup>

A large number of producers exporting marijuana to the United States joined the international drug trafficking network that sent South American cocaine through Mexican territory into the United States. The relationship between Mexican and Colombian DTOs went beyond mere transportation. In the 1990s in particular, Colombian cartels started paying Mexican organizations in kind instead of in cash, and increasingly large amounts of cocaine crossing toward the United States began to stay in Mexico.

More and more product was left in the country and consumed and sold within the burgeoning domestic market. During this period, from 1994 to 2010, Mexico's gross domestic product (GDP) per capita almost quadrupled. Mexican cartels now began producing drugs and exporting and distributing them for domestic consumption. They developed larger and more pervasive networks in the country, especially in the northern cities.<sup>2</sup> In other words, the market shifted from focusing on international trafficking to domestic distribution. In the 1990s DTOs acted as small cells focused on exporting drugs to the United States with trafficking routes along Mexico's two coasts. In contrast, today's larger DTOs are focused on expanding their *plaza* (territory) and have become more violent.

Enhancement of security along the border between the United States and Mexico during the 1990s also changed the way criminal organizations ran their businesses within Mexico even though security was not tightened to tackle drug trafficking but to curtail illegal border crossing. Security policies in this country and the greater levels



of drug interdiction between Mexico and the United States showed that DTOs were not only able to get their product into the United States but were also able to increase their profits. According to US government reports, Mexican and Colombian DTOs combined earn USD 18–39 billion annually in wholesale drug proceeds.<sup>3</sup> Most of the agencies estimate that 60 percent of all Mexican DTOs' drug revenues—some USD 20 billion—come from exporting marijuana. RAND Corporation suggests that Mexican DTOs' gross revenues from moving marijuana across the border into the United States and selling it to wholesalers are in the range of USD 1.5–2 billion.<sup>4</sup> Even taking into account the more conservative estimates, it is clear that drug trafficking is a very profitable business.

All of these changes transformed the drug business in Mexico. Whereas DTOs used to engage in international trafficking with no need for territorial control and almost no confrontation with domestic authorities, they now needed to control routes and territories for distribution and to develop larger networks to corrupt local police officers and authorities.

Conversely, the authorities failed to improve and transform institutions to keep pace with the expanding DTOs. Local police institutions were woefully ill-prepared for the changes in organized crime. By the start of the current administration, only 12 of Mexico's 31 states had a police presence in every municipality; more than 400 municipalities had no public security force, and of those that had one, almost 90 percent of municipal police forces numbered fewer than 100 officers.<sup>5</sup> Criminal organizations easily co-opted local police officers who lacked professional skills, equipment, training, and decent salaries. Whereas cartels were gaining in strength and complexity, local security institutions grew weaker and were damaged by corruption. Local law enforcement institutions, which have primary responsibility for fighting crime, were incapable of facing the challenge of increasing crime.

In a clear manifestation of the changed crime context, cartels began to fight for control of distribution to certain areas and regions within Mexico. The familiar practice of executing criminal adversaries to “cleanse” the organization, discipline it, or gain territory became more visible. Turf wars still continue today.

The increasingly violent crime context was exacerbated by a change in US policy that offered significant benefits to criminal organizations: the lifting of the assault weapons ban.<sup>6</sup> The ten-year prohibition on the manufacture, transfer, and possession of assault weapons expired in 2004, at the very time when criminal

organizations had undergone the transformation described above. They now had incentives to fight each other and a readily available illegal market in high-caliber weapons. Obviously, their fights became more deadly.

In addition to becoming more complex, the cartels also diversified their activities. They used their networks and abilities to co-opt, corrupt, or inflict fear upon local security authorities in order to expand to other criminal activities, such as kidnapping, extortion, and human trafficking. Paradoxically, the incursion into these new criminal activities had an important positive effect: Mexican society woke up to the problem of drug trafficking. Criminals had begun to affect everyday life in certain regions of the country, and citizens demanded security as a priority.

In summary, when taking office in December 2006, President Calderón faced powerful criminal organizations, increasing crime rates, weak local institutions, and a defective legal system. Criminal violence had damaged the fabric of society in some parts of the country. The solution to the problem was evident: a structural transformation was needed.

### **The National Public Safety Strategy**

In this section I provide an overview of the comprehensive solution implemented by Calderón's administration and also assess some of the achievements after the first five years of its implementation.

The federal government designed Mexico's public safety strategy following an extensive, deep, and serious diagnosis that served as a basis for various government plans and programs. Early on in his administration, President Calderón presented a comprehensive national public safety strategy with three components, each of equal importance. All of us in the administration knew that the strategy's success required working simultaneously and effectively on all three of its components:

#### **1. Containment and Weakening**

At the beginning of the 2006–12 administration, the main challenge was to contain and weaken criminal organizations. To do so, the federal government had to enhance local authorities that were weak, as explained above. Federal forces (in particular the federal police and the military) were deployed to certain damaged regions where local authorities had explicitly requested support.

Joint operations to support local authorities and citizens are perhaps the most visible component of the strategy, but they are not the only one. Containing and weakening criminal organizations is a necessary but insufficient step toward solving the crime problem, especially in the long term since federal authorities cannot be supportive of local authorities forever: an institutional transformation had to be implemented.

## ***2. Institutional Transformation***

Given that criminal organizations had increased their capabilities, it was very important for Mexico's government to expand its operational and technological capabilities at the federal and local levels to keep pace with those organizations. This required more than improvements to equipment and training; a deeper institutional transformation was also needed to guarantee that local authorities would be as strong as needed in the future and that they would be credible, honest, and reliable.

On the other hand, the aforementioned institutional changes needed to be embedded in the legal framework. Thus, we introduced legal reforms both at the federal and at the local level to update Mexico's constitutional and legal framework to deal with crime in a broader way.

## ***3. Reconstruction of the Social Fabric***

Focus on active crime prevention required reconstruction of the fabric of society. As members of the administration, we were aware of the social problems associated with drug-related crime, particularly in the urban lower income areas that had been deeply affected, and we began addressing this important issue immediately. We had to improve opportunities for youth, provide a better social safety net and support for families, and make sure that local criminal incidents are also addressed from a social perspective.

## ***Shared Responsibility as a Transverse Axis***

A global problem cannot be solved without a global effort. Consolidation of the strategy required shared responsibility at the international level as much as on the domestic one.

The National Security Cabinet and the National Security Council are responsible for implementing the strategy. As outlined in the

National Security Act, the National Security Cabinet is composed of the Ministry of the Interior (SEGOB), the Ministry of Defense (SEDENA), the Naval Ministry (SEMAR), the Ministry for Public Security (SSP), the Attorney General's Office (PGR), and the Ministry of Finance (SHCP). The National Security Council consists of these same institutions plus the Foreign Ministry (SRE), the Ministry of Communications and Transportation (SCT), and the Ministry of the Civil Service (SFP).

In contrast to a classic bureaucratic model designed to react to events and to take decisions unilaterally, the National Security Cabinet coordinates interactions and a number of diverse approaches around a common goal: genuine and lasting security for Mexican society. The cabinet operates mainly through the Executive Coordination Group (GCE), which is a top collegiate body composed of senior representatives of the institutions of the cabinet. The GCE's main functions are: (1) to support and monitor the national security strategy, (2) to enforce agreements, (3) to generate mechanisms for coordination with federal and state authorities in priority areas under the national risk agenda, and (4) to monitor operational coordination groups in the individual states.

The National Security Council meets at least once a week, and in accordance with the National Security Act it is responsible for:

1. approving the National Security Program (2009–12 for Calderón's administration) and the National Risk Agenda, which are submitted each year and serve as a guide for all security actions; and for
2. adopting resolutions on international cooperation programs on security issues; issuing guidelines to provide assistance in public safety, law enforcement, and any justice matter determined by the council; and classifying and declassifying information on national security.

The National Security Council has addressed a variety of topics, including the southern border, customs modernization, the Merida Initiative, ports and airport security, fuel theft, money laundering, and the high levels of violence in Ciudad Juarez.

### **Main Achievements**

In this section I review a selection of achievements under each of the components of the strategy. As explained above, the first component is probably the most visible because its achievements are more noticeable in the short term. But the timeframe for each component is different;

the deeper the change, the longer it takes to see results. Mexico will reap the benefits of institutional transformation and the reconstruction of the fabric of society in the long term, which is why it is important to ensure that the pertinent policies are solid and permanent.

Table 1.1 shows the most wanted criminals listed by the Attorney General's Office in 2009. All were leaders, lieutenants, or financial traders of criminal organizations. So far, the federal authorities have neutralized 22 of them; most are in prison, and some have been extradited to the United States. A few were killed by federal authorities in efforts to detain them, and two members of rival DTOs were executed. This is a significant achievement, especially considering that every criminal organization has been weakened by the loss of its leaders.

**Table 1.1** Neutralized criminal leaders

#	Date	Name and alias	Organization*	Status	Hierarchy
1	December, 2011	Raúl Lucio Fernández Lechuga "El Lucky"	Zetas	Captured	Lieutenant
2	June, 2011	Jose de Jesús Méndez Vargas "El Chango"	La Familia	On trial	Leader
3	January, 2011	Flavio Méndez Santiago "El Amarillo"	Zetas	On trial	Lieutenant
4	December, 2010	Nazario Moreno González "El Chayo"	La Familia	On trial	Leader
5	November, 2010	Antonio Ezequiel Cárdenas Guillén "Tony Tormenta"	Golfo	Killed	Leader
6	September, 2010	Sergio Villarreal Barragán "El Grande"	Beltrán Leyva	On trial	Leader
7	August, 2010	Edgar Valdez Villarreal "La Barbie"	Beltrán Leyva	On trial	Leader
8	July, 2010	Ignacio Coronel Villarreal "Nacho Coronel"	Pacífico	Killed	Leader
9	January, 2010	Eduardo Teodoro García Simental, "El Teo"	Pacífico	On trial	Leader

*Continued*

**Table 1.1** Continued

#	Date	Name and alias	Organization*	Status	Hierarchy
10	December, 2009	Eduardo Almanza Morales “El Gori”	Golfo / Zetas	Killed	Lieutenant
11	December, 2009	Arturo Beltrán Leyva, “El Barbas”	Beltrán Leyva	Killed	Leader
12	October, 2009	Octavio Almanza Morales, “El Gori 1”	Golfo / Zetas	On trial	Lieutenant
13	September, 2009	Sergio Enrique Ruiz Tlapanco, “El Tlapa”	Golfo / Zetas	On trial	Lieutenant
14	September, 2009	Alberto Pineda Villa, “El Borrado”	Beltrán Leyva	Executed	Lieutenant
15	September, 2009	Marco Antonio Pineda Villa, “El MP”	Beltrán Leyva	Executed	Lieutenant
16	May, 2009	Raymundo Almanza Morales, “El Gori 2”	Golfo / Zetas	On trial	Lieutenant
17	April, 2009	Gregorio Saucedo Gamboa, “El Goyo”	Golfo / Zetas	On trial	Lieutenant
18	April, 2009	Vicente Carrillo Leyva “El Ingeniero”	Carrillo Fuentes	On trial	Leader
19	March, 2009	Sigifredo Nájera Talamantes, “El Canicón”	Golfo / Zetas	On trial	Lieutenant
20	March, 2009	Sergio Peña Mendoza “El Concord”	Golfo / Zetas	On trial	Lieutenant
21	March, 2009	Héctor Huerta Ríos, “La Burra”	Beltrán Leyva	On trial	Lieutenant
22	March, 2009	Vicente Zambada Niebla, “El Vicentillo”	Pacífico	Extradited	Leader

*Source:* Attorney General’s Office (PGR).

*Notes:* \*Golfo / Zetas Organization split into two antagonistic groups starting in 2010.

Critics, including Guerrero in this volume ([chapter 2](#)), have voiced concerns that neutralizing criminals increases violence because of the presence of federal forces or because of a reorganization within a criminal group when factions vie to replace the lost leaders. An analysis of ten cases where federal authorities captured or killed cartel leaders between October 2008 and January 2011 shows that there is no systematic and direct link between the neutralization of criminal leaders and the rise of violence.<sup>7</sup> This is not to deny that violence, in terms of homicides, has increased since 2008 but merely to point out that government action is not the cause of the deaths in the context of criminal rivalry and that violence is a phenomenon with many causes.

Another important achievement is the amount of drugs and guns, and ammunition seized as well as seizures of all sorts of other supplies used to benefit organized crime operations. The current administration seized record levels of drugs: 8,130 tons of marijuana in the period between 2006 and 2011 compared to 8,270 tons between 2000 and 2005 and 4,197 tons between 1994 and 1999.<sup>8</sup> Methamphetamine seizures increased even more dramatically, namely, to 24,243 kilograms from 2006 to 2011 compared to 2,789 kilograms between 2000 and 2005 and 835 kilograms between 1994 and 1999.

The federal authorities have also confiscated unprecedented amounts of cash (dollars and pesos), ground vehicles, and aircraft. Authorities seized USD 471 million in cash in the period from 2006 to 2011 compared to USD 44 million between 2000 and 2005 and USD 31 million between 1994 and 1999. The number of ground vehicles confiscated between 2006 and 2011 was 47,490 compared to 15,260 between 2000 and 2005 and 18,710 from 1994 to 1999. Although most of the aircraft that have been seized from criminal organizations are small airplanes, a vast array of models is represented, and in terms of quantity many more have been confiscated than under previous administrations, specifically, 501 between 2006 and 2011 compared to 145 between 2000 and 2005 and 166 between 1994 and 1999.

In the first four years of Calderón's presidency, authorities confiscated more than 10 million rounds of ammunition—five times more than under the previous administration—and more than 11,000 grenades and explosives—a tenfold increase over the previous administration's success. Historically high numbers of handguns and rifles seized reflect the strength of criminal organizations and also the government's ability to weaken them over the past few years. Between 2006 and 2011, 102,600 handguns and rifles were confiscated compared to 29,500 between 2000 and 2005 and 44,400 from 1994 to 1999.



**Figure 1.1** Seizures of weapons, 1994–2011

*Source:* PGR-CENAPI (2011).

Figure 1.1 shows total seizures of weapons in Mexico between 1994 and 2011. There were relatively numerous seizures in 1995 and 1996, but since then up until 2006 the numbers have decreased. From the beginning of this administration, we have been able to seize a very significant number of both handguns and assault weapons.

When weapons seizures are disaggregated into handguns and high-caliber weapons, it becomes clear that the number of high-caliber weapons has been increasing in recent years. While the total number of all types of weapons seized has grown rapidly since 2006, the number of assault weapons has exceeded the number of handguns in each year since 2008. This reflects the change in the illegal market in assault weapons from the United States.

Although there is no doubt that containment efforts have weakened criminal organizations, perhaps the most important achievements—albeit less visible—involve the structural transformation of law enforcement institutions in Mexico. Since 2006 the federal authorities have driven the country’s most massive improvement in law enforcement capacity. At the beginning of this administration there were only some 6,500 federal police officers in a country of about 104 million people. Today, Mexico has more than 35,000 police officers, and 7,000 of them are college graduates.<sup>9</sup>

The government has introduced a systematic vetting process that has been applied to every serving officer. Candidates who are found not suitable to serve or who are subject to criminal investigation are



excluded. As a result, we now have a very highly skilled and professional federal police; more important, we have a system that will provide significant benefits and capacities for the long term in Mexico. This is a transformation that was not only necessary at the federal level but also at the state and municipal levels.

This transformation has been costly. The government more than doubled the federal budget for security between 2006 and 2011 from MXN 61 billion to MXN 138 billion.<sup>10</sup> State and municipal security budgets have also increased substantially because 90 percent of crimes and 90 percent of the police force in Mexico are in state and municipal jurisdictions. Yet, few states and municipalities have made significant changes to try to tackle drug-related crimes.

The total expenditure at the local level has also increased significantly. There are three federal government subsidies to support local security efforts, which are in addition to expenditures by local authorities. These are the *Fondo de Aportaciones para la Seguridad Pública* (Public Security Support Fund, FASP), the *Subsidio de Seguridad Pública Municipal* (Municipal Public Security Subsidy, Subsemun), and the *Sistema de Policía Acreditable* (Accredited Police System, SPA). They totaled MXN 13.8 billion in 2011, a considerable increase over the 2008 figure of MXN 10.1 billion.<sup>11</sup>

The federal government has a number of programs focused on state and municipal authorities to promote the same standard of transformation that has taken place at the federal level. An example is the *Centro de Inteligencia de la Policía Federal* (Federal Police Intelligence Center) in Mexico City, which provides a technological basis for *Plataforma México* (Mexican platform), a system that connects 32 state governments and hundreds of municipal governments and gives them access to information about crimes and criminals and to databases in order to help fight crimes, such as kidnapping and extortion, in local jurisdictions. This platform is fully operational and has allowed millions of annual connections and enquiries.

Institutional transformation has gone beyond the administrative level. In the administration we have also enacted substantial legislation. For example, the legislature has approved a very significant reform of the criminal justice system that will be implemented in 2016. This reform represents a huge change not only in public security terms but in the way we conceive of justice (see Ingram and Shirk [chapter 6](#) in this book).

Other important laws have been enacted against kidnapping and drug trafficking and to reform both the federal police and the

Attorney General's Office; in addition, laws against illegal property have been introduced so that the state can seize property from drug traffickers and their networks. We have also reformed the way the federal government coordinates with the states and municipalities, and this has transformed the public security system.

Since 2008 congress has been debating bills on military jurisdiction (submitted to congress on October 18, 2010), money laundering and terrorism financing (submitted on August 26, 2010), national security (submitted on April 23, 2009), offences against freedom of expression (submitted on October 30, 2008), and on single police command (*Mando Único*, submitted on October 6, 2010).

Achievements under the social component of the strategy are difficult to observe and measure in the short term. One indicator of improvement is the number of public spaces, such as parks and sports courts, that have been reclaimed from use by criminal organizations for recruitment or drug consumption. The authorities reclaimed and renovated 8,800 such spaces in the period between 2007 and 2010.<sup>12</sup> There are now more spaces available for recreation, sports, and educational activities.

Two other social programs that can be measured are the National Safe Schools Program and the Nueva Vida Centers, which are aimed at early detection and prevention of addiction. By 2010, 30,000 schools had enrolled in the National Safe Schools Program, which brings parents, teachers, and students together in efforts to improve school safety and to enable students to identify risky situations, to care for themselves and others, and to develop ethical behavior.<sup>13</sup> There are currently more than 300 Nueva Vida Centers across the country providing prevention and treatment services and training personnel in the control of addictions; they often work with civil society organizations.<sup>14</sup>

As we know, poverty and lack of opportunities provide fertile ground for criminal activities. With this in mind, the federal government has considerably raised spending on poverty relief. The government has increased its federal budget for poverty relief as a percentage of the total federal budget from 7.1 percent in 2000 to 11.6 percent in 2010.<sup>15</sup> A significant component of the government's strategy for the alleviation of poverty is the *Oportunidades* program, which provides grants for education, health, and nutrition to families in extreme poverty, primarily in rural areas. Since 2007, the government has extended *Oportunidades* to urban areas directly affected by criminal organizations. Today, more than 30 million people in Mexico have access to this program, 6.8 million of them in urban areas. By comparison, in

2000 there were 13.1 million beneficiaries of the program (formerly known as *Progresa*), all of whom were in rural areas.<sup>16</sup>

Another major achievement in social policy is that by the end of this administration Mexico will have universal health coverage in every state. This is largely provided through the *Seguro Popular* federal program (popular health insurance), which already has more than 80 percent coverage in most states and 60–80 percent in the country as a whole. In 2006 the program had 15 million members; by 2010 the health ministry had registered 43 million members, and the goal is to extend coverage to 49 million people in 2011.<sup>17</sup> The benefit is not only health care for families but also increased opportunities to combat addictions and to prevent drug-related diseases around the country.

It is very clear that more education and employment opportunities are needed. The proportion of students enrolling in higher education (college) has increased from 26 percent in 2006 to 30 percent in 2010. High school enrolment increased from 60 percent to 66 percent over the same period while primary school enrolment was universal by 2010. The Ministry for Public Education has overseen the building of some 400 public high schools and of more than 80 public universities under Calderón's administration to meet the increased enrolment demand.<sup>18</sup>

In sum, the government faced a structural problem and therefore created a structured strategy to deal with it. This strategy works on the containment of criminal organizations, administrative changes at the federal and local level, transformation of the legal framework, social policy, and an unparalleled level of cooperation with our friends and strategic allies in many parts of the world, particularly in the context of the shared responsibility with the US government to confront this regional challenge.

## Conclusions

It would be a mistake to think that the problem of drug-related crime is limited to Mexico. This is a problem that has resulted from and been transformed by globalization. And in different countries it has many different expressions: in some countries certain drugs are produced, and in others illegal products are trafficked; in others still, organizations reap the benefits of their links to local gangs or corrupt local security institutions. Every country that has witnessed some of these expressions in its own territory must implement a structured and comprehensive strategy to make sure criminal organizations are

controlled and do not threaten national security. That is exactly what Mexico is working on.

Mexico is not conducting a war on drugs because the criminal organizations are no longer just exporters of drugs; they have diversified and expanded into other criminal activities. Rather, Mexico is fighting organized crime, and the authorities are convinced that Mexico must strengthen its capacity to weaken the top cartel leadership and must also enhance its capacity to fight these organizations effectively on the local level to reduce crime systematically.

There are areas in Mexico where crime is increasing, but in other areas federal and local authorities have brought about a decline in criminal activity. For example, in Baja California in 2008, during the most critical stage of violence, authorities registered a daily average of seven homicides in the context of criminal rivalry. Two years later there was only one daily homicide of this type. One lesson that can be drawn from this case is that federal and local jurisdictions need to join in a systematic effort to improve security conditions. There have already been several successes, and the administration expects that in the next few years there will be many more stories of diminishing criminal activity.

Impunity remains a significant problem, in particular at the state and local levels. As mentioned above, 90 percent of crimes occur in local jurisdictions, and 90 percent of police officers are in local police forces. Certainly the country faces a problem of organized crime, but simply bringing down the cartels will not solve it. Combating impunity is necessary to guarantee that the public security problem can be solved at the local level because otherwise we will be faced with even stronger, efficient, and wealthy criminal organizations. We need to eliminate impunity for crimes committed in local jurisdictions. At the federal level, 90 percent of criminal cases result in a confirmatory sentence, which means that those accused of a criminal offence are convicted by a judge in nine of every ten cases.

The federal government has increased its subsidies for the states; more than USD 5 billion has been directly transferred from federal budgets to state budgets exclusively for the development of the criminal justice system. This is in addition to the huge expenditures that state authorities have been making themselves since the fiscal reform of 2007.

The government is enhancing Mexico's border security capabilities not only in the north but also along the southern border. The administration needs to distinguish between the US constitutional right to bear arms and the fact that guns sold illegally in the United States are entering Mexico in violation of US federal and local laws. Greater law

enforcement effort on this issue is needed, and gun trafficking must be stopped; state authorities must be supported in their battle against criminal organizations.

Mexico needs a better and more centralized command of police activities. The *Mando Único* or Single Police Command bill for police reform is designed to achieve this. It is difficult to tackle criminal activities with more than 2,000 municipal police forces, 32 state police forces, and the federal police force, all of which apply different degrees of coordination and cooperation.

Under the *Mando Único*, municipal police forces would not disappear. Rather, only those with adequate capacity, expertise, and equipment to face the current security challenges will be retained and have their own relatively autonomous commands. At all levels throughout the country, the police force will have the necessary professionalism, skill development, vetting process, and overall enhancement of human capital to meet the current challenges in the fight against crime. We are now in the process of establishing specialized police units in all 32 states that will be subsidized, trained, and developed with the federal authorities' support. By 2012, at least some of these new police officers will be deployed in every state. If we can improve local security institutions more rapidly, we will improve the security situation in Mexico overall.

In the federal government, we know that there are still challenges to face. We are also sure, however, that we are taking appropriate steps to achieve authentic and permanent security for the country.

### Notes

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## Chapter 2

# Organized Crime and Violence in Mexico, 2007–2010

*Eduardo Guerrero*

Since December 2006, when Felipe Calderón took the oath of office as president of Mexico and launched a full-fledged response against organized crime, there has been a steady increase in the number of deaths related to organized crime. If the current trend continues, by the end of Calderón's six-year term in December 2012, the figure will reach 66,000 deaths caused by organized crime. Moreover, the violence, initially highly concentrated in a handful of municipalities, has been spreading geographically, particularly since early 2010 when organized-crime-related violence became endemic throughout the states of Tamaulipas and Nuevo León as well as in south-central Mexico.

This chapter analyzes the link between the federal government's anticrime efforts and the sharp rise in violence throughout Mexico.<sup>1</sup> Even though many factors may be causing the increase in violence, I focus on the dynamics of cartel fragmentation that have been fostered by the criminal organizations' reliance on personal leaders and by the federal government's current policy of arresting capos. Unlike other possible explanatory variables, capo arrests and cartel fragmentation can be measured, and the data show that changes in these two variables correlate with increases in violence both at the national and the state level. Taking into account the current trends in organized crime in Mexico, this chapter concludes with a description of two possible scenarios for the coming years: the consolidation of two or three large cartels and the fragmentation of all criminal organizations.

### Theoretical Framework

The literature on violence due to organized crime can be divided into two broad categories. One group consists of studies that point

to what may be described as structural variables. Through the analysis of mostly demographic, social, and economic factors, scholars have attempted to explain variations in levels of violence as well as the broader social processes that foster endemic crime and violence. Some of the structural factors that have been associated in the literature with high levels of crime-related violence include urban poverty,<sup>2</sup> large cohorts of youths,<sup>3</sup> and unemployment.

The second group comprises studies on crime-related violence that focus on contextual factors, namely, events affecting specific actors that may trigger cycles of violence or act as “breaks” to bring violence cycles to an end. Unlike structural factors, contextual factors are difficult to interpret when they are not analyzed in relation to their specific context. Therefore, analysis of contextual factors is based on general laws of human behavior and is also sensitive to nuances that stem from the culture, psychology, and previous experience of individuals.<sup>4</sup> Contextual factors that may increase violence include clashes between criminal organizations and even disagreements among the leadership of a single organization. Conversely, social movements aimed at bringing security demands to the public agenda may work as a violence break. Government interventions may be either violence triggers or violence breaks. In any case, government interventions play a central role as contextual factors that affect the level of crime-related violence.

Violence has suddenly increased in Mexico in recent years. For instance, the increase in the homicide rate between 2007 and 2009 was large enough to reverse the steady downward trend observed during the two previous decades.<sup>5</sup> The escalation in the level of violence is even more dramatic when specific regions and municipalities are analyzed. This does not mean that structural factors have not played a significant role. The current violence crisis would not have taken place without widespread urban poverty and a very large demand for illicit drugs across the US border. Since structural factors only change gradually, they cannot fully account for the current violence crisis, however. This chapter focuses on the contextual factors that have triggered violence throughout Mexico since 2007 in the hope that such an analysis will bring insights useful for much needed interventions to reduce violence in the short and medium term. The second and third sections of this chapter analyze the relationship between government security policy interventions and organized-crime-related violence in Mexico. The remainder of this section briefly describes scholarly accounts of the role that violence plays for criminal organizations seen as industrial organizations.

Many scholarly accounts find a close relationship between crime and violence. According to Schelling,<sup>6</sup> for example, organized crime



requires the organized use of violence, either through threats or actions, to extort from legal firms as well as to impose a monopoly of violence over a given area. Likewise, due to the lack of access to the judiciary, criminal organizations need to protect their property and enforce agreements on their own.<sup>7</sup> Hence, the ability to engage in violence is a requisite for both the success and survival of criminal organizations.

Not all criminal organizations and not all organized-crime activities rely on violence with the same intensity, however. In some cases the threat of violence may successfully prevent conflicts between participants in an illegal market.<sup>8</sup> The key to the Mexican case is the distinction between economic activities that are consensual, such as the provision of illicit goods, and predatory activities, such as rent-extraction schemes known as extortion.<sup>9</sup> While violence in consensual activities is mostly a mechanism for contract enforcement and therefore not systematic, predatory activities are based on a continuous threat of violence. Drug trafficking falls clearly within the category of consensual activity. Therefore, while large drug-trafficking organizations or cartels inevitably carry weapons and from time to time engage in violence, under regular circumstances drug trafficking alone does not produce high levels of murder and other violent crimes.

Civil war scholarship provides one relevant approach to explain the sudden and puzzling increase in organized-crime-related violence in Mexico, particularly the conflicts between drug-trafficking organizations. For instance, Kalyvas points out that violence may be deployed in order to annihilate particular groups, displace populations, plunder goods, or demonstrate a group's power and ability to hurt other groups (what has also been labeled reputation building).<sup>10</sup> This approach fits well with evidence from recent turf wars between Mexican cartels and their factions, where violence has been portrayed as a means to show the military or moral superiority of one rival over another in a highly contested and unstable scenario (see also [chapter 3](#) in this volume).<sup>11</sup> As discussed below, the distinction between violence that is integral to criminal activity and violence that stems from conflicts between criminal organizations is necessary for the comprehensive assessment of the current dynamics of organized crime in Mexico.

### **Key Features of the Mexican Federal Government's Backlash against Crime**

The Mexican federal government has stressed that its security policy is not merely a war against drugs.<sup>12</sup> This claim has some merit, since an intensive institution-building process has been a distinctive feature

of security policy in recent years. Above all, the government has increased the federal police budget and manpower on a yearly basis. The federal police already provides a platform to engage in different law enforcement activities, not only actions against drug traffickers. Its role as the federal government's foremost law enforcer is likely to increase in the coming years (as the military gradually withdraws from public security tasks). Among other steps to build institutions is the approval of a set of bills to enhance the legal framework to act against criminals.

In terms of tactics, however, the government focused narrowly—at least initially—on tackling organizations engaged primarily in drug trafficking. Moreover, among the Mexican authorities' traditional interventions against drug trafficking, such as crop eradication, seizures, and arrests, the latter is the only case where the government has effectively delivered a better-than-expected performance. The detention (or sometimes the death during a capture operation) of cartel leaders has played a central role in the government's effort against organized crime. As discussed below, one of the effects of the government's backlash against drug trafficking and of the policy to capture capos has been to foster other criminal activities as criminal organizations diversify away from drug trafficking.

Finally, it is noteworthy that another distinctive feature of the security policy implemented by the federal government has been the massive deployment of the military in public security tasks. In launching operations in several states concurrently, the government has had to rely on the military to perform most of the high-profile operations against cartels, to erect checkpoints, and in many places to perform regular policing activities since the state and municipal police (which are traditionally and legally responsible for regular policing) have been completely overrun by violence and threats from criminal organizations.

### **The Violence-Triggering Mechanisms: Capo Arrests**

The lack of written contracts, the difficulty to enforce agreements, and the lack of access to the legal system for settling disputes are the main reasons why low trust is pervasive among members of criminal organizations<sup>13</sup> and why internal conflicts are much more prevalent there than among firms operating in legal markets. These features have three key consequences. First, the internal tensions within criminal organizations are not easily resolved and eventually lead to splits and conflicts about turf among the remnants of the original cartel.

Second, at all times cartels need to maintain a minimum of capacity for violence as a means to enforce agreements with employees, partners, and clients; that is, violence is for them a substitute for access to the judiciary. Third, cartels also rely heavily on personal reputation and networks to maintain internal cohesion (the leaders' ability to deliver drug shipments and payments to their partners and to punish defectors). Hence, the capo's reputation and long-standing business relationships are probably the cartels' most valuable assets.

In 2006 Mexico's two largest cartels, Pacífico cartel and Golfo cartel, each had a stable leadership that had been relatively successful in maintaining cohesion within each organization and in securing necessary cash flows. Joaquín Guzmán Loera (El Chapo) had been the leader of the Pacífico cartel (a federation of several organizations, including the Beltrán Leyva Organization) since he escaped from prison in 2001. Even though the Golfo cartel boss, Osiel Cárdenas Guillén, had been captured in 2003, he was able to maintain control of his organization until his extradition to the United States in January 2007.

The reputation of the leaders, the internal cohesion, and the fact that these two organizations faced no major competition along large parts of the drug trafficking routes they each controlled contributed to overall low levels of organized-crime-related violence (even though some localized high-profile violent incidents took place in the months prior to Calderon's administration taking office).

This situation came to a sudden end in the first semester of 2008 in the aftermath of Alfredo Beltrán Leyva's detention. His brothers, who controlled a large faction within the Pacífico cartel, blamed the capture on the rest of the cartel's leadership, primarily on El Chapo. The conflict between the Pacífico cartel and the Beltrán Leyva organization led to a new alignment of criminal organizations throughout the country and an increase in violence in several states.

Alfredo Beltrán Leyva's detention was the first of several high-profile detentions (see [table 2.1](#)). The pattern of a detention followed by internecine conflicts, splits, and violent turf wars has been repeated in several cases. Detentions have recently led to the fragmentation of regional cartels and second-tier organizations (organizations that originated from the split of a larger cartel), bringing organized-crime-related violence to more places. For example, the detention in May 2010 of Juan Nava Valencia, leader of the regional Milenio cartel in Jalisco, was followed by a sudden increase in violence in that state. Following the arrest, two factions with links to out-of-state organizations started a war for control of trafficking routes and local extortion

markets. Several messages found next to corpses throughout the state support the argument that the wave of violence stemmed from a turf war between the two remnants of the Milenio cartel.

Table 2.1 shows an exploratory analysis of the effect on violence of the most prominent capo arrests and deaths (hereinafter referred to as “events”) during Calderón’s administration. For this analysis I use three different methods.<sup>14</sup> The first compares the absolute number of deaths due to organized crime before and after the event. This method identifies the cycle or wave of violence that frequently follows an event as different organizations or factions split or retaliate. A flaw of this method is that it might identify an unrelated effect if there already was an upward trend that accounts for the differences in the number of incidents of violence before and after the event.

The second method compares the growth rate of violence before and after the event. Officers of the Mexican federal government recently used this method—albeit with different time spans and applied to a single case—to support the claim that the policy of arresting capos does not increase violence (chapter 1 in this volume).<sup>15</sup> This methodology has the inverse advantage and flaw of the first method; while it fails to account for possible cycles of violence following an event, it avoids including unrelated effects that stem solely from an underlying upward trend.

Finally, the third method measures the change in the baseline of violence in the periods before and after an event. This comparison shows whether the constant and minimum levels of violence increased after an event. The three comparisons are based on three-month periods (comparing the three months before an event to the three months following it).

Table 2.1 shows that when analyzed with the first method, 79 percent of events had a aggravating effect on violence; when the second method was applied, the violence increased in 68 percent of cases. Application of the third method showed that 54 percent of the events led to an increase in violence. The three analyses suggest that in most cases capo arrests and deaths increase violence. Nevertheless, it is not possible to establish a causal relationship based solely on this set of methods. These findings call for more detailed statistical analyses, which can only be performed once additional data on government interventions and on organized-crime-related violence are disclosed.

In some cases there does not seem to be a link between a cartel split and the detention of a specific capo. For instance, no detention explains the split between the Golfo cartel and Zetas (formerly the Golfo’s armed wing). This does not mean, however, that the intensive

**Table 2.1** Effects of capo arrests and deaths on violence

Cartel	Name	Date	Influence zone	Methodology		
				I. Comparison of absolute numbers	II. Comparison of growth rate	III. Change in the violence in the "floor"
				Increased/ decreased	Rate (%)	
Pacífico cartel	Sandra Ávila Beltrán	09/28/2007	Chihuahua, Durango, Pacífico cartel, Sonora	↑	21	↑ No
Beltrán Leyva organization	Alfredo Beltrán Leyva "El Mocho"	01/20/2008	Sonora, Pacífico cartel, Durango, Nayarit	↑	19	↑ No
Pacífico cartel	Jesús Zambada García	10/22/2008	Chihuahua, Durango, Pacífico cartel, Sonora	↑	12	↓ Yes
Tijuana cartel	Eduardo Arellano Félix	10/26/2008	Baja California and Baja California Sur	↑	333	↓ Yes
Zetas	Jaime González Durán "El Hummer"	11/07/2008	Tamaulipas	↓	-13	↑ No
La Familia Michoacana	Alberto Espinoza Barrón "El Fresa"	12/30/2008	Michoacán	↑	49	↑ No
Pacífico cartel	Vicente Zambada Niebla "El Vicentillo"	03/18/2009	DF, Estado de México and Morelos	↑	34	↓ Yes
Juárez	Vicente Carrillo Leyva	04/02/2009	Chihuahua	↑	21	↑ No
La Familia Michoacana	Rafael Cedeño Hernández	04/20/2009	Michoacán and Guerrero	↑	59	↓ Yes
La Familia Michoacana	Arnoldo Rueda Medina "La Mimsa"	07/11/2009	Michoacán, Estado de México, Guanajuato	↓	-39	↑ No

*Continued*

**Table 2.1** Continued

Cartel	Name	Date	Influence zone	Methodology			
				I. Comparison of absolute numbers Increased/ decreased	II. Comparison of growth rate	III. Change in the violence in the "floor"	
				Rate (%)			
Beltrán Leyva organization	Arturo Beltrán Leyva "El Jefe de Jefes"*	12/16/2009	Sonora, Pacifico Cartel, Durango, Nayarit	↑	53	↓	Yes
			DF, Guerrero, Estado de México and Morelos	↑	10	↑	No
Beltrán Leyva organization	Carlos Beltrán Leyva	12/30/2009	Sonora, Pacifico Cartel, Durango, Nayarit	↑	53	↓	Yes
			DF, Guerrero, Estado de México and Morelos	↑	10	↑	No
Tijuana cartel	Teodoro García Simental "El Teo"	01/12/2010	Baja California and Baja California Sur	↓	-20	↓	Yes
Tijuana cartel	Manuel García Simental "El Chiquilín"	02/07/2010	Baja California and Baja California Sur	↓	-38	↓	Yes
Beltrán Leyva organization	Gerardo Álvarez Vázquez "El Indio"	04/21/2010	Guerrero, Estado de México	↑	26	↓	Yes
Milenio cartel	Juan Nava Valencia	04/30/2010	Colima, Jalisco and Naandarit	↑	119	↑	Yes
Pacifico cartel	Ignacio Coronel Villarreal "Nacho"	07/29/2010	Colima, Jalisco and Naandarit	↑	35	↓	Yes

Beltrán Leyva organization	Édgar Valdez Villareal "La Barbie"	08/30/2010	DF, Guerrero, Estado de México and Morelos	↑	17	↑	No
Beltrán Leyva organization	Enrique Villareal Barragán "El Grande"	09/12/2010	Acapulco	↑	310	↑	No
				DF, Guerrero, Estado de México and Morelos	↑	24	↑
Pacífico cartel	Margarito Soto Reyes "El Tigre"	09/26/2010	Colima and Jalisco	↑	277	↑	No
				6	↓	Yes	
La Familia Michoacana Zetas	Ignacio López Medina	10/13/2010	Michoacán	↑	12	↓	Yes
				Óscar Manuel Bernal "Spider"	↓	-9	↑
Golfo cartel	Antonio Ezequiel Cárdenas Guillén "Tony Tormenta"*	11/05/2010	Tamaulipas	↓	-28	↑	No
				Nazarito Moreno "El más Loco"*	↑	18	↑
La Familia Michoacana Zetas	Flavio Méndez Santiago "El Amarillo"	01/17/2011	Michoacán, Estado de México, Guerrero Oaxaca, Chiapas, Veracruz	↑	26	↑	Yes
				José Lozano Martínez	↑	29	↑
Independent cartel Zetas	"Comandante Lino"	01/24/2011	Nuevo León	↑	34	↓	Yes
Independent cartel	Miguel Gómez Vázquez	02/01/2011	Acapulco	↑	132	↑	No

Source: Based on data from SNSP-CON, 2009 and 2010.

arrest policy is not related to such conflicts in a more subtle fashion. Since the capos' ability to maintain internal cohesion in a low-trust environment stems from the expectation that they will be around in the future to enforce agreements, their personal clout is undermined by the mere probability that they will be captured. In such a scenario, some factions within the cartel may decide that it is in their best interest to anticipate events and seize a larger share of the business before other factions make the move.

In other cases, the overall context of more intense conflict may force cartels to devote more resources to gunmen who become more vital to the cartels' profitability and survival. This trend, combined with the declining influence of the traditional cartel leadership, might improve the standing of the gunmen and in turn lead them to demand a higher share of profits and power within the organization. Such a dynamic might explain the tensions and the final split between the Golfo cartel and Zetas.

### **Violence-Triggering Mechanisms: Cartel Fragmentation**

Cartel fragmentation and violent turf wars among new rival organizations have developed in a systematic way. Between 2007 and 2011 the number of cartels doubled due to the fragmentation of the six large regional cartels that previously controlled the drug-trafficking market (see [table 2.2](#)). Hence, it is not plausible that cartel fragmentation and turf wars are exclusively the result of internal tensions inherent to criminal organizations. Those tensions certainly were a necessary condition for cartel fragmentation and the subsequent increase in violence. However, since fragmentation has been a rather systematic phenomenon over the past four years and was mostly absent from Mexican cartels prior to 2008, another factor or set of factors is necessary to provide a comprehensive explanation. The systematic analysis of violence before and after major capo arrests suggests that the federal government's policy of arresting capos was the critical factor that triggered the current increases in violence throughout Mexico.

By the first quarter of 2011 cartel fragmentation had advanced so much that it is no longer easy to track all the criminal organizations that sprang from the six original regional cartels. A dramatic example is the southern branch of the Beltrán Leyva organization (or Cartel Pacífico Sur), which was especially strong in the states of Morelos and Guerrero. In a relatively short period the authorities arrested almost all the leaders of the Beltrán Leyva organization. At the time of their



**Table 2.2** Cartel fragmentation

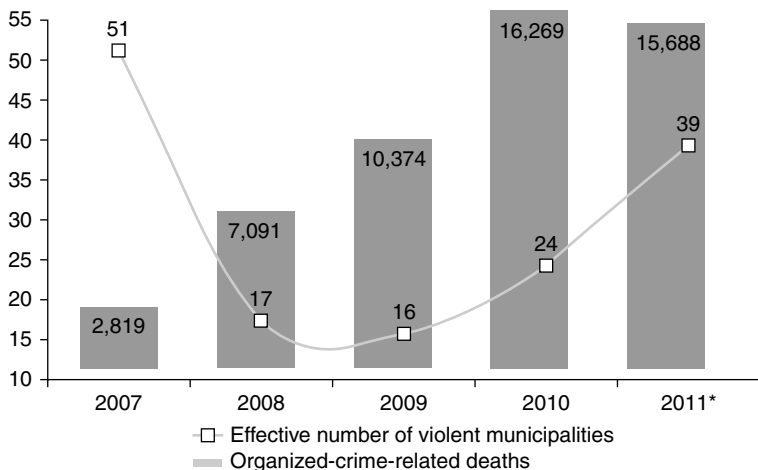
2006	2007–2009	2010 (1st Semester)	2010 (2nd Semester)	2011	January 2012
Sinaloa Cartel	Sinaloa Cartel Beltrán Leyva Organization	Sinaloa Cartel Cártel Pacífico Sur	Sinaloa Cartel Cártel Pacífico Sur	Sinaloa Cartel Cártel Pacífico Sur	Sinaloa Cartel Cártel Pacífico Sur
Juárez Cartel Tijuana Cartel	Juárez Cartel Tijuana Cartel El Tco's	Cártel de la Barbie	Cártel Independiente de Acapulco Cártel del Charro Juárez Cartel Tijuana Cartel	La Mano con Ojos La Nueva Administración Cártel Independiente de Acapulco Cártel del Charro Juárez Cartel Tijuana Cartel	La Mano con Ojos Cártel Independiente de Acapulco Juárez Cartel Tijuana Cartel
Golfo Cartel	Organization Golfo Cartel-Zetas	Organization Golfo Cartel Los Zetas	Golfo Cartel Los Zetas La Familia Michoacana	Golfo Cartel Los Zetas Los Caballeros Templarios Los Incorregibles La Empresa	Golfo Cartel Los Zetas Los Caballeros Templarios La Empresa
La Familia Michoacana	La Familia Michoacana	La Familia Michoacana	La Familia Michoacana	Los Zetas Los Caballeros Templarios Los Incorregibles La Empresa	Los Zetas Los Caballeros Templarios La Empresa
Milenio Cartel	Milenio Cartel	Milenio Cartel	La Resistencia Cártel de Jalisco- Nueva Generación	La Resistencia Cártel de Jalisco-Nueva Generación La Nueva Federación para Vivir Mejor	La Resistencia Cártel de Jalisco-Nueva Generación
—	—	—	—	16	12
6	8	10	11	16	12

arrest some of these leaders, most notably Edgar Valdez Villarreal (La Barbie), were already leading competing factions and waging a bloody turf war against each other. Nevertheless, their arrest led to an escalation in the fragmentation process and in violence.

A growing number of criminal factions currently operate in Guerrero and Morelos. Most of these organizations are no longer able to participate in the transnational drug-trafficking market. Their networks typically encompass only a single municipality. Yet, their sheer number and the intense competition between them for local illegal protection markets have brought unprecedented violence to cities in south central Mexico. The resort town of Acapulco has been affected the most by conflicts between these “atomized” cartels.

### Violence-Triggering Mechanisms: Geographical Dispersion

In addition to cartel fragmentation and the increase in the absolute number of organized-crime-related deaths, another major trend during the last few years has been the geographic dispersion of violence. This means that killings, shootings, and harassment of authorities by criminal organizations have spread widely throughout Mexico. This phenomenon can be accounted for in both relative and absolute terms.



**Figure 2.1** Total deaths related to organized crime and the Laakso-Taagepera Index

\*Based on official first quarter data.

In relative terms the dispersion trend is less straightforward. In 2007 violence levels were low overall, and violence was diffused throughout the country. In 2008 and 2009 violence increased dramatically in a small number of cities. At this first stage only four municipalities—Ciudad Juárez, Tijuana, Chihuahua, and Culiacán—accounted for a very large share of total organized-crime-related deaths (around 40 percent for summer 2008 when violence started to increase sharply). Therefore, dispersion indexes, such as the Laakso-Taagepera formula, showed a stark concentration of violence.<sup>16</sup> This index showed dispersion in 51 municipalities in 2007 but in only 16 by 2009. There was, however, a clear reversion of relative violence concentration during 2010 and the first quarter of 2011, when violence reached 39 municipalities according to the Laakso-Taagepera index. During this period violence increased much faster in a new set of municipalities than in the four municipalities where violence had been concentrated previously. Cartel fragmentation throughout the country as well as the new conflict between the Golfo cartel and Zetas explain this trend.

When geographical dispersion of violence is analyzed in absolute terms, the progressive dispersion trend becomes clear. The number of municipalities with 12 or more organized-crime-related deaths has increased in every year since 2007. That year a total of 53 municipalities had 12 or more deaths due to organized crime. The figure for 2010 was 200 municipalities, a 277 percent increase compared to 2007. In 2011 the number of municipalities with 12 or more deaths due to organized crime was 201.

Absolute and relative accounts of violence have different uses. Dispersion in absolute terms indicates the magnitude of the phenomenon as well as the proportion of the Mexican population who may see their daily life affected by organized-crime-related violence. The steady increase in violence in relative terms means that now there is more violence in more places. From the perspective of government intervention, both measures are relevant. The fact that violence has recently spread in relative terms adds complexity to the problem. The federal government can no longer expect to tackle violence simply by sending federal police or the army to enhance or take the place of local public forces in a few areas. There are clear limitations to the territory that federal forces can patrol. After engaging in large scale joint operations in nine states—where they often must deploy personnel to take on local police departments' regular duties—federal forces may already be overstretched (even taking into account the recent expansion of the federal police). The dispersion of violence observed in 2010 suggests that an antiviolence strategy will inevitably fall on state and

municipal police departments, which unfortunately are understaffed and ill-prepared in most cases.

The geographic dispersion of violence is linked to the violence triggers described in the previous section: the government policy of arresting capos, cartel fragmentation, and the subsequent conflicts among the remnants of the cartels.

In the first stage of conflicts between cartels (2008 and 2009 in most cases), the bloodiest clashes were between large factions over territories key to the drug-trafficking business, in particular the cross-border towns of Ciudad Juárez and Tijuana as well as enclaves where capos traditionally lived, such as Culiacán and Uruapan. As the fragmentation process deepened, however, some of the competing factions were no longer dominating in large areas. The conflicts in these cases were for positions and assets that provide rents in each municipality, for instance, the control of the extortion market, the “support” of the local police department, or the ability to extract a “toll” for illegal goods smuggled through local roads, ports, or border crossings.

Among others, Varese has pointed out that criminal organizations may not actively seek expansion.<sup>17</sup> But they may develop networks in new territories when circumstances lead to the relocation of some of their members. Conflicts have pushed some cartels and factions out of their traditional strongholds. Several messages found next to corpses and *narcomantas* (banners) warn established organizations that a new group rules in town and that they will no longer be tolerated. The messages suggest that conflicts among cartels have led to very high mobility for criminal organizations. For these groups of heavily armed people, the logical option after relocation is to engage in criminal activities (especially in extortion) for a livelihood.

A third reason why geographic dispersion of violence might stem from conflicts between cartels is that some organizations may no longer have the ability to profit from transnational drug trafficking. Even though the capacity for violence may be necessary to work as a drug trafficker, drug trafficking does not necessarily require a great degree of violence. When drug trafficking is no longer a feasible alternative for an organization, for example, because conflicts shut down access to goods or to cross-border trafficking routes, it might engage in other illegal activities that involve a high level of violence, particularly extortion.

### **Scenarios and Policy Implications**

The previous sections describe the processes that explain the sudden increase in organized-crime-related violence in Mexico from

2008 to 2011. Taking into account such processes as well as the current landscape of Mexican criminal organizations, this section analyzes two possible scenarios for the coming years: the consolidation of two or three large cartels or the atomization of all criminal organizations.

The first possible scenario foresees an end to the current trend of cartel fragmentation and the reestablishment of an oligopolistic drug-trafficking market. One fact that suggests this outcome is that while some cartels and factions have atomized quickly—the Beltrán Leyva organization being the prime example—others maintain overall internal cohesion. The latter group includes the Pacífico cartel and Zetas. Both have networks across several states as well as the capacity to smuggle drugs on a massive scale across the US border. In neither case is there evidence of further fragmentation after an initial split (in early 2008 in the case of the Pacífico cartel and in January 2010 in the case of the former Golfo-Zetas coalition).

It is uncertain whether the consolidation of two or three large cartels would lead to a reduction in the current levels of violence. On the one hand, these organizations may have the strength to defeat some of their competitors in the drug-trafficking business, thereby ending some of the conflicts that initially triggered violence. This may already be happening in some places. In Ciudad Juárez the Pacífico cartel's local rival, the Juárez cartel, is severely weakened and the number of organized-crime-related deaths is finally decreasing after a dramatic two-year increase. Even though violence is still well above 2007 levels in Ciudad Juárez, the town no longer appears to have the highest homicide rate among large Mexican municipalities.

On the other hand, it is less clear that a return to an oligopolistic drug trafficking market would reduce the increasing levels of violence that conflicts among atomized criminal organizations are bringing to regions where no single cartel or faction has hegemony. These regions do not seem to be part of key drug-trafficking routes. Hence the violence may continue until authorities are able to regain control over the territory or until a few of the small organizations gain dominance. The latter possibility would only involve a partial reduction in violence since smaller organizations would not have access to transnational drug trafficking and would engage in violence-intensive criminal activities.

Finally, it is important to note that despite the current strong positions of the Pacífico cartel and Zetas, the consolidation of an oligopolistic drug-trafficking market is far from being a certain outcome in the medium term. Federal government interventions present the main challenge to the survival of these two organizations. It remains

unclear whether future governments would be able or willing to coexist with cartels that concentrate resources large enough to pose a real threat to national security. The Pacífico cartel and Zetas do not seem in danger of imminent collapse, but this situation may change if the federal government launches a new offensive against them once the current conflicts finish, stabilize, or become—as seems to be the case—challenges to local governance and public security rather than national security threats.

A second possible outcome of the government's advance against organized crime is the atomization of all criminal organizations, following paths similar to the competing factions of the former Beltrán Leyva organization in the states of Guerrero and Morelos. This seems to be the avowed original goal of the federal government's strategy against criminals "with no distinctions."<sup>18</sup> However, the continued and increased fragmentation of all Mexican cartels brings a set of unsettling public security consequences.

Above all, atomization would entail the further geographical dispersion of organized-crime-related violence. Violence would be triggered across large swathes of Mexico if an organization currently not facing major competition were to collapse. This would be the case, for example, along the Gulf corridor in Veracruz and Tabasco where Zetas hold a strong and uncontested position. The geographical dispersion of violence makes it less feasible to implement joint operations, which rely heavily on an intensive deployment of the army, navy, and federal police. These forces are already overstretched, and it seems unlikely that they will be able to successfully perform municipal and state police duties, as they already do in some cities, in an additional dozen or so large municipalities. Therefore, in a scenario of cartel atomization a larger portion of the struggle against organized crime would have to be carried out by municipal and state police forces. State and municipal police forces vary greatly in terms of their resources, their reliability, and their degree of professionalism. Overall, the institution-building process of the state and municipal police departments seems to advance at a much slower pace than it does at the federal level.

The collapse of all major cartels and their replacement with smaller organizations would not necessarily curb flows of drug-trafficking money and weapons or reduce corruption. It is unlikely that in the foreseeable future the illegal drugs, especially cocaine, will stop being trafficked through Mexico. Agencies in the United States are much more effective at interdicting drug shipments by sea and air than by land. Moreover, the intensity and strategic value of the legal trade

between the United States and Mexico makes it very hard to impose effective control at ports of entry along the common border. If illegal drug trafficking through Mexico is going to continue on a massive scale even in the absence of large cartels, small and competing organizations will have the resources and incentives to continue fighting each other for an unlimited period. Steady resources from developing illegal protection markets could bolster criminal organizations in an atomized scenario. Under such circumstances, authorities might not be able to curb violence and crime.

### Notes

I am grateful for the valuable support I received from Roberto Valladares in writing this article.

1. The terms “organized crime related violence” or simply “violence” are used throughout this chapter to refer to a broad phenomenon that encompasses all acts of illegal coercion performed by criminal organizations (murder, shootings, harassment of authorities, and kidnapping). However, since the government has gathered and published data only on deaths related to organized crime, I use this figure as a proxy for all types of violence unless otherwise specified.
2. Alex Stevens and Dave Bewley-Taylor, *Drug Markets and Urban Violence: Can Tackling One Reduce the Other?* (Oxford: Beckley Foundation, 2009).
3. Robert MacCoun and Peter Reuter, *Drug War Heresies: Learning from Other Vices, Times, and Places* (Cambridge: Cambridge University Press, 2001).
4. Robert Goodin and Charles Tilly, *The Oxford Handbook of Contextual Political Analysis* (Oxford: Oxford University Press, 2006).
5. Fernando Escalante Gonzalbo, “Homicidios 2008–2009: La muerte tiene permiso,” *Nexos* (Mexico), January 2011.
6. Thomas Schelling, *Choice and Consequence: Perspectives of an Errant Economist* (Cambridge, MA: Harvard University Press, 1984).
7. Harold Demsetz, “Toward a Theory of Property Rights,” *The American Economic Review* 57, no. 2 (1967): 347–59.
8. Frederick J. Desroches, *The Crime That Pays: Drug Trafficking and Organized Crime in Canada* (Toronto: Canada Scholars’ Press, 2005).
9. Jay S. Albanese, *Organized Crime in Our Times*, 5th ed. (Newark: LexisNexis, 2007).
10. Stathis Kalyvas, *The Logic of Violence in Civil War* (New York: Cambridge University Press, 2005).
11. See also Howard Campbell, *Drug War Zone: Frontline Dispatches from the Streets of El Paso and Juárez* (Austin: University of Texas Press, 2009).

12. For the federal government's own assessment of its security policy see Felipe Calderón Hinojosa, "La lucha por la seguridad pública," portal.sre.gob.mx, 2010.
13. Diego Gambetta, *The Sicilian Mafia: The Business of Private Protection* (Cambridge: Harvard University Press, 1993).
14. Eduardo Guerrero Gutiérrez, *At the Root of Violence* (Washington D.C.: The Washington Office on Latin America, 2011), <http://bit.ly/wcJ4aI>.
15. See also Alejandro Poiré and María Teresa Martínez, "La caída de los capos no multiplica la violencia," in *Nexos* (Mexico), 401 (May 2011): 24–26.
16. The Laakso-Taagepera Index was originally developed to provide an "effective number" of parties competing in a party system. The estimate of the index takes into account the share of the vote each party receives. In this estimate I used the share of national organized-crime-related deaths that took place in each municipality. The index was estimated using the following formula (where  $v$  is the share of deaths that happened in the  $i$  municipality.  $Laakso - Taagepera Index = \frac{1}{\sum_{i=1}^n v_i^2}$
17. Federico Varese, "How Mafias Migrate: The Case of the 'Ndrangheta in Northern Italy," *Law & Society Review* 40, no. 2 (2006): 411–44.
18. Claiming that the federal government's backlash against crime makes "no distinctions" (*sin distinción*) has been a popular slogan in the government's TV and radio spots and in public servants' speeches. This slogan attempts to address the frequent accusation that authorities are allied to certain organizations. The following link contains a note where the Ministry of the Interior [stresses the no distinction policy: <http://bit.ly/oz9opq>.



## Chapter 3

# “Ya saben quién”: Journalism, Crime, and Impunity in Mexico Today

*Pablo Piccato*

Two numbers are the initial evidence; the first is a large one: 30,000, which is a recent official count of those “executed” in the context of the violence against and among organized criminals from late 2006 until the end of 2010.<sup>1</sup> The second is a small one: 66, which is the number of journalists killed or disappeared during the same period.<sup>2</sup> The relation between the two numbers might be explained away as a matter of statistics; given the massive scale of the violence across the country, it is to be expected that each group of the population would be affected; this would make journalists no different from, say, ice-cream vendors. Yet, Mexico is one of the most dangerous places in the world for journalists. Regardless of how high the numbers are, the human cost cannot be measured. If we accept suggestions from President Felipe Calderón and other state representatives, however, the social cost is relative, as most of those 30,000, and probably a few of the 66, are criminals anyway.<sup>3</sup>

Those numbers are only rough and incomplete indicators of contemporary problems in Mexico. The methodology for tracking “executions” is questionable: the federal government, which since 2010 has counted the deaths compiled by newspapers, defines executions as those actions in which “victim or perpetrator is thought to be the member of a criminal group” and where the method of the murder involves high-powered weapons, the use of “materials characteristic of criminal groups, such as gags, blankets, tape, etcetera,” or specific ways to kill and dispose of bodies. Although the data can be corrected later according to the results of judicial investigations, the presumption is that most of the dead are criminals and that the victims killed by armed forces fell mostly in the context of “aggression

against authority.” The public information available does not yet contain any reference to revised results.<sup>4</sup> Scholars have criticized this methodology,<sup>5</sup> largely because we cannot be sure about the criminality of victims or murderers as few cases are actually investigated and solved. Most murders in Mexico, particularly when the crime seems to have taken place in the context of drug-related disputes, do not lead to an indictment, much less a guilty verdict (see [chapter 6](#) in this volume). On the contrary, when a local police investigator takes on a homicide—always a local crime—that might be associated with drug trafficking, the more powerful federal agencies take over the case and subordinate the investigation to their “larger” cases against cartel leaders.<sup>6</sup>

Two factors complicate the lack of certainty over crime-related homicide levels: the large number of human rights violations involved in the cases of deaths committed by state actors, all of all of whom are officially presumed to be guilty, and the lack of justice that accompanies most cases. Civil society complaints about both are becoming increasingly frequent.<sup>7</sup> Petitions from victims to human rights commissions about abuses by the armed forces have increased, but few have been adjudicated by military or civilian courts.<sup>8</sup> The federal government nevertheless has dismissed concerns about human rights abuses by the armed forces in the fight against drug cartels.<sup>9</sup>

The number of journalists who have been victimized can also be deceiving. Many observers, even in the profession, will explain in private that violence is a natural result of the fact that some colleagues take bribes from drug organizations, thus compromising their reporting and becoming part of illegal businesses. Official explanations of some murders allude to this: the 2008 and 2009 reports of the federal agency for investigating these crimes list several cases of homicides against journalists in which the crimes either were unconnected to the victim’s job or were related to other crimes in which the victim was presumably involved.<sup>10</sup> The implicit argument presented by the *Fiscalía* is that there are “good” and “bad” journalists, and perhaps also “unlucky” ones, and that the crimes against the second type are somehow less worthy of the agency’s investigations. The first part of the argument—that journalists can be divided into groups based on their morality—is impossible to verify, particularly in the broad grey area that corruption, extortion, and impunity have created in the regions where criminal organizations have long been operating; the second claim, that they do not matter that much, is similar to the notion that most of the 30,000 must be guilty of something, an implicit justification for violence as social cleansing.<sup>11</sup>

Another problem is that a considerable number of the threats received from journalists come from authorities. It is difficult to know how widespread this problem is because the majority of the crimes committed against journalists, fatal or not, are not seriously prosecuted. For each one who is murdered a much larger number of reporters are threatened, kidnapped, and harassed, many of whom do not report these threats to authorities for fear that that latter are in collusion with criminals.<sup>12</sup> Data about threats are not systematically collected but could be a good predictor of more serious violence. Since 2000 the *Comisión Nacional de Derechos Humanos* (National Human Rights Commission, CNDH) has received complaints about 65 murders of journalists, only 10 of which resulted in a judicial sentence. Since 2005, the CNDH has known of 12 disappearances of journalists and 17 attacks on media.<sup>13</sup> Even more damning is the evaluation of Reporters Without Borders, which counts 61 journalists murdered since 2000 and no cases solved.<sup>14</sup> Neither count gives a clear indication of the motives and perpetrators of violence, an uncertainty that is reinforced by the absence of convincing judicial accounts.

Members of the government have acknowledged the problem of violence against the media but have failed to provide an effective response. In 2010 the federal executive created in the Attorney General's Office (*Procuraduría General de la República*, PGR) the above-mentioned special prosecutor for crimes against freedom of expression (*Fiscalía Especial para la Atención de Delitos cometidos en contra de la Libertad de Expresión*) to investigate crimes against journalists. The new *Fiscalía* took over the work of the *Fiscalía Especial para la Atención de Delitos cometidos contra Periodistas* (special prosecutor for crimes against journalists) that had been established in 2006. The latter initiated 108 investigations and only achieved indictments in 4 of them.<sup>15</sup> In the context of the high mortality connected with organized crime and law-enforcement violence in certain regions of the country, it is unlikely that the investigation and resolution of a few cases that happen to involve journalists will overturn the impunity that defines the current situation.

This chapter is based on a thesis that, I hope to show, is not merely normative: regardless of the relatively small number of journalists killed, the violence against them is a central problem for the continuity of democracy and the rule of law. In order to support this thesis, I will try to place today's violence in historical perspective, focusing on the role of newspapers in the gap between truth and justice that defines twentieth-century Mexico. My main argument is that journalists are targeted because newspaper reporting of police news—the

much derided *nota roja* (yellow press)—was the most influential and widely read part of Mexican journalism during the twentieth century. Criminal organizations and the public officials who collaborate with them care deeply about what is published as police news; thus, they try to control news reporting with violence or other means. Of the journalists murdered since 1992, according to the Committee to Protect Journalists, 78 percent covered the crime beat, 83 percent in print media.<sup>16</sup> Without exception, all of them worked outside Mexico City. In other words, it is not the prestigious political reporting that is the target of violence against journalism, but good old, local *nota roja* work.

### **Birth of the *Nota Roja*: Crime and Politics**

In the postrevolutionary period, the *nota roja* was the section of newspapers that engaged readers the most and had the highest circulation. Political news was controlled by the regime through different means, mainly the co-optation of mainstream papers, editors, and owners.<sup>17</sup> Since the 1930s, *nota roja* publications, such as the daily *La Prensa*, the weekly *Alarma!* and the afternoon editions of *El Universal* and *Excelsior*, enjoyed a degree of autonomy because they could sustain themselves with sales. Reports of violent policemen or corrupt judges were not uncommon in their pages.<sup>18</sup> Coverage of famous cases (crimes of passion, political assassinations, and serial killers) often included allusions to the slowness and inefficacy of official investigations, which was contrasted with the dynamism of reporters. In the case of the murder of three women in a Tacubaya barbershop in 1934, for example, readers were absorbed by the investigative reporting that eventually led to the capture of the murderer after many police blunders.<sup>19</sup> These cases became narratives that brought together large, active audiences, often with political consequences.<sup>20</sup>

Homicides, in particular, allowed newspapers to enter into realms usually considered private and thus beyond the purview of journalism. In 1959, for example, the murder of Senator Rafael Altamirano by his former employee and alleged lover Ema Martínez allowed her, through interviews in newspapers, to publicize information about the private life of the victim. This, in turn, led to opinion pieces in *nota roja* and “serious” newspapers that departed from official discourse (*oficialismo*) by criticizing the deceased senator and in general the corruption at higher levels of the federal government.<sup>21</sup> In other words, the *nota roja* was the place for open criticism of the state. At the same time, the police news gave readers tools for navigating everyday life: letters,

complaints, and stories about corruption presented a picture of real life that could not be found in the political section.

The *nota roja* was successful also because it developed a strong visual and narrative language—often dismissed as pornographic by its critics.<sup>22</sup> But, read carefully, photographs, drawings and text provided detailed information, and the coverage of certain cases over several days built narratives containing multiple voices. They spoke about the lack of justice, the limits of the search for truth, and the suffering associated with crime. The police reporter was a prominent figure in these narratives. He entered the crime scene on the heels of the police detectives and first-aid workers and described, sometimes in the first person, every detail of the place where the crime had taken place. He interviewed suspects and witnesses, engaging them in long conversations. In some cases, reporters acquired some fame and became part of the story.<sup>23</sup>

Essential to reporters' work was their proximity to the police: they could spend hours in police stations waiting for a sensational case to come up, meanwhile building close personal relationships with officers. Some reporters, such as Manuel Buendía, even had badges from police corps that facilitated their work.<sup>24</sup> Some were so close to the police that victims or witnesses would take them for detectives. This proximity gave reporters access to famous suspects for interviews or evidence from the crime scene.<sup>25</sup>

A few reporters got so close to police agents that some reporting, particularly in the latter decades of the twentieth century, was indistinguishable from police public relations work, whether in the form of paid insertions praising a new police chief or the uncritical publication of the results of successful police investigations.<sup>26</sup> A common format for this was the "presentation" to the media of suspects arrested by the police and presumed guilty. Suspects were pictured with their weapons, sometimes holding them, as if to demonstrate their responsibility and criminal nature. Positive press coverage was important for police officers, because turnover at the higher levels of all police departments was fast and depended mostly on political considerations. Multiple investigative and preventive agencies competed against each other and were subordinated to the personal agendas of different officials.<sup>27</sup>

But the *nota roja* could not be a mere mouthpiece of the authorities. The celebrity of reporters made possible—and paled in comparison to—that of criminals. Interviews with murderers became central to the coverage of big crimes. In the most famous case of the twentieth century, the homicide of four women by chemistry student

Gregorio Cárdenas in 1942, reporters competed to have access to the suspect. They published conversations in which he not only described the crimes and his motivations but also talked about music, literature, and science. Cárdenas was educated and knew he stood to avoid punishment if he could demonstrate that he was mentally ill.<sup>28</sup> Other suspects tried to use the press to influence the outcome of trials. The Tacubaya barbershop killer, Rodríguez Silva, and the celebrated Pedro or Manuel Gallegos, who murdered socialite Jacinta Aznar, allowed their writings and portraits to be published on the front page of newspapers.<sup>29</sup> Interviews with criminals were particularly important in the *nota roja* because they brought readers closest to the truth. In murder cases, victims could not give their side of the story, witnesses were not always willing to speak publicly, and, most important, police and judicial investigations were never fully reliable.

Impunity has been a long-standing feature of the judicial system. Newspapers often commented on it. This skepticism is well-founded if we compare the evidence from judicial sources with health authority counts of homicide as a cause of death: health authority tallies were on average 65 percent higher for the country and 91 percent higher for the Federal District, between 1926 and 2005.<sup>30</sup> Thus, journalists and readers had little interest in the judicial outcome of cases. Once a suspect had been indicted, newspaper coverage all but stopped as trials took a long time and lacked the drama of the police investigation and the presentation of suspects. The narratives of *nota roja* were best concluded with a confession, which served to close the gap between the result of the judicial process and public knowledge about the truth of a case. Suspects knew this and with their actions as much as words became coauthors of the stories circulated by the *nota roja*.

These features of crime coverage had political consequences. When political stability was consolidated after the Revolution, murder became a central theme in the public sphere in Mexico. It was the subject that authorized multiple voices to have an opinion and to judge the performance of the state as well as the morality of individuals. Unanimity in condemnation of a murder created a public space for speaking, writing, and demanding justice. This unanimity did not necessarily translate into support for the privacy or dignity of victims and suspects, however. Press stories included victims' personal information or their blood-spattered and sometimes almost naked images. Readers and editors considered this information relevant to the solution of a case. In the most egregious cases, suspects were characterized on the front page as "jackals" or "monsters," and editors and readers

called for swift justice—that is, the death penalty. Although capital punishment was not established, such clamor probably contributed to the extrajudicial executions of the Tacubaya murderer, Rodríguez Silva, and Gallegos.<sup>31</sup> Three suspects in the assassination of the federal senator Mauro Angulo in 1948 were killed while in police custody in Veracruz. Support for the police action in this case was expressed through the press and, more discreetly, by the governor of that state and future president, Adolfo Ruiz Cortines, to a police agent sent from Mexico City.<sup>32</sup>

The government did not appreciate the political engagement, emotional content, and critical tone of the *nota roja*. In 1936 Silvano Barba González, the minister of the interior, proposed that the *nota roja* be banned altogether. He defined it as “the scandalous publication of crimes and misdemeanors with all kinds of details about the circumstances and procedures, which provides an apology for or exaltation of the personality of the criminal who parades his physical or mental characteristics before suggestible people with antisocial tendencies as a subject worthy of imitation or emulation.”<sup>33</sup> The Chamber of Deputies discussed other bills banning the *nota roja*, but these were never voted upon.<sup>34</sup>

### ***Nota Roja* and New Forms of Violence**

In Mexico today the *nota roja* has lost some of its prestige and faces competition from television and Internet, but its ability to capture the attention of the public remains strong. In the mid-1960s, *Alarma!* sold a million copies with its reporting of the case of the *Poquianchis*, a group of women who exploited and murdered prostitutes in Guanajuato.<sup>35</sup> The critical reporting of police news survived in the new journalism that since the 1980s emerged in newspapers such as *unomásuno* and *La Jornada* and magazines such as *Proceso*.<sup>36</sup> Cases of police abuse, as much as politically motivated repression of social movements, fueled the emergence of human rights activism in the 1980s and constituted an important part of the work of the national and state human rights commissions established in the 1990s. All the publications mentioned above, except for the afternoon edition of *Excélsior*, continue to be published and play a central role in Mexican journalism.

The graphic language and images of *nota roja* reporting and the centrality of criminals' voices remain.<sup>37</sup> True crime books have become as popular as detective magazines were in the 1950s. Many of these books include interviews with suspects, usually high-level

members of drug-trafficking organizations. Even prestigious journalists such as Julio Scherer García engage in extensive conversations with famous *narcos*, revealing a fascination with their lives and voices. Ricardo Ravelo, a reporter for *Proceso*, wrote a biography of the Tamaulipas capo Osiel Cárdenas to understand “the emotional chords of the most gruesome passions.”<sup>38</sup>

The impunity that justified the lack of interest among editors and readers for the judicial process not only remains but now seems greater. Although national murder rates today are not as high as they were a century ago, the prevalence of murder has grown dramatically in certain regions that are battlefields in the disputes between criminal organizations and the armed forces, and some scholars predict a reversal in historical trends.<sup>39</sup> The gap between homicides and prosecutions is still very large in some cities: in Nuevo Laredo there were 130 reported cases of homicide in 2004, but only 11 individuals were indicted for the crime.<sup>40</sup>

The political economy of crime has changed, however, with a deep impact on the role of reporters. The new violence appears in the context of recent changes in the illegal drug industry. Mexican organizations increased their power since land routes became dominant in the 1980s, and extended their influence to production in South America and distribution in the United States and probably also Europe.<sup>41</sup> The business has become more profitable and criminal organizations have increased their ability to co-opt state actors and acquire weapons, techniques, and training formerly reserved for the armed forces.<sup>42</sup> Since around 2000, however, drug traffickers’ ability to buy protection from the state has weakened as a result of the increasing competitiveness of the political system.<sup>43</sup> The arrest of some high-level leaders and the intervention of the army and navy in key cities compounded the effect of increasing profits and political uncertainty to create stronger competition among groups as well as a tendency to divide and fight for territories and routes.<sup>44</sup> Competition and the need to invest resources in violence are also causing the diversification of criminal practices, as some of these organizations, starting with the Zetas (formerly the armed branch of the Cartel del Golfo, now their own group) and the *Familia Michoacana* (now in the process of splitting), have developed extortion and human trafficking as additional sources of income.<sup>45</sup>

In the eyes of these criminal organizations and many among the general public, the arrests of capos and the use of the armed forces, a central federal policy since President Calderón took office in 2006, meant the break of a gentlemen’s agreement between *narcos* and



the state. While in the past the government had allegedly turned a blind eye to drug trafficking and allowed the business to prosper with a limited use of violence, the new aggressiveness of the federal government, critics claim, has opened a Pandora's box of violence throughout the country.<sup>46</sup> It is debatable, however, whether drug trafficking ever worked without violence. Witness the story of the Arellano Félix in Tijuana, characterized by their use of violence since the 1990s or before, and the Mexican government has a long history of massive and ineffective antidrug operations, paradigmatically exemplified by *Operación Condor* in Sinaloa in the 1970s (see chapter 4 in this volume). However, the myth persists and even in the accounts of Jesús Blancornelas, a journalist who suffered violence himself, there is a nostalgia for an era of *narco* without violence.<sup>47</sup> A frequent corollary of this myth is that things could return to normal with a government more willing to negotiate with the organizations. Such was the proposal, through radio journalists, of Servando Gómez Martínez (*La Tuta*), the leader of *La Familia Michoacana*, to President Calderón.<sup>48</sup>

Such messages are not isolated. As competition grows stronger and the business becomes more diverse horizontally and vertically, criminal organizations demonstrate a new concern about public opinion. Like any other illegal actor, Mexican drug organizations have problems communicating with their partners, victims, and adversaries. They have to be careful to establish trust with their interlocutors lest they get arrested, as police infiltration and surveillance are increasingly common.<sup>49</sup> Criminals want their potential partners or extortion victims to know that they mean business and are not just bluffing. Hence public opinion, especially the public's perception of their power, is important for criminal organizations as they constantly recruit personnel, extort money from legitimate businesses and families, tax illegal activities, and control the places of passage of drugs. The result is a constant competition to appear the most powerful actor in a particular place.

*La Tuta's* proposal is an example of how criminal organizations want to affect state policy and official attitudes toward enforcement, and it shows that they see publicity as a means to achieve these goals. Historic Sinaloa *narco* boss Ismael "Mayo" Zambada told Scherer that the war on drugs would never be won because their influence was as pervasive as corruption itself. He also complained about the human rights abuses committed by the army.<sup>50</sup> This is not surprising coming from a leader who probably had benefited from accommodations that allowed his business to grow. Bribes worked very well,

and they still do, but they are no longer as reliable as they perhaps once were as a way to protect large-scale illegal operations because of the diverse law enforcement agendas of different government actors. Disputes between cartels reach many parts of the country but are not national in scale nor directly subordinated to federal government policies: conflicts are always local and solved in specific places. Personnel changes at the presidency do not radically modify the logic of the business.<sup>51</sup> Policy can be profitably altered at different levels of the state apparatus.

Not all media are equally effective for these purposes. Criminals cannot sign legally binding contracts and cannot advertise in newspapers although they have at times been able to buy or extort space in local newspapers. The Sinaloa cartel held four journalists hostage until media broadcast videos intended to correct information about their rivals and their own alleged cooperation with the Durango police.<sup>52</sup> For decades *narco corrido* songs have been useful to establish individual reputations. They were written to order, performed, and reproduced on the radio and by copying cassettes.<sup>53</sup> The Internet has provided a new vehicle to distribute these products without great risk of capture for the author. The now famous *narcomantas* (*narco* banners) are posted in cities to recruit soldiers, to take or deny responsibility for specific attacks, or to demand that the federal government stop favoring one criminal group over others.<sup>54</sup> In Ciudad Victoria, Tamaulipas, Zeta operatives emailed “press releases, complete with photos, to local newspapers, which ran the propaganda out of fear, according to local editors.”<sup>55</sup> These fake stories criticized the army or praised local police agencies. According to Astorga, Osiel Cárdenas Guillen from Tamaulipas was one of the first to develop a media strategy. At the same time, Cárdenas also created a paramilitary structure, the Zetas, which escalated violence. The coincidence of both strategies, which now seem to have been adopted by other groups, is meaningful: publicity and violence need to go together.<sup>56</sup>

### **Violence as Communication**

How else could criminal organizations give credible and thus effective messages? One method, used by the Mafia in the United States and Italy, was to adhere to strict cultural codes about loyalty and ethnic identity, such as linguistic uses and personal style.<sup>57</sup> In Mexico observers have written profusely about *narcocultura*, which can be defined as a set of styles and practices that identify *narcos* and their adherents, from hats, boots, belts, trucks, and songs to religious

practices and notions of heroism and "good banditry." This would be expressed, for example, in traditional celebrations, such as the Day of the Dead or the cults of Santa Muerte and Jesús Malverde, a nineteenth-century bandit supposed to have helped the poor and been killed by the government in Culiacán. Yet, the borders of *narcocultura* stretch to the point of making the concept meaningless, incorporating almost any Mexican contemporary cultural product remotely associated with drugs.<sup>58</sup> To look like a *narco* is no longer a credible sign of authenticity for criminal organizations and leaders. Organizations such as the Zetas tend to use military uniforms instead, and leaders seem to be fond of using polo shirts rather than the traditional cowboy shirts of old.<sup>59</sup>

The most efficient way to make messages credible is violence. Internet videos, songs, and images have more impact when they reproduce actions and scenes of violence that could not be simulated. For Sergio González Rodríguez, the use of bodies as messages dates back some twenty years and accompanies other uses of victims' bodies to brag about power and rituals linked to their activities.<sup>60</sup> At a more basic level, killings and mutilations can be a calling card for a group that intends to go into business in a locality: "we are here and we are serious"—that was the message from *La Familia* to Zitácuaro local wealthy families when the group arrived in town.<sup>61</sup> By committing murder, illegal actors demonstrate their willingness to take on considerable risk and cost in order to make their message more credible.<sup>62</sup>

There are multiple ways to convey specific messages through murder. The most direct are notes left next to the bodies. According to *New York Times* correspondent Mark Lacey, "When Mexican homicide investigators pull up at the scene of the latest drug-related slaughter, they go through a mental checklist: How many corpses? What sort of wounds? And, finally, where is the note scrawled by the killers?"<sup>63</sup> According to government figures, 8.3 percent of the "executions" between late 2006 and 2010 included a "message for a rival organization."<sup>64</sup>

Mutilations can be used to say different things: the victim was a traitor, talked too much, or was a thief.<sup>65</sup> The delivery of the body or its dumping in certain places can also send a message. In his insightful examination of the practice of decapitation, González Rodríguez proposes that this form of mutilation is intended to establish a reign of terror that would make impossible old "codes or implicit understandings of mutual respect."<sup>66</sup> Yet, the very fact that decapitations are signs intended to convey meaning to an audience implies that

such acts also require the possibility of communication between adversaries: fear is not incompatible with publicity, quite the contrary. González Rodríguez rightly stresses this impact of violence on the public sphere over the familiar metaphor of “psychological warfare.”<sup>67</sup>

Murders are meant to be decoded both by the rival organizations to which the victims presumably belong and by the general public. A message left next to two heads in the state of Guerrero in 2008 exemplified the paradox of secrecy combined with publicity. It read: “This is one part cement for two of sand; for each member of us you kill we will kill ten. Yours, You know who.”<sup>68</sup> If the performance of the violence fully makes sense only for those who understand the specific vocabulary and are aware of the current disputes for territory, that performance also has a broader effect by sowing fear and confusion throughout general audiences that see in the obscurity of these messages further evidence that authorities are powerless to do anything about violence. Sometimes these actions simply intend to create a sense of disorder in a rival organization’s city: “*calentar la plaza*” (“heat up the turf”) is the term used when violence is employed to draw negative attention from the state and the international and national media. According to federal authorities, murders in Coahuila and Tamaulipas in 2004 were designed to cast blame on a different group in order to confuse law enforcement agencies.<sup>69</sup>

There is an implicit message to the state and civil society in some of these actions: they are a reminder of that mythical time when understanding between authorities and *narcos* allowed for a more peaceful business. One action in Morelia in 2008 represents this message with clarity, regardless of who was specifically responsible: tossing a grenade into a crowd celebrating Independence Day demonstrated the vulnerability of society to the powerful weaponry and impunity of criminal organizations.

A parallel message is that criminal organizations limit violence, since they only use it when they want to, and can punish small-time transgressors. Some murders are performed so as to leave no doubts that they are a form of justice: the hands of thieves are cut off and left next to their bodies, sometimes with a note.<sup>70</sup> A victim in Veracruz had his hands and tongue cut off and a note from the Zetas was stuck in his body with screwdrivers warning: “This is how all of those who extort innocent people in the name of the Zetas will end up.”<sup>71</sup> Mantas address problems of justice too, as in the recent case of Marisela Escobedo, the mother of a victim of domestic violence who was assassinated because of her campaign to have the government of

Chihuahua prosecute her daughter’s killer. The Sinaloa Cartel promised in a manta to “achieve justice” for the case and invited “the Chihuahuans and all the citizens” to report those responsible on its web page “*página quitapuercos*” (“remove pigs page”). A song in a YouTube video promoting the page against a backdrop of crime scene photos and mug shots of suspects, praises the actions of the character named Quitapuercos, adding that “Quitapuercos publishes important events online before any other media.”<sup>72</sup> *La Familia Michoacana* published ads in state newspapers in 2006 promising to fight drug traffickers and drug consumption and to establish order in the state of Michoacán.<sup>73</sup>

These messages refer to a discourse of order and rough justice that is likely to find receptive audiences. A message from the Zetas on the above-mentioned corpse found in Veracruz stated “those who should die will die because we are cleaning the streets of rubbish.”<sup>74</sup> In Guanajuato several bags were found containing dismembered bodies and a message from the *Cártel de Jalisco Nueva Generación*: “This is a gift for the *resistoleros* and the *chapulines* (deserters); we will carry on clearing the rubbish. Yours, C.D.J.N.G.”<sup>75</sup> The same organization explained in a YouTube video that its attack against a member of *La Familia* was not intended to also hurt members of the navy. The video showed five men wearing military fatigues, helmets, and face masks and carrying weapons in front of a neat white background with the acronym of the organization explaining to the president, the minister of the navy, and the state governor that their fight was against the rival organization *La Resistencia* in Jalisco. The men offered evidence incriminating navy officers in the protection of their rivals and promised to send copies to the media. They claimed not to kidnap, extort, or steal and invited the population of the state to denounce their enemies, promising to kill the criminals who fell into their hands: “We’re going to keep this state free from those scabs.” They promised “tranquility and peace” and added that “we are people who are dedicated to doing our business.” They thanked journalists for broadcasting the video.<sup>76</sup>

Public opinion and the state are receptive to these messages even though government officials are adamant in their refusal to negotiate with criminals. In 2010 a group filmed and broadcast on the Internet the confession of a policeman and member of a rival group who, before being executed on camera, said inmates of the Torreón jail were used to carry out violent attacks in neighboring cities. The director of the penitentiary was later arrested.<sup>77</sup> Other groups have also disseminated videos of rivals under their custody confessing to

crimes. These videos are directed at authorities, the public in general, and potential enemy recruits.<sup>78</sup>

Murder, in other words, works as a press release for criminal organizations. It has a strong impact and a broad audience. It is relatively inexpensive, since the triggermen and intellectual accomplices face almost no risk of capture. As with other forms of communication, however, this lower risk might lead to a decrease in the value and credibility of the sign. Since anyone can commit a murder that looks like an execution, it is no longer a certainty that there is a “serious” partner or rival behind it. It is meaningful in this regard to see the parallel efforts of criminal organizations to hide other murders by disposing of the bodies in collective graves, caves, or destroying them with chemicals.<sup>79</sup> They can choose which homicides have meaning.

The legacy of the *nota roja* survives in the popularity, political impact, and language of these uses of murder as a communicative act. The state must respond to these confessional videos because public opinion will judge it on the evidence they present. The graphic and emotional tone of *nota roja* covers, with their images of dead bodies and calls for swift punishment, resonates with the material that organized crime publishes through blogs, web videos, and local newspapers. Criminal organizations are known to make calls to press rooms in order to make sure a body is duly photographed and published on the front page—or not, as the case may be.<sup>80</sup> The crime scene is arranged by the perpetrators to fit the narrative expectations of the readers: all the relevant information should be there, thus giving greater meaning to the article.

For some journalists and politicians, particularly in Mexico City, the survival of *nota roja* language allows for the manipulation of the press by criminals. Héctor Aguilar Camín, for example, criticized Scherer’s interview of Zambada as one such case of a passive journalist transmitting the messages of a sanguinary criminal.<sup>81</sup> As in the 1930s, proposals have emerged to curtail reporting although this time as a self-imposed editorial decision rather than through legislation. Members of powerful news organizations, including the two main television networks, agreed in 2011 to establish common rules regarding the coverage of drug-related violence. Adherents to the agreement on media coverage of violence (*Acuerdo para la cobertura informativa de la violencia*), which did not include some major newspapers such as *Reforma* and *La Jornada*, agreed to limit the reporting of events and to give them their due importance according to “the size and real situation of the problem.”<sup>82</sup> The goal was to avoid turning the media into “involuntary instruments” of organized crime.

Supporters of the *Acuerdo* cited the traditional concern about making criminals into heroes already invoked, as noted above, by Barba González, minister of the interior, in 1936. This concern, if taken seriously, would mean banning *narcocorridos* altogether, as proposed in Congress in 2008 and recently attempted by the government of Sinaloa.<sup>83</sup> The *Acuerdo* also included a commitment to control the language of reporting by avoiding the use of vocabulary employed by criminals and the confusing use of juridical terms—as if audiences were not able to understand the law. In an exceptional gesture of self-criticism, adherents promised to maintain the presumption of innocence of the suspects, but they quickly undermined that goal by stating also that it was necessary to signal the guilt of criminals.<sup>84</sup>

The *Acuerdo* and other attempts to control information about crime are motivated by the frustration that President Felipe Calderón expressed very clearly in 2010: the press is giving free advertising to criminals by publicizing their deeds and criticizing the country while the government has to spend enormous resources to get its message across. While violence continued to mount, the president defined the problem as one of perception rather than reality, arguing that Mexican murder rates are lower than those of countries with a better international image, such as Brazil. Underlying this complaint was the widespread notion that Calderón's government favored the Sinaloa cartel over other organizations. Online commentators of the speech, while mostly making fun of the government's concern about perception over reality, shared that notion.<sup>85</sup> In doing so they confirmed the effectiveness of messages left with bodies, in mantas, and in other media, denouncing law enforcement favoritism.<sup>86</sup>

What is largely missing from these criticisms and self-criticism of the press is the recognition of the communicative role of violence. Criminal organizations attack or threaten journalists because they want reporting to have a specific slant. But journalists are also targets of attacks because they can reveal the structure of local and regional alliances and the weaknesses in a group's control of a city. Some, such as Valentín Valdés Espinosa of *Zócalo de Saltillo*, were murdered, according to a note left next to his body, for simply reporting the arrest of a Gulf cartel leader.<sup>87</sup> Local media are also the best witnesses of the changing relationship between criminal organizations and state actors. In some cases, journalists are attacked because they reveal specific cases of corruption—although this is always difficult to establish with certainty because of the shortcomings of investigations. In the case of police beat reporter Bladimir Antuna García, murdered in Durango in November 2009, detectives failed to check

on his relations with the army and the police, to act on the threats that he received before his abduction and murder, and even to interview his widow. Antuna García's work on corruption in the state was not incorporated into the investigation either.<sup>88</sup>

The abundant evidence of violence suggests that curtailment of reporting is not always a matter of choice. The Committee to Protect Journalists observes "pervasive self-censorship by news media in areas under drug traffickers' influence."<sup>89</sup> In some places such as Tamaulipas there is no longer any reporting of the violence because of the control exercised by criminal organizations. The term "self-censorship," however, is deceiving since it suggests that journalists' decision not to publish certain information is voluntary.<sup>90</sup>

The diffuse yet very direct nature of the threat of violence against journalists prompted one of the most revealing responses from a newspaper to criminal organizations. After the murder of two of its reporters in less than two years, in September 2010 *El Diario de Juárez* wrote an editorial addressed at "the different organizations that are disputing the Ciudad Juárez plaza." The article asked for guidelines that would prevent further killings; it demanded "that you explain to us what you want from us, what you want us to publish or not publish, so that we know what to follow." Otherwise, the lives of journalists will continue to be "vehicles or messages, coded or not, among the different organizations, or from these to the official authorities." The editorial included a critique of public authority: "You [the criminal organizations] are, at this time, the de facto authorities in this city." For *El Diario*, the mantas in which the organizations sent warnings and messages to authorities and adversaries were to be taken more seriously than President Calderón's offensive against organized crime—a device to gain legitimacy after disputed elections, according to the editorial, and a mistake because it was started without knowing "the dimensions of the enemy nor the consequences that this confrontation would bring for the country."<sup>91</sup>

## Conclusions

It might not be too late for the state to understand that free and critical journalists are its best allies in the fight against organized crime. From the perspective of the federal government and many other social and political actors, there is a contradiction between the rule of law and the so-called war against drug-trafficking organizations (see [chapter 5](#) in this volume). The unfettered work of journalists, I argue, is essential if we are to transcend that false dilemma: without access



to information and a critical perspective on both state and criminal organizations, civil society will not be able or willing to support the former in any attempt to neutralize violent actors. Without comprehensive coverage of individual and collective cases of homicide, justice will never be associated with the truth, and no state action will be completely legitimate in the eyes of the population. Through their old-fashioned reporting of police news, journalists exert the most effective pressure on prosecutors to investigate crimes, make solid indictments, and in general increase the risk involved in killing a journalist or any other person, criminal or not. This, and not the limits on reporting proposed by the *Acuerdo*, would make murder more costly as a message to public opinion. Since the early days of *nota roja*, the absence of credible judicial investigations was the counterpoint of sensationalism. The repeated and disturbing killing of young women in Ciudad Juárez since the 1990s is evidence of this absence. The Mexican state at the local, state, and federal levels, according to the Inter-American Court of Human Rights' sentence on the case, "failed to comply with its obligation to investigate."<sup>92</sup>

For this change to be effective the logic of law enforcement should no longer be retaliatory (to punish the culprits by any available means) but judicial. This means, in other words, that the objective, case-specific reasons for indictment and punishment should be public and obtained through a transparent process of investigation in which the press plays a key role of dissemination and debate, as it did in the postrevolutionary period. This would reinforce strong responses of civil society against crime and impunity—even if it goes against hard-line sentiments. But if extrajudicial punishment is administered, or if investigations involve illegal means, such as torture or forced detention, justice will continue to have a dubious relationship with the truth, and paramilitary retaliation will continue to grow in popularity.

It might be overly hopeful to expect the thousands of deaths that weigh on Mexican democracy today to be solved lawfully and transparently—although there is no reason not to start with the next one, to establish a new beginning from whence the imperatives of truth and justice will be reconciled. This, as well as the recovery of the names of the victims of violence, is the impulse behind the protest campaign led by poet Javier Sicilia following the death of his son.<sup>93</sup>

In late June of 2011, as I was finishing the first draft of this chapter, Miguel Ángel López Velasco, editor and columnist of Veracruz's *Notiver* was murdered at his home together with his wife and son. The publication, characterized as lowbrow and focused on sensational

and local stories, was nevertheless a must-read for Veracruzano public opinion. In his column, López Velasco criticized government officials, described drug-related criminal events, and reported other local news.<sup>94</sup> Nothing more and nothing less than a good journalist's work.

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## Chapter 4

# Civil-Military Relations and the Militarization of Public Security in Mexico, 1989–2010: Challenges to Democracy

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In this chapter, I will argue that the delegation of policy missions to the armed forces and away from civilian agencies transformed the balance of power that had prevailed for decades in the system of civil-military relations. As I will show, the initial decision of President Carlos Salinas to use the military instead of the Attorney General's Office to counteract the power of the drug cartels created a momentum of militarization that has reached virtually every corner of the system of public security at federal, state, and municipal levels.

This momentum is partly sustained by the moral capital and good image of the military in the people's eyes, allowing the president to increase military roles without meeting major resistance from civil society and opposition parties. Still, the consequence of this shift of responsibilities from civilians to soldiers has reinforced the authoritarian nature of the system and represents a visible obstacle to the quality of democracy in the country. Clearly, the relatively new policy missions delegated to the military have not been accompanied by an adequate mechanism of supervision. The armed forces remain accountable only to the president while intermittently police corps fall under the formal or informal control of the army and navy.<sup>1</sup>

The chapter is divided into three sections. First, I outline the historical background of the army's role in counteracting drug trafficking. Here, I deal with the long-standing pressure the United States has put on the Mexican government to improve its capacity to combat the powerful drug cartels. In the second section, I look at the possible

motivations behind President Salinas' crucial decision to delegate this huge responsibility to the armed forces; I also analyze the impact these measures had in terms of the institutionalization of military roles during the presidency of Ernesto Zedillo. Particular attention is paid to understanding the transformation that these new roles generated in the organization of the armed forces, especially regarding its yearly budget allocations, geographical distribution of personnel, and internal structure of promotions.

Finally, I look at the presidency of Vicente Fox. Here, I address the great expectations of social change embraced by the people because of his electoral triumph, especially in terms of democratizing the system of civil-military relations. As it turned out, however, his policies led to the opposite outcome. In fact, it was during his term that the militarization of public security reached its zenith with the appointment of an army general on leave as the nation's attorney general. This policy shift toward militarization does not appear to be abating; in fact, it is acquiring new shapes and forms during the presidency of Felipe Calderón (2006–12). In this section, I suggest that democratization in Mexico has not meant a change in the basic rule of the system of civil-military relations, in which the military remains subordinate to the executive power but to no one else. Moreover, I present give a thorough explanation of this form of control, which I call “exclusive subordination.”<sup>2</sup>

### **The Armed Forces and the Origins of the Drug War**

Military involvement in the control of drug trafficking was active long before the US government tagged the issue as “relevant” to its internal security in 1946. One example occurred in 1938, when under the presidency of Lázaro Cárdenas a battalion of the 4th Military Zone destroyed marijuana fields in Sonora. This operation was run in cooperation with the Attorney General's Office (*Procuraduría General de la República*, PGR) and Agent Scharff from the US Secretary of the Treasury.<sup>3</sup> These early efforts by the Mexican government were followed by a permanent campaign of eradication of illicit drugs under the leadership of the PGR.<sup>4</sup> The policy was suspended during the Second World War, presumably as a result of the United States' intention to ensure the supply of opiates to produce morphine.<sup>5</sup>

In the years that followed, mild international pressure to heighten the drug war was placed on the Mexican government. Yet it was not until the 1960s, in the midst of the hippie revolution, that the rampant consumption of illicit drugs in the United States attracted the

attention of national policy makers, particularly that of President Nixon. According to the President's Commission on Organized Crime, Mexico supplied almost the entire US demand for marijuana in 1965.<sup>6</sup> In fact, it was in the late 1960s that Mexico and the United States experienced the first major diplomatic confrontation over the issue of illegal drug trafficking.

In 1969 President Richard Nixon ordered the closure of all crossing points along the border with Mexico so that agents of the newly created Task Force One, made up of the Justice Department's Bureau of Narcotics and Dangerous Drugs and the Treasury Department's Customs Bureau, could search for illegal drugs in every car and person who intended to cross the border.<sup>7</sup> The searches created enormous chaos. According to Carpenter, thousands of Mexican workers lost their jobs in the United States because of customs delays.<sup>8</sup> More than 5 million citizens of the United States and Mexico were caught up in that nightmarish dragnet before it finally ended.<sup>9</sup>

President Gustavo Díaz Ordaz did not seem upset by the closure of the border even though the vast operation resulted in the seizure of only small quantities of drugs. Rather, his anger came from Mexico's tainted international reputation and the precarious economic welfare of its border cities caused by such unilateral action.<sup>10</sup> Allegedly, Nixon's drastic actions were the response to Mexico's refusal to allow the United States directed aerial inspection of Mexican territory. Díaz Ordaz's resistance got in the way of a US continental policy that disrupted supply by spraying chemical herbicides over fields of illegal crops. Gordon Liddy, special assistant to the secretary of the Treasury and member of the diplomatic team that negotiated with Mexico at the end of the operation, explains: "Operation Intercept, with its massive economic and social disruption, could be sustained far longer by the United States than by Mexico. It was an exercise in international extortion, pure and simple and effective, designed to bend Mexico to our will. We figured Mexico would hold out for about a month; in fact, they caved in after about two weeks, and we got what we wanted."<sup>11</sup>

There is evidence that since 1969 Mexico's ruling elite has not disregarded US concerns over drug trafficking. After Operation Intercept, a wider cooperation was instituted between the two countries with the objective of eradicating illegal crops and running shared interdiction programs. Still, the frenzy of the war on drugs lost some steam under former presidents Ford and Carter. Each adopted a slightly different approach toward the issue of drugs, and Mexico's relationship with the United States improved considerably. Carter shifted the policy

focus toward preventing consumption rather than concentrating exclusively on supply.<sup>12</sup> Paradoxically, during a period of low pressure from the United States, the Mexican government launched the strongest campaign ever known against drug trafficking in the country to eradicate illicit drug crops and dismember domestic drug-trafficking organizations. Under the so-called *Operación Cóndor*, the Mexican government coordinated the efforts of the military, federal and local police agencies, and the Federal Directorate of Security (DFS) toward a single objective: to combat the international drug trade.<sup>13</sup>

Beyond the possible political motivations of this policy, the results of *Operación Cóndor* were stunning. The share of Mexican marijuana in the US market dropped from 40 percent in 1977 to only 3 percent in 1981. The success of *Operación Cóndor* was not only applauded by US officials but also by influential scholars in the field of organized crime; one of them was Peter Lupsha, who affirmed that the results achieved during those years probably represented the only resolute attempt to fight drug trafficking successfully in Latin America in the 1970s. In fact, the United States presented Mexican achievements in the war on drugs as a model that other countries could follow,<sup>14</sup> as marijuana and poppy fields were practically eradicated during the five years the operations lasted. For a different set of authors, however, the success of the Mexican efforts to combat drug trafficking derived from the bad reputation of Mexican marijuana among US consumers due to the intensive use of paraquat, a highly toxic substance that local authorities used to exterminate the plant.<sup>15</sup>

Despite the success of *Operación Cóndor*, the total amount of drugs available in the United States was hardly reduced as Colombian traffickers and other external and internal suppliers managed to fill the gap in the market left by Mexican drug cartels.<sup>16</sup> Still, Condor showed, for the first time, that the Mexican government was eager to act against drug trafficking both in response to international pressure and for its own reasons—that is, to conceal the open combat that the state was waging against urban and rural guerrillas.

Not surprisingly, once the political power of the regime was reinstated and the guerrilla movement annihilated in the early 1980s, the production of illegal drugs bounced back and recovered its previous levels but with some important variations. First, the number of state resources employed during *Operación Cóndor* brought into play almost all the security agencies available in the country. This massive eradication effort pushed less daring and smaller traffickers out of the market, thus benefiting the most powerful and organized, particularly those who could afford the high cost of corruption and the

increasing use of violence.<sup>17</sup> It also greatly expanded the corruption potential of a burgeoning illegal drug market that was about to experience its best performance ever in the first half of the 1980s. To put it in numbers, based on statistics gathered by the US Department of Health, by 1979 almost 29 percent of the population over the age of 12 consumed marijuana frequently, 3 percent used heroin, and 10 percent used cocaine.<sup>18</sup> There is no doubt that such a massive demand made the business of illegal drugs very appealing, particularly to an increasingly impoverished Mexican peasantry.

A further element that enhanced the role of Mexico in the international drug-trafficking market was the widely celebrated triumph of the Reagan administration on the subject of the Caribbean corridor and its closure to Colombian cocaine shipments entering through Florida.<sup>19</sup> After that “success,” Mexico became the preferred substitute route for Colombian cocaine exporters. This shift dramatically elevated Mexico’s position in the international drug trade and vastly increased the power and influence of the country’s major trafficking organizations.<sup>20</sup> Under these conditions, the 1980s represented an extremely difficult period for the Mexican government. This coincided with the beginning of Miguel de la Madrid’s presidency (1982–88) and the Republican administration of President Ronald Reagan. Internally, President de la Madrid needed to introduce urgent measures to improve the country’s economic performance after the disastrous record of his predecessor. Externally, the revival of Nixon’s rhetoric by President Reagan implied that the return of a bilateral relationship could easily be poisoned by the topic of drugs. In fact, the Reagan administration labeled de la Madrid’s *sexenio* as poorly committed to the war on drugs and permeated with corruption.<sup>21</sup>

The State Department’s long list of allegedly corrupt Mexican public servants included names such as Sergio García Ramírez, who served as the nation’s attorney general; Manuel Bartlett, the minister of the interior; General Juan Arévalo-Gardoqui, the minister of defense; Miguel Aldana, the chief of Interpol Mexico; and José Antonio Zorrilla Pérez, the head of the Mexican Intelligence Agency. The latter was ultimately convicted of the assassination of Manuel Buendía, a well-known journalist specializing in national security issues, particularly drug trafficking. Even though many of these allegations were never fully proven, the confiscation of 7,000 tons of marijuana (the largest amount seized in the world’s history) at *El Búfalo* Ranch in Chihuahua in 1984 and José Antonio Zorrilla’s imprisonment in 1989 showed that some of the rumors were certainly

true and that the presence of drug traffickers in the political system was more than a suspicion.<sup>22</sup>

Not surprisingly, after each political corruption scandal, a political statement was issued by President De la Madrid expressing his firm commitment to combat drug trafficking, cleanse law enforcement of corruption, and strengthen interagency cooperation with the United States. The presidential political discourse had no bearing on the policies adopted, however. In fact, from 1969 to 1988, no Mexican president tried to reform the police agencies as a way of boosting the state's ability to counteract the power of the drug mafias. In other words, law enforcement reform did not figure in the agendas of presidents Gustavo Díaz Ordaz (1964–70), Luis Echeverría (1970–76), José López Portillo (1976–82), or Miguel de la Madrid (1982–88). The Attorney General's Office (PGR) remained the main actor in the antidrug strategy of the Mexican state, as it had been since 1938.

This changed drastically during the presidency of Carlos Salinas de Gortari (1988–94). Since the year of Operation Intercept, failure and corruption scandals had already caused great damage to the reputation of the Federal Judicial Police. Furthermore, achieving the inclusion of Mexico in the North American Free Trade Agreement (NAFTA)—arguably the primary objective of President Salinas's administration with regard to the United States—required easing the negative impact of drug matters on the bilateral agenda to gain the support of the US Congress in this endeavor. Therefore, the president's strategy focused on conveying the idea that Mexican authorities were working hard against corruption and were willing to cooperate fully with the United States.

Still, it was clear that more than good intentions and joint press releases were going to be required this time. The government of Mexico wanted to prevent the type of corruption scandals that had damaged the reputation of the Federal Judicial Police and the regime's apparatus as a whole. In other words, President Salinas had to ensure that drug trafficking affairs would not become recurrent front-page material for newspapers, particularly due to the acts of corrupt Mexican officials.

Furthermore, Mexico would be required to comply with the US Department of Defense's recommendations on the war on drugs. In practice, this meant bringing the military into counternarcotics operations to assist or replace inefficient and corrupt police agencies. Under this set of conditions, President Carlos Salinas chose to delegate important responsibilities related to the war against drug trafficking to the armed forces instead of the Attorney General's Office.

This policy shift was framed within the National Development Plan (PND) for 1988–94. In it, President Salinas recognized that drug trafficking was a growing public health concern and a damaging force affecting the performance of public security institutions. Therefore, it was the executive's responsibility to direct as many resources as needed toward counteracting such a destructive influence. An important element underlying the situation was the public acknowledgment within the incoming administration that federal civilian police had failed to counteract the power of organized criminals. This was allegedly because the police agencies were corrupt and had become the allies of the groups that they were supposed to combat.

The PND also made clear that the participation of the armed forces was only meant to assist the Attorney General's Office in fighting organized crime, particularly drug trafficking. The activities that the military performed during the Salinas administration, however, demonstrate that the word "assistance" was a synonym for replacement. From 1989 to 1992 a series of joint programs between the Mexican Attorney General's Office and the Defense Department began to bring the efforts of the two institutions together in the fight against drug trafficking. This cooperation included training programs for civilian personnel in military facilities as well as the constant replacement of "dirty" or corrupt police officers with "on-leave" military personnel. It was due to this policy that in 1990 the first wave of army officers came to occupy key positions in the PGR and in Mexico City's police department.

Cooperation between the two institutions has never been free of conflict. On several occasions the army expressed its contempt for the lack of professionalism of *los judiciales* (Federal Judicial Police). It claimed that training or educating already corrupt police personnel would not prevent them from protecting and assisting the operations of drug traffickers.<sup>23</sup> This kind of statement became a common theme for the armed forces, especially when they managed to apprehend a notable drug lord. For instance, after the army detained Héctor "el Güero" Palma in 1995—at the time, one of most hunted drug traffickers in the country—General Luis Garfias declared that the military had incarcerated Palma under strict conditions of secrecy because the Federal Judicial Police and the local police could not be trusted.<sup>24</sup> A similar argument was used by the defense minister when Benjamín Arellano Félix, the leader of *El Cartel de Tijuana*, was captured in 2002 by a specialized unit of the army.<sup>25</sup> According to General Clemente Vega García, there were only three senior public servants who knew about the operation: President Fox, the attorney

general (who was also an army general), and José Luis Santiago Vasconcelos, who acted as the general director of the Special Unit against Organized Crime (UEDO). Once more, General Luis Garfias declared—this time from his chair at the Center for the Study of the Armed Forces—that the apprehension of Benjamín Arellano Félix was possible due to the close cooperation between the US Drug Enforcement Administration (DEA) and the Mexican government as well as due to the efficient work of the army's intelligence apparatus. "It could not be otherwise, because the Mexican police have not changed; those people are still corrupt."<sup>26</sup> José Luis Santiago Vasconcelos told this author that the intelligence unit that followed the leads on Arellano Félix was a very closed and select agency, made up of selected army officers and civilians. Santiago Vasconcelos affirmed that the UEDO was the only civilian office enjoying the trust of the military, partly because Santiago Vasconcelos and his men also had the trust of the DEA.<sup>27</sup> In this case, it is also curious to observe how General Clemente García allowed the mass media to film the specialized squad that had captured Arellano Félix.<sup>28</sup> For Oscar Rocha Dabrowsky, director of the Joaquín Amaro Foundation for Strategic Studies, the message that General Clemente was intending to send with this video was clear: "The army is the only institution capable of delivering results in the war against drug trafficking."<sup>29</sup>

A similar message was repeated by the defense minister when the army captured Osiel Cárdenas Guillén, the leader of the *El Golfo* cartel, in Nuevo Laredo, Tamaulipas, on March 16, 2003.<sup>30</sup> On this occasion, General Clemente declared that only President Fox knew about the operation and that the whole intelligence task force had been operated by the army alone.<sup>31</sup> According to General Clemente, not even the governor of Tamaulipas, Tomás Yarrington, was aware of the operation. Later that day, in an interview for a news radio show, Yarrington said he was happy not to have known anything about the operation that ended with the incarceration of Cárdenas Guillén. He explained that issues related to drug trafficking were very sensitive and, for that reason, should be carried out in strict secrecy.<sup>32</sup> It is noteworthy that while this chapter was being written (February 2012), the General Attorney's Office released a press statement indicating that Yarrington, along with two former other governors of Tamaulipas (Manuel Cabazos Lerma and Eugenio Hernandez Flores), was being investigated for alleged links to organized crime.<sup>33</sup>

A somewhat similar incident occurred during the operation that culminated in the execution of Arturo Beltrán Leyva, "Boss of Bosses," the leader of *El Cartel del Pacífico Sur*, in December 2009.



This operation was performed directly by the navy in the city of Cuernavaca, approximately 50 miles south of Mexico City. According to various narratives released by the press, among them WikiLeaks, this operation was carried out by the navy alone, after the US embassy revealed to the Mexican army the whereabouts of Beltrán Leyva. According to a diplomatic cable leaked to the press, “Pascual said that the United States, which had information on Beltrán Leyva’s location, originally took it to the army, which refused to move quickly. Beltrán Leyva was eventually brought down in a shoot-out with Mexican marines, a corps that has since taken the lead in other operations against cartel capos.”<sup>34</sup>

There is no doubt that both the army and navy have taken very seriously their missions to counter drug trafficking; the secrecy surrounding their operations, sometimes even from each other, may well be further evidence of such an attitude. According to other cables provided by WikiLeaks, it seems the relationship between the army and the navy is not free of friction. It is clear, however, that on the public relations side of the equation—that is, the success story of the military in the drug war—they share the idea of reinforcing the public view that organized criminal gangs have penetrated civilian security agencies and may have corrupted key political figures. Therefore, the army and, more recently, the navy present themselves as the only credible alternative for dealing with the problem.

Following this logic, it is easy to understand the resistance of military personnel to cooperating with or even receiving orders from what they often consider inept and corrupt civilian authorities. These internal disputes reached a boiling point during the last year of Carlos Salinas’s administration. In April 1994, the president ordered the creation of the National Coordinating Council of Public Security.<sup>35</sup> This interagency institution comprised the ministries of defense and the navy interior, the attorney general, and the state governors (as well as the mayor of Mexico City). All were under the supervision of Arsenio Farrell Cubillas, at that time secretary of the Department of the Comptroller General and Administrative Development.<sup>36</sup> In a well-known act, President Salinas’s defense minister, General Antonio Riviello Bazán, declared publicly that the army would not take orders from a civilian other than the president. Because of this refusal to go along with civilians, the National Coordinating Council of Public Security did not last long; following reform measures, it became the National Council of Public Security, in which the military assumed a leading role.

Jeffrey Davidow, the former US ambassador to Mexico, revealed a second incident of this nature. According to Ambassador Davidow,

Adolfo Aguilar Zinser, who was appointed as senior national security advisor to President Vicente Fox, intended to establish better channels of communication between the Mexican government and the US embassy regarding security matters. As chairman of the National Security Council, Aguilar Zinser set up a meeting of top public servants of the incoming administration with some senior US embassy officers, including the ambassador himself. Among those present were the naval, defense, and interior ministers, the director of the Center for Research on National Security (CISEN), and the attorney general. Davidow remembers that General Clemente Vega refused to participate in the meeting; he simply remained silent, and other colleagues adopted a similar attitude.<sup>37</sup> Once again, it was clear that the defense minister refused to receive directions from a civilian other than the president.<sup>38</sup> This attitude rendered Zinser's presence on Fox's team irrelevant and forced his resignation in the following months.<sup>39</sup> Thereafter, Vicente Fox took personal charge of the coordination of the National Security Council.<sup>40</sup>

A more recent incident of this nature took place during the first year of Felipe Calderón's presidency, with the creation of the Federal Task Forces of Support. Initially, this agency—made up entirely of elite members of the armed forces—was meant to be commanded by the minister of public security, Genaro García Luna, to address a sudden upsurge in levels of criminality and violence in the country.<sup>41</sup> However, the resistance of the armed forces to taking orders from a civilian member of the cabinet forced the transformation of the newly created security agency. In the end, the new task force remained within the structure of the Defense Ministry and was expected to act only by direct order of the president or prior request of a state governor.<sup>42</sup>

Finally, a cable sent to the US Department of State by the American embassy in Mexico City and revealed by WikiLeaks, shows that Mexico's minister of defense, Guillermo Galván, does not trust the police in the Mexican government's war on drug trafficking. According to Cable 09Mexico3077, General Galván prefers to work separately due to the propensity of corrupt public servants to pass information to the drug lords concerning the counternarcotics operations of the armed forces.

In light of these cases, it seems clear that differences of opinion between the armed forces and civilian leadership have always been resolved in the military's favor. The minister of defense has fiercely defended a civil-military system in which the unequal distribution of power favoring the civilian component arises only when the armed

forces deal with the president, in what I call exclusive subordination. However, at lower levels of the public administration, where the armed forces interact with other state agencies, the relationship is markedly different. There, civilian law enforcement agencies are subordinated to the armed forces or at least supervised by them. This means that military personnel are appointed to head civilian police corps and that new police corps backed by military personnel are created. Thus, empowering the armed forces in the realm of public security not only reinforced their role as the privileged and reliable agent of the president in combating crime but also converted the military into the principal agent vis-à-vis federal and state law enforcement institutions.

This unequal distribution of power helps to explain how the military has been capable of keeping its sphere of influence intact and even expanding it while its civilian counterpart has suffered a quite different fate. Since 1990, the PGR has been undergoing a fragmentation process characterized by a gradual loss of responsibilities, constant change of leadership, and purges of allegedly corrupt personnel. For instance, between 1988 and 2010, the PGR had 12 attorneys general, the same number that this institution had had in the previous 50 years.

Within the same period, the department responsible for implementing counternarcotics policies suffered five major transformations. From 1988 to 1990, it was called the Deputy Attorney General's Office for the Investigation and Combat of Drug Trafficking. In 1990, it was renamed the Antinarcotics Division. From 1990 to 1993, it was the General Coordination to Fight Crimes against Health. From 1993 to 1997, it was the National Institute for the Combat of Drugs (INCD). During this period, the INCD had seven general directors, two of whom are in federal prison for serious corruption charges. In June 1997, the INCD was renamed the Special Office to Prosecute Drug Crimes (FEADS). The name remained until 2002, when another case of corruption triggered its change to the Deputy Attorney General's Office for Special Investigation into Organized Crime, SIEDO.<sup>43</sup> In addition to this continual transformation, every new attorney general ordered a purge of PGR personnel.

While the PGR has been virtually dismantled since 1989, the armed forces experienced a completely different fate. Most state agencies have been characterized by deep cuts in government spending, but the military budget is one of the few that massively increased during the 1990s.<sup>44</sup> In other words, military budget allocations were spared the difficulties of the Mexican economy in the second half

of the 1990s. With virtually no exception, military spending has increased steadily ever since.<sup>45</sup>

Such consistent increases in military budget allocations bolstered the strength of the armed forces, particularly the army, in the campaign against drug trafficking. An analysis of data released by the army and compiled in the official statistics of the federal government makes clear that drug interdiction and eradication increased almost at the same rate as budget allocations between 1990 and 2004. The greater funds also led to an improvement in the military's capability to protect highways and airports, provide disaster relief and health assistance campaigns to the civilian population (army only), and arrest drug-related suspects. Growth in military membership also became possible.<sup>46</sup> Still, one cannot overlook the fact that most statistics on drug eradication and interdiction are provided by the armed forces themselves, without any sort of external supervision or verification. Therefore, the possibility that such estimates are manufactured in order to justify the constant budget increases cannot be ruled out.

### **Movement across the Ranks in the Army: Changes in Scale and Criteria**

In addition to increasing budget allocations, the 1990s were marked by a rise in promotions to the highest ranks of the army. This is clear when comparing the promotions of army officers to the rank of colonel between 1976 and 1988 with those that took place between 1989 and 2002—a 60 percent increase. The number of brigadier generals rose by 49 percent, that of brigade generals by 56 percent, for, and that of division generals by 5 percent. In sum, by 2002, the Mexican army had one general for every 348 soldiers; in contrast, the US Army had one for every 1,467.<sup>47</sup>

It is noteworthy that the Ministry of Defense presents its proposals for promotions from colonel to division general to the president for approval yearly, on the anniversary of the Mexican Revolution. Once he has approved them, the Senate makes the final ratification. During the 1990s, the number of promotions to the highest echelons of the army skyrocketed and had immediate approval of the president and the Senate. Comparing the periods of 1976–88 and 1989–2002, the number of officers promoted to division general rose from 860 to 1,348 and those promoted to brigade general increased from 470 to 702; promotions to brigadier general rose from 180 to 331, and those to the rank of colonel increased from 68 to 72.<sup>48</sup> This response exhibits the willingness of both powers to comply with military demands.

Although the frequent promotion of army officers to top military ranks indicates the growing influence of the army in the political system and the fact that membership means a more extensive compensation package, it must be kept in mind that this compensation is linked to performance. Since 1989, it seems that the army has begun to increase rewards to officers for direct participation in counterinsurgency and combating drug-trafficking operations. Nowadays, reaching the top of the army hierarchy requires a concise record of service in military zones identified with the production of illicit drugs (Baja California, Chiapas, Chihuahua, Guerrero, Michoacán, Sinaloa, Sonora, and Tamaulipas) or with the presence of guerrilla activity (Guerrero and Michoacán). These states are among the top ten in the national ranking on violent homicides, with the exception of Tamaulipas (12th) and Chiapas (24th).<sup>49</sup> Furthermore, they all appeared among the top ten in a 2008 national ranking on positive opinion of the armed forces at the subnational level.<sup>50</sup> At the same time, with the exception of Baja California, which comes in at 15th, all are among the ten states with the highest levels of reported human rights violations perpetrated by the armed forces in 2007.<sup>51</sup>

An analysis of defense ministry databases conducted by this author shows that from 1976 to 1988, 39 percent of those officers who reached the rank of division general had command experience in zones where the army itself recognizes the high presence of insurgency.<sup>52</sup> For the following period, 1989–2002, that proportion increased to 48 percent. In the case of direct command experience in military zones where substantial drug-trafficking activities have been identified, the percentage increased from 16 in the period from 1976 to 1988 to 27 percent in period between 1989 and 2002.

This transformation is also noticeable at lower levels of the hierarchy. In the years 1976–88, 16 percent of those officers promoted to brigade general had command experience in zones where the army itself recognizes a high level of insurgency, compared to 16 percent for the years 1989–2002. In the case of direct command experience in military zones with substantial drug-trafficking activities, the percentage increased from 34 between 1976 and 1988 to 43 percent between 1989 and 2002.<sup>53</sup>

A third indication of the transformation of the army as a result of its increasing participation in the public security system is its willingness to provide more opportunities of direct command experience to high-ranking officers. On this topic, we found that chiefs of army zones were rotated more often between 1989 and 2003 than in the previous period under analysis (1976–89). Rotations of chiefs of military

zones seem most frequent in Chihuahua (12 months), Michoacán (14 months), Sinaloa (13 months), and Sonora (14 months), all states with significant drug-trafficking activities. In the previous period under study, they chiefs remained in one position for a considerably longer time—25 months, 24 months, 19 months, and 18 months, respectively.<sup>54</sup>

In sum, it seems clear that the army has taken the mission of guarding public security and combating drugs very seriously even though it constantly makes public its reticence to address this issue in the long term. For the armed forces, participation in missions related to public security is always framed in a discourse that emphasizes the provisional character of their role. Yet, as a result of its increasing participation in the system of public security, the army has not only increased the number of officers promoted to the highest ranks but also favored their specialization in areas that represent the driving force of its recent expansive role in the political system: counterinsurgency and the fight against drug trafficking. This suggests that in the long term the army is interested in taking over key policy areas in the public security system.

The conclusions drawn from these data contrast sharply with the army's alleged reluctance to take over the mission of combating drug trafficking from civilian agencies. The contradiction between an apparent unwillingness to fight drug cartels and the patent proclivity to gain more political influence and economic power through this task may be difficult to comprehend. A Mexican navy admiral who participated in the creation of the Federal Preventive Police in 1997 explained to the author that the army clearly has a double agenda. According to this source, the intention is to occupy as many positions in the public security system as possible, because this means an expansion of the army's sphere of influence in the political system. Therefore, an important part of this policy requires constantly acknowledging that police agencies are very difficult to handle because of the endemic phenomenon of corruption. This is an excellent strategy for protecting the good name of the institution in case a scandal breaks out.<sup>55</sup>

### **Formalizing the Role of the Armed Forces in the Public Security System**

The militarization of public security continued during Ernesto Zedillo's presidency. It was during his term that an important qualitative shift began to take place, however. The participation of the military in public security missions, as portrayed in President

Zedillo's National Development Plan, represented the chief asset in the Mexican state's fight against the drug cartels. In 1996, the Mexican Congress formalized this role in the law that created the National System of Public Security (SNSP). According to the new strategy, the army assumed a central role in backing federal, state, and local police departments in their effort to confront organized crime.<sup>56</sup> This cooperation included the direct intervention of the military in anticrime operations as well as the design and implementation of training programs for police corps. With the creation of the SNSP, the participation of the military ceased to be an arbitrary choice of the executive power in dealing with the problem of public security. Instead, its role became institutionalized in the best-funded policy of President Zedillo's administration. Under the plan, the armed forces were allowed to arrest people for drug-related crimes, interrogate them, carry out investigations, and use their intelligence apparatus to support the tasks of fighting criminal organizations.<sup>57</sup>

The military's intervention in the public security system was taken even further in the second half of Zedillo's term of office under his *Cruzada Nacional contra el Crimen* (National Crusade against Crime). Heavily advertised on radio and television, the *Cruzada Nacional* focused intensely on reducing crime levels in the country through the modernization of police departments and the participation of the armed forces. Not surprisingly, it was also meant to strengthen the position of Francisco Labastida—the interior minister who later became the presidential candidate of the ruling party—in preparation for the upcoming election. That same year, President Zedillo created the Federal Preventive Police, a new security agency whose human resources, numbering nearly 5,500, came directly from army and navy battalions.<sup>58</sup>

As in the past, President Zedillo's strategy started with the assumption that military-educated personnel were more resistant to the corrupting power of drug cartels and other forms of organized crime. Furthermore, their rigorous instruction and civic education were thought to be helpful in boosting the efficiency of police agencies.<sup>59</sup> No doubt this vision was widely accepted among the political elite, until General Jesús Gutiérrez Rebollo, Mexico's drug czar, was removed from his position in February 1997 for alleged links to the criminal underworld. It was alleged that Gutiérrez Rebollo maintained close ties with Amado Carrillo Fuentes, leader of the Juárez cartel.<sup>60</sup> General Gutiérrez lived in the same building as Carrillo and was particularly aggressive toward the Arellano Félix cartel but remained rather ineffective against Carrillo's organization.<sup>61</sup>

After Rebollo's incarceration for drug trafficking, several voices—opposition politicians, retired army officers, and leaders of national and international human rights organizations—challenged the idea that the militarization of public security represented a sensible policy to counteract crime. For instance, Francisco Molina, the former director of the INCD in 1996 and a senator from the *Partido Acción Nacional* (PAN) in 1997, declared that involving the military in the war against drug trafficking was a serious mistake made by President Zedillo. Molina argued that there was no evidence that the military had been more effective or less corrupt than the civilian police in such tasks; in fact, he argued that 150 officers from the armed forces had been found to have links to criminal organizations.<sup>62</sup> A secret dossier leaked to the press in July 1997 showed the great concern of the army over connections between high-ranking officers and drug mafias. The files included the names of ten generals who had been investigated on such charges since 1990. General Gutiérrez Rebollo was not on that list.<sup>63</sup>

For Roderic Ai Camp, a leading academic expert on the Mexican military, the incarceration of General Gutiérrez was further evidence of the impossibility of guaranteeing the immunity of military officers from the corruptive power of the drug cartels.<sup>64</sup> In fact, many studies address the proclivity of the Mexican military to become corrupt.<sup>65</sup> General Luis Garfias, the former president of the Federal Congress's Commission of Defense, stressed the importance of supervising the army more closely and withdrawing it as soon as possible from the war on drugs as well as limiting its role and involvement in missions to eradicate marijuana and opium poppy fields.<sup>66</sup>

Among all these voices against the participation of the military in counternarcotics operations, Felipe Calderón's was loud and clear. It is interesting to read his statements and even articles during the time when Calderón served as the national leader of PAN. In February 1997, he stated that the armed forces were being excessively used by President Zedillo. Furthermore, he argued that the military had been unnecessarily tainted by situations such as that of General Gutiérrez Rebollo.<sup>67</sup> Calderón also said that the disproportionate use and even abuse of the armed forces in missions that properly fall to civilian agencies—meaning public security—could only set the military on a path of institutional debacle.<sup>68</sup> Despite this fervent opposition to having the armed forces carry out such missions, Calderón's record as president of Mexico tells a different story. I will return to this issue in the final section of this chapter.



There is no doubt that after the incarceration of Gutiérrez Rebollo, the avalanche of criticism of the armed forces, particularly the army, forced President Ernesto Zedillo to appear on national television to defend the reputation of the military and its participation in the war against drug trafficking. Zedillo pointed out that as an institution, the Mexican army represents a great ally of the Mexican people in defending the country's security as well as in boldly fighting organized crime.<sup>69</sup> The stance of President Zedillo on this issue was consistent with the system of civil-military relations and honored one of the unspoken rules of interaction between the executive power and the armed forces—that is, to secure their corporate interest and moral capital whenever it is threatened.

### **The Democratization and Militarization of Public Security**

Despite the rhetoric of President Zedillo on public security and the acceptable performance of the country's economy during the last two years of his mandate, the ruling party lost the presidential election in July 2000 after 70 years in office. Great expectations accompanied the arrival of President Vicente Fox in terms of democratizing the system of civil-military relations and redefining the army's mission. In fact, one of Fox's campaign proposals was to take the military out of the war against drug trafficking.<sup>70</sup> His position on the issue was to consider drug trafficking as a problem of public health, not national security. The team commanding the transition was even assigned the task of finding ways to select a civilian defense minister. A retired general was to be appointed as the minister of defense so that he could prepare the arrival, within a two-year period, of a civilian successor.<sup>71</sup> The idea was not new; it had been implemented in Uruguay, Paraguay, and El Salvador in the 1980s and 1990s.<sup>72</sup>

None of these plans were carried out, however. One day after the inauguration of Vicente Fox as president, the minister of defense General Vega García declared that he had been instructed to concentrate fully on the war against drug trafficking.<sup>73</sup> This was the first sign that the arrival of a president from a political party other than the *Partido Revolucionario Institucional* (PRI) did not mean a shift in direction regarding public security and the inherited trend of militarization.<sup>74</sup> On the contrary, it was during the presidency of Vicente Fox that the PGR seemed, for the first time in history, like a mere

extension of the Ministry of Defense. By 2002, Mexico's attorney general was an on-leave army general, and 16 of the 20 most important positions within the PGR and the federal public security ministry were occupied by persons with military backgrounds.

Furthermore, the presence of the armed forces had begun to extend beyond federal administration agencies and also dominated state and local security agencies. Based on information obtained through the Freedom of Government Information Law, as early as 2003 the army had 241 retired or on-leave officers working in public security institutions.<sup>75</sup> Even if the number does not look significant, the positions occupied in local and state police departments made a notable difference. High-ranking army officers commanded 16 of the 32 state police departments in the country, and 9 were secretaries of public security at the state level. By 2008, only in Aguascalientes and Tlaxcala, the smallest state in the country, did the army not have any public security functions.<sup>76</sup>

The method followed by elected officials to select those in charge of local and state police agencies is also indicative of the enormous influence of the armed forces in this field. Former governor of Veracruz Fidel Herrera stated that he made the decision to appoint General Orozco as his public security minister by direct recommendation of the defense minister General Clemente Vega García. The governor told this author that the method was a common practice among PRI governors and that he got the advice to call General Clemente from José Natividad González Paras, the governor of Nuevo León.<sup>77</sup> When it comes to selecting a chief of police, the practice of consulting the defense minister or the regional military chief seems to be common among elected officials regardless of their political affiliation. In an interview dated May 13, 2008, the PAN governor of Baja California, Francisco Osuna Milán, affirmed that the appointment of the chief of police in the cities of Tijuana, Ensenada, and Tecate was made by direct recommendation of General Aponte Polito, the military chief of the northern region.<sup>78</sup>

Moreover, information provided by the military on the allocation of on-leave or retired officers in local and state public security institutions revealed that until 2004, the army tried to avoid direct participation in local police agencies in states with a high density of illegal crop cultivation (Sinaloa, Chihuahua, Durango, Sonora, and Nayarit) or that share the northern border with the United States (Baja California, Sonora, Chihuahua, Coahuila, and Tamaulipas). This situation has changed radically during the presidency of Felipe Calderón, however: the heightening of the war on drugs during his

administration has pushed the armed forces and the federal police to intervene directly in almost every corner of the security system in that group of states. The idea of preventing the development of the corrupt alliances that have traditionally emerged between civilian law enforcement institutions in these particular states has not been considered a priority despite the extremely high level of violence and confrontation between the criminal organization themselves and between them and the police and armed forces.

In terms of presumed human rights violations by the military, it is interesting to note that in 2007 the highest number of reported violations occurred in states where the federal government put in motion the emergency security plan known as "*México Seguro*": Baja California, Chihuahua, Guerrero, Tamaulipas, Michoacán, Nuevo León, Sinaloa, and Sonora.<sup>79</sup> This plan, originally implemented by President Vicente Fox in 2005 and maintained by Felipe Calderón, is meant to stop sudden upsurges of violence in states identified by the armed forces and intelligence agencies as hosting the main criminal organizations, most of which thrive on drug trafficking.<sup>80</sup>

According to information from the national human rights commission (CNDH), five of the six states with the most presumed human rights violations committed by the military were included in the first part of this program. In other words, the intense physical presence and activity of the armed forces seems to be related to a high index of alleged human rights violations.<sup>81</sup> Still, this phenomenon does not affect the military's good image among the population in this small but significant number of states. A recent public opinion study, the first of its kind made available to the public, indicates that the military received the highest positive evaluation achieved from the population of Colima, a tiny state located on the pacific coast, with 8.4 on a scale of 1 to 10.<sup>82</sup> After Colima came Baja California, followed by Tamaulipas, Chiapas, Sinaloa, Sonora, and Michoacán. The rating obtained throughout these states was above the national average of 7.5, and all these states fell under the "*México Seguro*" plan. Furthermore, these states are all identified by the military as either suffering a high degree of drug trafficking (Baja California, Guerrero, Sinaloa, Tamaulipas, and Sonora) or guerrilla activity (Chiapas and Guerrero). In fact, two (Michoacán and Guerrero) are afflicted by both. If we look at the number of violent assassinations connected with drug trafficking, the list of states that rank at the top is not much different. Chihuahua comes in first, with 1,694 violent executions in 2008; there were 908 in Sinaloa, 735 in Baja California, 311 in Durango, and 302 in Guerrero.<sup>83</sup>

The analysis of these data suggests that the image of the armed forces is not significantly tainted by their presumed human rights violations, the implementation of highly invasive security operations such as *México Seguro*, or even a high, permanent, and visible troop deployment. In fact, 58 percent of the population considers that human rights have been consistently violated by the armed forces as a result of the war against drug trafficking; however, 81 percent approve of their participation in such missions.<sup>84</sup> Furthermore, the national human rights commission (Comision Nacional Para Derechos Humanos, CNDH) reported that the number of presumed human rights violations committed by the defense ministry increased from 910 during the administration of Vicente Fox (2000–06) to 6,265 during the first five years of Calderón's administration (2006–11).<sup>85</sup> It also documented 251 cases of torture in which members of the armed forces and the federal police have participated since 2007.<sup>86</sup>

Such public tolerance for the excesses committed by the armed forces and even their underperformance in the war against drug trafficking is confirmed by the same poll. It indicates that only 29 percent of the population believes that the war against the drug cartels is being won by the federal government 51 percent of respondents think that criminal organizations are ahead.<sup>87</sup> Paradoxically, whenever the presence of the military is high, either as a result of guerrilla or drug-trafficking activities, a sense of gratitude arises in the general population. In fact, according to a Bimsa poll conducted in 2008, 70 percent of Mexican citizens believed that the armed forces should participate more in public security tasks. It seems that this fact has made elected politicians, including the president, rely increasingly on the armed forces not only to thwart the advance of crime but also to demonstrate a commitment to addressing the problem of public security.

This attitude was taken to the extreme by President Felipe Calderón: on his first day in office, he appeared on TV dressed in an army uniform while commanding military operations against drug trafficking in Apatzingan, Michoacán. During the same event, Calderón announced a policy of austerity and restricted government expenditures, but he made clear that such cuts would not affect the military. On the contrary, soldiers' salaries would be raised.

Calderón's speech was also accompanied by a strong campaign on TV and radio during which the president asserted: "It is an honor to command a military organization whose origin are the people of Mexico, that relates to the people and works for the people." Many political analysts have suggested that the president's extreme reliance on the armed forces and his public adulation of them is the result

of his weakened legitimacy and political authority, deriving from his challenger Andrés Manuel López Obrador's refusal to accept defeat in the presidential election of July 2006. Therefore, Calderón has been obliged to rely too much on the political institution held in the highest regard by people, the armed forces,<sup>88</sup> as a way to enhance his public image.<sup>89</sup>

It is fair to say that this general attitude is not exclusive of the executive branch but is shared among politicians and members of Congress. In an interview, José Alberto Aguilar Iñárritu, the former federal representative and member of the Congressional Commission of National Defense, affirmed that we heed the military, as they are the experts on national security and enjoy the full confidence of the population.<sup>90</sup> Similarly, the former senator and assistant chairman of the Mexican Senate, Ernesto Gil Elordoy, said to this author: "It is possible to share views and even challenge the opinion of the army's leadership, the big generals, but we have to do it behind closed doors and within a climate of respect and deference."<sup>91</sup> The senator was asked this question: "Given the amount of responsibilities delegated to the armed forces by President Fox, wouldn't it be reasonable to increase congressional supervision of their new tasks and performance?" Senator Gil Elorduy answered that the military is very sensitive and "there is no need to look for trouble where there is none."<sup>92</sup> Finally, César Camacho and José Manuel del Río, both members of the National Security Commissions of Congress, said that the Mexican state should give as many resources as possible to the armed forces in order to cover the breadth of their responsibilities in the crusade against organized crime. Both deputies stressed the need to fund the modernization of the military and the purchase of new equipment.<sup>93</sup>

## Conclusions

It appears that by delegating direct policing functions to the armed forces, President Salinas opened a window of opportunity for military participation in anti-drug-trafficking operations and eventually in the entire system of public security. In fact, since 1989, the military has come to intervene in and even command the functions of the Attorney General's Office, control the reform of federal police departments, dominate the state's intelligence apparatus, and displace civilian authorities from state and municipal police departments. There is evidence that this set of new responsibilities has been taken very seriously by the armed forces, to the point of pushing an internal

reorganization aimed at creating incentives for membership to specialize in the areas of counterinsurgency and operations against drug trafficking.

As the military has gained power and independence from civilian law enforcement agencies and other representative institutions, the executive branch is the only body to which it has remained accountable. The nature of such “accountability” signifies tacit obedience to presidential orders more than a real evaluation process, however. The situation has shielded the military from practically any formal form of supervision, reinforcing its autonomy and strengthening its internal mechanisms to ensure discipline. In the end, this condition has been greatly enhanced by the executive power’s need to convey, both internally and externally, the message that there is a clear will to combat corruption in police agencies and drug-trafficking activities in the country.

It seems that the new set of responsibilities delegated to the military has heightened the principle of exclusive subordination. It has been successful in opposing, stopping, and even reversing attempts to be held accountable for abuses committed during the 1970s and to undergo civilian supervision. This clearly authoritarian attitude is not only defended by the military but by members of Congress. Regardless of political affiliation, the leadership that led the process of democratization in Mexico deliberately left untouched one of the most emblematic institutions of the authoritarian regime. No major political actor has attempted to deprive the president of full control over his most effective policy instrument. His unwillingness to strengthen supervision of the armed forces in spite of their enormous and largely unquestioned role in the political system is explained by their indispensable position, both to national security and to the president himself. But in the end, the capitulation of civilian authority vis-à-vis the military poses serious questions about civilian supremacy and represents one of the obstacles to the flourishing of democracy in Mexico.

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## Chapter 5

# Framing the Fight: Public Security and Human Rights in Mexico

*Todd Landman*

### Introduction

The twin processes of economic and political modernization since the 1970s have profoundly transformed the social and political landscape of contemporary Mexico. The country has emerged from a prolonged period of state-led and relatively autarkic economic development to one that is increasingly market-driven and integrated into the global economy. It has modernized its politics and created a new set of institutions that have given rise to a new era of competitive elections and the first defeat of the *Partido Revolucionario Institucional* (Institutional Revolutionary Party, PRI) by the *Partido Acción Nacional* (National Action Party, PAN) in 2000 and a successive electoral victory for the PAN in 2006. Both processes have seen Mexico emerge as an upper-middle-income country, member of the Organisation for Economic Co-operation and Development (OECD), the World Trade Organization (WTO), and numerous free trade agreements that stretch far beyond the popularly known North American Free Trade Agreement (NAFTA). Mexico currently boasts healthy macroeconomic indicators with above-average growth rates, low inflation, and patterns of internal investment that have seen a rise in a number of social indicators relating to education, health, and welfare. Democratization continues with closely contested elections (some with highly disputed outcomes), decentralized political competition throughout the federal system, and an expectation that democratic institutions will continue to be modernized in ways that sustain the gains that have been made since the 2000 transition.<sup>1</sup>

Parallel to these otherwise positive developments, however, Mexico has been wracked by an increasing threat to public security resulting from changing national and international patterns in the production, consumption, and distribution of illegal narcotics. Changing characteristics of the drug trade outside Mexico combined with new forms of distribution within Mexico, and changing gun laws in the United States have led to an increase in territorial conflict among transformed drug cartels seeking enhanced market position and high return from the illicit trade in drugs. The policy response from the state and in particular the mix of policy tools implemented by the Calderón administration since 2006 has been accompanied by a dramatic increase in violence that is unprecedented; the number of killings between 2006 and 2010 is reported to exceed 31,000. The patterns in violence suggest that 2010 was actually worse than previous years regarding the sheer number of killings,<sup>2</sup> but the government claims to have made progress in combating organized crime in terms of arrests (more than 91,000), drug seizures, and weapons confiscations (see chapter 1 in this volume).

This chapter examines these phenomena in Mexico in the context of framing the current public security challenges. It does so in terms of the nature of the problem, the relationship between violence and democracy, and the larger debate concerning democratic responses to threats to security and the protection of human rights.<sup>3</sup> Drawing on theoretical frameworks from the political economy of terrorism and international human rights law,<sup>4</sup> the chapter develops a human-rights-based approach to public security that takes account of the nature of the threat, the proportionality of the response, and the non-derogable nature of human rights obligations to which the Mexican state is formally committed. It argues that framing the fight in terms of combating organized crime and using the legal tools of the state in Mexico in the long run represents the best form of response to the threat to public security. Characterizing the conflict in alternative frames, such as “insurgency,” “terrorism,” and “war,” will only lead to further destabilization, an increase in the “culture of criminality,” and sustained patterns of human rights violations with continued impunity.

To this end, the chapter is organized into five sections. Section one outlines the nature and extent of the current threat in Mexico with respect to organized crime, violence, and public security. Section two outlines the policy response of the Calderón administration, including police reform, concern over the Mexican social fabric, interdiction, and the “inconvenient” fact of a large and increasing number of

killings. Section takes a broader view and considers the challenge that democracies face in combating threats such as the one in Mexico and draws analogies to the response of democracies to threats, particularly during the War on Terror since 2001. The fourth section develops a human-rights-based approach to public security that recognizes the need for the primacy of the rule of law, the non-derogable nature of rights commitments, and the need for proportionality of response to the threat. The final section draws some conclusions and discusses the implications of a rights-based approach to public security and combating crime.

### **The Nature and the Extent of the Threat**

Since the 1960s and perhaps earlier, Mexico has had criminal organizations based on the illicit drug trade, but traditionally the drug trade was characterized by the transportation through Mexico and export to the United States. However, more recently the chronology and evolution of cartels in Mexico has become increasingly complex and competitive, yielding increased levels of violence for a number of interrelated and conjunctural reasons. First, the Caribbean route for drugs had by and large been shut down; this effectively put pressure on Mexico as a new route to the United States. Second, the Colombian cartels, themselves subject to increased pressure from the war on drugs, started to pay Mexican cartels in kind rather than in cash, which has brought significant new supplies of narcotics into Mexico and created a nascent domestic market. Third, the United States lifted a ban on assault weapons, and as a result, AK47 and AR15 assault rifles can now be brought into Mexico more easily. The combination of continued demand for drugs in the United States with increased supply and weaponry in Mexico has created new incentives for cartels to seek territorial control to sell drugs domestically and to control exports. Their tactics for control have included outright violent conflict and armed control, bribery and corruption of local law enforcement agencies, and increasingly “spectacular”<sup>5</sup> forms of public violence, with victims of execution displayed hanging from bridges with graffiti warning others to stay out of particular areas of control.<sup>6</sup> The cycle of violence has been harrowing; there are accounts of gender-based killings, retribution and terrorized communities, kidnappings, and other forms of intimidation as well as of more petty forms of street crimes.<sup>7</sup> As we shall see, the violence in Mexico is not primarily ideologically or politically motivated but is used to signal control of territory and dominance of particular cartel organizations

in particular areas and regions of the country. The cartels themselves are thus not engaged in a terrorist campaign to change hearts and minds to a new way of thinking. Rather, they are terrorizing the population to control the market.<sup>8</sup>

Some have argued that the process of democratization itself has contributed to the problem.<sup>9</sup> During the hegemony of the PRI, the authoritarian regime had a series of informal arrangements with the cartels that allowed them the space to operate while keeping violence to a minimum. With the democratization of state institutions and society, informal relations between the cartels and the state have broken down, leading to a period of transition, which has seen a dramatic increase in uncertainty and violence as new forms of interaction have emerged. Party competition and variation in political control of Mexican states and municipalities has meant that new forms of relations have not yet been established. Rather, competition for influence and political uncertainty has been coupled with violent intimidation and corruption in ways that have made finding stability and peace in parts of Mexico, particularly in the north, problematic.

### **The Mexican Government's Response**

The Mexican state's response to the transformations in organized crime since the inauguration of President Calderón, despite popular accounts in the media that focus on the war, has sought to combine a series of policy instruments and reforms that deal with different aspects of the crisis, ranging from its immediate threats to its underlying causes, including the social fabric of Mexico. First, the administration has sought to attack the problem head-on through a policy of containment and weakening of the cartels through joint operations using the Federal Police and the Mexican army. Second, the administration has invested in the state's security forces, dramatically increasing the number of federal police officers from 6,500 in 2006 to 35,500 by 2010. Third, the administration has engaged in a series of legal and institutional reforms, including legislation on kidnapping, drug trafficking, federal police reform, the seizure of illegal property, reform of the national public security system, and of the criminal justice system. Fourth, the administration has enacted new powers for the prevention of crime. To that end, the regime has focused on 37 of the most wanted criminals from six different cartels, 20 of whom have now been "neutralized," has arrested more than 90,000 criminal suspects, and increased the seizure of illegal weapons by nearly 250 percent (see chapter 1 in this volume).<sup>10</sup> Fifth,

it has engaged in international cooperation to address the main contours of the threat, including weapons, drugs, and financial transactions. Indeed, under the auspices of the Merida Initiative, a US program that provides finance, equipment, and technical capacity in law enforcement for Mexico, Central America, the Dominican Republic, and Haiti, Mexico is working with the United States to “disrupt organized criminal groups,” “strengthen institutions,” “build a twenty-first-century border” between the two countries, and “build strong and resilient communities.”<sup>11</sup> The United States has appropriated USD 1.5 billion since 2008, which is earmarked for justice reform, promotion of the rule of law, provision of hardware, and technical assistance. The extension of assistance contains human rights provisions aimed at promoting reform of Mexican institutions in ways that decrease human rights violations and fortify institutions for the protection of human rights in the future.

The multifaceted response has had mixed results to date, and human rights organizations, such as Human Rights Watch and Amnesty International, as well as government agencies, such as the United States State Department, report widespread violations of human rights as a result of anticrime activities of the Mexican army and the Federal Police. The reports argue that the relative inability of the state to protect individuals from human rights violations has meant that journalists, human rights defenders, and migrants (through and within Mexico) are increasingly the target of both criminal organizations and the security forces themselves.<sup>12</sup> There are reports of numerous killings, torture and rapes alleged to have been committed by the military,<sup>13</sup> which have not been adequately investigated or prosecuted. Torture is still *perceived* and *accepted* by many as a means to extract information and confession for prosecution,<sup>14</sup> and pretrial detention has increased the prison population and led to further abuses. Legal and institutional reforms have been slow and have meant continued impunity for human rights abuses committed by state agents and failure to prosecute abuses committed by non-state actors, such as the cartels. Indeed, Mexico has used military tribunals to prosecute abuses committed by the military, which many see as an unworkable policy because it violates the general idea of horizontal accountability through separation of state functions and proper independent investigation of abuses (see below). Migrants are particularly vulnerable as they flee persecution in their countries of origin, are susceptible to kidnapping, exploitation, and execution by the cartels (72 migrants were killed in Tamaulipas in August 2010),<sup>15</sup> or die as “cross fire” victims in the state’s battle against organized



crime.<sup>16</sup> The most telling indicator of the size of the problem is that since 2006 more than 31,000 people have been reported dead as a result of the violence from the state and from the cartels (see chapter 2 in this volume). Moreover, civil society has begun to mobilize large numbers of people who are critical of framing this fight in terms of a “war” and of the perverse consequences of the strategy pursued by the Calderón administration (see below).

### **The Dilemmas of Democracy**

By 2000, Mexico had emerged as at least a procedural democracy with the defeat of the PRI by the PAN and thus joined the family of democracies that account for more than 60 percent of the countries in the world.<sup>17</sup> But like other democracies, Mexico also faces a number of dilemmas in addressing threats to national security, which have been especially highlighted with the advent of the War on Terror since the September 11, 2001, terrorist attacks on New York City and Washington, D.C.<sup>18</sup> For many analysts, the dilemma consists of a trade-off between liberty (and the protection of human rights required for the protection of liberty) and national security.<sup>19</sup> On the one hand, democracies have been seen as particularly prone to attack from terrorist groups,<sup>20</sup> and thus their openness should be “adjusted” through the enactment of legislation that centralizes state power and removes key rights protections. For example, Campbell and Connolly note that “dominant legal discourses on the ‘War on Terror’ proceed from an assumption that a revised legal regime, loosening restrictions on security agencies, will yield consequential anti-terrorism benefits.”<sup>21</sup> In political science and political theory there is an emerging consensus that “some adjustment in our individual freedoms” has been justified, and commentators vary on their relative degree of reluctance to accept this view and in what they consider the appropriate balance between liberty and security.<sup>22</sup>

On the other hand, the extreme curbing of liberties can create increased levels of grievance among groups and can mobilize individuals to join terrorist networks. Qualitative analysis of released prisoners in Northern Ireland, for example, illustrates that a policy of curbing liberties and the arbitrariness of British army tactics, such as house raids and the exercise of stop and search powers, reveals that the cumulative effect of the British army presence and behavior in Northern Ireland often provided a series of tipping factors that propelled people into activism. The experience in Northern Ireland suggests that at some point, the increased restriction of civil liberties

can actually lead to an increase in terrorist activities; an argument that has been made for other contexts in which governments adopt a harsh response to terrorism.<sup>23</sup>

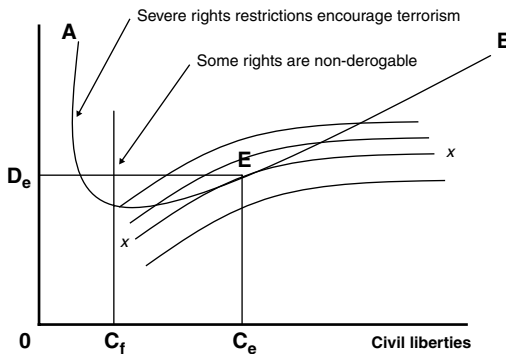
Do these insights from the literature on democracy and terrorism provide useful analogies for the situation in Mexico? As Mexico continues to develop its democratic institutions, is there a trade-off between liberty and security in the battle against organized crime? In the absence of a formal curbing of liberties, has the Mexican state assumed that human rights act as impediments to combating organized crime? Or has the struggle against organized crime been framed in such a way (“war” or “counterinsurgency”) that state officials have disregarded human rights for the larger objective of reducing the activities of the cartels? Has an increased culture of illegality emerged that encourages recruitment of aggrieved and impoverished young people into the cartels, thus making hard-line “neutralization” strategies less efficacious in tackling organized crime? To tease out the full implications of these different questions, it is helpful to return to the debate in the literature on democracy and terrorism.

A stark illustration of the trade-off between liberty and security has been developed in Enders and Sandler,<sup>24</sup> who provide a formal model of the trade-off between “expected terrorism damage” and the protection of civil liberties. The model posits a societal constraint curve that intersects with a series of indifference curves, where the cost of increasing civil liberties is seen as greater exposure to terrorism and terrorist damage. For their model, the most benefit accrues from the reduction of civil liberties along the upward sloping end of the curve, and then there is a decreasing benefit from significant reduction in civil liberties. In other words, each additional sacrifice of freedom gains less additional security from terrorist attacks. This constraint curve is combined with a series of indifference curves, which are meant to indicate how willing society is to trade civil liberties for reduction of terrorism risks. This combination between the indifference curves and the constraint yield an optimal equilibrium point at which society experiences a tolerable level of civil liberty protection and terrorist damage.

I have been critical of this simple trade-off model for two important reasons.<sup>25</sup> First, as I outlined briefly above, the constraint curve may not have the shape that Sandler and Enders posit, since the curbing of liberties may actually encourage increased levels of terrorism. This means that at some point, the constraint curve bottoms out and begins to rise sharply. Second, there is a series of non-derogable rights protections, such as the prohibition of torture, that cannot be

removed even if the state is facing a state of war that threatens its territorial integrity or continued existence. This legal principle suggests that not only does the constraint curve have a different shape but also that there is a threshold of rights protections below which the state simply cannot go.

This modified model for democracy and terrorism is reproduced in [figure 5.1](#). The horizontal axis depicts the protection of civil liberties and the vertical axis depicts expected terrorism damage. The constraint curve **AB** slopes downward to the left until it reaches the bottom and then slopes sharply upward to capture the idea of increased terrorist activity under conditions of severe rights restrictions. The shape of the constraint curve **AB** captures the trade-off between terrorism and civil liberties, where the cost of increasing civil liberties (the right-hand side of the curve) is a greater exposure to terrorism, and the cost of restricting civil liberties (the left-hand side of the curve) is also a greater exposure to terrorism. The constraint curve is combined with a series of indifference curves ( $x$ ), which indicate how willing society is to trade civil liberties for protection against terrorism risks. At the intersection of the indifference curves ( $x$ ) and the constraint curve **AB** we find equilibrium point **E**; this is the point at which society experiences an optimal ratio of civil liberty protection ( $C_e$ ) and terrorist damage ( $D_e$ ). The vertical line ( $C_f$ ) depicts the non-derogable rights threshold below which countries are prohibited to go by international law. This revised model suggests that states are more constrained than Enders and Sandler suggest,<sup>26</sup> since no state would want to encourage terrorism at either end of the constraint curve or violate its international human rights commitments.



**Figure 5.1** Trade-off between constrained terrorist damage and civil liberties

While these insights are useful for qualifying our understanding of the trade-offs that democracies face in combating terrorism, can this modified model be applied to the fight against organized crime in Mexico? Figure 5.2 replicates the model with respect to organized crime. On the vertical axis, “expected terror damage” is replaced with “expected criminal danger”; the other features from figure 5.1 remain the same. As with the arguments relating to terrorism, it seems appropriate here to argue that increased curbing of liberties, either through formal state policy and legislation or through heavy-handed state action and impunity, can and will breed an increased *climate of criminality* in which failure to respect the rule of law on either side of the fight creates its own downward spiral and increase in expected (or real) criminal danger. Moreover, as in the fight against terror, international human rights instruments (many of which Mexico has ratified)<sup>27</sup> have a number of articles that outline a series of rights commitments that are considered non-derogable. For example, Article 4 of the International Covenant on Civil and Political Rights stipulates that in times of “public emergency that threatens the life of the nation,” certain rights protections cannot be eliminated, including the right to life (Article 6), freedom from slavery and servitude (Article 8), imprisonment for failure to uphold a contractual obligation (Article 11), protection against ex post facto legislation (Article 15), the right to legal personality and recognition (Article 16), and right not to be subjected to arbitrary interference in privacy, home, and correspondence. The strength of this concept of non-derogable rights lies in the fact that even if a country is under attack, state actions such as torture continue to be prohibited despite the many claims that torture somehow leads to the acquisition of actionable intelligence.

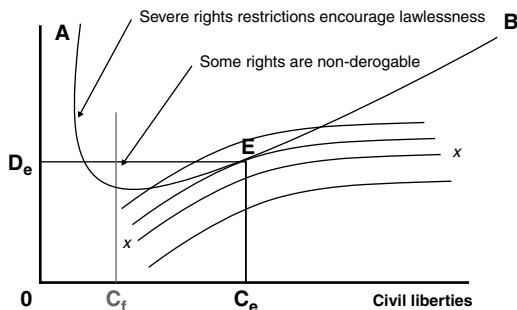


Figure 5.2 Expected criminal danger and civil liberties

From an abstract perspective, it is easier for nondemocratic states to fight organized crime since they are less accountable to their citizens and can introduce a range of measures that curb any rights protections that may have existed or that citizens may have been able to exercise in the absence of formal legal protection. In contrast, it is much harder for democracies to fight organized crime since they are accountable to their citizens, and in liberal democracies rights are enshrined in national constitutions or find expression through other legal mechanisms. The combination of majority decision making and minority rights protections is a firm principle in liberal democratic theory. The practical solution has been to construct models of democratic government that have a variety of mechanisms for both vertical and horizontal accountability.<sup>28</sup> Democracies achieve vertical accountability formally through periodic elections and the alternation of control over government through some form of representative political party system. They achieve this less formally through providing a set of rights and freedoms that allow a free and lively civil society to flourish, which contributes to setting the issue and policy agenda as well as to holding government to account through its ability to mobilize the public in times of severe crisis and critique. Mechanisms for horizontal accountability, on the other hand, include the institutional checks and balances between different branches of government as well as between civilians, military personnel, and the security services. The principle of judicial review and legislative oversight of executive powers is meant to constrain leaders and prevent the worst forms of abuse of power.

As an emerging democracy, Mexico has a number of institutions that variously provide elements of vertical and horizontal accountability. Since the 1980s, Mexico has implemented a number of electoral reforms, most notably the establishment of the *Instituto Federal Electoral* (Federal Electoral Institute, IFE). Opposition parties have increasingly been successful in contesting power at the state and local level, and with the 2000 election they have done so also at the national level. The existence of the presidential *sexenio* (the six-year single term of office) means that presidents are not eligible to run for reelection, only their parties are. This means that any policies implemented during the *sexenio* will have an impact on the electoral fortunes of the president's party. It is thus in the interest of the incumbent president to pursue policies that will not result in electoral punishment in future elections. It is fair to say that there is a direct and important link between current policies and future electoral contests and the longevity of political parties in power. This mechanism of vertical

accountability provides an important check “from below” on the exercise of executive power.

In addition to the formal mechanisms for vertical accountability, Mexico also has an active and lively civil society. Since the 1960s, social mobilization from many different groups in civil society (and to some degree also economic society, such as unions) has challenged the Mexican state. The student movements in the late 1960s were repressed dramatically in the 1968 “Tlatelolco Square” massacre, and since that time other groups have formed powerful social movements. For example, there were rural mobilizations from students and peasants in 1972, university and rail worker strikes in 1973, rural mobilizations and the struggle for land in 1975, urban mobilizations in 1981 (led by the National Coordinating Committee of the Urban Popular Movement, CONAMUP), urban strikes, rural strikes, and teacher mobilizations during the 1982 financial crisis. In addition, Mexico saw urban mobilization in response to the devastation caused by the 1984 earthquake and mobilization from a splinter group within the PRI led by Cuauhtémoc Cardenas that resulted in the formation of the *Partido de la Revolución Democrática* (Democratic Revolutionary Party, PRD).<sup>29</sup> By far the most dramatic mobilization was the 1994 uprising of the Zapatista movement that challenged Mexico’s path to greater economic liberalization and increasing integration with the global economy.<sup>30</sup>

This tradition of social mobilization has continued with protests against the Calderón administration’s policy in the fight against the drug cartels. On May 8, 2011, an estimated 90,000 protesters poured into the Central Plaza of Mexico City to voice their opposition to the war on drugs, the rise in violence, and the culture of impunity surrounding the killings. The march began in Cuernavaca and resulted in the protesters issuing a “citizen pact” that calls for reform to the administration’s security policy, a naming of the victims of the war, a replacement of the “war on drugs” with a policy for “citizen security,” and measures to combat corruption and impunity. Moreover, the protesters called for policies to address the economic roots of the crisis including money laundering, attention to affected youth and a broken society, and for participatory democracy.<sup>31</sup> The protests also addressed the role of the United States in the crisis, in particular the demand for drugs, the supply of arms, and complicity of financial institutions in money laundering. A key element of the citizen pact is a challenge to the dominant paradigm on security that frames the struggle against organized crime as a “war,” a point that is addressed in more detail below.

In addition to the formal and informal mechanisms for vertical accountability, the Mexican political system also has formal institutions and mechanisms for horizontal accountability. At the national level Mexico is a presidential system with three branches of government, a bicameral legislature, and a judiciary. Such a model is typical across Latin America, and as in the rest of the region, there is a high degree of power concentrated in the executive branch, where both the legislature (Senate and Chamber of Deputies) and the judiciary are considered to be relatively weak.<sup>32</sup> Now that the historic opposition party (the PAN) has been in power since the 2000 presidential elections, the PRI is in opposition and has increased its number of seats in the legislature since Calderón was elected. In the 2006 election, the PRI won 32 seats in the Senate (5 through relative majority and 27 through proportional representation) and a total of 106 seats in the Chamber of Deputies (65 through relative majority and 41 through proportional representation).<sup>33</sup> In the 2009 midterm elections the PRI gained 135 seats in the Chamber of Deputies.<sup>34</sup> The change in seats for the PRI away from the PAN in the midterm elections of 2009 suggests that opposition is growing to the PAN in the run-up to the 2012 presidential election. It is impossible to connect this partisan turn directly to the security policy *per se*, but all presidents are vulnerable to the shift in electoral fortunes, and controversial policies do not help maintain political support.

Mexican states replicate the institutional arrangements found at the national level, and also feature greater power in the governorships *vis-à-vis* the other two branches. The concentration of executive authority can lead (and has led) to political leaders using extraconstitutional means to push forward particular political agendas. The slide into extraconstitutionality further builds a culture of criminality that encourages corruption and impunity of the kind that characterizes the current crisis in Mexico. Moreover, the judiciary at the national and state level is notoriously weak and has been unable (or unwilling) to prosecute individuals responsible for drug trafficking, money laundering, and murder. Judicial reforms across the country have been planned to transform the system to one that is based on oral argumentation and an adversarial approach, but their full implementation is not formally required until 2016, and very few states have begun the process so far (only 11 out of 31).<sup>35</sup> In addition, judges themselves do not necessarily have faith in the system or perceive it as having the institutional capacity to prosecute criminals (see chapter 6 in this volume).

### **Framing and Rights-Based Approaches to Public Security**

This overview of the response in Mexico to what is arguably a crisis that has reached levels of violence typical of civil wars<sup>36</sup> illustrates how policies in Mexico are pushing against and in many cases crossing the “lower boundary” of rights protections that ought to be in place *even if a country faces an existential threat*. The threat from the criminal organizations in Mexico is greater in real terms than the threat from terrorist organizations in many democracies, but Mexico is not a failed state nor is it likely that the country faces an existential threat comparable to an invasion by another state. Mexico is party to a wide range of international and regional human rights instruments, which provide a legal framework and normative guidance on the state’s use of force in ways that seek to protect the human being. Indeed, the jurisprudence in international human rights law specifies states’ obligations to respect, protect, and fulfill human rights. To these ends, the state ought to respect human rights (not actively violate them) as well as protect individuals from third-party violations of human rights. The framing of the struggle as a war has led many to believe that rights guarantees can be relaxed in some way, but this framing does not provide free reign to states and allow them to commit rights violations with impunity. Moreover, protecting human rights is simply not at odds with fighting crime, whether that fight is framed as a war or not.

Of the many options open to democracies in responding to terrorism—a criminal justice model, a war model, or a model based on the causes of terrorism<sup>37</sup>—the United Kingdom, for example, has by and large followed a criminal justice model for dealing with its threat of terror; nevertheless, there remains a significant temptation for the criminal justice model to be superseded by a “security model based on fear and suspicion.”<sup>38</sup> The United States, particularly under the Bush administration, adopted a war model that has been based on precisely such fear and suspicion. The rhetorical construction of the War on Terror has prevented the adoption of alternative metaphors and has led to a self-reinforcing cycle of threat perception, policy formulation, and government expenditure that has been labeled a whirlwind of the War on Terror.<sup>39</sup> The assassination of Osama Bin Laden again raises questions about the framing of the War on Terror and the reluctance to use a criminal justice approach, and the Obama administration will be under increased pressure as a result.

However, it is my contention that the analysis of frames with respect to the fight against terror is informative for the Mexican approach to



fighting organized crime. The “war” metaphor or frame leads to a different set of expectations about the use of state power, the pursuit of suspects, and the rule of law. Mexico is not facing a terrorist threat. The cartels may well be using terrorist methods, but they are not terrorist organizations in terms of ideology and motivation. The fight against organized crime in Mexico is more akin to the struggle against Mafia-style organizations in Italy and in Chicago in the 1920s. The cartels have formed networks of power that seek to control increasingly larger areas of Mexican territory through violence, intimidation, bribery, and corruption. The goal of these activities, which in the short run cause terror, is market dominance and the maintenance of high financial return on the illicit trade in drugs. Heavy-handed police tactics were used in the fight against the Chicago mafia, but the most famous capture and prosecution was that of Al Capone, who in the end was prosecuted for tax evasion. It is also telling that the decapitation of the Sendero Luminoso movement in Peru in 1992 with the capture and arrest of Abimael Guzman after 20 years of violence was achieved through good police and intelligence work and not the War on Terror pursued by President Alberto Fujimori.

Fighting crime and upholding human rights is not only possible but compatible. A human-rights-based approach to fighting crime, like a human-rights-based approach to fighting terrorism, has a number of significant underlying principles that draw on the international regional human rights instruments to which Mexico is a party. These principles include legality (preclusion of all arbitrary or discriminatory enforcement), non-derogability, necessity and proportionality, nondiscrimination, and due process and rule of law. Such an approach to fighting crime is not a soft option that disregards security, nor does it claim all rights need to be protected at all times, since it is possible under extreme conditions to curb mobility, impose curfews, and gather information in ways that limit the enjoyment of rights. Rather, such an approach seeks to establish a legal bottom line in recognition of the need to protect human dignity while providing security. Michael German, a former undercover FBI agent who infiltrated right-wing and white supremacist organizations in the United States, has argued strongly for a criminal justice model for fighting terror of the kind that is consistent with a human-rights-based approach to fighting organized crime developed here:

By treating terrorists like criminals, we stigmatize them in their community while simultaneously validating our own authority. Open and public trials allow the community to see the terrorist for the criminal

he [or she] is, and successful prosecutions give them faith the government is protecting them. Judicial review ensures that the methods used are in accordance with the law, and juries enforce community standards of fairness. The adversarial process exposes improper or ineffective law enforcement techniques so they can be corrected. Checks and balances on government power and public accountability promote efficiency by ensuring that only the guilty are punished.<sup>40</sup>

Such a position is also consistent with Amnesty International's comments in 2007 on the war on drugs in Mexico:

The protection of human rights is not an obstacle to combating crime, but a fundamental means of ensuring safe convictions, fair trial standards, and the independence and impartiality of the justice system. All these are indispensable in order to improve its effectiveness and generate public confidence in the criminal justice system.<sup>41</sup>

Too often in the past, concerns over national security have become catchall excuses for systematic violations of human rights. History shows that it is easy and tempting to abandon the basic principles that have been essential for the foundation of liberal societies around the world in the name of combating subversion, terrorism, and large-scale organized crime. But the unintended consequences of state action during Mexico's war against drugs can create an outcome that compromises both security and liberty.

### **Summary and Implications**

This chapter has addressed the crisis situation in Mexico in terms of the state response to the developments of organized crime associated with the illicit drug trade. It has raised significant questions about the framing the response in terms of a "war," despite its multifaceted approach that combines the more salient forms of intervention with institutional, legal, and societal reforms. Framing it in terms of war may well not be the best way to address the problem. Rather, seeing the problem as one of organized crime akin to Chicago-style mafia organizations and framing it in terms of criminal justice may bring better results in the long run. To illustrate this contention, the chapter developed a human-rights-based argument for the struggle against organized crime and the maintenance of public security; this argument draws on the extant international law of human rights and its accompanying jurisprudence, which stipulates the different ways in which states may suspend rights guarantees during times of national emergency and crisis. In this chapter I have argued

that good lessons for Mexico can be found by looking at the War on Terror and the arguments for human-rights-based approaches. Leading democracies, such as the United States and the United Kingdom, have sought to curb liberties while fighting terrorism and have increasingly come up against legal barriers to this approach. Legislatures, judiciaries, and the public in advanced democracies are calling into question antiterror policies that undermine hard-won and fundamental commitments to rights.

The lessons from these examples provide a useful way of thinking about the current crisis in Mexico. It is possible to uphold rights and fight crime, and the accountability that comes with such an approach brings with it long-term democratic stability, as faith in institutions and the solutions they can offer builds in the mind of the public. Continuation of the current path will indeed lead to the capture and elimination of cartel leaders, but in the long run the Mexican state cannot remain in an indefinite state of war because such leaders are quickly replaced by new ones, where innocent people get caught in the cross fire, where suspects never make it to a fair trial, and where those arrested and not killed languish in prison awaiting trial. The protests on May 8, 2011, are an indication of popular dissatisfaction with the current policies, and the Calderón administration's response to the protests suggests that the current strategy will remain unchanged. Such a stance could well harm the PAN in the forthcoming presidential elections, as the electorate seeks a new government with new ideas for dealing with a serious crisis. Such a new government would benefit from considering a change in how it frames this fight.

### Notes

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1. For an up to date summary of the broad trends in political and economic change in Mexico, see Stephen Haber et al., *Mexico since 1980* (Cambridge: Cambridge University Press, 2008).
2. There are significant methodological challenges associated with such "event-based" data on killings since it is possible that many killings remain unreported and the identification of the perpetrators that have

carried out the killings could be incorrect. In both cases, there is the risk of overcounting certain events and undercounting others. See Patrick Ball et al., *Making the Case: Investigating Large-Scale Human Rights Violations Using Information Systems and Data Analysis* (Washington, DC: American Association for the Advancement of Science, 2000); Todd Landman and Edzia Carvalho, *Measuring Human Rights* (London: Routledge, 2009); Todd Landman and Anita Gohdes, “A Matter of Convenience: Challenges of Non-Random Data in Analyzing Human Rights Violations in Peru and Sierra Leone,” in *Civilian Casualties and Strategic Peacebuilding*, ed. Taylor Seybolt et al. (forthcoming).

3. Alison Brysk and Gershon Shafir, eds., *National Insecurity and Human Rights: Democracies Debate Counterterrorism* (Berkeley: University of California Press, 2007); Todd Landman, “The United Kingdom: Terror and Counter-Terror Continuity,” in *National Insecurity and Human Rights: Democracies debate Counterterrorism*, ed. Alison Brysk and Gershon Shafir (Berkeley: University of California Press, 2007), 75–91; Todd Landman, “Imminence and Proportionality: The US and UK Response to Terrorism,” *California Western International Law Journal*, 28 (1) 2007: 75–106.
4. Walter Enders and Todd Sandler, *The Political Economy of Terrorism* (Cambridge: Cambridge University Press, 2005).
5. Daniel Goldstein, *The Spectacular City: Violence and Performance in Urban Bolivia* (Durham, NC: Duke University Press, 2004).
6. For example the “Bride of Dreams” in Ciudad Juarez in September 2008, see Ed Vulliamy, *Amexica: War Along the Borderline* (London: The Bodley Head, 2010), xvii.
7. Kathleen Staudt et al., eds., *Human Rights along the US-Mexican Border: Gendered Violence and Insecurity* (Tucson: University of Arizona Press, 2009); U.S. State Department, *International Narcotics Control Strategy Report* (Washington D.C.: U.S. State Department, 2011).
8. Terrorism itself is considered an “essentially contested” concept since there is no consensus on a clear definition, the boundary conditions, and its differentiation from political violence more generally; however, it is based on the combination of indiscriminate violence that seeks maximum societal impact for ideological purposes. See Jennifer S. Holmes, “Terrorism” in Todd Landman and Neil Robinson, eds., *The Sage Handbook of Comparative Politics* (London: Sage, 2009), 463–76.
9. Richard Snyder and Angelica Duran-Martinez, “Does Illegality Breed Violence? Drug Trafficking and State-Sponsored Drug Rackets,” *Crime, Law and Social Change* 52 (2009): 252–73.
10. Similar details are available from U.S. State Department (2011).
11. Merida Initiative Fact Sheet, March 3, 2011, <http://www.state.gov/documents/organization/158009.pdf>.

12. Human Rights Watch, *Uniform Impunity: Mexico's Misuse of Military Justice to Prosecute Abuses in Counternarcotics and Public Security Operations* (New York: Human Rights Watch, 2009); "Mexico: Country Summary," *World Report 2011* (New York: Human Rights Watch, 2011); U.S. State Department, "Mexico," *Country Reports on Human Rights Practices* (Washington, DC: U.S. State Department, 2010).
13. Human Rights Watch (2009).
14. Human Rights Watch (2011).
15. Human Rights Watch (2011).
16. A common defense made by security forces is that innocent victims get caught between the security forces and the criminals they are trying to fight, but often the notion of "cross-fire killing" becomes a useful construction that maintains impunity. See Human Rights Watch, *Judge, Jury and Executioner: Torture and Extrajudicial Killings by Bangladesh's Elite Security Force* (New York: Human Rights Watch, 2006), <http://www.hrw.org/reports/2006/12/13/judge-jury-and-executioner>.
17. Todd Landman, *Human Rights and Democracy: The Precarious Triumph of Ideals* (London: Bloomsbury Academic, forthcoming).
18. Brysk and Shafir (2007); Ian Lustick, *Trapped in the War on Terror* (Philadelphia: University of Pennsylvania Press, 2006); Bruce Ackerman, *Before the Next Attack: Preserving Civil Liberties in an Age of Terror* (New Haven: Yale University Press, 2006).
19. Alex Schmid, "Terrorism and Democracy," *Terrorism and Political Violence* 4, no. 4 (1992): 14–25.
20. See Enders and Sandler (2005); Quan Li, "Does Democracy Promote Transnational Terrorism?" *Journal of Conflict Resolution* 49, no. 2 (2005): 278–97.
21. Colm Campbell and Ita Connolly, "Making War on Terror? Global Lessons from Northern Ireland," *Modern Law Review* 69, no. 6 (2006): 935.
22. Jeremy Waldron, "Security and Liberty: The Image of Balance," *The Journal of Political Philosophy* 11, no. 2 (2003): 191; Bruce Ackerman, "The Emergency Constitution," *Yale Law Journal* 113 (2004): 1029; Ackerman (2006); David Cole, "The Priority of Morality: The Emergency Constitution's Blindspot," *Yale Law Journal* 113 (2004): 1753; Fernando R. Tesón, "Liberal Security," in *Human Rights in the "War on Terror,"* ed. Richard Wilson (Cambridge: Cambridge University Press, 2005), 57–77; Michael Ignatieff, *The Lesser Evil: Political Ethics in the Age of Terror* (Edinburgh: Edinburgh University Press, 2005).
23. Martha Crenshaw, "The Causes of Terrorism," *Comparative Politics* 13 (1981): 379–99; B. Peter Rosendorff and Todd Sandler, "Too Much of a Good Thing? The Proactive Response Dilemma" *Journal of Conflict Resolution* 48, no. 5 (2004): 657–71; Landman (2007a and 2007b).
24. Enders and Sandler (2005).

25. Landman (2007a and 2007b).
26. Enders and Sandler (2005).
27. Mexico has ratified all major international human rights treaties. See [www.bayefsky.com](http://www.bayefsky.com).
28. Guillermo O'Donnell, "Horizontal Accountability in New Democracies," *Journal of Democracy* 9, no. 3 (1998): 112–26.
29. See Joe Foweraker, *Popular Mobilization in Mexico: The Teacher's Movement, 1977–1987* (Cambridge: Cambridge University Press, 1993); Joe Foweraker and Todd Landman, *Citizenship Rights and Social Movements: A Comparative and Statistical Analysis* (Oxford: Oxford University Press, 1997), 248–49.
30. See, for example, Neil Harvey, *The Chiapas Rebellion: The Struggle for Land and Democracy* (Raleigh, NC: Duke University Press, 1998); Clifford Bob, *The Marketing of Rebellion: Insurgents, Media, and International Activism* (Cambridge: Cambridge University Press, 2005); Gloria Munoz Ramirez et al., *The Fire and the Word: A History of the Zapatista Movement* (San Francisco, CA: City Light Books, 2008).
31. See Laura Carlsen, "On the Road with Mexico's Peace Caravan," *Counterpunch*, June 9, 2011, <http://www.counterpunch.org/2011/06/09/on-the-road-with-mexico-s-peace-caravan/>.
32. See Mark P. Jones, *Electoral Laws and the Survival of Presidential Democracies* (Notre Dame, IN: University of Notre Dame Press, 1995); Matthew Shugart and John M. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (Cambridge: Cambridge University Press 1992); Scott Mainwaring and Timothy R. Scully, "Introduction: Party Systems in Latin America," in *Building Democratic Institutions: Party Systems in Latin America*, ed. Scott Mainwaring and Timothy R. Scully (Stanford: Stanford University Press, 1995), 1–34; Stephen Haber et al., *Mexico since 1980* (Cambridge: Cambridge University Press, 2008).
33. These data come from the Political Database of the Americas, Georgetown University. <http://pdba.georgetown.edu/Elecdata/Mexico/leg06.html>.
34. These data come from the Political Database of the Americas, Georgetown University. <http://pdba.georgetown.edu/Elecdata/Mexico/leg09.html>.
35. The 11 states that have implemented judicial reforms include Baja California, Chihuahua, Morelos, Oaxaca, Zacatecas, Estado de México, Durango, Yucatán, Nuevo León, and Tabasco. See U.S. State Department (2011), 384.
36. Indeed, the monthly reported rate of killings in Mexico is equal to that being reported in Afghanistan.
37. Judith Large, "Democracy and Terrorism: The Impact of the Anti," International IDEA Policy Paper, (Stockholm: International IDEA, 2005).

38. Conor Gearty, "The Crisis of National Security" in *Can Human Rights Survive?* (Cambridge: Cambridge University Press, 2006), 99–139.
39. Ian Lustick (2006).
40. Michael German, "Squaring the Error," *Law v. War: Competing Approaches to Fighting Terrorism* 11 (2005): 13–14.
41. Amnesty International, *Mexico's Laws Without Justice: Human Rights Violations and Impunity in the Public Security and Criminal Justice System*, AMR 41/002/2007 (London: Amnesty International, 2007).

## Chapter 6

# Building Institutional Capacity in Mexico's Criminal Justice System

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### Introduction

Speaking at the London School of Economics and Political Science in March 2011, Mexico's national security spokesman, Alejandro Poiré, identified weak institutional capacity in the judicial sector as the crux of the security crisis that has plagued Mexico since the mid-1990s. To be sure, the root causes of Mexico's recent crime and violence are multiple and complex. In addition to increases in common crime resulting from Mexico's economic woes in recent decades, the country has also suffered from extreme forms of violence associated with clashes among organized crime groups, which became especially severe in the mid-2000s. This is the challenge of criminality to the state—a kind of external challenge—a threat that has grown more severe due in part to the evolution and empowerment of non-state, criminal actors (see also, chapter 5 by Landman in this volume).

However, as Poiré's remarks underscored, in Mexico's case, the other part of this challenge is an internal one, that of strengthening the institutional capacity of the state to address crime, violence, and the resolution of social conflict in general. This is the challenge of effectively administering justice—a challenge faced by all modern states, and one that is thus far largely unmet in Mexico. For decades, a host of problems—resource deficits, corruption, and a general lack of professionalization—have undermined Mexico's criminal courts, police agencies, penitentiary facilities, and other vital aspects of the criminal justice system. Considering that justice sector institutions are those by which the state exerts its legitimate Weberian monopoly on the use of force, their weakness belies a state in crisis and makes justice—the vindication of rights and liberties—a tenuous guarantee for the country's citizens.



In a major attempt to help resolve these problems, in 2008 the Mexican federal government passed a criminal procedure reform with broad and deep implications for the design and performance of the criminal justice system.<sup>1</sup> This reform is one of the most ambitious and far-reaching attempts to improve the criminal justice sector, the failings of which—delays, impunity, corruption, and mistreatment—are widely regarded as at least partly responsible for the security challenges facing Mexico today.<sup>2</sup>

This chapter focuses on the long-standing weakness of Mexico's criminal justice system and on the recent and ongoing reforms aimed at solving the country's crisis of state capacity. In particular, we draw attention to the highly decentralized nature of criminal justice reform in Mexico. Understandably, much of the research and scholarship in the fields of public law, judicial politics, and comparative law tends to focus on high courts—constitutional tribunals and national supreme courts. These are the prominent, high-profile institutions that resolve controversial cases; they are courts of last resort and render unappealable decisions. But it is a mistake to stop there and not look beyond high courts to other institutions, especially in Mexico and other large federal systems in the region, such as Brazil and Argentina. In Mexico's case, while the above-noted reforms emanated from the federal government, the process of criminal justice sector reform was initiated at the state level, where initial experimentation with similar reforms had taken place well before the 2008 federal reform. That is, contrary to some accounts of Mexican judicial reform as a centrifugal, center-to-periphery phenomenon, there is ample evidence to support a centripetal, margin-to-center account of reform. Moreover, the future success of criminal justice reforms in Mexico hinges critically on state and local judicial sector institutions because, as also highlighted by Poiré in this volume, 90 percent of criminal offenses occur in local, i.e., state jurisdictions (*fuero común*) and are processed by institutions of the state and local justice sector.<sup>3</sup>

The next section highlights some of the current problems facing Mexico's justice system. Subsequently, we focus on two prominent reforms intended to address these problems—judicial councils and criminal procedure—and offer new, original data that assess recent progress in the criminal procedure reform at the state level. We conclude with some consideration of the implications for understanding the politics of criminal justice sector reform in Mexico as well as some generalizable lessons regarding efforts to strengthen state capacity through criminal justice reform.

### **The Corrosive Effects of Weak Institutions in the Justice Sector**

In recent years, Mexico's criminal justice system has exhibited major dysfunctions, contributing to extraordinarily high levels of criminal impunity. Many of these dysfunctions are glaringly obvious to the Mexican public. In public opinion polls, Mexicans demonstrate little trust and low approval of the judicial system as a whole and of the criminal justice system in particular.<sup>4</sup> According to the Mitofsky polling firm, police rank among the least respected Mexican justice institutions; just one in ten Mexicans has some or much confidence in police agencies.<sup>5</sup> Mexican citizens distrust law enforcement officials not only because of the perception that authorities are unable to solve crimes, but also because of the perception (and reality) that many police are involved in corruption and even criminal activity.<sup>6</sup>

Given such perceptions, it is understandable that many victims do not even attempt to report crimes, since the administration of justice through Mexico's criminal courts has also proved woefully inadequate. Survey evidence from the 2008 Latin American Public Opinion Project found that 16.12 percent of respondents had been victims of a crime, and 62 percent of these said that they had not reported the crime to authorities.<sup>7</sup> Respondents who did not report the crime to authorities were asked why they did not do so, and 60.39 percent answered because it is futile, and another 10.39 percent said it was actually risky or unsafe to do so. In other words, reporting a crime to authorities could result in personal harm, presumably due to any number of reasons, ranging from police violence to retribution from the criminals, but in any case it is not encouraging that when citizens suffer harm they see the risk of additional harm if they seek the attention of official authorities. In sum, a total of 70 percent of people who were victims of crime and who chose not to report said crime to authorities gave very negative reasons for why they decided against reporting it.

Other crime victimization surveys conducted since the early 2000s by the Instituto Ciudadano de Estudios Sobre la Inseguridad (ICESI) suggest even greater distrust, with 25 percent of crimes or fewer reported; that is, 75 percent of crimes go unreported. Drawing on this statistic, Zepeda Lecuona notes that with only 25 out of 100 crimes reported, only about 4.6 out of 25 reported crimes are fully investigated due to resource limitations, case backlogs, and insufficient capabilities of prosecutors and police investigators.<sup>8</sup> Of the 4.6 cases investigated, Zepeda finds, 1.6 cases result in criminal charges

by the prosecutor, and 1.2 are actually brought to trial. Of 1.2 cases brought to trial, 1.1 result in a criminal sentence. Even those who are sentenced for a crime may go unpunished since there are serious problems with compliance and the enforcement of sentences as well as with Mexico's penitentiary system, as we discuss below. The net result is that there is widespread impunity for most perpetrators of a crime while for the victims of crimes in Mexico there is rarely any justice.

At the same time, there are also problems of injustice for those accused of committing a crime. Those few cases in which a suspect is detained and brought to trial are hampered by lengthy, inefficient criminal proceedings that often do not adhere to due process.<sup>9</sup> Police investigators are often poorly trained and inadequately equipped to employ modern forensic techniques in the course of an investigation. State and federal investigative police agencies exhibit disturbing patterns of corruption and abuse, including the use of bribery and torture, according to surveys of prison inmates.<sup>10</sup> Meanwhile, during the course of criminal proceedings, defendants are frequently held in pretrial detention, with very limited access to bail even when the offense is relatively minor.<sup>11</sup> In recent years, because of case backlogs and inefficiencies, more than 40 percent of Mexico's prison population (some 90,000 prisoners) has consisted of prisoners waiting in jail for a final verdict.<sup>12</sup> Many suspects are detained even when charged with relatively minor offenses, such as shoplifting or an automobile accident. During pretrial detention, individuals accused of a crime are frequently mixed with the general prison population while they await trial and sentencing. Because of lengthy delays in criminal proceedings, many defendants languish in jail for months or years without a sentence.<sup>13</sup>

Once a criminal accusation has been made, the odds of a guilty verdict increase at each stage in the process, particularly when a suspect is poor and the crime is petty. Indeed, while the probability of being arrested, investigated, and prosecuted for a crime is extremely low, as many as 85 percent of crime suspects arrested are found guilty.<sup>14</sup> Nearly half of all prisoners in Mexico City were convicted for property crimes valued at less than 20 dollars.<sup>15</sup> These patterns are partly attributable to the fact that the prosecutor's pretrial investigations is readily accepted as evidence at trial and that a suspect's guilty plea is often the sole cause for indictment and conviction. In addition, the preponderance of torture and human rights violations in Mexico involve forced confessions in the criminal justice system.<sup>16</sup> Meanwhile, armed with superior resources, access to evidence, and procedural advantages, public prosecutors are often easily able to

overpower the meager legal defense available to most accused criminals. In addition, faced with an overwhelming caseload, the judge who rules on preliminary hearings is often the same judge presiding at trial and sentencing and frequently delegates matters—including court appearances—to courtroom clerks. As a result, many inmates report that they never even had a chance to appear before the judge who sentenced them.

Once in prison—whether for pretrial detention or after final sentencing—inmates typically encounter severely overcrowded facilities, inadequate access to basic amenities, corrupt and abusive prison guards, violence and intimidation from other inmates, and ongoing criminal behavior (including rampant drug use). According to official statistics, on average Mexican prisons were overcrowded by more than 30 percent above capacity in 2009 and the prison continued to grow.<sup>17</sup> In recent years, such conditions have contributed to serious problems of rioting and prison breaks that have allowed some of the worst criminals to escape from Mexican penitentiaries. Such circumstances illustrate the inadequacy of Mexico's current prison facilities—and perhaps the use of incarceration in general—as a means of promoting the rehabilitation of convicted criminals in the midst of the country's current public security crisis.

### **Reforming the Administration of Justice in Mexico**

Over the past two decades, a series of reforms to the above-mentioned institutions have been implemented in Mexico with substantial implications for the criminal justice system and democratic governance overall. The 1980s brought the dismantling of the nation's federal police agency as well as new structures for coordinating national security policy under President Miguel de la Madrid (1982–88).<sup>18</sup> In December 1994, under President Ernesto Zedillo (1994–2000), the federal government restructured the national public security system and reformed the federal judiciary to promote higher professional standards, stronger powers of judicial review, new standards for judicial precedent, and greater judicial independence.<sup>19</sup> Most recently, in 2008, President Felipe Calderón picked up a reform project that had failed under President Vicente Fox in 2004 but succeeded this time. It revolutionized criminal procedure throughout Mexico and required deep changes throughout the criminal justice sector, from preventive measures and policing all the way to prison and other postsentencing measures.

We focus here on judicial councils and the criminal procedure reform, especially on the spread of these two phenomena across

Mexico's 32 states. Notably, the 1994 reforms, including those of the federal judicial council, were formally aimed only at the federal judiciary, but the expectation was that state courts would follow suit in an effort to improve court management and performance. Conversely, the 2008 criminal procedure reform was aimed largely at the states, explicitly giving them eight years—until June 2016—to complete the reform process.

Judicial councils are essentially administrative organs in the judiciary; in their strongest designs, they take over all the administrative duties of the judiciary. These duties include budget preparation and execution, institutional planning and development (including construction of new courts), and all personnel decisions—everything from hiring to firing—and all the day-to-day management and supervision of courts. Thus, councils play a strong role in maintaining proper infrastructure and in monitoring and promoting professionalism in the judiciary as a whole.<sup>20</sup>

Councils vary tremendously in the extent of power delegated to them and in their composition, the selection of members, and other structural conditions.<sup>21</sup> Councils composed only of judges face criticisms for lack of accountability, but they are also praised for maintaining a strict separation of powers. Councils composed of judges, politicians, and even civil society representatives are praised for their transparency and accountability, but they are also frequently criticized for compromising the separation of powers by placing representatives from the political branches in charge of administering the judiciary. They can also be criticized for ineffectiveness if nonspecialists are in charge of the administration of the courts. The sharpest criticisms arise when a majority of councilors comes from political sources, as in Aguascalientes, where four out of seven councilors represent the political branches.

Selection to the council can also vary widely, affecting allegiances and patterns of loyalty among councilors. Some councilors who are judges are voted in by their peers, and others are appointed by the state court president. Councilors who emerge from political branches can either be appointed or elected. Lastly, regarding other structural conditions, councilors can have either full-time or part-time appointments, and the physical infrastructure for councils varies widely. For example, all members of the council in Aguascalientes have part-time appointments, and there is no building or separate staff for the judicial council. This kind of arrangement sets up a very weak administrative organ.

Why should we care about judicial councils? By taking over all the administrative duties of managing the courts, strong councils leave

judges to focus on the task of judging, rather than managing court personnel, supplies, or building maintenance. Thus, these organs can lead to greater quality and efficiency in the judicial process, and a more efficient judicial process is a more accessible judicial process. Moreover, if those judicial councils are now laying out merit-based judicial career paths, these gains bring more independence and professional competence. Beyond these gains, if councils reflect a balanced composition, then there are additional gains in transparency and accountability. In short, judicial councils promise a wide variety of benefits in court performance, gains that have long been sought in the judiciary in Mexico. Indeed, some of the goals of the criminal procedure reform of 2008 are the same as those of the council reform, such as efficiency and accountability.

In a way, if the council reform is done well throughout the states, there will be a less pressing need for the ongoing criminal procedure reform, and the implementation of the criminal procedure reform might even be easier because there would be a strong administrative organ in place to manage that reform process and its implementation. In a somewhat redundant move in terms of institutional design, most states that have pursued the criminal procedure reform thus far have opted for creating a new local body (reform commissions or committees) to debate, design, and implement the reform, functions that arguably belong to judicial councils. As an example of how these organs might work in a more complementary manner, a judicial council was just created in Yucatán at the start of 2011, and it will essentially be taking over the process of implementing the criminal procedure reform.

In sum, the increased presence of judicial councils across the Mexican states since 1994 marks a major transformation in the structure of the judiciary. However, this transformation pretty much disappeared from the public radar of reform as soon as public safety and security began dominating policy debates in the 2000s. Ironically, the public safety debates emphasize the need for greater institutional capacity, as Poiré argues (see chapter 1 in this volume). The motivation for creating councils was to generate precisely that kind of capacity.

We turn now to the criminal procedure reform of 2008. The most substantial efforts to promote reform specifically in the criminal justice sector in recent decades began during the administration of Vicente Fox (2000–06), the first president from the *Partido Acción Nacional* (National Action Party, PAN), a socially conservative, probusiness party founded in 1939. In April 2004, the Fox administration proposed a series of constitutional and legislative changes to modernize

Mexico's criminal justice system.<sup>22</sup> The 2004 proposal pressed for a comprehensive reform including, among other major changes, a shift from Mexico's unique variation of the inquisitorial system toward an adversarial model. Although the Fox administration was able to pass significant reforms of the juvenile justice system in 2003, the 2004 justice reform package met considerable resistance and ultimately stalled in the legislature. Despite failing to win congressional approval, the Fox administration's proposal triggered a national debate on the merits of a major judicial reform and also signaled federal approval to Mexican states working to implement similar reforms at the state and local level.<sup>23</sup> The states of Nuevo León, Chihuahua, and Oaxaca were among the earliest adopters of new adversarial procedures and other innovations.<sup>24</sup>

The perception that these state-level reforms contributed to greater judicial efficiency and transparency helped build support for the adoption of judicial reforms on the federal level by the Mexican Congress in 2008 during the administration of Fox's successor, President Felipe Calderón (2006–12). The reform package was based primarily on a bill sponsored by the PRI and passed in the Chamber of Deputies, with some significant modifications introduced in the Senate in December 2007.<sup>25</sup> The reforms benefited from widespread support among jurists, academics, and human rights advocates favoring greater emphasis on due process protections. The reforms also gained broad political support in part because of elevated levels of violence from organized crime, which took sharp upswings in 2007 and 2008. Because the reform package included constitutional amendments—including revisions to ten articles (16–22, 73, 115, and 123)—final approval of the reforms required approval by a majority of the 32 state legislatures. The reforms took effect with the publication of the federal government's official publication, the *Diario Oficial*, on June 18, 2008, with provisions calling for full implementation in all states by 2016.

The most heralded aspect of the reform is the introduction of oral trials in Mexican criminal procedure, which will now include live public proceedings to be held in open court and video recorded for future review. However, popular emphasis on the novelty of oral trial procedures is somewhat misleading for two reasons. First, Mexican criminal courts have traditionally relied on the use of oral testimony, presentation of evidence, and argumentation in at least some fashion.<sup>26</sup> Therefore, a more important aspect of the reform to emphasize is the larger transition from Mexico's mixed inquisitorial model of criminal procedure to an adversarial model that draws on elements from the procedures in the United States, Germany, Chile, and other

countries. A second reason that the emphasis on orality is somewhat misplaced is that the reform involves many more changes than just a transition to oral proceedings. The reform of Mexican criminal procedure also involves other changes, notably mechanisms of alternative dispute resolution and *procedimiento abreviado* (plea bargaining) to relieve congestion and reduce the overall number of cases handled in court. With sentences that contemplate alternatives to prison (such as mediation, diversion, community service, reparations to victims), the reforms are intended to achieve greater efficiency and *justicia restaurativa* (restorative justice). Since a majority of criminal cases will likely be resolved via mechanisms of alternative dispute resolution—that is, without ever getting to trial—this will presumably free up the courts and contribute to a more efficient judicial process. Even on this point there is opposition, though, as some see alternative dispute resolution and plea bargaining as robbing defendants of their “day in court” and consider anything less than a full trial before a judge inadequate.

The 2008 reforms also include stronger constitutional protections for the presumption of innocence, the creation of special judges to oversee distinct phases of the criminal proceedings, specific provisions banning the use of torture, requirements for the physical presence of a judge during all hearings involving the defendant, new measures to provide a quality legal defense for the accused, and other procedural safeguards intended to bolster due process. This new emphasis on the protections of the rights of the accused is frequently described—both by proponents and critics—as a *sistema garantista* (system of guarantees).<sup>27</sup> For example, the reforms include specific provisions, under Article 20 of the Constitution of Mexico, admonishing the use of torture and making it unlawful to present a suspect’s confession as evidence in court (unless obtained in the presence of the suspect’s defense attorney). Moreover, all criminal defendants will be required to have professional legal representation, and a strong system of public defenders has been set up to protect the rights of the poor and indigent. This provision is extremely important, given that the vast majority of defendants rely on a *defensor de oficio* (public defender).<sup>28</sup>

In sum, Mexico’s recent justice sector reform includes sweeping changes to Mexican criminal procedure, greater due process protections, and new roles for professionals in the judicial system. Advocates hope that the reforms will bring greater transparency, accountability, and efficiency to Mexico’s ailing justice system. The scope and scale of changes contemplated under the 2008 judicial reforms are enormous. Existing legal codes and procedures need to be radically revised at the federal and state level; courtrooms need to be remodeled and



outfitted with recording equipment; judges and lawyers need to be retrained; police need to be professionalized and prepared to assist with criminal investigations, collect and preserve evidence, and even testify in court; and citizens need to be prepared to understand the purpose and implications of the new procedures.

Despite their much-touted benefits, Mexico's judicial reforms have met with serious and deserved criticism, both from legal traditionalists loyal to the old system and from advocates of more substantial reform. Some critics initially bristled at the perception that the reforms were being actively promoted by outside forces, particularly from within the United States. On a related note, given troubling gaps and inconsistencies in the reforms themselves, some critics expressed concerns that the reform constituted an ill-conceived, costly, and potentially dangerous attempt to impose a new model without consideration of the intricacies, nuances, and benefits of Mexico's existing system. However, the most damning criticisms relate to public concerns regarding the extension of rights and protections for accused criminals amid the country's severe security crisis.

A prominent example highlighted these concerns in late 2010 in the state of Chihuahua. Marisela Escobedo Ortiz's 17-year-old daughter was allegedly killed by Sergio Rafael Barraza, but Barraza was exonerated in one of the new oral trials after the court found that there was insufficient evidence against him. Later, Escobedo herself was killed while protesting the court's decision. Following another arrest order issued after concerns expressed by the then governor José Reyes Baeza, another judge ruled to revoke Barraza's acquittal and sentenced him in absentia to 50 years in prison. Barraza remained a fugitive for several months, and the entire case provoked criticism that the technicalities of Chihuahua's new criminal justice system made it "soft on crime" and allowed dangerous criminals to return to the streets.<sup>29</sup>

### **Evaluating the Implementation of Criminal Justice Reform**

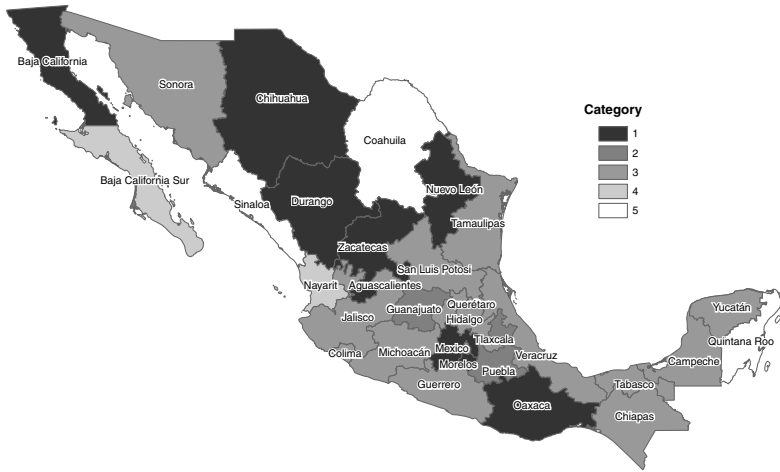
Evaluating the progress of efforts to improve the administration of justice in Mexico requires some assessment of the formal enactment of the reforms throughout the country as well as an evaluation of the actual implementation of those reforms. First, we begin with an analysis of the actions taken at the state level to pass and implement procedural reforms and include an extensive analysis cataloguing the specific measures taken in different states. Second, to further gauge the expectations and assessments of judges and lawyers with

regard to these reform efforts, we draw on new data generated by the *Justiciabarómetro* survey series initiated by the Justice in Mexico Project, a binational research program hosted by the Trans-Border Institute at the Joan B. Kroc School of Peace Studies at the University of San Diego. This new survey data provides a rare glimpse into the perceptions of legal professionals themselves regarding the transformation of their home institutions.

### **State-Level Reform Efforts**

A full, comprehensive analysis of all local policy changes across all legal areas and across all 32 states is beyond the scope of this chapter. In an effort to narrow the discussion, we draw on Ingram's analysis to highlight state-level reforms toward a more accusatorial system as well as reforms in the area of alternative dispute resolution (ADR).<sup>30</sup> As noted above, some states adopted the accusatorial process early even *before* the federal 2008 reform (for example, Chihuahua, Nuevo León, and Oaxaca) while others have done little or nothing more than three years *after* the federal reform.<sup>31</sup> Moreover, states engaged in reforms have pursued different strategies of implementation. Some states have applied some of the reforms to all types of criminal cases but started with a limited set of judicial districts and only later expanded to other places (what Ingram refers to as *geographic gradualism*). Other states inverted this strategy, applying the reforms to all judicial districts in the state but starting with limited types of criminal cases and only later expanding to all criminal cases. Some states even extended the reforms to matters of civil and family law (*substantive gradualism* or *implementación por delito*). Among the geographic gradualists, there are still other variations as some states began in the judicial district of the state capital and expanded the reform from there (*centrifugal* geographic gradualism) while others started in smaller, peripheral parts of the state, testing the reform in less populated areas before extending it to the state capital (*centripetal* geographic gradualism).

In the map of Mexico presented in [figure 6.1](#) each shade corresponds to a value of the index.<sup>32</sup> The darkest colors identify the strong reformers in category 1—states that are already implementing the new system. These states appear in black. Next are the states in category 2 in dark gray—those that have approved the reform but have not yet begun implementing it. In a lighter shade of gray are states in category 3, followed by those that have taken none of the above steps but have received recognition for at least pursuing training relevant to the reform (category 4). Lastly, those states that have done none of



**Figure 6.1** Advances in implementation of judicial sector reform by state (scale of 1–5)  
*Source:* Official data, elaborated by author.

the above appear in white (category 5). In sum, darker colors reflect stronger, more comprehensive efforts; lighter colors reflect weak or partial efforts.

It must be noted that the reform process is in flux, and many states may propose a reform or make an advance that is not included here. Moreover, states may appear to move forward toward reform, and then the process may stall (as it has, for example, in Coahuila). Worse, in some states (for example, in Chihuahua and Durango) there is evidence of counterreform. Thus, the landscape of reform is irregular in ways that make it difficult to get a clear picture of the state of reform across all states at any moment in time. The information provided here is therefore not intended as a precise metric of reform levels across the Mexican states but rather as a general overview of reform efforts at the close of 2011, near the end of the Calderón administration.

### ***Attitudes toward Reform among Judges and Lawyers***

At the same time when the above-mentioned data were compiled to examine the progress of implementation efforts at the state level, the authors worked with a team of researchers to develop a major survey of judges, prosecutors, and public defenders. This initiative was part of the *Justiciabárometro* research project, which includes various surveys of personnel in the Mexican criminal justice system in an effort

to examine areas of institutional weakness and to gain a better understanding of the perspectives of those charged with implementing reforms to the criminal justice system. The surveys capture attitudes of legal professionals about a range of legal and institutional issues in the criminal justice sector and across a variety of regional, economic, political, and reform contexts. The participants in the 2010 survey of judges and lawyers came from nine of Mexico's 32 states (the number of judges responding from each state is listed in parentheses): Baja California (12), Coahuila (17), Chihuahua (21), Jalisco (30), Michoacán (33), Nuevo León (20), Oaxaca (20), Yucatan (5), and Zacatecas (13).<sup>33</sup> The survey included prosecutors from three states: Baja California (6), Nuevo León (12), and Oaxaca (20). The survey also included public defenders from three states: Baja California (36), Coahuila (15), and Nuevo León (8). In terms of the typology described above, this selection deliberately included states that could be characterized both as "advanced" and states that could be called "lagging" in their adoption of criminal procedure reforms. The survey was conducted by telephone between October 11 and December 17, 2010, and included judges with jurisdiction over criminal cases as well as prosecutors and criminal defense attorneys.<sup>34</sup>

### **Effectiveness and Efficiency of Mexico's Traditional System**

First, it is worth noting how respondents felt about the traditional system that was in place prior to the passage of the 2008 judicial reform. Approximately 51 percent of respondents agreed that the traditional justice system was *eficaz y eficiente* (effective and efficient). About 17 percent reported a neutral position on this question, leaving about 31 percent of respondents who expressed any level of disagreement with this statement. This is a provocative result because it suggests that a majority of criminal justice professionals considered the traditional system adequate prior to the 2008 reform.

Across professions, there was greater variation. Those expressing some level of agreement with the statement that the old system was effective and efficient included 59 percent of judges, 44 percent of prosecutors, and 37 percent of defenders. Among judges, the most frequent response was mild agreement (26 percent), and the next most frequent response category was "totally agree" (17 percent) (mean = 4.69). Among prosecutors, the most common response was neutral (25 percent), and the next most frequent response was "totally agree" (23 percent) (mean = 4.35). Among defenders, the modal

response was “totally disagree” (37 percent), and the next most frequent response was mild agreement (15 percent) (mean = 3.42). In sum, judges seem to be the most likely to think the old system was performing well, prosecutors were fairly evenly split, and defenders were most likely to believe the old system was performing poorly.

Comparing each profession across the states included in the study, this pattern remains. For instance, in seven of nine states, most of the judges agreed that the old system was effective and efficient. Indeed, this majority opinion never falls below 57 percent in these seven states. Only in two states (Coahuila and Nuevo León) was the pattern different, and even there the judges who disagreed with the statement in the question were not in the majority. In fact, in Coahuila more judges (45 percent) agreed with the statement than disagreed (only 30 percent). Thus, only in Nuevo León did the largest group of judges disagree with the statement (45 percent). Even there, 35 percent of judges agreed, and 20 percent expressed the highest level of agreement.

These patterns among judges should give pause to scholars, policy makers, and practitioners alike, as they suggest that judges, in general, may not have believed that the 2008 reform was really necessary. A majority of judges in seven out of nine states expressed agreement with the notion that Mexico’s traditional justice system was effective and efficient, with very strong agreement in Baja California, Jalisco, Oaxaca, Yucatán, and Zacatecas.<sup>35</sup> These attitudes may be a source of opposition to the reform or a source of resistance to the full implementation of its provisions. Ultimately, such attitudes could lead to future efforts to repeal the reform since the persistence of traditional attitudes among judges after reforms may surface years later as significant counterreform movements. Future research should examine the reasons behind these attitudes, clarifying whether there is disagreement with the substantive provisions of the reform or whether the opposition is motivated by narrower interests (for example, an unwillingness to learn a new way of running a courtroom).

Turning to lawyers, their attitudes regarding the old system also differ widely. Excluding neutral responses, the agree-versus-disagree distribution among prosecutors was 50–34 in Baja California and 72–18 in Nuevo León, but 20–40 in Oaxaca. Oaxaca is particularly interesting because the majority of judges agreed with this proposition, but most prosecutors disagreed. Among defenders, these distributions were mostly reversed: 31–59 in Baja California, 40–54 in Coahuila, and 63–25 in Nuevo León. That is, opinions regarding the traditional justice system were essentially mirror images of each other among prosecutors and defenders in Baja California (50–34

and 31–59), but they were very similar in Nuevo León (72–18 and 63–25). One possible explanation is that the baseline performance of the traditional criminal justice system was simply better in Nuevo León than in Baja California.

### Problems in the Traditional Justice System

To the extent that respondents identified problems with the traditional justice system, the survey included additional questions to elucidate areas of concern. First, when asked about the main problems with the justice system, almost 30 percent of respondents named corruption as their top concern over a lack of personnel, infrastructure, adequate pay, or training. Ranked after corruption, are a series of responses that basically identify what we might call resource issues. Specifically, legal elites list *falta de personal* (insufficient personnel), *falta de infraestructura* (inadequate infrastructure), *bajos sueldos* (low salaries), and *falta de preparación* (insufficient training or preparation). Those are basically resource issues, which suggests that there are significant deficits in organizational capability, at least from the perspective of those working within the criminal justice system.

These concerns are supported by Ingram's analysis of judicial budgets across the Mexican states over the 17-year period from 1993 to 2009.<sup>36</sup> Drawing on his data, [figure 6.2](#) offers a visual representation



**Figure 6.2** Mean judicial spending (real, per-capita terms), 1993–2009

Source: Ingram (2012)

of mean judicial budgets by state and makes apparent the disparities and unevenness in the financial strength of the justice sector across Mexico. Budget figures are in real pesos per capita, using 2000 as the base year. The state of Jalisco, in particular, stood out both in respondents' appraisals of resource scarcity and in the budget comparisons conducted by Ingram. This kind of unevenness is not ideal for the development of governance institutions in a democracy and probably merits a needs-based approach to the distribution of federal resources for improvements in the justice sector.

### **Foreign Pressure to Reform**

One of the frequently mentioned accusations against the 2008 reform is that it was the result of pressure from foreign governments and organizations, particularly from the United States. Overall, approximately 40 percent of respondents agreed that the 2008 reform was the result of these foreign pressures. Across the professions, about 39 percent of judges, 38 percent of prosecutors, and 45 percent of defenders agree with this statement. Again, the distribution within professions is very dispersed, with at least 20 percent in each profession expressing the highest level of agreement (7 = "totally agree") and at least another 20 percent expressing the highest level of disagreement (1 = "totally disagree").

The fact that more than a third of respondents in each profession indicated that foreign pressure was responsible for the reform seriously undermines the legitimacy of the reform project. In a country where nationalist currents run deep and sensitivities about foreign intervention are strong, this may help to explain why the reform has been slow to spread and develop across the 32 Mexican states. Particularly disturbing is the fact that judges were the ones most likely to believe foreign pressure played a major role in the reform.

Part of the reason this perception persists may be because one of the most active proponents of the reform, the nonprofit organization known as PRODERECHO, was essentially created and funded by USAID, then contracted out to Management Systems International.<sup>37</sup> After the failure of a major legislative package of judicial reforms initiated by President Vicente Fox in 2004, PRODERECHO's explicit strategy was to pursue criminal procedure reforms in the states "where the governments had more flexibility and the ability to pass reforms more quickly than at the federal level."<sup>38</sup>

Still, it should be noted that it was not just US governmental or nongovernmental organizations that worked in Mexico. Spanish,

German, Chilean, and European Union organizations were also at work. Perhaps more important, it should also be noted that some states in Mexico were already progressing toward a reform of criminal procedure before Fox's 2004 proposal. For instance, Oaxaca already had a Draft Code of Criminal Procedure in 2003; this draft actually served as the template for the model code promoted by PRODERECHO.<sup>39</sup> Thus, to at least some extent, there has been interplay between domestic and foreign influences in the debate about reforming the criminal justice system.

### **General Opinion of the 2008 Reform**

Despite the above findings, views of the 2008 reform were remarkably positive. Approximately 84 percent of respondents expressed some level of agreement with the 2008 reform. Across all three professional categories, support for the reform has remained fairly strong. More than 80 percent of respondents within each category reported a positive assessment of the reform, stating that they were somewhat in agreement, in agreement, or totally in agreement with the reform. Indeed, in all three professional categories, approximately half of the respondents reported the highest level of agreement with the reform. In particular, among public defenders there is no opposition to the reform. Such opposition registers only among prosecutors and judges. Specifically, while 5 prosecutors (12.5 percent) and 15 judges (8.8 percent) expressed some level of opposition to the reform, *none* of the 59 public defenders interviewed for this study expressed any level of opposition to the reform. That any negative views persist provides ammunition for opponents to the reform and does not bode well for states that are still at earlier stages in the reform process. Nevertheless, it is worth noting that the majority of respondents do seem to favor the reforms or at least give the reforms the benefit of the doubt.

### **Attitudes toward Selected Components of Reform: Oral Trials and Presumption of Innocence**

Overall, 79 percent of respondents agreed that the traditional inquisitorial criminal process should be replaced with the oral-adversarial model. Across the professions, 76 percent of judges agreed that criminal trials should be oral, and 80 percent of prosecutors and 88 percent of defenders also agreed. In a few states, however, there was some noticeable variation among the professions. For example,



100 percent of prosecutors in Nuevo León expressed high or very high levels of support for oral trials, making prosecutors in Nuevo León a key source of support for this aspect of the reform. By contrast, 34 percent of prosecutors in Baja California expressed disapproval of oral trials.

Interviews conducted separately with judges suggests this is due, at least in part, to the reluctance of judges—especially older, more established judges—to learn a new way of conducting the activities that take place in their courtroom. In essence, the reform asks judges to maintain control of process while speaking less and allowing the parties to speak more in a more open, public proceeding. Thus, some judges may simply be insecure about their professional image as they try to manage these adversarial conflicts under the watchful eyes of the public and press. In any case, the picture that emerges from the responses is that there is generalized support across all three professional categories for the new oral proceedings and especially so among public defenders.

In addition to oral trials, one of the central pillars of the 2008 reform was the strengthening of the presumption of innocence. Overall, about 76 percent of respondents agreed that the presumption of innocence should be respected *even if that means releasing suspects in cases involving minor offenses*. Perhaps the most striking aspect of the answers to this question is that there is any major variation in responses at all. The question asked clearly whether the presumption of innocence should be observed by freeing pretrial detainees in minor cases until their guilt or innocence is determined. We anticipated that all responses to this question would fall to the right of the scale, indicating at least some level of agreement with this statement. The vast majority of replies fit this expected pattern. That is, most judges, prosecutors, and defense attorneys support the presumption of innocence, even if in minor cases this means letting the defendant go free. However, two aspects of the results are worth highlighting. First, 13 percent of all respondents expressed at least some level of disagreement with this proposition. Second, prosecutors are most likely to express this opposition to the presumption of innocence, with 25 percent doing so, compared to 14.2 percent of judges and only 3.3 percent of defenders. In other words, even though most prosecutors expressed some level of support for the presumption of innocence, the level of this support is the lowest among them of all professional categories at 70 percent, compared to 77.5 percent among judges and 85 percent among defenders.

### Speed of Criminal Proceedings

Approximately 84 percent of respondents agreed that the new system will increase the *celeridad* (speed) of criminal proceedings, yielding gains in efficiency. At first glance, this finding might appear to contrast with the earlier pattern of responses that indicated the old system of justice was effective and efficient (see above). That is, if the old system was efficient, then how could the new system increase the speed of the criminal prosecution process? However, it is possible that respondents assessed the old system as adequate—that is, not slow—and that the new system will still increase speed and efficiency. Across professions, overwhelming agreement with the proposition that the reform will increase speed remains. The majority of all respondents agrees with this proposition—81 percent of judges, 85 percent of prosecutors, and 92 percent of defenders—and within each profession the majority expressed the highest level of agreement with this proposition: 56 percent of judges, 68 percent of prosecutors, and 72 percent of defenders.

### Impact of the New System on Criminality

Given that the 2008 reform was promoted as a key part of the fight against rising criminality, whether the reform is perceived by criminal justice elites to be meeting this expectation is a crucial question. Disappointingly, only 47 percent of respondents think the reform will help reduce criminality while about 34 percent of all respondents disagree. Given the levels of violence Mexico is experiencing and the high-profile framing of this reform as a central measure to fight crime and impunity, this is not an encouraging finding. Across professions, 41 percent of judges, 53 percent of prosecutors, and 58 percent of defenders think the reform will help. Those that disagree include 38 percent of judges, 35 percent of prosecutors, and 23 percent of defenders. Among legal professionals, judges express the most pessimistic attitudes regarding this question.

Across states within each profession, substantial disagreement remains. Among judges, only in Michoacán is there a majority (70 percent) convinced that the new system will reduce criminality. Aside from the positive assessment of the reform on this point in Michoacán, there is widespread disagreement among judges across these eight states whether the criminal procedure reform will reduce criminality. Only two other states have a large proportion of judges reporting agreement with this proposition: 50 percent in Nuevo León

and 48 percent in Jalisco. The rate of agreement drops rapidly elsewhere, down to only 20 percent in Oaxaca (4 of 20) and Yucatán (1 of 5). Meanwhile, those judges not convinced that the reform will reduce criminality make up 57 percent of responding judges in Chihuahua, 55 percent in Oaxaca, 53 percent in Zacatecas, and 50 percent in Baja California. In each of these states, a substantial proportion of judges surveyed expressed the highest level of disagreement—33 percent, 35 percent, 38 percent, and 25 percent, respectively. Among lawyers, results are slightly more encouraging. In two states, the majority of prosecutors and defenders think the new system will reduce criminality (Baja California and Nuevo León). However, in Oaxaca 40 percent agree while another 40 percent disagree. In Coahuila, 46 percent of defenders think the reform will reduce criminality, but 27 percent disagree.

In contrast to the previous question on the increased speed of the new criminal procedure, these results present a rather pessimistic picture. There is substantial disagreement that the reform will help reduce criminality. Notably, this disagreement exists across professions, across states, and even across professions in a single state: the negative opinion of judges in Baja California versus the positive opinion of lawyers in the same state is illustrative. The attitudes of judges in Chihuahua, Oaxaca, and Zacatecas show particularly disheartening results because these states (along with Nuevo León) have longer experience with the reform already implemented. If judges in these states do not think the reform reduces criminality, better results are unlikely elsewhere. The evidence from Chihuahua is perhaps most disturbing due to the high levels of violence in Ciudad Juárez, but that fact might also explain the results. That is, Ciudad Juárez is the site of high levels of drug-related violence,<sup>40</sup> so that phenomenon may be obscuring the utility of the reform. On the other hand, judges may be commenting on the fact that the reform fails to address drug-related criminality. In other words, reducing levels of criminality may require a different approach, separate from the 2008 reform.

### **Impact of the New System on Corruption**

Recalling the earlier survey result that corruption is perceived as the main problem facing the criminal justice sector, approximately 70 percent of respondents believe the reform will help reduce corruption. In contrast to the opinions regarding the reform's potential to reduce crime, this result is more encouraging regarding its potential to reduce corruption. Across professions, 70 percent of judges,

65 percent of prosecutors, and 77 percent of defenders agreed that the reform will reduce corruption. Among judges, 41 percent expressed the highest level of agreement with this proposition, along with 45 percent of prosecutors and 50 percent of defenders. Though 23 percent of judges expressed some level of disagreement, only 18 percent of prosecutors and 10 percent of defenders did so.

### **Results of the Reform Thus Far**

Another question on the 2008 reform asked whether the results of the reform have thus far been good. Given that the survey was administered in late 2010, respondents had the benefit of more than two years of reflection and experience since the passage of the reform in June 2008 (though it had not yet passed locally in several states). Responses to this question were far more mixed than those to the one focusing on general support for the reform. Specifically, 64 percent of respondents expressed some level of agreement with the results of the reform, which is noticeably less than the proportion of respondents (84 percent) expressing general support for the reform.

The results remained mixed even when disaggregated by state and profession. Approximately 55 percent of judges expressed some level of approval of the results of the reform compared to 80 percent of defenders and 67 percent of prosecutors. Even within professions, though, there is wide variation. For instance, 100 percent of prosecutors in Nuevo León agree with the reform's results, but 34 percent of prosecutors in Baja California disapproved of the results of the reform. Among judges, more than 20 percent of respondents in several states reported disagreement with the results of the reform, but in Michoacán only 6 percent of judges reported any level of disagreement. In Oaxaca, 25 percent of judges expressed total disagreement with the results of the reform, and a total of 45 percent of judges in this state expressed some level of disagreement with the reform's results. Given that 20 percent of Oaxacan judges expressed a neutral position on the reform (4 judges), this leaves 45 percent of judges opposed to the results of the reform and only 35 percent in favor.

Hence, Michoacán appears to be a bastion of support for the reform and its results despite not having implemented its own reform; Oaxaca has a high level of disapproval of the reform's results after several years of experience with the reforms locally (Michoacán was scheduled to approve its new Code of Criminal Procedure in December 2011 but had not yet done so when this survey was administered). Again, Oaxaca is one of the pioneers in the reform of criminal procedure

among the Mexican states, so the fact that such generalized disagreement with the results of the reform exists in this state is not encouraging for advocates of the reform and deserves closer attention and further research.

### Conclusion

Prominent ongoing reforms seek to resolve the crucial problem of institutional capacity in Mexico. We highlight two of these reforms—judicial councils and criminal procedure—reforms that we are confident most observers would agree are the two most transformational, revolutionary changes in the justice system in Mexico in the past 20 years, especially the criminal procedure reform of 2008. In this regard, Mexico's experience can offer several lessons to other countries. First, states are great laboratories for experiments. We can see that in Mexico in this regard decentralization can probably provide lessons to other countries, but it has also generated a lot of institutional unevenness, whether in terms of spending, judicial councils, or the criminal procedure reform. The varying failures and successes across the Mexican states offer generate insights for scholars and policymakers alike. However, the landscape of judicial institutions in Mexico is very, very uneven. This means citizens experience justice on a day-to-day basis in a very different fashion depending simply on where they live.

The politics of reform is a major area that calls for further study. Specifically, the process of reform on the state level is not a phenomenon of federal policies that passively diffuse in a centrifugal, center-to-margin fashion from the nation's capital out to the states. Both judicial councils and criminal procedure reforms emerged in some states *before* similar federal reforms, undercutting the conventional centrifugal thesis. Moreover, reform is diffusing in a very uneven fashion depending largely on local political factors. Best practices in institutional design are in circulation and widely understood, but policies that adopt these practices appear quickly in some states and not at all in others. What determines whether one state decides to improve its justice sector and actually does it while another state does not? The varying timing and content of reforms signal that local politics is helping in some places and hindering in others; yet, we lack a full understanding of these political factors. Future works that build on existing scholarship on judicial reform in Mexico promise valuable insights.<sup>41</sup>

The 2008 reform poses a huge challenge to the states. Where effective judicial councils already exist, these organs may provide the

required institutional support for successful reform of criminal proceedings. But one cautionary question to ask is this—is too much being done at one time? Recent reforms expanding concurrent jurisdiction (for example, *narcomenudeo* or street-level drug dealing), delegating authority to states to process types of cases that used to be the sole jurisdiction of federal authorities, are causing consternation among local legal professionals who fear that they are increasingly asked to do more with less. While this delegation can be read as a vote of confidence in or empowerment of state courts, these institutions are already overwhelmed and struggling to fully implement the judicial council and criminal procedure reforms outlined above, and they are doing so in contexts of resource scarcity (see above) and political opposition. As stated in the introduction, the vast majority of criminal offenses are already tried in state courts, so this delegation further expands the volume of cases moving through what are already backlogged court dockets. These are huge additional burdens being placed on the states, and it is not clear exactly how successful they will be in handling them, particularly in the face of inadequate resources and a dire security crisis. Our own position is that the reforms highlighted here bring salutary changes to the judiciary; yet, we remain skeptical whether enough attention is given to the obstacles, largely political, facing the reform process at the local level.

### Notes

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25. One of the earliest Calderón-era legislative proposals to modify the judicial system came from federal deputy Jesús de León Tello from the National Action Party (PAN). However, the bill that became the basis for the 2008 reforms was championed by the head of the Judicial Committee in the Chamber of Deputies, former governor of Estado de México and the then federal deputy César Camacho Quiroz, from the PRI. After the bill passed in the Chamber of Deputies, key provisions having to do with the use of search and seizure without a warrant were removed by the Senate in December 2007.
26. Contrary to popular opinion, not all aspects of traditional Mexican criminal law are based on written *expedientes* (affidavits). In the *instrucción* (evidentiary phase) within the larger process of a *proceso penal* (criminal proceedings), judges frequently interview victims, suspects, witnesses, prosecutors, and defense attorneys “orally.” Certain portions of criminal proceedings, particularly at the *pre-instrucción* (pretrial evidentiary) hearing, occur in live court sessions.
27. “Garantismo” is a loaded term in Mexico. On the one hand, it is used in a positive sense by progressive jurists concerned about the real effect of civil rights. On the other hand, it is used disparagingly by more conservative jurists who think judges and the state should be more concerned with the form and procedures of the law than with protecting particular rights or interests. This tension resonates with discussions about legal or judicial “activism” in the United States. The tension also resonates with a broader political-ideological tension in policy priorities, namely, whether the criminal justice system should prioritize the liberties of individuals suspected of a crime or the security of the broader society.
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32. All maps generated with ArcMap 9.2. Ingram thanks Alberto Diaz-Cayeros for the underlying shape file.
33. An additional eight respondents are not included in the findings we report here: three defenders originating from Chihuahua, Durango, and Jalisco; one judge from Durango; and four respondents who did not identify their profession or for whom other information was missing. Where broad, aggregate statistics are of interest, the full 276 respondents are included.
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35. The question asked whether judges agreed or disagreed that the traditional justice system was effective and efficient, and responses were on a scale from 1 (total disagreement) to 7 (total agreement). The authors categorize answers above 6 as “strong agreement” and answers below 2 as “strong disagreement.” The states with the highest levels of “strong agreement” were Baja California (58%), Jalisco (40%), Oaxaca (42%), Yucatán (40%) and Zacatecas (42%).
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## Chapter 7

# Challenges and Qualities: Government, Public Security, and Justice Information in Mexico

*Mario Palma*

In this chapter I will refer to the main problems that statistical agencies face in producing information on the crucial subjects of government, public security, and justice. I will do so through a narrative of the recent experience of the Mexican National Institute of Statistics and Geography (*Instituto Nacional de Estadística y Geografía*, INEGI). From this description I will extract certain conclusions that may be useful for the future work of INEGI and agencies in other countries facing similar circumstances.

### Context

Toward the end of 2008 two apparently unrelated developments converged in Mexico. The first was the worsening of the public security situation in the country and the heightened public awareness of it. Crime seemed to be rampant, and from the statistical point of view there was not much quality information available. Both the general public and the authorities in charge of public security faced a void in this respect that urgently needed to be filled.

The second development was that in October 2008 the first board of governors of the newly autonomous INEGI was installed. This marked the culmination of a long process of granting INEGI legal autonomy from the executive branch of the federal government. Article 26 of the Constitution of Mexico was amended on April 7, 2006, to establish INEGI as an autonomous entity. A specific law to regulate the National System of Statistical and

Geographic Information (hereinafter “the system”) was issued on April 16, 2008.

These institutional changes reinforced INEGI’s traditional role as a producer of information as it became the coordinator of all government units producing statistical and geographic information at federal, state, and local levels. The system was charged with providing the public with relevant information on the main sociodemographic, economic, geographic, and environmental phenomena.

INEGI deemed it of particular importance that all information should be useful for the formulation and evaluation of public policies. An initial review of the many fields in which INEGI was producing information immediately made clear that the subjects related to government, public security, and justice had been neglected.

### **Challenges Facing INEGI**

A first diagnosis of the status of information on government, public security, and justice in the country identified the following challenges:

#### **1. Lack of Information**

Contrary to what was the case in most sociodemographic and economic areas, there was a distinct lack of statistical information on government, public security, and justice. The last municipal survey was carried out in 2002 and did not cover any of these three subjects but referred only to social development issues. No state or federal survey or census had ever covered these issues.

INEGI’s main task would consist in gathering administrative records on a set of different crimes from state and federal sources and publishing them on an annual basis in its compendiums. To take homicide rates as one example, INEGI would have to gather the information from various sources, such as civil registries and public prosecution offices in 32 federal entities with different regulations and procedures—clearly a complex and slow process. This affects the timeliness with which the data are published. Similar problems affect the collection of data related to justice, since judicial information needs to be collected from a multitude of local and federal courts.

In the case of crime surveys, INEGI participated in 2005 in the National Insecurity Survey with the nongovernmental organization *Instituto Ciudadano de Estudios sobre la Inseguridad* (ICESI), which has promoted and organized the survey annually since 2002.

## **2. Lack of Coordination and Trust among Different Players**

There was no coordinated mechanism for analyzing statistical data among the different stakeholders involved in the production of this statistical information—namely, the government units at the federal, state, and municipal levels—or the users of this information, both private and public.

A related problem was the reluctance of different groups of stakeholders to see beyond their immediate area of responsibility. For instance, judges were interested in information that concerned them directly, such as data on caseloads and sentencing, but had little regard for other aspects of crime. The police forces and public prosecutor's offices were similarly narrow in focus. Academics, on the other hand, would never expect—and had never been invited before—to discuss statistical issues regarding these areas with the authorities in charge of producing the data, who were themselves unfamiliar with working with outside academics.

## **3. Sharp Contrasts among Federal, State, and Municipal Governments**

In terms of data production, municipalities in general tend to lag behind states due to their level of institutional development and limited resources, which are usually not allocated to information gathering as a priority. In turn, states tend to lag behind the federal government. There are also discrepancies between the different states as some have developed better systems of information than others. Moreover, it is important to note that there are 32 criminal codes in the country with different definitions and penalties for what are in fact the same crimes.

## **4. Other Issues**

Additional challenges for the production of information that public agencies had to contend with were the lack of statistical culture and consequently of resources allocated to the task.

One of the results of working in such a milieu, in which statistical information gathering in general is hampered by the problems described above, is a *dearth of information about violence against women*. This kind of information was not a priority, and therefore there was no systematic way of looking at it. Thus, without a substantial change of

approach, the country would face one of its most important crises in recent years without the proper tools to analyze its dimensions.

The final item emerging in this diagnosis is the *public mistrust* for official statistics. This came as no surprise since it was not reasonable to expect any degree of public trust for statistics produced under the circumstances outlined above. Moreover, it was logical for people to mistrust information produced by the same authorities responsible for remedying a problem.

### **INEGI's Qualities: Legal and Strategic Tools**

INEGI has several tools to help it confront these challenges. Some of the tools are directly related to its new legal status while others resulted from a change in strategic direction.

#### ***Optimizing the Legal Framework***

As previously mentioned, INEGI was established as an autonomous entity in the Mexican public administration with the same status as Mexico's central bank, its federal electoral institute, and the federal human rights commission. It is possibly the only statistical or geographic agency in the world to have achieved such legal status. Its status insulates it from interference by the executive branch. Without a clear legal mandate and autonomy, it is at the very least complicated for a technical government agency to resist political considerations.

INEGI is governed by a board consisting of a president and four vice presidents who are nominated by the president of the country to be approved by the Senate for a fixed term. A specific law was promulgated to regulate the National Statistical and Geographic Information System in April 2008, designating INEGI as the coordinator of the entire system, in addition to its traditional functions as a producer of information. This meant that INEGI, an outsider to the executive function (not only to the executive branch of government but also, in the widest sense, to all governmental activities that generate statistics), became a neutral guarantor of the quality of information made available to the public by the whole statistical system. INEGI's main task is to make statistical and geographic information available to the general public on the different phenomena it studies although the emphasis is on information that is useful for the evaluation and formulation of public policies.

The laws governing the system enshrined three priority subsystems of information: sociodemographic, economic, and geographic and

environmental. Other subsystems could be added, and in December 2008 the board of governors formally created the subsystem of Government, Public Security, and Justice Information (hereinafter “the subsystem”). INEGI created a specific deputy general directorship to take charge of the subsystem and allocated resources for its operational budget. One of the vice presidents of the board chairs the subsystem’s main committees and promotes and oversees its work program.

### ***Developing a Strategic Approach***

This takes us to the second set of tools. It is one thing to have the legal tools and quite another to change a situation, and INEGI needed to devise a strategy that would allow for practical solutions to the challenges it faced. Three basic tenets were deemed crucial:

1. There had to be a systematic approach to the production of information.
2. The key producers and users of information had to be involved in the subsystem.
3. Statistical projects had to start making information available as soon as possible.

In terms of the systematic approach, only once an area is no longer neglected and becomes a priority is it possible to develop a systematic approach to its problems and their solutions. This may sound obvious, but in practical terms it means moving from a passive, reactive, bureaucratic system that is accustomed to repeating long-standing habits to a proactive, analytical system that is able to innovate in response to new challenges.

An initial step was to subdivide the three subjects that make up the subsystem of Government, Public Security and Justice Information into four main components: government proper (governance management), public security (crime and policing), prosecution, and justice. This division allows INEGI to examine the particular items separately while keeping a general view of their interrelationships. For example, there will always be government issues, such as budget and personnel considerations, in the analysis of the other three components; crime will crosscut the other three subject areas, and the justice component is much broader than its criminal component because it covers a multitude of legal specializations.

All the subjects in question are closely related to institutional capabilities. In other words, the performance of the governmental

institutions responsible for these subjects is a consequence of the information related to them. In this sense it is crucial to observe the functions, resources, and performance of the institutions that administer the four components mentioned above. Information has to be produced on what is supposed to be done and what is actually done by government at all levels, what resources are used, and what results are obtained.

Just to mention a few examples, we need to know the size of budgets, personnel costs, number of patrol cars and weapons, and we also need to know what happens with the use of these resources: number of investigations, number of people detained, and what happened to them. Were they prosecuted? Was there a sentence? Have all these efforts meant a reduction in crime? As the questions can be endless, the approach has to be analytical. The main statistical tools available for this task are administrative records, surveys, and censuses complemented by geographic instruments, such as mapping technologies.

As part of this systematic approach, I have included the work being done at the international level since international cooperation has proved an efficient way to promote the use of information on these subjects. INEGI heads the so-called Group of Friends of the Chair of the United Nations Statistical Commission on Violence against Women and has a leading role in the Statistical Conference of the Americas in promoting the gathering of statistics on crime.

In addition, together with the United Nations Office on Drugs and Crime, INEGI has established the first regional Center of Excellence for the study and promotion of information on government, victimization surveys, crime, and justice in Mexico City. The center aims to support research on these matters as well as the exchange of information through seminars, courses, workshops, and an annual international conference.

Turning to the stakeholders involved in the subsystem, INEGI had to preach the qualities (actual and eventual) of such a subsystem to the main producers and users of information on the subjects in question. Legislation governing INEGI allows it to establish so-called Specialized Technical Committees (STCs) to work on the information aspects of particular subjects. The committees should be chaired by either the key user or producer of that particular information, but with INEGI acting as the secretariat. Other interested stakeholders should be invited to join the STCs.

Four STCs were created: on government, public security, prosecution, and justice. Each is chaired by a prominent individual from a relevant institution: the head of the federal budget unit at the Ministry



of Finance in the case of the government STC; the federal police commissioner for the security STC; the general director of planning at the Attorney General's Office for the prosecution STC; and the general director of statistics and planning of the Federal Judicial Council for the justice STC. All chairs agreed to preside over their meetings in person. STC chairs also help identify the other institutions to be invited to join the STC. In all cases, as many representatives of the states are included as possible as well as other federal agencies and academics.

The STCs have become the ideal format for meeting, discussing, and consulting on information topics in their area of specialization. In these committees the relevance and quality of particular indicators are analyzed and new projects are presented. Quality of information is central to their work as are the commitments of their members in this respect. The importance of the STCs cannot be overstated; they have become real working committees driving the production of statistics.

In addition—and also prescribed in the legislation governing INEGI—an executive committee was formed with the chairs of the STCs and representatives from a few other ministries with the objective of overseeing the work of the STCs and of the whole subsystem. Finally and even though it was not mandated by law, INEGI also invited a group of 20–25 academics doing research on the subjects in question to form a focus group, which functions as a kind of advisory committee that is kept informed of new projects and the work of the subsystem in general and provides advice and criticism to INEGI.

A final issue of strategic importance is timeliness of the information, and in times of crisis, time is the rarest of commodities. While organizing a methodological approach and convening the necessary committees, the pressure was on to start making information available.

### **Improved INEGI Products**

The final part of this chapter will present an overview of the main concrete projects on government, public security, and justice information initiated in the period from 2009 to 2011. As soon as available, results are published on INEGI's web page: [www.inegi.org.mx](http://www.inegi.org.mx).

### ***Municipal Censuses 2009, 2011***

As I mentioned before, the last municipal survey had been conducted in 2002 and covered only social development issues. In 2009 INEGI designed a new survey that also included questions on government,

public security, justice, and environment (use of water and solid waste disposal).

Although the survey was administered to all 2,440 municipalities in the country plus the 16 delegations that comprise Mexico City, it was still called a survey. This was because traditionally the census denomination was only used for the national economic, population, and agricultural censuses, and the first two of these were to take place in 2009 and 2010, respectively. INEGI decided to wait until 2011 before adopting the term “municipal census” to avoid confusion between the different projects. The questionnaire was revised for the first time in the STCs and by external experts, and a huge field operation was undertaken across the whole country to interview all mayors and their main officials.

It is important to mention the difficulties entailed in such an effort because Mexico is an extremely varied country with very modern and relatively wealthy municipalities with populations of over 1 million people as well as very poor and dispersed municipalities where the mayor might not speak Spanish, might fulfill several other functions besides being mayor, and might have little or no schooling. Under these circumstances, the response rate of 98.2 percent for the 2009 survey is very satisfactory. This resulted in 7,714,419 data items; a wealth of information available for the first time in the country. The resulting databases can be consulted on INEGI’s web page.

With the information obtained it is now possible to know, for example, the number and gender of people employed by each municipality and their occupations. For instance, according to the 2009 survey there are 623,629 municipal employees in total, across all municipalities, of whom 178,829, or 29 percent, are women. Of this number, 135,555 municipal employees work in public security, an average of 58 per municipality, and of these 13,521, or 10 percent, are women. We also know how many computers each municipality has (130,080 across all municipalities), what their budgets are, and how these budgets are allocated.

It is also possible to see the number of administrative proceedings (11.05 million individual proceedings) by subject. The highest number of local government administrative proceedings in the 2009 municipal survey related to transit (18.1 percent), followed by real estate registry (13.5 percent) and municipal abattoirs (9.5 percent). In fourth place was public security (6.2 percent), and criminal proceedings accounted for 3.2 percent. We also know how many people work in public security at the municipal level and the number

of crime investigations initiated: 517,817. We can also find out what happened to these investigations and whether they resulted in legal prosecutions.

With the benefit of the 2009 experience, INEGI reviewed the questionnaires and the field strategy and decided to take into consideration the fact that local administrations (serving for three-year terms) tend to change at different times in the country. INEGI decided to start with the more “mature” administrations and give as much time as possible to the “new” administrations to get acquainted with their jobs before asking them to answer the census. The 2011 municipal census began in June 2011 and was expected to take four months to complete.

### ***State Censuses 2010, 2011***

There was no precedent for a state census on government, public security, and justice information. The 2010 census was applied to the 31 federal states plus the Federal District of Mexico City and covered government, public security, and prisons. The 2011 census was conducted in April and May 2011 and deals with prosecution of crime and state justice.

Prior to the implementation of the 2010 census, INEGI consulted representatives of states and local specialists who analyzed the questionnaires and suggested changes and improvements. This joint work resulted in a much smoother statistical operation. When the final questionnaires were sent to the different state offices, the people in charge not only knew in advance of the coming census but cooperated in what was perceived as a joint effort of their state and INEGI.

It is important to notice that even though it was the first time that answers were requested for information that could be considered “sensitive,” none of the participants questioned whether they should take part in the statistical exercise in the first place. The work and consensus achieved in the STCs were crucial for the 100 percent response rate obtained in the 2010 census.

For the 2011 census INEGI worked with both the Conference of State Prosecutors and the Conference of State Courts, which sit on the prosecution STC and the justice STC, respectively, and which adopted resolutions concurrently in their own forums supporting the censuses.

The variety and extent of the information produced should prove a valuable tool for the public in general on the work of state

governments and also for the officials in charge of public policies in their states. The 2010 information can be viewed on INEGI's web page. It includes information such as the number of people employed in state governments (1,683,710) and the gender breakdown of this figure (40 percent are female, 60 percent are male), and the number of computers held by state governments (678,489, an average of 21,887 per state).

### ***Crime Surveys***

INEGI had conducted local crime surveys since 1989 in several cities, including Mexico City, and participated in the National Insecurity Survey in 2005, 2009, and 2010 together with alongside ICESI. The 2010 sample survey consisted of 73,274 households and indicated that 10.1 percent of the adult population had been victim of a crime in 2009; 84 percent of all crimes were either not reported to the authorities, or after being reported, no proceedings were initiated by them. That is, these crimes make up the so-called dark figure of crime. This information is published on INEGI's web page: [www.inegi.org.mx](http://www.inegi.org.mx).

For 2011 INEGI decided to undertake a new survey called the National Victimization and Public Perception Survey (*Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública*, ENVIPE) for the following reasons:

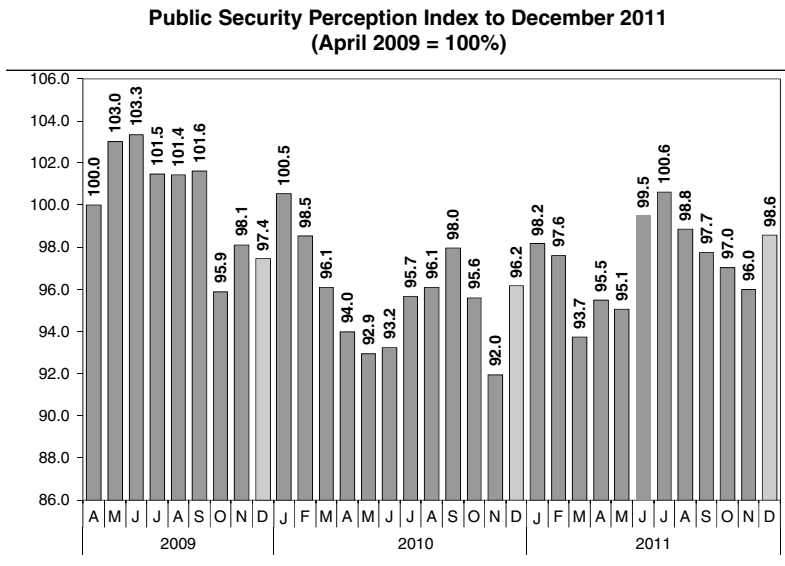
1. It would have ample and balanced coverage of three aspects: victimization, public security perception, and evaluation of the performance of the authorities in charge of public security.
2. It would be conducted each year in the same month (March) allowing for year-on-year comparisons and for analysis of trends over a relatively short period of time.
3. The sample size would increase (78,000 households in 2011, 92,000 in 2012) to improve accuracy of the individual states' results.
4. It would allow for the latest innovations in crime surveys to be adopted. INEGI reviewed the main and more successful surveys carried out in other countries (including Britain, United States, Chile, and Spain) as well as the latest recommendations by the United Nations Office for Drugs and Crime (UNODC) and directly consulted and worked with the latter on this matter. UNODC experts analyzed the new questionnaire and methodology of the

survey. Mexican academics and experts on crime surveys and the subsystem’s four STCs were also consulted.

In addition to the annual ENVIPE survey, INEGI publishes a monthly Public Security Perception Index. The index is based on the Public Security Perception Survey, which is carried out in 32 cities with a sample size of 2,336 households. The survey was conducted for the first time in April 2009 and results are calculated from the average of the indices produced by the answers to five questions:

1. Perception of personal security in relation to 12 months ago.
2. Expected personal security in 12 months compared to present.
3. Public security in the country in relation to 12 months ago.
4. Expected public security in the country in 12 months.
5. Confidence to walk alone in own neighborhood between 16:00 and 19:00 hours.

Figure 7.1 shows the Public Security Perception Index to December 2011. It is published two weeks after the last month of reference.



**Figure 7.1** Public Security Perception Index to December 2011

Source: Government of Mexico.

### ***Administrative Records***

Probably the biggest challenge of all is the production of administrative records as improvements entail long-term work with the many agencies responsible for producing them. The revision of methodologies for producing administrative records requires consensus and coordination. The STCs have proved particularly invaluable in this regard as they provide a venue for the identification of indicators and the analysis of what is needed to improve them.

All four STCs have ongoing projects on indicators. One interesting example is the case of the prosecution STC, which has already agreed with the Conference of State Prosecutors to approve as a priority work on ten sets of indicators on subjects such as the professionalization of personnel, equipment, crime prevention, human rights, crime victims' rights, and transparency.

INEGI is also developing a project to change the production and publication of information on homicides from an annual to a monthly basis. The importance of this change for public policy in general cannot be overstated. It is equally difficult to overstate how complex it will be to implement, since information is recorded in 31 states plus the Federal District with differences in proceedings and their speed. INEGI started this project at the end of 2010 and aimed to produce estimated monthly figures in the second half of 2011.

### ***What is Missing?***

After two years working on the creation of a totally new subsystem of information, in addition to the obvious need for the consolidation of the various projects already started, INEGI has identified the following next steps:

1. The municipal and state censuses that are now being implemented need to be complemented with a federal government census. This will allow for homogeneous data to be available to the public in one place, rather than across multiple sources for information at the different ministries and decentralized agencies of the federal government.
2. Surveys should eventually expand to cover quality of government services at all levels. As discussed in the section on strategy, it is important to analyze institutional capabilities and this means not only the resources and functions of each institution at all levels of government but also how each is performing.

3. As mentioned above, there are important developments at INEGI in connection with crime surveys that measure victimization of individuals. There is still a need to know the effect of the public security situation on business, however. Work has started on the design of a survey regarding the impact of crime and corruption on the business community, on how it is affecting costs and, ultimately, strategic decisions.
4. INEGI is one of the few agencies in the world responsible for both statistics and geography and so is particularly well placed to develop the use of mapping technologies to georeference statistical information. This is done on a regular basis for demographic and economic information (see [www.inegi.gob.mx](http://www.inegi.gob.mx)). Work has started on the possibility of using some of these technologies for crime information on a local basis with some of our stakeholders.
5. Due to the importance and sensitivity of the information produced, INEGI needs to ensure that it communicates clearly the main issues concerning the production and characteristics of this data. In addition to the easy accessibility provided by INEGI's web page, efforts are under way to disseminate and publicize the different projects carried out under the subsystem.

Subject to budgetary constraints, work on these four items should start in 2011 and evolve over the next two years.

## Conclusions

Mexico, like most countries in the world, had traditionally neglected information on the three key subjects of government, public security, and justice. The crisis in public security brought to the fore the subject of information on crime and related subjects and the lack of information on them. The Mexican case illustrates the particular challenges that the production of information on government, public security, and justice presents to statistical agencies. The way in which these agencies respond to them will determine the quantity and quality of the information available to the public in general and to the people evaluating and/or formulating public policies; last but not least, it will affect the level of trust with which society treats that information. While the qualities needed to create a system (or in the Mexican case a subsystem) of information on these three subjects apply to all types of statistical information, they may acquire a dimension of their own due to their special features and antecedents, as explained above.

From a structural point of view, two qualities are crucial for the work of statistical agencies: *autonomy* and a *legal framework* that supports their activities. These qualities are linked together since to be formally binding—especially to other authorities—an autonomous status requires a legal statute.

Autonomy implies the possibility of pursuing technical work without interference of any kind, but it also means that an agency other than the ones responsible for government functions is measuring the social and economic phenomena in which the latter may be involved. In other words, a neutral agency provides the public with information. Once the law guarantees this autonomy, it should also provide the instruments for an effective way of realizing the statistical agency's objectives. These instruments should include the means to coordinate the work of other producers of information as well as the obligations of individuals and private and public entities to provide information for statistical purposes when required.

In addition to these qualities—which can be classified as structural or basic for an agency's performance—there are several qualities that depend on the institution's willingness and capacity to involve itself in a specific subject or project. Chief among them is an internal decision to consider a particular subject as a *priority*. In the case of statistical agencies priorities should respond to a need for information deemed relevant to a country. In practical terms this means finding and allocating resources to a particular program. The resources available will determine the ambitions of a program. Priorities have to be signaled, in the sense that the agency should communicate to other stakeholders in the program and to the public in general its commitment to the undertaking.

In addition to earmarking resources, prioritizing allows for a *systematic approach* to the new objective. Personnel will dedicate time to the methodological analysis and implementation of the new program and synergies will emerge through the interaction of its different components. This approach must be comprehensive in the sense of including all the elements relevant to the production of information on the subjects in question, but it should also allow for these elements to be analyzed in isolation.

Institutional capability is an important variable. In the case of government information, by its very nature all government authorities at all levels play a role in generating it. In the cases of public security and justice, there are fewer offices involved, but the capabilities of each of them influence the quality of data and analysis. A systematic approach to the subjects in question must therefore give special consideration,



from the statistical point of view, to the functions, resources, and performance of public institutions.

Different projects will require different tools depending on requirements and costs. A statistical agency should strike a balance between the most efficient tools and the budgets at its disposal.

International cooperation can support information programs not only through the exchange of information and cooperation but as a reference of best accepted international practices.

As mentioned above, the *inclusion of all stakeholders*, users and producers of information as well as their coordination are indispensable aspects of a system (subsystem) that includes a varied assortment of institutional producers of information from all levels of government.

The litmus test for statistical agencies is, of course, the actual production of information and how it is made available to the public. Given that we are talking about subjects where information has generally been lacking, the pressure to start releasing results is immense, especially if there is a crisis situation. It is therefore crucial for the work and for the technical prestige of a statistical agency that quality projects responding to clear information needs are scheduled as soon as possible.

In the case of INEGI, municipal and state censuses were produced to address a need for information in the three areas. Crime surveys were carried out annually and eventually revised and improved to cover public security, perception, and the performance of the relevant authorities. An index was developed as a result of a much smaller monthly survey to complement the perception part of the annual crime survey. Detailed work was started in all areas for the revision of administrative records.

All these projects were implemented in coordination with the system's stakeholders and were carried out in the shortest possible period of time while other projects were prepared for the future. The experience acquired with the first projects and the work of the STCs also led us to a clearer vision of what was missing. A critical mass of information has already been created that should develop into a more complete and solid system (subsystem) of information on government, public security, and justice information in the near future.

## Conclusions

*Susana Berruecos and Diana Rodríguez*

Violence related to organized crime is Mexico's biggest security threat and at the top of the policy agenda as the country gears up for elections in July 2012. The authors in this volume agree that the problem is deep, intractable, and global in scope. In providing a historical analysis both of the drug market in Mexico and of the government's response to it, several of the authors remind us of the interconnectedness among producer, transit, and consumer countries. Even if the Mexican government succeeds in the long run in its battle to dismantle the cartels, this might merely push problems to neighboring countries in Central America and the Caribbean, which are less prepared to tackle powerful criminal networks. Indeed, as Alejandro Poiré and Jesús López note in this volume, it was a concerted effort by law enforcement agencies to close the Caribbean drugs route in the 1980s that caused cartels to relocate to Mexico in the first place.

Success in reducing the power of the cartels or even reducing levels of violent crime is by no means guaranteed in the near term, but there have been some gains. The most recent figures from the Attorney General's Office, issued in February 2012, suggest that violence might be leveling out, albeit at a high level.<sup>1</sup> There were 12,903 murders in the period from January to September 2011, an increase of 11.4 percent over the previous year. But this compares with a year-on-year increase of 80 percent in 2010 and more than 100 percent in 2009 over the previous year.<sup>2</sup>

When these figures are disaggregated, a more nuanced picture emerges, with some significant improvements in several of the areas most affected by organized crime. In his chapter, Poiré highlights the state of Baja California, where the rate of homicides linked to organized crime declined from a daily average of 7 in 2008 to 1 by 2010. In Ciudad Juárez killings in 2011 were down some 40 percent compared to 2010. These improvements could be the result of fragmentation and weakening of specific cartels, as outlined in Guerrero's

chapter. They might also result from the government's decision to concentrate its efforts against the most violent groups—namely, Los Zetas—or from improved coordination among federal and local law agencies involved in fighting organized crime. Mexico City—the largest drug market in the country with lots of *narcomenudeo* (small-scale drug peddling)—continues to enjoy relatively low homicide levels, helped by the density of policing in the city, with 11 police officers per 1,000 people compared to the 2.8 per 1,000 recommended by the United Nations.<sup>3</sup>

Other areas have become more violent. Nuevo León has suffered instances of violence in recent years, especially in Monterrey, Mexico's third largest city, which had previously enjoyed a reputation for prosperity and relative tranquility. Since at least 2010, Monterrey has been the setting of a brutal turf war between the Gulf Cartel and its former allies, Los Zetas. In August 2011, gunmen set fire to the crowded Casino Royale, trapping patrons inside and killing 52 people. President Felipe Calderón later gave a televised address in which he declared three days of national mourning and called on Mexicans to unite behind his government's controversial offensive against the drug cartels. The wave of violence in Nuevo León, heightened by the escape of 30 prisoners and massacre of 44 others in Apodaca prison, has resuscitated the debate on governability in the state. A combined effort involving all levels of government is needed to tackle the prison system in Mexico. Advances made at the national level to improve prisons will be negated if at the local level there continues to be a lack of commitment to change.

The tourist port of Acapulco, Guerrero, has become another battleground for rival drug cartels. The cartels have not targeted foreign tourists directly, but they have killed taxi drivers, teachers, and local citizens. In September 2011 thousands of teachers in Acapulco took to the streets in protest, claiming that it is impossible to teach given the current levels of violence. In contrast to the teachers' message to government that they are fed up with the violence that is terrorizing Mexico, Governor Zeferino Torreblanca has downplayed the violence in the beach resort that seems to ignore the reality that classrooms are empty and cruise lines have canceled their Acapulco stops.

As several authors in this volume make clear, it is important to disaggregate violence not only along geographic lines but also in terms of perpetrators and modes of crime. In Veracruz, for instance, a group called Mata Zetas vowed to "eliminate" Los Zetas in a video posted on the internet via YouTube several days after 49 bodies were found on the streets of Xalapa.<sup>4</sup> According to security spokeswoman

Alejandra Sota, the Mata Zetas “are not a paramilitary group but the result of rivalries among criminal groups as they are only seeking to do propaganda.”<sup>5</sup> A previous group calling itself Pelotones Omega distributed fliers in October 2010 indicating that its members would fight kidnappers, murderers, and other criminals in the state of Michoacán.<sup>6</sup>

Behind the gory headlines and high-profile arrests is a set of structural problems that foment crime: a lack of livelihood opportunities on the one hand and underperforming law enforcement institutions bedeviled by high levels of corruption and impunity on the other. Several authors point to the great strides Mexico has taken over the past two decades in advancing economic and democratic development despite the advancing crime wave. In his inaugural address to a 2011 conference at the London School of Economics, Economy Minister Ernesto Cordero spoke of Mexico’s healthy fiscal position and low and stable inflation environment, which, he argued, has improved the overall economic well-being of the population.<sup>7</sup> A study conducted by the Economy Ministry in 2011 shows that in 2010 Mexico’s position in the global ranking of foreign direct investment (FDI) recipient countries rose to 18 from 21 in 2009. Moreover, the report states that FDI in Mexico’s seven most violent states has increased since 2006.<sup>8</sup>

Yet, the benefits of economic development have not reached large swathes of the population; although inequality has shrunk slightly since 2006, Mexico remains highly unequal.<sup>9</sup> Even the above-mentioned increase in FDI is merely in keeping with region-wide trends and reflects the country’s cheap labor, which trumps the risks of extortion in the eyes of potential investors.<sup>10</sup> It is nevertheless encouraging that a central component of the government’s anticrime strategy is to repair the country’s social fabric through programs to alleviate poverty and improve access to education, as outlined in Poiré’s chapter.

### **Untangling the Narratives of War**

The chapters by López and Piccato in this volume debunk the myth that before Calderón took office in 2006 drug trafficking was carried out without violence thanks to an accommodation between the state and the cartels that was based on bribes. López reminds us that it was President Carlos Salinas who first used the military instead of the Attorney General’s Office to counter the drug cartels. Calderón has vastly expanded this policy to the point where the military now has some degree of control over almost every branch of public security across every state.

The official narrative of war appears to have changed. Whereas in 2008 senior Mexican officials acknowledged that the full-frontal attack on cartels would lead to greater bloodshed before the situation improved,<sup>11</sup> Poiré describes current levels of violence as continuing a pre-2006 trend. He argues that violence was on the upturn before Calderón took office as cartels battled to expand their territory, dominate the nascent local market for drugs, and control transit routes. Changes to US gun laws in 2004 gave the cartels a ready supply of high-caliber assault weapons, rendering the conflict more deadly. Guerrero's alternative reading of the recent history of violence is that the capo arrest policy and resulting cartel fragmentation have triggered an increase in the background level of violence as well as causing spikes in violence following the "neutralization" of each cartel leader.

The government increasingly refers to its "fight against organized crime," dropping the "war on drugs" metaphor. Terminology matters, not only because the cartels have broadened their activities away from merely drug trafficking, but also because the priority for the Mexican government has to be to reduce levels of violence. It also matters, as Landman argues, because framing the fight in terms of a "war" gives the government justification for measures that erode basic rights and liberties in the name of safeguarding the integrity of the state. Calderón's *Iniciativa de Ley de Seguridad Nacional*—a bill to extend the military's reach over civilian law enforcement jurisdictions—is an example of such a measure. Instead, the fight should be seen in terms of combating organized crime using the legal tools of the state: treating drug traffickers as common criminals stigmatizes them, and achieving solid convictions in trustworthy courts has a deterrent effect.

The government is sensitive to how its battle is being perceived. Piccato analyzes the agreement between the government and a number of prominent media organizations to self-censor crime reporting ostensibly to rid criminal gangs of free publicity for their gory displays of power-brokering but also because constant coverage of violence is demoralizing for the general public.

### **Institutional Development and Federalism**

One of the themes to emerge from this work is how the context of high levels of violent crime has shaped institutional development in Mexico, in particular since 2006. In the case of the military, Lopez argues, the "fight against organized crime" has not merely aggrandized the

institution, but has transformed it since its ranks have become more top-heavy as military leaders are rewarded for action on the frontline against drugs.

The chapter by Shirk and Ingram analyzes the 2008 judicial reform, which was the most profound in a series of reforms that have been attempted since the 1980s. Many of the reforms were first introduced at the state level where more than 90 percent of crimes are tried. The states have been given until 2016 to implement the changes, and to date progress has been uneven. Adding to the burden on local judiciaries, the 2008 reforms give states authority to process certain types of cases that used to fall under federal jurisdiction, such as *narcomenudeo*.

The mismatch in capacity between local and federal authorities is not confined to the courts, but extends to the police forces as well. More than 90 percent of the police force is made up of state and municipal officers rather than federal officers; as Poiré and Landman and Shirk describe, the former earn meager salaries, are frequently rotated, and have high attrition rates. More than 400 municipalities (of 2,400) do not have their own security force. If capacity fails to keep pace with increasing responsibility, the small-scale local law enforcement agencies could well face increased pressures from criminal organizations to provide them with protection from the law.

Calderón's administration is seeking constitutional reforms to dissolve the 2,000-plus municipal police agencies and replace them with 32 state-level public security forces under the so-called *Mando Único*, described in the chapter by Poiré. The proposal is part of the federal government's strategy of disaggregating the crime problem and devolving to the local level the fight against all but the most powerful criminal gangs. Few quarrel with the rationale behind the attempt to streamline police corps and improve coordination, and Nuevo León has effectively introduced the policy without it being codified in federal law. Other state governors and municipal leaders are resistant to changes that might affect their autonomy, however. The Conago group of state governors launched its own parallel initiative in August 2011, the *operativo de seguridad Conago 1*, with the more modest goal of improving coordination between existing police corps.

### **Limits on Calderón's Strategy and His Last Year in Office**

In what remains of his presidency, Calderón is devoting greater resources to the fight against crime. The 2012 draft budget asks for a

10.7 percent increase in real terms for the military and police, which is more than four times the rate of increase for the budget overall. The budget increase would pay for close to 20,000 soldiers and 8,000 police officers.<sup>12</sup> Intelligence and information systems have been strengthened, with the development of *Plataforma México*, which is unparalleled in the region as a center of information on crime.<sup>13</sup>

In February 2012 the defense minister General Guillermo Galván delivered a notable speech during the annual “March of Loyalty” ceremony. In an event with President Calderón, defense minister Galván acknowledged that human rights violations had been committed by the military and formally accepted recommendations in terms of civil rights. Galván reassured the loyalty of the military to the executive branch and promised that the military will support a gender agenda, offering more opportunities to women.<sup>14</sup>

In terms of perceptions of public security, polling data suggest that 2011 might well have been Calderón’s bleakest year. A study in October 2011 by the pollster Consulta Mitofsky signaled that insecurity had overtaken the economy as the primary concern of voters with 51 percent of people polled citing it as their main worry compared to 43 percent who placed the economy first.<sup>15</sup> Around the same time, Parametría issued a poll showing that people were increasingly opposed to the current antidrug policy. Whereas in June 2008, 52 percent of respondents supported the statement “drug trafficking should be tackled even if this generates violence in the country,” by August 2011 only 28 percent of respondents supported it. Conversely, the number of respondents who supported “no violence in the country even if there is some drug trafficking” increased from 33 percent to 65 percent over the same period.<sup>16</sup>

The most recent data from INEGI’s monthly *Índice de Percepción sobre Seguridad Pública* (Public Security Perception Index) suggests perceptions might have improved slightly in early 2012; the index improved by 1.4 percent in January 2012 compared to the previous year.<sup>17</sup> INEGI’s national survey of perceptions of public security released in December 2011 also signals a slight increase in support for the government’s strategy to fight organized crime: the majority (86 percent) of respondents agreed with increasing the number of soldiers in the cities; 37 percent (11 percentage points more than in April 2011) would be happy to have US agents in Mexico; 34 percent are in favor of legalizing drugs, and 33 percent think negotiation with criminal organizations would lower levels of violence in the country.<sup>18</sup>

## The 2012 Elections and the Public Security Debate

The opposition *Partido Revolucionario Institucional* (PRI) won easy victories in gubernatorial and municipal elections in four states in 2011, and polling data from January 2012 puts it ahead in almost every state and at the national level more than 15 points ahead of the ruling *Partido Acción Nacional* (PAN). In November 2011 the PRI defeated the president's sister, Luisa María Calderón, in gubernatorial elections in the president's home state, Michoacán. Calderón's war has not proved popular with voters, and his party is likely to be punished for its apparent failure to curb drug trafficking or violence levels. In addition, there is important concern about the role that violence and insecurity might play during the elections on July 1, 2012.

Although Calderón and his party will be blamed for the decision to ratchet up the fight against the cartels, the PRI's candidate, Enrique Peña Nieto, the former governor of Estado de México, would be unlikely to chart a very different course. He has supported increases in resources and powers for the security forces. In September 2011, he used a high-profile state-of-the-union-type address in Estado de México to reveal that his administration had managed to halve the murder rate in the state. Although few gave credence to the claim—it was the result of a statistical revision in 2007 using a new categorization of homicide—it does signal that law enforcement will be central to the 2012 campaign.<sup>19</sup>

Peña Nieto has stated that President Felipe Calderón's decision to conduct an all-out attack on organized crime was correct, but that the strategy needs to be reformulated and broadened. In his opinion, it is necessary to “build an efficient state to implement a National Strategy for Reducing Violence” based on four pillars: crime prevention; improving law enforcement through the creation of a specialized police force, more effective justice institutions, fighting money laundering, and improving gun control; focusing on the most violent municipalities; and shared responsibility, including in the international sphere.<sup>20</sup> He has criticized the inefficacies of the law enforcement institutions and has spoken of the need to accelerate the implementation, with adequate funding, of the criminal justice and security reforms throughout the country.

Peña Nieto has been quoted in the Mexican press as supporting a withdrawal of military forces from the war on cartels. On a visit to Washington, D.C., Peña Nieto said that the “military should go back to their barracks and be replaced by civil forces”<sup>21</sup> since the militarization of the war on crime had not guaranteed security. Peña



Nieto's statements have alarmed some US policymakers. According to Andrew Selee, director of the Mexico Institute at the Woodrow Wilson International Center for Scholars, in an interview with Guy Taylor of *The Washington Times*, "In private, you hear concern from a lot of US policymakers about how the PRI would deal with organized crime."<sup>22</sup>

A common discussion in Mexico has focused on the extent to which the PRI's popularity is based on having maintained peace in the past by negotiating with criminal organizations. In general terms, from the 1940s to the 1980s drug violence under PRI administrations was maintained at a reasonably low level. This is clearly a debate the incumbent government benefits from repeating: on October 11, 2011, Calderón told the *New York Times* that "there are many in the PRI who think the deals of the past would work now. I don't see what deal could be done, but that is the mentality many of them have. If that opinion prevails, it would worry me."<sup>23</sup>

On February 10, 2012, news reports based on US court documents stated that Mexican drug cartels paid USD 4.5 million in bribes to buy protection and political favors in a state run by the PRI.<sup>24</sup> Tomás Yarrington, the former PRI governor of Tamaulipas (2000–05), is under investigation in Mexico along with two other PRI former Tamaulipas governors, Manuel Cavazos Lerma (1993–99) and Eugenio Hernández (2005–10). The PRI has said these investigations are politically motivated.

The PRI's main rival for the presidency is Josefina Vázquez Mota of the PAN. During the first weeks of her primary election campaign,<sup>25</sup> Vázquez Mota was unclear on security policy, positioning herself somewhere between her opponents Ernesto Cordero, who clearly defended Calderón's strategy, and Santiago Creel, who openly criticized it and talked about a "new agenda." Gradually, Vázquez Mota started to talk of a second phase in the security agenda that—in line with Cordero's initial proposal—would build on the work of President Calderón. The goal in this second phase would be to strengthen the state, with clear rules and with institutions that are strong enough to challenge impunity and corruption and to withstand the pressures of daily politics and personal whims.

A key measure in her agenda will be to reform the federal system. At the moment, she argues, the system gives economic and political power to the states without additional responsibilities. Clear rules are needed not only in the field of security, but in general. She supports Calderón's efforts to unify the police corps (the *Mando Único* bill). But she also calls for strengthening *ministerios públicos* (public

prosecutions offices)—which Calderón did little to modernize—and giving them constitutional authority. In her view the public is not reassured by the presence of troops on the streets in the face of weak police institutions. Much like the other presidential candidates, Vázquez Mota argues that a return of the army to its barracks will depend on the agreements achieved with the states to increase their law enforcement responsibilities and capabilities. She met with generals and admirals from Mexico's armed forces the week before the PAN primary election, to thank them for their support and assure them that they could count on her support and commitment.<sup>26</sup>

Among Vázquez Mota's specific public security policies are the proposals to centralize criminal police under a single institution with all of the faculties for fighting crime (under the interior ministry), to create citizen councils within each police corps, to transform agencies of the public prosecutions offices into victim support centers, to give full investigative powers to the federal police, to reinstall people's juries, and to involve the public in the criminal prosecution process.<sup>27</sup> She has called for life sentences for "anyone who makes deals with crime, including politicians" and says the government will not consider negotiating with criminal organizations. She has also voiced her commitment to work on a security agenda with the United States and in particular to address the issue of weapons sales.<sup>28</sup>

The third of the presidential candidates, for the left-wing *Coalición Movimiento Progresista* (Progressive Coalition Movement, PRD-PT-Convergencia), is Andrés Manuel López Obrador. He has sought to differentiate his message from that of his 2006 candidacy by appearing less combative and more conciliatory. In his first Internet message of 2012, López Obrador wrote: "We need to calm the country, and we will achieve this with three short ideas: honesty, justice, and love."<sup>29</sup>

López Obrador presented his project for public security in Durango on January 31, 2012, where he described violence and unemployment as the biggest problems facing Mexico today.<sup>30</sup> He summarized his proposal as "hugs, not bullets"<sup>31</sup> and indicated that he would gradually remove the army and navy from the streets to prevent the further decline of these important institutions. He also said he would create a *Mando Único* and a new, efficient, disciplined, and honest federal police force that would gradually take charge of tasks currently undertaken by the army and navy. López Obrador was emphatic in affirming that "we will not continue to undermine the army, which should only be used for tasks established in the constitution."

In the same presentation López Obrador also proposed creating a “national health system to treat addiction; we need to give the topic a different focus, not criminalize but rather see this issue as a public health problem; there are thousands of young addicts who are not being treated.” In terms of corruption, López Obrador’s narrative has always been that Mexico’s political class has become rich through public power and that more honest politicians are needed.

Regardless of the candidates’ heated rhetoric, the three political platforms have a lot in common in terms of the fight against crime. All favor not negotiating with organized crime, bolstering law enforcement institutions, and scaling back the military. Two of the parties have nominated candidates with strong connections to crime-fighting to head the government of the Federal District of Mexico City. The PAN candidate is a civil society activist and mother of a kidnapping victim, Isabel Miranda de Wallace, who is not from the party’s ranks. The PRD candidate, Miguel Ángel Mancera, was general attorney for the Federal District from 2008 to 2012. In Mexico City and in Mexico in general, the elections will be clearly dominated by the security agenda.

### **Concluding Remarks**

These conclusions were written almost a year after the London School of Economics (LSE) conference that was the foundation for this book. The year 2011 was one of light and shade in the fight against organized crime in Mexico. For many, Calderón’s efforts on public security have been too costly in terms of drug-related killings. No one can deny, however, that as the security analyst Joaquín Villalobos said at the LSE in March 2011, violence itself has become an agent of change that has forced the Mexican state to transform. It is positive that the fight against violence and insecurity has become a priority on the national agenda. It is also positive that the fight against crime is increasingly viewed—including by all presidential candidates—through the lens of institutional development of law enforcement and justice institutions not only at the federal level, but at the state and municipal levels as well.

In the past few years, the Mexican government has significantly increased its security budget, has improved information systems, and has strengthened the federal police force. In structural terms, the theme of insecurity has shined a light on the need to address profound social inequalities and to integrate young people into society. A few early signs of a reduction in violence at the national level since

2006 emerged in the first months of 2012. There are also indications of improvements in coordination on security among the different levels of government in some states. Criminal organizations have lost power to co-opt significant portions of the Mexican state, and gradually the institutional intelligence systems are being strengthened.

Perhaps the most positive development is the growing social movement demanding improved security levels in the country and increased public scrutiny over the fight against crime, which should inspire a more proactive and responsible attitude from the authorities at all levels. The three presidential candidates have proposed sensible adjustments in security policy, including a gradual demilitarization of the problem, though their ability to implement change will depend on the composition of the next legislature and on strides made in curbing corruption. The future is uncertain, and the security challenges are huge, especially in the face of the 2012 presidential elections, but there is no doubt that Mexico needs to deepen the institutional transformations that have characterized the past few years. In the words of Villalobos, it is less difficult to organize the state so that it can control violence than to organize the criminals to be peaceful.

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