

THE INSTITUTIONAL DEFICIENCIES WHICH CAUSE MEXICO'S 95% IMPUNITY RATE

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ABSTRACT: According to reports released by México Evalúa in October of 2021, the current rate of impunity for violent crimes in Mexico is estimated to be 94.8% and this is occurring as the number of homicides and disappearances continues to rise nationwide. To understand how the country remains caught in a perpetual state of extreme violence requires a deeply complex and multi-faceted analysis to determine which specific institutional deficiencies in Mexico might be contributing to the rise and ongoing dominance of organized crime. This article seeks to provide a concise yet broad perspective from which to begin to answer such questions by addressing the problematic development of Mexico's justice system from the adoption of the 1917 Constitution to the present day, the endemic corruption at all levels of government and security institutions, the tactical imbalances between law enforcement and organized crime due to misuse of funding and illegal arms trafficking, and the failed attempts at bilateral cooperation with the US despite the two nations' shared interest in disempowering the drug cartels. This comprehensive overview will provide a foundation from which possible solutions will be examined. These solutions include policy changes related to the relationship between the US and Mexico which could improve bilateral cooperation in combatting crime and corruption despite the recent diplomatic breakdown involving the US Drug Enforcement Agency's arrest and subsequent release of Mexican General Salvador Cienfuegos. Reforms of the justice and law enforcement systems will then be explored which will include proposals that encourage the involvement of international institutions such as the United Nations Committee on Enforced Disappearances and the International Criminal Court.

KEYWORDS: Impunity, organized crime, corruption, forced disappearances, bilateral cooperation.

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RESUMEN: Según informes difundidos por México Evalúa en octubre de 2021, la tasa actual de impunidad por delitos violentos en México se estima en 94.8% en medio de un aumento constante de homicidios y desapariciones a nivel nacional. Una explicación de cómo el país parece estar atrapado en un estado perpetuo de extrema violencia requiere una mirada profundamente compleja y multifacética sobre qué deficiencias institucionales en México podrían ser los factores que más contribuyen al establecimiento y dominio continuo del crimen organizado. Este artículo busca brindar una perspectiva concisa pero amplia desde la cual comenzar a responder tales preguntas al abordar el desarrollo problemático del sistema de justicia de México desde la constitución de 1917 hasta la actualidad, la corrupción endémica en todos los niveles del gobierno, las instituciones de seguridad, los desequilibrios tácticos entre la aplicación de la ley y el crimen organizado debido al mal uso del financiamiento y el tráfico ilegal de armas, fracasó en la cooperación bilateral con los Estados Unidos a pesar de una responsabilidad compartida en el empoderamiento de los cárteles de la droga. Esta descripción general proporciona una base a partir de la cual se exploran las soluciones que incluyen cambios de política en las relaciones entre los Estados Unidos y México que podrían mejorar la cooperación bilateral en la lucha contra el crimen y la corrupción tras la reciente ruptura diplomática que involucró el arresto y la posterior liberación del general mexicano Salvador Cienfuegos por parte de la Agencia Antidrogas de Estados Unidos. Con respecto a una reforma más eficaz del sistema de justicia y la aplicación de la ley, se han propuesto soluciones que involucran a instituciones internacionales como el Comité de las Naciones Unidas contra las Desapariciones Forzadas y la Corte Penal Internacional.

PALABRAS CLAVE: Impunidad, crimen organizado, corrupción, desapariciones forzadas, cooperación bilateral.

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I. INTRODUCTION

Mexico has suffered greatly as the result of the astonishing rise to power of criminal organizations over the past several decades. These groups first began to appear in the 1980s, but violence has increased exponentially across the

country and impunity has reached unprecedented levels following the government's declaration of war on the drug cartels in 2006. Recent reports by México Evalúa estimate the rate of impunity for violent crimes in Mexico to be 94.8%. Meanwhile, clandestine graves containing the remnants of thousands of "disappeared" persons are continuously discovered as the public awaits answers regarding the now infamous Ayotzinapa 43, femicides reach new records, and political assassinations take place in broad daylight as organized crime overpowers vastly underequipped police forces.¹

This violent crime impunity rate of nearly 95% is the result of a complex mixture of innate flaws in the development of Mexico's criminal justice and law enforcement systems, deep-seated institutional corruption, and failed attempts at bilateral cooperation with the US. The extensive and multidimensional nature of such a colossal problem has shared roots in the United States regarding issues such as illicit drug demand, arms sales, and corrupt actors.

Nevertheless, this paper will primarily employ a Mexican institutional perspective with only a limited acknowledgment of the effects resulting specifically from Mexico's relationship with its northern neighbor. This paper will first investigate the institutional weaknesses that have led to such an extreme impunity rate by providing a review of the problematic development of Mexico's judicial system and law enforcement institutions since the adoption of the 1917 Constitution.

From this comprehensive perspective, the continued efforts to fight corruption and the failure of bilateral cooperation can then be adequately analyzed, these being perhaps the two greatest obstacles facing in modern Mexico's struggle with organized crime. Potential solutions involving a more thorough reform of the justice system, as well as improved collaboration with the relevant agencies of the United States government, the United Nations Committee on Forced Disappearances (UNCED), and the International Criminal Court (ICC), can also be considered.

II. DEFICIENCIES IN JUSTICE SYSTEM DEVELOPMENT: 1917 CONSTITUTION – PRESENT

To understand the current problematic state of Mexico's justice system, a review of its development is necessary. A wealth of literature on modern Mexico explains how the problematic development of both its court and law enforcement systems, combined with endemic corruption and the resultant culture of distrust, has given birth to a grossly ineffective justice system. The problem begins with the 1917 Constitution. The enactment of the Constitu-

¹ For extensive data on Mexican crime and its justice system, see MÉXICO EVALÚA, *HALLAZGOS 2020: EVALUACIÓN DEL SISTEMA DE JUSTICIA PENAL EN MÉXICO*, (Oct. 5, 2021), <https://www.mexico-evalua.org/hallazgos-2020-evaluacion-del-sistema-de-justicia-penal-en-mexico>.

tion following the end of the Mexican Revolution in February of 1917 was the first stepping-stone in the development of the modern Mexican government. At the time of the Constitution's adoption, Mexico continued to operate under an inquisitorial court system inherited from Spain in which judges held significant power to control both the investigations and the outcomes of criminal cases. Although the writers of the Constitution of 1917 openly called for an accusatorial system more conducive to fair trials, the idea did not take root, and the updated criminal codes of 1931 only further hindered progress. The new codes produced a hybridization of the inquisitorial and accusatorial models but generally maintained its historical, inquisitorial structure and included accusatorial procedures only near the end of court proceedings, which served as a merely symbolic gesture. As a result, the accused, at trial, was still subject to arbitrary rulings by a judge or prosecutor and faced "an opposing party rather than a neutral and detached magistrate."²

This system is still the norm across Mexico today and has led to a situation where public prosecutors hold near absolute power over court decisions. As Hine-Ramsberger explains, "What sets Mexico's procedural system apart from the majority of modern legal systems is the almost plenary power and expansive role of the public prosecutor," as they dominate court proceedings generally unchallenged by the defense and have "unfettered freedom to collect and admit into trial any evidence he or she wishes." Perhaps unsurprisingly, evidence is obtained without independent oversight.³ This system has been identified as a prime facilitator of the continued rise of organized crime since securing the compliance of the relatively few actors who hold power over court outcomes is the only obstacle preventing criminals from going unpunished. Years after President Calderón proposed reforms of Mexico's court system in 2008, reforms which have progressed at a glacial pace, the current system still "leaves prosecutors (and police, judges, customs officials, and prison administrators) susceptible to bribery and corruption."⁴

The institutional infestation of corruption to such levels is due to the rise in power and influence of drug cartels following the breakdown of the long-term "working relationship" they had enjoyed with the Partido Revolucionario Institucional (PRI), which had held one-party rule in Mexico for over 70 years. Throughout this "relationship," which Hine-Ramsberger refers to as a "live and let live approach," the PRI had practiced a strategy of "containment" over confrontation with organized crime. This created an environment of relative peace in terms of the relationship between the cartels, the government, and the public. However, the storm to come was developing as

² William Hine-Ramsberger, *Drug Violence and Constitutional Revisions: Mexico's 2008 Criminal Justice Reform and the Formation of Rule of Law*, 37 BROOKLYN JOURNAL OF INTERNATIONAL LAW, 291, 294, (2011), <https://heinonline.org/HOL/P?h=hein.journals/bjil37&i=293>.

³ *Id.* at 296.

⁴ *Id.* at 299.

the infrastructural capabilities of drug cartels were allowed to grow exponentially during this time.⁵ This period of relative peace was shattered soon after the PRI's reign ended in 2001 and President Felipe Calderón declared war against organized crime in 2006, which led to an enormous rise in violence across the country as heavily armed cartels faced off against both government forces and rival cartels alike.

As Mexico's streets became bloody warzones following Calderón's declaration of war against the cartels, the judicial reforms introduced in 2008 sought to reinforce the policy of direct confrontation with a systematic revitalization. These reforms called for more accusatorial methods comparable to the US system featuring the addition of oral court proceedings and greater courtroom prerogatives for the accused. The President introduced these changes, along with a requirement that all Mexican states implement the new measures by 2016, as a means to directly combat organized crime and corruption, and he optimistically asserted that these changes would restore the rule of law.⁶ However, progress has been hindered by a mixture of factors. Mexico's economic struggles inhibited implementation of the reforms and, as the 2016 deadline approached, state governors complained of inadequate allocation of federal funds to successfully carry out the necessary changes which included the construction of courtrooms and other costly institutional changes. One aspect of the institutional change envisioned included the gargantuan task of creating a new wave of sufficiently trained lawyers capable of operating within a more intricate court system. This required a "parallel reform of the Mexican legal education system" to compliment that of the courts.⁷ Many governors have also claimed that these setbacks are compounded by a lack of political will to change a system since the beneficiaries of rampant corruption profit from the status quo and will continue to do so until more federal support is given.

Perhaps the most daunting setback has been the violent backlash from the cartels in the form of "special victim" assassinations which target judges, journalists, and law enforcement. On many occasions, the victim is approached by a lawyer on behalf of a criminal organization and is directly threatened to comply with their demands. In some cases, threats go further than targeting a single individual. In 2009, for example, Calderón's government had made significant advances in exposing corrupt officials who had been colluding with the notorious drug cartel known as La Familia Michoacana. Judicial officials in Michoacán then received a simple yet ominous letter declaring "La Familia is watching you."⁸ This dark cloud of fear which enshrouds the judi-

⁵ *Id.* at 301.

⁶ *Id.* at 302.

⁷ *Id.* at 312.

⁸ For substantial data sets regarding trends in criminality, justice system development, and tactical weapons deficiencies on a state-by-state level, see S. Schatz & S. Tobias, *State Ineffec-*

cial community has left it in a state aptly described by Schatz and Tobias as “condemned to mediocrity in homicide sentencing to achieve stability” since they have to deal not only with these types of security concerns but the myriad other challenges facing the Mexican judicial system as well. Those who do not bend to the will of organized crime often pay the price. This became clear following the initial announcement of the judicial reforms. For example, *El Universal* reported that “between 2008 and July 2010, various organized crime groups have been responsible for killing ninety-eight members of the Chihuahua State Attorney General’s Office who had received training in the implementation of the procedural reforms.” Such trends arose in state after state.⁹ The ongoing chaos has fostered public distrust in the Mexican court system, which creates yet another obstacle to change since citizens tend to avoid seeking the help of law enforcement, “furthering impunity for perpetrators and incentivizing corrupt practices.”¹⁰

Despite the grim outlook regarding the progress of reform of the court system, it was not entirely a failure from the beginning. In certain outlier states, which for a time showed promise in implementing the changes, rates of homicide sentencing increased significantly when comparing the available data from 2009 to that of 2014/2015. In Chihuahua, the first Mexican state to implement oral court proceedings in 2007, there was an 85% increase in homicide sentencing, which increased the rate of sentencing to 1 out of every 4 homicides compared to only 1 out of 37 in 2009.¹¹ Similar positive trends were seen in notoriously violent states such as Sinaloa, Michoacán, and Mexico’s capital, the Distrito Federal. However, these states were unable to improve upon or even maintain such progress as their court systems eventually struggled to develop rapidly enough to accommodate the rising wave of violent crime across the country. Some states saw homicide rates increase as much as 400-600%.¹² As of 2014, the vast majority of Mexican courts continued using the traditional system and had undergone little or no reform at all, and those that had were inundated with new cases leaving little chance of success. The entire justice system was facing chronic congestion across the spectrum of criminal processes from the issuing of arrest warrants to trials and sentencing. This limited court capacity left some cases delayed for years and caused critical issues such as the assassination of journalists to be virtually ignored. The dismissal of one particular case involving the murder of

tiveness in Detering Organized Crime Style Homicide in Mexico: A Vicious Cycle, 76 *CRIME, LAW, AND SOCIAL CHANGE*, (2021), <https://doi.org/10.1007/s10611-021-09946-1>.

⁹ Evangelina Hernández, *Narcoguerra rebasa a la reforma judicial*, *EL UNIVERSAL*, (July 9, 2010), <https://archivo.eluniversal.com.mx/primera/35257.html>.

¹⁰ Hine-Ramsberger, *supra* note 2, at 300.

¹¹ Schatz and Tobias, *supra* note 8.

¹² *Id.*

three police chiefs due to “deficient labor” added to the climate of distrust both from the public and police officers who felt unprotected.¹³

Mexican law enforcement systems which are meant to share a symbiotic partnership with the courts have their own distinct deficiencies. Perhaps the greatest challenge is the tactical disparity between underequipped local police units and drug cartels who are kept in constant supply of new weaponry via the “iron river” of illegal arms trafficking. This illicit flow of weapons, a large percentage of which comes from the US, helps create organized crime’s de facto armies. Heavy automatic weapons, military grade explosives, RPGs, and IAFVs (Improvised Armored Fighting Vehicles) are readily available whereas municipal police forces are left relatively powerless due to the scant supply of weapons, extremely poor-quality body armor, and a lack of personnel in general.¹⁴ Municipal police units have taken the brunt of the criticism due to cartel activity being “highly localized” and “geographically specific,” generally taking place in only 54% of Mexico’s municipalities.¹⁵ This geographic containment does appear to aid law enforcement in combatting organized crime since the military has the ability to intervene and focus on certain regions for any period of time deemed necessary. However, over the long-term, this tactic becomes a country-wide game of whack-a-mole and neither law enforcement nor the military have the infrastructure to effectively combat the cartels on a national level.

There was some hope that a program called Fortaseg (Programa de Fortalecimiento de la Seguridad) would be able to provide a solution for these under-equipped municipal police forces. Fortaseg, which began in 2016, is a government-subsidized program designed to direct funds to municipalities specifically in need concerning this issue. However, this program appears to have been an overall failure for two principal reasons. First, municipalities have found it extremely difficult to obtain approval for funding. There are 2,448 municipalities in Mexico, yet funding is limited to 206 of these, and each applicant must meet a “high intensity” classification regarding crime rates in order to be awarded funding.¹⁶ These highly selective restrictions also feature a bias that privileges the most populated municipalities despite the fact that there are significantly higher homicide rates in other less populated areas. Second, mismanagement and corruption appear to be preventing any progress in municipalities which are granted funding. Local police have accused officials of funneling Fortaseg funds into their own pockets. Government audits appear to support these claims, concluding that 44.5% of Fortaseg funds have been spent on “personal and technical services” and “other purchases/expenses.” Some municipal police units face armed criminals with

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

no weapons whatsoever, while others report the disappearance of weapons from caches with restricted access (likely due to corrupt suppliers to cartels), shipments of supplies that never arrive, and a severe lack of ammunition, inferior armor, and the selling of reconditioned vehicles as new vehicles. These complaints were found to be common grievances nationwide.¹⁷ Law enforcement and the military are outgunned and outmanned while at the same time both are suffering from debilitating levels of corruption.

Another flaw in Mexico's law enforcement system post-2006 has been its aggressive, militarized response which has brought with it a litany of human rights abuses.¹⁸ Such conduct is contrary to, and ultimately undermines, the rule of law and is a principal driver of the endemic distrust of law enforcement by the general population in Mexico. This generalized disengagement remains a notable factor fostering impunity. Various human rights commissions have investigated numerous claims of arbitrary imprisonment and use of excessive force, as well as thousands of reports of torture.¹⁹ Although major institutions such as the Inter-American Commission on Human Rights (IACHR) have called on the Mexican government to take immediate remedial action, these abuses have gone largely unacknowledged and a deep rift between the public and law enforcement prevails.

III. FAILED BILATERAL COOPERATION AND CONTINUED CORRUPTION

In 2008, a security agreement entitled the Merida Initiative was established between the US, Mexico, and the Central American nations with the goal of combatting organized crime in the region. The following year, the US Department of Justice described Mexican drug trafficking as “the greatest organized crime threat to the United States.”²⁰ This raises the question as to why so little progress has been made in combatting organized crime when Mexico shares common cause with its powerful northern neighbor on this issue. Although the Merida Initiative explicitly highlighted the importance of targeting money laundering, relatively little funding was allocated to specifically target money laundering, and funding for various other goals of the initiative appear to have lacked any focused approach as well.²¹ In addition to the initiative's weak start, modern, sophisticated methods of moving of

¹⁷ *Id.*

¹⁸ Paula I. Rosa Rodriguez, *Criminal Justice, Due Process and the Rule of Law in Mexico*, 12 MEXICAN LAW REVIEW, 147, 153, (Jan. 2019), <http://dx.doi.org/10.22201/ijj.24485306e.2019.1.13131>.

¹⁹ *Id.* at 168.

²⁰ Eric L. Olson, et al., *Shared Responsibility: US – Mexico Policy Options for Confronting Organized Crime*, WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS, MEXICO INSTITUTE, 141 (Oct. 2010).

²¹ *Id.* at 142.

funds obtained via the drug trade have worked in favor of organized crime and exacerbated the problem. As the power of Mexican organized crime has eclipsed that of the Colombian cartels further south, there is less of a need to move cash into and out of Mexico and the rapid advancements in technology which obviate the need for the physical transport of bulk cash across borders are an advantage for organized crime. Meanwhile, on the northern side of the border, there is no centralized US entity which collects and consolidates information regarding money seizures by its various law enforcement institutions, so the data which could be used to advance the initiative in a substantial manner is simply not available.²² In addition, the US government has not been able to devise any effective method of inhibiting the flow of contraband transported by vehicle due to the overwhelming amount of traffic at US-Mexico border crossings.²³ The Merida Initiative has essentially been ineffective since its inception and any progress that has been made has been overshadowed by more disconcerting issues in US-Mexico collaboration efforts resulting from corruption.

Mexico's current president, Andrés Manuel López Obrador (AMLO), has appeared to make a genuine attempt at fulfilling his campaign promise to crack down on corruption, however, any sign of progress has yet to be seen, and the sincerity of his efforts have been subject to a high level of scrutiny. AMLO has utilized Mexico's Financial Intelligence Unit (FIU) to a far greater degree than his predecessors had in order to combat money laundering (one of organized crime's greatest tools) and he has not shied away from targeting high-level corruption. After his first year in office, corruption-linked bank accounts blocked by the FIU had increased by 1,400%, and the number of pesos frozen had increased by more than 5,500%. AMLO's government also introduced reforms which allowed for "non-conviction-based asset forfeiture" which has proven to be a productive tool against corruption.²⁴ Despite the impressive numbers, this apparent progress is no significant detriment to the colossal system of organized crime. Additionally, these anti-money laundering efforts are plagued by a lack of institutional cooperation (frozen accounts are often freed by court rulings), inefficient monitoring of and adaptation to progressing technology, and inadequate investigation of "threats through nonfinancial businesses."²⁵ AMLO has also faced harsh criticism for appearing to have personal biases regarding targeted corruption. His administration boasts of acting against high-profile corruption, but there is a notable lack of action against his own associates or political allies, and he turns a blind

²² *Id.* at 144.

²³ *Id.* at 148.

²⁴ Andres Martinez Fernandez, *Money Laundering and Corruption in Mexico: Confronting Threats to Prosperity, Security, and the US – Mexico Relationship*, AMERICAN ENTERPRISE INSTITUTE, 4, (Feb. 2021), <http://www.jstor.org/stable/resrep30205>.

²⁵ *Id.* at 4.

eye to accusations against his family members.²⁶ In addition, there has been a failure to include any part of the military in AMLO's anti-corruption efforts. This was highlighted by the controversial arrest of General Salvador Cienfuegos by the US Drug Enforcement Administration (DEA). Following his arrest, AMLO's administration took a hard stance in his defense and successfully negotiated his release after threatening to disallow any future DEA operations in Mexico. Furthermore, DEA agents in Mexico no longer have diplomatic immunity and must share any intelligence information they obtain with Mexican officials.²⁷ These types of diplomatic breakdowns impede bilateral cooperation between Mexico and the United States which is a crucial factor in combatting organized crime. Cases such as the General Cienfuegos debacle not only exacerbate the distrust between US and Mexican officials, but also demonstrate an attitude of tolerance toward organized crime which further promotes impunity.

IV. PROPOSED SOLUTIONS

Experts and analysts of Mexico's domestic and international policies have posited some viable solutions to these problems. Regarding bilateral cooperation with the US, there are institutional changes which, if implemented in both countries, might mend the damaged diplomatic relationship, and greatly improve the efficacy of efforts to combat organized crime and corruption on both sides of the border. Although this paper's analysis proceeds from a Mexican institutional perspective, the Cienfuegos incident underscores how AMLO's reluctance to include military personnel in his sworn fight against high-profile corruption puts an impenetrable roadblock in the path of progress. As a result, the US needs to be the catalyst for progress until either new leadership comes to power in Mexico or unexpected changes in policy take place. The US should take action to enhance the capabilities of the DEA, the Department of Justice, and the Treasury Department to fight illicit drug demand, cash smuggling, and money laundering by providing more targeted funding to operations such as the Financial Crimes Enforcement Network. Such action could inspire Mexican officials to seek a more cooperative relationship with the US due to its display of genuine commitment to the issue.²⁸ With actions such as these providing a starting point for the improvement of relations between the two nations, new specialized bilateral task forces could be created to facilitate stronger cooperation and to address common problems such as the need for more effective information sharing mechanisms and more coordination in the setting of priorities. Such efforts would, of course,

²⁶ *Id.* at 19.

²⁷ *Id.* at 11.

²⁸ *Id.* at 22.

face the ever-present factor hindering progress, which is corruption at all levels. On the US side, increased sanctions on Mexican officials would not only disable the cycle of judicial corruption that frees accounts previously frozen by Mexico's FIU, but could also target military and security entities which are being ignored by the current administration.²⁹ In terms of Mexico's contribution, a broad and depoliticized anti-corruption effort is necessary. AMLO's administration needs to abandon its apparent preference for excluding political allies and the security sector from investigation. This can be achieved by giving institutions such as the FIU greater independence and reversing the recent decisions antagonistic to DEA cooperation. In addition, although AMLO's fixation on high profile corruption is necessary, efforts to combat middle and low-level corruption have been neglected.³⁰ These lower levels of corruption extend throughout the country and are the foundation of the national problem. Eliminating such corruption will require better communication and cooperation between local, state, and federal institutions. If steps such as these are undertaken, the level of cooperation between the US and Mexico could surpass anything achieved previously.

In addition to reinvigorating bilateral cooperation with the US, other solutions proposing intervention by international institutions hold some hope that Mexico might be nudged into taking legitimate steps in combatting organized crime and corruption. One set of solutions seeks to reform Mexico's policies which have permitted the ongoing impunity in the area of forced disappearances. Mexico has a dark history of forced disappearances. Amid the civil strife of the 1960s, forced disappearances were perpetrated by the military. Disappearances began to increase even more with the rise of organized crime, with a particularly dramatic increase occurring after the onset of the Drug War in 2006. "Forced disappearances" are distinct from cases of "missing persons" in that the disappearance is carried out by state actors or outside agents with the "authorization, support, or acquiescence of the state."³¹ Data available concerning the staggering (and still increasing) number of disappearances in Mexico contain little information as to whether a case can be considered "forced," but the numbers do offer some implications. As of 2018, the number of missing persons in the country had reached 34,656, yet in the previous year only 732 investigations had been opened and only 9 convictions had resulted from these cases. The IACHR had already declared disappearances to be at "critical levels."³² As of May 2022, the official number of disappearances recorded since 1964 had surpassed

²⁹ *Id.* at 22.

³⁰ *Id.* at 24.

³¹ J. A. Guevara Bermúdez, & L. G. Chávez Vargas, *La impunidad en el contexto de la desaparición forzada en México*, 14 EUNOMÍA. REVISTA EN LA CULTURA DE LA LEGALIDAD, 162, 163, (Apr. 2018), <https://doi.org/10.20318/eunomia.2018.4161>.

³² *Id.* at 165.

100,000, with the majority of these taking place following President Calderón's War on Drugs.³³ While these numbers are already alarmingly high, Mexico's legal system is susceptible to underreporting in this area which is yet another factor contributing to the country's high level of impunity. The National Survey of Victimization and Perception of Public Security estimates unreported crimes to be at 93%, citing general distrust of law enforcement as the cause. For cases that are reported, persons making the report are typically asked for the context and cause of the disappearance that many cannot provide, and this further contributes to underreporting.³⁴ At the institutional level, the management of cases of reported disappearances is delayed by the aforementioned congestion within Mexico's judicial system. Perhaps the most substantial factor, however, is the law itself, which grants virtual immunity to the military. Mexico's military codes permit military personnel to carry out unrestricted and undefined activities under the guise of "internal security" which are entitled to confidentiality.³⁵

In 2016, Mexico created a prosecutor's office independent from the executive branch in an attempt to shield prosecutors from corrupt influences. While this does offer some hope for progress, Guevara explains that civil servants continue to call for far more action such as the demilitarization of public security and specifically defining the operational limits of the military. This is necessary since the military has been the primary offender regarding abuses involving excessive force, arbitrary detentions, withholding of evidence, and forced disappearances.³⁶ In addition to these measures, Guevara asserts that the only hope for lasting change is international oversight similar to the moderately successful Comisión Internacional contra la Impunidad en Guatemala (CICIG). An example of this type of oversight occurred amid the increased scrutiny of Mexico's justice system in the aftermath of the forced disappearance of 43 students in the city of Iguala. The United Nations Committee on Enforced Disappearances (UNCED) provided Mexico with a set of guidelines to address its seemingly insurmountable level of corruption and impunity. The recommendations consisted of the following: (i) adopt a general law regulating and facilitating the search for victims as well as the prevention, investigation, and prosecution of the act at both the federal and state levels; (ii) create and maintain a national register with comprehensive statistics regarding victims of enforced disappearance; (iii) reform the federal and state criminal codes so that they uniformly recognize the crime as autonomous from others and provide a definition in accordance with the International Convention on Enforced Disappearances; (iv) guarantee both (a)

³³ Vanessa Buschschlüter, *Mexico Disappearances Reach Record High of 100,000 Amid Impunity*, BBC, (May 17, 2002), <https://www.bbc.com/news/world-latin-america-61477704>.

³⁴ Guevara, *supra* note 31, at 169.

³⁵ *Id.* at 170.

³⁶ *Id.* at 171.

that all state entities or agents that could have been involved in a disappearance are investigated and (b) that those members of civil or military security forces that could have been involved be excluded from participating in such investigations, in order to ensure that Mexican officials conduct exhaustive and impartial investigations.³⁷ Saenz explains that there is a general consensus that implementation of these guidelines, complimented by continued US extradition of drug cartel leaders and prosecution of high-profile cases of corruption, could be a true catalyst for change in Mexico.

Direct involvement of the International Criminal Court (ICC) and its Office of the Prosecutor (OTP) could put additional pressure on Mexico to improve its justice system. Given the dire levels of corruption and forced disappearances in Mexico, a preliminary investigation of these problems would almost certainly lead to a full intervention by the ICC and would pressure Mexican officials to seek legitimate reform in the justice and public security systems, dissuade them from protecting corrupt actors, and likely uncover information regarding unresolved cases of forced disappearances.³⁸ Due to the corrupt nature of Mexico's government, it is extremely unlikely to request or welcome an initial examination by the OTP, and such external involvement has been resisted in the past. Nevertheless, Mexico has been subject to the jurisdiction of the ICC since it ratified the Rome Statute in 2005, thus, the ICC could assert its authority in Mexico with the full support of international law even without such a request. Widespread pleas for direct involvement by entities such as the ICC increase the likelihood of a self-initiated investigation by the OTP or a request for intervention by the United Nations Security Council. While this remains a reason for hope, the complex procedural requirements which must be fulfilled before a full investigation can occur present another formidable challenge.³⁹ Given Mexico's current chaotic situation, the mere presence of the OTP in Mexico could lead to dramatic improvements for the people of Mexico even if a full ICC investigation were never initiated. Saenz explains that the OTP has tools and resources which could put considerable pressure on government officials even before a full ICC investigation has commenced since opposition to reforms proposed by the OTP would be perceived as an indicator of possible corruption. In addition, the OTP would likely make use of the work previously done by human rights organizations and other NGOs which would add more gravity and credibility to their claims and enhance the legitimacy of these organizations. The powerful influence of the OTP's presence in the country might inspire

³⁷ Rodolfo D. Saenz, *Confronting Mexico's Enforced Disappearance Monsters: How the ICC Can Contribute to the Process of Realizing Criminal Justice Reform in Mexico*, 50 VANDERBILT JOURNAL OF INTERNATIONAL LAW, 45, 53 (January 2017), <https://heinonline.org/HOL/Page?handle=hein.journals/vantl50&collection=usjournals&id=55&startid=55&endit=122>.

³⁸ *Id.* at 77.

³⁹ *Id.* at 77.

other influential organizations to join the effort to pressure the Mexican government to implement genuine reform.⁴⁰

V. CONCLUSION

As mentioned above, data compiled by México Evalúa currently estimates the rate of impunity for violent crimes in Mexico to be 94.8%. Investigation into the causes of such a high impunity rate has led to an abundance of literature on the subject. The sources referenced in this review provide a foundation for identifying and understanding the set of institutional deficiencies inherent in Mexico's governmental and law enforcement systems that have facilitated such a deep-seated political culture of corruption and impunity.

Although literature on the subject is plentiful, especially following the spike in violence after the initiation of Calderón's Drug War in 2006, acquiring consistent and up-to-date data appears to be an ongoing challenge. This appears to be the result of the confluence of factors identified in this article which hinders an effective governmental response to the problem, and also suggests why much of the literature cites the work of NGOs and human rights organizations instead of reports produced by the Mexican government itself.

However, experts in law and criminal justice, non-governmental entities, as well as both Mexican and international authorities, have produced source material which provides reliable assessments of the enduring defects of Mexico's justice system and have recommended specific courses of action which could bring about genuine change in the country.

⁴⁰ *Id.* at 107.