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ARTICLES

The Evolution of Mexico's Pharmaceutical Sector: Legal Reforms, Trade Liberalization and Global Integration (1876-2020)

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Abstract: This article explores the legal and institutional transformation of the Mexican pharmaceutical sector, focusing on the period following Mexico's entrance into the General Agreement on Tariffs and Trade (GATT) in 1986. The shift from protectionist policies to economic liberalization reshaped the regulatory and competitive landscape of the industry. Key legislative reforms, including the 1991 Industrial Property Law, the 1984 General Health Law, and the 1993 Foreign Investment Law, aligned the sector with global trade standards, thus affecting intellectual property, foreign investment, and pharmaceutical production. This article also examines the impact of international agreements like TRIPS, NAFTA, and USMCA. These legal and trade reforms fostered opportunities for multinational corporations, but also created challenges for domestic firms, particularly regarding intellectual property and growing reliance on generic drugs. This research article evaluates how these changes have affected competitiveness in the sector, innovation, and access to medicine, shedding light on the evolving dynamics of Mexico's pharmaceutical industry in a globalized context.
Keywords: Mexican pharmaceutical industry; legal and regulatory frameworks; late 20th century and early 21st Century.

Resumen: Este artículo explora la transformación legal e institucional del sector farmacéutico mexicano, enfocándose en el periodo posterior a la integración de México al Acuerdo General sobre Aranceles Aduaneros y Comercio (GATT) en 1986.

El cambio de políticas proteccionistas a la liberalización económica reconfiguró el panorama regulatorio y competitivo de la industria. Reformas legislativas clave, como la Ley de Propiedad Industrial de 1991, la Ley General de Salud de 1984 y la Ley de Inversión Extranjera de 1993, alinearon al sector con los estándares comerciales globales, afectando la propiedad intelectual, la inversión extranjera y la producción farmacéutica. El estudio también analiza el impacto de acuerdos internacionales como el TRIPS, el TLCAN y el T-MEC. Estas reformas legales y comerciales favorecieron a las corporaciones multinacionales, pero generaron desafíos para las empresas nacionales, especialmente en lo relacionado con la propiedad intelectual y la creciente dependencia de medicamentos genéricos. La investigación evalúa cómo estos cambios afectaron la competitividad, la innovación y el acceso a medicamentos en el contexto globalizado de México.
Palabras clave: industria farmacéutica mexicana; marcos legales y regulatorios; finales del siglo XX y principios del siglo XXI.

I. Introduction

The Mexican pharmaceutical sector has undergone a significant institutional and legal evolution, revealing the complex interplay between national development objectives and pressures of global economic integration. From its early foundations in the 19th century to the structural reforms of the late 20th century, the Mexican pharmaceutical industry has undergone profound transformations driven by changes in political priorities, regulatory frameworks, and international economic trends. Mexico's entry into the General Agreement on Tariffs and Trade (GATT) in 1986 marked a decisive turning point, reshaping the regulatory landscape and the commercial dynamics of the sector, which had previously been characterized by a protectionist approach toward domestic companies aimed at reducing reliance on foreign entities. However, the economic liberalization imposed by this agreement and subsequent trade opening led the country to substantially modify its legislation on intellectual property protection, foreign investment, and pharmaceutical production.

Throughout this process, key reforms were implemented, such as the 1991 Industrial Property Law, the 1984 General Health Law, and the 1993 Foreign Investment Law, which redefined trade relationships and sector competitiveness. These laws, along with international treaties like TRIPS, NAFTA, and USMCA, created a regulatory environment aligned with global standards, but also posed challenges for national actors, who were displaced by large multinational corporations. In a globalized context, foreign companies increased their participation in the Mexican market while national companies faced barriers

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such as intellectual property in the hands of a few and a growing reliance on generic medicines.

This article aims to analyze the legal and trade restructuring processes of the Mexican pharmaceutical sector, focusing on the implications of legislative reforms and international agreements on the growth of this industry. Through a detailed examination of the effects on industrial property, foreign investment, and health regulation, the goal of this article is to understand how these changes have reshaped competitiveness, innovation, and access to medicine in the globalized context. Additionally, this analysis explores how legal reforms, driven by international pressures, have transformed the sector's landscape, presenting new challenges and opportunities for both national companies and multinational corporations operating in Mexico.

II. Institutional and Legal Evolution of the Pharmaceutical Sector in Mexico

1. Evolution and Regulatory Foundations of the Mexican Pharmaceutical Industry

The emergence of the Mexican pharmaceutical industry dates back to the late 19th and early 20th centuries, with notable scientific and research activities taking place during the Porfiriato period (1876-1911).[1] Despite this initial development, a fully-fledged national industry did not come into being until after the Mexican Revolution, when European and US pharmaceutical companies identified opportunities in Mexico and invested in the production and sale of medications.[2]

Significant imports and sales of medications from abroad prompted the Mexican government to regulate the industry. In 1926, the Sanitary Code was issued, followed by the implementation of the Medication Registry in 1927. This regulatory framework categorized medicine dispensaries into pharmacies, drugstores, and similar establishments, regulating the production and sale of pharmaceutical products in the country.[3] However, between 1917 and 1940, the government did not implement short-term or long-term policies to encourage the development of the pharmaceutical industry.[4]

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[1] This term refers to the period of government of President Porfirio Díaz.

[2] Rogelio Godínez Reséndiz & Patricia Aceves Pastrana, *El Surgimiento de la Industria farmacéutica en México*, 45 Rev Mex. Cienc. Farm. 55, 55-68 (2014)

[3] Rogelio Godínez Reséndiz & Patricia Aceves Pastrana, *La Regulación del Medicamento Industrial en México*, 43 Rev. Mex. Cienc. Farm. 49, 49-57 (2012). (In response to rising drug imports, Mexico established pharmaceutical regulations in the 1920s, including the 1926 Sanitary Code and 1927 Medication Registry.)

[4] Godínez Reséndiz & Aceves Pastrana, *El Surgimiento de la Industria Farmacéutica en México*, *supra* note 2, at 55–68.

Before World War II, only finished medication was imported.[5] Between 1945 and 1960, 35 foreign-dependent laboratories and 130 small domestic laboratories were established, manufacturing medications internally with raw materials from abroad. The production of domestic raw materials also started at this time. From 1960 to 1978, the number of laboratories increased to 860, with 70 belonging to international corporations, 10 of national origin, and 780 small laboratories.[6]

In 1977, Soria[7] highlighted Mexico's heavy reliance on foreign capital, with 208 subsidiaries and affiliates in the pharmaceutical industry, which represented 87.1 percent of foreign investment. However, between 1978 and 1987, the number of establishments dropped to 380 laboratories, with 320 manufacturing finished pharmaceutical products and 60 producing chemical-pharmaceutical products. During this period, 76 drew on foreign capital and 304, on national capital.[8]

By 1987, the production of new chemical compounds to be used as raw materials increased, replacing several of the imported ones. This shift contributed to stabilizing the trade balance, considering that in 1982 approximately 80 percent of inputs were imported. By 1985, national production reached 45 percent, reducing imports by 25 percent.[9]

The domestic pharmaceutical industry's dependence on international providers was unmistakable in 1983 when there was a shortage of medications caused by global economic events, which included external imbalances in influential countries, issues related to the Uruguay Round of the GATT, the acceleration of European integration, and the rise of the market economy in Central and Eastern European countries.[10]

In response to the economic crises of the early 1980s, triggered by Mexico's declaration of its inability to repay its debt in 1982, the government sought to strengthen the domestic pharmaceutical sector through various public poli-

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[5] Mario Lieberman Litmanowitz, *Estado Actual de La Industria Farmacéutica En México: Avances y Problemas*, v.29, n.3 Salud Pública de México 249 (1987), http://saludpublica.mx/index.php/spm/article/view/285

[6] Lieberman Litmanowitz, *Estado Actual de la Industria Farmacéutica en México*, *supra* note 5. (Lieberman mentions the growth of the pharmaceutical industry in Mexico between 1945 and 1978, highlighting the increased number of laboratories and the beginning of domestic raw material production.)

[7] Víctor M. Soria, *Estructura y comportamiento de la industria farmacéutica en México. El papel de las empresas transnacionales*, 02 Revista de Ciencias Sociales y Humanidades 111, 111-141 (1980), https://revistaiztapalapa.izt.uam.mx/index.php/izt/article/view/650/799

[8] Lieberman Litmanowitz, *Estado Actual de la Industria Farmacéutica en México*, *supra* note 5 at 250.

[9] Lieberman Litmanowitz, *Estado Actual de la Industria Farmacéutica en México*, *supra* note 5 at 250. (Mexico's shift toward self-sufficiency in pharmaceutical raw materials in the 1980s.)

[10] José M. Pérez de Villarreal, *La Economía Mundial en los Años Ochenta y la Política Económica de los Noventa*, No. 20 ekonomiaz 215, 215 (1991).

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cies aimed at addressing the limited national supply of medications.[11] However, government support for the industry underwent a radical change halfway through the 1982-1988 presidential period, as it grappled with international austerity measures proposed to reverse the effects of the economic crisis.

According to Dussel,[12] the pharmaceutical industry in Mexico exhibited the following characteristics in the last quarter of the 20th century:

- The country produced most medications, with annual domestic and international sales ranging between 700 million and 1.5 billion US dollars.
- There were approximately 300 pharmaceutical laboratories, 75 of which were foreign, dedicated principally to making products primarily for the private market (individual purchases).
- Research and development (R&D) to identify new molecules or create new technology was limited. The national industry and public research centers focused on improving processes or studying the industry, respectively.
- The State largely controlled drug prices, and its policies influenced the sector. Noteworthy measures included granting patents for processes rather than chemical substances, restricting imports of pharma chemicals produced or created domestically, limiting foreign direct investment participation to 49 percent, and requiring participation in public tenders to win bids to supply the public sector. Additionally, the State played a crucial role in creating, fostering, and strengthening the national pharmaceutical industry.

2. Legal and Programmatic Foundations Shaping the Mexican Pharmaceutical Industry: An In-Depth Overview

In order to better understand the state of the Mexican pharmaceutical sector, we need to conduct a critical examination of the laws and programs that define the contextual landscape. Building on Brodovsky's proposals,[13] this analysis encompasses watershed legislation and initiatives, such as the Law of the Transfer of Technology and the Use and Exploitation of Patents and Trademarks (1972), the Foreign Investment Law (1973), the General Health Law (1984), and the Comprehensive Pharmaceutical Industry Development Program (1984). And we will add additional elements below in order to provide a nuanced perspective.

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[11] Lieberman Litmanowitz, *Estado Actual de la Industria Farmacéutica en México*, *supra* note 5 at 250. (In the 1980s, Mexico used public policies to boost its pharmaceutical sector in response to an economic crisis.)

[12] Enrique Dussel Peters, Las industrias farmacéuticas y farmoquímica en México y el Distrito Federal 3-31 (Economic Commission for Latin America and the Caribbean, 1999).

[13] Joan Brodovsky, *La Industria Farmacéutica y Farmacoquímica Mexicana en el Marco Regulatorio de los Años 90*, cepal/ciid 3 (1995), https://repositorio.cepal.org/server/api/core/bitstreams/28e3c8c2-1053-4494-b9cd-4bb31c17b2ce/content

The Law of the Transfer of Technology and the Use and Exploitation of Patents and Trademarks[14] gave the State the ability to scrutinize contracts and licenses, as well as the authority to refuse them if the conditions were unfavorable for the country. This law fueled the development of the national industry, fostering the inclusion of endogenous knowledge and blocking the entry of certain technologies by establishing higher costs or convoluted bureaucratic registration procedures. However, in the 1970s, patent protection in sectors like the pharmaceutical one was eliminated, leaving only process-related patents.

The Law to Promote Mexican Investment and to Regulate Foreign Investment governed foreign capital participation in domestic enterprises. Noteworthy points of this law include the explicit statement that foreigners acquiring any type of property in Mexico are considered nationals in view of those assets.[15] It also stipulated that foreign investment may not exceed forty-nine percent, as a way to prevent the company from being dominated by foreign control[16]Nevertheless, with this law the National Foreign Investment Commission could adjust the investment percentage based on benefits and in the best interests of the national economy, under the stipulated conditions and reservations.

The General Health Law[17] helped boost the production of medications needed to meet the 1984 public health demand. It established a Basic Inventory of Health Sector Inputs to ensure a stable supply of medicine and essential health supplies for the general population. Additionally, it set the foundations for selling quality medication at fair prices.

Miguel de la Madrid's government policy to encourage growth in the pharmaceutical industry was laid out in the National Development Plan (NDP)[18] through programs like the National Program for Industrial Development and Foreign Trade [PRONAFICE] (1982-1988), the National Program for Technological and Scientific Development [PNDTC] (1982-1988), and the Comprehensive Program for the Development of the Pharmaceutical Industry [PIDIF] (1984-1988).

Important events took place between 1982 and 1988, including the 1982 economic crisis that led to the international debt moratorium and paved the way for the liberalization of the national economy. Consequently, there was a

[14] H. Congreso de la Unión de los Estados Unidos Mexicanos, *Ley sobre el Registro de Transferencia de Tecnología y el Uso y Explotación de Patentes y Marcas* [Law of Transfer of Technology and the Use ad Exploitation of Patents and Trademarks], Diario Oficial de la Federación, Dec. 30, 1972 (Mex.).

[15] H. Congreso de la Unión de los Estados Unidos Mexicanos, *Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera* [Law to Promote Mexican Investment and to Regulate Foreign Investment], art. 3, Diario Oficial de la Federación, Mar. 9, 1973 (Mex.).

[16] *Ley para Promover la Inversión Mexicana*, *supra* note 15, art. 5.

[17] *Ley para Promover la Inversión Mexicana*, *supra* note 15, art. 5.

[18] Miguel de la Madrid Hurtado, *Plan Nacional de Desarrollo 1983-1988*, Poder Ejecutivo, 8–92 (1983).

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shortage of medicine and intermediate products, prompting emergency plans to address these issues.[19]

The NDP was concerned about a technological dependency in the production, distribution, and quality control of pharmaceutical products required and consumed in the country. It aimed to strengthen national industry through various programs that promoted development, fortified strategic industries, and met the national demand, with an eye on potential exports after joining the GATT.[20] [21]

PRONAFICE created a technological base and a social, efficient, and competitive State-owned industry. The program strategy gave priority to areas with high final demand, abundant national resources, and the potential to create a demand for capital goods produced domestically and efficiently.[22] According to the presidential report at the time,[23] the program supported measures for tax and financial incentives, increased investment and employment, promoted exports, encouraged small and medium-sized industries, and stimulated industrial decentralization. Companies received technical assistance, tax incentives, and financial resources.

The PNDTC[24] steered the national production apparatus towards prioritized technological areas, including the pharmaceutical sector. It aimed to regulate the flow of imported technology, enhance negotiation capabilities, assimilate and adapt technology-importing companies, increase postgraduate human resource formation, and boost investment in science and technology.

Stemming from the National Development Plan 1983-1988, the Decree for the Promotion and Regulation of the Pharmaceutical Industry was established to meet the needs of the country's industry. Some strategies included a revolving fund managed by Nacional Financiera and other government institutions, as well as purchasing medicine from national pharmaceutical industries, contingent on timely delivery at pre-agreed prices and quality.[25]

At the time, Mexico underwent a critical economic-structural adjustment due to the country's debt from the 1970s and its inability to pay it back in the

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[19] Lieberman Litmanowitz, *Estado Actual de la Industria Farmacéutica en México*, *supra* note 5 at 250. (Between 1982 and 1988, an economic crisis led to a debt moratorium and economic liberalization, causing shortages that required emergency measures.)

[20] *Plan Nacional de Desarrollo 1983-1988*, *supra* note 18, at 88.

[21] Lieberman Litmanowitz, *Estado Actual de la Industria Farmacéutica en México*, *supra* note 5 at 250-251.

[22] *Plan Nacional de Desarrollo 1983-1988*, *supra* note 18, at 90.

[23] Miguel de la Madrid Hurtado, *Informe de Gobierno del Presidente Constitucional de los Estados Unidos Mexicanos*, Diario Oficial de la Federación, 198 (1985).

[24] Miguel de la Madrid Hurtado, *Programa Nacional de Desarrollo Tecnológico y Científico 1984–1988*, Diario Oficial de la Federación, 338–47 (1984).

[25] H. Congreso de la Unión de los Estados Unidos Mexicanos, *Decreto para el Fomento y la Regulación de la Industria Farmacéutica*, Tomo CCCLXXII, No. 39, Diario Oficial de la Federación, Feb. 23, 1984, at 8–14 (Mex.).

1980s because of trade imbalances between industrialized countries.[26] This made it difficult to import the necessary inputs for pharmaceutical manufacturing. Therefore, measures to promote the pharmaceutical industry focused on manufacturing strategic pharmaceutical raw materials (such as beta-lactam antibiotics, fermentation derivatives, and synthetic products) essential for producing the medicines in short supply in the country. The State instituted programs that prioritized companies founded with national capital. However, if these companies lacked the necessary conditions for production, foreign-capital companies would benefit at a secondary level.

As part of the same Decree for the Promotion and Regulation of the Pharmaceutical Industry, the Agreement establishing the Comprehensive Program for the Development of the Pharmaceutical Industry (PIDIF) was published with the following objectives:[27]

- Contribute to national health protection by producing affordable and quality medicines essential for the country's population.
- Plan and propose strategies in the pharmaceutical market to manufacture what society demands.
- Assist the national industry in achieving economic and technological independence from abroad (import substitution).
- Strengthen local pharmaceutical production for national consumption and export.

It should be noted that on May 9, 1990, the presidential decree signed by Carlos Salinas de Gortari abrogating the Decree for the Promotion and Regulation of the Pharmaceutical Industry was published in the Official Gazette.[28] As observed, this institutional framework, originally geared towards promoting domestic production chains in the country, then shifted towards adopting a free market approach with the country's entry into the GATT and later with the North American Free Trade Agreement (NAFTA).

III. Legal and Trade Restructuring of the Mexican Pharmaceutical Sector in the Context of Globalization

In 1986, Mexico entered the fold of the General Agreement on Tariffs and Trade (GATT), a pivotal move that significantly altered the regulatory land-

[26] Pérez de Villarreal, *supra* note 10, at 203-204.

[27] H. Congreso de la Unión de los Estados Unidos Mexicanos, *Decreto para el Fomento y la Regulación de la Industria Farmacéutica*, Tomo CCCLXXII, No. 39, Diario Oficial de la Federación, Feb. 23, 1984, at 13 (Mex.).

[28] H. Congreso de la Unión de los Estados Unidos Mexicanos, *Decreto por el que se extingue la Comisión Intersecretarial de la Industria Farmacéutica*, Diario Oficial de la Federación, Transitorios, art. segundo, May 9, 1990, http://dof.gob.mx/nota_detalle.php?codigo=4654748&fecha=09/05/1990&print=true

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scape governing the pharmaceutical industry. Prior to this, regulations were characterized by the logic of State protectionism for domestic companies, with President Miguel de la Madrid actively seeking to reduce reliance on foreign entities in the pharmaceutical sector, as seen in both the National Development Plan (1983-1988) and the Comprehensive Program for the Development of the Pharmaceutical Industry (1984).

National objectives included not only strengthening the domestic pharmaceutical industry, but also made a concerted effort to foster research and development in the country. However, these goals faced considerable challenges in the wake of Mexico's GATT-acquired trade commitments. As Brodovsky pointed out, "Mexico was forced to reduce its tariffs and eliminate the requirement of prior import permits for virtually all imported products."[29] This shift had a dual impact – while the pharmaceutical chemical industry struggled to compete with external prices due to market opening, it also benefitted from importing raw materials at lower costs, thereby reducing production expenses.[30] The negotiations and commitments Mexico undertook as a GATT member played a pivotal role in shaping a new economic, political, and legal structure within the country while laying the foundations for future trade agreements.

As the narrative unfolds, focusing on the restructuring period of the 1980s and 1990s, key laws proposed by Brodovsky come into sharp focus. In her view, these laws had a profound impact on the pharmaceutical industry during this transformative period, including the 1991 Industrial Property Law [LPI], the 1984 General Health Law, and the 1993 Foreign Investment Law [LIE]. These domestic regulations, alongside significant international agreements such as TRIPS and NAFTA, played a crucial role. The USMCA, signed in 2018, further reshaped the legal and trade landscape, making these legal frameworks central to the ongoing development and analysis presented in this study.

1. The Impact of Legal Frameworks on the Pharmaceutical Landscape

The 1991 Industrial Property Law [LPI] played a decisive role in shaping the dynamics of industrial property rights and trade-related matters in Mexico. This legislation marked a significant turning point by establishing the Mexican Institute of Industrial Property (IMPI) and introducing crucial amendments to the application process, particularly in the realms of trademarks and patents. Noteworthy changes included the extension of the validity period from five to

[29] To provide clarity and maintain linguistic integrity, certain quotations originally in Spanish have been translated into English in the main text. The original Spanish versions are provided in the footnotes for reference purposes

Original Spanish version: "México se vio obligado a reducir sus aranceles y eliminar el requisito de permisos previos de importación para prácticamente todos los productos importados". Brodovsky, *supra note 13, at 5*.

[30] Brodovsky, *supra* note 13, at 5-6.

ten years for trademarks, with an option for renewal, and from ten to twenty years for patents. These modifications, as well as those to licenses, rights transmission, and sanctions, were influenced by international pressures from economically influential nations seeking to fortify commercial expansion, safeguard investments, and maintain control over innovations in the context of heightened trade openness.

The Industrial Property Law grants patent owners the exclusive right to exploit their inventions, creating a temporary monopoly that empowers patent holders to take actions like setting prices. In the pharmaceutical sector, the implications of the 1994 amendments have led to notable disparities between entities that benefited from these changes[31] and those actively engaged in extensive research in the pharmaceutical field. Foreign companies holding or having held pharmaceutical patents possess the means to license or litigate against both national and foreign entities, leveraging their advantageous position in terms of technological, research, and development capabilities. This, in turn, allows them to swiftly increase the number of patent registrations.

The creation of new pharmaceutical patents inherently requires substantial investments in R&D. It should be highlighted that Mexico allocates a mere 0.27 % of its Gross Domestic Product (GDP) to R&D, a significantly lower percentage than countries like the United States, Germany, and Denmark, where it exceeds 2 % across all fields of knowledge, including the pharmaceutical sector.[32] External organizations, such as the Mexican Association of Pharmaceutical Research Industries (AMIIF), play a crucial role in conducting research in the sector.

Finally, there was an important legislative development in 2003, when Article 47b of the Industrial Property Law Regulation was modified in order to require the publication of pharmaceutical patents in a public gazette. This measure aimed to "control the entry of medicines that did not comply with intellectual property requirements."[33] Simultaneously, a reform to Article 167B of the Health Inputs Regulation was enacted on the same date, which further contributed to a comprehensive regulatory framework for pharmaceutical-related issues.

In 1991, a major shift in health legislation took place with the amendment of the 1984 General Health Law, which expanded the role of the health sector in science and technology to protect citizen health. This amendment, specifically to Article 2, introduced scientific and technological research as integral components of the right to health protection. Mexico's inclusion of detailed defini-

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[31] H. Congreso de la Unión de los Estados Unidos Mexicanos, *Ley de Propiedad Industrial* [Industrial Property Law], *Diario Oficial de la Federación* Jun. 3, 1991 (Mex.).

[32] Banco Mundial, *Gasto en investigación y desarrollo (% del PIB)* (2025), https://datos.bancomundial.org/indicador/GB.XPD.RSDV.GD.ZS

[33] Original Spanish version: "Controlar la entrada de medicamentos que no cumplieran con los requisitos de propiedad intelectual." In Jacqueline Arzoz Padrés, *Situación del sector farmacéutico en México*, CENTRO DE ESTUDIOS SOCIALES Y DE OPINIÓN PÚBLICA, 69 (2010).

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tions for medication, drugs, raw materials, additives, and materials, along with the classification of medication based on their preparation and nature, gave legal certainty to the production, distribution, and marketing of pharmaceuticals and bio-pharmaceuticals both nationally and internationally.

Another noteworthy amendment to the General Health Law took place on February 24, 2004. Addressing the issue of a five-year validity of sanitary registration,[34] this reform aimed at ensuring the safety and efficacy of medication. Concurrently, the 2008 elimination of the "plant requirement" for the commercialization and importing of foreign medicines in Mexico stoked policy debates. This significant change, formalized through a Decree amending Articles 168 and 170 of the Health Inputs Regulation, removed the need for a license, certificate, or document granting permission to manufacture medications in the home country. Additionally, the requirement for a legal representative residing in the country,[35] product storage facilities, and the need for quality control and bioequivalence tests were eliminated.[36]

Arguments both for and against surfaced in response to this legislative change. Proponents, primarily institutional, argued that removing the plant requirement would broaden access to generic and patented medicines, fostering competition in the domestic market.[37] This, they contended, would benefit consumers in terms of both price and quality. Notable suppliers from countries like the United States, Germany, France, and Switzerland were expected to benefit from fewer marketing limitations.[38]

On the other side, concerns were raised about less control and surveillance over the quality of external medications. One 2007 proposal to eliminate the plant requirement was countered with arguments intimating that this move might negatively impact investment and jobs in the country.[39] Despite these op-

[34] Jacqueline Arzoz Padrés, *Situación del sector farmacéutico en México*, CENTRO DE ESTUDIOS SOCIALES Y DE OPINIÓN PÚBLICA, 69 (2010).

[35] Misión de México ante la UE, *Lazos Comerciales*, Año 6, No. 8 OFICINA DE REPRESENTACIÓN DE LA SECRETARIA DE ECONOMÍA CENTRO DE ESTUDIOS SOCIALES Y DE OPINIÓN PUBLICA 1–2, (2008).

[36] Antonio Javier Severino, *Lineamientos para una unidad tercero-autorizada de registros sanitarios*, FACULTAD DE ESTUDIOS SUPERIORES ZARAGOZA, 8 (2013).

[37] María de la Luz Lara Méndez et al., *Historia de la regulación farmacéutica*, Año 3, No. 11, REV. COFEPRIS PROTECCIÓN Y SALUD (2018).

[38] Misión de México ante la UE, *Lazos Comerciales*, *supra* note 35, at 2.

[39] One of the opposing views was presented during a plenary session of the Permanent Commission on May 30, 2007, when Senator Gabino Cué Monteagudo submitted a proposed Point of Agreement on the procedure for reforms to the Health Inputs Regulation. With the intention of eliminating the plant requirement, the Senator argued that allowing entry and removing restrictions would reduce control and surveillance over the quality of imported medications. Furthermore, he stated that the plant requirement had increased investment and employment in the country. This matter was duly addressed, and the Presiding Officer instructed the removal of the issue from the records, considering it concluded and informing the proponent of this decision accordingly.

posing viewpoints, the removal of the plant requirement led to the closure of some pharmaceutical plants in Mexico.[40] [41]

The consequences were multifaceted. Some pharmaceutical corporations, like Merck and Roche, initiated plant closures and restructuring plans, which led to substantial job losses.[42] [43] Simultaneously, national consumers faced challenges as medication prices increased, leaving Mexico with the highest average medication prices among OECD member countries in 2009.[44] Notably, the public sector's limited participation in medication-related spending –accounting for only 15%– raised concerns, especially when compared to the OECD average public sector spending of 60%.[45]

The elimination of the plant requirement favored foreign corporations as it allowed them to become distributors, reduce operational costs, and source inputs globally, leaving smaller local suppliers at a disadvantage. Gradually, these health law reforms significantly transformed the pharmaceutical industry in Mexico, resulting in the dominance of transnational pharmaceutical corporations in the national market[46] with key players like Pfizer, Bayer, Merck, and GlaxoSmithKline.

In the late 1990s, Mexico's pharmaceutical industry was a substantial market, boasting an annual revenue of approximately 3.5 billion dollars and 1.8 billion units, as well as a diverse sector distribution. The private sector dominated 80% of the market with brand-name medications, followed by the secondary sector (5% with generic brand medications), and the government sector (15% with essential or generic medications).[47] Foreign Direct Investment (FDI) from 1994 to 1998 averaged 1.75% of total FDI, with notable investments from Bayer, Schering Plough, and Promeco-Boerhinger Ingelheim.[48]

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[40] Senado de la República, *Gaceta: LX/1SPR-23/12990*, Gaceta del Senado (June 27, 2007), https://www.senado.gob.mx/64/gaceta_del_senado/documento/12990.

[41] Arturo Fuentes Ramírez, *Situación del sector farmacéutico en México*, Centro De Estudios Sociales Y De Opinion Publica, 100 (2010).

[42] *Farmacéutica Merck cierra dos plantas en México*, El Economista (July 8, 2010), https://www.eleconomista.com.mx/empresas/Farmaceutica-Merck-cierra-dos-plantas-en-Mexico--20100708-0034.html.

[43] Eulalio Victoria, *Roche cierra planta en Estado de México*, El Financiero (Nov. 11, 2016). https://www.elfinanciero.com.mx/empresas/roche-cierra-planta-en-estado-de-mexico

[44] Victoria, *supra* note 42.

[45] Organisation for Economic Co-operation and Development (OECD), Manual de estadísticas de patentes de la OCDE, (Oficina Española de Patentes y Marcas, 2009).

[46] Rafael Pérez Miranda, Tratado de derecho de la propiedad industrial: patentes, marcas, denominación de origen, obtentores de vegetales, informática: un enfoque de derecho económico, 429 (Editorial Porrúa, Quinta edición) (2011)

[47] Pérez Miranda, *supra* note 46, at 54-55. (The author discusses the structure and economic weight of Mexico's pharmaceutical industry in the late 1990s.)

[48] Pérez Miranda, *supra* note 46, at 54-55.

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By 2004, the pharmaceutical industry had expanded significantly, with 480 raw material production companies employing 62,000 people.[49] Representing 0.2% of the total manufacturing companies and 1.5% of the employed workforce, the industry contributed 1.2% to the annual GDP. Some of the most notable market leaders were Pfizer, Sanofi-Aventis, and Schering Plough, with Pfizer claiming an 8% market share.[50]

The period from 2007 to 2013 witnessed a steady growth in sales value for companies producing medicines for human use, as seen in a 25.6% increase.[51] The industry also generated additional employment, creating 10,757 jobs to total 86,783 jobs in 2013. Despite this growth, the import-export gap widened, reaching 5.59 billion dollars in imports against 1.14 billion dollars in exports by 2014.[52]

In that same year, Mexico had 718 economic units engaged in pharmaceutical production, ranking third nationally in gross value added.[53] National production in 2014 reached 11.43 billion dollars, marking an Average Annual Growth Rate (AAGR) of 5.2% from 2015 to 2020.[54] Mexico became the second-largest market in Latin America in 2015, standing at 0.5% of the national GDP.[55]

Production concentrated mainly in Mexico City, the State of Mexico, and Jalisco, with 75.2% allocated to meet family and export demands.[56] Antibiotics constituted a significant share of national products, accounting for 14.8% of the value and 22.3% in volume.[57] Mexico stands out for its low production costs, which rank among the lowest in the world, after China and India.[58] Despite this, the pharmaceutical sector faced challenges such as a growing trade deficit and companies built on national capital focusing on generic drug manufacturing. Regulated since 1998, generic production plays a crucial role in addressing the high costs of treating chronic-degenerative diseases.[59]

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[49] Sandra Torres Guerra & Juan Pablo Gutiérrez, *Mercado farmacéutico en México: tamaño, valor y concentración*, 26(1) Rev. Panam. Salud Pública, 47–48 (2009).

[50] Torres Guerra & Gutiérrez, *supra* note 49.

[51] Cámara Nacional de la Industria Farmacéutica (CANIFARMA), *Datos económicos, (2025).*

[52] Cámara Nacional de la Industria Farmacéutica (CANIFARMA), *supra* note 51.

[53] Instituto Nacional de Estadística y Geografía, Estadísticas a propósito de la Industria farmacéutica (2016).

[54] Instituto Nacional de Estadística y Geografía, *supra* note 53; Unidad de Inteligencia PROMÉXICO, *Diagnóstico sectorial farmacéutico*, Secretaría de Economía, 4 (2015).

[55] Ingrid Chávez et al., *El Mercado de medicamentos en México: retos y oportunidades*, Instituto Mexicano para la Competitividad A.C., 9, 1-37 (2021).

[56] Instituto Nacional de Estadística y Geografía (INEGI), *supra* note 53, at 11–15.

[57] Instituto Nacional de Estadística y Geografía (INEGI), *supra* note 53, at 11–15.

[58] KPMG, La industria farmacéutica mexicana: industria farmacéutica y de dispositivos médicos, 11 (2018).

[59] René Leyva et al., *Hacia una política farmacéutica integral para México*, 48 Salud Pública De México 104 (2006); Instituto Nacional de Estadística y Geografía (INEGI), *Banco de Información*

By 2017, the industry experienced a reduction in the number of establishments, with 103,013 engaged in producing raw materials and 90 in preparations.[60] The industry's contribution to the GDP increased modestly from 32.36 billion pesos in 2003 to 47.99 billion in 2018, indicating a growth of only 2.3%.[61] This nuanced evolution underscores the complex dynamics and challenges faced by Mexico's pharmaceutical industry at the time.

With regard to the broader context in 1993, this was a decisive year for the transformation of the Mexican pharmaceutical sector in terms of foreign investment. In that year, the Mexican Congress approved a key reform to the Foreign Investment Law [Ley de Inversión Extranjera] (LIE),[62] replacing the 1973 version. This reform included significant changes, such as the modification of Article III of Chapter I, which granted "immigrant" status to foreign investments and favored the resolution of disputes through international agreements, rather than relying solely on national laws. Additionally, Article VII imposed a 49% capital participation limit, with exceptions for certain sectors. It is important to note that the pharmaceutical industry was not included among the exempted sectors, opening the possibility of exceeding this limit.

This alteration in the Foreign Investment Law hinted at a potential increase in foreign capital participation in the pharmaceutical sector, given its non-strategic classification and absence from the list of activities exclusively reserved for the State. This, coupled with the lack of specific regulations and restrictions on the amount of foreign participation, created a favorable environment for international involvement in the pharmaceutical industry.

An assessment of the FDI in Mexico's pharmaceutical scene revealed a diverse range of activities, including raw material production, pharmaceutical preparations, and various ancillary services. Notably, companies engaged in wholesale trade, pharmaceutical product manufacturing, and the wholesale trade of chemicals for the pharmaceutical industry played prominent roles in these categories. The PROMEXICO Business Intelligence Unit[63] pointed out the dominant investors in Mexico's pharmaceutical sector between 2005 and 2015, with the United States leading at 40%, followed by Luxembourg (11%), and Ireland (10%). Major transnational corporations, including Merck, Boehringer Ingelheim, Schering Plough, Bayer, AstraZeneca, Pfizer, and GlaxoSmithKline, employed a substantial workforce of approximately 58,749 people.

Económica (BIE) (2019), available at https://www.inegi.org.mx/app/indicadores/?tm=0&t=1040#tabMCcollapse-Indicadores.

60 Subsecretaría de Competitividad de la Dirección General de Inversión Extranjera, *Inversión Extranjera de Sociedades Mexicanas*, Secretaría de Economía (2019), available at http://www.datos.economia.gob.mx/InversionExtranjeraSociedadesmexicanas.xls.

61 Subsecretaría de Competitividad de la Dirección General de Inversión Extranjera, *supra* note 60.

62 Ley de Inversión Extranjera, 1993, https://www.diputados.gob.mx/LeyesBiblio/ref/lie/LIE_orig_27dic93_ima.pdf

63 Unidad de Inteligencia PROMÉXICO, *supra* note 54, at 5.

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2017 reports projected substantial investments of around forty billion pesos by Merck, Bayer, Pfizer, Roche, Novartis, and Takeda, among others, earmarked for plant expansions, equipment acquisition, and personnel training.[64] The evolving dynamics of foreign investment in Mexico's pharmaceutical industry underscore its adaptability to changing regulations and international economic trends. This, in turn, shapes the sector's growth, technological advancements, and its position in the global pharmaceutical scene.

2. Legal Frameworks and Implications: Navigating International Agreements Applicable to the Pharmaceutical Industry in Mexico

The abovementioned legislative measures and their subsequent reforms have played a pivotal role in establishing the essential requirements for the negotiation and implementation of agreements like TRIPS, NAFTA, and USMCA in Mexico. Although these agreements are grounded in the principle of equal treatment, which implies parity among signatory nations, in practice, their application results in substantial inequality. This is because, in many cases, international treaties grant foreign corporations certain privileges that are not equally applied to national entities, potentially affecting the competitiveness and conditions of local businesses.

In the event of a legal dispute between a foreign corporation and a national entity, or between a company and the State, it will be necessary to resort to a separate tribunal, as stipulated in international agreements and treaties. This dispute resolution process is generally carried out through international tribunals, such as the International Centre for Settlement of Investment Disputes (ICSID), or via arbitration clauses included in treaties like NAFTA and USMCA. In this context, international tribunals have the authority to annul or invalidate provisions of national legislation that are incompatible with the signed agreements, which may place national laws in a secondary position.

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement [65] and the North American Free Trade Agreement (NAFTA)[66] established key provisions that significantly impacted the pharmaceutical industry. Among these was the extension of the patent protection term to twenty years from the date of filing, with no possibility of renewal, as stipulated by international standards.

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[64] Miguel Ángel Pallares Gómez, *Invertirán farmacéuticas 40 mil mdp en México*, El Universal (Feb. 27, 2017), available at https://www.eluniversal.com.mx/articulo/cartera/negocios/2017/02/27/invertiran-farmaceuticas-40-mil-mdp-en-mexico.

[65] World Trade Organization (WTO), *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Annex 1C*, in The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations 341–73 (1994).

[66] North American Free Trade Agreement (NAFTA), Dec. 17, 1992, Can.-Mex.-U.S., entered into force on Jan. 1, 1994.

The TRIPS Agreement also incorporated the figure of compulsory licensing, which is permitted under specific conditions such as national emergencies or anticompetitive practices. However, its implementation has encountered stricter limitations under the NAFTA framework and remains subject to ambiguities under the USMCA. The Bolar exemption, which was added into the Mexican Federal Law for the Protection of Industrial Property in 2020, allows the use of patented inventions for strictly experimental and regulatory purposes before patent expiration, thus facilitating the timely market entry of generic medicines.

While the scope of patentability was not expressly expanded under Mexican law, the pharmaceutical, chemical, and metallurgy sectors, among others, are fully protected. Moreover, under the framework of international trade and investment treaties, patents may be classified as investments, thereby allowing foreign patent holders to access investor-State dispute settlement mechanisms. These mechanisms have raised concerns over potential bias in favor of large multinational corporations. This dual legal framework, where international commercial disputes are resolved through international treaties while administrative or civil disputes are subject to domestic law, creates tensions in the protection of local interests.

Furthermore, the lack of legal clarity as to what constitutes a "national emergency" –a prerequisite for granting compulsory licenses– increases the risk of misuse or legal loopholes that may hinder its effective application. Compounding this issue is the data exclusivity requirement enforced by trade agreements, which restricts early access to critical clinical data needed to register generic medicines.

Guerrero[67] contends that NAFTA primarily benefited the United States and Canada, failing to succeed in attaining the envisioned equal trade footing. Despite the outcomes of previous commitments, the USMCA, ratified in early 2019, brought about changes in intellectual property that favor large pharmaceutical corporations. In 2019, the legislative branches of Mexico ratified the United States-Mexico-Canada Agreement (USMCA),[68] which underwent key amendments through a Protocol of Amendment. In its original form, the agreement included provisions that favored large corporations, especially those in the pharmaceutical industry. Notable among these were the protection of test data and the possibility of granting multiple patents for a single drug, whether based on its active ingredient, formulation, composition, or even new therapeutic uses. Such clauses posed a significant barrier to the entry of generic medicines and thus market competition.

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[67] Rodrigo A. Guerrero Castro & Roberto Gutiérrez R., *Los ADPIC y el TLCAN en la industria farmacéutica mexicana: Un análisis TradeCAN*, n. 35 Economía: teoría y práctica 93–129 (2011).

[68] Agreement Between the United States of America, the United Mexican States, and Canada (USMCA), signed July 1, 2020, entered into force July 1, 2020.

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The Protocol of Amendment removed some of these provisions, including the mandatory ten-year data exclusivity for new biological drugs and the patentability of new uses for known substances. Nevertheless, the Federal Law for the Protection of Industrial Property (LFPPI) [69] [70], enacted in July 2020 as part of Mexico's legal harmonization process with the USMCA and other international treaties, incorporated mechanisms that continue to benefit patent holders. Among these are the expansion of powers granted to the Mexican Institute of Industrial Property (IMPI) to enforce measures in favor of companies, many of which are foreign, and the possibility of extending patent terms by means of administrative delays, which may further postpone the market entry of generics.

One clear example of the critical importance of these legal provisions emerged during the COVID-19 pandemic. The global urgency for access to medicines, vaccines, and treatments requires States to enable local production or to import generic versions. However, in Mexico, the rigidity of the patent protection regime, coupled with the legal requirement for coordination between IMPI and the Federal Commission for the Protection Against Sanitary Risks (COFEPRIS) to safeguard test data, may have limited the State's response to the health emergency.

Furthermore, the implementation of compulsory licenses—a vital mechanism during public health crises—was hindered by the lack of legal clarity regarding what constitutes a "national emergency," a prerequisite for activation under international treaties. This legal ambiguity obstructed timely access to affordable treatments and disproportionately favored the interests of large transnational pharmaceutical companies.

These developments have reignited the debate over the delicate balance between protecting innovation and ensuring equitable access to public health. In countries like Mexico, where the development of a robust generic pharmaceutical industry is essential to safeguard the right to health, it is imperative to review and adjust the legal framework to prevent it from becoming a barrier in future public health emergencies.

IV. Conclusions

The history of the pharmaceutical industry in Mexico from the 1970s to the present is a narrative rich in transformations and adaptations. The emergence of this industry in the late 19th and early 20th centuries laid the foundation for

[69] H. Congreso de la Unión de los Estados Unidos Mexicanos, Ley Federal de Protección a la Propiedad Industrial [Federal Law on the Protection of Industrial Property], July 1, 2020 (Mex.).

[70] H. Congreso de la Unión de los Estados Unidos Mexicanos, *Dictamen de las Comisiones Unidas de Economía, de Salud y de Estudios Legislativos, Segunda con Proyecto de Decreto por el que se expide la Ley Federal de Protección a la Propiedad Industrial y se abroga la Ley de la Propiedad Industrial*, Cámara de Diputados del H. Congreso de la Unión, June 29, 2020.

its growth during the Mexican Revolution. At this time, foreign investment and government regulations were key factors in shaping the industry.

The 1940s marked the beginning of domestic drug production, even if it remained dependent on imported raw materials. From 1960 to 1978, the industry experienced a surge in the number of laboratories, but foreign capital dependence was still high. The early 1980s economic crisis led the government to strengthen the pharmaceutical sector through public policies, although these strategies were significantly altered in response to international measures.

In the late 1980s, Mexico achieved greater autonomy in the production of raw materials, which helped stabilize the trade balance. However, the Mexican pharmaceutical industry was strongly affected by a shortage of medicines in 1983 due to global economic events and trade imbalances. At this point, State regulation played a crucial role in price control, patent granting, import restrictions, and the advancement of the national pharmaceutical industry. However, challenges persisted, such as limited investment in R&D and a lack of focus on creating new molecules.

Mexico's entry into the GATT in 1986 marked a significant shift towards market opening. This process intensified with the signing of the North American Free Trade Agreement (NAFTA) in 1994 and the subsequent US-Mexico-Canada Agreement (USMCA) in 2019. These agreements led to legal and regulatory adjustments that transformed the industry's dynamics.

The 1991 Industrial Property Law and the 1984 General Health Law were fundamental to this process as they extended patent protection and established the Mexican Institute of Industrial Property (IMPI), thus creating a legal framework that favored foreign participation and protected intellectual property rights.

The 1993 Foreign Investment Law opened new possibilities by allowing higher percentages of foreign investment in the pharmaceutical industry, which led to a growing presence of transnational companies in the Mexican market. Despite these changes, the industry faced significant challenges. A lack of investment in R&D persisted while patent regulation became a point of conflict, especially with the ushering in of generic drugs. Ambiguities around compulsory licenses and international trade disputes also negatively impacted the industry.

The implementation of the USMCA in 2020 presented a new framework for data and intellectual property protection, with significant implications for access to generic drugs and the balance between national and international interests. In conclusion, the evolution of the pharmaceutical industry in Mexico has been a complex story of legislative changes, market opening, and persistent challenges. Although greater autonomy in production has been achieved, dependence on foreign investment and strains between intellectual property protection and access to affordable drugs remain critical issues. The industry's future will depend on Mexico's ability to find a sustainable balance between innovation, competition, and equity in access to healthcare.

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Armed Conflicts and Their Impact on Biodiversity Preservation in Colombia: A Legal and Ethical Analysis

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Abstract: This article adopts an analytical approach to examine the environmental impacts of illegal activities and unsustainable exploitation of natural resources in Colombia. Through a deep analysis of the relationship between resource exploitation and violence, it demonstrates how armed conflicts and illegal resource extractions have led to habitat destruction and loss of biodiversity. Case studies, such as the devastating effects of armed conflicts on the Amazon rainforest and the use of chemicals, such as glyphosate to combat illegal crops, provide a comprehensive picture of the crisis. The research results reveal that Colombia's existing laws have the potential to transform the long-standing relationship between human beings and the environment into a more ethical and respectful one. However, to achieve greater effectiveness, the legal framework needs to be strengthened and aligned with contemporary ethical and environmental perspectives. This article also emphasizes that legal reforms may place Colombia as a leader in animal protection and environmental sustainability in Latin America.
Keywords: armed conflicts; biodiversity preservation; Colombia; colombian armed forces.

Resumen: Este artículo adopta un enfoque analítico para examinar los impactos ambientales de las actividades ilegales y la explotación insostenible de los recursos naturales en Colombia. A través de un análisis profundo de la relación entre la explotación de recursos y la violencia, demuestra cómo los conflictos armados y la extracción ilegal de recursos han provocado la destrucción del hábitat y la pérdida de biodiversidad. Estudios de caso, como los efectos devastadores de los conflictos armados en la selva amazónica y el uso de químicos como el glifosato para combatir cultivos ilegales, ofrecen un panorama completo de la crisis. Los hallazgos revelan

que las leyes vigentes en Colombia tienen el potencial de transformar la relación histórica entre los seres humanos y el medio ambiente hacia una más ética y respetuosa. Sin embargo, para lograr una mayor efectividad, el marco legal necesita ser fortalecido y alineado con perspectivas éticas y ambientales contemporáneas. El artículo también enfatiza que las reformas legales podrían posicionar a Colombia como líder en protección animal y sostenibilidad ambiental en América Latina.
Palabras clave: conflictos armados; conservación de la biodiversidad; Colombia; fuerzas armadas de Colombia.

I. Introduction

Colombia, one of the countries with the greatest biodiversity of the world, harbors ecosystems of critical importance for the planet's environmental health. Despite of its rich natural heritage, the country has faced severe ecological challenges, predominantly due to unsustainable exploitation of natural resources and the devastating effects of protracted armed conflicts. These conflicts have intensified deforestation, habitat destruction, and loss of biodiversity, directly linking violence to ecological degradation.[1] The exploitation of natural resources, often unregulated, has fueled illegal activities and deepened socio-economic inequalities, disproportionately affecting rural and indigenous communities that rely on these ecosystems for their livelihoods.[2]

This study investigates the environmental impact of such dynamics, emphasizing the urgent need to recognize biodiversity rights as an integral to the broader framework of justice and the repair of damage. It examines whether the current legal frameworks in Colombia sufficiently address the complex interplay between armed conflict, biodiversity preservation, and the welfare of sentient beings. By focusing on specific cases, such as the use of glyphosate in combating illegal crops and the destruction caused by paramilitary operations, the study highlights how the absence of effective regulations exacerbates environmental and societal harm.

Results reveal that overexploitation of resources has significantly diminished Colombia's biodiversity, raising the pressing question: What are the implications of armed conflict on the rights of sensitive beings and biodiversity? The findings advocate for an ethical and legal evolution that prioritizes the protec-

[1] Carlos A. Sierra et al., *Monitoring Ecological Change During Rapid Socio-Economic and Political Transitions: Colombian Ecosystems in the Post-Conflict Era*, 76 Environmental Science & Policy 40, 41 (2017).

[2] Rebecca M. Bratspies, *Territory is Everything: Afro-Colombian Communities, Human Rights and Illegal Land Grabs*, 4 Colombia Human Rights L. Rev. (2020).

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tion and restoration of natural habitats and species. Recognizing biodiversity rights is not merely a moral imperative but also a strategic necessity for building sustainable communities and addressing long-standing ecological injustices.

The introduction of progressive environmental and animal welfare laws in Colombia marks a step forward. Yet, challenges remain in their implementation and enforcement. A shift from anthropocentric perspectives toward ecocentric and biocentric approaches is vital. This transformation needs a more integrated legal and ethical framework, fostering a harmonious coexistence between human beings, animals, and environment. By embracing such a paradigm, Colombia has the potential to lead Latin America (including Colombia) in to sustainable development and biodiversity preservation, setting a global example in the process.[3]

This article is structured as follows: To address the research question, it first examines the significance of biodiversity in Colombia. Next, it explores the vulnerability of animals and biodiversity during periods of conflict. Following that, the relationship between armed conflict, deforestation, and environmental violence in Colombia is being analyzed. Based on these assessments, this article proposes a transformation in the human relationship with biodiversity and animals, advocating for the adoption of legislation with more empathetic perspectives toward their rights. Finally, a conclusion is presented.

II. The Importance of Biodiversity in Colombia

Colombia is renowned as one of the most biodiverse countries in the world, boasting a wide array of ecosystems ranging from tropical rainforests and Andean highlands to wetlands and coastal mangroves. This remarkable biodiversity holds immense importance, not only for the country itself, but also for global environmental health.[4] Home to about 10% of the planet's species, Colombia's ecosystems serve as critical habitats for countless endemic and endangered species, including jaguars, spectacled bears, and the iconic Andean condor.[5] The vast Amazon rainforest in Colombia plays a vital role in regulating global climate by acting as a carbon sink, absorbing large quantities of CO2, and releasing oxygen.[6] Biodiversity also underpins the livelihoods of millions of Colombians, particularly indigenous communities who have lived in

[3] Laura Ordoñez-Vargas, L. C. Peralta González & Enrique Prieto-Ríos, *An Econcentric Turn in the Transitional Restorative Justice Process in Colombia*, 17 Int´l. J. Of Transitional Justice 107 (2023).

[4] Diego Andrés Villate Daza et al., *Mangrove Forests Evolution and Threats in the Caribbean Sea of Colombia*, 12 Water 1113, 1-3 (2020).

[5] Enrique Arbeláez-Cortés, *Knowledge of Colombian Biodiversity: Published and Indexed*, 22 Biodiversity and Conservation 2875, 3 (2013).

[6] Gloria Dickie, Eight Bears: Mythic Past And Imperiled Future (WW Norton & Company, 1st. ed., 2023).

harmony with nature for centuries. These communities rely on diverse plant and animal species for food, medicine, and cultural practices, by making biodiversity an integral part of their heritage and survival.[7] Furthermore, Colombia's rich biological resources fuel its economy through agriculture, ecotourism, and natural resource extraction.[8] Coffee plantations, fruit farms, and fishing industries benefit directly from the pollinators, fertile soils, and clean water that healthy ecosystems provide.[9] However, Colombia's biodiversity is under constant threat due to deforestation, illegal mining, agricultural expansion, and climate change. Forests are being cleared for cattle ranching and coca cultivation, leading to habitat destruction and species loss. In response, Colombia has taken steps to conserve its biodiversity, such as establishing national parks, promoting sustainable practices, and participating in international agreements like the Convention on Biological Diversity.[10] These efforts aim to strike a balance between development and conservation, ensuring that future generations can inherit a thriving natural environment. The preservation of Colombia's biodiversity is not only a moral and ecological obligation but also a strategic necessity for the country's sustainable development and resilience in the face of environmental challenges.[11]

III. Animals in War: Silent Victims Amidst Human Devastation

Disruptions to ecosystems and the reduction of biodiversity have profound consequences for animals, leading to imbalances that affect both the health of ecosystems and the stability of food chains, particularly during conflicts where such disruptions are exacerbated. The absence of specific legal protections for animals in conflict situations significantly increases their vulnerability, as the lack of clear protective frameworks, which leaves animals exposed to multiple threats, such as habitat destruction, overhunting, and deliberate or unintentional neglect.[12] Without effective legislation, emergency measures to safeguard animals

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[7] Edna Rödig et al., *The Importance of Forest Structure for Carbon Fluxes of the Amazon Rainforest*, 13 Environmental Rsch. Letters 054013, 2 (2018).

[8] Giovanny Garavito et al., *Assessment of Biodiversity Goods for the Sustainable Development of the Chagra in an Indigenous Community of the Colombian Amazon: Local Values of Crops*, 17 J. of Ethnobiology and Ethnomedicine 1, 2-3 (2021).

[9] Diana Ojeda, *Green Pretexts: Ecotourism, Neoliberal Conservation and Land Grabbing in Tayrona National Natural Park, Colombia*, *in* Green Grabbing: A New Appropriation of Nature 369 (Routledge, 1st ed., 2014).

[10] Andrés González-González, Nicola Clerici & Benjamin Quesada, *Growing Mining Contribution to Colombian Deforestation*, 16 Environmental Rsch. Letters 064046, 2, 9 (2021).

[11] John Heath & Hans Binswanger, *Natural Resource Degradation Effects of Poverty and Population Growth Are Largely Policy-Induced: The Case of Colombia*, 1 Environment and Development Economics 65 (1996).

[12] Pablo José Negret et al., *Need for Conservation Planning in Postconflict Colombia*, Conservation

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amidst, the chaos of conflict rarely succeed. As human beings, priorities often overshadow animal welfare concerns. This not only exacerbates the suffering of animals but also jeopardizes the ecosystems that depend on them, as key species—such as pollinators, apex predators, and keystone species crucial for maintaining ecological balance—are either wiped out or displaced from their habitats. Such imbalances trigger cascading effects throughout the food chain, potentially collapsing local agriculture, increasing hunger, and undermining human livelihoods.[13] Moreover, domesticated and wild animals directly affected by war, often find themselves deprived of vital resources such as water, food, or veterinary care, a situation that amplifies widespread mortality and accelerates the extinction of vulnerable species. The lack of specialized and enforceable laws to protect animals during conflicts means that even when humanitarian organizations and institutions seek to provide assistance, they often lack the tools or authority to act effectively. Consequently, animals become not only direct victims of war's violence but also suffer from indirect consequences, such as environmental contamination caused by chemical warfare or the destruction of natural resources, further fueling long-term ecological crises.[14]

Environmental models, both nationally and internationally, require significant advancements in incorporating animal rights into laws and policies, as these rights have been largely overlooked. This issue becomes even more critical in the context of armed conflicts and their devastating effects on biodiversity and animal welfare. As Padila notes, "there is a significant gap in recognizing animal rights within the judicial system and in legal guarantees for their protection".[15] This gap not only results in the systematic neglect of the needs and welfare of animals under normal circumstances but also exposes them to far greater and more extensive threats during crises such as armed conflicts. The absence of comprehensive and enforceable laws to protect animals leaves them vulnerable to threats like habitat destruction, overhunting, illegal exploitation, and even deliberate or passive mistreatment. This negligence has severe consequences not only for various species and natural habitats, but also indirectly for human communities. The reduction of biodiversity and the destruction of key species disrupt ecological balance, food chains, and the livelihoods of people who depend on these ecosystems. Moreover, as Elias[16] highlights,

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Biology (2017).

[13] Sandra E. Baker, Trudy M. Sharp & David W. MacDonald, *Assessing Animal Welfare Impacts in the Management of European Rabbits (Oryctolagus cuniculus), European Moles (Talpa europaea) and Carrion Crows (Corvus corone)*, 11 PLOS ONE e0146298 (2016).

[14] Ministerio de Salud y Protección Social, Plan Decenal de Salud Pública 2022-2031 (2022), https://www.minsalud.gov.co/Normatividad_Nuevo/Resoluci%C3%B3n%20No.%201035%20de%202022.pdf

[15] Alejandro Padilla, Sentient Law: Non-Human Animals in Latin American Law (Siglo del Hombre Editores, 2022).

[16] Guillermo Elías, *Environmental Protection in Times of Armed Conflict: An Analysis of International Humanitarian Law. Case Study: Environmental and Economic Consequences of the 2006 Lebanon War*, 10

the failure to recognize animal rights and the lack of effective legal guarantees for their protection significantly impact communities affected by armed conflicts, perpetuating obstacles to achieving environmental justice and sustainable peace. Addressing this fundamental gap requires a serious reevaluation of environmental and legal models, particularly in countries facing conflicts and environmental challenges. Protecting animals and recognizing their rights must become an integral part of policies and legal frameworks to ensure a more ethical and sustainable coexistence.

Although both Padilla and Elias emphasize the importance of protecting animals, the concepts of animal welfare and animal rights are fundamentally different. Animal rights focus on the intrinsic value of living beings and assert that animals, as human beings possess fundamental rights, including the right to life, freedom, and protection from exploitation. This perspective often calls for the complete abolition of using animals for human benefit, including in agriculture, scientific experimentation, and entertainment. Advocates of animal rights, such as PETA (People for the Ethical Treatment of Animals), believe that animals should not be treated as property or commodities and emphasize their moral and legal entitlements as sentient beings.[17] In contrast, the animal welfare approach focuses on the well-being of animals within the framework of human use. This view seeks to reduce pain, suffering, and distress in animals while permitting their use in agriculture, research, and other industries. Animal welfare supporters emphasize humane treatment, appropriate housing, and adequate care to ensure that animals live in conditions that meet their physical and psychological needs. This approach is supported by organizations such as the American Humane Society, which work within existing legal frameworks to improve care standards.[18] The key difference between these two approaches lies in their ultimate goals: Animal rights aim to end all forms of animal exploitation, while animal welfare seeks to improve the conditions under which animals are used. Philosophically, animal rights are rooted in deontological ethics, emphasizing moral principles and the intrinsic dignity of animals, whereas animal welfare often aligns with utilitarian ethics, balancing the benefits of animal use against the harm caused to them.[19] Despite these differences, both movements share common ground in opposing unnecessary cruelty and advocating for bet-

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Cuadernos de Marte 173, 173-213 (2016), available at: https://publicaciones.sociales.uba.ar/index.php/cuadernosdemarte/article/view/1824

[17] Michael L. Nelson, Animal Rights and Welfare: A Documentary and Reference Guide 175 (Greenwood, 2015); Gary E. Varner, The Prospects for Consensus and Convergence in the Animal Rights Debate, 24 Hastings Center Report 24, 24-28 (1994).

[18] Javaid Aziz Awan & S. F. Rahim, *Animal Rights and Welfare in Islam*, 3 International J. of Avian & Wildlife Biology 427, 427-430 (2018); Marc Bekoff & Meaney A. Carron A., Encyclopedia of Animal Rights and Animal Welfare (Routledge, 2013).

[19] L. Wayne Sumner, *Animal Welfare and Animal Rights*, 13 The J. of Medicine and Philosophy 159, 159-175 (1988); Jessica Eisen, *Beyond Rights and Welfare: Democracy, Dialogue, and the Animal Welfare Act*, 51 U. Mich. J.L. Reform 469 (2017).

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ter treatment of animals. However, tensions arise when welfare measures are perceived as legitimizing the use of animals. Dialogue and cooperation between the perspectives of animal welfare and animal rights can promote mutual understanding and create a foundation for achieving their shared goal: reducing harm to animals. Such collaboration also allows for addressing the ethical and practical complexities inherent in human-animal relationships.[20]

On September 23, 1977, in London, during a session of the "International League of Animal Rights," the Universal Declaration of Animal Rights was adopted, and in 1978 it was recognized by UNESCO and the United Nations. This declaration asserts that all animals possess inherent rights and that disregarding these rights is a crime against nature and humanity itself.[21] The recognition of the right to life for all species is considered the foundation of peaceful coexistence between human beings and animals. The preamble of the declaration states that respect for animals is tied to respect for human beings, and that education should, since childhood, foster affection, respect, and understanding toward animals. According to the declaration, all animals are entitled to equal rights to life and respect. Human beings must neither exploit nor destroy animals and are obligated to use their knowledge to protect them. Animals must receive care, protection, and freedom from mistreatment. In cases where killing animals is necessary, it must be done without pain or suffering. Wild animals have the right to live freely in their natural habitats and to reproduce; depriving them of this freedom—even for educational purposes—is a violation of their rights. Domesticated animals must also be raised under conditions appropriate to their species and without commercial coercion. Abandoning pets is considered an act of cruelty. Working animals must have limited workloads, proper nutrition, and adequate rest. Experiments that cause physical or psychological suffering to animals are deemed unacceptable and should be replaced with alternative methods. Overall, the declaration emphasizes animals' right to life, respect, care, freedom, and natural living. It also states that farm animals must be treated with respect and without suffering throughout their lives and up to the point of slaughter. Regarding the exploitation of animals solely for human entertainment, it is clearly stated that no animal should be abused for human amusement, and shows or programs that exploit animals are incompatible with animal dignity. Any act leading to the unnecessary death of an animal is considered biocide—a crime against life. Similarly, acts resulting in the death of large numbers of wild animals are considered genocide—a crime against species. From this perspective, the United Nations believes that environmental pollution and destruction of natural habitats result in genocide. It is noteworthy that not only do living animals have rights, but dead animals must also be treated

[20] Robert H. Schmidt, *Why Do We Debate Animal Rights?*, 18 Wildlife Society Bull. 459, 459-461 (1990); Michael L. Nelson., *supra* note 17.

[21] Jean-Marc Neumann, *The Universal Declaration of Animal Rights or the Creation of a New Equilibrium Between Species*, 19 Animal L. Rev. 91, 92, 96 (2012).

with respect. Likewise, the depiction of violent scenes against animals in cinema and television must be prohibited unless their purpose is to raise awareness and highlight the violation of animal rights.[22]

International humanitarian law, which is a body of rules aimed at limiting the effects of war, contains provisions for the protection of the environment. For instance, the Additional Protocols to the Geneva Conventions and certain environmental treaties prohibit widespread, long-term, and severe damage to the natural environment during armed conflicts. However, these protections are primarily framed within the context of preserving the environment for human survival, and they rarely address the protection of animal rights as independent beings with intrinsic value. While humanitarian law indirectly protects the environment, it does not grant specific legal rights to animals that would shield them from pain and harm. This gap reflects a broader legal and ethical perspective that views animals mainly as property or resources, rather than as sentient beings worthy of independent consideration.[23]

The argument surrounding the idea that animal welfare laws should impose legal duties on individuals to protect animals is based on a new perspective that views animals as stakeholders with rights deserving of protection.[24] This approach calls for significant changes in animal welfare laws, aiming to safeguard animals against external threats such as human cruelty, neglect, and damages caused by illegal activities. However, despite this evolving viewpoint, a clear lack of specific legal frameworks and codified rights for animals is evident in existing laws. This legal gap means that effective protection of animals is often limited, especially in areas affected by armed conflicts and wars. In these regions, animals face serious threats, including physical harm from violence, forced displacement, and the loss of their natural habitats. These issues not only directly endanger the well-being of animals but also negatively affect ecosystems and biodiversity. Ultimately, the lack of clear and enforceable laws to protect animals in crisis situations, especially during times of war and conflict, creates significant challenges and highlights the urgent need for reforms in both national and international policies to ensure the welfare and rights of animals during such crises.

Disruptions to ecosystems and the reduction of biodiversity can have significant consequences for animals, leading to imbalances that affect both the health of ecosystems and the stability of the food chain.[25] One of the key aspects is how the lack of specific legal protections for animals in conflict situations con-

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[22] *Id.*

[23] Michale J. Bowman, *The Protection of Animals Under International Law*, 4 Connecticut. J. Int'l L. 487 (1988).

[24] Alexia Fillol, *The Legal Status of Animals in Armed Conflicts*, 75 Spanish J. Int'l. L. 291, 291–320 (2023), https://doi.org/10.36151/REDI.75.2.11

[25] Luis Fernández, *How Does the Environment Impact the Survival of Animal Species?*, CONICET (2017), https://www.conicet.gov.ar/como-impacta-el-ambiente-en-la-supervivencia-de-especies-animales/ ; Eric Chivian, Biodiversity: Its Importance to Human Health, Center for

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tributes to increasing their vulnerability. The absence of "specific protections may exacerbate the suffering of animals and make it difficult to implement effective measures to protect them amidst the chaos of conflict".[26]

The restoration of natural habitats and the implementation of measures for the protection of animals can play a crucial role in building more resilient and sustainable communities after an armed conflict. In the post-conflict reconstruction process, it is essential not only to focus on habitat restoration but also to take specific actions for the protection and rehabilitation of wildlife that has been affected. This approach is seen as a key factor for reducing the ongoing suffering of animals and promoting the survival of ecosystems in a scene shaped by violence and instability.

However, Chocó (one of the most biodiverse regions of Colombia) has been severely affected by armed conflict. Illegal armed groups, including paramilitaries and guerrillas, have been active in the region. The presence of these groups has led to deforestation for illegal crops and mining operations, destroying the habitats of many wild species.[27] Domesticated animals belonging to local communities have often been stolen, killed, or abandoned, resulting in serious economic consequences for farmers and disrupting food supply chains. Additionally, illegal hunting for food or trading poses a significant threat to vulnerable species.[28] Furthermore, in the Meta region, armed conflict has caused widespread displacement of rural populations. As people flee violence, their domestic animals—such as cattle, chickens, and horses—are often left behind, leading to starvation, exposure, or predation. Moreover, the destruction of pastures and water sources due to military operations has diminished essential resources for both domestic and wild animals. Illegal hunting and the use of firearms have also contributed to increased animal mortality.[29]

The authorities responsible for animal protection and welfare in Colombia are required to exercise thorough and strict supervision in this area. According to Article 307, the slaughter of animals for public consumption must only take place in slaughterhouses authorized by a competent authority. In addition to complying with the provisions of this law and its regulations, slaughter, killing, and transportation of animals must follow the guidelines issued by the Ministry of Health. A significant step forward in this regard was the adoption of Law 84

Health and the Global Environment, 6, 7, 17 (Harvard Medical School, 2002.) https://www.chgeharvard.org/resource/biodiversity-its-importance-human-health .

[26] Ministerio de Salud y Protección Social, *supra* note 14.

[27] María D. Álvarez, *Forests in The Time of Violence: Conservation Implications of the Colombian war*, *16* J. of Sustainable Forestry 47, 51, 53, 64 (2003).

[28] Nathalie Van Vliet, Björn Schulte-Herbruggen, Liliana Vanegas, Eric Yair Cuesta, François Sandrin & Robert Nasi, *What Role Do Wild Animals (Fish and Wildmeat) Play in the Food Security of Urban Teenagers Living in Poverty and Conflict—The Case of Quibdó, Colombia*, 7 Ethnobiology and Conservation (2018).

[29] Jane M. Rausch, *Villavicencio, Colombia, 1940-2005: From Frontier Town to Frontier Metropolis*, 23 J. of Third World Studies 149 (2006).

of 1989,[30] which establishes the "National Statute of Animal Protection." The provisions of this statute pursue the following objectives:

a) The prevention and treatment of animal pain and suffering;
b) The promotion of animal health and welfare by ensuring hygiene, health, and appropriate living conditions;
c) The eradication and punishment of mistreatment and violent acts against animals;
d) The development of educational programs through public media and official and private educational institutions to promote respect and care for animals;
e) The formulation of effective measures for the conservation of wildlife species.

This law also outlines obligations for animal owners, caretakers, or keepers, including:

a) Keeping the animal in an environment that allows for adequate movement, lighting, ventilation, cleanliness, and hygiene;
b) Providing sufficient and quality water and food, as well as the necessary medication and care to preserve the animal's health and welfare and to prevent harm, illness, or death;
c) Offering appropriate shelter against adverse weather conditions, when required by the species and climate.

Regarding the use of live animals in research and experimentation, it is stipulated that such activities are only permitted with prior authorization from the Ministry of Public Health and only when the action is scientifically necessary and unavoidable. It must also be demonstrated that:
a) The experimental results cannot be obtained through any alternative method;
b) The experiments are necessary for the control, prevention, diagnosis, or treatment of diseases affecting human beings or animals;
c) The experiments cannot be replaced by cell culture, computer models, designs, films, photographs, videos, or other similar methods.[31]

Across Colombia, armed conflicts have not only inflicted immense suffering to people but also caused serious impacts on animal populations and eco-

[30] *Ley 84 de 1989: Estatuto Nacional de Protección de los Animales.* Diario Oficial No. 39.120, 27 de diciembre de 1989. At: https://www.camara.gov.co/sites/public_html/leyes_hasta_1991/ley/1989/ley_0084_1989.html

[31] Javier González Cortés, *The Rights of Animals in Colombia: A Tangled Series of Discourses*, 48 Revista de Bioética y Derecho 245, 75 (2020).

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systems. Violence against animals has profound consequences for ecosystems and human communities. Animal abuse disrupts ecological balance, as suffering or loss of animal species can interfere with food chains and biodiversity, ultimately impacting vital ecosystem services such as pollination and water purification—services, which is essential for human survival.[32] Moreover, there is well-documented evidence linking animal abuse to interpersonal violence, including domestic abuse and violent crime. Studies have shown that cruelty toward animals can normalize aggression within human communities.[33] Economically, violence against animals—particularly in industrial contexts such as slaughterhouses—can contribute to social disorder and elevated crime rates in surrounding areas, thereby placing additional strain on local economies and social structures.[34] Furthermore, witnessing or participating in violence against animals can lead to psychological desensitization to violence, perpetuating cycles of harm across the boundaries between human beings and other species.[35] Addressing animal violence is not only an ethical imperative but also a practical necessity for maintaining environmental integrity, social stability, and economic resilience. Collaboration between animal welfare professionals and human service providers, alongside restorative justice approaches, is essential for mitigating these interconnected harms and fostering a more compassionate coexistence.[36]

In Nariño, armed groups compete for control over drug trafficking routes, leading to frequent violent clashes. Many rural residents have fled their homes due to the violence, abandoning their domestic animals, which often perish as a result. The economic collapse of farming communities has significantly reduced the capacity to care for animals. In addition, illegal hunting has increased as a means of survival for displaced individuals, placing intense pressure on local wildlife populations. Putumayo has been heavily affected by armed conflict, with multiple confrontations taking place between guerrilla groups, paramilitaries, and government forces. Both domestic and wild animals have suffered from

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[32] Brinda Jegatheesan, Marie-Jose Enders-Slegers, Elizabeth Ormerod & Paula Boyden, *Understanding the Link Between Animal Cruelty and Family Violence: The Bioecological Systems Model*, 17 Int´l. J. of Environmental Rsch. and Public Health 3116, 1 (2020).

[33] Christopher Hensley, Suzanne E. Tallichet & Erik L. Dutkiewicz, *Recurrent Childhood Animal Cruelty: Is there a Relationship to Adult Recurrent Interpersonal Violence?*, 34 Criminal Justice Rev. 248 (2009).

Jessica Racine Jacques, *The slaughterhouse, social disorganization, and violent crime in rural communities*, 23 *Society & Animals* 594 (2015).

[34] *Id.*

[35] Robert White, *Inter-Species Violence: Humans and the Harming of Animals*, Australian Violence: Crime, Criminal Justice and Beyond 176 (J. Stubbs & S. Tomsen eds., 2016).

[36] Kelly Struthers Montford, Darren Chang & Selingul Yalcin, *Anti-Carceral Approaches to Addressing Harms Against Animals: Considerations on Multispecies Restorative and Transformative Justice*, Law & Social Inquiry 1-28, 284, 305-306 (2024); *See also* Vincent Aviva, Shelby McDonald, Bethanie Poe & Vicki Deisner, *The Link Between Interpersonal Violence and Animal Abuse,* 3 Society Register, 83-101 (2019).

habitat destruction, direct violence, and neglect. Livestock have been killed or confiscated, and the expansion of illegal crops has led to the destruction of forests that are critical for wildlife survival. These factors have contributed to declining animal populations and the destabilization of local ecosystems.[37]

Armed conflicts have profound and multifaceted impacts on wildlife, primarily through habitat destruction and increased illegal hunting. Military operations often lead to the devastation of natural habitats, resulting in species displacement and ecosystem disruption, depriving animals of essential resources for survival. For example, in areas of high biodiversity, conflicts have been linked to significant declines in wildlife populations due to habitat loss and ecosystem fragmentation.[38] Moreover, armed conflicts create conditions that facilitate illegal hunting and wildlife trafficking. The breakdown of governmental structures and law enforcement during wars allows poachers to exploit wildlife and supply black markets with ivory, bushmeat, and other animal products. This illicit trade not only accelerates loss of biodiversity but also undermines global conservation efforts.[39] Additionally, the proliferation of weapons and militarization of landscapes during conflict exacerbates wildlife hunting, as seen in Cambodia, where armed conflicts led to a drastic reduction in both the abundance and diversity of species.[40] The combined effects of these actions are far-reaching, as the loss of biodiversity not only impacts the animals themselves but also undermines the overall health of ecosystems, human livelihoods, and the planet's ability to sustain life. These consequences underscore the urgent need for immediate and coordinated action to address the interconnected crises of violence, loss of biodiversity, and ecological disruption.

The situation of animals abandoned by displaced families in Colombia is a complex issue intricately tied to the country's prolonged armed conflict, which has led to the displacement of millions. Internally displaced persons (IDPs) are often forced to flee rural areas quickly, leaving behind livestock and pets due to the urgency of the circumstances. Studies indicate that around 92% of displaced families who owned livestock were compelled to abandon them, contributing to widespread neglect and abandonment of animals in conflict-affected

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[37] Editorial, *New People Displaced by the Armed Conflict in the Nariño Department* (2009), Médecins Sans Frontières, October 26, 2009. https://www.msf.org/new-people-displaced-armed-conflict-nari%C3%B1o-department-colombia?utm_source=; Claudia Amaya-Castellanos, Edna M. Gamboa-Delgado, Etelvina Santacruz-Chasoy & Blanca Pelcastre-Villafuerte, *Loss of ancestral food practices and perception of its effect on children's health among Inga indigenous grandmothers, Nariño, Colombia*, 22 Bmc Publich Health 1, 1452, 3 (2022).

[38] Kaitlyn M. Gaynor, Kathryn J. Fiorella, Gregory Gillian H., David J. Kurz, Katherine L. Seto, Lauren S. Withey & Justin S. Brashares, *War and Wildlife: Linking Armed Conflict to Conservation*, 14 Frontiers in Ecology and the Environment 533, 533-534 (2016).

[39] Timothy Kuiper et al., *Drivers and Facilitators of the Illegal Killing of Elephants Across 64 African Sites*, B 290 Proc. Royal Soc`y, 1, 1-2, (2023).

[40] Colby Loucks et al. *Wildlife Decline in Cambodia, 1953–2005: Exploring the Legacy of Armed Conflict*, 2 Conservation Letters 82, (2009).

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regions.[41] Moreover, displaced families face severe socio-economic hardships, which often persist even after resettlement and further limit their ability to care for animals.[42] The phenomenon of animal abandonment also reflects broader societal issues, such as the consumerist preference for purebred animals and the disregard for native or stray animals, exacerbating the plight of homeless and stray animals.[43] According to a report by Human Rights Watch,[44] during the 1997 massacre in the region of El Salado, paramilitary forces drove residents to flee, forcing many of them to leave behind their belongings and animals. Similarly, a 2014 report by Al Jazeera recounted the experience of Alirio Alfonso Guerrero, who was displaced from his farm due to paramilitary threats and had to leave behind his land and 200 animals.[45]

The loss of these animals not only has significant economic impacts on displaced families but also directly affects the health and well-being of these sentient beings. Animals abandoned due to the displacement of their owners become vulnerable to hunger, disease, predators, and harsh environmental conditions, which severely threaten their lives and survival.[46] These creatures, recognized as sentient beings, are impacted not only biologically but also emotionally by such sudden and drastic changes. However, recent years have seen some initial progress in the realm of animal rights, reflecting positive shifts in the justice system's approach. These changes lean toward the ethical and legal recognition of animals as sentient beings, emphasizing the need to protect their rights and address their well-being. Such measures indicate a growing acknowledgment that animals are not merely economic resources but living beings with inherent needs and moral value, deserving consideration within the framework of relevant policies and laws.

In Colombia, there are significant limitations in the mechanisms for administering justice to request support and advocate for interests of animal welfare. The growing awareness about animal rights highlights the need to overcome these legal limitations and ensure effective representation in courts to address the violence that animals have endured during conflicts. This also underscores the importance of incorporating legal measures into Colombian legislation that

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41 Diana Esther Guzmán-Rodríguez, *Dignity Takings and Dignity Restoration: A Case study of the Colombian Land Restitution Program,* 92 Kentucky L. Rev. 871, 871-872 (2017).

42 Sonia Díaz Monsalve et al., *Mental Health Among Displaced and Non-displaced Populations in Valledupar, Colombia: Do Inequalities Continue?*, 116 Pathogens and Global Health 305, 305 (2022).

43 Gonzalo Luna-Cortés, *The Influence of Materialism on Purebred Dogs' Welfare Among Two Different Generations in Colombia (South America)*, 22 J. Applied Animal Welfare Sci., at 149 (2019).

44 Human Rights Watch, *Colombian Internally Displaced Woman* (Dec. 11, 1997), https://www.hrw.org/legacy/reports98/colombia/Colom989-07.htm?utm_source=

45 Chris Arsenault, *Colombia: Refugees in their own country* (May 18, 2014), https://www.aljazeera.com/features/2014/5/18/colombia-refugees-in-their-own-country?utm_source=

46 García-Jiménez, Carlos Ignacio, and Yalma L. Vargas-Rodríguez, "Passive Government, Organized Crime, and Massive Deforestation: The Case of Western Mexico", Conservation Science and Practice 3, no. e562 (2021): 1-6.

not only recognizes the rights of animals but also establishes ways for effective protection and accountability in cases of violence against them.

IV. Irreparable Damages of Armed Conflicts on Green Areas in Colombia

During the pandemic years, Colombia's Institute of Hydrology, Meteorology, and Environmental Studies (IDEAM) reported that 171,685 hectares of forest—mostly in the Amazon region—were destroyed, representing an increase of more than 8% compared to 2019. Through land grabbing, economic actors often establish so-called "high-value agricultural activities", such as cattle ranching and the cultivation of African oil palm. This phenomenon has deep historical roots: Even before the signing of the peace agreement, extractive projects had already been benefiting from land grabbing dynamics and the rural development model. Meanwhile, the government effectively legitimized these land seizures by supporting and backing companies that had illegally taken over public lands (baldíos).[47]

Throughout history, the intensification of conflicts has been strongly influenced by land, crops, and natural resources. The competition between illegal groups and organized crime for control of resources has emerged as one of the most significant drivers of deforestation in the country. While not all activities related to this competition are illegal, the exploitation of natural resources often occurs in a manner that disregards environmental preservation. Armed groups and illicit organizations have been known to clear forests for agricultural expansion, mining, and drug production, all of which contribute to ecosystem degradation.[48] Additionally, the lack of effective enforcement of environmental laws exacerbates the situation, allowing these activities to continue unchecked and undermining the country's environmental sustainability. These conflicts not only disrupt the balance of local ecosystems but also have long-lasting social and economic consequences for the communities living in those regions.[49] An interview conducted by the International Crisis Group highlights this crisis:

> Official statistics for the period from 2015 to 2020 show that deforestation is primarily driven by factors such as the expansion of livestock farming,

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[47] Institute of Hidrology, Meteorology And Environmental Studies (IDEAM), *Early Deforestation Detection Bulletin (DT-D)* (Subdirectorate of Ecosystems and Environmental Information, Forest and Carbon Monitoring System (SMByC)), http://documentacion.ideam.gov.co/openbiblio/bvirtual/023891/22BOLETIN.pdf.

[48] Carlos Ignacio García-Jiménez & Yalma L. Vargas-Rodríguez, *Passive Government, Organized Crime, and Massive Deforestation: The Case of Western Mexico*, 3 Conservation Sci. and Practice e562, 1-2, 6 (2021).

[49] Hakeem Ijaiya & Joseph O. T., *Rethinking Environmental Law Enforcement in Nigeria*, 5 Beijing L. Rev. 306, 306, 307-308 (2014).

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> unplanned infrastructure development, illegal coca cultivation, mining—particularly illegal mining—large-scale agriculture, land grabbing, which includes forcing farmers to sell their properties at low prices or seizing them after displacement through violence, and the exploitation of forests.[50]

Land control has played a central role in the dynamics of the conflict in Colombia. Between 1996 and 2006, during the peak of paramilitary violence in Colombia, over 3,100 people were killed and 55,000 farmers were displaced. These displacements led to a decline in land values and the cheap acquisition of land by mining companies. One paramilitary fighter admitted in court that the main motivation behind this violence was the seizure of coal-rich lands.[51] Following these displacements and fraudulent transactions, companies such as Drummond, Cerrejón (represented by Glencore), and Carbones del Cerrejón obtained extraction licenses for lands that victims have identified as illegally seized properties. These lands are primarily located in the Cesar province and coincide with paramilitary activities. Despite the official disbandment of paramilitary groups in 2006, threats against victims and social activists persist.[52] After the enactment of the Victims and Land Restitution Law in 2011, neo-paramilitary groups have used intimidation and coercion to prevent displaced people from returning. Similar patterns are observed in lands that previously belonged to Afro-descendant communities or small farmers and are now controlled by large agribusiness and livestock companies. For example, the Afro-Colombian communities of Curvaradó and Jiguamiandó in El Carmen del Darién lost over 3,500[53] residents within three days during joint military and paramilitary operations.[54] Upon their return, they faced illegal land seizures by logging and oil palm companies. Although the first chapter of the Colombian peace agreement calls for rural reforms aimed at addressing land ownership inequalities, the transitional justice framework that followed does not challenge

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[50] International Crisis Group, Broken Canopy: Deforestation and Conflict in Colombia (Crisis Group, 2021), https://www.crisisgroup.org/es/latin-america-caribbean/andes/colombia/091-broken-canopy-deforestation-and-conflict-colombia.

[51] Auxiliary Court to the Fifth Specialized Criminal Court of the Medellín Circuit, 2013 *in* Clear Accounts: The Role of the Truth Commission in Unveiling Corporate Responsibility in the Colombian Armed Conflict (Nelson Camilo Sánchez eds., 2018), https://www.dejusticia.org/publication/cuentas-claras-empresas/.

[52] *The Damned Land: Guerrilla, Paramilitaries, Mining Companies, and Armed Conflict in the Department of Cesar,* (CNMH, Aug. 2016), https://www.centrodememoriahistorica.gov.co/descargas/informes2016/malditatierra/la-maldita-tierra.pdf.

[53] *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, Judgement, Inter-am. Ct. H. R. (ser. C), No. 270, Nov. 20 2013, 46, https://www.corteidh.or.cr/docs/casos/articulos/seriec_270_esp.pdf.

[54] *Cacarica: 23 Years Building Peace*, (Commission for the Clarification of Truth, Coexistence, and Non-Repetition, Mar. 13, 2020), https://comisiondelaverdad.co/actualidad/noticias/cacarica-23-anos-construyendo-paz.

the economic dominance of corporations. The law continues to serve corporate interests and falls short in protecting the rights of small farmers.[55]

The exploitation of nature, both past and present, has been a fundamental cause of harm and displacement for human beings and non-human animals alike. One might imagine that animals in Colombia's forests during the decades-long conflict lived peacefully in areas beyond the reach of law and inaccessible to extractive companies. However, such an image is deeply utopian. Over nearly fifty years of internal conflict, the Revolutionary Colombian Armed Forces (FARC-EP) maintained a strong human presence in the forests, displacing animals from their habitats, fighting against them, often consuming them, instilling fear, and even using them as instruments of war. War in Colombia claimed the lives of many human beings and animals alike. FARC-EP hunted animals for food and sometimes used them to attack their enemies. Their hunting mastery of wild animals ensured their survival and superiority over human beings untrained in these skills. Initially, their relationship with animals was politically motivated. Before their project became heavily intertwined with the drug trafficking economy, FARC-EP viewed animals as a means to support rural livelihoods and family independence.[56] However, as Crespo[57] analyzes, many questions remain unanswered: How many animal species were displaced from their habitats? How many animals were killed in bombings or by landmines? How many of them were used as live shooting targets to desensitize combatants to death and torture? FARC-EP's use of animals as bombs was also well-known: "Animals, bicycles, and corpses were turned into bombs. Horses, donkeys, ambulances, artillery, and even children's bodies were transformed into explosive devices".[58]

This process not only reinforced land distribution inequality but also caused many families to run away from their homes.[59] With the implementation of the peace agreement signed in 2016 with FARC, many areas, which were previ-

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[55] Oficina del Alto Comisionado para la Paz, Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, (Nov. 24, 2016), [https://perma.cc/LF8X-ZR8N] [hereinafter Final Agreement]; Isabella Ariza Buitrago & Luisa Gómez Betancur, *The Shortcomings of Corporate Accountability in Post-Conflict Colombia: Land, Rivers and Animals* Conference: The Social Practice of Human Rights (2021).

[56] This conception of land ownership and animals rearises in the Peace Agreement of 2016: the only direct allusion to animals in the Agreement is in regard to them being provided to families that used to cultivate illegal crops. Animals as victims of war are left out of the Agreement. As property, FARC-EP demanded their more equal distribution between owners and the campesinos who worked the land; Ariza Buitrago & Gómez Betancur, *supra note* 55 at 13.

[57] Carlos A. Crespo, *Territories of Peace for Animals and the Environment*, El Turbión, (June 2, 2016), https://elturbion.com/13421.

[58] Guerrillas exploded corpses, houses, animals, and cars to attack and contain their enemy, the national army; *See* National Center For Historical Memory, *Chapter IV: The Impacts and Damages Caused by the Armed Conflict in Colombia*, *in* Informe General, (Aguilar ed., 2014) centrodememoriahistorica.gov.co/descargas/informes2013/bastaYa/capitulos/basta-ya-cap4_258-327.pdf.

[59] OXFAM, Divide and Purchase: A New Way of Concentrating Public Lands in Co-

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ously under the control of this group, were liberated from the restrictions that FARC had placed on deforestation.

These restrictions were tied to the use of dense forests as shelters for guerrilla camps and areas of their presence.[60] Consequently, these regions became hotspots for intense conflict and were exposed to the influence of a new generation of armed groups. These groups, driven by private interests, promoted the agendas of large corporations, ranchers, and landowners. Moreover, they were often linked to various forms of corruption, which further exacerbated the instability and violence in these areas.[61] As a result, forests, once protected by the constraints imposed by FARC, became contested spaces, where fighting for control over resources was intensified. The power vacuum left after the FARC's retreat allowed for the proliferation of these groups, which took advantage of the weakened state presence to advance their own economic goals.[62]

Paramilitary groups move into areas ahead of major mining, energy, industrial farming, and infrastructure projects. Their presence drives forced displacement or coerced land sales and encourages land speculation. With the disarmament and reintegration of former FARC combatants into civilian life, killings of local leaders, forced or voluntary displacements may decrease, allowing new economic projects to face fewer obstacles. However, in other countries such as Rwanda, the Democratic Republic of Congo, and Angola, environmental heritage destruction has followed post-conflict periods.[63] The final peace agreement begins with a commitment to sustainability and environmental protection: "Given that Colombia's new vision for peace seeks to achieve a sustainable society, united in diversity, based on respect for human rights, mutual tolerance, environmental protection, respect for nature, renewable and non-renewable resources, and its biodiversity".[64] Environmental references in the agreement include: Access and use of non-productive lands, formalization of land ownership, agricultural frontier boundaries, and protection of reserve areas. It stipulates the "closure of agricultural frontiers and protection of reserve areas" with the aim to delineate agricultural boundaries, safeguard ecologically significant areas, and create balanced options for populations living adjacent to

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LOMBIA (2013), https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/file_attachments/rr-divide-and-purchase-land-concentration-colombia-211013-es_0.pdf.

60 INTERNATIONAL CRISIS GROUP, *supra* note 50.

61 E. Molina, G. Chaparro & O. Guzmán, *Impacts of the Colombian Armed Conflict on the Environment and Actions for Effective Reparations*, 20 REV. CIENTÍFICA GENERAL JOSÉ MARÍA CÓRDOVA, at 1087 (2022). https://revistacientificaesmic.com/index.php/esmic/article/view/1129/904.

62 Paulo J. Murillo-Sandoval et al., *The End of Gunpoint Conservation: Forest Disturbance After the Colombian Peace Agreement*, 15 ENVIRONMENTAL RSCH. LETTERS 034033 (2020).

63 Fabrizio Hochschild, *The Environmental Paradox of the Peace Agreement*, (EL ESPECTADOR, 2015) http://www.elespectador.com/noticias/paz/paradoja-ambiental-del-acuerdo-de-paz-articulo-539073.

64 FINAL AGREEMENT, *supra* note 55; Unidad de Investigación y Acusación. *El ambiente como víctima silenciosa: Un diagnóstico de las afectaciones en el posacuerdo de paz (2017–2022)*. (Unidad de Investigación y Acusación, 2022).

or within these zones —balancing environmental preservation with well-being and quality of life. This is to be implemented by the national government under principles of rural community participation and sustainable development, including the preparation of an environmental zoning plan within two years.[65] Environmental safeguards related to the substitution of illicit crops are also addressed. Beyond these points, there is no mention of the current government's economic drivers. It seems paradoxical that the president who achieved the greatest progress in negotiations with guerrillas, simultaneously promotes the strengthening of extractive economies, the construction of roads, ports, and other commercial infrastructure, and the attraction of foreign investment across all sectors. Yet, this is less paradoxical when understood in the context of the need to expand capital and markets in countries with high potential for raw material supply and large consumer populations. Indeed, "mining and energy extraction were not included in the peace agreements, and senior government officials presented them as a source of financing for the post-conflict era".[66] From the outset, government negotiators declared that the country's "development model" was not open for discussion. Within this framework, social-environmental conflicts are expected to increase as areas and territories formerly affected by armed conflict and previously overlooked by mining and energy companies are now targeted. However, it is not only mining and development projects that may generate social-environmental conflicts. The reintegration of former combatants into civilian life in areas near or within ethnic group territories —such as indigenous and Afro-Colombian communities— may also cause problems. These communities, with their distinct relationships to the environment and resources, must accommodate new populations whose views do not necessarily align with their own.

Finally, the costs are not only environmental: "80 percent of human rights violations and 87 percent of all forced displacements occur in municipalities with mining and energy projects. Ninety percent of violations against indigenous and Afro-Colombian populations take place in areas where traditional agriculture and fishing have been displaced by gold and oil extraction".[67] Therefore, opening new national territories for exploitation and use under the current National Development Plan's economic drivers and the ongoing consolidation of mining and energy projects, means that peace will only relate to the potential removal of an illegal armed actor. The root causes of violence—greed for economic profit and the inequalities arising from it—will remain unaddressed.[68]

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[65] Final Agreement, *supra* note 55, at 19-20.

[66] Rafael Colmenares Faccini, *In Colombia, Does the Mining Locomotive Lead to Peace?* (ELDIARIO.ES, 2016) http://www.eldiario.es/ultima-llamada/Colombia-locomotora-minera-conduce-paz

[67] Alma De Walsché, *The Competition for Natural Resources Threatens the Peace Agreement in Colombia*, (MO, 2016) http://www.mo.be/es/lisis/la-competencia-por-los-recursos-naturales-amenaza-el-acuerdode-paz-en-colombia.

[68] Claudia Patricia Puerta Silva & Robert Dover, *Salud, recursos naturales y el proceso de paz en Colombia* 22 J. Latin Am. & Caribbean Anthropology 183, 184-186 (2017).

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Armed conflicts play a significant role in habitat destruction and pose severe threats to wildlife conservation and biodiversity. During conflicts, ecosystems often suffer as collateral damage. This damage can result from direct effects such as bombings, deforestation, and chemical pollution, as well as indirect effects like the collapse of governance systems and protective policies.[69] Over 90% of armed conflicts between 1950 and 2000 occurred in biodiversity hotspots, many of which have been repeatedly affected by violence, leading to the degradation of critical habitats.[70] The socio-political instability caused by war, often leads to overexploitation of wildlife and vegetation, placing additional pressure on ecosystems and local communities dependent on these resources.[71] Preservation efforts, during and after conflicts, face challenges such as institutional weakness, illegal wildlife trade, and human displacement, which disrupt ecological balance and hinder recovery and restoration.[72]

The exploitation of natural resources is closely linked to various forms of violence, including armed conflicts, sexual violence, and social unrest. Armed conflicts often occur in regions rich in natural resources, as competition over control and profits from resources such as oil, diamonds, and precious stones can motivate rebel groups to prolong wars or resist government forces.[73] Additionally, sexual violence perpetrated by rebel groups may be influenced by their resource exploitation strategies. For example, groups that rely on extortion tend to need less local support and are more likely to engage in such violence, whereas trafficking-based groups require broader cooperation, reducing the likelihood of sexual violence.[74] Moreover, resource-related conflicts often intersect with ethnic and social grievances, especially in areas where resource extraction exacerbates inequalities or fuels separatist movements.[75] Environmental degradation and scarcity resulting from overexploitation also intensify local conflicts over land, water, and other essential resources, thereby contributing to instability.[76] These situations show the complex connection between natural resource

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69 Kaitlyn M. Gaynor, *supra* note 38 at 533-535; Thor Hanson, *Biodiversity conservation and armed conflict: a warfare ecology perspective,* 1429 Annals New York Acad. Sci. 50 (2018).

70 Hanson, *supra* note 69.

71 Joseph P Dudley., Joshua R. Ginsberg, Andrew J. Plumptre, John A. Hart & Liliana C. Campos, *Effects of War and Civil Strife on Wildlife and Wildlife Habitats* 16 Conservation Biology 319, 319-320 (2002).

72 Colby Loucks, *supra* note 40 at 82-83.

73 Macartan Humphreys, *Natural Resources, Conflict, and Conflict Resolution: Uncovering the Mechanisms*, 49 J. Conflict Resolution 508, 509-511 (2005); Päivi Lujala, *The Spoils of Nature: Armed civil conflict and rebel access to natural resources,* 47 J. Peace & Rsch. 15-28 (2010).

74 Beth Elise Whitaker, James Igoe Walsh & Justin Conrad, *Natural Resource Exploitation and Sexual Violence by Rebel Groups,* 81 J. Politics 702, 702-704 (2019).

75 Edward Aspinall, *The Construction of Grievance*, 51 *J.* Conflict Resolution 950, 950-972 (2007); Tim C. Wegenast & Matthias Basedau, *Ethnic Fractionalization, Natural Resources and Armed Conflict*, 31 Conflict Management & Peace Sci. 432, 432-457 (2014).

76 Esther, D. K., *Land Resource Conflicts and Its Link to Cattle Rustling Along the Borders of Baringo County, Kenya: Causes, Effects and Possible Remedies*, 7 Int`l J.Humanities & Soc. Studies 11 (2019).

use and violence, highlighting the need for sustainable and fair management of resources to prevent conflicts.

In response to the new reality in which biodiversity is viewed as a war victim, several proposals have emerged, emphasizing the need to address the suffering and damage inflicted on biodiversity within the context of conflict. The dominant economic perspective has been questioned, and in its place, a more integrated and systemic approach has been suggested to understand the relationship between human beings and non-human entities. This new approach stresses the importance of recognizing violence against natural elements as one of the underlying causes of war, calling for a process where the suffering of non-human entities is reconsidered. Moreover, it advocates for an interdisciplinary approach that encompasses a comprehensive and empathetic understanding of these issues, promoting a deeper awareness of the interconnectedness between human actions and the broader ecological impacts. Such a shift in perspective aims to foster more humane and sustainable solutions to the environmental destruction caused by armed conflicts, urging societies to think their approach to both nature and warfare over.[77]

The economic losses resulting from biodiversity destruction are also significant. According to the report by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), ecosystem degradation costs the global economy up to $25 trillion annually. The World Bank has warned that low-income countries could lose about 10 percent of their GDP by 2030 due to the collapse of ecosystem services.[78] In response to this crisis, a trend has emerged that seeks to assign financial value to biodiversity. Financial institutions and governments are investing in environmental conservation projects, with billions of dollars attracted to this sector so far.[79] However, this monetization of nature presents challenges. When ecosystems are assigned a price tag, there is a risk that the protection of species deemed as "economically unviable" will be overlooked. This approach is a form of reductionism which brings nature down merely to a source of economic profit.[80] Moreover, developed countries that have committed to supporting global biodiversity restoration have in practice fallen short of their commitments. According to a report by the British Overseas Development Institute, countries such as the United Kingdom, Can-

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[77] Alejandro Castillejo, *Recalibrar la Escucha: ¿De los árboles como sujetos del dolor?*, 19 (Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición-CEV, Documento de trabajo, 2023).

[78] Jessica Rawnsley, *Investment Sector Seeks to Put a Value on Biodiversity*, (Financial Times, Dec. 9, 2024) https://www.ft.com/content/4db45de5-1458-4f89-a124-7f722c177158?utm_source=; Financial Times, *Biodiversity hit to economies estimated at up to $25tn a year in landmark report*, at https://www.ft.com/content/fed37e59-1f36-453a-a9b1-70f94c8b24f9?utm_source=; World Bank, *Biodiversity*, en https://www.worldbank.org/en/topic/biodiversity?utm_source=.

[79] Rawnsley, *supra* note 78.

[80] Barbara Unmüßig, *Monetizing Nature: Taking Precaution on a Slippery Slope*, (Great Transition Network, August, 2014). https://greattransition.org/publication/monetizing-nature-taking-precaution-on-a-slippery-slope

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ada, and Italy have contributed significantly less than their fair share to financing conservation efforts.[81] This kind of thinking leads us to the conclusion that "nature" must be codified, reduced to a mere research subject or resource to be exploited.[82] Such an approach undermines the true complexity of the issue, ignoring the intrinsic value of ecosystems and species beyond economic calculations. This highlights the urgent need for an interdisciplinary framework that can explore the intricate relationships between nature, conflict, and human impact in a more nuanced and thoughtful way.[83] Addressing environmental degradation, therefore, requires more than just a technical or economic perspective. It demands a holistic, collaborative approach that can engage with the ethical, ecological, and social dimensions of the problem.[84] The complexity of environmental pollution and destruction, particularly in the context of armed conflict, calls for a solution that acknowledges and integrates all these factors, creating space for deeper inquiry and more comprehensive solutions that prioritize both human and ecological well-being.[85]

On the other hand, it is crucial to recognize that the strategies implemented by the government to combat armed groups have not always been the most effective. A clear example of this can be seen in the approach used to fight drug trafficking, where the preferred method has been aerial spraying with glyphosate. The Colombian government mainly used a strong herbicide called glyphosate to destroy coca plantations, which are the plants used to make cocaine. This operation was carried out through aerial spraying and was part of a larger program supported by the United States known as Plan Colombia. In this method, glyphosate was sprayed over vast areas of forests, agricultural lands, and water sources.[86] However, the use of this chemical has raised serious environmental and health concerns. Environmentally, glyphosate has caused the destruction of non-target vegetation, contamination of water resources, and damage to Colombia's highly rich ecosystems. Chemical residues have entered

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81 Phoebe Weston, Editorial, *UK among rich countries not paying fair share to restore nature–report*, (The Guardian, June 20, 2024) https://www.theguardian.com/environment/article/2024/jun/20/uk-among-rich-countries-not-paying-fair-share-to-restore-nature-report-aoe?utm_source=; Phoebe Weston, *The world needs $700bn a year to restore nature. But where is the money coming from?*, The Guardian, (Oct. 30, 2024) https://www.theguardian.com/environment/2024/oct/30/the-world-needs-700bn-a-year-to-restore-nature-but-where-is-the-money-coming-from?utm_source=.

82 Jacobo Grajales, *State Involvement, Land Grabbing and Counter-insurgency in Colombia*, 44 Dev. & Change, at 211 (2013).

83 Petri Tapio & Willamo Risto, *Developing Interdisciplinary Environmental Frameworks*, Ambio, 125, 125-133 (2008).

84 Harry Wells et al., *Equity in Ecosystem Restoration*, 29 Restoration Ecology, e13385 (2021).

85 Iryna Kyrpychova et al., *Identifying the Risks of Armed Conflict Impact on the Ecosystem* (Eastern-European J. Enterprise Technologies, 2024).

86 Miranda Fox, *Colombia Has Suspended Aerial Herbicide Spraying on Illegal Coca and Poppy plantations*, Earthjustice, (June 16, 2025), https://earthjustice.org/article/colombia-suspends-aerial-spraying-of-illegal-coca-crops?utm_source=.

groundwater and aquifers, posing long-term risks to biodiversity and ecosystem health. On the other hand, studies have shown that glyphosate is also harmful to human health. Local people —especially children, pregnant women, and the elderly— have experienced skin, breathing, and digestive issues.[87] Such methods highlight the need for more thoughtful and ecologically sensitive strategies that do not prioritize short-term gains over the long-term health of both human and environmental systems. The ongoing environmental damage caused by these practices demonstrates the importance of finding alternative, sustainable solutions that address the root causes of conflict and drug trafficking without further harming the natural world.[88]

Some experts have recently described these types of actions as "ecocide" or "environmental destruction", as they represent lethal forces capable of harming both human and non-human life.[89] Many studies have shown that glyphosate has toxic effects on animal health, causing behavioral problems, reproductive issues, and indirect harm through environmental pollution. For example, glyphosate has been linked to alterations in microbial communities, which can increase animals' susceptibility to diseases, such as toxic bacterial infections in birds and mammals.[90] Moreover, glyphosate's toxic effects on the nervous system and its disruption of hormones have raised concerns about its long-term harm to wildlife and ecosystems.[91] One of the main challenges faced by animals is biocide or ecocide, a concept that encompasses any actions leading to the death of an animal without adequate justification. This can include overhunting and overfishing, scientific testing on animals, exploitation in the food industry, and abuse or abandonment of domestic animals.[92] It is important to note that animals are not mere objects or things; they are beings capable of feeling pain and experiencing emotions.

The government's unfavorable approach extends beyond the previously mentioned issues. One of the most controversial news stories that emerged from

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87 Center for International Environmental Law, *Aerial Fumigations in Colombia's Drug War* (February 2017), https://www.ciel.org/project-update/aerial-fumigations-in-colombias-drug-war/?utm_source=.

88 International Crisis Group, *supra* note 50.

89 Ángela Schembri Peña, *Ecocidio: ¿nuevo crimen internacional? - Derecho del Medio Ambiente* (Universidad Externado de Colombia, Departamento de Derecho del Medio Ambiente, June 24, 2021), https://medioambiente.uexternado.edu.co/ecocidio-nuevo-crimen-internacional/.

90 Ariena Van Bruggen et al., *Indirect Effects of the Herbicide Glyphosate on Plant, Animal and Human Health Through Its Effects on Microbial Communities*, 9 Frontiers in Environmental Sci., 763917, 1-3 (2021).

91 Zoe Kissane & Jill M. Shephard, *The Rise of Glyphosate and New Opportunities for Biosentinel Early-warning Studies*, 31 Conservation Biology 1293, 1293-1300 (2017); Becky Talyn, Kelly Muller, Cindy Mercado, Bryan González & Katherine Bartels, *The Herbicide Glyphosate and Its Formulations Impact Animal Behavior Across Taxa*, 2 Agrochemicals 367, 367-408 (2023).

92 Carolina Gamboa, Biocidio. Todo acto que entrañe la muerte de un animal, es decir, un crimen contra la vida (B.A. thesis, Pontificia Universidad Javeriana, 2021), https://repository.javeriana.edu.co/bitstream/handle/10554/4602/tesis312.pdf?sequence=1&isAllowed=y.

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Colombia —and received worldwide attention— was the pursuit, shooting, and eventual public display of a dead African hippopotamus in the country's forests.[93] This operation was carried out with the involvement of a battalion from the National Army and with prior approval from the Ministry of Environment.[94] Regarding wildlife hunting, Colombia is governed by the Natural Resources Law, which provides the overall framework for the management, protection, exploitation, and trade of wildlife. Additionally, Decree 1608 of 1978, which regulates this law specifically in the area of wildlife, and the National Animal Protection Regulations are among the relevant legal documents. Among the types of legal hunting in Colombia are the following:

- Subsistence hunting: This requires no permit and is carried out to meet basic human needs.
- Scientific hunting: Permitted solely for research or study purposes within the country. Although the number of such hunts is reportedly insignificant, collectors and traffickers often exploit this type of permit.
- Supportive or breeding hunting: Conducted to establish animal breeding centers or special hunting zones. A permit is mandatory for this type of hunting; however, because it requires a continuous supply of animal specimens, it can have very negative consequences for species.
- Control hunting: Done to regulate the population of a species when necessary.

On another note, Colombia has not yet joined the International Whaling Commission (IWC) to contribute to efforts aimed at banning whale hunting, despite the significant benefits whales bring to the tourism industry. These marine mammals face two other threats that may be even more dangerous: on one hand, the lack of a firm stance by the IWC —led by Japan— against banning whale hunting; and on the other, the inefficiency of the Colombian government, which has delayed its accession to the commission for months, even though such a move could have signaled its opposition to whale killing to the world. Although commercial whaling was globally banned in 1986 due to the risk of extinction of 13 recognized species, the Japanese government claims that whale hunting in the country is conducted solely for scientific research. How-

[93] In its July 10, 2009 edition, the *Los Angeles Times* opened its international section with: "The Colombian government's order to kill the hippopotamus that once belonged to Pablo Escobar has sparked a wave of protests among animal rights activists." The *Telegraph* of Britain reported: "Following the death of the first animal, the search continues for two others that were also part of the exotic collection the cocaine baron amassed during his millionaire days". *Le Monde* of France stated: "The hunt for Pablo Escobar's hippopotamuses remains open".

[94] One of the scientists who brought the animal from Kenya noted that his first contact with the hippopotamus was directly in its natural environment, in Africa, around the river inlet, in a natural grassland with sparse forest, where it lived with the herd. *See* Gonzalo Palomino Ortiz, *Los "falsos positivos" ambientales* (Observatorio Ambiental de la Universidad del Tolima, July 14 2009).

ever, according to Milko Schwartzman, an activist from Greenpeace Argentina, "it can be said with certainty that this hunting is actually commercial whaling disguised as scientific research".[95]

It is crucial to highlight that the legal framework in Colombia does not seem to fully align with the evolving attitudes towards animals and the environment. While there are laws related to animal protection and welfare, as well as regulations prohibiting their exploitation and certain environmental actions,[96] it is evident in practice that the approach remains centered on the instrumentalization of animals and the exploitation of biodiversity. This perspective reflects a naturalized state of dominance, where human interests take precedence, and the rights of animals as sentient beings are overlooked. The legal system, in this sense, continues to perpetuate a view that animals and natural resources are primarily tools for human use, rather than acknowledging their intrinsic value and rights. As a result, even though there may be legal provisions in place, the effective protection of animals and the environment is undermined by ingrained societal and legal norms that prioritize human needs over the well-being of other species. This disconnection between legal frameworks and ethical considerations demonstrates the need for a more profound shift in both legal structures and societal values to ensure that animals are recognized not just as property, but as beings with inherent rights deserving of respect and protection.[97] As a result, it is crucial to acknowledge that the resistant perspective adopted regarding armed conflict has not led to the creation of legal interest or moral equality similar to what has been granted to human victims in the post-conflict period. Despite the profound environmental destruction caused by armed conflicts, including the devastation of habitats and biodiversity, the lack of a comprehensive legal framework that adequately addresses environmental harm, offering protection and compensation akin to the focus on human victims in post-conflict situations, remains evident. Legal systems in many post-conflict societies have primarily concentrated on human rights and the rebuilding of communities affected by violence, while environmental consequences are often overlooked. This disparity highlights a fundamental flaw in the post-conflict reconstruction approach, where environmental damage is not given the same moral or legal consideration as human suffering.[98] Consequently, recognizing the rights of the environment and non-human inhabitants in post-conflict justice and reconstruction processes has been marginalized, and the long-term effects of environmental destruction are less prioritized. To ensure equal attention to the environment and its non-human inhabitants, a shift in this perspective is

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[95] Juan Trujillo Cabrera, *Los derechos de los animales en Colombia*, Corporación Universitaria Republicana, 7 Rev. Republicana, at 69

[96] Padilla, *supra* note 15.

[97] Elizabeth Anderson, *Animal Rights and the Values of Nonhuman Life*, *in* Animal Rights. Current Debates and New Directions (Sunstein Cass R. & Martha Nussbaum eds., 2004).

[98] Daniëlla Dam-de-Jong, International Law and Governance of Natural Resources in Conflict and Post-Conflict Solutions, 121 (Cambridge University Press, 2015).

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essential. This disparity highlights the urgent need for a review and strengthening of existing legal regulations, not only to recognize these rights but also to establish mechanisms that ensure the consistent application of these regulations in conflict situations. Only through a more equitable and comprehensive development toward animals and nature, aligned with the growing awareness of their rights, can a legal framework be established that genuinely supports the protection and well-being of all forms of life affected by armed conflict in Colombia.

V. The Impact of Human Relations on Biodiversity and Proposals for the Future in Colombia

In Colombia's history, the relationship between people, biodiversity, and animals has been influenced by a perspective of control and exploitation. Therefore, legislation and government policies can play a crucial role in transforming this relationship towards a more ethical and respectful approach by recognizing the importance of moving away from the mindset of ownership and the instrumentalization of animals and biodiversity.

To ensure the recognition and preservation of animal and biodiversity rights, it is recommended to adopt a doctrine based on respect and equality of conditions. Dynamic policies should be employed with the aim of promoting care and preserving the right to life. This principle is fundamental not only for the overall well-being of the planet but also for our specific land. Therefore, there is a need for a thorough analysis and legal strengthening that recognizes this essential component.

The Special Jurisdiction for Peace (JEP) in Colombia, created specifically to handle crimes connected to armed conflict and peacebuilding, can play a key role in incorporating animal rights into its legal processes. Despite existing limitations in the predominantly anthropocentric approach, this does not prevent recognizing the victimhood and comprehensive reparation of harm caused to non-human bodies and territories. Some actions by the Special Jurisdiction for Peace (JEP) have attempted to fill this gap. Currently, Colombian judges have recognized more than nine rivers, two national parks,[99] and other ecosystems such as high-altitude wetlands (paramos)[100] and Amazon[101] rainforests as "sub-

[99] *See generally* Juan Felipe Rodríguez v. Presidencia de la República and others; Tribunal Superior [T. Sup.] [Ibagué State Superior Tribunal], Sala Quinta Laboral Ibagué 2020, N. 2020-000091 (Colomb.) (Los Nevados National Natural Park case); Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala de Casación Civil 2020, STC3872-2020 (Colomb.) (Isla Salamanca National Natural Park case).

[100] Corte Constitucional [C.C.] [Constitutional Court], Tribunal Administrativo de Boyacá, August 9, 2018, 15238-3333-002-2018-00016-01 (Colom.) (Páramo de Pisba case).

[101] Corte Suprema de Justicia JUSTICIA [C.S.J] [Supreme Court], SALA CIVIL, april

ject of rights".[102] This process began in 2016, when for the first time, a river was recognized as a non-human body and a "subject of rights". In ruling T-622 of 2016, the Constitutional Court of Colombia declared that the Atrato River has "rights that imply its protection, conservation, maintenance and [...] restoration".[103] This ruling was issued following a tutela[104] (protective writ) petition filed by indigenous communities residing alongside the Atrato River. They demonstrated in their petition that government institutions had violated their fundamental rights to their land and culture. According to the claimants, the lack of effective oversight over illegal mining activities in the river basin —overlapping with their ancestral territories— threatened their traditional way of life. The court, in its ruling, linked the illegal extraction in the Atrato River basin with armed conflict: "the rise of illegal mining of gold and other precious metals [in the Basin of the Atrato River and its tributaries] has opened up alarmingly —as a financier of the armed conflict— which is generating worrying socio-environmental conflicts that materialize in an indiscriminate struggle for the control of territories and natural resources".[105]

As a result, the area and its communities have faced consequences such as forced displacement, ecosystem destruction, deforestation, extinction of native species, and river pollution —factors that seriously endanger the country's natural and cultural heritage.[106] Beyond the damages caused by illegal activities, the Supreme Court emphasized that "policies and legislation have emphasized access for economic use and exploitation to the detriment of the protection of the rights of the environment and of the communities".[107]

5, 2018, M.P: Luis Armando Tolosa Villabona, STC4360-2018, Expediente 11001-22-03-000-2018-00319-01 [*hereinafter* Decision STC4360-2018].

[102] The Quindío State Superior Tribunal, Fourth Decision Chamber, ruled on March 15, 2019, case No. 2019-00024 (Quindío River case); The Third Tribunal of Execution for Penalties and Security in Cali, Valle del Cauca, ruled on July 22, 2019, case No. 00043 (Pance River case); The Medellín State Superior Tribunal, Civil Court No. Four, ruled on June 17, 2019, case No. 2019-076 (Cauca River case); The Administrative Tribunal of Tolima, handled the Personería Municipal de Ibagué, Ministry of Environment, and others case in 2019 (Tolima Rivers case); The Constitutional Court, ruled in Luz Marina Diaz et al. v. Empresa de Servicios Públicos del Municipio de La Plata–Huila, case No. 2019-114 (La Plata Huila River case); The Fourth Tribunal of Execution for Penalties and Security in Pereira, Risaralda, ruled on Tutela 036-2019 (Otún River case); and The First Criminal Tribunal of the Circuit of Neiva Huila ruled in Andres Felipe Rojas Rodriguez and Daniel Leandro Sanz Perdomo v. Ministerio de Ambiente y Desarrollo Sostenible et al., case No. 41001-3109-001-2019-00066-00 (Magdalena River case).

[103] Corte Constitucional [C.C.] [Constitutional Court], november 10, 2016, Sentencia T-622/16, translated in *The Judgement for River Atrato (Colombia) Is Now in English!*, GARN (July 2, 2019), https://delawarelaw.widener.edu/files/resources/riveratratodeci-sionenglishdrpdellaw.pdf [https://perma.cc/AN2K9KCX] [*hereinafter* Judgment T-622/16].

[104] According to "Constitución Política de Colombia" [C.P.] art. 86, a Tutela is a legal mechanism in Colombia to protect fundamental rights.

[105] Constitutional Court, *supra* note 100, at 9.35; Ariza Buitrago & Gómez Betancur, *supra note* 56 at 19–20.

[106] *Id.*

[107] *Id.* at 9.31;Constitutional Court, *supra* note *100,* at 9.35.; Ariza Buitrago & Gómez Be-

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The court determined that the government had not only failed to recognize the river as an ecosystem but also as a territory that enables local communities to develop their cultural rights. Therefore, the government had not understood the existence of a "biocultural" relationship between the river and local communities that deserves constitutional protection. The legal remedy was the recognition of the river as a legal subject and the establishment of a "Guardians' Council", composed of one member from the claimant communities and one representative of the Colombian government. This council is tasked with representing and protecting the river in all respects. This ruling presents an innovative solution to social and environmental problems. For years, the government had neglected the Atrato River territories and marginalized adjacent communities. Thus, by creating a Guardianship Council with decision-making power, a novel form of community participation and environmental governance was established —one not foreseen by ordinary law. Interestingly, this governance was entrusted to the local population whose field experience and knowledge can offer valuable perspectives on more appropriate and sustainable interactions with the Atrato River ecosystem.[108]

Recognizing nature as a rights-bearing subject creates a demand to end the duality between society and nature; a call for alternatives instead of worn-out development discourses, and a response for reproductive systems instead of the dominant economic growth model. Undoubtedly, the rights of nature reveal the anthropocentric limitations of environmental law and emphasize the need to envision and create strategies that support the inseparable and intertwined bonds between humans and nature.[109] Given the recognition of "rights of nature" for rivers and other non-human entities, one may ask whether ecosystems that have suffered negative impacts from war, can be recognized as victims of armed conflict? If so, can rivers, ecosystems, or animals be subject to reparation and restoration for the damage inflicted? In recent years, the Research and Prosecution Unit of the Special Jurisdiction for Peace has declared the environment as the "silent victim of armed conflict," in an investigation conducted in the southern region of the country (Nariño). This unit has stated that it seeks "to be seeking [environmental] reparation mechanisms and guarantees of non-repetition".[110]

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tancur, *supra note* 56 at 20.

[108] Luisa Gómez-Betancur, *The Rights of Nature in the Colombian Amazon: Examining Challenges and Opportunities in a Transitional Justice Setting*, 25 UCLA J. Int'l L. & Foreign Aff. (2020), https://escholarship.org/uc/item/5bk379rd.; Ariza Buitrago & Gómez Betancur, *supra* note 56 at 20.

[109] *Id.*

[110] Jurisdicción Especial para la Paz (*hereinafter* JEP), Unidad de Investigación y Acusación, *Unidad de Investigación y Acusación de la JEP, "Reconoce como víctima silenciosa el medio ambiente", Comunicado 009*, (June 5, 2019), https://www.jep.gov.; Ariza Buitrago & Gómez Betancur, *supra* note 56 at 21..

The rights of nature have also been mentioned by other units of the Special Jurisdiction for Peace.[111] Notably, judges have accepted the limitations of the duality or opposition between society and nature, and instead have promoted a more intertwined dialogue between these two worlds. They have emphasized the concept of territory as a victim —"a living whole and sustenance of identity and harmony". According to indigenous ontologies, "territory" does not refer to a separation between material, cultural, and spiritual realms, but rather humans and non-humans (such as animals, land, rivers, etc.) are mutually connected and interdependent.[112] Based on this perspective, the Special Jurisdiction for Peace —which is one of the most diverse courts globally in terms of gender and ethnicity— has issued multiple rulings recognizing territories as victims of armed conflict.[113] According to recent decisions, the territories of Katsa Su and Cxhab Wala Kile belonging to the indigenous Awá and Nasa peoples,[114] along with territories of Afro-Colombian communities in the municipalities of Tumaco, Ricaurte, and Barbacoas,[115] have been recognized as rights-bearing subjects. These decisions, along with others, including the territory of Eperara Euja belonging to the Eperara Siapidara people and nine other indigenous communities and peoples, have also been issued.[116] Although a close examination of the cases in Colombia reveals that there is no unique, standard, or unified content for "rights of nature" and many challenges remain in

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111 JEP et al., Ethnic and Cultural Diversity, Legal Pluralism and Prior Consultation: Coordination and Articulation Intruments Between Indigenous Peoples and the Comprehensive System of Truth, Justice, Reparation and non-Repetition (SIVJRNR), (2019), [https://perma.cc/5E8L-246W].

112 The idea of nature as a victim was referenced by Decree-Law 4633 of 2011, known as the Law of Victims for Indigenous Communities. This legislation, a political victory for the indigenous peoples' organizations, establishes that indigenous peoples have "special and collective ties" with "Mother Earth" (Article 3) and have the right to "harmonious coexistence in the territories" (Article 29). In addition, it recognizes that the territory is "a living whole and sustenance of identity and harmony" and that it "suffers damage when it is violated or desecrated by the internal armed conflict" (Article 45). "Spiritual healing" is part of the integral reparation of the territory (Article 8); Belkis Izquierdo & Lieselotte Viaene, *Decolonizing Transitional Justice From Indigenous Territories*, ICIP (2018), http://www.icip-perlapau.cat/numero34/articles_centrals/article_central_2 [https://perma.cc/VX78-KC9R].

113 *See* Santiago Pardo Rodríguez, *A Second Chance on Earth: Understanding the Selection Proccess of the Judges of the Colombian Special Jurisdiction for Peace* 10 Notre Dame J. Int'l & Compar. L. 209, 261–262 (2020).

114 JEP, *Chamber of Recognition of Truth, Responsibility and Determination of Facts and Conducts [SRVR]*, Order SRVBIT 079 (November 12, 2020); *Order SRVBIT 099*, Presiding Judge: B. F. Izquierdo Torres (December 3, 2019); *Order SRVBIT 002*, Presiding Judge: R. Sánchez (January 17, 2020).

115 JEP, *Chamber of Recognition of Truth, Responsibility and Determination of Facts and Conducts [SRVR]*, January 24, 2020, Presiding Judge: B. F. Izquierdo Torres, Order SRVBIT 018; *see also* JEP, *Chamber of Recognition of Truth, Responsibility and Determination of Facts and Conducts [SRVR]*, October 21, 2019, Presiding Judge: B. F. Izquierdo Torres, Order SRVBIT 067.

116 JEP, *Chamber of Recognition of Truth, Responsibility and Determination of Facts and Conducts [SRVR]*, June 10, 2020, Presiding Judge: B. F. Izquierdo Torres, Order SRVBIT 094.

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their implementation, this approach may represent a promising path to fill the gaps regarding anthropocentric versus ecocentric conflicts, guaranteeing justice, truth, reparations, and guarantees of non-repetition also for territories, rivers, and animals. [117] In conclusion, it can be said that Colombia's legislation should evolve toward a more inclusive approach, incorporating an "ecopsychological" perspective —one that embraces transformative environmental constitutional law and the recognition of eco-rights.

On an international scale, there have been notable practices in recognizing the rights of animals and biodiversity. A clear example of this can be found in Argentina, where the right to the environment takes precedence over the instrumental use of dolphins.[118] Similarly, in 2010, Bolivia introduced the "Law of Mother Earth," which recognizes the rights of nature and promotes sustainable development. This law incorporates Indigenous worldviews and emphasizes harmony between human beings and ecosystems.[119] Bolivia declared that ecological balance should be maintained in relation to healthy development, and it allowed the relocation of animals to new places to avoid overcrowded conditions.[120] Furthermore, in Ecuador, a movement advocating to animal rights has led to the adoption of laws and regulations aimed at protecting these creatures. Ecuador is one of the global pioneers in granting legal rights to nature. Its 2008 Constitution recognizes nature as a legal entity, allowing ecosystems to be defended in court. This framework has led to significant legal actions aimed at protecting biodiversity and preventing environmental degradation. This shift towards more compassionate and ecological perspectives aligns with a broader global movement for environmental justice and the ethical treatment of animals.[121] Brazil has established extensive protected areas, including the Amazon rainforest, which are crucial for preserving biodiversity. Although challenges such as deforestation persist, the country's legal frameworks and conservation initiatives continue to play a vital role in safeguarding its rich biological diversity.[122] Costa Rica implemented the 1998 Biodiversity Law, which supports the intellectual property rights of indigenous and rural communities in the use of natural resources and biodiversity. This law is considered one of the most comprehensive pieces of legislation for the implementation of the Convention on

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[117] Ariza Buitrago & Gómez Betancur, *supra* note 56.

[118] Juzgado Nacional de Primera Instancia en lo Contencioso-Administrativo Federal Nº 2 (JN Federal Contencioso Administrativo), Alberto E. Kattan et al. v. National Government – Executive Power, May 10, 1983, Wordpress.com

[119] Bernardo Hernández-Umaña, Oliver Mauricio Esguerra Ramírez & Karen Giovanna Añaños Bedriñana, *Earth Jurisprudence in South America: Trends and Developments*, 8 J. Infrstr., Pol'y & Dev. 3515, 9-10 (2024).

[120] Andrea Padilla, Los animales al Derecho (2018) (Ph.D. dissertation, Repositorio Institucional Séneca), https://repositorio.uniandes.edu.co/server/api/core/bitstreams/f80a25a2-975e-411a-a7e4-a8a4cdd9c93d/content.

[121] Hernández-Umaña, *supra* note 119.

[122] Janeth Lessmann et al., *The Role of Funding in the Performance of Latin America's Protected Areas*, 121 Proc. Nat´l Acad. Sci. e2307521121 (2024).

Biological Diversity.[123] This trend reflects a growing recognition of the importance of considering non-human life in legal frameworks, not just as subjects to be exploited but as beings deserving of rights and protection.[124]

In the United Kingdom and the United States, there is significant legal support for animal rights, and this is not merely a coincidence. On the contrary, it stems from a deep social belief in the responsibility to respect animals and their environment.[125] This belief has evolved over time through cultural values that emphasize compassion and ethical treatment of all living beings. Unfortunately, in many societies, including Colombia, this awareness is notably absent. However, it is important to note that this observation does not deny animals' ability to experience pain or suffering. Rather, it reflects a public indifference or a lack of sufficient interest in advocating for the comprehensive and growing recognition of these rights.[126] This situation requires a shift in social values towards a more empathetic and responsible approach towards animals, where their intrinsic value is recognized beyond their utilitarian value to human beings.[127]

Consequently, it can be argued that there is a direct connection between social awareness and the level of legal protections for animals. This connection explains why animals that are closer to human beings, such as pets, receive more legal protection, while some laboratory practices remain exempt from these protections. In this regard, the existing laws in the UK play a crucial role in safeguarding animal rights. One of the most prominent and oldest laws in this area is the "Protection of Animals Act 1911", which is considered the foundation of anti-cruelty laws for animals in England and Wales.[128] At the time, this law represented a significant step toward animal welfare, and it has since undergone various amendments to address emerging needs in animal rights. Among the changes to this law are increased penalties for cruelty toward animals and improvements in the conditions of animal care and transport.[129] In Denmark, the Danish Animal Welfare Act came into force in 2021, replacing the former Animal Protection Act. This framework law covers nearly all as-

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123 Michael J. Miller, *Biodiversity Policy Making in Costa Rica: Pursuing Indigenous and Peasant Rights, STA RICA*, 15 J. Environment & Dev. 359-381 (2006).

124 Mauro Leonel Fuentes, *Los derechos de los animales: una aproximación a los derechos de la naturaleza en el Ecuador*, Forum Animal L. Stud., (July 17, 2020).

125 Rachel Monaghan, *Not Quite Terrorism: Animal Rights Extremism in the United Kingdom*, 36 Stud. Conflict & Terrorism 933, 933-951 (2013).

126 Brayan Benjamín Nicolás Herrera Silva, *Derechos de los Animales: La Legislación Nacional Interna como Barrera Legal para el Reconocimiento de la Subjetividad Jurídica Animal*, 13 Via Inveniendi Et Iudicandi 55, 55-93 (2018).

127 Carlos Contreras, *Sentient Beings Protected by Law. Analysis of Recent Changes in Colombian Animal Welfare Legislation*, 2 Global J. Animal L. 1, 1-19 (2016).

128 Jessica Horton, *UK Animal Protection Legislation: The Animal Welfare (Service Animals) Act 2019 in* Animal Law Worldwide, (Dalpane F., Baideldinova M eds., T.M.C. Asser Press, The Hague, 2024) https://doi.org/10.1007/978-94-6265-643-7_24.

129 Animal Health and Welfare (2006), Protection of Animals Act 1911, https://www.legislation.gov.uk/asp/2006/11/part/1.

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pects related to animal welfare, except for animal experimentation, which is regulated under separate legislation. Like its predecessor, the new law includes general principles regarding the protection and welfare of various animal species. Additionally, it introduces a large number of general delegation provisions that authorize the Minister for Food to issue regulations in several areas such as slaughter, surgical treatment, animal care and housing, supervision, transport, professional training, zoos, and more. Prior to 2021, the former Animal Protection Act was supplemented by several specific laws passed by Parliament for particular species, such as farm animals, dogs, and horses. However, to enhance the flexibility of the legislative process, the new Animal Welfare Act expanded the scope of delegated authority and removed the need for separate legislation for each species at the parliamentary level.[130] These changes reflect the ongoing progress toward strengthening legal protections for animals and emphasize the ethical responsibility of societies toward living beings.

At the European Union level, in the 2015 judgment of the case *Zuchtvieh-Export GmbH v Stadt Kempten* (C-424/13), the Court of Justice of the European Union (CJEU) ruled that animal welfare regulations must be observed throughout the entire journey of live animal exports, including transit through non-EU countries. In this case, a German company intended to export cattle to Uzbekistan without providing the necessary rest stops for the animals. The Court held that Member States may refuse to authorize exports if animal welfare standards are not met, even when the transport takes place outside the territory of the European Union.[131] The European Court of Human Rights also found itself in a position where it had to address the issue in the case of *Herman v. Germany*. In this case, the applicant based their request on environmental awareness reasons, arguing against the granting of hunting rights on their private land.[132] In Colombia, the role of laws and governmental policies is pivotal in facilitating significant changes in the relationship between individuals, biodiversity, and animals. To overcome the dominance that has historically been imposed upon them, it is essential to reconsider the relationship and move away from the ownership and instrumental view that has been dominant for centuries. This requires a transformation in the legal framework to promote a more ethical and respectful approach towards animals and the environment.[133] Shifting towards a more eco-centric perspective will not only challenge the historical mindset of

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130 Horton, *supra* note 128.

131 BBC, Editorial, *EU court: Animal welfare rules apply to animals leaving EU*, (April 23, 2015), https://www.bbc.com/news/world-europe-32436133?utm_source=; Editorial, *Export of live animals for slaughter: European Court rules that animal welfare laws apply outside the EU*, Rosalind English, (29 April 2015), https://ukhumanrightsblog.com/2015/04/29/export-of-live-animals-for-slaughter-european-court-rules-that-animal-welfare-laws-apply-outside-the-eu/?utm_source=;

132 Rosa Fernández, *International Environmental Jurisprudence*, 3 RCDA, 2012, https://www.raco.cat/index.php/rcda/article/download/322600/413238.

133 Iván Vargas Chaves et al., *Recognizing the Rights of Nature in Colombia: The Atrato River Case*, 17 Jurídicas, at 13, (2020).

exploitation but also encourage a new approach that recognizes the inherent value of animals and biodiversity, fostering a relationship based on coexistence rather than domination. By revisiting and reforming these entrenched views, Colombia can advance toward a legal and ethical paradigm that aligns more closely with the values of environmental sustainability and animal welfare.

The Law 84 of 1989 (Animal Protection Statute), while offering specific protections for animals, could be improved by adopting a broader approach that acknowledges animals' intrinsic value, rather than seeing them only as tools or resources for human use. While this law lays the groundwork for animal welfare, it does not go far enough in recognizing animals as beings with inherent worth, deserving of rights independent of their utility to human beings. Article 6 and the subsequent provisions of Colombia's law establish administrative and procedural regulations, among which one of the most important is granting the National Police and relevant law enforcement authorities the power to preemptively seize any animal found to be in a vulnerable situation. This applies when there is evidence or information indicating behaviors that constitute animal abuse. This change is considered an amendment to the law, with a new article (Article 46 (a)) added to the statute. Moreover, this law stipulates that revenues from fines related to Statue of Animal Protection violations must be exclusively allocated to the processes of drafting, informing, implementing, and monitoring animal protection policies, as well as to awareness campaigns, public education, and the establishment of animal protection funds. In this regard, animal welfare organizations, animal advocacy councils, or similar bodies will actively participate in achieving these goals (paragraph of the new Article 46 of the Statue of Animal Protection). Finally, Article 10 of the new law in Colombia provides that the Ministry of Environment, in coordination with relevant institutions, may conduct educational campaigns aimed at changing animal care practices and promoting best practices for animal welfare. This highlights the crucial role of public education in fostering progress and encouraging more respectful and appropriate treatment of animals.[134] Following this, Law 1774 of 2016[135] recognizes animals as sentient beings capable of feeling pain, but it could have gone further in explicitly prohibiting the use of animals as property. The failure to establish such provisions limits the legal framework for animals' protection. Adopting an approach that sees animals as individuals with non-transferable rights could contribute to changing the deeply ingrained narrative of human dominance. This shift would recognize that natural resources are no

[134] Carlos Andrés Contreras López, *Colombia: animales como seres sintientes protegidos por el Derecho penal*, Forum Animal L. Stud., 4 (2016).

[135] Ley 1774, 2016. Congreso de Colombia [Congress of Colombia], Jan. 6 2016. (Law 1774, enacted in 2016 by the Congress of Colombia, is a reform law that modifies several important Colombian laws, including the Civil Code, Law 84 of 1989, the Penal Code, and the Code of Criminal Procedure. Additionally, it introduces other provisions. In other words, this law encompasses a set of amendments to various laws) https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=68135.

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longer merely at the discretion of men and women but are entrusted to them for stewardship and protection. Such a transformation would align legal frameworks with the growing global acknowledgment of animal rights, signaling a cultural and legal shift towards viewing animals not as property but as beings with moral standing and legal protection. This kind of legal evolution would not only benefit animals but also strengthen the ethical foundations of human interactions with the environment and biodiversity.[136]

The Colombian Constitution of 1991, as a pioneering and comprehensive legal framework, provides a strong foundation for the protection of animal rights. Article 79 is one of the key provisions in this regard, guaranteeing every individual the right to enjoy a healthy environment. This article not only obligates the government to protect the environment but also implicitly refers to the protection of animals as part of ecological balance. The Constitution emphasizes the principle that animal welfare is directly linked to environmental preservation, and therefore, preventing cruelty and exploitation of animals is established as a legal duty of the government. Furthermore, Article 80 holds the government responsible for planning and implementing policies aimed at conserving natural resources, restoring ecological balance, and protecting biodiversity. Since animals are an integral part of biodiversity, this article implicitly addresses the protection of animal species and their habitats. This legal obligation ensures that animal protection is incorporated into the country's broader environmental policies, fostering a sustainable balance between human beings and nature. Additionally, Article 334 encourages the government to promote sustainable economic development that respects environmental standards and animal welfare. This article guides that development policies should be designed with environmental responsibility in mind and prevent activities that could harm animals. The Constitution's Article 58 refers to the collective rights of the people to protect the environment and cultural heritage, which generally includes respect for animals as well. This collective approach enhances animal rights protection within communities and enables local people to actively participate in animal conservation.[137] The Constitution clearly does not limit the immediate protection of ecosystems or any of their components to a liberal perspective, where human beings can freely exploit other living beings or natural resources as they see fit. Instead, it emphasizes that the relationship between human beings and the environment must be governed by specific patterns and requirements that define not only their freedoms but also their responsibilities. Within this framework, any use of natural resources or living beings must align with the preservation of biodiversity and the integrity of ecosystems, rather than acting against them. This approach underscores the need to consider the

[136] Iván Darío Ávila Gaitán, *Derechos Humanos, Derecho Animal y Crítica de la Violencia Especista: El Lugar de la Sintiencia*, 6 Análisis Jurídico-Político at 15 (2024), https://doi.org/10.22490/26655489.7271.

[137] Constitución Política de Colombia (C.P.), art. 79, 1991.

rights of living beings as part of nature and emphasizes that human beings must responsibly use these resources while taking into account the long-term impacts of their actions on the environment and ecosystems. Therefore, the Constitution effectively supports principles that can ensure the protection of the environment and all its components against human threats and misuses. This approach is especially significant in a time when environmental crises and climate change remain serious threats, as it highlights the importance of joint efforts to safeguard natural resources.[138]

It is important to consider how the law, through the imposition of prison sentences, restrictions, and heavy fines, seeks to establish a robust legal framework for animal protection. However, the interaction of this law with the dynamics of conflict may create tensions and practical challenges. For example, the preservation of the Colombian Amazon, part of which is attributed to the barriers imposed by violence, raises questions about how to balance animal protection with the social, economic, and environmental complexities that arise in the post-conflict context. The goal of animal protection laws is to enforce heavy penalties for cruel treatment of animals, but in countries like Colombia, which are in the process of rebuilding after prolonged conflict, other priorities also exist.[139] In these areas, the preservation of natural resources, especially the Amazon, which is safeguarded due to specific factors such as barriers against extraction projects, faces new challenges. These challenges include balancing environmental protection with the social and economic needs of communities suffering from the consequences of conflict. Thus, the effective implementation of laws in such areas requires a comprehensive approach that not only protects animals but also addresses the social and economic needs of post-conflict regions. This law must be designed in a way that can harmonize with the complexities of reconstruction and adaptation to post-conflict conditions while simultaneously safeguarding animal rights.[140] Under Law 1448 of 2011,[141] which specifically addresses the rights of victims in Colombia, the definition of victims can be expanded to include animals. This expansion means that the suffering of animals could be recognized as a significant harm, allowing for comprehensive reparative measures that not only address material damages but also the emotional harm caused by unnecessary violence. This could lay the groundwork for more comprehensive compensation frameworks that address both physical and psychological injuries inflicted on animals, as well as the new Law 2294 of 2023.[142] This means that the law, which contains specific rules like

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138 Padilla, *supra* note 15, at 72.

139 Contreras, *supra* note 127.

140 Beckline Mukete et al., *Environmental Degradation in Conflict and Post-conflict Regions,* 4 Int´l J. Environmental Protection & Pol´y, 187(2016).

141 Congress of Colombia, Law 1448 of 2011: Establishing Measures for the Care, Assistance, and Comprehensive Reparation of Victims of the Internal Armed Conflict and Other Provisions (2011)

142 Law 2294 of 2023: Issuing the National Development Plan 2022–2026 "Colom-

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Articles 27, 31, 42, and 178 aimed at protecting and caring for animals, could improve by including ethical principles in every aspect of how humans interact with animals. If provisions are included in this law to promote ethical treatment of animals and prevent their unnecessary exploitation, it could lead to a significant shift in legal frameworks. Such changes would not only assist in protecting animal rights but could also enhance social awareness and shift behaviors at various levels, recognizing all living beings as valuable and deserving respect in human processes, including economics and development. These actions could contribute to the creation of a more comprehensive legal framework for animal protection in Colombia and globally.

A significant advancement in animal protection can be found in Law 2318 of 2023,[143] which prohibits the use of animals to suppress protests, as well as gatherings of riots and disturbances. This regulation introduces changes to the provisions of Law 1801 of 2016[144] and establishes principles and duties for police officers, particularly concerning the use of force and the prohibition of using animals to control riots. While this law is not directly related to armed conflicts, it sets out regulations for maintaining public order, emphasizing the need to avoid unnecessary use of force and to respect the welfare of animals. This development reflects a broader understanding of the ethical treatment of animals in public safety operations and highlights the growing recognition of their rights in various aspects of societal law enforcement.

The Colombian government can create significant changes in societal attitudes towards animals by leading educational initiatives that promote empathy for all forms of life and emphasize the importance of living in harmony and peace with nature. These initiatives can include campaigns that raise public awareness about animal rights, the necessity of protecting biodiversity, and respecting the rights of living beings. Furthermore, by strengthening protective laws and ensuring the enforcement of animal rights across all social and economic sectors, the government can play a key role in transforming the way individuals interact with animals and the environment. In this context, legislation and public policies should actively promote ethical and legal respect for animals in all situations, including during conflicts. Shifting the mindset from ownership to recognizing the intrinsic value of animals, Colombia can set an example for other nations in terms of animal rights protection and improving

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bia, Global Power of Life," Ministry of Environment and Sustainable Development, (May 19, 2023), *www.minambiente.gov.co/documento-normativa/ley-2294-de2023/#:~:text=19%20de%20mayo%20de%202023,Potencia%20Mundial%20de%20la%20Vida%E2%80%9D.*

143 Law 2318 of 2023: By Which the Use of Animals to Deter Demonstrations, Riots, and Uprisings is Prohibited, House of Representatives, (2023), *www.camara.gov.co/presidente-petro-sanciona-la-ley-que-prohibe-el-uso-de-animalesenprotestas#:~:text=La%20sanci%C3%B3n%20de%20ley%202318,nunca%20m%C3%A1s%20podr%C3%A1n%20ser%20usados.*

144 Law 1801 of 2016: By Which the National Code of Security and Citizen Coexistence is Issued, Congress of Colombia, (July 29, 2016), www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=80538.

their living conditions, thus making effective strides toward achieving environmental justice.

VI. Conclusion

This study concludes that the armed conflicts in Colombia have not only caused extensive human suffering but have also severely impacted biodiversity and the welfare of sentient beings. The exploitation of natural resources, fueled by conflict, has led to habitat destruction, deforestation, and a significant loss of species, exacerbating ecological imbalances and undermining the resilience of ecosystems. Current legal frameworks, though gradually recognizing the rights of animals and biodiversity, remain insufficiently developed to address the complex challenges arising from these intersections. The findings highlight a pressing need for Colombia to adopt an integrated and transformative approach that extends legal protections to animals and ecosystems, ensuring their recognition as critical stakeholders in post-conflict reconstruction. By transitioning from an anthropocentric to a more ecocentric or biocentric legal paradigm, Colombia has the opportunity to position itself as a regional leader in sustainable development and environmental justice. Such an evolution requires not only legal reforms but also the establishment of mechanisms for effective implementation and enforcement. The study emphasizes that acknowledging biodiversity rights as integral to broader reparative frameworks can significantly contribute to achieving sustainable peace, reducing ecological injustices, and fostering harmony between human beings and nature. It advocates for interdisciplinary and empathetic strategies to mitigate the intertwined crises of violence, ecological degradation, and loss of biodiversity.

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Cybersecurity in Mexico: An In-Depth Analysis of a Fragmented Regulatory Landscape

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Abstract: Mexico's cybersecurity regulatory framework remains highly fragmented, as it comprises discrete provisions on cybercrime, national security, and data protection without forming a cohesive whole. Although progress has been made in criminal statutes and intelligence capacities, the lack of a unified cybersecurity law weakens enforcement consistency and interagency collaboration. This article offers a comprehensive analysis on existing regulatory instruments, legislative proposals from 2015 to 2025, and relevant international treaties, including the Budapest Convention and the newly adopted United Nations Convention against Cybercrime. The findings reveal persistent gaps and overlaps that hamper effective detection, mitigation, and prosecution of cyber threats, disproportionately affecting critical infrastructure and SMEs. Political disputes over surveillance powers, privacy safeguards, and alignment with global frameworks have repeatedly stalled efforts to pass integrated legislation. Further complicating the landscape, rapid technological developments such as generative artificial intelligence pose new challenges to threat detection and incident response. Nevertheless, partial alignment with international standards under the USMCA and improved global cybersecurity indices signal growing awareness of the need for more cohesive governance. The article concludes by advocating the enactment of a dedicated cybersecurity statute, separate from broader security measures, to harmonize definitions, clarify institutional mandates, and foster public-private collaboration. Enhanced interagency coordination and multi-stakeholder engagement are crucial for boosting national resilience and advancing an adaptive, rights-based approach to cybersecurity.
Keywords: cybersecurity regulation; fragmented framework; digital infrastructure; international standards.

Resumen: El marco regulatorio de ciberseguridad en México sigue caracterizándose por su fragmentación, al abarcar disposiciones dispersas en cibercrimen, seguridad nacional y protección de datos sin consolidarse en un instrumento integral.

Pese a avances en materia penal y capacidades de inteligencia, la ausencia de una ley unificada en ciberseguridad debilita la consistencia en la aplicación legal y la colaboración interinstitucional. Este artículo proporciona un análisis exhaustivo de los instrumentos normativos existentes, las propuestas legislativas entre 2015 y 2025, y los tratados internacionales pertinentes, incluido el Convenio de Budapest y la reciente Convención de las Naciones Unidas contra la Ciberdelincuencia. Los hallazgos evidencian brechas y superposiciones que obstaculizan la detección, mitigación y persecución efectiva de amenazas digitales, lo que afecta de manera desproporcionada a la infraestructura crítica y a las PYMES. Las disputas políticas en torno a facultades de vigilancia, salvaguardias de privacidad y convergencia con marcos globales han detenido reiteradamente el avance de una legislación integral. Sumado a ello, el rápido desarrollo de tecnologías como la inteligencia artificial generativa plantea nuevos desafíos para la identificación de riesgos y la respuesta a incidentes. No obstante, la alineación parcial con estándares internacionales bajo el T-MEC y mejores índices de ciberseguridad reflejan una creciente conciencia de la necesidad de mayor coherencia normativa. El artículo concluye con una propuesta para promulgar un estatuto dedicado exclusivamente a la ciberseguridad, independiente de otras disposiciones de seguridad, que armonice definiciones, clarifique mandatos institucionales y fomente la colaboración público-privada. La coordinación interinstitucional y el involucramiento de múltiples actores resultan esenciales para fortalecer la resiliencia nacional y adoptar un enfoque adaptativo y centrado en derechos humanos en materia de ciberseguridad.
Palabras clave: regulación de ciberseguridad; marco fragmentado; infraestructura digital; estándares internacionales.

I. Introduction

Cybersecurity has emerged as a critical global challenge amid escalating geopolitical tensions and the rapid evolution of disruptive technologies, most notably, generative artificial intelligence. This article analyzes Mexico's current cybersecurity regulatory framework, identifying specific gaps, challenges, and the need for policy cohesion, for which it will examine both the contextual situation of world`s main reforms and the local history of legislative actions.

The 2025 Global Cybersecurity Outlook by the World Economic Forum reveals that the cyber threat landscape has become even more complex, widening the cyber resilience gap between large, resource-rich organizations and smaller enterprises, particularly in emerging econo-

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mies like Mexico.[1] SMEs (small and medium-sized enterprises) continue to struggle with financial constraints, skill shortages, and the burdens of an increasingly fragmented regulatory environment, underscoring the urgent need for coordinated, proactive cybersecurity strategies.

Critical digital infrastructure remains highly vulnerable in Mexico, as in other Latin American countries. Cisco's Cybersecurity Readiness Index reveals that only 2% of Mexican organizations have reached a mature cybersecurity readiness level, with the majority still in formative or beginner stages. This low preparedness is worrying, as nearly 73% of companies anticipate a significant cyber incident within the next two years.[2]

The Global Cybersecurity Index (GCI) provides greater insight into Mexico's progress. In the 2020 report by the International Telecommunication Union (ITU), Mexico ranked 52nd with a score of 81.68, showing particular strengths in legal and technical measurements.[3] By 2024, Mexico had advanced to Tier 2 (Advancing) with an overall score of 85.77, indicating improvements in legal and organizational measurements.[4] However, cooperation measurements saw a slight decline, highlighting an ongoing challenge for Mexico in terms of regional and international partnerships.

Moreover, the Cost of a Data Breach Report 2024 from IBM shows that the global average cost of a data breach has risen by 10% over the past year, reaching $4.88 million. Mexican organizations are not immune to these rising costs, as many companies experience prolonged disruptions and financial losses after breaches. The report also notes that companies implementing AI and automated solutions tend to incur lower breach costs, underscoring the need for Mexico to adopt such technologies amid a widening cybersecurity skills gap.[5]

This challenge is further illustrated in the 2020 Cybersecurity Report: Risks, Progress, and the Way Forward in Latin America and the Caribbean, which points out that while some progress has been made, regulatory fragmentation persists in Mexico and its neighboring countries,

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[1] World Economic Forum, *Global Cybersecurity Outlook 2025*, at 4, 16, 25 (2025).

[2] Cisco, *2024 Cybersecurity Readiness Index - Mexico,* at 2-3 (2024).

[3] International Telecommunication Union, *Global Cybersecurity Index 2020*, at 6, https://itu.int/dms_pub/itu-d/opb/str/D-STR-GCI.01-2021-PDF-E.pdf (last visited Nov. 11, 2024).

[4] International Telecommunication Union, *Global Cybersecurity Index 2024*, at 6, 24-25, https://www.itu.int/en/ITU-D/Cybersecurity/Documents/GCIv5/2401416_1b_Global-Cybersecurity-Index-E.pdf (last visited Nov. 11, 2024).

[5] IBM & Ponemon Institute, *Cost of a Data Breach Report 2024*, at 3-4 (2024).

leaving them more susceptible to cyber threats.[6] According to Google Cloud's Cybersecurity Forecast 2024, in order to enhance phishing and misinformation campaigns, attackers increasingly use generative AI tools, posing new challenges in distinguishing between legitimate and malicious content.[7]

According to Digital Trust Insights 2025 (Mexico edition), although 83% of organizations plan to increase their cybersecurity budgets, only 42% have identified critical business processes and 37% have developed recovery manuals. Additionally, 50% remain uncertain about risk quantification, 41% intend to deploy generative AI for threat detection and response, and 68% view cybersecurity as a competitive growth advantage. These findings highlight significant gaps in achieving effective cyber resilience despite rising investments.[8] Similarly, Accenture's Cyber-Resilient CEO Report reveals that most CEOs recognize the critical importance of cybersecurity but feel unprepared to handle emerging risks, indicating a need for stronger leadership focus and integration of cybersecurity strategies.[9]

Moreover, the 2025 Global Risks Report by the World Economic Forum points out that technology's role in geopolitical tensions is a key concern, with cyber espionage and warfare ranking fifth in the two-year outlook.[10] This high ranking reveals the growing risk that advanced cyber capabilities can be exploited to destabilize global relations and compromise critical digital infrastructure, highlighting the pressing need for robust cybersecurity measures. The IBM X-Force Threat Intelligence Index supports this view, noting an increase in identity-based cyberattacks, which are challenging defenders to detect due to the complexity of distinguishing legitimate from unauthorized user access.[11]

Finally, research by the Asociación del Internet de México and the Consejo de Datos y Tecnologías Emergentes examines digital security practices across various sectors, emphasizing the importance of public awareness and education in cybersecurity. The study suggests a significant need for improved knowledge and digital practices among the Mex-

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[6] Inter-American Development Bank, *2020 Cybersecurity Report: Risks, Progress, and the Way Forward in Latin America and the Caribbean*, at 5, 12-13 (2020).

[7] Google Cloud, *Cybersecurity Forecast 2024*, at 3-4, 8 (2024).

[8] PwC, *Digital Trust Insights 2025 - Mexico Edition* (2025).

[9] Accenture, *The Cyber-Resilient CEO*, at 4-5, 18 (2024).

[10] World Economic Forum, *Global Risks Report 2025*, at 8, 12 (2025).

[11] IBM, *X-Force Threat Intelligence Index 2024*, at 3-4, 6 (2024).

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ican public in response to the growing risks within the country's digital ecosystem.[12]

This global cybersecurity context poses an urgent challenge for Mexico. Unlike many nations that have established dedicated cybersecurity laws, Mexico's regulatory approach is fragmented across various legislative frameworks without a singular, cohesive cybersecurity law. This regulatory gap leaves Mexico's critical infrastructure, SMEs, and the broader digital ecosystem vulnerable to cyber threats. The need for an integrated cybersecurity framework is particularly compelling in light of the increase in cyber risks and the growing reliance on digital technologies in every sector of Mexican society.

This article aims to critically analyze Mexico's current cybersecurity regulatory framework, identifying specific gaps, challenges, and the need for policy cohesion. It examines Mexico's fragmented legislative approach to cybersecurity, focusing on how these legal structures address, or fall short in addressing, contemporary cyber threats. Ultimately, this article advocates in favor of strategic recommendations aimed at consolidating Mexico's regulatory landscape, encouraging international alignment, and fostering a more resilient digital infrastructure.

While there are various instruments that, although not strictly regulatory, possess binding authority due to their nature as formally administrative but materially legislative acts, this article will not address those issued by public administration. Instead, it will focus exclusively on regulations issued by representative bodies, such as the Mexican Congress and Senate. However, it is worth noting that Mexico addresses cybersecurity through several key documents. The National Cybersecurity Strategy 2017,[13] for example, is a foundational framework that outlines national cybersecurity policies and serves as a primary reference in this article. Additional instruments, including the National Development Plan, the National Public Security Program, the Sectoral Program for Security and Citizen Protection, the National Digital Strategy, and several administrative agreements, also contain relevant cybersecurity provisions.[14] This list is not exhaustive, since numerous administrative guidelines in Mexico address various aspects of cybersecurity across the public sector.

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[12] Asociación del Internet de México & Consejo de Datos y Tecnologías Emergentes, *3er Estudio de Ciberseguridad en México 2023*, at 3-4, 6 (2023).

[13] Presidencia de la República [Office of the President], Estrategia Nacional de Ciberseguridad [National Cybersecurity Strategy] (2017) (Mex.).

[14] Inter-American Development Bank, *2020 Cybersecurity Report: Risks, Progress, and the Way Forward in Latin America and the Caribbean*, at 126-129 (2020).

This research is grounded on a thorough review of legislative initiatives, regulatory provisions, and policy measures specific to cybersecurity in Mexico. First, the article presents a historical context and legislative evolution of cybersecurity initiatives in Mexico, capturing both achievements and ongoing challenges. It then provides a comprehensive overview of cybersecurity provisions within Mexican legislation, examining key areas such as cybercrime, critical infrastructure protection, and data privacy. Additionally, it explores Mexico's involvement in relevant international cybersecurity treaties, analyzing both ratified and pending agreements that shape Mexico's approach to cross-border cyber threats. Finally, the article concludes with reflections on the current state of Mexico's cybersecurity landscape and the potential pathways toward a more cohesive regulatory framework.

In light of these pressing concerns, this article explores the regulatory landscape of cybersecurity in Mexico, emphasizing the gaps, overlaps, and underlying political dynamics that have thus far impeded the formulation of a coherent, unified legal framework. By situating Mexico's experience within broader global cybersecurity challenges, the analysis highlights the interplay of legislative inertia, emerging technological threats, and the critical importance of aligning domestic policies with international conventions. The sections that follow offer a structured investigation: first, a historical contextualization of Mexico's cybersecurity initiatives, tracing the evolution of proposals and amendments; next, a comprehensive overview of existing laws that capture scattered cybersecurity provisions; and, subsequently, a review of relevant international treaties that underscore Mexico's potential pathways toward harmonization and cross-border collaboration.

The article then presents findings on how this fragmented framework impedes both public and private sector resilience, followed by a discussion that examines the legal, institutional, and societal ramifications. The concluding sections synthesize the insights gleaned from this inquiry, proposing strategic recommendations for legislative consolidation and enhanced stakeholder engagement. By mapping out the challenges and opportunities, this article aims to bolster not only Mexico's cybersecurity posture but also its readiness to adapt to rapidly evolving digital threats, an imperative that resonates well beyond national borders.

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II. Methodology

This study adopts a mixed qualitative approach designed to capture both the doctrinal underpinnings of Mexico's cybersecurity legislation and the broader policy context in which it unfolds. Methodologically, the research proceeded in four main stages:

1. Documentary and Legislative Review:
The core of this investigation consisted of an extensive analysis of primary legal sources. This included reviewing the full texts of relevant laws, proposed bills, and amendments in the Mexican legislative record from 2015 to 2025. Legislative proposals were identified through official parliamentary documents, publicly accessible archives of the Mexican Congress and Senate, as well as official communications and press releases outlining the scope of each initiative. Particular attention was paid to the chronological evolution of these proposals, enabling a comparative assessment of how lawmakers have conceptualized cybersecurity over time and how legislative intent has shifted, or remained static, across different political administrations.

2. Doctrinal Legal Analysis:
To interpret the fragmented body of statutes and legislative drafts, a doctrinal (black-letter law) approach was employed. This method entailed a close reading of statutory language to identify explicit cybersecurity provisions, definitions, penalties, and enforcement mechanisms. By evaluating the precision of the terms (e.g., "cybercrime," "information security," "critical infrastructure," "cyber intelligence") and mapping them against broader legal frameworks (e.g., criminal, national security, and data protection laws), the study elucidates both overlaps and lacunae in the regulatory landscape. This doctrinal lens was also instrumental in distinguishing cybersecurity-specific provisions from those primarily geared toward criminal justice or intelligence gathering.

3. Comparative and Contextual Framework:
After establishing a foundation through legislative texts, the study integrated a comparative perspective using international instruments and standards. Particular focus was placed on the Budapest Convention, the newly adopted United Nations Convention against Cybercrime, and relevant clauses in the USMCA (T-MEC). By juxtaposing

Mexico's legal texts with these global norms, the research highlights the degree of alignment, potential areas of conflict, and prospects for harmonization. Concurrently, authoritative reports and indices, such as the Global Cybersecurity Index, IBM's Cost of a Data Breach Report, and the World Economic Forum's Global Cybersecurity Outlook, provided broader context on how legislative fragmentation intersects with on-the-ground cybersecurity readiness.

4. Iterative Thematic Synthesis:
Finally, an iterative thematic analysis was conducted to integrate findings from the legislative review, doctrinal interpretation, and international comparisons. Key themes, such as the conflation of cybersecurity with cybercrime, the interplay of national security concerns, and the political impediments to passing a unified cybersecurity statute, were identified, refined, and cross-referenced. This approach allowed the research to move beyond enumerating statutory gaps and, instead, discuss how institutional, political, and international factors converge to shape cybersecurity regulation in Mexico. The synthesis informed not only the problem definition and discussion sections but also the policy-oriented solutions proposed toward a more cohesive regulatory framework.

By combining rigorous legal analysis with contextual insights from international standards and sectoral reports, this methodology ensures a multifaceted understanding of Mexico's cybersecurity environment. It captures both the doctrinal intricacies of evolving legislative texts and the real-world challenges, technical, political, and organizational, that influence the feasibility and effectiveness of any proposed reforms.

II. Literature Review

Scholarly discourse on the issue of cybersecurity in Mexico has predominantly revolved around the inadequacies of its legal frameworks and the pressing need for a cohesive regulatory landscape. We will briefly describe the main branches of it as it will help us in the global comprehension of the precedent academic studies.

The early work by Diaz Gomez highlights the necessity of intersectoral collaboration, encompassing governmental, private, and civil enti-

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ties, to effectively combat cybercrime.[15] By situating the national legal framework in a comparative international context, including potential alignment with the Budapest Convention, he underscores that safeguarding individual liberties must remain central, even as legislative initiatives increasingly prioritize security concerns. His work reveals a delicate balancing act between protecting citizens in cyberspace and preserving constitutional rights, a tension that resonates with ongoing debates over surveillance powers, data protection, and freedom of expression. Building upon these foundational insights, Piña Libien presents a hermeneutic and conceptual investigation into the interplay of cybersecurity measures and fundamental rights in Mexico's evolving information society.[16]

Standing from a geopolitical perspective, Aguilar-Antonio contends that cyberspace has evolved into a principal arena of national defense, necessitating a reconfiguration of security policies in Mexico.[17] Drawing comparisons with global cybersecurity benchmarks, particularly the Global Cybersecurity Index, his study illustrates how underinvestment and political divergence have impeded the development of robust defense capabilities. He further advocates for the formation of a dedicated National Cybersecurity Agency, positing that such an entity could address deficits in coordination, incident response, and technical readiness.

Legal fragmentation is also evident in comparative regional analyses, as shown by Elizalde Castañeda, Flores Ramírez, and Castro Lorzo, who explore the legislative trajectories of Chile, Mexico, and Colombia with respect to cybercrime statutes and compliance with the Budapest Convention.[18] Their findings indicate that while all three nations have enacted measures to penalize cyber sabotage, espionage, and other digital offenses, significant disparities persist, particularly in Mexico's and Chile's integration of international standards. Colombia's more robust adherence highlights the need for harmonized reforms to bolster transnational cooperation against cyber threats.

Within Mexico, significant heterogeneity exists at the subnational level. Alcalá Casillas and Meléndez Ehrenzweig reveal considerable inconsistency in how Mexico's 32 states codify cyber offenses—ranging from

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[15] Andrés Díaz Gómez, *El Delito Informático, Su Problemática y la Cooperación Internacional como Paradigma de su Solución: El Convenio de Budapest*, 8 REDUR 169, 203 (2010).

[16] Hiram Raúl Piña Libién, *Cibercriminalidad y ciberseguridad en México*, 2 IUS COMITIALIS 47–69 (Dec. 2019).

[17] Juan Manuel Aguilar Antonio, *Presente y futuro de los retos de la ciberseguridad en México, una propuesta para la seguridad nacional*, 13 REV. LEGIS. ESTUD. SOC. & OPINIÓN PÚBLICA 83, 120 (2020).

[18] Rodolfo Rafael Elizalde Castañeda, Héctor Hugo Flores Ramírez et al., *Los delitos cibernéticos en Chile, México y Colombia. Un estudio de Derecho Comparado*, 4 IUS COMITIALIS 252, 276 (2021).

fraud to cyberstalking, ultimately undermining an integrated national response.[19] These discrepancies manifest in divergent definitions, penalties, and enforcement protocols. As a result, not only does it become challenging to investigate such crimes uniformly, but the lack of coherent statutory language also erodes both preventative measures and prosecutorial efficacy across the country.

Extending the discussion to include legislative proposals, Aguilar Antonio and Quechol Maciel survey cybersecurity bills introduced in Mexico from 2019 to 2023, revealing a predominantly state-centric, security-oriented paradigm.[20] They argue that human rights considerations, collaborative mechanisms between the public and private sectors, and avenues for international cooperation remain comparatively underexplored. This critique resonates with concurrent findings by Aguirre Quezada, who acknowledges that despite multiple proposals during the LXIV Legislature, the regulatory framework remains inadequate.[21] Drawing on national and international cybersecurity indices, Aguirre Quezada warns that escalating threats—from data breaches to large-scale attacks—necessitate not merely robust laws but also an integrative policy agenda, one that foregrounds human rights and systematically engages diverse stakeholders.

A more recent strand of scholarship examines how cybersecurity shortfalls intersect with broader digital rights. Fuentes-Penna, Gómez-Cárdenas, and González-Ibarra contend that Mexico's regulatory apparatus remains splintered across various statutes, such as the Federal Criminal Code and laws pertaining to national security, generating a legal vacuum that fails to account for human rights nuances in the cyber domain.[22] Although policy documents like the National Cybersecurity Strategy stresses values of transparency and cross-sectoral collaboration, the authors note that legislative codifications have thus far emphasized punitive mechanisms rather than preventative or rights-based approaches.

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[19] Alcalá Casillas, Miryam Georgina & Meléndez Ehrenzweig, Miguel Ángel, *Delitos informáticos en México. Reconocimiento en los ordenamientos penales de las entidades mexicanas*, 13 Paakat: Rev. Tecnol. & Soc. 1, 37 (2023)

[20] Juan Manuel Aguilar Antonio & Kate Quechol Maciel, *¿Qué necesita una ley de ciberseguridad? Análisis de las propuestas legislativas en México (2019-2023)*, 28 Paakat: Revista de Tecnología y Sociedad 1, 53 (2023).

[21] Juan Pablo Aguirre Quezada, *Ciberseguridad, desafío para México y trabajo legislativo*, Cuaderno de Investigación No. 87 (Instituto Belisario Domínguez, Senado de la República 2022). http://bibliodigitalibd.senado.gob.mx/handle/123456789/5551.

[22] Alejandro Fuentes Penna & Raúl Gómez-Cárdenas et. al., *La Ciberseguridad en México y los derechos humanos en la era digital*, 24 Espacios Públicos 119, 142 (2023).

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From an international trade perspective, Becerril situates cybersecurity within the broader context of free trade agreements, arguing that digital interconnectivity has heightened the imperative for robust cybersecurity standards.[23] She conceptualizes cyberspace as a space of flows, where transactions transcend national boundaries and necessitate regulatory harmonization. Her analysis reinforces the proposition that cybersecurity must be integrated within a multi-stakeholder framework, one that balances national security goals, the preservation of critical infrastructures, and the facilitation of seamless cross-border digital commerce.

Despite the breadth of scholarly inquiry, the literature collectively underscores two primary lacunae in Mexico's cybersecurity landscape: (1) fragmented statutory efforts, compounded by the conflation of cybersecurity measures with those addressing cybercrime, cyber intelligence, and national security; and (2) political inertia that hinders the creation of a centralized, comprehensive cybersecurity law. While existing research has done much to illuminate the prevalence of legislative piecemeal efforts and the tension between security and civil liberties, relatively fewer studies have systematically examined how these fragmented statutes, and the political dynamics that sustain them, produce tangible gaps in enforcement, readiness, and international collaboration.

Accordingly, this article adds to the extant scholarship by providing an in-depth assessment of Mexico's fragmented regulatory fabric, scrutinizing how misalignment among diverse legislative initiatives impedes a cohesive national cybersecurity framework. In contrast to earlier works, it delves explicitly into the underlying political factors that forestall consensus, and explores the ramifications of deferring international norms, such as those embedded in the Budapest Convention and the newly adopted United Nations Convention against Cybercrime. By focusing on the legislative, political, and diplomatic dimensions, this study advances a more nuanced understanding of the barriers to adopting a comprehensive cybersecurity law in Mexico, thereby offering policy-relevant insights that go beyond enumerating statutory provisions to propose a targeted roadmap for reform.

[23] Anahiby Becerril, *La ciberseguridad en los Tratados de Libre Comercio: El comercio electrónico como habilitador para el fortalecimiento de la ciberseguridad internacional*, 8 Revista Chilena de Derecho y Tecnologías, No. 2 111–137 (2019).

IV. Problem and Possible Solutions

Despite recent advances in legislative initiatives, Mexico's cybersecurity framework remains marked by a core problem: fragmentation. Cybersecurity provisions are dispersed across an array of general and sector-specific laws, many of which primarily address national security, criminal offenses, or data protection. This dispersal has led to several operational drawbacks. First, cybersecurity efforts are often conflated with objectives more aligned to cybercrime or intelligence gathering, diluting the focus required for preventive and protective cyber measures. Second, gaps and inconsistencies persist in implementing protocols for threat detection, coordinated response, and infrastructure resilience. Since each piece of legislation is enacted by different authorities and addresses its own set of urgent concerns, the overall framework struggles to establish consistent definitions, standardized best practices, or clear lines of accountability. Lastly, political factors have repeatedly stalled or thwarted the creation of a single, robust cybersecurity law, weakening the country's ability to respond swiftly to sophisticated cyber threats.

A further complication arises from limited coordination among the various stakeholders required to mount an effective cybersecurity strategy. Although several proposals for comprehensive cybersecurity bills have been introduced, disagreements over data privacy safeguards, surveillance powers, and human rights protections often prevent legislative consensus. This lack of alignment not only hampers interagency cooperation but also undermines private-sector engagement, especially among small and medium-sized enterprises that lack the resources to navigate a patchwork of overlapping laws. As a result, Mexico's cybersecurity readiness remains uneven and vulnerable to emerging threats, including identity-based intrusions, large-scale data breaches, and disruptive attacks on critical infrastructure.

Several solutions can help overcome these structural and political obstacles. First, enacting a dedicated cybersecurity law, one that explicitly demarcates cybersecurity from cybercrime and national security, would provide the clarity needed to harmonize standards and definitions across sectors. Such legislation should outline clear roles, responsibilities, and enforcement mechanisms while avoiding overreach into domains where privacy and due process rights might be jeopardized. Second, strengthening institutional coordination through the establishment of a central cybersecurity authority or agency would streamline incident reporting, facilitate capacity-building efforts, and foster more effective interagen-

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cy collaboration. Third, aligning with international standards and best practices, particularly those embedded in the Budapest Convention and the newly adopted United Nations Convention against Cybercrime, would bolster Mexico's capacity to combat transnational cyber threats and enable it to leverage global expertise. This alignment could include adopting enhanced protocols for cross-border data sharing, electronic evidence preservation, and rapid response measures.

In addition to legal and institutional reforms, multi-stakeholder engagement is crucial, because collaborative platforms that bring together government agencies, private-sector leaders, civil society organizations, and international partners can promote the exchange of best practices, refine threat intelligence, and elevate public awareness. Also, comprehensive workforce development and cybersecurity training should be prioritized to address the human capital gaps that currently limit incident response and policy implementation.

Investments in specialized education, professional certifications, and research funding would help cultivate a skilled workforce capable of supporting both public and private cybersecurity needs. By coupling this emphasis on talent development with well-defined legislative and institutional frameworks, Mexico can move beyond piecemeal reforms, achieving a resilient and adaptive cybersecurity environment that not only meets current challenges but is also prepared for those yet to emerge.

V. Historical Context and Legislative Evolution of Cybersecurity Initiatives in Mexico

Several legislative initiatives and reforms have been proposed in the country over the years to address cybersecurity and cybercrime. These efforts have included amendments to various secondary laws, such as the National Security Law, Federal Criminal Code, Data Protection Law, and even the Federal Constitution. While these reforms represent essential steps toward integrating cybersecurity within Mexico's legal framework, they remain scattered across multiple regulatory areas, lacking a cohesive approach. In this context, special laws specifically dedicated to cybersecurity have been introduced, aiming to provide a more comprehensive regulatory structure. Below is a chronological analysis of these key legislative proposals, highlighting their scope and impact.

1) October 22, 2015. Initiative for the Federal Law to Prevent and Punish Cybercrimes: Senator Omar Fayad Meneses introduced a comprehensive

legislative project aimed at criminalizing cyber offenses.[24] The proposal, known as the *Ley Federal para Prevenir y Sancionar los Delitos Informáticos*, sought to establish clear definitions and penalties for various cybercrimes.

2) March 19, 2019. Law of Information Security and Amendments to the Federal Criminal Code: Senator Jesús Lucía Trasviña Waldenrath presented an initiative to establish the *Ley de Seguridad Informática,*[25] alongside amendments to Title IX of the Federal Criminal Code. This law sought to unify regulations on cyber offenses while establishing an information security framework.
3) September 1, 2020. Initiative for the General Cybersecurity Law: Backed by the entire parliamentary group, this proposal, led by Senator Miguel Ángel Mancera, aimed to create a *Ley General de Ciberseguridad.*[26] This initiative suggested amendments to the Criminal Code, the National Security Law, and the General Law of the National Public Security System. It emphasized the need for an integrated cybersecurity strategy.
4) October 19, 2020. National Cybersecurity Law Proposal: Deputy Javier Salinas Narváez from the Morena party introduced the *Ley Nacional de Seguridad en el Ciberespacio.*[27] The proposal focused on regulating cybersecurity practices within critical national infrastructure, emphasizing national security implications.
5) March 25, 2021. General Cybersecurity Law Initiative: Senator Jesús Lucía Trasviña Waldenrath presented another initiative for a *Ley General de Ciberseguridad*, aiming to consolidate and update existing regulations in the Criminal Code.[28]
6) October 6, 2022. General Cybersecurity Law Proposal: Deputy Juanita Guerra Mena, also from Morena, introduced a new *Ley General de Ciberseguridad*[29] designed to establish unified standards for cybersecurity practices across sectors.

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[24] Omar Fayad, *Iniciativa con Proyecto de Decreto por el que se Expide la Ley Federal para Prevenir y Sancionar los Delitos Informáticos*, Senado de la República, LXIII Legislatura, Gaceta Parlamentaria, 22 de octubre de 2015 (Mex.).

[25] Jesús Lucía Trasviña Waldenrath, *Iniciativa con Proyecto de Decreto por el que se Reforman y Derogan Diversas Disposiciones del Título Noveno, Libro Segundo del Código Penal Federal y se Expide la Ley de Seguridad Informática*, Senado de la República, LXIV Legislatura, Gaceta Parlamentaria, 19 de marzo de 2019 (Mex.).

[26] Miguel Ángel Mancera Espinosa, *Iniciativa con Proyecto de Decreto por el que se Modifica la Denominación del Capítulo II, del Título Noveno, del Libro Segundo y se Reforma el Artículo 211 bis 1 y se Derogan Diversos Artículos del Código Penal Federal, y se Expide la Ley General de Ciberseguridad*, Senado de la República, LXIV Legislatura, Gaceta Parlamentaria, 1 de septiembre de 2020 (Mex.).

[27] Javier Salinas Narváez, *Iniciativa con Proyecto de Decreto por el que se Expide la Ley Nacional de Seguridad en el Ciberespacio*, Cámara de Diputados, LXIV Legislatura, Gaceta Parlamentaria, 19 de octubre de 2020 (Mex.).

[28] Jesús Lucía Trasviña Waldenrath, *Iniciativa con Proyecto de Decreto por el que se Expide la Ley General de Ciberseguridad y se Derogan Diversas Disposiciones del Código Penal Federal*, Senado de la República, LXIV Legislatura, Gaceta Parlamentaria, 25 de marzo de 2021 (Mex.).

[29] Juanita Guerra Mena, *Iniciativa con Proyecto de Decreto por el que se Expide la Ley General de*

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7) April 25, 2023. Federal Cybersecurity Law Proposal: Proposed by Deputy Javier Joaquín López Casarín from the PVEM, this initiative aimed to implement specific cybersecurity measures within the public and private sectors.[30] This *Ley Federal de Ciberseguridad* presented a detailed framework, but faced logistical challenges and was eventually withdrawn on March 13, 2024.
8) February 8 and April 26, 2023. General Law for the National Digital Security System: Introduced by Deputy Salvador Caro Cabrera of Movimiento Ciudadano, this bill sought to create a L*ey General del Sistema Nacional de Seguridad Digital.*[31] The first version was withdrawn shortly after, and a revised version was presented on April 26.
9) February 14, 2024. Federal Cybersecurity Law Proposal: Senators Checo Pérez Flores and Rafael Espino de la Peña introduced a proposal to repeal existing cybercrime articles in the Criminal Code, replacing them with a comprehensive *Ley Federal de Ciberseguridad.*[32]
10) February 27, 2024. General Cybersecurity Law Proposal: Presented again by Deputy Juanita Guerra Mena, this initiative represents Morena's continued efforts to establish a *Ley General de Ciberseguridad.*[33]
11) March 20, 2024. Federal Cybersecurity Law Proposal: Deputy Javier Joaquín López Casarín reintroduced a revised version of his *Ley Federal de Ciberseguridad,*[34] aiming to address previous criticisms and streamline cybersecurity governance.
12) August 14, 2024. Federal Cybersecurity and Digital Trust Law: Senator Alejandra Lagunes Soto Ruíz from the PVEM presented the *Ley Federal de Ciberseguridad y Confianza Digital,*[35] expanding cybersecurity efforts to include digital trust provisions. This law aims to enhance public confidence in digi-

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Ciberseguridad, Cámara de Diputados, LXV Legislatura, Gaceta Parlamentaria, 6 de octubre de 2022 (Mex.).

[30] Javier Joaquín López Casarín, *Iniciativa con Proyecto de Decreto por el que se Expide la Ley Federal de Ciberseguridad*, Cámara de Diputados, LXV Legislatura, Gaceta Parlamentaria, 25 de abril de 2023 (Mex.).

[31] Salvador Caro Cabrera, *Iniciativa con Proyecto de Decreto por el que se Expide la Ley General del Sistema Nacional de Seguridad Digital*, Cámara de Diputados, LXV Legislatura, Gaceta Parlamentaria, 6 de diciembre de 2023 (Mex.).

[32] Checo Pérez Flores & Rafael Espino de la Peña, *Iniciativa con Proyecto de Decreto por el que se Expide la Ley Federal de Ciberseguridad y se Derogan los Artículos 211 bis 1–7 del Código Penal Federal*, Senado de la República, LXV Legislatura, Gaceta Parlamentaria, 14 de febrero de 2024 (Mex.).

[33] Juanita Guerra Mena, *Iniciativa con Proyecto de Decreto por el que se Expide la Ley General de Ciberseguridad*, Cámara de Diputados, LXV Legislatura, Gaceta Parlamentaria, 27 de febrero de 2024 (Mex.).

[34] Javier Joaquín López Casarín, *Iniciativa con Proyecto de Decreto por el que se Expide la Ley Federal de Ciberseguridad*, Cámara de Diputados, LXV Legislatura, Gaceta Parlamentaria, 20 de marzo de 2024 (Mex.).

[35] Alejandra Lagunes Soto Ruíz, *Iniciativa con Proyecto de Decreto por el que se Expide la Ley Federal de Ciberseguridad y Confianza Digital y se Reforman Diversas Disposiciones en Materia de Ciberdelitos*, Senado de la República, LXV Legislatura, Gaceta Parlamentaria, 14 de agosto de 2024 (Mex.).

tal infrastructure and includes updates to cybercrime definitions, marking the latest effort to create a holistic cybersecurity policy in Mexico.

13) December 10, 2024. General Citizen Cybersecurity Law: Senator Jesús Lucía Trasviña Waldenrath of the Morena Parliamentary Group introduced a draft decree to enact the General Citizen Cybersecurity Law while repealing several provisions of the Federal Criminal Code.[36] This legislative initiative is designed to modernize Mexico's cybersecurity framework by establishing comprehensive legal measures that protect citizens' digital rights and strengthen coordinated national efforts against emerging cyber threats, marking a significant advancement in the country's overall digital security policy.

14) March 4, 2025. General Cybersecurity Law: Senator Mauricio Vila Dosal of the National Action Party introduced a draft decree to enact the General Cybersecurity Law.[37] This initiative seeks to create a comprehensive legal framework to address the growing cybersecurity challenges in Mexico by protecting digital infrastructure, ensuring the security of personal data, and modernizing the nation's legal response to emerging cyber threats, thereby reinforcing national cybersecurity across public and private sectors.

Despite their differences, these initiatives share several common elements that reveal legislative priorities regarding cybersecurity. One recurring theme across all proposals is the protection of critical infrastructure, underscoring the need to safeguard essential services within an increasingly interconnected digital environment. Additionally, all initiatives seek to strengthen the Criminal Code by incorporating specific cybercrimes and establishing penalties for offenses such as unauthorized access, digital fraud, and data theft. However, each initiative approaches these issues differently: some advocate for stricter penalties, while others propose more measures that are moderate aligned with international best practices. Another shared aspect is the acknowledgment of human rights within the digital sphere, although each proposal varies in its approach to privacy and freedom of expression protections. While some include detailed safeguards to prevent abuse, others have faced criticism for lacking effective privacy protections.

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[36] Jesús Lucía Trasviña Waldenrath, Iniciativa con Proyecto de Decreto por el que se expide la Ley General de Ciberseguridad Ciudadana y se derogan diversas disposiciones del Código Penal Federal, Senado de la República, LXVI Legislatura, Gaceta Parlamentaria, 10 de diciembre de 2024 (Mex.).

[37] Mauricio Vila Dosal, Iniciativa con Proyecto de Decreto por el que se expide la *Ley General en materia de Ciberseguridad*, Senado de la República, LXVI Legislatura, Gaceta Parlamentaria, 04 de marzo 2025 (Mex.).

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Significant divergences in approach and focus emerge among the initiatives. For example, Senator Mancera's 2020 proposal advocates for a comprehensive law covering not only cybercrimes but also infrastructure protection and digital rights. In contrast, other proposals, such as those led by Deputy Juanita Guerra Mena and Deputy Javier Joaquín López Casarín in 2023, focus on establishing a specific cybersecurity framework without extending to broader regulatory issues. Moreover, recent initiatives like Senator Alejandra Lagunes' 2024 proposal explicitly seek alignment with international standards, referencing frameworks such as the Budapest Convention on Cybercrime and other global standards. This approach contrasts with previous proposals that focus solely on a national regulatory framework without adopting international principles or practices, reflecting differing perspectives on global cooperation in cybersecurity.

The recurrence of similar initiatives highlights persistent challenges and criticisms that have hindered progress toward a comprehensive cybersecurity law in Mexico. One primary obstacle has been the lack of consensus regarding privacy safeguards, a recurring point of contention between legislators and civil society. Many proposals have been perceived as overly intrusive due to insufficient provisions for protecting privacy and preventing abuse, especially in terms of surveillance and control over digital communications. Another major challenge lies in the lack of clarity surrounding implementation and oversight mechanisms, raising questions about the practical feasibility of these laws. Lastly, extensive amendments to the Criminal Code have faced opposition due to concerns that broad and vague definitions of cybercrimes could criminalize legitimate online behavior, thereby affecting citizens' rights.

In conclusion, this chronological and thematic analysis of Mexico's cybersecurity legislative initiatives reveals a continuous effort to address digital threats, but a unified and consensus-driven approach remains elusive. Each legislative attempt reflects both the growing importance of cybersecurity within the country and the complex balance required to secure the nation while respecting fundamental rights in the digital realm. Progress toward an effective and comprehensive cybersecurity law likely depends on closer collaboration among legislators, civil society, and the private sector to design a framework that addresses the complexities of Mexico's digital landscape and is practically enforceable, while respecting the privacy and rights of citizens.

VI. Comprehensive Overview of Cybersecurity Provisions in Mexican Legislation

Within Mexico's legislative framework, cybersecurity is addressed through specific provisions in federal laws and codes, establishing a robust legal foundation to tackle challenges related to information security, access control, and privacy in digital environments. These legal instruments seek to safeguard digital security and data integrity by defining and penalizing cybercrimes, regulating public security practices, and setting standards for personal data management. Below, we make a review of key articles that address cybersecurity from criminal, organizational, and fundamental rights perspectives.

The Federal Criminal Code (*Código Penal Federal*)[38] includes significant provisions addressing cybercrimes explicitly linked to digital or electronic means. Articles 199 Septies, 202, 202 BIS, 210-211 bis 7, 254 bis 1, and 424 bis II outline offenses such as the solicitation of minors via digital communication, child pornography, and unauthorized disclosure of private information. Article 199 Septies criminalizes the solicitation of sexual material from minors through digital channels, while Article 202 penalizes the production, distribution, and exhibition of child pornography. Articles 210 and 211 address the unlawful disclosure of private information, with Article 211 Bis focusing on breaches involving intercepted private communications. Additionally, Article 254 bis 1 penalizes actions that obstruct investigations by altering or destroying electronic files, while Article 424 bis II sanctions the manufacture of devices intended to bypass digital protections on software, thus reinforcing the legal response to cybercrimes.

The National Guard Law (*Ley de la Guardia Nacional*)[39] grants cybersecurity authority to the National Guard, particularly in Article 9, sections XXVI and XXXVIII. This law allows the National Guard to request mobile device geolocation and other information from telecommunications providers, subject to judicial authorization, to prevent criminal activities. It also enables monitoring of public internet networks to deter online crimes, with judicial decisions required within twelve hours for any requests, reflecting a balance between operational effectiveness and respect for privacy.

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[38] Código Penal Federal [C.P.F.] [Federal Criminal Code], as amended, *Diario Oficial de la Federación* [D.O.F.], 14 de agosto de 1931 (Mex.).

[39] Ley de la Guardia Nacional [L.G.N.] [National Guard Law], *Diario Oficial de la Federación* [D.O.], 27 de mayo de 2019 (Mex.).

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The Federal Police Law (*Ley de la Policía Federal*)[40] also provides specific cybersecurity measures. Articles 8 (XXVIII, XXIX, XLII) and 48-55 allow the Federal Police to request information from telecommunications providers, intercept communications (under judicial authorization), and conduct surveillance of public internet spaces to prevent crime. These provisions impose strict procedural controls and monthly reporting requirements, underscoring the legal and regulatory safeguards necessary for cybersecurity operations.

The Internal Security Law (*Ley de Seguridad Interior*)[41] establishes provisions to preserve internal security and promote intelligence gathering while respecting human rights. Articles 4 (VII) and 29-31 define intelligence as the collection and processing of data, with federal and armed forces authorized to gather information legally. The law mandates mechanisms for inter-agency collaboration, with the aim to safeguard national security while protecting fundamental rights, illustrating an approach that balances national security needs with respect for individual freedoms.

The National Security Law *(Ley de Seguridad Nacional)*[42] has a dedicated focus on information security, with specific protocols for handling confidential government information. Articles 6 (V), 8 (IV), 9, 10, 13 (VII), 19 (VIII and IX), 33-55, 61-64, 70, and 71 (V) establish rules for the classification and protection of sensitive information. This law emphasizes confidentiality in national security operations, regulates communication interception during national security threats, and includes requirements for the acquisition and management of specialized technology. The provisions in this law emphasize the importance of data integrity and confidentiality within national security.

The Federal Law Against Organized Crime (*Ley Federal contra la Delincuencia Organizada*)[43] addresses information security within organized crime investigations, particularly in Articles 8, 11 bis 1, 16-21, 24, and 26-28. Judicial authorization is required for communication interceptions, electronic surveillance, and the use of informants. The law mandates severe

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[40] Ley de la Policía Federal [L.P.F.] [Federal Police Law], *Diario Oficial de la Federación* [D.O.], 1 de junio de 2009 (Mex.).

[41] Ley de Seguridad Interior [L.S.I.] [Internal Security Law], *Diario Oficial de la Federación* [D.O.], 21 de diciembre de 2017 (Mex.).

[42] Ley de Seguridad Nacional [L.S.N.] [National Security Law], *Diario Oficial de la Federación* [D.O.], 31 de enero de 2005 (Mex.).

[43] Ley Federal contra la Delincuencia Organizada [L.F.C.D.O.] [Federal Law Against Organized Crime], as amended, *Diario Oficial de la Federación* [D.O.], 7 de noviembre de 1996 (Mex.).

penalties for unauthorized interventions by public officials, highlighting the commitment to upholding data integrity and privacy in the context of organized crime while balancing investigation efficacy with individual rights.

The Federal Law on Private Security (*Ley Federal de Seguridad Privada*)[44] regulates private security activities, emphasizing the importance of data security. Articles 2 (I, XIV, XV), 15 (IV and V), 32 (XXII), and 45-50 define data security as maintaining confidentiality, integrity, and availability through security systems and information backups. The law grants the General Directorate authority to approve private security services, including electronic monitoring and establishes confidentiality requirements for private security providers.

The General Law on Women's Access to a Life Free of Violence (*Ley General de Acceso de las Mujeres a una Vida Libre de Violencia*)[45] tackles digital violence in Articles 20 Quater, 20 Quinquies, and 20 Sexies. This law defines digital violence as any malicious action using technology to disseminate intimate content without consent, with corresponding penalties in the Federal Criminal Code. Additionally, it addresses media violence, requiring protective measures against the unauthorized disclosure of digital content involving women, including legal obligations for digital platforms to assist in content removal.

The General Law of the National Public Security System (*Ley General del Sistema Nacional de Seguridad Pública*)[46] addresses information security protocols, particularly regarding public security databases. Key provisions are found in Articles 5 (II), 7 (XII), 31 (VIII), 39 (B.XIV), 108 (IV), 110, 139 (I, II, III), 144 (I), and 150. This law mandates cellular and radio signal blocking in detention facilities, enforces confidentiality in public security records, and requires real-time data sharing across security entities. These provisions reinforce the integrity of the National Public Security Information System and outline requirements for private security services, including licensing and compliance with local regulations.

The General Law to Prevent, Punish, and Eradicate Crimes of Human Trafficking (*Ley General Para Prevenir, Sancionar y Erradicar los Delitos en Ma-*

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[44] Ley Federal de Seguridad Privada [L.F.S.P.] [Federal Law on Private Security], *Diario Oficial de la Federación* [D.O.], 6 de julio de 2006 (Mex.).

[45] Ley General de Acceso de las Mujeres a una Vida Libre de Violencia [L.G.A.M.V.L.V.] [General Law on Women's Access to a Life Free of Violence], *Diario Oficial de la Federación* [D.O.], 1 de febrero de 2007 (Mex.).

[46] Ley General del Sistema Nacional de Seguridad Pública [L.G.S.N.S.P.] [General Law of the National Public Security System], *Diario Oficial de la Federación* [D.O.], 2 de enero de 2009 (Mex.).

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teria de Trata de Personas)[47] establishes comprehensive information security measures in Articles 16, 32, 33, 88 (IV.d), 113 (XVII), 118, and 119 (IV). This law mandates strict confidentiality protocols for electronically stored data related to trafficking investigations and victim assistance programs, with exclusive federal authority for data collection, protection, and exchange. These provisions highlight the commitment to data security in human trafficking cases, ensuring victim protection and secure handling of sensitive information.

The General Law to Prevent and Punish Kidnapping (*Ley General para Prevenir y Sancionar los Delitos en Materia de Secuestro*)[48] reinforces information security in public safety contexts, specifically through Articles 16, 24, 25, 30, 40 (XIX), and 43 (X). This law includes penalties for public officials who disclose confidential information without justification and mandates telecommunications providers to support investigations. The law also calls for permanent communication restrictions in detention centers and facilitates cooperation between investigative units and telecom providers, illustrating the importance of public-private partnerships in cybersecurity for crime prevention.

The National Law on Criminal Execution (*Ley Nacional de Ejecución Penal*)[49] establishes data security principles in the penitentiary system, with a focus on prisoner information confidentiality. Articles 4 (6), 40 (IX), 41 (V), 60, 136, 137, 154, and 171 (III) prevent unauthorized telecommunications use in correctional facilities and impose sanctions proportionate to data security breaches. This law mandates ethical handling of medical and judicial records, reinforcing the integrity of data management in non-custodial measures.

The National Detention Registry Law (*Ley Nacional del Registro de Detenciones*)[50] mandates secure management of personal data related to detainees. Key articles include 9, 10, 13-16, 26-29, 32, and 35, which outline security protocols for personal data storage, requiring restricted access and digital authentication. The law imposes sanctions for breach-

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[47] Ley General para Prevenir, Sancionar y Erradicar los Delitos en Materia de Trata de Personas y para la Protección y Asistencia a las Víctimas de estos Delitos [L.G.P.S.E.D.M.T.P.] [General Law to Prevent, Punish, and Eradicate Crimes of Human Trafficking], *Diario Oficial de la Federación* [D.O.], 14 de junio de 2012 (Mex.).

[48] Ley General para Prevenir y Sancionar los Delitos en Materia de Secuestro [L.G.P.S.D.M.S.] [General Law to Prevent and Punish Kidnapping], *Diario Oficial de la Federación* [D.O.], 30 de noviembre de 2010 (Mex.).

[49] Ley Nacional de Ejecución Penal [L.N.E.P.] [National Law on Criminal Execution], *Diario Oficial de la Federación* [D.O.], 16 de junio de 2016 (Mex.).

[50] Ley Nacional del Registro de Detenciones [L.N.R.D.] [National Detention Registry Law], *Diario Oficial de la Federación* [D.O.], 27 de mayo de 2019 (Mex.).

es, and mandates technological security measures in data registries, ensuring detainee data management aligns with national data protection standards.

The Federal Law on the Protection of Personal Data Held by Private Parties (*Ley Federal de Protección de Datos Personales en Posesión de los Particulares*)[51] sets forth rigorous standards for personal data protection in Articles 3, 18-20, 39, 55, 58, and in Chapter XII (Articles 62-64). These provisions mandate that data controllers implement comprehensive administrative, technical, and physical security measures to safeguard personal data against damage, loss, alteration, destruction, or unauthorized access, taking into account existing risks, data sensitivity, and technological developments. In addition, data breach notifications are required immediately when security vulnerabilities significantly affect the economic or moral rights of data subjects, as specified in Article 19, while Article 20 obliges both controllers and third parties involved in data processing to maintain confidentiality throughout and beyond the processing stages.

The law further empowers the Ministry, under Article 39, to disseminate international security standards and best practices, and Article 55 authorizes the Ministry to access necessary documentation during verification procedures under strict confidentiality obligations. Infractions, such as compromising database security or breaching confidentiality requirements as outlined in Article 58, are subject to penalties, with Chapter XII imposing criminal sanctions that include prison terms from three months to three years for profit-driven breaches (Article 62), six months to five years for deceptive practices intended for illicit gain (Article 63), and doubled penalties when sensitive personal data is involved (Article 64). Overall, this law aims to ensure the secure and responsible management of personal data within Mexico's digital landscape.

The General Law on the Protection of Personal Data Held by Obliged Entities (*Ley General de Protección de Datos Personales en Posesión de Sujetos Obligados*)[52] establishes a comprehensive framework for ensuring the confidentiality, integrity, and availability of personal data within public institutions. Articles 3, 24-36, 53, 58, 78, and 132 collectively outline detailed requirements that include the development of a security document, defin-

[51] Ley Federal de Protección de Datos Personales en Posesión de los Particulares [L.F.P.D.P.P.P.] [Federal Law on Protection of Personal Data Held by Private Parties], *Diario Oficial de la Federación* [D.O.F.], 20 de marzo de 2025 (Mex.).

[52] Ley General de Protección de Datos Personales en Posesión de Sujetos Obligados [L.G.P.D.P.S.O.] [General Law on Protection of Personal Data Held by Obligated Subjects], *Diario Oficial de la Federación* [D.O.F.], 26 de enero de 2017 (Mex.).

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ing key concepts such as administrative, physical, and technical security measures, and mandate continuous risk analysis, gap assessments, and the implementation of corrective actions. The law requires periodic reviews and updates of these measures to address evolving technological challenges and emerging threats, while enforcing strict confidentiality obligations on all personnel involved in data processing. Additionally, it regulates contractual relationships with data processors and empowers Transparency Committees to oversee compliance, with clearly defined penalties for non-compliance, including misclassification of data and breaches of confidentiality. Overall, these provisions provide a robust legal foundation for proactive data protection and responsible information management in the public sector.

The General Transparency and Access to Public Information Law (*Ley General de Transparencia y Acceso a la Información Pública*)[53] establishes a robust legal framework that guarantees the human right to access information held by public entities while simultaneously instituting rigorous protocols for classifying and safeguarding sensitive data. Articles 4, 39, 46, 107, 112, 119, 20, 102, 110, and 115-119 delineate a balanced approach that not only ensures the broad dissemination of public information but also imposes strict measures, such as the formation of Transparency Committees, the mandatory application of a damage test to assess potential harm to public interest or national security, and detailed classification procedure, to protect information deemed reserved or confidential. This framework upholds transparency and accountability while mitigating risks to national security, public safety, and individual rights, thereby reinforcing an effective system of public information management.

The General Law of Archives (*Ley General de Archivos*)[54] focuses on document management and data security, particularly in Articles 5, 25, 41, 46 (IV), and 60-63. Public institutions are required to implement technical and administrative measures to preserve document integrity, availability, and accessibility. For electronic records, this law emphasizes the importance of annual security programs and the comprehensive management of digital documentation, including access assignment, storage, and traceability. The law further mandates secure third-party services and cloud document management, with strict requirements to ensure

[53] Ley General de Transparencia y Acceso a la Información Pública [L.G.T.A.I.P.] [General Law of Transparency and Access to Public Information], *Diario Oficial de la Federación* [D.O.F.], 20 de marzo de 2025 (Mex.).

[54] Ley General de Archivos [L.G.A.] [General Law on Archives], *Diario Oficial de la Federación* [D.O.F.], 15 de junio de 2018 (Mex.).

the authenticity, integrity, and security of information. These protocols underscore the law's commitment to a secure and efficient digital record-keeping environment.

The Credit Institutions Law (*Ley de Instituciones de Crédito*)[55] outlines critical security requirements for multiple banking institutions, particularly in Articles 10, 46 bis, 77, 96, 110 bis 11, and 115 (c). It commands operational plans incorporating security measures, emphasizing internal controls and physical security at office facilities, and authorizes electronic notifications. The law also highlights client information protection, internal compliance areas, and imposes financial penalties for breaches, especially for unauthorized disclosures of information, stressing the importance of information security in the financial sector.

The Credit Institutions Law establishes foundational security requirements for banking institutions, covering operational plans, internal controls, physical security, client information protection, and financial penalties for breaches. Complementing this, the *Disposiciones de Carácter General Aplicables a las Instituciones de Crédito*[56] acts as a formal administrative instrument with legislative weight, addressing areas often unregulated by traditional laws and mandating robust requirements that enhance financial sector resilience. This circular imposes comprehensive obligations, including stringent credit risk management protocols, capital adequacy guidelines, transparency via risk disclosures, and periodic reporting obligations. It further dictates stringent governance and internal controls by clarifying institutional responsibilities and enforcing the separation of duties. The circular also includes mandatory incident reporting measures: incidents impacting information security, such as breaches, must be reported to the Commission within 48 hours. Moreover, banks are obligated to notify customers about data breaches involving personal information to mitigate risk exposure. Additionally, the Chief Information Security Officer (CISO) must be kept informed monthly of security risks, ensuring proactive oversight and enforcement of security measures within the institution.

The Law of Insurance and Bonding Institutions (*Ley de Instituciones de Seguros y de Fianzas*)[57] addresses information security in Articles 41 (V.g),

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[55] Ley de Instituciones de Crédito [L.I.C.] [Credit Institutions Law], *Diario Oficial de la Federación* [D.O.F.], 18 de julio de 1990 (Mex.).

[56] Disposiciones de Carácter General Aplicables a las Instituciones de Crédito [Circular Única de Bancos], *Diario Oficial de la Federación* [D.O.F.], 2 de marzo de 2004, última reforma DOF 31 de diciembre de 2021, arts. 115, 116, 117.

[57] Ley de Instituciones de Seguros y de Fianzas [L.I.S.F.] [Insurance and Bonding Institutions Law], *Diario Oficial de la Federación* [D.O.F.], 4 de abril de 2013 (Mex.).

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268 (I), 269, 366 (XXXVII), 468, and 492 (c). During the authorization process, a comprehensive activity plan with specific security measures is required to preserve information integrity. While institutions may outsource services, they must follow strict confidentiality guidelines. The Commission, with technical autonomy, may share information with foreign financial authorities through reciprocal agreements, provided there is no associated risk. Provisions for electronic notification with acknowledgment of receipt also enhance the information security protocols.

The Payments System Law (*Ley de Sistemas de Pagos*),[58] particularly in Articles 6 (V) and 19-21, emphasizes that payment systems' internal regulations should ensure both efficiency and security under the Bank of Mexico's authorization. Security measures for operating systems and contingency plans are mandatory, while the Bank of Mexico supervises and assesses risk control systems, enforcing compliance where necessary. Administrators are required to provide information to validate adherence, and the Bank of Mexico can implement mandatory adjustment programs to rectify deficiencies, ensuring transaction security. Additionally, two important circulars further strengthen cybersecurity and IT requirements for payment systems: Circular 12/2023,[59] applicable to the *Sistema de Pagos Electrónicos Interbancarios* (SPEI), and Circular 13/2023,[60] which governs the *Sistema de Pagos Interbancarios en Dólares* (SPID).

The Credit Unions Law (*Ley de Uniones de Crédito*)[61] sets forth provisions in Articles 17 (IV), 121 (IV), 129 (III), and 142. This law requires that authorization requests include operational plans addressing security to preserve information integrity. It penalizes the destruction of information to obstruct supervision with prison sentences, mandates the security of data relating to partner identification and operations, and allows for electronic notifications with acknowledgment, contingent upon security protocols, stressing secure electronic communication.

The Securities Market Law (*Ley del Mercado de Valores*)[62] integrates information security standards in the financial sector, particularly for broker-

[58] Ley de Sistemas de Pagos [L.S.P.] [Payment Systems Law], *Diario Oficial de la Federación* [D.O.F.], 21 de diciembre de 2002 (Mex.).

[59] Circular 12/2023, Diario Oficial de la Federación [D.O.F.], 22 de noviembre de 2023 (Mex.), https://www.dof.gob.mx/nota_detalle.php?codigo=5709192&fecha=22/11/2023#gsc.tab=0.

[60] Circular 13/2023, Diario Oficial de la Federación [D.O.F.], 22 de noviembre de 2023 (Mex.), https://www.dof.gob.mx/nota_detalle.php?codigo=5709193&fecha=22/11/2023#gsc.tab=0.

[61] Ley de Uniones de Crédito [L.U.C.] [Credit Unions Law], *Diario Oficial de la Federación* [D.O.], 13 de agosto de 1993 (Mex.).

[62] Ley del Mercado de Valores [L.M.V.] [Securities Market Law], *Diario Oficial de la Feder-*

age firms and stock exchanges, in Articles 115 (III.b), 177, 212 (III.c), 220 (II.c), 226 Bis (V), 235 (III.c), 245, 282, and 392 (II.n). This law requires detailed operational plans focusing on information integrity, data confidentiality mechanisms, and third-party agreements with robust security policies. Additionally, the law enforces preventive and detection obligations to curb financial crimes, imposing sanctions for non-compliance, thus safeguarding trust and information integrity within the securities market.

The General Law of Credit Organizations and Auxiliary Activities (*Ley General de Organizaciones y Actividades Auxiliares del Crédito*),[63] with provisions in Articles 87-D (I.p, II.k, III.c, IV.p), 95 (c), 95 bis (c), and 101 bis 12, highlights cybersecurity protocols in auxiliary credit organizations. It requires authorization from the Ministry of Finance to proceed with criminal charges for certain offenses and mandates strict security of customer identification data. Electronic notifications are permitted if agreed to in writing and via secure systems defined by financial authorities, underscoring cybersecurity's role in credit organizations.

The General Law of Commercial Companies (*Ley General de Sociedades Mercantiles*)[64] specifies requirements for security in corporate events, in Articles 6 (XIV) and 245. It permits electronic, optical, or other technological means for participation, provided they ensure real-time interaction equivalent to physical meetings. This law also commands secure mechanisms for attendee access, identification verification, and vote recording. For document preservation, liquidators may retain records in digital or print formats, following digitization guidelines set by the Ministry of Economy to ensure information integrity.

The General Law of Credit Instruments and Operations (*Ley General de Títulos y Operaciones de Crédito*),[65] particularly in Articles 432-435, addresses financial crimes related to information security. It penalizes the unauthorized production, alteration, and misuse of credit cards and sensitive data, and restricts unauthorized access to electronic systems of issuing entities. This regulatory approach seeks to protect information security,

ación [D.O.F.], 30 de diciembre de 2005 (Mex.).

63 Ley General de Organizaciones y Actividades Auxiliares del Crédito [L.G.O.A.A.C.] [General Law on Credit Organizations and Auxiliary Activities], *Diario Oficial de la Federación* [D.O.], 14 de enero de 1985 (Mex.).

64 Ley General de Sociedades Mercantiles [L.G.S.M.] [General Law of Commercial Companies], *Diario Oficial de la Federación* [D.O.F.], 4 de agosto de 1934 (Mex.).

65 Ley General de Títulos y Operaciones de Crédito [L.G.T.O.C.] [General Law of Negotiable Instruments and Credit Operations], *Diario Oficial de la Federación* [D.O.F.], 27 de agosto de 1932 (Mex.).

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prevent fraudulent manipulation, and safeguard users from illicit activities in the financial sector.

The Law for the Transparency and Regulation of Financial Services (*Ley para la Transparencia y Ordenamiento de los Servicios Financieros*),[66] particularly in Article 4 Bis 3 (I.c) and 22 (II.b), focuses on financial service regulation with an emphasis on data security. It highlights the joint responsibility of the National Banking and Securities Commission and the Bank of Mexico in regulating transaction networks, enforcing security and operational requirements, and underlining the role of digital signatures and security protocols for data integrity in digital financial services.

The Law to Regulate the Activities of Cooperative Savings and Loan Societies (*Ley para Regular las Actividades de las Sociedades Cooperativas de Ahorro y Préstamo*),[67] particularly in Articles 62, 72 (III), 110 (III and IV), and 129, grants the Commission authority to supervise internal and information control systems. It emphasizes the security of partner and transaction data, imposing prison sentences and fines for supervision obstruction. Electronic notifications with acknowledgment are permitted under secure and explicitly agreed-upon conditions, reinforcing the confidentiality and integrity of information in cooperative societies.

The Law to Regulate Financial Groups (*Ley Para Regular las Agrupaciones Financieras*),[68] in Articles 39 (V), 52 (V-VII), 59 (IX), 106, 114, 128, 157 (V-VII), and 173, outlines key information security requirements. It establishes the board's responsibility to oversee risk and accounting systems, prohibits tampering with financial records, and mandates that directors ensure system integrity. The law grants the Supervisory Commission unrestricted access to facilities and documentation and imposes penalties, including imprisonment, for unlawful activities involving financial information. Electronic notifications are permitted, further fortifying security in official communication channels.

The Law to Regulate Financial Technology Institutions (*Ley para Regular las Instituciones de Tecnología Financiera*),[69] in Articles 34 (IV), 37 (III), 39

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[66] Ley para la Transparencia y Ordenamiento de los Servicios Financieros [L.T.O.S.F.] [Transparency and Financial Services Law], *Diario Oficial de la Federación* [D.O.F.], 18 de julio de 2007 (Mex.).

[67] Ley para Regular las Actividades de las Sociedades Cooperativas de Ahorro y Préstamo [L.R.A.S.C.A.P.] [Law to Regulate the Activities of Cooperative Savings and Loan Societies], *Diario Oficial de la Federación* [D.O.F.], 13 de agosto de 2009 (Mex.).

[68] Ley Para Regular las Agrupaciones Financieras [L.R.A.F.] [Law to Regulate Financial Groups], *Diario Oficial de la Federación* [D.O.F.], 18 de julio de 1990 (Mex.).

[69] Ley para Regular las Instituciones de Tecnología Financiera [L.R.I.T.F.] [Law to Regulate Financial Technology Institutions], *Diario Oficial de la Federación* [D.O.F.], 9 de marzo de 2018 (Mex.).

(VI), 48, 56, 58 (III), 76, 83 (III), 87 (II), 103 (IV.b), 119, 128, 130-133, and 142, focuses on security measures in fintech institutions. It mandates robust infrastructure, effective internal controls, and clear communication on the risks associated with virtual asset transactions. Furthermore, advanced electronic signature standards are enforced to maintain legal validity. Specific sanctions for misconduct underscore protections against unauthorized access and system integrity breaches, allowing for electronic acknowledgment for secure communication.

The Law to Regulate Credit Information Societies (*Ley para Regular las Sociedades de Información Crediticia*),[70] particularly in Articles 7 (V), 17 bis, 22, 32, 33, 37, 38, 52, and 62 (II), imposes stringent data security measures within the credit information sector. This law addresses IT systems and control measures, ensuring confidentiality post-employment, and emphasizes secure data exchanges with authorities, user authentication, and security guidelines. Penalties, including significant fines, are enforced for improper handling of credit information, emphasizing cybersecurity's critical role in this sector.

The Commercial Code (*Código de Comercio*)[71] incorporates significant provisions regarding information security, particularly in Articles 20, 30 bis, 93 bis, 97, 99, 101, 102 (II), and 1390 Bis 26. It mandates that the Public Registry of Commerce operate electronically, managed through a specialized program by the Secretariat, with a strong focus on data security. Access to the database is facilitated by digital certificates, emphasizing the integrity and preservation of electronic messages. Additionally, the code stipulates requirements for advanced electronic signatures, detailing the signer's responsibilities and setting guidelines for certification service providers. Electronic recording of hearings is also permitted jn order to ensure fidelity and information integrity. These provisions highlight the need for robust digital security measures to secure commercial transactions and public records.

The Foreign Trade Law (*Ley de Comercio Exterior*),[72] particularly in Articles 17 A and 20 A, requires that compliance with non-tariff restrictions and regulations in international trade be documented with secure, preferably electronic, measures. The law acknowledges electronic signatures certi-

[70] Ley para Regular las Sociedades de Información Crediticia [L.R.S.I.C.] [Law to Regulate Credit Information Societies], *Diario Oficial de la Federación* [D.O.F.], 15 de enero de 2002 (Mex.).

[71] Código de Comercio [CÓD.COM.] [Commercial Code], as amended, *Diario Oficial de la Federación* [D.O.F], 7 de octubre de 1889 (Mex.).

[72] Ley de Comercio Exterior [L.C.E.] [Foreign Trade Law], *Diario Oficial de la Federación* [D.O.], 27 de julio de 1993 (Mex.).

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fied by accredited providers, facilitating transactions and notifications related to non-tariff regulations and established programs. This approach enhances the security of electronic transactions and ensures the authenticity of documentation in foreign trade.

The Federal Consumer Protection Law (*Ley Federal de Protección al Consumidor*),[73] in Articles 1 (VIII), 76 bis, and 76 bis 1, focuses on promoting and protecting consumer rights, with a dedicated chapter on electronic transactions. Regarding information security, the law sets out measures to ensure consumer data confidentiality, including a prohibition on dissemination without explicit consent. Suppliers are required to use technical safeguards to protect information and must disclose these mechanisms to consumers before transactions occur. The law emphasizes transparency in commercial practices, mandating clear communication of terms and conditions to consumers, and prohibits deceptive practices. Furthermore, it specifies requirements for suppliers using electronic means, including adherence to security standards, verification mechanisms, proof support, and protection of consumers' personal information.

The National Code of Civil and Family Procedures (*Código Nacional de Procedimientos Civiles y Familiares*),[74] specifically Articles 142 (IV), 918, 934, and 964-973, provides guidelines on information security within judicial contexts and digital technology usage. It grants jurisdictional authorities the ability to restrict physical or digital access during judicial hearings to those who do not adhere to safety and cybersecurity measures. Digital submission and transfer of files for appellate proceedings are also permitted, ensuring data confidentiality and integrity. Chapter III is dedicated to digital justice systems and information security, mandating robust cybersecurity measures and appointing individuals to supervise and correct potential digital system issues. Sections I and II emphasize security protocols to prevent unauthorized access and detail responsibilities for jurisdictional authorities, highlighting the significance of information security as a guiding principle.

The National Code of Criminal Procedure (*Código Nacional de Procedimientos Penales*)[75] covers Articles 51, 71, 131 (II), 291-303, and 444, allowing electronic means across procedural stages, including online reporting

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[73] Ley Federal de Protección al Consumidor [L.F.P.C.] [Federal Consumer Protection Law], *Diario Oficial de la Federación* [D.O.F.], 24 de diciembre de 1992 (Mex.).

[74] Código Nacional De Procedimientos Civiles Y Familiares [C.N.P.C.F.] [National Civil and Family Procedure Code], *Diario Oficial de la Federación* [D.O.F.], 7 de junio de 2022 (Mex.).

[75] Código Nacional de Procedimientos Penales [C.N.P.P.] [National Code of Criminal Procedure], *Diario Oficial de la Federación* [D.O.F.], 5 de marzo de 2014 (Mex.).

and videoconferencing. The code validates certified electronic copies and permits the replacement of originals with electronic files, enabling the Public Prosecutor's Office to accept reports digitally. It includes provisions for private communication interception, emphasizing authenticity and the destruction of non-relevant records. The code also regulates service provider cooperation and confidentiality regarding internationally obtained information.

The Federal Fiscal Code (*Código Fiscal de la Federación*),[76] in Articles 17-C to 17-L, 29 (VI), 38, 75 (II)(g), 82-G, 85 (IV), 87 (IV), 105 (XV), 110 (IV, VI), 111 (VI), 111 bis (II, III, V), and 134 (I), contains strict information security regulations for tax matters, enforcing advanced electronic signatures certified by the SAT (*Servicio de Administración Tributaria*). It defines protocols for identity validation, digital seal certificates, revocation conditions, and SAT's certification services, promoting security in electronic transactions. In addition, it dictates issuing online digital tax receipts with specific computational requirements, ensuring authenticity and certificate validity, and outlines penalties for infractions, including unauthorized handling of digital tax receipts and confidential information breaches by public officials.

The General Law of Institutions and Electoral Procedures (*Ley General de Instituciones y Procedimientos Electorales*),[77] in Articles 329, 341, and 343, specifies security requirements for overseas voting by Mexican citizens, particularly through electronic voting systems. It emphasizes the reliability and security of the voting process, ensuring freedom and secrecy. The law stipulates electronic voting criteria such as auditability, pre-vote verification, coercion prevention, unique voter identification, and real-time electoral results. Notably, certain provisions were revalidated on March 2, 2023, after being deemed unconstitutional in a SCJN ruling on June 23, 2023.

The General Law of Electoral Remedies (*Ley General de los Medios de Impugnación en Materia Electoral)*[78] in Article 6 (5) mandates the Federal Electoral Tribunal to implement an online judicial system, allowing for electronic submission and processing of appeals. It highlights advanced electronic

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[76] Código Fiscal de la Federación [C.F.F.] [Federal Tax Code], as amended, *Diario Oficial de la Federación* [D.O.F.], 31 de diciembre de 1981 (Mex.).

[77] Ley General de Instituciones y Procedimientos Electorales [L.G.I.P.E.] [General Law of Electoral Institutions and Procedures], *Diario Oficial de la Federación* [D.O.F.], 23 de mayo de 2014 (Mex.).

[78] Ley General de los Medios de Impugnación en Materia Electoral [L.G.M.I.M.E.] [General Law of Electoral Remedies], *Diario Oficial de la Federación* [D.O.F.], 23 de mayo de 2014 (Mex.).

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signatures' legal validity as substitutes for handwritten ones and allows for the attachment of authenticated electronic files. The focus is on secure procedural communication, ensuring that electronic mechanisms comply with legal requirements for authenticity and integrity.

The Federal Law for the Protection of Industrial Property (*Ley Federal de Protección a la Propiedad Industrial*),[79] Articles 22-24, 163-169, 386 (XIV), and 402 (III-VI), governs information security, especially public access to registry information, with exceptions for confidential requests. Title Three defines and protects Trade Secrets, recognizing them as confidential information conferring competitive advantages. The law commands confidentiality safeguards, regulates unauthorized acquisition of trade secrets, and imposes penalties for breaches, including in judicial and administrative contexts, thereby securing trade secrets and enforcing data security.

The Federal Copyright Law (*Ley Federal del Derecho de Autor*),[80] Articles 101-114, 114 Bis to 114 Octies, 231 (V, VII), and 232 Quinquies, addresses information security for software and databases. It safeguards proprietary rights over software, permitting technological protection measures and regulating rights management. The law imposes responsibilities on Internet Service Providers (ISPs) for information security, stipulating measures to prevent copyright and related rights infringements. It prohibits importing or using devices that disable protections, thereby strengthening security for software and databases and establishing ISP responsibilities for preventing copyright violations.

The Customs Law (*Ley Aduanera*),[81] particularly Articles 4 (II)(c-e), 14-C, 14-D, 16, 16-A, 16-B, 16-D, 59 (III), 100-A (VII), 121 (I)(c), 135-A, 144 (XXXV), 160 (X), 167-F (VII), and 185 (VIII), mandates the acquisition and maintenance of surveillance equipment, automated systems, and control measures within strategic locations, such as ports and airports. It also imposes security standards, electronic controls, and secure data transmission protocols for customs operations like electronic pre-validation of declarations and management within strategic fiscal zones. The law protects data integrity in customs processing, establishing penalties for security breaches, and underscoring the importance of secure customs information handling.

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[79] Ley Federal de Protección a la Propiedad Industrial [L.F.P.P.I.] [Federal Law on Industrial Property Protection], *Diario Oficial de la Federación* [D.O.F.], 1 de julio de 2020 (Mex.).

[80] Ley Federal del Derecho de Autor [L.F.D.A.] [Federal Copyright Law], as amended, *Diario Oficial de la Federación* [D.O.F.], 24 de diciembre de 1996 (Mex.).

[81] Ley Aduanera [L.A.] [Customs Law], as amended, *Diario Oficial de la Federación* [D.O.F.], 15 de diciembre de 1995 (Mex.).

The Federal Labor Law (*Ley Federal del Trabajo*),[82] Articles 330-E (V, VIII), 721, 776 (VIII), and 836-A to 836-D, addresses data security in remote work by requiring employers to implement data protection measures for telework arrangements. Specific provisions cover digital evidence admissibility and procedural actions via electronic means, introducing terms such as certifying authority, digital certificate, and electronic signature. Detailed regulations govern electronic evidence handling, including designating official experts and requirements for digital document submission and retrieval, highlighting concerns over data security and authenticity in labor and judicial contexts.

The Amparo Law (*Ley de Amparo*),[83] Article 30, sets protocols for secure judicial notifications via electronic means, requiring digital signatures to verify authenticity. It includes secure handling procedures for digital documents, daily system checks, and defined timeframes. The law permits notifications by court officers for heightened security in certain cases, addressing system interruptions by pausing legal deadlines to ensure data integrity.

The Civil Aviation Law (*Ley de Aviación Civil*),[84] Articles 78 bis to 78 Bis 11, emphasizes operational safety, entrusting the Federal Civil Aviation Agency (AFAC) with security oversight. Service providers must implement certified safety management systems with risk assessment and continuous improvement processes. AFAC's certification depends on regulatory compliance, emphasizing data confidentiality and use limitations for operational purposes. International cooperation on data sharing is also highlighted.

The Advanced Electronic Signature Law (*Ley de Firma Electrónica Avanzada*),[85] Articles 8 (II, III, V, VI), 13, 14, 16 (II, III), 19, 22, 25, and 27, covers security aspects of electronic signatures. It establishes principles of authenticity, integrity, non-repudiation, and confidentiality, and requires entities to create secure electronic systems with access controls. Public access to electronic data and documents is allowed unless classified. Procedures for document replacement with electronic equivalents are defined,

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[82] Ley Federal del Trabajo [L.F.T.] [Federal Labor Law], as amended, *Diario Oficial de la Federación* [D.O.F.], 1 de abril de 1970 (Mex.).

[83] Ley de Amparo, Reglamentaria de los artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos [L.A.] [Amparo Law], *Diario Oficial de la Federación* [D.O.F.], 2 de abril de 2013 (Mex.).

[84] Ley de Aviación Civil [L.A.C.] [Civil Aviation Law], *Diario Oficial de la Federación* [D.O.F.], 12 de mayo de 1995 (Mex.).

[85] Ley de Firma Electrónica Avanzada [L.F.E.A.] [Advanced Electronic Signature Law], *Diario Oficial de la Federación* [D.O.F.], 11 de enero de 2012 (Mex.).

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with revocation conditions and responsibilities for certificate holders and certifying authorities. The law allows inter-entity coordination to standardize technology, ensuring secure and authentic digital signatures.

The Federal Telecommunications and Broadcasting Law (*Ley Federal de Telecomunicaciones y Radiodifusión*),[86] Articles 3 (XXXII), 145 (III), 181, 189-190 bis, 191 (II), 197, and 298 (D)(V), implements robust information security measures, such as user data privacy protections, data retention requirements for service providers, and collaboration with security and justice authorities. Key provisions include a georeferenced database, content blocking upon user request, and sanctions for breaching confidentiality and communication privacy measures. The Supreme Court of Justice recently nullified changes related to the National Mobile User Registry, which mandated biometric and personal data collection, finding that it violated proportionality, as alternatives existed to ensure public safety without compromising privacy.

The General Education Law (*Ley General de Educación*),[87] Articles 74 (III, IV, V, VIII), 78, 85, 113 (VII), and 115 (XIII), promotes information security within educational settings, including measures to counter cyberbullying. It mandates psychosocial support, legal guidance, and free advisory mechanisms for involved parties, with a digital safety agenda focused on responsible technology use. It holds parents and educators accountable for promoting safe digital practices and issues guidelines for secure technology use by educational authorities.

The General Law on the Rights of Children and Adolescents (*Ley General de los Derechos de Niñas, Niños y Adolescentes*),[88] Articles 57 (XX), 77, 81, 101 Bis 2, 103 (XI), and 149, integrates information security by promoting quality education that encourages safe technology use. The law recognizes minors' rights to secure internet access, providing measures to protect their privacy in electronic media. Additionally, it mandates that educators impart responsible technology use, with penalties for privacy violations against minors, safeguarding their personal information in the digital realm.

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[86] Ley Federal de Telecomunicaciones y Radiodifusión [L.F.T.R.] [Federal Telecommunications and Broadcasting Law], *Diario Oficial de la Federación* [D.O.F.], 14 de julio de 2014 (Mex.).

[87] Ley General de Educación [L.G.E.] [General Education Law], *Diario Oficial de la Federación* [D.O.F.], 13 de septiembre de 2019 (Mex.).

[88] Ley General de los Derechos de Niñas, Niños y Adolescentes [L.G.D.N.N.A.] [General Law on the Rights of Children and Adolescents], *Diario Oficial de la Federación* [D.O.F.], 4 de diciembre de 2014 (Mex.).

The General Health Law (*Ley General de Salud*),[89] Articles 53 Bis, 74 Ter (VIII), 103 Bis 3, and 109 Bis, addresses information security in healthcare by authorizing service providers to use biometric and electronic records for user identification. It ensures health information confidentiality, mandates specific genetic data protections, requires explicit consent for genome studies, and entrusts the Ministry of Health with issuing guidelines for electronic health record systems, emphasizing security and interoperability across National Health System institutions.

In summary, the Mexican legal framework on cybersecurity reflects a comprehensive approach, combining criminal, regulatory, and public security provisions to address the complexities of digital security in a rapidly evolving landscape. By delineating specific offenses, establishing data protection standards, and empowering public security entities, these laws work in tandem to strengthen the integrity, confidentiality, and resilience of Mexico's digital infrastructure. While certain laws indirectly protect information security or cybersecurity in Mexico, it is both imperative and critically necessary to establish a dedicated cybersecurity law. This section has illustrated the current fragmented state of Mexico's approach; however, this fragmentation is not ideal. On the contrary, a unified law and specialized authorities are essential for cohesive and effective governance in this domain. Although legal goods related to cybersecurity and cybercrime have been mentioned here for pedagogical purposes, a cybersecurity law should focus specifically on cybersecurity itself, rather than on overlapping areas such as cybercrime. As cyber threats continue to evolve, a focused approach is required to underscore the country's commitment to safeguarding personal data, protecting public safety, and ensuring accountability within digital ecosystems.

VII. Relevant International Cybersecurity Treaties Involving Mexico: Ratified and Pending

Mexico's involvement in international cybersecurity treaties underscores its commitment to global security standards and collaborative approaches to countering digital threats. Through a combination of ratified treaties and active participation in negotiations for prospective agreements, Mexico is progressively aligning its cybersecurity framework with international norms. This alignment enhances Mexico's capacity to address

[89] Ley General de Salud [L.G.S.] [General Health Law], *Diario Oficial de la Federación* [D.O.F.], 7 de febrero de 1984 (Mex.).

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and mitigate cyber risks on a global scale, enabling both domestic and cross-border resilience against cyber threats. In this section, we analyze key international treaties involving Mexico, with particular focus on those with binding cybersecurity provisions and those in which Mexico holds a significant position as a signatory or observer.

The Budapest Convention on Cybercrime (2001)[90] stands as the sole binding international instrument specifically dedicated to combating cybercrime. It aims to harmonize national laws related to cybercrime and provide a framework for international cooperation. The Convention mandates the criminalization of offenses against the confidentiality, integrity, and availability of computer systems and data. It also establishes procedural laws that facilitate cooperation across jurisdictions in cybercrime investigations. Although Mexico holds observer status, its involvement in the Convention indicates a commitment to aligning its cybersecurity practices with internationally accepted standards. Adopting these standards could enhance Mexico's capacity to collaborate in global cybercrime investigations and set a foundation for potential future ratification.

Moreover, two protocols complement the Budapest Convention, expanding its reach in addressing cybercrime more comprehensively. The Additional Protocol to the Convention on Cybercrime (2003) targets the criminalization of acts of a racist and xenophobic nature committed through computer systems.[91] This protocol provides measures to counteract online hate speech, ensuring that cybercrime frameworks extend to protect individuals and groups from racial and xenophobic propaganda distributed via digital channels. The Second Additional Protocol to the Convention on Cybercrime (2022) focuses on enhanced cooperation and the disclosure of electronic evidence,[92] a crucial aspect of cybercrime investigations. This protocol emphasizes the importance of international collaboration and outlines processes for rapidly accessing electronic data, facilitating timely and effective responses to cyber incidents across borders.

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[90] Convention on Cybercrime, opened for signature Nov. 23, 2001, 41 I.L.M. 282 (entered into force July 1, 2004).

[91] Additional Protocol to the Convention on Cybercrime, concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed through Computer Systems, opened for signature Jan. 28, 2003, ETS No. 189 (entered into force Mar. 1, 2006).

[92] Second Additional Protocol to the Convention on Cybercrime on Enhanced Cooperation and Disclosure of Electronic Evidence, opened for signature May 12, 2022, CETS No. 224.

The United States-Mexico-Canada Agreement (USMCA),[93] or T-MEC in Spanish, which came into effect in 2020, includes provisions specifically related to cybersecurity in Chapter 19 on Digital Trade. These provisions aim to enhance data protection, promote cybersecurity cooperation, and encourage a risk-based approach to cybersecurity across North America. Article 19.15 of the USMCA explicitly emphasizes the development of response capabilities, information-sharing practices, and trust-building measures in digital trade through enhanced cybersecurity. By aligning its cybersecurity efforts with those of its primary trading partners, the USMCA strengthens Mexico's internal cybersecurity mechanisms and its cross-border defenses, reinforcing the region's collective resilience against digital threats.

The United Nations Convention against Cybercrime, adopted by the General Assembly on 24 December 2024 in New York by resolution 79/243, represents the first comprehensive global treaty dedicated to addressing cybercrime.[94] Developed over nearly three years of negotiations and having been unanimously approved by UN Member States, the Convention provides States with a broad range of measures to prevent and combat cybercrime while aiming to strengthen international cooperation in sharing electronic evidence for serious crimes. During its negotiation, strong statements from Australia, Canada, the European Union, Liechtenstein, New Zealand, Switzerland, the United Kingdom, and particularly the United States underscored the necessity of integrating human rights safeguards. Meanwhile, the UN Office on Drugs and Crime (UNODC), serving as the substantive secretariat, continues to highlight the Convention's pivotal role in bolstering international cooperation, capacity-building, and rapid response mechanisms, while cautioning against the potential misuse of even well-structured treaties by authoritarian regimes.

Mexico's government has warmly welcomed the adoption of this Convention, highlighting its importance in setting a global standard for cybersecurity and international cooperation.[95] Mexico's active role in the negotiation process emphasized human rights protections, transparen-

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[93] Agreement Between the United States of America, the United Mexican States, and Canada, 19 U.S.C. § 4501 (entered into force July 1, 2020).

[94] G.A. Res. 79/243, U.N. GAOR, 79th Sess., Agenda Item 108, U.N. Doc. A/RES/79/243 (Dec. 31, 2024)

[95] Secretaría de Relaciones Exteriores, Mexican Government Welcomes Adoption of UN Convention Against Cybercrime, Press Release No. 303 (Aug. 9, 2024), https://www.gob.mx/sre/prensa/mexican-government-welcomes-adoption-of-un-convention-against-cybercrime.

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cy, and inclusivity. Mexican representatives participated constructively throughout the sessions, contributing to a robust legal instrument aimed at effectively combating cybercrime on a global scale. The Convention also supports Mexico's goals for international regulatory harmonization and legislative advancement in cybersecurity. This treaty, once ratified by Member States, will establish a unified legal framework to tackle cyber threats, closing gaps in national legislation and enhancing global cybersecurity collaboration.

In summary, Mexico's active participation in these international treaties and its commitment to aligning with global cybersecurity norms reflect a proactive approach to addressing the complex and evolving challenges of the digital age. By engaging with these treaties, Mexico not only bolsters its national cybersecurity infrastructure but also contributes to a coordinated international response to cyber threats, reinforcing collective global security.

VIII. Results and Discussion

The analysis of Mexico's cybersecurity regulatory landscape reveals a persistent fragmentation that significantly hinders the country's ability to protect its digital infrastructure, users` personal data and the citizens` economic interests. Our review of legislative proposals and existing laws shows that cybersecurity provisions remain scattered across multiple statutes, largely focused on cybercrime, cyber intelligence, and national security, rather than consolidated in a singular, comprehensive instrument. This lack of cohesion is consistently identified as a principal obstacle to effective governance and coordination, ultimately impeding the prompt detection, mitigation, and prosecution of cyber threats.

A central finding is that the proliferation of disparate bills, many of which overlap or conflict with one another, has produced gaps in coverage and enforcement. Despite numerous initiatives, from the first Federal Law to Prevent and Punish Cybercrimes in 2015 to the latest General or Federal Cybersecurity proposals in 2025, none has achieved the political consensus required to pass comprehensive cybersecurity legislation. This legislative deadlock has left Mexico reliant on piecemeal reforms in criminal, national security, and data protection laws, none of which fully address the preventive, protective, and resilience-oriented dimensions of cybersecurity. The net effect is a system where the lines between cybersecurity, cybercrime, and broader national security measures are blurred,

complicating interagency collaboration and diluting the focused attention that a dedicated cybersecurity framework demands.

Compounding the legislative fragmentation are political and institutional factors that stymie swift and decisive action. As evidenced by multiple withdrawn or stalled bills, partisan disagreements and divergent priorities across legislative factions have repeatedly obstructed the establishment of a unifying legal framework. In several of the proposals examined, tensions arose over the appropriate scope of surveillance powers, concerns about human rights safeguards, and the extent to which domestic law should incorporate, or deviate from, international instruments such as the Budapest Convention and the newly adopted United Nations Convention against Cybercrime. Consequently, the absence of a strong cross-party commitment to cybersecurity has stalled legal reforms and limited robust investments in cybersecurity infrastructure, leaving key sectors, including SMEs, underprepared for sophisticated cyber incursions.

Despite these systemic shortcomings, there have been incremental gains. Certain legislative initiatives, including those referencing international standards and treaties, underscore a growing recognition of the need for cross-border collaboration. Mexico's observer status in the Budapest Convention, its alignment with USMCA provisions on digital trade, and its vocal support for the new UN Cybercrime Convention highlight a willingness to align domestic legislation with global cybersecurity norms. These moves reflect an evolving consensus that international partnerships, backed by interoperable legal frameworks, are critical to addressing the transnational nature of cyber threats. Furthermore, statistical indicators, such as Mexico's upward movement in the Global Cybersecurity Index, suggest that incremental policy improvements and targeted investments in specialized cyber units are having some effect, although cooperation measures still lag behind legal and organizational efforts.

Taken together, these findings highlight an urgent need to replace the current patchwork of cybersecurity provisions with a cohesive, purpose-built cybersecurity law. Such a framework must clearly demarcate cybersecurity from cybercrime and national security concerns and incorporate robust governance mechanisms to coordinate interagency efforts, promote public-private collaboration, and elevate the country's readiness against evolving cyber threats. Political consensus, buttressed by continued progress toward harmonizing with international standards, emerges as the linchpin for sustainable reform. In this context, the discussion

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underscores that while incremental legislative and institutional changes have yielded modest improvements, the core challenge persists: only a unified and well-structured cybersecurity regime can effectively address Mexico's rising threat landscape.

IX. Limitations and Future Research

Despite offering a detailed examination of Mexico's fragmented cybersecurity regulatory environment, this study is subject to several limitations. First, the research primarily relies on legislative and policy documents, along with secondary data from international indices and official reports. While these sources provide substantial insight into the legal framework and broader policy directions, they do not capture the lived realities of enforcement, the day-to-day practices of governmental agencies, or the perspectives of private-sector actors, especially small and medium-sized enterprises (SMEs). Future work could incorporate interviews, case studies, and ethnographic field research to more fully represent the practical challenges and successes of implementing cybersecurity provisions at multiple levels of governance.

A second limitation arises from the dynamic nature of Mexican cybersecurity legislation. This article captures a snapshot of proposed and existing laws, many of which are subject to rapid change, withdrawal, or amendment due to political negotiations. Given the evolving policy landscape, there is a risk of legal obsolescence shortly after publication. Ongoing legislative developments and fluctuating political support underscore the necessity for continuous monitoring. More frequent updates or longitudinal research designs would help track these legislative shifts over time and assess the stability and impact of enacted measures.

Third, although the analysis covers diverse sectors, from financial services and telecommunications to education and electoral processes, it does not systematically evaluate how each sector adopts and adapts cybersecurity measures on an operational level. Sector-specific assessments could illuminate how fragmentation influences resilience, resource allocation, and inter-agency coordination in practice. Future studies may also investigate the interplay between federal policies and state-level initiatives, given that Mexico's federal system often generates a complex mosaic of subnational regulations.

Building on these limitations, future research agendas might benefit from three main directions. First, empirical investigations on how cyber-

security laws translate into tangible outcomes, such as reduced cyber incidents or higher compliance rates, would strengthen the evidence base for legislative reforms. Second, comparative analyses with countries that have recently adopted comprehensive cybersecurity laws could yield best practices and highlight pathways for Mexico to achieve political consensus. Finally, an interdisciplinary approach that integrates technological, legal, and sociopolitical perspectives would foster a more holistic understanding of cybersecurity challenges, further informing both policy design and implementation in this critical domain.

X. Conclusions

This study aimed to demonstrate that, despite incremental legislative advances and increased policy attention, Mexico's cybersecurity framework remains primarily constrained by fragmentation. Existing statutes, ranging from the Federal Criminal Code to sector-specific financial regulations, address distinct aspects of cyber risk without forming a cohesive regime. The dispersion of regulations across multiple domains, cybercrime, data protection, national security, has created overlapping mandates and inconsistencies, ultimately undermining enforcement efficacy and interagency coordination. Moreover, persistent political hurdles and divergences in legislative priorities have impeded the passage of a consolidated cybersecurity law, leaving vital sectors such as critical infrastructure and small and medium-sized enterprises (SMEs) inadequately protected against escalating cyber threats.

By tracing the trajectory of cybersecurity bills proposed between 2015 and 2025, this article reveals recurring themes that have inhibited legislative consensus. Chief among these are debates over surveillance authority, human rights safeguards, and alignment with international instruments such as the Budapest Convention. While the growing willingness to reference these global standards signals an emerging recognition of cybercrime's transnational nature, integrating such norms into domestic law requires sustained political commitment and well-defined legal frameworks. The absence of broad-based legislative support not only perpetuates legal ambiguity but also discourages the private sector from making robust cybersecurity investments, particularly among SMEs that face unique resource constraints.

Despite these challenges, Mexico has made noticeable strides in certain areas, including incremental enhancements to criminal statutes,

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targeted intelligence capabilities, and improved ranking in global cybersecurity indices. These gains draw attention to the potential for more comprehensive reforms. A unified cybersecurity law, distinct from cybercrime or intelligence legislation, would streamline disparate statutes, clarify institutional responsibilities, and promote technical guidelines for proactive cyber defense. Institutional reforms that establish a central authority with a clear mandate to oversee cybersecurity initiatives are equally essential, as it will coordinate responses and foster collaboration among federal entities, state governments, and private-sector partners.

A convergent multi-stakeholder approach, anchored in transparent governance, international cooperation, and robust capacity-building is definitely the most viable pathway to bolster national cyber resilience. While incremental legal and policy changes have generated modest improvements, this article's findings reaffirm that only a cohesive and strategically oriented legislative framework can effectively mitigate Mexico's complex cyber risks. Future endeavors should thus concentrate on reconciling political differences, enhancing institutional cooperation, and fortifying alignment with global cybersecurity norms, ensuring that Mexico's digital ecosystem is both resilient and adaptive in an ever-evolving landscape.

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Toward a New Regulation on the Exclusionary Rule. What Can Mexico Learn from American and Canadian Experiences?

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Abstract: For over a century, U.S. debate surrounding the Exclusionary Rule has centered on questions such as if it inevitably allows criminals to go free, if the victims suffer due to police misconduct, or if the rule's scope has narrowed over time. The rule's primary objective has been to deter police misconduct. In Canada, discussions have focused on the necessity of conducting a discretionary analysis to determine the admissibility of unconstitutionally obtained evidence, especially since Canada's Charter of Rights and Freedoms publication in 1982. Mexico's debate on the issue began in 2008, and its version of the rule aims to guarantee more rights for the accused; however, it remains subject to legal interpretation and hasn't been able to effectively reduce police misconduct. This article provides a brief comparison of the Exclusionary Rule's-related regulation in the three neighboring countries. It suggests that Mexico should consider its northern neighbors common law legal history and pursue substantive changes to the National Criminal Procedures Code. These should directly address illegal evidence's prohibition and any exceptions to the rule that may exist.
Keywords: admissibility of evidence; exclusionary rule; exceptions to exclusionary rule; illegal evidence; police illegality; suppress evidence.

Resumen: Durante más de un siglo, el debate en Estados Unidos en torno a la Regla de Exclusión se ha centrado en cuestiones como si inevitablemente permite que los delincuentes queden en libertad, si las víctimas sufren debido a la mala con-

ducta policial o incluso si el ámbito de aplicación de la norma se ha reducido con el tiempo. En cualquier caso, el objetivo principal de la norma ha sido disuadir de la mala conducta policial. En Canadá, por su parte, los debates se han centrado en la necesidad de realizar un análisis discrecional para determinar la admisibilidad de las pruebas obtenidas inconstitucionalmente, especialmente desde la publicación de la Carta Canadiense de los Derechos y Libertades en 1982. Por último, en México el debate sobre la cuestión comenzó en 2008, y su versión de la norma pretende garantizar más derechos a los acusados; sin embargo, sigue estando sujeta a interpretación jurídica y no ha logrado reducir eficazmente la mala conducta policial. Este estudio ofrece una breve comparación de la regulación de la Regla de Exclusión en los tres países vecinos. Sugiere que México debería tener en cuenta la historia jurídica del derecho consuetudinario de sus vecinos del norte y realizar cambios sustantivos en el Código Nacional de Procedimientos Penales. Estas deberían abordar directamente la prohibición de las pruebas ilícitas y las excepciones a la regla que puedan existir.
Palabras clave: admisión de pruebas; reglas de exclusión; excepciones a la prueba ilícita; prueba ilícita; ilegalidad policial; no admisión de pruebas.

I. Introduction

Since its inception, the Exclusionary Rule (ER) has been among the most controversial and widely debated legal doctrines in American common law. This debate has not been limited to the United States, persisting in Canada and, more recently, in Mexico. Rooted in the Fourth Amendment of the U.S. Constitution—which guarantees the "right of the people to be free from unreasonable searches and seizures"—, the ER was first established in Weeks v. United States, 232 U.S. 383 (1914). For over a century, it has been a cornerstone of jurisprudence in North America's common law systems in the U.S. and Canada. An early precursor to the ER appeared In Boyd v. United States, 116 U.S. 616 (1886), where the Court excluded evidence obtained through a police demand for private documents, deeming it an unreasonable search and seizure. The Court further reasoned that such an action amounted to compelling self-incriminating testimony, reinforcing the rule´s foundational principles.

Since then, the ER has evolved into a judicial mechanism that limits government overreach, safeguards privacy rights, upholds the integrity of the courts, and deters unconstitutional police conduct by "throwing out" illegally obtained evidence. Courts have traditionally justified this rule by emphasizing the need to prevent tainted evidence from undermining the judiciary´s reputation and preserving what Justice Stevens termed "the imperative of judicial integrity".[1] Matthew Kim expands on this view, suggesting that the ER not only protects ju-

[1] *See* Elkins v. United States, 364 U.S. 206, 222 (1960)

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dicial integrity, but strengthens it, at least in the United States.[2] Similarly, Bloom describes it as "the major remedy in the United States for addressing a police illegality".[3] Other scholars, including Correa;[4] Bloom, Fentin and Smith,[5] and Orfield[6] have echoed this perspective, highlighting the ER´s role as a substantive deterrent against police misconduct in the US.

The Exclusionary Rule has faced vocal critics on both sides of the 49th Parallel. Generally, they argue that the rule has no clear basis in the Fourth Amendment, does little to deter police misconduct (e.g., offering neither guidance on respecting constitutional rights nor incentives for internal discipline) and may encourage further wrongdoing, such as additional violations to ensure tainted evidenced is admitted in court. No one embodied these criticisms more famously than U.S. Federal Appeals Judge Malcolm Wilkey, who even nicknamed the rule as "irrational". He blamed it for rising crime rates —in a nation, as he quipped, where a criminal "can parade in the streets with a submachine gun in a blanket under his arm"—,[7] as well as for undermining police accountability, and at times, incentivizing even more egregious misconduct. After a century of jurisprudential debate, the issue remains unresolved in its country of origin.

On the other hand, the evolution of the Exclusionary Rule in Canada followed a very different path from that of its southern neighbor, though it ultimately reached a similar outcome. Rather than allowing the rule to develop solely through judicial precedent, Canada proactively included it in the Canadian Charter of Rights and Freedoms (henceforth, the Charter), enacted in 1982. Mirroring the U.S. Fourth Amendment, the Charter guarantees that "[e]veryone has a right to be secure against unreasonable search and seizure" and explicitly mandates the exclusion of evidence if its admission "would bring the administration of justice into disrepute". Beyond this, the Charter also enshrines other protections, including due process rights, safeguards against unlawful searches or seizures, the right to counsel, and prohibitions on cruel and unusual punishments. Before the Charter, however, Canadian courts largely favored admitting evidence as long as it was "relevant, probative and reliable".[8]

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[2] Matthew D. Kim, *The Exclusionary Rule and Judicial Integrity: An Empirical Study of Public Perceptions of the Exclusionary Rule*, 87 Mo. L. Rev. (2023).

[3] Robert Bloom, *Inevitable Discovery*: *An Exception Beyond the Fruits*, 20 American Journal of Criminal Law, No. 079. 79-104 (1992).

[4] Carlos Correa Robles, *La función de la exclusión de la prueba ilícita en el proceso penal y sus consecuencias: un estudio comparado*, 16 Política criminal 32, 644-677 (2021).

[5] Robert Smith, *Herring v. United States: The Continued Erosion of the Exclusionary Rule*, 61 Mercer Law Review, No. 2, Article 9 (2010).

[6] Myron Orfield, *The Exclusionary Rule and Deterrence: An Empirical Study of Chicago Narcotics Officers*, 54 The University of Chicago Law Review 3, 1016-1069 (1987).

[7] Malcolm Wilkey, *The Exclusionary Rule: Why Suppress Valid Evidence?*, 62 Journal Judicature 5, 214-232 (1978).

[8] Eileen Skinnider, *Improperly or Illegally Obtained Evidence: The Exclusionary Evidence Rule in Canada,* International Centre for Criminal Law Reform and Criminal Justice Policy 6, 1-26 (2005).

The most famous and relevant is section 24(2), which states: "Where, in proceedings under section (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute" (Canadian Charter of Rights and Freedoms, s 2, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11).

However, this does not mean that judicial review has not played a key role in shaping the Exclusionary Rule in Canada. In fact, courts are partly expected to help remedy violations of individual liberties since[9] the Supreme Court established guidelines for lower courts when assessing evidence admissibility. In Collins v. The Queen, 1 S. C. R 265 (1987) the Court emphasized that judges must consider excluding evidence if it undermines trial fairness, and that they should also take into account the seriousness of the Charter violation (e.g., a "good faith" error being less severe than an avoidable breach), and the potential harm to the judiciary´s reputation.[10]

It is important to bear in mind that Canada is a common law nation whose legal system operates on precedent. While it has taken significant legislative steps to address the inclusion or exclusion of evidence (such as amending the Charter of Rights and Freedoms through the well-known section 24(2)), case law remains predominant, as legislative bodies have been unable to establish a clear consensus. As noted by Skinnider, "whether and in what circumstances courts should exclude illegally or improperly obtained evidence is one of the most hotly contested questions in criminal procedure and evidence law".[11] Similarly, Osborn affirms[12] that in Canada illegally obtained evidence is excluded only when its prejudicial effect outweighs its probative value, or when it is either irrelevant or unreliable, an approach Mexico should consider.

While the norm is said to be "American Made, Canadian Approved", the past 15 years have seen a growing debate in Mexico regarding the Exclusionary Rule. After centuries of civil law tradition and inquisitorial process, the country has adopted certain common law legal principles, including the adversarial system. Under significant U.S. political and economic pressure, Mexico underwent a dramatic shift, prioritizing not only the rights of the accused but also the protection of victim´s rights. State authorities are now obligated to uphold the presumption of innocence, due process, the right to legal counsel, and the prohibition of self-incrimination.

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[9] James Stribopoulos, *Lessons from the Pupil: A Canadian Solution to the American Exclusionary Rule Debate*, 22 Boston College International and Corporative L. Rev. 1, 77-140 (1999).

[10] Stribopoulos, *supra* note 9, at 122-124.

[11] Skinnider, *supra* note 8.

[12] Debra Osborn, *Suppressing the Truth: Judicial Exclusion of Illegally Obtained Evidence in the United States, Canada, England and Australia*, 1 Elaw Journal, Murdoch University Electronic Journal 44, (2000).

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However, alongside the positive changes, the adoption of the adversarial system has raised concern among citizens, legal professionals and scholars. Key issues include the potential for guilty parties to go free, insufficient measures to curb police corruption, and challenges in safeguarding the integrity of the criminal justice process. Now, fifteen years into the transition, Mexico's legal community continues to grapple with balancing the rights of the accused against those of victims, including questions of reparations and compensation.

This article's central question is whether Mexico should formally incorporate the North American version of the Exclusionary Rule (along with its exceptions), into its written legislation. Given that Mexico's decision to reform its centuries old legal traditions was partly influenced by its northern neighbor, the analysis focuses on the path taken by the U.S. and Canada —rather than other legal systems like Spain—, since both nations have struggled with this issue extensively in their courts and legislatures. We argue that Mexico should avoid letting "history repeat itself" by waiting for courts to legislate through judicial fiat, as occurred in the U.S. Instead, it should confront the issue directly with comprehensive legislation and, if possible, a constitutional amendment, one that is even more progressive than the Canadian Charter. Additionally, the legislature should proactively codify exceptions to the Exclusionary Rule while providing clear guidelines and training for law enforcement and judges on its implementation.

We believe Mexico is likely to follow the path traced by its northern neighbors. First, no country exerts more political pressure —formal or informal— on Mexico than the U.S. In fact, Mexico's ongoing transition to an adversarial legal system is largely driven by U.S. mandates tied to American financial support. As a result, like most Latin American countries, Mexico´s Criminal Procedures Code already establishes an adversarial system blending elements of traditional civil law and American-inspired common law.

Second, the geographical proximity of the U.S. and Canada, along with long-established treaties, trade ties and/or cultural exchanges, makes them natural reference points —much as France might look to Italy for legal guidance rather than overseas. Finally, both the U.S. and Canada have operated under the adversarial system for generations, developing a robust legal framework that Mexico could leverage to its advantage.

II. Methodology

This analysis is based on a review of the most relevant judicial precedents from the United States and Canada, in addition to legislative frameworks in Mexico. These selected cases focused on the obtention of illegal evidence, a key element in any investigation. For the Mexican case, the analysis covers constitutional standards, applicable criminal laws, and jurisprudential criteria. Moreover, key factors influencing the application of the Exclusionary Rule—including trial

fairness, judicial integrity, police misconduct, prosecution, and suppression motions—are examined. Through an analysis of suppression motion frequency, persecution rejection rates, and their potential systemic impact, this research evaluates whether these rules safeguard or undermine the criminal justice system. Additionally, we include a comprehensive literature review of noteworthy academic articles on illegal evidence in the United States, Canada, and Mexico.

III. The Exclusionary Rule in the U.S. and Canada

The history of the Exclusionary Rule goes back to the second decade of the twentieth century. However, its foundational precedent emerged earlier in Boyd v. United States, 116 U.S. 616 (1886), when the Supreme Court linked the Fourth and Fifth Amendments. In this landmark ruling, the Court held that compelling a defendant to produce private documents constituted an unconstitutional search and seizure protections to obtain self-incriminating evidence, such conduct also breached the Fifth Amendment's safeguards against compelled testimony.

This was later solidified in the landmark case of Weeks v. United States, 232 U.S. 383 (1914) where the Supreme Court specifically established the necessity of excluding illegally obtained evidence. The court emphasized that this exclusion served not merely to deter unconstitutional conduct by authorities, but to safeguard judicial integrity. In its ruling, the Court rejected the admission of private documents seized by federal law officers without a warrant. This made the U.S., according to Craig Bradley, the first nation to exclude probative evidence from the court process in order to protect citizens from government infringement on individual rights.

The Warren court would later apply these protections to the state jurisdictions via Mapp v. Ohio, 367 U.S. 643 (1961), explicitly citing constitutional safeguards against illegally obtained evidence. The decision prioritized both the importance of preserving judicial integrity and the necessity of deterring government misconduct, particularly by police enforcement. In Mapp, the court excluded "lewd and lascivious" materials found during an unlawful warrantless search for a bombing suspect despite their prohibited status under Ohio law. Additionally, the Court overturned part of its prior decision in Wolf v. Colorado, 338 U.S. 25 (1949), which had previously held that the exclusionary rule did not apply to state proceedings.

Even with a more clearly defined exclusionary rule under the Canadian Charter, the issue has remained a subject of debate and judicial review in Canada. Unsurprisingly, Canadian courts have developed extensive case law on the matter, sparking significant controversy. It is worth noting that Canada's adherence to the exclusionary rule stems, at least in part, from international

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law[13] and a longstanding commitment for human rights —not merely deference to American common law precedent. Ultimately, however, Canadian jurisprudence leans more heavily on the Charter and domestic legal precedent as it seeks to balance the rights of the accused against the society's interests` in punishing criminal offenders. As former Canadian Justice Lamer articulated in R. v. Hogan,[14] this involves weighing the "social interest in the particular case and against the gravity or character of the invasion". Before the Charter, Canadian courts almost invariably favored admitting "relevant" evidence regardless of how it was obtained. However, in recent decades, they have also acknowledged the need to curb police misconduct and uphold judicial integrity by excluding evidence obtained through rights violations, most notably through "Collins framework".

In 1987, the Supreme Court of Canada first interpreted section "24(2)"—the provision governing the exclusion of evidence—in the case of Ruby Collins, who had been forcibly detained by the Royal Canadian Mounted Police (RCMP) and found in possession of a small balloon filled with heroin. Collins argued that the warrantless search violated section 8 of the Charter, which guarantees freedom from unreasonable searches and seizures. Overturning lower courts, Canada's high court emphasized that judges must assess "all of the circumstances" (similar to the American "totality of the circumstances" test) when deciding whether to exclude the evidence. Key considerations include the nature of the evidence, the severity of the state violation (i.e. technical error versus deliberate misconduct), and the availability of alternative means to obtain the evidence.

Skinnider notes that the ultimate result was a three-part guide for lower courts to consider 1) how admitting the evidence would affect trial fairness, 2) factors to assess when evaluating the seriousness of the Charter violation, and 3) whether admitting the evidence would bring the judicial system into disrepute. While this "Collins Framework" provided the initial guidance, courts in the following years generally distinguished between types of evidence, favoring the admissibility of real evidence, (e.g., a murder weapon) while dismissing self-incriminating evidence (e.g., confession). However, this did not mean Canadian common law would not continue evolving on the issue.[15]

A decade later in R. V. Stillman, 1 S.C.R. 607. (1997), the Supreme Court of Canada offered further guidance by distinguishing between "descriptive" and "non-descriptive" evidence. Descriptive evidence— such as evidence obtained without "compelling cooperation"— was not subject to protection, while non-descriptive evidence, —where the accused was compelled to participate in the "creation or discovery of the evidence," as with the hair samples, buccal swabs and teeth impressions in this case— was deemed inadmissible regardless of its

[13] International Covenant on Civil and Political Rights, 1976

[14] *See* R. v. Hogan, 2 U.S. 574, 595 (1975).

[15] Skinnider, *supra* note 8.

probative nature. However, this dichotomy didn't last. In 2009, the court revisited the issue in R. v. Grant, [2009] 2 S.C.R. 353, abandoning the *Collins framework in favor of* a "fresh look" at the exclusion of evidence under section 24 (2) of the Charter.

In Grant, the Supreme Court of Canada, recognizing the ambiguity of earlier rulings and the resulting challenges in applying them consistently, established "three avenues of inquiry" to be assessed from a long-term, forward-looking, and societal perspective". The court revisited and revised the "Collins test", raising the standard for excluding evidence. The case involved Donahue Grant, a young Black man, who was walking on a sidewalk in a location police deemed considered to be a high-crime area, when he was approached by several officers, including two plainclothes detectives. Driving past Grant, the detectives claimed he "stared" at them and was acting suspiciously by fidgeting in his pants and jacket. Along with a uniformed officer who intentionally blocked Grant's path, the three officers confronted him. According to the police, Grant acted "suspiciously", and he was asked to keep his hands visible while he was questioned as to whether he was carrying anything he should not. He admitted that he was carrying a firearm and a small quantity of marijuana. He was then read his rights and arrested.

At trial, Grant claimed the stop and arrest violated his rights under multiple sections of the Canadian Charter of Rights and Freedoms and sought to have the evidence excluded. However, the trial judge disagreed and admitted the pistol as evidence, resulting in Grant's conviction on several firearms offences. Grant appealed, but the appeals court upheld the decision, ruling that while the detention was "arbitrary", and breached section 9 of the Charter, the evidence remained admissible under section 24(2). The Supreme Court later confirmed this ruling, concluding that while the stop was arbitrary, it was not "sufficiently egregious" to exclude the evidence, and the weapons convictions were upheld.

Thus, when balancing the effect of admitting evidence against protecting individual rights and upholding the integrity of the justice system, courts must consider three key factors: (1) the seriousness of the state conduct that violated the Charter (as admitting the evidence could signal judicial tolerance of serious state misconduct), (2) the extent to which the breach undermined the accused's Charter-protected interests (since admission might devalue individual rights); and (3) society's interest in resolving the case on its merits (para. 71). Additionally, the court confirmed that judges must consider the totality of the circumstances surrounding the evidence's acquisition and determine whether its admission would bring "the administration of justice into disrepute" (para. 71) (R v Grant, 2 SCC 32, 2 SCR 353 (2009)).

In short, the court ruled that while sections 8 and 9 of the Charter had been violated, the breach was not severe enough to justify excluding the evidence, as doing so would not "bring the administration of justice into disrepute". Grant marked a significant shift in the court's approach— moving from balancing

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the rights of the accused against those of victims, to weighing individual rights against the government's (and by extension, the court´s) reputation.

Still, the court's "broad societal test"[16] effort did not settle the issue, and, unsurprisingly, Canada's courts have since faced numerous exclusionary rule cases, with the Grant's guidelines remaining "the subject of significant consideration and commentary".[17] Ultimately, despite a considerable "head start" (including a century of American jurisprudence in the area) a well-written Charter, and almost fifty years of case law, Canada's legal debate over the exclusionary rule remains unresolved.

1. The Constable Blundered

The central criticism of the Exclusionary Rule is that it has, does, and will continue to release guilty individuals simply because "the constable blundered", as U.S. Supreme Court Justice Benjamin Cardozo famously put it. Critics argue that countless factually guilty defendants may evade justice due to police errors made in "good faith".[18] However, time has shown that this concern is unfounded. Evidence is successfully suppressed in very few cases, perhaps less than 1% of felony prosecutions.[19] Moreover, as Davies notes the vast majority of cases are settled before trial, often before any challenges to admission of evidence are even raised.[20]

Additionally, as McDonald explained in 2018, when the police misconduct is unintentional, excluding evidence does little to deter future violations. Consequently, Fourth Amendment violations stemming from police ignorance, carelessness, or even sheer incompetence have rarely led to evidence being excluded.

In his comprehensive study, Peter F. Nardulli found that motions to suppress physical evidence were filed in fewer than 5% of the 7,500 cases reviewed — and succeeded only 0.69% of the time. His analysis revealed similarly low success rates for "serious" motions to exclude identifications and confessions, with suppression motions yielding comparable results.[21] Furthermore, he points out that even where evidence was excluded, it did not necessarily lead to an acquittal or charges being dropped. In fact, "In all, only 46 cases —less than 0.6% of the cases studied— were lost because of the three exclusionary rules combined,

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[16] Wayne Gorman, *The Admission and Exclusion of Unconstitutionally Obtained Evidence in Canada*, 54 Court Review: The Journal of the American Judges Association 1, 113 (2018).

[17] Gorman, *supra* note *16,* at 114.

[18] Matthew Tokson & Michael Gentithes, *The Reality of the Good Faith Exception*, Georgetown Law Journal 546, 1-57 (2023).

[19] Report by the Comptroller General of the United States, Impact of the Exclusionary Rule on Federal Criminal Prosecutions 14 (1979).

[20] Thomas Davies, A Hard Look at What We Know and Still Need to Learn About the Costs of the Exclusionary Rule, USA, American Bar Association 611 (1983).

[21] Peter Nardulli, *The Societal Cost of the Exclusionary Rule: An Empirical Assessment*, 8 American Bar Foundation Research Journal 3, 585-609 (1983).

most of them involving offenses that would have incurred less than six months' imprisonment or first offenders".[22]

In a recent study, Liu and Nir found that few cases face evidentiary challenges, and even among those, only 13% result in exclusion of any evidence. They also note that judges predominantly sided with the police, especially in cases lacking corroborating facts (e.g., no video evidence). Therefore, they conclude that the motion to suppress hearings are not an effective deterrent against police misconduct.[23] Moreover, evidence suppressions occur in only 0.69% of all cases dismissed due to illegally seized evidence. Prosecutors reject just 0.8% of felony arrests because of illegal searches, and the rate is slightly higher for drug cases, at 2.4%.

In similar research, Craig Uchida and Timothy Bynum found comparable results: motions to suppress evidence were granted for only two percent of cases, and defendants who were "set free" typically faced charges involving minor drug possession or petty theft.[24] Furthermore, another recent study by Esther Nir, which included cases where motions to suppress were dropped prior to a hearing, revealed a slightly higher success rate (6%) for the defense.[25] These findings suggest that raising exclusionary rule concerns has little to no effect on allowing criminals, especially those accused of felonies or violent crimes, to evade conviction.

As we can see, rejection rates in both the U.S. and Canada are relatively low, and the inclusion of the Exclusionary Rule has not compromised public safety or led to an evolving door of crime. In the U.S., the debate has shifted towards allowing erosion of the Rule, with growing acceptance of such evidence in certain cases.

2. Does Not Reduce Corruption

The second major criticism is that the exclusionary rule has little to no effect on deterring police misconduct. Thomas K. Clancy[26] addressed the lack of empirical data to either confirm or refute its effectiveness in preventing 4th Amendment violations. While no comprehensive database tracks instances of police planting or illegally obtaining evidence, the extremely low number of case dis-

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[22] Nardulli, *supra* note 21, at 585.

[23] Liu Siyu & Esther Nir, *Mission Impossible? Challenging Police Credibility in Suppression Motions*, 33 Criminal Justice Policy Rev. 6, 584–607 (2021).

[24] Craig Uchida & Timothy Bynum, Effects of "United States vs. Leon" on Police Search Warrant Practices, (1984-1985, Stanford libraries). https://www.icpsr.umich.edu/web/NACJD/studies/9348

[25] Esther Nir, *Empowering the Exclusionary Rule: Using Suppression Motion Data to Improve Police Searches and Searches in the United States*, 22 International Journal of Police Science & Management 1, 96–107 (2020). https://doi.org/10.1177/1461355719888945 Last consulted February 10th, 2025.

[26] Thomas K. Clancy, *The Fourth Amendment`s Exclusionary Rule as a Constitutional Right*, 10 Ohio St. J. of Crim. L., May 12th, 2012, at 357.

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missals and the rarity of serious disciplinary actions against officers each year strongly supports this conclusion.

In fact, some argue that the ER may even encourage constitutional violations, particularly when outdated case law and statutes are used to justify modern police practices.[27] Also, the suppression of evidence does not guarantee a dismissal or acquittal, as remaining evidence may still lead to a conviction. Critics also emphasize that the ER offers little direct relief for the innocent individuals whose Fourth Amendment rights have been violated by law enforcement. Even so, proponents would likely agree that the Exclusionary Rule, if properly applied, serves as a safeguard for all —guilty and innocent alike— against future constitutional violations (assuming police adhere to judicial rulings that curb their discretion).

In Canada, Lauren Gowler has highlighted the limitations of the Charter of Rights and Freedoms in deterring police corruption and misconduct, questioning whether officers are genuinely held accountable for violations. Then, by addressing police powers on an ad hoc basis (e.g., numerous lower court rulings) the judiciary has failed to establish clear precedents limiting police authority. Consequently, Gowler advocates for a more proactive legislative role in defining police powers and implementing stronger safeguards, including new laws and Charter amendments, to prevent abuses.

If the exclusionary rule, as currently interpreted by the courts, enforced by police themselves, and overseen by government prosecutors reluctant to bring criminal charges against officers in the U.S. and Canada, does not significantly reduce police corruption, it certainly will not do so in Mexico.

3. Civil Torts and Police Qualified Immunity

Evidently, civil torts have also proven ineffective in deterring police misconduct. Lawsuits against police are difficult to win, and —aside from a few notable exceptions—, rarely lead to substantial penalties. Moreover, they fail to hold individual officers personally accountable, as any monetary judgments are typically passed on to taxpayers or an insurance company. Interestingly, the cases that influenced the drafting of the Fourth Amendment were not English criminal cases, but rather tort claims in which victims sought damages for violations of their lawful rights.[28]

In the past year, particularly since the death of George Floyd, there has been significant debate over reforming this system, including proposals to eliminate qualified immunity, which often shields police and other public employees from liability for actions taken "under the color of law", even in cases that may

[27] Matthew Tokson & Michael Gentithes, The Reality of the Good Faith Exception, University of Utah College of Law Research Paper No. 546 (2023).

[28] Richard Posner, *Rethinking the Fourth Amendment*, 49 The Supreme Court Review, 49-80 (1981).

appear to be civil rights violations. Some have also suggested requiring officers to carry individual liability insurance, at least in the U.S. However, Joanna Schwartz notes, "eliminating qualified immunity would not significantly alter the scope of constitutional protections, dramatically increase plaintiffs' success rates, or transform government practices that currently dampen the effects of lawsuits on officers' and officials' decision-making." Given these limitations, Mexico's legislature would likely need to enact tailored regulations to address these concerns effectively.[29]

IV. Exceptions to the Exclusionary Rule

The development of exceptions to the Exclusionary Rule under common law has also been controversial. While a full discussion falls outside the scope of this article, the following provides a summary of these exceptions. Broadly speaking, evidence obtained in good faith is not excluded, for instance, when police reasonably rely on a search warrant that is later deemed invalid. As established in Stone v. Powell (cited by Brown);[30] along with Halpern[31] and Correa,[32] courts may allow evidence obtained by government agents who acted under reasonable, although mistaken, belief that their search or seizure was lawful.

The doctrine of inevitable discovery allows evidence obtained through an unlawful search or seizure to be admitted in court, provided it would have been unavoidably discovered through an independent, legal investigation. For example, in Brewer v. Williams, 430 U.S. 387 (1977) cited by Kamisar[33] and Brooks,[34] the court admitted illegally obtained evidence —Williams' incriminating statements that led the police to the victim's body— reasoning that the body would have been found eventually, even without the unlawful interrogation. Similarly, in Nix v. Williams (referred by Kaczynski[35] and Fishkin[36]), the Court reaffirmed that evidence remains admissible if it would inevitably have been uncovered through lawful police procedures. Similarly, In Murray v. Unit-

[29] Joanna Schwartz, *After Qualified Immunity*, 120 Columbia Law Review 2, 309–388 (2020).

[30] John Brown, *The Good Faith Exception to the Exclusionary Rule,* 23 S. Tex. L.J. 655. (1982).

[31] Philip Halpern, *Federal Habeas Corpus and the Mapp Exclusionary Rule After Stone v. Powell*, 82 Colum. L. Rev. 1 (1982).

[32] Correa, *supra* note 4. *At* 644-677.

[33] Yale Kamisar, *Brewer v. Williams, Massiah and Miranda, What Is 'Interrogation'-When Does It Matter*, 67 Geo. L. J. 1 (1978).

[34] Peter Brooks, *Inevitable Discovery-Law, Narrative, Retrospectivity*, Yale J. of Law and the humanities, 2013, in 71.

[35] Stephen Kaczynski, *Nix v. Williams and the Inevitable Discovery Exception to the Exclusionary Rule,* Army Law, 1(1984).

[36] James Fishkin, *Nix v. Williams, An Analysis of the Preponderance Standard for the Inevitable Discovery Exception*, 70 Iowa L. Rev 1369 (1984).

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ed States (referenced by Graveline[37] and Fee[38]), the Supreme Court broadened the independent source doctrine, permitting evidence initially discovered during an illegal police entry to be admitted because it was later secured through a valid warrant, independent of the initial illegality.

The attenuation exception to the ER allows evidence obtained through government misconduct to be admissible if the connection between the misconduct and the discovery of the evidence is sufficiently weak. For example, in Wong Sun v. U.S. , a narcotics case, the defendant's confession followed an unconstitutional arrest. The police initially found heroin in possession of Way, who then led them to Toy. After an illegal entry, Toy implicated Johnny as a drug seller, and at Johnny's premises, he further implicated Wong Sun. Johnny and Toy were arrested, and the police compelled Toy to take them to Wong Sun's house. Though no narcotics were found, Wong Sun was arrested. While the Court of Appeals ruled that the arrests and evidence obtained without warrants violated the Fourth Amendment, it held that certain items of proof were not direct products of the illegal arrests and were therefore admissible.

When evidence is challenged but the unconstitutional conduct is deemed too remote from the original police misconduct (i.e., attenuated) it may still be admissible.[39] The independent source doctrine permits the use of evidence initially obtained unlawfully, such as through an illegal search, if it is later acquired through constitutionally valid means. Additionally, the government may sometimes introduce illegally gathered evidence (impeachment evidence) not to prove guilt but to challenge the credibility of a defense witness. Finally, qualified immunity shields police officers from civil lawsuits—often a defendant's only recourse for a rights violation (i.e., illegal search)—unless the officer acted entirely outside the scope of their lawful duties.

For over a century, America's common law courts have stirred controversy by carving out numerous exceptions to the Exclusionary Rule, such as the "good faith exception". The U.S. Supreme Court's ruling in Silverthorne Lumber Co. v. United States,[40] began weakening the ER declaring that illegally obtained evidence "become sacred and inaccessible" —this exception is now known as the "independent source" doctrine. Over time, courts have interpreted additional exceptions, leading many to argue that these represent a steady, albeit slow erosion of Fourth Amendment protections. Critics of the ER, as Stribopoulos points out, often dismiss its role in preserving judicial integrity.[41] Carolyn Yagla goes further, asserting that "the Exclusionary Rule has evolved from a

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[37] Bradley Graveline, *Fourth Amendment-An Acceptable Erosion of the Exclusionary Rule*, 79 J. Crim. L. & Criminology 647 (1988).

[38] Edwin Fee, Jr., *Criminal Procedure I: Narrowing the Protection of the Fourth Amendment*, Ann. Surv. Am. L. 371. (1989)

[39] *See* Nardone v. United States, 308 U.S. 338, 341 (1939)

[40] Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1920))

[41] James Stribopoulos, *Lessons from the Pupil: A Canadian Solution to the American Exclusionary Rule Debate*, 22 Boston College International and Corporative L. Rev. 1, 77-140 (1999).

constitutional right to its present interpretation as a judicial remedy applicable only when it will advance the goal of deterrence".[42] We argue that Mexico should not emulate this approach. Instead, legislative action, rather than relying solely on judges, is necessary to protect the accused and effectively deter police misconduct.

In Canada, while the Charter has not relied as exclusively on case law for specific exceptions, the Supreme Court has still been called to interpret its provisions and provide some guidance for lower court judges. Historically, pre-Charter Canada left the determination of evidence's probative value —and thus its admissibility— largely to the discretion of individual judges. This has resulted in a legal framework that generally favors admissibility over exclusion. Moreover, Canadian scholarship on the ER tends to prioritize safeguarding the judiciary from "disrepute" rather than focusing primarily on deterring police misconduct or protecting individual rights. As Robert Harvie observes, while stemming police misconduct may be a benefit that results from the ER, "the purpose of section 24(2) is to prevent the administration of justice from being brought into *further* [italics added] disrepute by the admission of the evidence at trial".[43] Thus, Mexico may require a legislative, rather than a judicial, approach to effectively address police corruption and rights violations.

V. The Exclusionary Rule in Mexico

Unlike its northern neighbors, Mexico's Exclusionary Rule is not a product of judicial interpretation but is explicitly enshrined in the Federal Constitution and in the National Criminal Procedures Code. Further, protection against the use of illegally obtained evidence (known as "*prueba ilícita*") is recognized as a human right and is as one of the key tools of court officials to protect the rights of the accused.[44] As in the U.S., however, it is also viewed as an important safeguard of judicial integrity, since judges are expected to disregard illegally obtained evidence when determining guilt or innocence.

Additionally, a key purpose of the exclusionary rule in Mexico was to reduce illegal practices during detentions and criminal investigations.[45] Unlike in Canada and the U.S., Mexico's ER is not considered to be a remedy for the personal "harm" suffered by the individuals subjected to an unlawful arrest or searches. In other words, it is *not* designed to deter police misconduct or correct unconstitutional practices by law enforcement. As Salas Calero notes, most police offi-

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[42] Carolyn Yagla, *The Good Faith Exception to the Exclusionary Rule: The Latest Example of "New Federalism" in the States*, 71 Marquette L. Rev. 1, 15 (1987).

[43] Robert Harvie, *The Exclusionary Rule and the Good Faith Doctrine in the United States and Canada: A Comparison,* 14 Loyola of Los Angeles International and Comparative L. J. 4, 798 (1992).

[44] Miguel Anaya & Paola De la rosa, la prueba ilícita, sus premisas, regulación y excepciones en el sistema penal acusatorio 116 (México: Flores Editor y Distribuidor, 2017)

[45] Erik Perez Loyo, La prueba ilicita (México: Flores Editor y Distribuidor, 2022).

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cers are poorly informed about the rule's application or its exceptions, and there is minimal accountability for illegally obtained evidence.[46] Furthermore, the lack of professionalism in police work has led to a high number of due process violation complaints filed with Mexican human rights organizations.

It is evident that Mexico's ER not only shares origins with the U.S., but also mirrors its expectations and growing pains. Now that Mexico has adopted a common law legal process, it will likely face the same centuries-long struggle of legal precedents to achieve the desired balance. However, we argue that this ought not be necessarily the case. Mexico can "predict the future" by examine the evolution of the Exclusionary Rule in the U.S. and Canada, using their histories to craft a *legislative remedy* more aligned with the Canadian Charter of Rights and Freedoms. Rather than waiting decades to achieve a fragmented judicial review, we suggest a more substantive legal reform in the National Criminal Procedures Code, one that clearly defines protections from the outset.

While the exclusionary rule inevitably means some criminals may go free, history in the U.S. and Canada suggests that this number is minimal (e.g., less than 1% at the U.S. federal level) and typically applies only to relatively minor cases. We argue that the more pressing concern is the need to curb police misconduct and strengthen public trust in the criminal justice system. Furthermore, fears about "cartel members evading justice" —a significant issue in Mexico— could be mitigated by incorporating a "crime seriousness test" into the law. This would involve a legislatively codified directive instructing judges to weigh the admissibility of evidence based on the gravity of the offense and, where relevant, its ties to particularly dangerous Drug Trafficking Organizations.

While this article cannot fully address all the legal, political and social objections to the ER, several key criticisms have persisted in both the U.S. and Canada. Opponents argue that the rule allows the guilty to go free and fails to assist innocent victims of police misconduct when no illegally obtained (or planted) evidence exists. Additionally, critics contend that it provides, at best, a *minimal* deterrence against police misconduct and may even incentivize further corruption, such as perjury. Lastly, existing tort remedies have proven inadequate in deterring police violations. Our broader argument is that these criticisms have endured for decades in both the U.S. and Canada, *and* strikingly similar objections have emerged in contemporary Mexico. The next section briefly addresses each of these issues.

1. Concerns about the Exclusionary Rule in Mexico

In Mexico, Congress serves as the primary source of law. Article 20 of the Federal Mexican Constitution establishes that any evidence obtained in violation

[46] Luis Calero, *Aspectos materiales y procesales del principio acusatorio: problemas probatorios, prueba ilícita y procesos penales socialmente relevantes. La exclusión de pruebas ilícitamente obtenidas en el Derecho Procesal de los Estados Unidos*, 66 Revista del poder judicial, 367-401 (2002).

of human rights is considered inadmissible. This principle is further reinforced by the National Criminal Procedures Code: Article 263 requires that evidence must be obtained, produced, and reproduced in a lawful manner, while Article 357 declares evidence invalid if it has been obtained through humans rights violations or not properly incorporated under the law. Additionally, Article 346 mandates the exclusion of evidence that has been illegally obtained. Together, these provisions reflect a strong legislative commitment to addressing concerns regarding improperly obtained evidence, as neither the Mexican Constitution nor the National Criminal Procedures Code permits exceptions to the exclusionary rule.

The second source of law in the Mexican legal system is jurisprudence, a term referring to binding legal precedents.[47] Judicially created laws play a secondary role, since the publication of court opinions remains limited, especially at the local level. According to the Mexican High Courts of Justice (*Tribunales Superiores de Justicia*), excluding illegal obtained evidence is a key practice that upholds and protects due process. Their judicial interpretations have established that evidence directly or indirectly gathered in violation of human rights is inadmissible, and will have no effect.[48] They have further ruled that the right to due process encompasses the right *not* to be convicted based on evidence obtained outside the constitutional and legal standards.[49] Another interpretation regarding the exclusion of illegal evidence states that any statement declared by the accused without the legal counsel must be excluded as unlawful and holds no value.[50] The prohibition of illegal evidence serves as a safeguard for defendants in criminal proceedings, ensuring that their rights are protected. It also means that the fundamental formalities of the procedure must be respected as a condition for any criminal conviction.

Another main concern of including the Exclusionary Rule in Mexican law was that it would lead to more acquittals of guilty defendants (due to excluded evidence), but, in contrast, would reduce police corruption. However, neither of these expectations has materialized. For instance, a study published in 2023 revealed that in the State of Mexico (*Estado de México*), prosecutors typically did not seek the exclusion of evidence because the defense presented none for consideration.[51] In Baja California, the Public Prosecutor's Office moved to exclude evidence in two cases where the defense did submit proof, but the judge

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[47] José Serna, *The Concept of Jurisprudencia in Mexican Law*. 1 Mexican Law Review, no.2 5 (2009).

[48] Tesis: CLXII/2011, Semanario Judicial de la Federación y su Gaceta, Novena Época, t. XXXIV, agosto de 2011, p. 226. Registro 161221.

[49] Tesis 139/2011, Semanario Judicial de la Federación y su Gaceta, Décima Época, t.3, diciembre de 2011, p. 2057. Registro: 160509

[50] Tesis: 1a./J. 35/2015 (10a.), Gaceta del Semanario Judicial de la Federación, Primera Sala, Décima Época, t. 1. libro 18, mayo de 2015, p. 302. Registro número 2009008.

[51] Usaid, Observatorios de audiencias y resoluciones judiciales. Estado de México y Baja California (2023).

denied both requests.[52] Furthermore, courtroom discussions during hearings rarely resulted in evidence being excluded.

The lack of penalties for crime in Mexico is evidently a top concern for citizens. Recent studies indicate that public concern over impunity more than doubled between 2012 and 2018.[53] A few months after the Exclusionary Rule was first codified in the Mexican Constitution, the Mexican newspaper Reforma revealed that only 1% of crimes committed resulted in punishment, which contributed to the low crime reporting rate. Nevertheless, this near-total lack of accountability is not due to the result of the exclusion of evidence in courts. According to a 2019 report by the Institute for Economics and Peace, only 7 % of the crimes were investigated and less than 3 percent led to convictions, resulting in an impunity rate of 97%.[54]

This phenomenon occurs primarily because crimes go unreported. According to the study, the main reason people avoid reporting crimes is lack of trust in authorities (16%).[55] Other contributing factors include lengthy legal processes, insufficient evidence, the perception that minor crimes are not worth reporting, fear of retaliation (especially among assault victims), concerns about extortions, and the hostile attitude of officials.[56] Most citizens in Mexico believe filing charges is a waste of time and victims generally doubt the authorities' ability to investigate crimes. Very few criminals face consequences, since cases are rarely pursued, arrests are infrequent, and prosecutions are even rarer.

Research from the U.S.[57] suggest that roughly 1% of cases involve evidence being excluded due to the exclusionary rule. Applying this to the Mexican context, where only 3% of crimes are reported, means the rule would affect less than 1% of that already small fraction. Ultimately, this amounts to a mere 0.03% of total criminal activity.[58] Additionally, public trust in the police has remained consistently low in Mexico. The following chart, sourced from the National Survey of Victimization and Perception of Public Safety (ENVIPE),[59] displays the percentage of crimes reported in Mexico between 2012 and 2019.

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52 USAID, *supra* note 50.

53 Jose Luengo & Tessa Butler, *Impunity in Mexico: A Rising Concern*, JUSTICE IN MEXICO, (MAY, 4, 2018), https://justiceinmexico.org/impunity-mexico-rising-concern/

54 INSTITUTE FOR ECONOMICS AND PEACE, ÍNDICE DE PAZ 2 (México 2019). https://www.economicsandpeace.org/wp-content/uploads/2020/08/Mexico-Peace-Index-2019-Spanish.pdf

55 INSTITUTE FOR ECONOMICS AND PEACE, *supra* note 54 at 62.

56 Marien Rivera & Rafael Chávez, *Presentan cifras de inseguridad en México*, 1 NÚMEROS ROJOS DEL SISTEMA PENAL 1, 1-17 (2011).

57 Mike Lavin, *The Impact of the Exclusionary Rule Upon the Montana Criminal Justice System, United States*, NATIONAL INSTITUTE OF JUSTICE (1984) https://www.bjs.gov/content/pub/pdf/ierumcjs.pdf

58 BUREAU OF JUSTICE STATISTICS, DEPARTMENT OF JUSTICE. https://www.bjs.gov/content/pub/pdf/ierumcjs.pdf

59 INEGI, Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública (ENVIPE) (2024).

Table 1. Victimization and Perception of Public Safety Based on INEGI (ENVIPE, 2024)

2012	12.2%
2013	9.9%
2014	10.7%
2015	10.5%
2016	9.7%
2017	10.4%
2018	10.6%
2019	11.0%
2020	10.1%
2021	10.1%
2022	10.9%
2023	10.4%

The Exclusionary Rule, in its current form, has proven largely ineffective in curbing police corruption. According to the 2021 National Survey of Persons Deprived of Liberty (ENPOL),[60] 52.8% of the detainees reported experiencing psychological violence while held in police stations or Public Prosecutor's Office. Criminal investigation authorities continue to employ torture and other forms of ill-treatment to extract incriminatory evidence during investigations.[61] Many respondents reported experiencing unlawful violence in their interrogations following detention. ENPOL reported that 75% of surveyed individuals claimed to have endured some type of "psychological violence" during arrest, including abuses such as forced nudity or suffocation. Nearly 64% reported physical assaults, such as kicking, punching, crushing injuries, and electric shocks. Furthermore, the survey revealed that 72% of the detained faced torture during custody and 61% experienced mistreatment in the prosecutor's office.

In 2019, the World Justice Project[62] revealed that the torture and ill-treatment in Mexico are most likely to occur before trial, particularly during inspections of individuals and private premises, detainee interrogations, and suspects line-ups. Testimonies from arrested individuals further indicate that violence is more prevalent during criminal investigations than in prisons. Unfortunately, as Jasso & Jasso point out, violent interactions between police and civilians re-

60 ENPOL, Encuesta Nacional de Población Privada de la Libertad (2021).

61 Philip Alston & Ryan Goodman, International human rights 1045 (Oxford University Press, 2013).

62 World Justice Project, Índice de Estado de Derecho en México 2019-2020 (2020).

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main a widespread and persistent issue across Latin America.[63] Cano & Fragoso suggest that police brutality is an endemic practice, where violent acts and victimization are typically not treated as law-breaking behaviors, [64] but as "externalities of police work".[65] Similarly, Westley asserts that violence is an accepted tool within police organizations.[66] Torture and illegal methods are often tied to investigative procedures, such as extracting confessions, witness statements, or testimonies from accomplices. These findings suggest that Mexico's ER system has done little to limit police corruption.

The prohibition of self-incrimination is firmly enshrined in both the Federal Constitution and the National Criminal Procedures Code. These provisions unequivocally ensure that incriminating evidence cannot be obtained through coercive methods. Before the constitutional reform of 2008, judicial interpretations failed to explicitly recognize the ban on illegally obtained evidence, resulting in a lack of legal precedents supporting this important principle. In addition, the Mexican Court has used three different exceptions to the exclusionary rule: inevitable discovery, independent source and attenuation doctrine.

According to the Mexican Federal Courts interpretation, the Inevitable Discovery exception exists when illegally obtained evidence could have been unavoidably acquired through legal means.[67] Additionally, Federal Courts have ruled that evidence presented following an illegal detention should not automatically be deemed inadmissible if it inevitably would have been discovered by lawful methods.[68]

The "independent source" theory has also been referenced by Federal Courts. The fact that a defendant's statement is deemed invalid due to being obtained without legal counsel does not automatically require the exclusion of their testimonies from the corresponding analysis, as doing so would violate the principle of exclusion. This is because the two pieces of evidence are independent, with no causal connection between them.[69] Another interpretation by these Courts states that if a defendant's statement given through a Gesell chamber is nullified due to the absence of an attorney, it does not follow that

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[63] Lucía Jasso & Carolina Jasso, *Abuso policial, discrecionalidad y tecnologías de vigilancia en América Latina*, 42 Iztapalapa. Revista de ciencias sociales y humanidades 90, 119-144 (2021).

[64] Ignacio Cano & José Fragoso, *Letalidade da acao policial no Rio de Janeiro: A actuacao da Justica Militar*, 8 Revista Brasileira de ciencias criminais 30, 207-233 (2000).

[65] Philip Stinson, Criminology explains police violence, (University of California Press, 2020).

[66] William Westley, *Violence and the Police,* 1 American Journal of Sociology 59, 34-41 (1953).

[67] Tesis: (II Región) 1o.6 P (10a.), Gaceta del Semanario Judicial de la Federación, Décima Época, Libro 70, Septiembre de 2019, Tomo III, p. 2006, Registro: 2020672.

[68] Tesis: I.1o.P.50 P (10a.), Gaceta del Semanario Judicial de la Federación, Décima Época, Libro 45, Agosto de 2017, Tomo IV, p. 3031, Registro 2015004.

[69] Tesis:I.9o.P.63P, Gaceta del Semanario Judicial de la Federación, Décima Época, t. III, septiembre de 2014, p. 2529. Registro número 2007446.

independently obtained evidence, unrelated to those proceedings, must also be excluded.[70]

The "attenuation connection" exception, interpreted by Mexican Federal Courts, applies when evidence is obtained illegally but the accused voluntarily testifies before the prosecutor or judge, provided the statement is made in accordance with constitutional rights.[71] However, these exceptions are not explicitly regulated in the National Criminal Procedures Code. As for the independent source doctrine, the Supreme Court has ruled that if the evidence in question lacks a causal connection to the illegally obtained evidence, it may still be admitted and assessed for probative value by judicial authorities.

Regarding the attenuation doctrine, Mexico's Circuit Courts have ruled that if the accused freely, voluntarily and spontaneously provides a statement before judge or a prosecutor, confirming a prior declaration, admitting to facts, or denying allegations; such testimony remains admissible even if supported by illegally-obtained evidence. This applies when the tainted evidence is not directly connected to the accused's voluntary statement. The doctrine addresses the tainting effects of illegally obtained evidence, which can extend to other probative information, commonly referred to as the "fruits of the poisonous tree". One relevant article of the Criminal Procedures Code references this doctrine, stating that: "Judges will declare an act is not legally valid when it has not been possible to validate it and under the parties' request. Here, judges must decide specifically the acts that are affected by such invalidities".[72]

There are only two judicial interpretations concerning the "fruit of the poisonous tree" doctrine. The first states that, under the criminal procedural system, judges must evaluate evidence in accordance with logical rules, scientific knowledge, and the maxims of experience. A key logical principal is that, if the source of evidence is tainted, any subsequent evidence derived from it is also corrupted, as it stems from illegally obtained information. The second judicial interpretation regarding this doctrine clarifies that the exclusion of illegally obtained evidence applies not only to evidence directly violating fundamental rights but also to any derivate evidence obtained as a result. However, the doctrine does not extend to evidence deemed merely irregular, that is, evidence initially gathered and introduced into the criminal proceedings without strict adherence to formal legal procedures. Unlike unlawful evidence, irregular evidence can be rectified as it has not been classified as outright illegal.

Finally, it is important that the precedents set by the Supreme Court do not offer sufficient guidance on the exceptions to the Exclusionary Rule. The Court`s analysis has been confined to the independent source and attenuation

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[70] Tesis: I.9o.P. J/16 (10a.), Gaceta del Semanario Judicial de la Federación, Décima Época, t.II, libro 20, julio de 2015, p. 1583. Registro: 2009552.

[71] Tesis: (II Región)1o.5 P (10a.), Gaceta del Semanario Judicial de la Federación, Décima Época, Libro 70, Septiembre de 2019, Tomo III, Página: 2007, Registro: 2020673.

[72] National Criminal Procedures Code, México. Article 101.

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doctrine.[73] Additionally, it is worth noting that during the 2008 legislative reform, Mexico's Congress showed reluctance to incorporate exceptions to the rule.

2. Risks of a Flexible System to the Exclusionary Rule

A counterargument to this perspective is that allowing exceptions to the prohibition of illegal evidence in the National Criminal Procedures Code undermines defendants' human rights. So far, Mexican criminal regulations have shown no signs of embracing the potential admission of illegal evidence, and human rights advocates have strongly opposed it. One of the most serious risks of introducing exceptions to the Exclusionary Rule is that it may foster public perception that the criminal justice system is neither strong nor effective in combating crime, potentially resulting in the release of guilty parties.

Furthermore, media coverage of legal changes presents an additional risk by potentially emboldening criminals, who may believe they can act with impunity, thus incentivizing illegal behavior. However, despite exceptions in the American and Canadian legal systems, motions to suppress such evidence remain relatively rare and have not led to rise in criminal activity.

VI. Summary and Conclusions

Both the Exclusionary Rule and its exceptions have been controversial in the common law for Mexico's northern neighbors for over a century. Now, Mexico finds itself in the early stages of a similar trajectory, one that will likely involve numerous court cases, evolving precedent, and potentially decades of legal development without clear political, legal or social consensus.

To avoid generations of legal conflict and public discord, we propose that Mexico address this issue directly, through legislative action. Congressmen should evaluate relevant historical documents, such as the U.S. Constitution's Fourth and Fifth Amendments and the Canadian Charter along with pertinent legal precedents. Furthermore, the legislation should articulate clear and concise exceptions to the exclusionary rule, preventing courts from creating ad hoc exceptions. The amendment's application should also be precisely defined in the National Criminal Procedures Code and automatically extended to the states. As U.S. District Judge Mary Scriven stated in an interview when asked whether ER interpretations should primarily rest with courts or Congress, she remarked, "We [judges] wish the legislature would give us more [legislative] guidance" lamenting that the ER has become perplexing with "not only exceptions but exceptions to the exceptions".[74] Mexico's Congress now has an unique opportunity to provide substantive clarity and judicial guidance.

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[73] Anaya et al., *supra* note 44.

[74] Interview with Mary Scriven, US District Judge, in Tampa, Florida. (September 14th,

Recognizing the legitimate concern regarding impunity for particularly egregious crimes, and criminals who commit them, on what could be perceived as technicalities, the law could incorporate "a scale of exclusion" that offers stronger protections in minor cases (e.g., theft) and reduced protections in more serious cases, particularly those involving drug cartels. While this may seem like an unequal application of the law, history demonstrates that such a de facto approach has long been used in the U.S. and Canada under the Exclusionary Rule. Mexico would simply be formalizing a measure that would likely evolve organically, even without formal legislative action. We believe that well crafted, substantive guidelines would provide judges with a valuable framework for adjudicating evidentiary concerns.

Therefore, legal provisions must include exceptions to the rule, given that written law is the primary main legal source in Mexico. One of the key shortcomings in the Mexican regulation of the Exclusionary Rule is that the National Criminal Procedures Code fails to specify any exceptions to the prohibition of illegally obtained evidence. Currently, the exclusion of such evidence is absolute, meaning that any tainted evidence introduced in a legal proceeding will be deemed devoid of probative value and rendered null.

Mexico should not hesitate to introduce exemptions to the exclusion of evidence, especially since, as previously explained, impunity does not stem from prohibiting improperly obtained evidence. As Teresa Armenta[75] points out, the exclusion of illegally obtained evidence should not be absolute.

A starting point in the ER regulation should include a "crime seriousness test". In fact, Bellin suggests Mexico should consider the discussion of the so-called crime-severity distinction in such a way that courts can make case-by-case assessments of the offense severity.[76] This, however, would be difficult under traditional common law and judicial review and thus must be codified by the legislature and ratified in the Constitution.

In this regard, it is necessary to establish a clear regulation clarifying specific cases where illegal pieces of evidence deserve to be excluded from criminal procedure. As mentioned before, every crime investigation has its features, and not all illegal conduct has the same impact on society. At the same time, not all police actions generate the same damage to those suspected of having committed a crime. In other words, the *small*, good-faith errors perpetrated by the police while investigating felonies should not summarily be excluded. However, if more serious violations of individual rights take place during an investigation of mere/ordinary infractions, they should result in the exclusion of the corrupted piece of evidence.

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[75] Teresa Armenta Deu, La prueba ilícita: Un estudio comparado 188 (Editorial Marcial Pons, 2da ed., 2011)

[76] Jeffrey Bellin, *Crime-Severity Distinctions and the Fourth Amendment: Reassessing Reasonableness in a Changing World*, 97 Iowa L. Rev. 1, 3-48 (2011).

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In its first decade of transition to an adversarial system Mexico is already struggling with issues that the U.S. and Canada have faced before, including ER's efficacy in reducing police corruption, contaminating the reputation of the court by entering illegal evidence and the concerns that guilty criminals will go free. Further, these legal conflicts continue in both the U.S. and Canada.

Mexico possesses sufficient competent jurists who could interpret the law and create legal precedents that can make the Exclusionary Rule work efficiently. However, this article suggests that the best possible outcome for Mexico is to develop a more proactive, legislative-driven legal framework which follows the lessons learned from over a century's worth of common law, controversies and actual outcomes in the legal systems of its northern neighbors. This would help to craft an Exclusionary Rule framework that fits Mexico's culture and societal norms rather than waiting three generations of stare decisis. If U.S. and Canadian history is any guide, a rule change is needed that aims for a more direct change that provides substantive legal guidelines on police powers, prosecutorial discretion, judicial review, admission of evidence, etc.

The incorporation of extensive and well-crafted regulations aims to ensure that judges admit or deny evidence depending on crime severity distinctions. With this specificity, courts would be able to easily identify and assess serious crimes and non-custodial offenses by allowing for a broader investigation of high-impact crimes and enabling concrete limits on investigations of minor crimes.

In addition, an extra-legal step would be the swift implementation and use of "body cams" in Mexico. As District Judge Mary Scriven has said,[77] contemporary experience in U.S courts suggests that video and audio evidence make admissibility arguments less relevant since there is clear media evidence of the event and courts no longer need to rely solely on law enforcement or defendant testimony. Courts can now directly see if a violation has indeed occurred. We believe additional sources of audio and video evidence from dash cameras (police and citizen), closed-circuit television, cell phone records, etc., would definitely aid in legal determinations of admissibility.

Mexico's legislature must provide a mechanism that addresses civil remedies for those whose rights are violated. We believe these may be codified in legislature with specific guidelines and penalty ranges that presiding judges would follow. That is, the judge in the criminal trial would have the flexibility to assign a civil penalty (e.g., fine) when there has been a rights violation without the need for a defendant to file a separate civil tort. This would redress individual grievances and limit the need for recourse to third parties in tort courts.

Finally, we consider it important to address potential judicial errors or malfeasance. While a more thorough discussion is outside the scope of this article, we offer two suggestions. First, Mexico could create a judicial commission with

[77] Interview with Mary Scriven, US District Judge, in Tampa, Florida. (September 14th, 2023).

specific review and remedy powers (e.g., mandated compensation to the victim of a violation; discipline of the offending judge) when there is judicial error or misconduct. While this may seem like a daunting task, the limited number of cases it would review makes it manageable. Secondly, Mexico must reinforce judicial ethics and the principle that, perhaps more than any other branch of government —as it does not have the command of the military or law enforcement— the Judiciary depends on the faith and trust of the citizenry, as well as the other branches of government, for its rulings to be enforced.

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Reconciliation or Justice: What Role Does Truth Play in Mexico's Redress for Victims of Atrocities?

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Abstract: Since 2018, the concepts of truth, justice, and reconciliation have become increasingly important in the Mexican State's judicial agenda. In Andrés Manuel López Obrador's presidential term, two Truth Commissions were established to investigate cases of mass atrocities that have deeply affected the country's social fabric. The first Truth Commission was established to look into the "Ayotzinapa Case" —a brutal episode of violence resulting in the disappearance of forty-three students. The second Truth Commission sought historical clarification of the atrocities committed in Mexico between 1965 and 1990, a time of political violence commonly known as the "Dirty War".

Despite sharing the same institutional name (commission) and being based on the same ideal (truth), closer examination reveals a conceptual split in their mechanisms and goals. This article shows that the Truth Commission for the Dirty War ("MEH") revolves around a reconciliatory view, while the Truth Commission for the Ayotzinapa Case ("COVAJ") prioritizes a sense of retributive justice. The article demonstrates why the selection of one political objective (*e.g.*, reconciliation) resulted in the exclusion of another (*e.g.*, justice) and how truth works inside each political process.
Keywords: truth; truth commission; justice; reconciliation; human rights.

Resumen: Desde 2018, los conceptos de verdad, justicia y reconciliación han cobrado importancia en la agenda judicial del Estado mexicano. En el periodo presidencial de Andrés Manuel López Obrador, se crearon dos Comisiones de la Verdad para investigar casos de atrocidades masivas que han afectado profundamente el tejido social. La primera se estableció con la intención de investigar el "Caso Ayotzina-

[1] This article is based on a broader research on reconciliation, human rights and transitional justice at the LSE.

pa", un brutal episodio de violencia que resultó en la desaparición de cuarenta y tres estudiantes. La segunda Comisión de la Verdad buscaría el esclarecimiento histórico de las atrocidades cometidas en México entre 1965 y 1990, un episodio de violencia política comúnmente conocido como la "Guerra Sucia".
A pesar de compartir el mismo nombre institucional (comisión) y basarse en el mismo ideal (la verdad), un examen más detallado revela una división conceptual en la forma en que se construyen sus mecanismos y objetivos. Este ensayo muestra que a Comisión de la Verdad para la Guerra Sucia ("MEH") tiene una visión reconciliadora, mientras que la Comisión de la Verdad para el Caso Ayotzinapa ("COVAJ") prioriza una agenda de justicia retributiva. El artículo demuestra por qué la selección de un objetivo político (por ejemplo, la reconciliación) resultó en sacrificios de otro (por ejemplo, la justicia), y muestra cómo funciona la verdad dentro de cada proceso político.
Palabras clave: verdad; comisión de la verdad; justicia; reconciliación; derechos humanos.

I. Introduction

Mexico's political debate on violence saw a shift in 2018. Following Andrés Manuel López Obrador's ("AMLO") election to the presidency, the concepts of truth, justice, and reconciliation became increasingly important in the State's judicial agenda. Violence and atrocities take on different forms in Mexico, as do the causes and victims' demands. In a country with over 100,000 people missing and 6,000 clandestine graves,[2] it is common for political leaders, society, and victims to find themselves embroiled in arguments and tensions over a wide range of pleas for justice.

Amid spiraling violence, prioritizing the truth was the State's initial action. In the first years of the presidential term, two Truth Commissions were established to investigate cases of mass atrocities that have deeply affected the social fabric. The first Truth Commission was set up to look into the "Ayotzinapa Case" —a brutal episode of violence resulting in the disappearance of forty-three students. The Commission's stated goal was to ensure the relatives' right to know the truth, as well as due access to justice. The second Truth Commission sought the historical clarification of the atrocities committed in Mexico from 1965 to 1990, a period of political violence commonly known as the "Dirty War".

Despite sharing the same institutional name (commission) and being based on the same ideal (truth), closer examination reveals conceptual divisions in the construction of their mechanisms and goals. Specialized literature suggests that "projects of public remembering have sought the truth about the past through

[2] Comisión Nacional de Búsqueda, *Informe total de personas desaparecidas, no localizadas y localizadas* (2024), https://comisionacionaldebusqueda.gob.mx/ (accessed on Dec. 14, 2024).

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two different paths: reconciliation or justice".[3] This essay argues that the Truth Commission for the Dirty War ("MEH") was committed to the former, while the Truth Commission for the Ayotzinapa Case ("COVAJ") aimed for the latter.

The purpose of this article, then, is to demonstrate why selecting one political objective (*e.g.*, reconciliation) might result in the exclusion of the other (*e.g.*, justice), and appreciate how truth functions within each political process. To this end, the article begins by outlining the theoretical and practical distinctions between a truth that promotes retributive justice and one that advocates reconciliation. It continues by discussing the institutional procedures designed to guide the truth, with particular emphasis on Truth Commissions. The context of the Mexican case is provided in a second chapter. My research focuses on comparing the MEH and COVAJ, examining how their political agendas led to conceptual and practical distinctions in the pursuit of the "truth." These chapters come together in a third section, where the conclusions are presented.

II. Truth, Justice, and Reconciliation

Dealing with historical injustices commonly begins with confronting or coming to terms with the past. This first task, which Stanley Cohen names the "truth phase",[4] can be understood as something objective "to know what happened, to phase the facts".[5] Nevertheless, in practical terms, it is typically a political choice "tied to deciding what to do with individual offenders or wider social goals such as reconciliation".[6]

Truth is a disputable concept and is built upon multiple meanings shaped by political decisions. A truth that is intended to serve as a legal basis for judicial persecution and punishment, for example, will be articulated and constructed differently from a truth that is intended to serve as a basis for reconciliation. As Humphrey explains, a "legal truth" is commonly expressed through "facts" that can be presented and applied by the judiciary. In contrast, a truth that promotes national renewal is often supported by testimonies that make victims' stories of suffering visible.[7] In these cases, the power of words is not legal, Humphrey points out, "but empathetic".[8]

These boundaries are not rigid and can be used interchangeably[9] (*e.g.*, factual information can influence a reconciliatory effort, and testimony can inform

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[3] Michael Humphrey, The Politics of Atrocity and Reconciliation: From Terror to Trauma 98 (Routledge, 2022).

[4] Stanley Cohen, *State Crimes of Previous Regimes: Knowledge, Accountability and the Policing of the Past* 20 Law & Soc. Inquiry, 1995, at 7.

[5] *Id.* at. 10.

[6] *Id.* at 11.

[7] Humphrey, *supra* note 3, at 105.

[8] *Id.* at 99.

[9] Moreover, as explained by Cohen and Humphrey, reconciliation and justice also have

a trial), but the emphasis and weight are often skewed toward one side or the other depending on the political objectives in play. Furthermore, the pursuit of "truth" in violent settings is entwined with a more general political choice about how to deal with gross human rights violations.[10] Ultimately, this political decision will be fundamental to understanding the nature of the truth that will be produced and presented.

In Argentina, for example, the political aim was to punish a regime that had disappeared thousands of innocent people. Under the motto *Nunca Más* ("Never Again") and the belief that "truth should lead to justice," the truth in that political context was used to serve "as the basis for persecution of the leaders of the Argentine Junta [...] consequently the whole procedure was very legal".[11]

South Africa, on the other hand, opted for a post-apartheid reconciliation process, relying on the idea that truth-telling would have a therapeutic and healing effect on the nation-building project.[12] With this political agenda and under the motto "reconciliation *through* truth", the State granted amnesty to perpetrators in exchange for confessions of some atrocities committed under apartheid.[13] As Moon recounts, political actors at the time argued that to achieve truth and reconciliation, the nation "must deliberately sacrifice the formal trappings of justice, courts, and trials".[14]

The political dilemma to use the truth as a tool for "reconciliation" or "justice" is not unique to Argentina or South Africa. In Sri Lanka, commissions were established to inquire into the disappearance of people in the country, as a way to gather evidence to criminally prosecute those involved.[15] Conversely, countries like El Salvador and Chile ease off on retributive justice ideals and the rule of law in support of a reconciliation agenda. Perpetrators in these nations enjoyed a certain degree of impunity and even gained political concessions to join the next government.[16]

What I am interested in underlining is that "truth" in political discourse is neither objective nor universal. Instead, it is flexible and conditional since it is inextricably linked to a specific political context that has irretrievably shaped its tenets and mode of expression. When confronted with past human rights violations, the State can prioritize the "ordinary" justice formula of prosecution and

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some points in common. For example, both oppose forgetting, both seek some kind of accountability, and both seek some kind of retribution for victims.

[10] Cohen, *supra* note 4.

[11] Humphrey, *supra* note 3, at 102.

[12] Claire Moon, *Healing Past Violence: Traumatic Assumptions and Therapeutic Interventions in War and Reconciliation*, 8 J. Hum. Rts., 71, 99 (2009).

[13] Richard Wilson, The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State (Cambridge Univ. Press, 2001).

[14] Moon, *supra* note 12, at 80.

[15] Priscilla B. Hayner, Unspeakable Truths: Confronting State Terror and Atrocity (Routledge, 2000).

[16] *Id.*

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punishment, or it can opt for a reconciliatory process. Embarking on one mission often involves making sacrifices in the other. As Cohen notes, States must decide: "[...] should atrocities and their perpetrators be held accountable and punished, or should old wounds be allowed to heal, and national reconciliation be achieved?".[17]

The question of truth is intrinsically linked to this decision and will be severely influenced by the political objectives pursued (whether justice or reconciliation). This political aim, in turn, will affect the path taken by the institutional vehicle that contemporary democracies have devised to pursue it: the Truth Commission.

Truth Commissions: An Overview

Defined as an "official body created [...] to investigate, document, and report upon human rights abuses within a country over a specified period of time",[18] truth commissions have established themselves as key institutions in confronting past human rights violations. Their general objective is "to establish an accurate record of a country's past, clarify uncertain events, and lift the lid of silence and denial".[19] A few characteristics that truth commissions have in common are their temporary nature, historical focus, State authorization or empowerment, and their study of abuse tendencies over a defined period of time.[20] Truth commissions are not courts or prosecutors' offices and, although they have quasi-legal elements, their task "is not to establish (criminal) guilt, but to establish (political) responsibility".[21]

While often focusing on atrocities suffered "at the point of political transition",[22] some may also investigate serious human rights abuses that occurred years ago. These "historical truth commissions", as dubbed by Hayner, are not part of a political transition agenda, but serve to clarify historical injustices, acknowledge victims, and provide reparations.[23] In the preceding section, I contended that "truth" is inherently linked to a broader political question related to the State's political aim while confronting past atrocities. Whether justice or reconciliation, the establishment of a truth commission often represents the State's choice between those two ends. The political objective that truth will pursue in a given context is generally entrenched in the commission's legal mandate, *vis-à-vis* the political leaders appointed to enforce it.

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17 Cohen, *supra* note 4, at 9.

18 Ruth Teitel, *Transitional Justice Genealogy* 16 Harv. Hum. Rts. Journal, 69, 78, 94 (2003).

19 Hayner, *supra* note 15, at 24.

20 *Id.*

21 Francois Du Bois, *Nothing but the Truth: The South African Alternative to the Dilemma of Corrective Justice in Transitions to Democracy* 1 Lethe's L., 97 (2001).

22 Hayner, *supra* note 15, at 17.

23 *Id.*

Since truth commissions frequently rest on ambiguous or construable goals like "memory," "justice," or "forgiveness", political players are decisive in directing how these goals are carried out. In Sri Lanka, for example, the government set up different truth commissions to scrutinize disappearances that occurred in the country. Despite working under the same mandate and investigating the same atrocity, the political leadership of each commission approached the search for the "truth" differently. Of note for this essay, one of the commissions "was clearly oriented towards identifying the perpetrators and recommending prosecution [...] (while other) adopted a more academic tone oriented towards reconciliation and the psychology of national healing".[24]

Although the question of how truth is constructed and presented "will ultimately come down to what (political) purpose a commission is intended to fill",[25] it is important to note that its purpose can be multilateral. Commissions may seek to adhere to the benefits of truth-telling, such as "acknowledging" victims or the deterrence theory, which holds that uncovering the past will prevent similar events from happening again.[26] They might also strive to tell a story that creates social consensus and closes an unpleasant chapter in the country's history.[27] Perhaps more concretely, as Hayner noted, the purpose of creating a truth commission can be to foster justice and accountability, or to promote reconciliation.[28] As I will show in the following chapters, truth commissions in Mexico mainly pursued the objectives of reconciliation and justice, but with different approaches in each case.

III. On Mexico's Human Rights Crisis: The Role of Truth in Reconciliation and Justice Processes

Mexico was ruled by a single political party for 70 years.[29] From electoral frauds to single candidate elections, the country was always formally a democracy, but with tints of partisan autocracy. Perceived at the time as a "perfect dictatorship",[30] the country took a stride toward genuine democracy in 2000 when it elected a president from an alternative platform, even if the political elite and the *status quo* remained substantially unchanged. The state of democracy changed in 2018, as Mexico elected its first left-wing president. Since then, the official message has been that the country is undergoing a political *transformation*. Within this political framework, the new government pledged transition-

24 *Id.* at 75.

25 *Id.* at 83.

26 Cohen, *supra* note 4.

27 Du Bois, *supra* note 21.

28 Hayner, *supra* note 15.

29 The Institutional Revolutionary Party ("PRI") governed Mexico from 1930 to 2000.

30 El País, *Vargas Llosa: México es la dictadura perfecta*, Aug. 31, 1989.

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al justice measures to challenge the country's overwhelming issue of violence. The truth commissions studied below are part of this agenda.[31]

One could legitimately contend that Mexico is not a democracy undergoing a transition. Unlike the earliest models of the twentieth century, which Teitel identified as Phase I models,[32] Mexico did not transition from a state of war to one of peace, nor did it undergo a shift from military rule to democracy like other Latin American countries. Furthermore, Mexico's national history does not match other processes of political reconciliation —where the idea of union, rupture, and reunion dominates.[33]

Rather than regarding truth commissions in Mexico as instruments of transitional justice, I view them as exceptional mechanisms[34] for the redress of historical injustices and past atrocities in a context of extreme violence and brutality. With this clarification in mind, I examine the truth commissions the Mexican government has established in the following sub-sections.

1. The Reconciliation Approach in the Commission for Access to the Truth, Historical Clarification, and the Promotion of Justice for Serious Human Rights Violations Committed from 1965 to 1990 ("MEH")

In Mexico between 1960 and 1990, opponents of the ruling party faced political violence. Students, farmers, and "rebels" who threatened the political class were subjected to persecution, murder, disappearances, and torture at the hands of the State. Addressing and comprehending this era —also known as the "Dirty War" or "State Terror"— was one of López Obrador's administration's top concerns.

Shortly after winning the presidential election, AMLO instituted the "Forums for Pacification and National Reconciliation". Before groups of victims of the "Dirty War", he presented his political agenda to redress Mexico's human rights crisis. Focusing mainly on the idea of forgiveness and reconciliation, Obrador declared, "Regarding those of you who say, 'neither forgive nor forget', I say, 'forgive, but do not forget' [...] If we abide by the Lex Talionis of 'an eye for an eye, a tooth for a tooth,' Mexico will be left toothless".[35] In his inaugural speech to Congress, AMLO doubled down on this idea. Addressing critics,

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[31] The phrase "transitional justice" is used in several official documents. Perhaps the most important one is found in the National Plan for Security and Peace (2018-2024).

[32] Teitel, *supra* note 18.

[33] Claire Moon, *Prelapsarian State: Forgiveness and Reconciliation in Transitional Justice* 1 J. Semiotics L., 2004, at 185.

[34] Daniel Torres-Checa, *Who Holds the Reins of Power in Chaos? Military Involvement and the Emergence of a De Facto State of Exception in Mexico* 2 Ratio Decidendi, 2025, 1, https://revistas.up.edu.mx/ratio-decidendi/article/view/3251

[35] Tania Casasola, *Olvido no, perdón sí. López Obrador llama a la reconciliación en el primer foro de pacificación*, Animal Político, Aug. 7, 2018.

victims' and organizations' calls for justice and retribution, Obrador declared, "There would not be enough courts or prisons (for the perpetrators), and what is even more delicate and more serious, is that we would put the country into a cycle of fracture, conflict and confrontation".[36]

Seeing justice as an incentive for confrontation is not unique to Mexico. Governments "often deny the retributive model on the basis that it threatens a return to violence".[37] In any case, Obrador's position sheds light on the politics of reconciliation and serves as a clear example of the dilemma States face when determining how to address historical injustices. According to AMLO, pursuing a justice model would result in "fracture" and "confrontation" that come in conflict with the objectives of national reconciliation. As I argue, this political vision would affect the priorities and methodology of the MEH.

The MEH is what Hayner would call a "historical truth commission".[38] Its function is to study the political violence perpetrated by the Mexican State against dissidents of the regime between 1960 and 1990. Its mandate outlines different objectives: the "clarification of the truth, remembrance, promotion of justice and reparation to victims".[39] Formally, one of the MEH's objectives is the promotion of "justice", but the political priorities seem to point towards the exercise of reconciliation, memory, and reparation. Since its establishment, the Commission has focused its efforts on investigating the atrocities committed by the State, listening to the victims' voices, and creating a truth-telling narrative of the Dirty War.[40]

According to MEH official reports,[41] the Commission has hosted dialogue and communication forums in 20 states; gathered the testimonies of more than 800 individuals; conducted research using documents found in specialized collections; exhumed the remains of victims of the 'Dirty War'; held events publicly acknowledging victims and their families; organized various commem-

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[36] Presidencia de la República, *Andrés Manuel López Obrador rinde protesta como Presidente Constitucional de México* (Dec. 1, 2018), https://www.gob.mx/presidencia/articulos/discurso-de-andres-manuel-lopez-obrador-presidente-de-los-estados-unidos-mexicanos?idiom=es, (last visited Dec. 18, 2024).

[37] Moon, *supra* note 12, at 72.

[38] Hayner, *supra* note 15, at 17.

[39] MEH Mandate, *Decreto por el que se crea la Comisión para el Acceso a la Verdad, el Esclarecimiento Histórico y el Impulso a la Justicia de las violaciones graves a los derechos* (June 6, 2021), https://www.dof.gob.mx/nota_detalle.php?codigo=5631865&fecha=06/10/2021#gsc.tab=0 (Accesed on Dec. 18, 2024).

[40] It is important to note that MEH was only one of many efforts the State led to investigate Dirty War crimes. Notably, in 2019, the Human Rights Commission issued Recommendation No. 30VG/2019, which included a full report on the results of the investigation into serious human rights violations during that period. This document highlights testimonies, evidence, and recommendations made to the Ministry of the Interior and the Ministry of Defense to ensure measures to prevent any recurrence of such practices.

[41] MEH Report, *Comisión para el Acceso a la Verdad, Esclarecimiento Histórico y el Impulso a la Justicia de las Violaciones Graves a los Derechos Humanos Cometidas desde 1965 a 1990, Avances y Perspectivas (2022-2023)* (Oct. 2023), https://comisionverdadyjusticia.segob.gob.mx/.

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orative acts and events; and created memory archives and microsites, such as 'We Don't Forget,' which contains infographics and documents on that violent period. One can argue that this might work under an agenda of reconciliation (as narrative), one that "seeks to cohere and unify diverging perspectives on the past".[42] This undertaking may foster memory, acknowledgment, and perhaps reparation. The "promotion of justice" is, however, the Commission's remaining task.

Even though the MEH Report confirmed the existence of covert detention centers in several military installations and identified the bodies of victims extrajudicially executed during this period and left in communal graves, no one has been prosecuted or held accountable as a direct consequence of this process.[43] The Commission's own data notes the lack of progress in this area and argues that, considering the absence of justice for victims for over 50 years, it may be appropriate to "promote different models of justice, before insisting on criminal prosecution".[44] In a nutshell, this is a political call to abandon the claim of retributive justice (prosecution and punishment of perpetrators).

When the Truth Commission was established, the "Collective of Surviving State Victims" asked the MEH "not limit itself to producing a historical report or carrying out a merely academic exercise". Instead, they demanded that it "focus on the perpetrators and prove their criminal responsibility". Before the commissioners and the president, they pleaded for it "not to take another 20 years to bring about *justice*".[45] The MEH completed its work in September 2024, submitting a historical report.[46] No one has been criminally charged due to this process and the prevailing recommendation regarding justice is that, perhaps, it is time to stop insisting on that idea.

2. The Retributive Justice Approach in the Commission for Truth and Access to Justice in the Ayotzinapa Case ("COVAJ")

On September 26, 2014, students from a Rural Normal School in Ayotzinapa, Guerrero, traveled to Mexico City to participate in a protest. Military personnel and state police were secretly observing the students. The truck carrying the students was intercepted by the police sometime between September 26 and September 27. That night the police opened fire on the students. Some were

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42 Moon *supra* note 33, at 193.

43 MEH Report, *supra* note 38.

44 *Id.* at 93.

45 MEH Inauguration, *Versión Estenográfica. Instalación de la Comisión de Acceso a la Verdad por Violaciones a DDHH 1965-1990* (Dec. 10, 2021), https://www.gob.mx/presidencia/articulos/version-estenografica-instalacion-comision-de-acceso-a-la-verdad-por-violaciones-a-ddhh-1965-1990?state=published.

46 MEH Final Report, *Fue el Estado (1965-1990) Informe Final del Mecanismo para la Verdad y el Esclarecimiento Histórico* (Aug. 16, 2024), https://www.meh.org.mx/.

killed, some were injured, and 43 were violently held and abducted.[47] To this day, students are still missing, and the violent events of September 26th are still unresolved.

As Cohen notes, truth is more pressing than justice in most situations.[48] This is particularly true in situations involving disappearances, where there is an overwhelming feeling of "desperately wanting to know what happened".[49] In some sense, creating the COVAJ was the institutionalization of that struggle. "We will find the truth about what happened". Obrador said in 2018, "Let us know where the students are and let us punish those responsible".[50]

Right from the start, the political rhetoric surrounding the Ayotzinapa Case has been focused on justice. Journalists quickly ascertained that, unlike with the victims of the "Dirty War", the government neither discussed reconciliation nor used the term 'forgiveness' in meeting with the parents of the missing students.[51] The COVAJ mandate seeks to "provide all the legal assistance required so that families can have [...] proper access to justice and knowledge of the truth".[52] In addition, its decree establishes the creation of a Specialized Prosecutor's Office which will provide the "truth" the Commission renders to the Courts.

Unlike the MEH, the COVAJ is not primarily concerned about hosting public debates, memory exercises or the construction of a compelling truth-telling narrative. As evidenced in its Progress Report, the COVAJ's work is focused on presenting a legal case-theory, establishing the facts, organizing the evidence, identifying the groups accountable for the atrocity and suggesting courses of judicial action to punish those responsible.[53] In some ways the COVAJ is guided by the Argentinean model where "truth must serve justice". Although in that case as in this one, a more honest motto would be "truth and justice must serve politics".

When the COVAJ became a threat to the political establishment, the ruling class and the military elite blocked its work. They discredited the group of inde-

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47 Ángela María Buitrago Ruiz et al., Informe Ayotzinapa: Investigación y Primeras Conclusiones de las Desapariciones y Homicidios de los Normalistas de Ayotzinapa (Grupo Interdisciplinario de Expertos Independientes, 2015).

48 Cohen, *supra* note 4.

49 *Id* at 19.

50 BBC News, México: *AMLO Se Compromete con Familiares de Víctimas de Ayotzinapa a Esclarecer lo Sucedido con los 43 Estudiantes*, BBC News, Sept. 9, 2018.

51 Shalia Rosangel, *AMLO no habló con los padres de los 43 del perdón. Les ofreció castigo, "sea quien sea"*. Sin Embargo, Sept 26, 2018.

52 COVAJ Mandate, *Decreto por el que se Instruye Establecer Condiciones Materiales, Jurídicas y Humanas Efectivas para Fortalecer los Derechos Humanos de los Familiares de las Víctimas del Caso Ayotzinapa a la Verdad y al Acceso a Justicia* (Dec. 4, 2018), https://www.dof.gob.mx/nota_detalle.php?codigo=5545622&fecha=04/12/2018#gsc.tab=0.

53 COVAJ Report, *Informe de la Presidencia de la Comisión para la Verdad y Acceso a la Justicia 'COVAJ' del Caso de Estudiantes de Ayotzinapa* (Aug. 12, 2022), https://comisionayotzinapa.segob.gob.mx/es/Comision_para_la_Verdad/Informe_Presidencia.

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pendent specialists investigating the case, illegally spied on Truth Commissioner Alejandro Encinas, and forced the prosecutor overseeing the case to resign. "It is because you went after the military" was the excuse given to the former prosecutor explaining why he should step away from the investigation.[54] Shortly thereafter, arrest warrants against high members of the army were dropped.

When the Commission published the "new narrative of the case," the families of the victims rejected it for "confining responsibility to the municipal level [...] and diminishing the responsibility of the army".[55] Yet, this truth-framework served as a basis for prosecuting lower-ranking local officials and former public servants, while larger structures of the armed forces remain virtually untouched.

Since there is nothing "remotely like a full policy of criminal accountability",[56] those in control of the political power are also positioned to determine who faces prosecution and who is pardon. Truth commissions play a role in this endeavor as well, presenting the Courts with an interpretation of the facts that best serves the political objectives of those in charge. On the eighth anniversary of the disappearance, rural educator Minerva Najera remarked, "there is still no truth, only fragments of the truth; pieces of truth that have befitted the government (to share)".[57] No wonder why Hayner suggests referring to truth commissions as "fact and fiction commissions" or "some-of-the-truth commissions".[58] In this case, as in others, the truth that comes to light, the truth that will serve justice, and the truth that will remain buried depend on the political goals pursued.[59]

IV. Conclusions

Mexico's Truth Commissions illustrate two approaches used to redress historical human rights abuses. It demonstrates, on the one hand, a commission intent on crafting a compelling truth-telling story. Testimonies and victims' voices make up most of the input while its political objective is to acknowledge harm and preserve historical memory. The overall design is more in line with the

[54] John Giber, *El Gobierno Dinamitó la Investigación del Caso Ayotzinapa, Denuncia Exfiscal*, Animal Político, Sept. 26, 2023.

[55] Alejandro Santos Cid, *La rabia de los familiares de los 43 de Ayotzinapa: 'el Gobierno se ha colocado del lado del Ejército*, El País, Sept 26, 2023.

[56] Cohen, *supra* note 4, at 20.

[57] Rodrigo Soriano, *Las familias de los 43, ocho años después: 'no hemos conseguido verdad ni justicia'*, El País, Sept 26, 2022.

[58] Hayner, *supra* note 15, at 22.

[59] For a better sense of how the government altered the facts this case, *see* Ángela María Buitrago Ruiz et al., *supra* note 4, and Javier Dondé, *El caso Ayotzinapa: de la desaparición forzada de personal al crimen de lesa humanidad*, Paréntesis Legal (2022).

South African model, where discovering the truth aims to help heal and reconcile society.

On the other hand, we have a commission focused on gathering evidence, investigating the facts, and crafting a legal case. Its purpose is to punish the perpetrators while its structure and aim are closer to the Argentinean model, where truth must serve justice. "Truth" was embedded in both processes, serving either as a vehicle for reconciliation or as a tool to advance justice. Even though truth served as the foundation of both commissions, its function and the way it was pursued were ultimately shaped by the prevailing political objectives in each case.

The sources for seeking reconciliation primarily lie in victim testimony, while the sources for seeking justice are based on "facts" that can be presented to the courts.[60] If the role of the victim in a reconciliation process is typically to forgive, in a retribution process, it is to demand.[61] Reconciliation is seen as a way to stop the cycle of violence and avoid confrontations between political figures, while justice is typically understood as a way to set a moral standard and deter (via punishment) the atrocious deed from ever occurring again.

In the midst of seemingly diverging paths, I would underline two important lessons. First, there are no generic formulas for resolving past injustices. The same State under the same political leadership can apply apparently contrasting models, as happened in Mexico. Thus, the political aim of the procedure will be determined by the balance of the different interests at play. The State may take a "strict justice" stance and seek punishment for any wrongdoer in a Kantian-type model.[62] It may seek to recall, remember, reconcile, and forgive, with the goal of "closing the chapter on the past".[63] It can also follow Zalaquetti's more utilitarian prescription and seek "all the truth, and as much justice as possible".[64] The number of alternatives and goals might be as high as the specific interests require.

Identifying the political interests at stake is a second key insight. The investigation compels us to strip the aura of universal objectivity with which "the truth" is commonly presented in political discourse. In processes that address mass atrocities and historical injustices, we are compelled to think of the "truth" not as a concept, but as a political tool. The question, then, is not *what* truth is, but rather *who* constructs it and *why*.

60 Humphrey, *supra* note 3.

61 Moon, *supra* note 12.

62 Cohen, *supra* note 4.

63 Moon, *supra* note 12, at 89.

64 Cohen, *supra* note 4, at 43.

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Justice Without a Gender Perspective? The Case of Keren Ordóñez

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Abstract: This article seeks to determine the extent to which judicial processes include a gender perspective, as well as the possible effects and instances of discrimination that accused women experience when it is absent. This research focuses particularly on analyzing the case of Keren Ordóñez, a young woman from Veracruz accused of kidnapping whose criminal proceedings did not protect her right to equality in criminal action and justice. The theoretical–methodological approach taken starts from a gender perspective in line with the critical feminist stand that proposes denouncement as the way to eradicate gender oppression. Among the findings, it is demonstrated that Keren's case was not considered with a gender perspective, on the contrary, it was an act of discrimination that violated her right to access justice under conditions of equality.
Keywords: gender; equality; human rights; access to justice; gender perspective.

Resumen: Este artículo busca conocer en qué medida se juzga con perspectiva de género en los procesos judiciales, así como las posibles afectaciones y situaciones de injusticia que experimentan las mujeres imputadas cuando no se hace así. Particularmente, se centra en el análisis del caso de Keren Ordóñez, una mujer joven originaria de Veracruz acusada de secuestro, en cuyo proceso penal no se garantizó su derecho a la igualdad en la acción penal e impartición de justicia. El enfoque teórico-metodológico parte de una perspectiva de género congruente con el compromiso crítico feminista que, a través de la denuncia, busca proponer acciones que erradiquen la opresión por género. Entre los resultados, se observa que en el caso de Keren fue

omitida la metodología para juzgar con perspectiva de género, lo que constituyó un acto de discriminación que vulneró su derecho de acceder a la justicia en condiciones de igualdad.
Palabras clave: género; igualdad; derechos humanos; acceso a la justicia; perspectiva de género.

I. Introduction

Access to justice is understood as people's ability to reach a fair and effective solution to their conflicts through the appropriate legal and judicial procedures. Hence, the perspective in this context goes beyond a merely formalistic vision, which focuses solely on "access to jurisdiction per se, that is, to the study of merely technical or procedural aspects and/or the administration of justice".[1] Instead, it is necessary to consider aspects of material or substantive justice, as well as everything regarding the design, evolution and interpretation of laws. In this light, it becomes an essential human right that guarantees the effective exercise and protection of legally recognized rights.[2]

> In this regard, it should be borne in mind that the justice administration system is the last frontier where citizens perceive whether their rights are effectively respected and guaranteed; hence the urgent need to facilitate and uphold, not only access to justice, but effective access to it.[3]

The lack of a gender perspective in access to justice is a major obstacle for women to exercise this right. Mexico's 2011 constitutional reform on human rights recognized this shortcoming, which led to establishing the obligation to guarantee equality between women and men in all public policies and government actions, including the administration of justice. It became clear that assumed equal treatment was not enough, but the underlying inequities that historically placed women at a disadvantage had to be recognized. Thus, a legal framework was created to prevent systematic violations of the right to justice on the basis of gender, especially in cases in which women are victims of gender violence.

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[1] Daniela Heim, Mujeres y acceso a la justicia, 15 (Didot, 2016).

[2] Jorge Marabotto Lugaro, *Un derecho humano esencial: el acceso a la justicia*, Anuario de Derecho Constitucional Latinoamericano, 291, 295 (2003).

[3] Juan Méndez, *El acceso a la justicia, un enfoque desde los derechos humanos, in* Acceso a la justicia y la equidad: estudio en siete países de América Latina 17 (Banco Interamericano de Desarrollo/Instituto Interamericano de Derechos Humanos, 2000).

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This work highlights the importance of studying the criminal action taken against women when they are accused of committing a crime. Historically, women who commit crimes have been subjected to a punitive system designed for men that, imbued with patriarchal ideology, "has ended up treating them with greater harshness and severity",[4] so that women are treated differently from men during criminal proceedings. A 2020 study by the Reinserta organization found that female Mexican prisoners serve "a sentence of approximately 23 years", whereas "in the case of men, it is approximately 17 years".[5] In addition, "short sentences are more frequent in the case of men (5 years) than in the case of women (25 years)".[6] Similar data is seen in the entire Latin American region, as presented in the most recent Inter-American Commission on Human Rights (IACHR) report on *Women Deprived of Liberty in the Americas*, which draws attention to the effects of incarceration both directly on the prisoners and on their families.[7]

Similarly, Mexico's National Human Rights Commission (CNDH) reported that the life stories of women deprived of liberty are marked by various forms of stigmatization, criminalization and violence under "the patriarchal social system [...] that permeate[s] the social and institutional structures and persist inside prisons, denying them opportunities for work, training, health and freedom of personality".[8] This condition is even worse after changes in their legal status and incarceration, as they face renewed discrimination, prejudice and violence (which includes being abandoned by their family or partner and social repudiation in general), "from the most subtle [form] to the most serious, which has had an impact on their physical and mental health and, in some cases, even led to loss of life".[9]

Women generally (and surreptitiously) receive greater punishment than men because women transgress the standards twice. Not only do they break the law, but they also go against their socially assigned gender role.[10] Therefore, they are stigmatized and are on the receiving end of other sanctions while in the criminal system.[11] In other words, prejudices stemming from social systems and their historical context judge women harder because they have violated statutory law

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[4] Libardo Ariza & Manuel Iturralde, *Mujer, crimen y castigo penitenciario*, 12(24) Política criminal, 731, 737 (2017).

[5] Reinserta, Diagnóstico sobre la percepción del desempeño de la defensoría penal en México 66 (2020), https://reinserta.org/

[6] *Id.*

[7] Comisión Interamericana de Derechos Humanos. Mujeres privadas de libertad en las Américas (2023).

[8] Comisión Nacional de Derechos Humanos (CNDH), Informe Diagnóstico Sobre las Condiciones de Vida de las Mujeres Privadas de la Libertad desde un enfoque interseccional 9 (2022).

[9] *Id.* at 5.

[10] Teresa Salazar & Blanca Elisa Cabral, *Miradas de género a la criminalidad femenina,* 22 Revista Venezolana de Sociología y Antropología 64, (2012).

[11] Lidia Casas Becerra et al., La perspectiva de género en la defensa de mujeres en el

and the law of "feminine nature."[12] Moreover, in an attempt to correct their failure to follow conventions, women are treated as children under the pretense of moral protection from authorities and prison agents in an attempt to justify their need for excessive control over the women.[13]

Part of this stigma implies that crimes committed by women are considered abnormal or aberrant, leading to "stereotypes" involving "the naturalization of inequality" and "biologistic premises".[14] When a woman acts outside her established social role by breaking the rules and acting as a man traditionally would, the stereotypes of feminine weakness or submission do not fit in with the collective imagination of criminality; thus, her punishment in the eyes of society is harsher than a man's would be in a similar case.[15]

This situation leads to "greater punishment against women for acting against social expectations and the patterns built around them."[16] While some crimes can be minimized when committed by men, they are seen with greater severity when attributed to women. This discretional characteristic is usually upheld by the very design of criminal codes, which do not fully comprehend or address differences on the basis of gender. Studies in other geographical places[17] assert that the increased number of prison sentences for women tend to respond to indirect discrimination derived from the limited freedom criminal codes include to apply the law from a gender perspective.

As Salazar and Cabral note, "the crucial question is not why are there women who do not comply with the law? But rather, why does the same society that knowingly tolerates male offenses continuously punishes and debases female transgressions?".[18]

Based on these considerations, it is necessary to analyze the extent to which cases are judged from a gender perspective, as well as the possible effects and instances of injustice accused women experience when it is not considered. This issue is examined here within the context of a specific case that exemplifies the limitations of the Mexican justice system, namely the case of Keren Selsy Ordóñez Hernández, a woman from Veracruz, who, at age 19, was deprived of

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nuevo sistema procesal penal chileno: un estudio exploratorio, (Facultad de Derecho Universidad de Portales, 2004).

12 Norma Fuller, *La perspectiva de género y la criminología: una relación prolífica,* 8 Tabula Rasa, 97, 110 (2008).

13 *Id.*

14 Julia Méndez, *Criminología feminista. Una revisión bibliográfica,* 39 Asparkía. Investigación feminista, 233, 253 (2021).

15 Nuria Artola, Las mujeres como victimarias: La realidad de la criminalidad femenina (unpublished undergraduate dissertation, Universidad del País Vasco/Euskal Herriko Unibertsitatea/Zuzenvide Fakultatae) (2022).

16 *Id.,* at 20.

17 *See* Albert Pedrosa, *¿Discrimina el Código Penal español a las mujeres?* 16 Rev. Española de Investigación Criminológica, 1, 22 (2018); *See also* Alicia Alonso Merino, *Mujeres y privación de libertad en Chile. Dimensiones de lo punitivo y discriminaciones*, 35 Revista de derecho, 79, 94 (2018).

18 Salazar & Cabral, *supra* note 9, at 244.

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her liberty and forced —under duress and torture— to sign a confession of having participated in a kidnapping, which resulted in a 50-year prison sentence.

The case was basically analyzed by reviewing her file, provided by the Miguel Agustín Pro Juárez Human Rights Center (Centro Prodh) with Keren's authorization. Additionally, two unstructured interviews were conducted with Keren Ordóñez in the Apizaco prison on March 9, 2023, and on April 4, 2024, so as to identify specific details of the events. Lastly, Keren Ordóñez's mother was interviewed via telephone on April 11, 2024.

The work presented here is organized as follows: The first section presents some methodological aspects that explains how this study was carried out. Then, the most important elements to analyze criminal proceedings from a gender perspective are given. Based on these considerations, the Keren Selsy Ordóñez Hernández case is provided, focusing on how the system failed to address special circumstances tied in with gender issues. The conclusions highlight the importance of having a justice system that operates with such a perspective.

II. Methodological Strategy

To explore this issue, we need to start by establishing a research methodology with a gender perspective that is consistent with the researchers' feminist commitment to the experiences of women who have been systematically excluded from the political stances, which seeks change to the *status quo* by identifying inequitable gender-based relations.[19] As Marcela Lagarde says, analysis with a gender perspective "detracts from the patriarchal order; it explicitly criticizes the harmful, destructive, oppressive and alienating aspects that are produced by a social organization based on inequality, injustice and the political hierarchy of people based on gender."[20] To this end, two components were fundamental to methodological strategy: first, it centered on women's experiences, which were then used as a starting point to analyze the case and identify vulnerable conditions (through interviews conducted with Keren and her mother). Second, law is not seen here as an impartial field, and therefore, the case analysis involves identifying and showing up gender biases.

It is essential, then, to use a feminist research method that, as Delgado argues, allows for adhering "to some premises of critical methods, such as detecting, uncovering or exposing existing beliefs that limit or restrict human freedom"[21] to discover and question the prevalent forms. Therefore, it is necessary to clarify what gender implies and understand "the processes that people undertake to

[19] *See* Gabriela Delgado, *Metodología de la investigación con perspectiva de género*, *in* Metodología de la investigación. La visión de los pares, 17, 38 (María de Lourdes Velázquez and Olivia Mireles coords., 2008).

[20] Marcela Lagarde, Género y feminismo. Desarrollo humano y democracia 3 (Horas y Horas, 1996).

[21] Delgado, *supra* note 18, at 35.

adapt or integrate themselves into social institutions as active, thinking and feeling beings."[22] This analysis is based on Alda Facio's methodological proposal, which establishes six steps to analyze legal texts with a focus on raising awareness about female subordination and identifying sexist traits that influence how women are perceived by society.[23]

Black, Chicano and Indigenous feminist contributions propose adopting a gender perspective with an intersectional approach; i.e., bearing in mind that the gender variable does not have an isolated effect but intersects with other variables that, in turn, explain conditions of exclusion and discrimination. Race, social class, and sexual orientation are some of the lines of oppression that are intertwined with gender.

> Taking an intersectional perspective means recognizing that gender discrimination is comprised of not only the disadvantages that women experience in patriarchal structures that assign power and privilege according to sexist criteria, but also the coexistence of other systems of subordination that create differences among women and put some women in positions of particular marginalization and social exclusion.[24]

Intersectionality is based on the understanding that discrimination has multiple dimensions and that a combination of them does not have a simply cumulative effect but rather gives rise to markedly different conditions of vulnerability. Intersectional analysis "address[es] the manner in which racism, patriarchy, class oppression and other systems of discrimination create inequalities that structure the relative positions of women" within specific historical, social and political contexts with the pressing need to recognize the "unique individual experiences resulting from the coming together of different types of identity".[25] This perspective is fundamental to the case analyzed here, especially when considering Keren's vulnerability as a young woman in a precarious economic situation facing a complicated postpartum period.

Finally, it should be noted that this article arises from a report prepared for the Centro Prodh, which has defended Keren Ordóñez since September 2022. The center asked the authors to gather documentary evidence on gender per-

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[22] "Gender is understood as the differentiated situations that women and men experience due to institutionalized cultural patterns and that determine instances of discrimination, oppression, subordination and sexism that in most cases negatively affect women.", *Id.*, at 18.

[23] A more detailed description of the six steps can be found at Alda Facio, Cuando el género suena, cambios trae. Una metodología para el análisis de género del fenómeno legal 75-110 (ILANUD, 1992).

[24] María Caterina La Barbera, *Interseccionalidad*, 12 Eunomía. Revista en Cultura de la Legalidad, 191, 195 (2017).

[25] Association for Women's Rights in Development (AWID*). Interseccionalidad: una herramienta para la justicia de género y la justicia económica,* 9 Derechos de las mujeres y cambio económico, 1, 2 (2004).

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spective to be included as part of their defense.[26] After reviewing the literature on access to justice from a gender perspective (which served to theoretically frame the research), the judicial casefile, with all its relevant documentation, was meticulously examined. This approach required listening to Keren Ordóñez's own voice to understand the context surrounding the events, identify aspects of her life with clear evidence of gender inequality and recognize other circumstances that could explain the turn of events conditioned by the lack of gender perspective and other shortcomings, omissions and even crimes perpetrated at the time of her arrest and imprisonment. Hence, in-depth interviews were conducted with both Keren and her mother to hear, in their own words, how they experienced the events and how they look back on them after almost nine years since Keren was first deprived of her liberty and separated from her daughter, a baby who was barely a month old at the time.

The interviews, carried out on March 9, 2023, and April 4, 2024, took place in the Apizaco prison. Due to the prison's security measures, cell phones and recording devices were not permitted inside, so there is no word-for-word transcript of the interviews. In addition, prior to preparing the expert opinion, it was essential to gain Keren's trust in order for her to speak openly, which is difficult to do in prison. For these reasons, creating a safe space for Keren was given priority over methodological rigor in terms of recording of the interview. For similar reasons, we chose not to record the telephone interview with Keren Ordóñez's mother, which took place on April 11, 2024. Even then, all the information reported here has been borne out by Keren Ordóñez herself to ensure that it coincides with the information she shared.

Thus, the analysis—the results of which will be presented later—was based on two fundamental methodological approaches: socio-legal contextualization with an intersectional perspective stemming from the interviews; and a critical analysis of the text of the first verdict of Keren's trial which made it possible to identify gender stereotypes.

III. Criminal Action with a Gender Perspective

This section addresses the elements of theoretical analysis to better understand the meaning of criminal action from a gender perspective. First, the concept and the definitions given by judicial institutions are presented, followed by an explanation of certain fundamental considerations to grasp the concept itself. A key aspect identified during this research is that critical analysis calls for an interdisciplinary approach since legal arguments alone are insufficient, and complementary sociological or psychological points of view are needed to tackle the complexity of this issue in particular.

[26] More specific details about the case will be provided later.

1. The Administration of Justice from a Gender Perspective

We start from the idea that gender perspective in the administration of justice "can be defined as a judicial methodology for legal conflict resolution, contextualized and in accordance with the *pro homine* principle to find fair solutions to situations of gender inequality. The sexual difference is legally important when there is a detrimental gender-related distinction, exclusion or restriction".[27]

This approach is rooted in the feminist and human rights movements that gained strength in the 20th century by highlighting gender inequalities in various facets of society, including the justice system. Likewise, international organizations like the United Nations played a decisive role in promoting a gender perspective in the administration of justice. Instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979, required member countries to improve women's access to justice. As a result, laws and policies were created at national levels in an effort to guarantee gender equality and protect the rights of women and other gender minorities. The IACHR *Report on Measures to Reduce the Use of Pretrial Detention in the Americas* establishes the basic criteria of what gender perspective means:

> A gender perspective also means taking account of the special situation of the risk of violence in all its expressions, including physical, psychological, sexual, economic, obstetric and spiritual, among others, as well as the fact that most such incidents end in impunity. [...] The States should also include an intersectional and intercultural perspective that takes into consideration the possible aggravation and frequency of human rights violations due to factors such as race, ethnicity, age, or economic position.[28]

Yet one more issue that is fundamental in the case analyzed here has to do with the specific roles that have been traditionally assigned to women, such as care-giving tasks. So much so that, as the Report states, the incarceration of women "spells severe consequences for their children and other persons under their care".[29] One last item highlighted here is the fact that women are frequently subjected to physical, sexual and psychological violence, including torture perpetrated or tolerated by the State or its officials, personnel, agents

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[27] Gloria Poyato i Matos, *Juzgar con perspectiva de género: una metodología vinculante de justicia equitativa*, 2 Iqual. Rev. de Género e Igualdad, 1, 19 (2019).

[28] Comisión Interamericana de Derechos Humanos (CIDH), Informe sobre medidas dirigidas a reducir el uso de la prisión preventiva en las Américas 135-136 (2017).

[29] *Id.* at 138. It should be noted that the IACHR recommends considering other measures than prison, taking into account elements such as: "a) women's unique and historically disadvantaged position in society, b) their history of victimization; c) the absence of aggravating factors in the commission of the offense, and d) the differentiated and incremental impact of custodial measures on persons under their care." *Id.*, at 138 and 139.

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and institutions. This provides further proof that States do not comply with the obligations established in the Belém do Pará Convention.[30]

Studies, such as that of Feria-Tinta (2007), have shown that women who suffer such violations "were completely under the power of State agents, absolutely defenseless, and had specifically been harmed by State security agents".[31] Examples of these violations include the sexual violence that women under the constant observation of men experience; prolonged solitary confinement measures that particularly affect inmates who are mothers; the lack of adequate pre- and postnatal medical care; unhealthy detention conditions that go against their human dignity; no consideration given to women's physiological needs and the refusal to provide personal hygiene products.[32] This includes the obligation to provide special arrangements for detained women who are menstruating, pregnant, or in postpartum or those accompanied by children. Neither are their specific physiological, psychological, emotional and health and well-being needs considered.

> This bias towards males, even more pronounced in prison systems because their being largely dominated by men, in all respects, hides the differentiated impacts of incarceration on women from view.[33]

These obligations were embodied in *the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (also known as the Bangkok Rules), the first instrument to devote attention to the children of women in prison, as well as the special conditions for women prisoners who are pregnant or breastfeeding.[34]

Given the invisibility of women's needs, as well as the discrimination and violence they face, these issues must be addressed from an intersectional approach that includes pregnant, postpartum and breastfeeding women.[35]

The situation in Mexico is not much different from that of other countries in the region. Increasing demands for the incorporation of the gender perspective in the justice system led the Supreme Court of Justice of the Nation (SCJN) (with modifications made by the First Chamber) to publish the *Protocol to judge*

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[30] Organización de los Estados Americanos (OEA), Convención Interamericana para prevenir, sancionar y erradicar la violencia contra la mujer, (Convención de Belém do Pará, 1994).

[31] Mónica Feria-Tinta, *Primer caso internacional sobre violencia de género en la jurisprudencia de la Corte Interamericana de Derechos Humanos: El caso del penal Miguel Castro Castro; un hito histórico para Latinoamérica*, 3 Revista Cejil. Debates sobre Derechos Humanos y el Sistema Interamericano, 30, 38, 45.

[32] *Id., a*t 39 and 40.

[33] *Id., a*t 33.

[34] Oficina de las Naciones Unidas contra la Droga y el Delito, Reglas de las Naciones Unidas para el tratamiento de las reclusas y medidas no privativas de la libertad para las mujeres delincuentes (Reglas de Bangkok, 2010).

[35] Feria-Tinta, *supra* note 30.

with a gender perspective in 2021.[36] With this, a methodology was established for judicial operators to hear cases with a gender perspective, based on six fundamental points:

> (i) Identify whether there are gender-related situations that give way to an imbalance of power between the parties to the dispute;
> (ii) Question facts and assess the evidence, discarding any gender stereotypes or prejudice, to detect detrimental situations caused by this;
> (iii) Sort the necessary evidence in a way that makes these situations visible, provided that the evidence is not enough to explain a situation of violence, vulnerability or discrimination on the basis of gender;
> (iv) Question the impartiality of the applicable law and evaluate the differentiated impacts of the proposed solution;
> (v) Apply the human rights standards of all the people involved; and
> (vi) Avoid the use of language based on stereotypes or prejudices and, in turn, endeavor to use inclusive language.

Although the document is intended for situations where women are victims of a crime, it also applies to cases where women are the alleged perpetrators of a crime as a way to ensure a fair trial. In addition to the presumption of innocence, this implies considering alternatives to incarceration, equal opportunities to present evidence and arguments, and the opportunity to be heard and have an adequate defense. Likewise, it is necessary to guarantee a gender perspective that takes into account the distinct situation of putting women at the risk of violence in all its forms, including physical, psychological, sexual, obstetric, etc.[37]

2. Equality and Nondiscrimination

A 2013 United Nations Office on Drugs and Crime (UNODC) report[38] on the prison situation noted that the disregard for complying with the minimum standards for the administration of justice, set out in various international treaties, is the cause of arbitrary detentions, an excessive use of pretrial detention, excessively harsh sentences and the incarceration of innocent people. These circumstances particularly affect people who are vulnerable because of their social and economic condition, as well as those who face different forms of discrimination, as is the case of women. Furthermore, when poverty and lack of social support "are combined with a 'tough on crime' rhetoric and policies that call for stricter

[36] SCJN, Protocolo para juzgar con perspectiva de género 131-32 (2021).

[37] CIDH, *supra* note 27.

[38] United Nations Office on Drugs and Crime (UNODC). Handbook on strategies to reduce Overcrowding in prisons 25 (2013).

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law enforcement and sentencing, the result is invariably a significant increase in the prison population".[39]

The situation of violence and discrimination is exponentially aggravated when individuals are "deprived of their liberty and placed under the control of the State authorities".[40] As held in the *Protocol to judge with a gender perspective,* one should avoid basing judicial decisions on gender stereotypes, such as assumptions about women's behavior or their role in society. Instead, decisions should be based on objective evidence and a close analysis of the individual circumstances of the case.

A study by INMUJERES and the Instituto Veracruzano de las Mujeres points at a system of patriarchal oppression that deepens social inequalities, a condition that "is ignored by judicial operators and by the prison system both when sentencing and when dealing with those incarcerated in prison that does not identify individuals as subjects with rights but rather ignores their condition and gender status".[41]

In this sense, gender perspective starts from the need to associate the principle of universality with the idea of equality, since, as Salazar suggests, "human rights guarantees are based on an ethical requirement and, at the same time, in a practical requirement that places the subject of the rights in a context and observes the need to interpret rights in terms of local needs".[42] In other words, the principle of equality obliges States to take into account the specific contexts and situations of the victims of discrimination so that they may be treated fairly.

With these principles in mind, a fundamental goal in judging from a gender perspective is to analyze the context of the inequalities and disadvantages in which women find themselves. If the woman being tried was a victim of gender violence either in the past or when the crime was committed, this may be a significant factor to understanding the motive for committing the crime. In any case, "a defense with a gender perspective is needed since [public defenders] often do not provide the background of the woman accused of committing a crime, thus precluding the judge from having the necessary elements to order a measure other than the deprivation of liberty or to 'fight' for a measure proportional to the circumstances of the accused".[43]

The sociocultural violence that women experienced before being deprived of their liberty can be a mitigating factor in criminal proceedings because it helps identify the violence underlying the crime. The narrative almost always

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39 *Id.*

40 Comisión Interamericana de Derechos Humanos (CIDH), *supra* note 27, at 134.

41 Instituto Nacional de las Mujeres (INMUJERES) & Instituto Veracruzano de las Mujeres (IVM), Estudio sobre la Situación de las Mujeres Privadas de su Libertad en Veracruz 114 (2016).

42 Pedro Salazar, La reforma constitucional sobre derechos humanos. Una guía conceptual 23 (Instituto Belisario Domínguez, Senado de la República, 2014).

43 EQUIS. Justicia para las mujeres, Metodología para el Análisis de las decisiones jurisdiccionales desde la Perspectiva de Género 48 (2017).

shows that a man is the perpetrator, who then involves the woman in the events. Thus, when a gender perspective is absent in criminal proceedings, women are judged without any consideration given to the conditions prior to the crime, hiding the fact that the crime is usually related to extreme danger, necessity or disorders like Stockholm syndrome, learned helplessness, battered woman syndrome or posttraumatic stress. Therefore, as stated by *EQUIS. Justice for Women,* simply "limiting oneself to assess on a crime committed without considering the circumstances of the specific case ends up harming women more than men, since the characteristics of women accused of committing crimes are substantially opposite to the males, who are usually the perpetrators or instigators".[44]

IV. The Case of Keren Ordóñez with a Gender Perspective

1. Background

Keren Selsy Ordóñez Hernández was born in 1996 in Xalapa, Veracruz. Except for a short time when she lived with her partner's mother, Keren had always lived with her parents in a context of poverty. She studied up to 11th grade. She worked for six months as manager at an internet café. Keren entered into a relationship with a young man and got pregnant.[45] After that, she devoted her time to doing the housework. On November 8, 2015, her daughter was born. Keren was 19 years old at the time. The delivery presented complications and after a C-section, the mother went through a difficult recovery.

For the first month after giving birth, Keren only left the house only for medical appointments, and always with her mother. During that time, the baby's father did not live with Keren, nor did he cover the expenses derived from their daughter's birth. However, on December 11, 2015, while still convalescing from childbirth, Keren decided to ask her ex-partner for child support. He finally agreed to meet her at an address a couple of blocks from where she lived to give her some money. Keren went to the appointment with her daughter, even though her family tried to dissuade her from going out at that time (approximately eight o'clock at night). According to her statement, Keren and her ex-partner were talking in the doorway of a house when Federal Police and Tlaxcala Ministerial Police vehicles (given that the events leading to the accusation happened in the state of Tlaxcala) arrived. Armed agents detained Keren's ex-partner, another man at the scene, Keren and her baby.

The agents took the baby from her arms and put them both in an official vehicle without explaining the reason for the arrest. Once in the patrol car, Keren

[44] *Id.*, at 51.

[45] For confidentiality reasons, the names of the people involved in the case who have not given their express authorization to use their names have been omitted.

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was subjected to beatings, strangulation and threats to hurt, kill or disappear her daughter.

As stated in the Court Ruling that gives an account of Official Letter of Collaboration FGE/OF/13888/2015 (10-Dec-15), the detainees were

> Immediately transferred [...], together with the infant who we now know is called [...], as well as the now claimant [...] to the General Office of the Judicial Police of the State of Veracruz, in order to obtain their corresponding medical certificates, arriving at said General Office, approximately at 02:00 on December 12, 2015, and upon having finished the corresponding medical certification, we immediately transferred them to the state attorney's office facilities, leaving the General Office of the Judicial Police of the State of Veracruz [...] at approximately 03:00, arriving at these facilities at approximately 07:30 on December 12, 2015, and proceeding to carry out the corresponding legal processes for their presentation [before the authorities]. On the basis of the above, we left Keren Selsy Ordóñez Hernández, 19 years old […] at their disposal. We also left the infant […] at their disposal, for the necessary proceedings before the State of Tlaxcala System for the Integrated Development of the Family (DIF).

From the time of arrest to being brought before the Public Ministry of Tlaxcala, Keren and her baby had spent a total of 11 hours in solitary confinement and were subjected to more violence and human rights violations. During that time, Keren was interrogated about a kidnapping inside the house where her ex-partner was staying while officers continued to threaten harm to her daughter. After a while, she was forced to sign a fabricated statement in which she acknowledged having participated in the kidnapping and performing domestic tasks. Hours later, the judicial authorities delivered the baby to the Tlaxcala System for the Integrated Development of the Family (DIF), without informing any family member. Keren's daughter was away from her family for 12 days until her maternal grandmother managed to get her back.[46]

On November 20, 2019, the Criminal Court of the Sánchez Piedras Judicial District, in Apizaco, Tlaxcala, ruled against Keren, sentencing her to 50 years in prison, for a crime she did not commit. Since then, it has been a long judicial process to have the sentence overturned. Over these years, twelve lawyers (six public defenders and six private) were involved with the case at one point or another, until the Prodh Center took over the case in September 2022. As a result of this journey, on September 27, 2021, the First Collegiate Court of the State of Tlaxcala granted Keren an *amparo* given that her procedural rights had been violated, and the proceedings were taken back to the investigation stage. At the time of writing, a ruling had not been issued, while Keren has been in jail for almost nine years. It should be noted that her ex-partner, being a minor at the

[46] Interview with Ciria Hernández, mother of Keren Ordóñez (April 11, 2024).

time, was sentenced to five years in prison and that since then, he has not had any contact with Keren, nor has he provided child support for their daughter.

2. Inconsistencies Found in Keren's Case

This section identifies the most important inconsistencies found after examining Keren Selsy Ordóñez Hernández's file, especially those that show the lack of a gender perspective in the administration of justice. The conviction states that the accusation is based on the fact that the circumstances of time, place and manner allegedly coincide. However, there are certain elements that make these circumstances suspect, especially given the failure to adopt a gender perspective at different stages of the criminal proceedings. According to the verdict, Keren was there when a woman who had been kidnapped ten days earlier was released. Even so, various omissions, contradictions and oversight in the investigation cast doubt on and call into question her participation in the events attributed to her, such as, the time of the arrest and whether she was inside or outside the house where the kidnapping victim was.

The accusation is mainly based on the testimonies of the abducted, the other two alleged perpetrators of the kidnapping and Keren herself. However, the accused's defense lies in the fact that her deposition was obtained by means of torture, such that her first self-incriminating statement should be thrown out because it was obtained under duress. The testimonies of the kidnapping victim and the other two people involved should only be taken into account, as long as their right not to incriminate themselves was respected.

The first inconsistency found is that the kidnapping victim never ratified her initial statement, which is not even signed. As will be seen later, this raises the question as to whether she truly identified Keren as someone involved in her kidnapping. In this first statement, she says that Keren was one of the people who took care of her, especially when the rest of her kidnappers went out: "[...] and Keren Selsy Ordóñez Hernández also arrived since she would come to take care of me when they went out to steal [...]".[47] However, the claim that the accused was her caregiver is exclusively based on the connection the abductee made between the sounds of a baby, which she claimed to have heard at some point during her captivity, and the person she believed was the mother of the child. Notably, the abductee never actually saw the accused, since at various points in the statement, she claims that whenever Keren was present, her head was covered so as not to be recognized: "but I would be sent upstairs with XXX so that I wouldn't see Keren Selsy Ordóñez Hernández" or "and I'd be covered with the blanket with which the photos were taken, so that I wouldn't see Keren Selsy Ordóñez Hernández".[48] This testimony draws an even greater contrast when she concedes that she did see the rest of the people in the house: "in this

[47] Keren Selsy Ordónez Hernández, Causa Penal 696/2015, at fojas 268-270.

[48] *Id.*

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regard, I could already identify them because my eyes were uncovered all the time".[49] Likewise, it is important to note that the victim links Keren to her abduction at the time of her release, when the police arbitrarily pointed Keren out to her as her abductor.

Additionally, the medical examinations of the physical integrity of the other two people who allegedly took part in the kidnapping found that they presented injuries after their arrest.[50] Therefore, it is possible to infer that their statements might have been coerced.

Other inconsistencies in the statements revolve around the time Keren allegedly spent at the house where the kidnapping victim was being held captive. The victim stated that she had been brought to the house on December 4, 2015, that Keren's ex-partner was always there, and that Keren came to take care of her when the others went out to commit thefts. On the other hand, Keren's ex-partner declared that Keren had been going to that house daily since December 3, but that she stayed only until 4 or 5 in the afternoon. The other suspect did not mention Keren in his statement until he gave an account of what happened on December 10, shortly before the arrest. Meanwhile in her first statement, Keren said she went to the house in question for the first time on December 6.

Other facts that do not fit into the narrative should also be highlighted. On the one hand, it is suggested that the victim was supposed to be released shortly before her kidnappers' arrest, but that this did not happen because several of them went on a pilgrimage: "and then XXX came upstairs really happy to tell me that they were not going to do anything to me, that they were going to let me go on Monday or Tuesday, and XXX and XXX began to planning to go on a pilgrimage on motorcycle to Xalapa",[51] as they allegedly did, which is why they were not at the house at the time of the arrest. However, it does not seem logical for the kidnappers to decide to desert the house where they kept the victim when they were about to release her.

On the other hand, all the statements of the law enforcement agencies that intervened in the release of the kidnapping victim mentioned that they found the house with the kidnapping victim by chance. They saw three people in the doorway, one of whom caught their attention because he was carrying a weapon and then drove away. The officers also heard someone (the victim) screaming for help. On the one hand, it is unthinkable that only two patrol cars could have found the victim's whereabouts within two hours of a random search over a wide area covering several neighborhoods in the largest city and the capital of the state of Veracruz, home to approximately half a million inhabitants, when the only information they had was that the victim might be in that city. On the other hand, it is hard to believe that at that precise moment, the victim was

49 *Id.*

50 *Id.*, at fojas 230 and 231.

51 *Id.*, at fojas 268-270.

discovered calling for help after being held for 10 days. Lastly, it is particularly strange that none of the testimonies (neither the victim's nor the two male detainees) mention a third man (in addition to the two male detainees). In fact, the abductee claims to have been left alone with Keren and her ex-partner, while Keren does not mention the second detainee either. Moreover, none of the police vehicles went in pursuit of the armed person who fled the scene.

In summary, the arrest narrative itself presents various inconsistencies that cast doubt on the testimonies used to verify the circumstances that led to the charges filed against Keren.

3. Analysis of the Case from an Intersectional Perspective and Taking Context Into Account

In addition to addressing the discrepancies that arise in the narratives and testimonies that led to Keren's arrest and being charged, it is necessary to analyze the facts and evidence from a gender perspective, since judicial decisions are often influenced by biases derived from Keren's unfavorable position. To this end, three different moments will be analyzed: first, her circumstances prior to her arrest, to identify the specific issues that led to her being charged, emphasizing Keren's life circumstances; second, the moment of arrest; and, finally, what happened afterward.

As mentioned, judging with a gender perspective implies considering the context in which the arrest was made, as established by the IACHR in the Campo Algodonero case. The Court pointed out that while there may be diverse motives or perpetrators of violence, many cases of gender violence occur within the context of systematic discrimination against women.[52]

At the moment of the arrest, Keren was automatically singled out and treated as a kidnapper, even though her very profile is at odds with this characterization. To make sense of this ambiguity, we will focus on aspects of her relationship with her ex-partner and the father of her child, as well as issues arising from a complicated postpartum and her socioeconomic level that, together, bring to light the vulnerability of her condition when she was arrested.

As noted above, Keren lived with her parents, siblings, nieces and nephews and helped with household chores while continuing with her schooling. Keren and her family lived most of their lives in poverty, lacking formal education, health care and adequate housing, as it was difficult for them to find jobs and bring in enough income to cover the family's needs.

After giving birth via C-section with later complications, she stayed at home to recover from the operation and take care of her daughter. The only time she went out after giving birth was for doctor's appointments, and her mother al-

[52] Corte Interamericana de Derechos Humanos. Caso González y otras ("Campo Algodonero") vs. México. Sentencia de 16 de noviembre de 2009. (Excepción Preliminar, Fondo, Reparaciones y Costas), at parr. 13.

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ways went with her. Her daughter was born on November 8, which means that when the kidnapping in which she allegedly participated took place, the baby was only 24 days old. As discussed later, the people who detained Keren should have considered these circumstances to assess her presence at the scene of the crime from a gender perspective.

Keren was, in fact, a single mother. The baby's father was not taking responsibility for his daughter, and Keren had to face all the postpartum complications, in addition to the expenses to care for a baby, on her own. Although the child's father did visit, they were brief visits and did not reflect any special commitment to fatherhood. In an interview, Keren noted that their relationship was fraught with constant fights, he was very possessive, he constantly checked her cell phone, and he forced her to give him her *Facebook* profile password. On one occasion, the argument became heated and he raised his hand against her, shouting "I don't even know if she is my daughter." This accusation did not go any further because Keren's brother intervened.[53]

The specific circumstances of Keren's life show how her autonomy and freedom were limited and restricted in a relationship based on control and subordination, where the man established the rules, leaving the woman at a clear disadvantage. It was he who decided when he would see Keren and his daughter; he kept an eye on Keren and decided with whom she could speak and with whom she could not; he decided to leave Keren with the full burden of raising a daughter alone. Under these circumstances, Keren's room to maneuver was negligible.

During the criminal proceedings, Keren stated that some of the issues pointed out by INMUJERES (2016) were reported, such as not taking into account the Keren's upbringing with sociocultural violence, not identifying the underlying violence, and ignoring her need of assistance.

At first, Keren paid the everyday expenses for the baby's care, but as the days and weeks went by, the situation became untenable, to the point that she asked the father of her child for support on December 11, 2015. Notably, he had not seen Keren and the baby for several days. This is another important fact because, although he did not contribute financially to care for their daughter, his presence was important for Keren. In an interview, she expressed her desire to "save their relationship" because she wanted her daughter to grow up with a father, which is why she accepted and abided by what he said.[54] It must be understood that this was the context that led Keren to leave her house with her daughter around eight o'clock at night, even though until that moment her only outings had been for medical appointments. She chose to do this, first, to obtain some money to buy diapers for her daughter and, second, so that he would not get upset but would keep in contact with them. The decision to go see him can only be understood in the context of her physical, emotional and financial con-

53 Interview with Keren Ordónez (March 9, 2023).

54 *Id.*

dition. If these events had been examined from a gender perspective, Keren's situation of violence and dependency with her partner would have been discovered, and it could have explained why, despite being in the postpartum period, she was at the site of the events.

When the police arrived at the house where the abducted woman was, they should have wondered what a young woman with a newborn baby was doing there. They simply assumed that her presence (circumstances of place and time) automatically justified the circumstance of manner (i.e., that she participated in the criminal acts). This prevented them from understanding the objective and subjective context that explained her presence at the scene and gave way to a different explanation from that set out in the verdict. It was taken for granted that a woman is an extension of the couple and, therefore, if the man participated in committing a crime, the woman automatically did too. Under this logic, there was no reason to look into the specific circumstances that explained her presence.

As to the moment of her arrest on December 11, 2015, it should be noted that upon reaching the house where her ex-partner was, Keren was approached by armed men dressed in civilian clothes, who put her in a car and took her daughter away. The four men and two women who participated in the arrest have been identified.

There are inconsistencies between the information given and what was recorded in Keren Ordóñez's file (where it states that she was arrested on December 12, 2015, at 01:15 a.m. and that she was in the house where a woman was being held kidnapped) and what Keren herself and her relatives state (that it was hours before and that she was on the sidewalk, not inside the house).[55]

As previously noted, Keren was treated from the outset as a member of a gang of kidnappers; her presence was automatically linked to her partner's being there and, therefore, they worked together.[56] However, the various circumstances and evidence at the time of the arrest were not taken into account, thus casting doubt on the legitimacy of the testimonies given at the time and compelling us to reassess the facts from a gender perspective. The most important aspects are detailed below.

On the one hand, the people who detained Keren never questioned her presence there, automatically assuming that, as the partner of the perpetrator, she had been implicated in the man's activities. At that time, Keren was denied identity and treated as simply an appendage of her partner.

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[55] It should be noted that the Third District Court in the State of Tlaxcala recognized that she had been the victim of a prolonged detention without justification for approximately seven hours and forty-five minutes. Indirect *Amparo* 16/2016-V, Third District Court in the State of Tlaxcala, judgment of June 7, 2016 (*amparo* trial filed against the formal arrest warrant dated December 20, 2015).

[56] An example of the treatment Keren received from the moment of her arrest is how she was presented to the media as part of a group of kidnappers. *See*, for example, Indecimedia, *Cae banda de jóvenes secuestros que aterrorizaba Huamantla*, (December 13, 2015).

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If the people involved in the arrest had viewed it from a gender perspective, they should have wondered how a woman who had had a C-section a month before could have carried out the criminal acts attributed to her. Knowing what recovery means after such an intervention would have helped them question Keren's presence in front of the house where the abducted woman was. The fact that it was mostly men who participated in the arrest and that the operation was directed by men may explain why these questions were not raised.

On the other hand, Keren Ordóñez was subjected to acts of torture that were closely linked to her status as a woman. This point is decisive because the torture led her to sign a self-incriminating statement. Importantly, when she was detained and put into the car, the people who detained her started hitting her repeatedly in the belly. The beatings did not stop, even when she begged them not to do so and explained that she had recently had a C-section. In addition to the physical violence, there was also the psychological violence in the form of the threat that her daughter would be taken away, telling her that they could make her disappear and that nothing could be done about it because the girl had not been registered at the Bureau of Vital Statistics.[57] Keren was held in these conditions for hours, subjected to blows and threats that left her totally defenseless. Any act of torture is reprehensible, but using a newborn baby as a means to subdue the detained person should be enough to question the validity of the statement of a woman who ends up signing whatever she was asked to as a way to "save her daughter's life". In such circumstances, it is logical to think that her choices were limited and prompted by a superior interest, that of guaranteeing the well-being of her daughter. These facts explain why she signed the first testimony, where she admitted to having participated in the acts attributed to her and that ended up in a conviction.

Finally, it is important to consider other incidents that took place after the arrest and that further bear out criminal proceedings without a gender perspective, which in this case led to Keren's indictment without any consideration given to circumstances that would have freed her of all responsibility of the imputed acts.

First, the State failed in its responsibility to guarantee the well-being of Keren's daughter: on December 12, 2015, the baby girl was handed over to the DIF Legal Advocate, and Keren's family did not know her whereabouts for days. Moreover, the authorities registered the baby at the Bureau of Vital Statistics, and in doing so, the information about the child's father was omitted, thus allowing him to elude any responsibility in terms of child support. This situation continues to this day, leaving the child in conditions of genuine vulnerability. In this case, it was a clear violation of human rights, as the IACHR indications were not followed, in that a gender perspective implies taking caregiving into consideration. The decision to separate Keren from her daughter (to the extent of denying the family the opportunity to get her back for days) had

[57] Interview with Keren Ordónez (March 9, 2023).

serious consequences for the physical and emotional health of both mother and daughter. Since Keren was not allowed to properly care for her daughter, her right to motherhood was denied her.[58] One of the aspects that came to light in the interviews with Keren and her mother was the enormous impact that the proceedings left on the lives of Keren, her mother (who had to take care of her granddaughter while already caring for her own mother and husband, in addition to having to follow up on the criminal proceedings) and her daughter. In all cases, the effects in terms of physical and emotional health are documented.[59]

Another issue that must be emphasized is the defense Keren received from the onset of her detention, which suggests the absence of a gender perspective. As of January 2016, Keren had three defense attorneys, two of them public and one private. Two disquieting factors come together here: the first is that the three were men, making it more likely that they did not identify the specific situations of vulnerability and violence in Keren's life. The second is even more worrying: during the first weeks after the arrest, Keren and her ex-partner had the same public defender, which could mean a serious conflict of interest. Instead of privileging the woman's situation, the defense is built around that of the male partner: "Technical assistance for women usually upholds the discourse of the accused who conceals their partners' crimes, instead of pointing out the meaning of victimizing the woman and contrasting the situations between the codefendants".[60]

With respect to the charges against Keren, there are sexist overtones in the way her participation in the acts of which she was accused was determined. Without considering the aforementioned contradictions about when Keren was at the house with the kidnapping victim, the role allotted to her in the kidnapping stands out: her job was to care for, prepare food, and play roles that are traditionally assigned to women. Furthermore, the victim's testimony mentions that when the other men who participated in the kidnapping were going to out to commit robberies, she was left in the care of Keren and her ex-partner. That is, Keren was assigned full responsibility for kidnapping even though the testimonies consigned her to a role that is removed from that of being involved in criminal activities. In this way, the judicial decision was based on gender stereotypes, according to which women's behavior is adapted to fit their socially assigned role. On the other hand, it is even more striking that although Keren

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[58] In the judgment of the Case of *Gelman v. Uruguay*, the Inter-American Court of Human Rights points out the serious physical and psychological effects that violated the victim's right to liberty and personal integrity, when she remained with her daughter in a clandestine detention center, where the noise of the torture inflicted on other detainees was usually heard. *See* Corte Interamericana de Derechos Humanos. Caso Gelman v. Uruguay. Sentencia de 24 de febrero de 2011. (Excepción Preliminar, Fondo, Reparaciones).

[59] Interview with Ciria Hernández, Keren's mother (April 11, 2924) and with Keren Ordóñez (April 4, 2024)

[60] Cecilia Marcela Hopp, *Buena madre, buena esposa, buena mujer*, *in* Género y justicia penal 36 (Julieta Di Corleto, comp., Didot, 2017).

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was presumably responsible for caregiving tasks, the victim indicated in her testimony that she could see the faces of all of her kidnappers, except for Keren, and she never saw her face because it was always covered when present. Why could the abductee see the faces of all the male members of the gang but never that of the only woman who participated in the kidnapping, who was also the one who allegedly took care of her?

In the verdict, there are inconsistencies between the testimonies presented by Keren and her mother, and the original testimonies (some obtained under torture). In the ruling, the testimonies of the two women are not given any credibility based on the argument that the women were probably lying to defend themselves. This is also a form of gender discrimination since there is no compelling argument to justify why the testimonies of the two women are not considered, other than the fact that they are not to be believed.

Table 1 summarizes the irregularities in the Keren Ordóñez Case based on different sources that establish mechanisms for acting from a gender perspective:

Table 1. Irregularities in the Keren Ordóñez Case

Source	How to act with a gender perspective	Irregularities in the Keren Ordóñez Case
National Women Institute (Inmujeres)	Establish women as legal subjects, considering their gender status and situation	Keren's specific vulnerability was not considered, not even her condition as a woman or, when analyzed from an intersectional perspective, her condition as a poor woman experiencing postpartum complications.
OAS	Prevent women from being subjected to physical, sexual and psychological violence (including torture)	During her detention, Keren was tortured, mainly by means of physical violence (blows to the stomach) and psychological violence (threats to hurt her daughter and even disappear the child). She was harmed because she was a woman, as she was viciously struck in the area of the C-section wound and threatened with harm to her daughter as a way to force her to sign false testimony.

SCJN (Protocol to judge with a gender perspective) Inmujeres	Identify whether there are gender-related situations that give way to an imbalance of power and put one party at a disadvantage, and analyze the conditions of violence the accused has experienced, in order to guarantee effective and equal access to justice	The context of sociocultural violence and the underlying violence Keren suffered was not acknowledged. The conditions of violence Keren experienced were not analyzed. This included economic violence (the father of the child did not help with the expenses), psychological violence (control over of Keren's interactions), and even physical violence (when he raised his hand against her).
SCJN (Protocol to judge with a gender perspective). Inmujeres	Question the facts and assess the evidence, discarding any gender stereotypes or prejudice, to detect detrimental situations for reasons of sex or gender.	It was taken for granted that Keren's presence in front of the house where the abducted woman was being held was automatically linked to her partner's presence and activities. The woman was denied her own identity and simply considered an extension of the man. Keren's state of necessity was not made known. This situation explained why she decided to leave her house the evening she was arrested.
SCJN (Protocol to judge with a gender perspective)	If there is insufficient evidence to explain a situation of violence, vulnerability or discrimination on the basis of gender, sort the necessary evidence in such a way that makes these situations visible.	There was no investigation to address the contradictions in the case, or that would explain why a woman who had given birth barely a month before was in front of a house where a kidnapped woman had been held for ten days.
IACHR	Avoid basing judicial decisions on gender stereotypes.	Keren was assigned the role of caregiving (even though she was allegedly not involved in the gang's other criminal activities).
IACHR	Ensure equal opportunities to present evidence and arguments, to be heard and to have an adequate defense.	Keren's statement was dismissed, even though her first testimony was obtained under duress and torture. Her mother's testimony was not taken into consideration either. Neither woman was heard during the proceedings. The fact that her partner was being defended by the same defense lawyer was a clear conflict of interest and placed her at a disadvantage.

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IACHR	Consider caregiving tasks.	Her daughter was taken from her, and her family was denied the possibility of getting her back for twelve days, leaving serious physical and emotional consequences for both the mother and the daughter.

SOURCE: prepared by the author.

V. Conclusions

Beyond the failings of the justice system—which affects both men and women equally and is manifested in acts of torture, case backlog, the discarding of certain evidence, and more, the analysis of Keren Selsy Ordóñez Hernández's case leads us to the following conclusions about the importance of judging from a gender perspective.

First, the judicial authorities that prosecuted Keren and issued a verdict on November 20, 2019, failed to apply the methodology for judging from a gender perspective, which constitutes an act of discrimination that violated her right to access justice under conditions of equality.

Second, during the criminal proceedings, sufficient elements were observed signaling Keren's particular situation of vulnerability and subordination with respect to her ex-partner at the time of her arrest. The ones that most stand out are her health (she was recovering from a C-section performed 22 days before the date of the kidnapping victim's abduction and 31 days after the date of her arrest) and the fact that she was breastfeeding and experiencing postpartum complications. Moreover, her family and economic situation also had bearing as a young unemployed woman and the mother of a one-month-old daughter (whom she had in her arms at the time of arrest) without financial independence or any financial support from the father of her child.

Finally, the above highlights the importance of judging with a gender perspective. In this case, doing so would have meant examining the facts of the case in more depth, especially why Keren was at the scene of the crime at the time of the arrest, and the gender-related conditions that led to her vulnerability and subordination. It would have implied evaluating the evidence for the prosecution; discarding the gender stereotypes assigned to Keren as a caregiver in the imputed crime; and questioning the impartiality of the applicable law, bearing in mind the disproportionate burden placed on Keren compared to the others who participated in the crime.

It is worth mentioning that at the time this research was under review, two significant events occurred. First, in September 2024, Keren was again sentenced to 50 years in prison, in a ruling that was also riddled with gender stereotypes—although this time the torture inflicted on Keren Ordóñez was at least

acknowledged. The second event took place in April 2025, when the Criminal and Specialized Chamber for Juvenile Justice of the Superior Court of Justice of Tlaxcala ruled on the appeal filed by Keren's defense, overturning the conviction and ordering her immediate release. Although a detailed analysis of this ruling falls outside the scope of this research, it is important to highlight how adopting a gender perspective in this case resulted in the original ruling being criticized for failing to consider Keren's conditions of vulnerability, while also casting doubt on the possibility of her active participation in the crime in view of her health conditions:

> In this ruling, the authority concluded that the corresponding analysis would be conducted from a gender perspective, and in reviewing and evaluating the evidence for acquittal and the defendant's preliminary statement, her conditions of vulnerability were examined and granted the corresponding legal value they deserved.[61]

Judging with a gender perspective is no small thing. Keren was unfairly imprisoned for more than nine years and could hardly ever see her daughter. But this is not an isolated case. Keren's story is the story of many other women who, like her, are imprisoned for crimes they did not commit or for extremely harsh sentences handed down by a system that has been unable to identify particular conditions of vulnerability, discrimination and violence that are commonplace in the lives of these women. Since the 16th century, justice has been depicted as blindfolded, denoting that distinctions between people should not be made. However, what this article has shown is that justice is far from being delivered in the same way for everyone: the law has a marked male-oriented bias, and this has produced an androcentric system that considers (and judges) men and women differently. If we want to portray justice without a blindfold, it is necessary to perceive and understand the specific conditions women experience to ensure that the system respects all of their rights. This is precisely what the push to incorporate a gender perspective in access to justice aspires to achieve. It could mean the difference between a life in prison or a life of freedom for Keren and so many other women.

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