

## Firearms without frontiers. Baja California, Mexico case study (2013-2020)

## Armas de fuego sin frontera. El caso de Baja California, México (2013-2020)

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### Abstract

This research aims to analyze firearms trafficking from the United States to Mexico and its correlation with homicidal violence in the border state of Baja California during 2013-2020. The methodology is inductive as it observes and registers the available data on weapon seizure. It is also exploratory because firearms trafficking has remained a subject of public discussion. However, it has been little analyzed theoretically from the perspective of the design and implementation of public policy. The results suggest that legal loopholes in Mexico's legal firearms control framework encourage organized crime to traffic weapons, generating spirals of violence in territories such as Baja California. There are limitations in the availability of information, but the theoretical perspective allows the research hypothesis to be developed and tested.

Keywords: firearms, organized crime, institutions, firearms trafficking, Mexico, United States of America.

### Resumen

El objetivo de la investigación es analizar el tráfico de armas de fuego de Estados Unidos hacia México y su correlación con la violencia homicida en el estado fronterizo de Baja California en el periodo 2013-2020. La metodología es inductiva debido a que observa y registra la información disponible de la incautación de armas. También es exploratoria porque el tráfico de armas de fuego se ha mantenido en la discusión pública pero poco se ha analizado desde la perspectiva teórica del diseño de la agenda e implementación de las políticas públicas. Los resultados plantean que las lagunas en el marco normativo del control de armas de fuego en México incentivan oportunidades para que la delincuencia organizada trafique armas generando espirales de violencia en territorios como Baja

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California. Existen limitaciones en la disponibilidad de información, pero la perspectiva teórica utilizada permite desarrollar y comprobar la hipótesis de la investigación.

Palabras clave: armas de fuego, delincuencia organizada, instituciones, tráfico de armas, México, Estados Unidos.

## Introduction

The phenomenon of arms trafficking is one of the main challenges facing governments globally due to its implications for security policies. The Global Study on Firearms Trafficking reports that, between 2016 and 2017, more than 500 000 firearms were seized in eighty countries. However, the reported figures may be only a part of the total magnitude of the problem due to underreporting in the timely and efficient detection of small-scale trafficking of firearms. It should be noted that, in Latin America, 75% of homicides in the region involve a firearm (Oficina de las Naciones Unidas contra la Droga y el Delito [UNODC], 2020, pp. 14-19; Goodwin, 2020).

This state of affairs shows that the transfer of weapons poses a challenge for designing and implementing public policies in nation states. Mexico has the highest number of seized rifles of any country, and the rate of gun crimes more than doubled from 13.6 per 100 000 inhabitants in 2015 to 29.6 in 2019 (Institute for Economics Peace [IEP], 2020, p. 4; UNODC, 2020, p. 14). The above has resulted in spirals of unusual violence in strategic regions such as Baja California. The importance of this territory located in the northwest of Mexico lies not only in its border with the United States but also in the fact that it is a state that has been characterized by migratory flows both internally and internationally. Between 2015 and 2020, 211 416 people came to live in Baja California. In that same period, 26 600 people left the state to live in another country, of whom 92 out of every 100 went to the United States (Instituto Nacional de Estadística y Geografía [Inegi], 2021a). The state has also been strategic for organized crime groups trafficking narcotics, people, drugs, and firearms.

This work aims to analyze the trafficking of firearms from the United States to Mexico and its correlation with homicidal violence in the northwest of the country, specifically Baja California. The hypothesis posits that loopholes in the institutional design and policy implementation of the Federal Firearms and Explosives Law (*Ley Federal de Armas de Fuego y Explosivos*, LFAFE) in Mexico incentivize opportunities for organized crime to traffic firearms into Mexico, which generates spirals of violence in strategic territories such as Baja California. Likewise, the governmental narrative and the systemic agenda in Mexico have blamed the U.S. government for the ease of access to firearms without accepting responsibility for the flaws in the design of the firearms policy.

The article is divided into four sections. The first section presents the theoretical references for designing the agenda and implementation of public policies. The second part analyzes the design of the Federal Law on Firearms and Explosives and the National Code of Criminal Procedures (*Código Nacional de Procedimientos Penales*) to identify loopholes, as well as the actors involved in their implementation. Through graphs and maps, the third section presents the regional and national consequences

of firearms trafficking in Baja California. It also presents the challenges faced by the Mexican State and the region of Baja California in the face of the firearms phenomenon. The last section contains the conclusions.

## Methodology

The study focuses on the state of Baja California in the 2013-2020 period, that is, the administration of Governor Francisco Vega de Lamadrid (2013-2019), and the first year of the Jaime Bonilla Valdez administration (2019-2021). The analysis is inductive because it starts from the observation and registration—through tables, graphs, and maps—of the available information on the seizure of firearms in the country. It also compares and analyzes the consequences of intentional homicides related to the availability of illegal weapons. The above makes it possible to present the level of violence in the border region of Baja California, Mexico, and California, United States, in order to emphasize—from the theoretical approach of public policy—the institutional forces needed to contain homicidal violence in each of the regions involved in arms trafficking.

The article is exploratory because firearms trafficking has remained a subject of public discussion. However, little has been analyzed from the theoretical perspective of the design and implementation of public policies. Furthermore, the lack of information and transparency reflects the importance of investigating the issue because the firearms problem is not only part of the criminal economy but is also a transnational phenomenon that governments, through public policies, have to confront.

The sources of information are qualitative, quantitative, and cartographic, and come from information requests available on the portal of the Ministry of National Defense (*Secretaría de la Defensa Nacional*, Sedena), the Federal Chamber of Deputies in Mexico, the Attorney General's Office of the State of Baja California (*Fiscalía General del Estado de Baja California*, FGEBC), the Executive Secretariat of the National Public Security System (*Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública*, SESNSP), the National Institute of Statistics and Geography (*Instituto Nacional de Estadística y Geografía*, Inegi), the National Urban Public Safety Survey (*Encuesta Nacional de Seguridad Pública Urbana*, ENSU), government reports at the federal and local levels, academic reports, and reports from specialized civil society organizations in Mexico and the United States, as well as newspaper and periodical sources.

## Institutions matter. Public agenda design and policy implementation

The design of the public agenda generally attracts considerable public attention and is perceived as falling within the purview of one of the governmental areas (Cobb et al., 1976, p. 127). Ortega Pérez and Ruiz Seisdedos (2005, p. 117) mention that the problem is on the public agenda to the extent that the public authorities consider it

a situation in which action must be taken. Likewise, the establishment of the public agenda has been related to the performance of the media, since it is argued that it is the media that set the agenda (McCombs & Shaw, 1972, pp. 176-187; Beltrán & Cinta, 1998, pp. 295-327; Andrews & Caren, 2010, pp. 841-866; Tamayo & Carrillo Barroso, 2005, pp. 658-681; Henry & Gordon, 2001, pp. 157-177). This is important due to the inevitable link between public agenda and public policies since the former plays a determining role in the design of the latter.

In the case of Mexico, the issue of firearms, their consequences in the context of homicidal violence in the country, their relationship with organized crime, and the bilateral relationship with the United States due to arms regulation have not necessarily unified an agenda that affects public policy so as to effectively address the phenomenon of arms trafficking (Déziga, 2020; Osorio, 2020; González et al., 2017, pp. 2861-2872; Coss Noguera, 2005). One explanation for the above is what Cobb and Elder propose: the existence of two types of agendas, the systemic and the institutional. The former refers to all the issues perceived by the political community as deserving the attention of the public and of the governmental authority. The second is defined as the series of items explicitly singled out for active consideration by decision-makers (1972, pp. 85-86).

This dichotomy occurs because the political process may not be so open as to allow all issues to attract political attention. The agenda-setting process may be biased and favor certain cases and interests (Parsons, 2007, p. 118). In other words, since the agenda takes place as a result of the expansion of an issue from an interested and informed public, one cannot ignore the strongly political character that arises among governmental and non-governmental actors involved in the political game of agenda building since, as mentioned above, they seek to position their interests in the public discussion (Ortega Pérez & Ruiz Seisdedos, 2005, pp. 123-124; Parsons, 2007, p. 159).

This variability leads to the fact that those who control the institutions are the ones who, within the complexity of the public policy process, decide, according to the degree of pressure received, which issues will reach the public agenda. The above has already been pointed out by Schattscheider, who states that “All forms of political organization are biased in favor of the exploitation of certain types of conflict, and the suppression of others, since organization means the mobilization of biases” (cited in Parson, 2007, p. 157). More specifically,

Institutional arrangements or structures that enable or inhibit participants, times, and forms of participation; they determine the set of actors that have the authority and capacity to bring an issue of interest—regardless of its origin—to the stage of processing. (Casar & Maldonado, 2010, p. 227)

Another challenge faced by public policies is their implementation, particularly in the face of a problem such as arms trafficking, especially since policies take place not only in national political systems but also in a global system (Parsons, 2007, p. 263). There are issues on the national policy agenda that are linked to international problems, such as economic welfare, drugs, firearms trafficking, and the environment;

the interaction of nation states is broader; nation states have less control of the agenda; changes may encompass other issues and problems on the agenda; the public policy agenda may be global, but decision making and implementation are rooted in the national realm (McGrew & Lewis, 1992, p. 317).

The above, especially concerning firearms control, relates to the large number of governmental actors involved not only in shaping the agenda, such as legislative chambers, government, administration and bureaucracy, interest groups, political parties, and think tanks, but also with the non-governmental actors who are for and against the free carrying of firearms. Among these are sections of Mexican society prone to the free carrying of weapons in their vehicles or businesses, as well as civil organizations that are against any proposal in favor of the right of citizens to carry firearms (Centro de Estudios Sociales y de Opinión Pública [CESOP], 2016, p. 7; Imco Staff, 2016).<sup>1</sup> Likewise, among these non-governmental actors is organized crime. This criminal element has a marked transnational dimension, a high capacity for adaptation, and a strong specialization in specific areas of illegal markets, one of which is firearms trafficking (Rojas Aravena, 2008, pp. 97-98). This presence of organized crime, according to Andreas, is largely due to the inevitability of the liberalization of international markets (2004, pp. 641-652), which, along with illegal markets, has meant great challenges for fragile nation states, which in turn must define the public agenda to implement policies to address problems such as homicidal violence related to firearms trafficking in their territories.

The institutional fragility alluded to and used by organized crime is characterized by high levels of political violence; recent major changes in its political institutions; a significant degree of the use of state force in domestic political affairs; the important political roles played by the police in day-to-day relationships with citizens; important political conflicts over the ideology to be used to organize the state; lack of a clear, explicit and functioning hierarchy of political authority; high degree of state control over the media; the existence of an urban middle class that is proportionally small concerning the rest of the population (Buzan, 1988, pp. 20-21).

It is important to consider the above because the implementation of policies is influenced by the strength of a State and its institutions, and the interests of the different actors involved. That means that public policies are not fixed but, instead, variables that change, especially in their implementation, over time (Méndez Martínez, 2015, p. 131; Medellín Torres, 2004, pp. 5-56). The above is independent of whether the authority is the one who decides which policy will be implemented. For this reason, and as Merino states, if an organization has scarce resources and is obliged by the regulatory framework to carry out procedures derived from policies as diverse as they

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<sup>1</sup> According to the Security and Citizen Participation survey conducted by the Chamber of Deputies in 2016, 47% of Mexicans are in favor of carrying guns in their vehicles or having them in their businesses. On the other hand, civil organizations that have spoken out against free access to weapons by citizens are: Cauce Ciudadano; Causa en Común; Consejo Cívico de Instituciones de Nuevo León A. C.; Instituto Mexicano para Competitividad A. C.; Instituto para la Seguridad y la Democracia, A. C.; México Evalúa, Centro de Análisis de Políticas Públicas, A. C.; México, ¿Cómo Vamos?

are complex, it will not be able to fulfill its purposes or, at least, it will not do so with the same efficiency (Merino, 2016, p. 3). This can be seen in the design of public policy to address firearms trafficking in Mexico and its repercussions at the national level and on the border between the United States and the northwestern region of Mexico, specifically in Baja California.

## Regulatory analysis of the policy on arms in Mexico

In 1972, President Luis Echeverría Álvarez (1970-1976) declared that the Federal Firearms and Explosives Law (LFAFE) and its regulations would be enacted to reinforce collective security in the context of “[...] the activity of certain groups that sought to create a climate of anxiety through assaults, kidnappings, and other terrorist tactics” (Cámara de Diputados, 2006, p. 73). It is important to mention this because, until the 1980s, organized crime did not figure as a non-governmental actor that influenced the public agenda of federal administrations. However, despite the governmental narrative, this did not mean that organized crime did not have a presence in the national territory with the same degree of qualitative violence for which it is currently known (Astorga, 2015, pp. 27-108; Lajous & Piccato, 2018).

When organized crime dedicated to drug trafficking began to figure on the public agenda—at the same time as the country’s economic liberalization in the 1980s—the Mexican State revealed a lack of regulatory and territorial control in the face of a growing criminal phenomenon. This is alluded to in Article 4 of the LFAFE, which states that the Sedena should have control of firearms in the country through the Federal Arms Registry (Cámara de Diputados, 2021c, p. 1). However, according to the information requests available on the Sedena website, the institution only began to count firearms in 1990, eighteen years after the entry into force of the public policy (Sedena, 2014a).

From the theoretical perspective used here, the fact that the implementation of a policy may be quite biased and favor certain problems and interests leads to unintended consequences—for example, the consolidation of the structures of criminal groups—and may mean that the actors involved in its implementation do not necessarily agree with the objectives of the policy. This is alluded to because the LFAFE stipulates in Articles 2 and 3 that in addition to the President of the Republic, the Ministry of the Interior and Sedena, the authorities of the states, Mexico City, and municipalities are also responsible for implementing the law (Cámara de Diputados, 2021c, p. 1).

However, the heads of the Sedena have accused governors, municipalities, and prosecutors of a lack of coordination and commitment to implement the policy. The above is due to the lack of control over the weapons used by police forces in the states and municipalities, loss of weapons, and unaccounted-for cartridge shortages (Flores, 2020; Adame, 2021). During the 2006-2012 federal administration, the Secretary of National Defense, Guillermo Galván, declared that the governors had

little control over the weapons under their charge. He stated that they had “found weapons that were never purchased or received by the different states, and they are all AK-47s, M15s, M16s, and there is no way of knowing how these weapons arrived” (Coss Noguera, 2005, p. 14).

In 2005, it was estimated that there were approximately 4 492 692 weapons in the country, and it was also reported that there was duplication of data and incomplete records that make it difficult to know with certainty how many weapons are circulating in the country (Coss Noguera, 2005, p. 13). Emphasis is placed on subnational actors because organized crime had not been on the national public agenda since the enactment of the LFAFE. As mentioned in previous paragraphs, this was because the decentralization of political power shifted many of the problems onto the agenda of subnational governments. Accordingly, the governors—at the same time that the country was undergoing economic liberalization and transition to democracy—consolidated their authoritarian enclaves, which included political control and organized crime in their territories (Gibson, 2007, pp. 168-169; Gervasoni, 2011, p. 584; Hernández, 2020, pp. 419-420).<sup>2</sup>

This type of political equilibrium at the subnational level caused non-governmental actors, such as organized crime, to resort to force, i.e., to firearms, in order to maintain their criminal activities—drug trafficking, human trafficking, extortion, kidnapping, and money laundering, among others. Hence, it is important to investigate the impact of institutional fragility on firearms control in Mexico and how organized crime has benefited from it. At first, the lack of transparency in the management of information and the data available for 2013 show a country with widespread availability of firearms, see Table 1.

When considering the 2005 estimates and the 2013 figures, it should be noted that these firearms shown in Table 1 are legally registered and protected by Article 10 of the Political Constitution of the United Mexican States, which states that it is a constitutional guarantee for legal residents—Mexicans and foreigners—to have access to and possession in their homes of one or more firearms, including those of different calibers, as long as they are not reserved for the exclusive use of the military.

Article 10. The inhabitants of the United Mexican States have the right to possess arms in their domicile, for their security and legitimate defense, except for those prohibited by federal law and those reserved for the exclusive use of the permanent Armed Forces and the reserve corps. The federal law [...] will determine [...] the cases, conditions, requirements, and places where the inhabitants will be allowed to carry arms. (Cámara de Diputados, 2021b)

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<sup>2</sup> In 2011, the former governor of Nuevo León, Sócrates Rizzo (1991-1996), stated:

[...] the violence of organized crime appeared in the country when the agreements of the PRI federal governments with the drug traffickers, in which they established transit routes and limited other areas, disappeared. I do not know how other governments have solved it, but there was control and there was a strong state and a strong president and a strong Attorney General's Office and there was tight control of the Army and then somehow, they said “you go through here, you go through here, but don't touch these places”; something happened. (APRO, 2015)

**Table 1. Weapons registered for home protection by state 2013**

State	Firearms serialized as A*	Firearms serialized as F**
Aguascalientes	11 638	108
Baja California	30 402	578
Baja California Sur	11 901	195
Campeche	27 876	244
Chiapas	32 786	963
Chihuahua	60 475	1 480
Coahuila	31 052	429
Colima	25 099	336
Mexico City	134 069	42 220
Durango	49 474	333
State of Mexico	99 309	24 692
Guanajuato	58 131	875
Guerrero	106 234	2 639
Hidalgo	40 802	1 150
Jalisco	98 405	4 888
Michoacán	109 163	1 104
Morelos	24 724	1 341
Nayarit	27 212	94
Nuevo León	49 270	2 807
Oaxaca	70 646	1 861
Puebla	45 204	2 093
Querétaro	21 477	853
Quintana Roo	18 354	335
San Luis Potosí	22 694	430
Sinaloa	69 041	351
Sonora	32 469	262
Tabasco	23 850	538
Tamaulipas	66 645	345
Tlaxcala	15 617	454
Veracruz	74 411	2 479
Yucatán	44 913	448
Zacatecas	23 674	248
Subtotal	1 557 017	97 173
<b>Total</b>	<b>1 654 190</b>	

\* Initial weapons registration.

\*\* Registration of a new weapon acquired at the Weapons and Ammunition Commercialization Directorate (DCAM) of the Secretariat of National Defense.

Source: Secretariat of National Defense, request for information, number 0000700026614 (Sedena, 2014b)

Secondly, beyond the large number of legal firearms registered in the country and the institutional incapacity to control them, little is known about illegal arms trafficking in the national territory. Generally, estimates are made concerning the number of firearms entering the country. However, it is possible to have a preliminary outline of the impact of this type of firearms because, in the 2013-2020 period, there were 191 784 intentional homicides of which, on average, 65.86% were committed with firearms—in 2020, 70% of intentional homicides in the country were related to firearms (Inegi, 2020; SESNSP, 2021).

### *Guns, homicidal violence, and the importance of institutions*

This context of homicidal violence goes hand in hand with the institutional fragility of the Mexican State, which makes it unable to contain arms trafficking at its borders. The above is mentioned for two reasons: 1) In the systemic agenda, the discussion of homicidal violence caused by illegal weapons generally focuses on the bilateral relationship between Mexico and the United States. The governmental narrative has made public its concern about U.S. laws that allow the purchase and sale of weapons, many of which end up being trafficked and strengthening organized crime groups in Mexico (Caño, 2010; Ortega & Mack, 2019). In this way, it has sought to hold the United States solely responsible for the consequences of arms trafficking, but without addressing the legal loopholes at the national level that have ultimately contributed to an increase in homicidal violence and the empowerment of organized crime in Mexico. 2) This refers to the incentives or regulatory loopholes found in Mexican legislation that allow organized crime to profit from the inconsistencies between the LFAFE and the National Code of Criminal Procedures (*Código Nacional de Procedimientos Penales*, CNPP) in its two recent reforms of 2016 and 2021 (see Table 2).

As public policy, the LFAFE is clear in involving the actors involved in its implementation. It is important to emphasize the role played by the prosecutor's offices and public ministries at the sub-national level (Article 77). Generally, the Sedena secures the weapons and the people who possess them and presents them to the local authorities, who in turn must prove, according to the investigations, that they are subject to Articles 83, 83 Bis, and 84. However, in 2017, according to Ángel (2017), 86% of those charged, more than 5 000, were released because Article 167 of the CNPP stated that the possession of weapons did not warrant pretrial detention and the prosecutors—according to Article 321—in their investigations did not prove that those charged posed a danger.

Table 2. Legislation to address arms trafficking in Mexico

Federal Firearms and Explosives Law	National Code of Criminal Procedures 2016	National Code of Criminal Procedures 2021
<p>Article 17.</p> <p>Any person who acquires one or more weapons is obliged to declare it to the Secretary of National Defense within thirty days. The declaration shall be made in writing, indicating the brand, caliber, model, and registration number, if any.</p>	<p>Article 167. Causes of origin</p> <p>The magistrate judge, within the scope of their competence, will order preventive detention informally in cases of <b>organized crime</b>, intentional homicide, rape, kidnapping, human trafficking, crimes committed with violent means such as weapons and explosives, as well as serious crimes determined by law against the security of the Nation, the free development of the personality and health.</p>	<p>Article 167. Causes of origin</p> <p>The magistrate judge, within the scope of their competence, will order preventive detention informally in the following cases [...] <b>organized crime</b>, intentional homicide, femicide [...] <b>crimes committed with violent means such as weapons and explosives, crimes involving firearms and explosives for the exclusive use of the Army, Navy, and Air Force, as well as serious crimes determined by law against the security of the nation</b> [...]</p>
<p>Article 77.</p> <p>The following will be sanctioned with a fine of ten to one hundred days (of minimum wage):</p> <p>I. Those who possess weapons without having declared them to the Secretary of National Defense;</p> <p>II. [...]</p> <p>To impose the administrative sanctions referred to in this article, <b>the case shall be directed to the local administrative authority responsible for punishing police infractions.</b></p>	<p>Article 241. Seizure of firearms or explosives</p> <p>When firearms or explosives are seized, the Secretary of National Defense, as well as the other authorities established by the applicable legal provisions, will be informed.</p>	<p>Article 241. Seizure of firearms or explosives</p> <p>When firearms or explosives are seized, the Secretary of National Defense, as well as the other authorities established by the applicable legal provisions, will be informed.</p>

<p>Article 83.</p> <p>Whoever, without the corresponding permit, carries a weapon for the exclusive use of the Army, Navy, or Air Force, shall be sanctioned as follows:</p> <p>I. With imprisonment of three months to one year and a fine of one to ten days, in the case of weapons included in paragraph <i>i</i>) of Article 11 of this Law;</p> <p>II. With imprisonment from three to ten years and a fine of fifty to two hundred days, in the case of weapons included in paragraphs <i>a</i>) and <i>b</i>) of Article 11 of this Law, and</p> <p>III. With a prison term of four to fifteen years and a fine of one hundred to five hundred days, in the case of any of the other weapons included in Article 11 of this Law.</p> <p>If two or more weapons are carried, the corresponding penalty shall be increased by up to two-thirds.</p> <p><b>When three or more persons, members of a group, carry weapons among those included in Section III of this Article, the penalty corresponding to each shall be doubled.</b></p>	<p>Article 321. Deadline for supplementary investigation</p> <p>The Public Prosecutor must conclude the supplementary <b>investigation</b> within the term indicated by the magistrate judge, which <b>may not exceed two months in the case of crimes whose maximum penalty does not exceed two years of imprisonment, or six months if the maximum penalty exceeds such term</b> or may exhaust such investigation before its expiration.</p>	<p>Article 321. Deadline for supplementary investigation</p> <p>The Public Prosecutor must conclude the supplementary investigation within the term indicated by the magistrate judge, which may not exceed two months in the case of crimes whose maximum penalty does not exceed two years of imprisonment, or six months if the maximum penalty exceeds such term or may exhaust such investigation before its expiration.</p>
<p>Article 83 Bis.</p> <p>Any person who, without the corresponding permit, collects weapons shall be punished as follows:</p> <p>I. With imprisonment from two to nine years and a fine of ten to three hundred days, if the weapons are included in paragraphs <i>a</i>) or <i>b</i>) of Article 11 of this Law. In the case of paragraph <i>i</i>) of the same article, a prison term of one to three years and a fine of five to fifteen days shall be imposed; and</p> <p>II. With imprisonment from five to thirty years and a fine of one hundred to five hundred days, if it is any other of the weapons included in Article 11 of this Law.</p> <p>Stockpiling should be understood as the possession of more than five weapons for the exclusive use of the Army, Navy, and Air Force.</p> <p><b>To apply the sanction for crimes of carrying or stockpiling weapons, the Judge shall consider the activity in which the perpetrator engages, their background, and the circumstances under which they were detained.</b></p>	<p>Article 327. Dismissal</p> <p>The Public Prosecutor's Office, the defendant, or their defense counsel may request the court to dismiss a case [...]</p> <p>The dismissal will proceed when:</p> <p><b>V. Once the investigation has been completed, the Public Prosecutor's Office considers that it does not have sufficient evidence to file an indictment;</b></p>	<p>Article 327. Dismissal</p> <p>The Public Prosecutor's Office, the defendant, or their defense counsel may request the court to dismiss a case [...]</p> <p>The dismissal will proceed when:</p> <p><b>V. Once the investigation has been completed, the Public Prosecutor's Office considers that it does not have sufficient evidence to file an indictment;</b></p>

<p>Article 84.</p> <p>A prison term of five to thirty years and a fine of twenty to five hundred days shall be imposed:</p> <p>I. Whoever participates in the clandestine introduction into the national territory of arms, ammunition, cartridges, explosives, and materials for the exclusive use of the Army, Navy, and Air Force or subject to control, per this Law.</p>		
<p>Article 84 Bis.</p> <p>Whoever introduces clandestinely into the national territory firearms that are not reserved for the use of the Army, Navy, and Air Force shall be sentenced to three to ten years of imprisonment.</p> <p><b>A resident abroad who for the first time introduces a single weapon referred to in the preceding paragraph shall only be subject to an administrative penalty of a fine of two hundred days [...]</b></p>		

Source: created by the authors based on the *Federal Weapons and Explosives Law* (2021) and the National Code of Criminal Procedures (2016 and 2021, Cámara de Diputados, 2021a, 2021c)

The above was due in part to the entry into force in 2016 of the New Criminal Justice System—in which the CNPP updates were ratified— of an oral and adversarial nature, which, due to the lack of economic and human resources, as well as the lack of training of some operators of the security and justice system, represented the phenomenon of a “revolving door”<sup>3</sup> for those allegedly guilty of carrying firearms (México Evalúa, 2019; Ingram et al., 2011, pp. 4-135; Semple, 2020). In 2021, the CNPP was amended to modify, among others, Article 167 to include preventive imprisonment for trafficking and possession of weapons for the exclusive use of the Army. Even so, the Public Prosecutor’s Office and public ministries are the ones who must carry out their investigations, as a second process, to prove the alleged culprit as a member of organized crime, in order to complement the judicial investigation and form the case.

Equally, the problem of State control over weapons is focused not only on individuals who possess weapons for the exclusive use of the Army but also on citizens who possess other weapons, according to Article 17 of the LFAFE. This article stipulates the obligation to report the possession of a firearm to the Sedena within thirty days; if this is not done, Article 77 establishes fines of ten to one hundred days. The paradox of the sanction is that, given the increase in the rate of crimes committed with firearms in the country, these two articles were reformed in 1985 and 1998, respectively. According to the Belisario Domínguez Institute, these types of regulatory loopholes have allowed the country to have 1.7 million illegal firearms

<sup>3</sup> The term “revolving door” refers to the freedom obtained by persons arrested for crimes established in the Criminal Code, since the loopholes in the legislation allow the accused to evade the corresponding punishment.

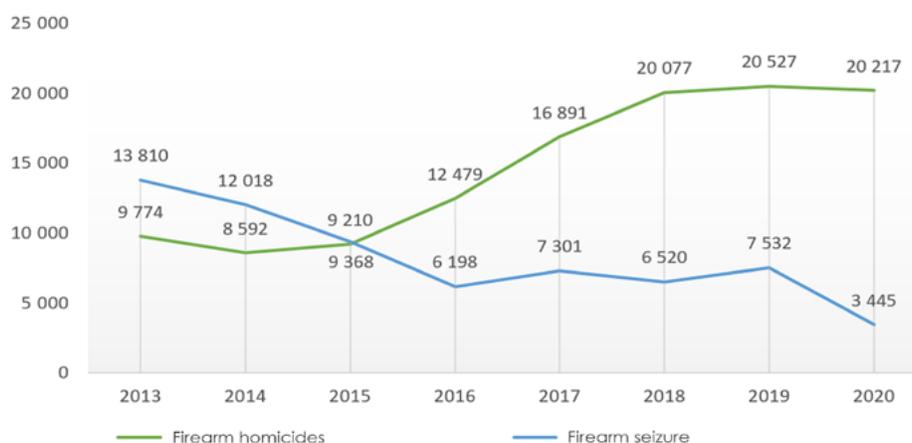
in possession of private individuals (Aguirre Quezada, 2020, p. 3). The above has led to events such as those that occurred in Torreón, Coahuila, where, in January 2020, a minor murdered teachers and classmates with arms for the exclusive use of the Army, which were the property of his grandfather and which he did not have a permit to carry (Salinas Maldonado, 2020).

Another important point to consider when analyzing the LFAFE is found in Article 84 Bis—reformed in 1998—which only provides for administrative sanctions and fines for foreign citizens who bring weapons into the country for the first time. This would help explain organized crime’s profitability in incentivizing small-scale trafficking of weapons. In 2019, the Sedena estimated that through this *modus operandi*, 200 000 weapons entered the country per year, an average of 567 weapons per day, 70% of them through the northern border (Nájar, 2019). The information available suggests that 95% of the people entering the country with handguns—80% of seizures are related to this type of revolvers—, long guns, or cartridges are U.S. citizens. These people receive 100 USD to 2 000 USD from organized crime groups for bullets or automatic rifles (González, 2021; Medina, 2020, p. 185; UNODC, 2020, p.10). These loopholes call for an explanation and analysis of the impact of gun regulation in the country.

## Baja California, regional consequences of arms without borders

One of the most important national consequences of the lack of gun control in Mexico is that, in 2020, 70% of intentional homicides in the country were related to firearms. This statistic shows that, although the systemic agenda keeps issues such as insecurity, homicidal violence, and the presence of firearms in the country under discussion, the Mexican State has shown fragility in its inability to implement a gun policy. This assertion is made because the seizure of weapons in the country has not been very successful, and, on the other hand, the number of homicides by firearms has increased (see Figure 1).

**Figure 1. Firearms homicides and firearms seizures nationwide 2013-2020**



Source: created by the authors with data from the Executive Secretariat of the National Public Security System 2013-2020; and the 2 *Informe de Gobierno (2019-2020)* of President Andrés Manuel López Obrador (Presidencia de la República, 2020).

In addition to the drop in firearms seizures in Mexico, illegal weapons have entered the country. In the 2009-2019 period, the Sedena estimated the illegal entry of 2 012 573 firearms into the country (Aguirre Quezada, 2020, p. 3). This large number of weapons has necessarily impacted the consolidation of another of the non-governmental actors involved in the politics of gun control in the country, organized crime. This national situation also has impacted at a regional level, such as the northwest zone, specifically Baja California, which, according to the Mexico 2020 Peace Index, is the state that consecutively in 2019 and 2020 has been the least peaceful in the country (IEP, 2020, p. 4). The above makes sense considering that homicidal violence in the state is related to arms trafficking and disputes between organized crime groups, which has generated spirals of violence during the 2013-2019 and 2019-2021 state administrations (see Figure 2).

Figure 2. Firearms seizures and homicides in Baja California (2013-2020)



Source: created by the authors with data from the *Primer Informe de Gobierno de Francisco Arturo Vega de Lamadrid* (Comité de Planeación para el Desarrollo del Estado [Coplade], 2014); *2 Informe de Gobierno (2019-2020)* of President Andres Manuel Lopez Obrador (Presidencia de la República, 2020); *Anuario estadístico y geográfico por entidad federativa* (Inegi, 2019); and data on the incidence of common crime by state, systematized by the SESNSP

Figure 2 presents the impact of arms in Baja California and how strategic this border territory, which has the most dynamic border in the country, is for organized crime.<sup>4</sup> It should be noted that according to the Ministry of Foreign Affairs (Secretaría de Relaciones Exteriores, SRE), Baja California—after Tamaulipas and Sonora—is the state through which the greatest number of long arms enter the country. The busiest crossings are Tijuana, Ensenada, and La Rumorosa (Medina, 2020, pp. 184-185). In the case of Mexicali, the capital of Baja California, the increased violence, especially in

<sup>4</sup> For example, in 2019, the number of crossings in San Isidro was 7 300 000 people and 25 550 000 cars (Notimex, 2019).

the Mexicali Valley, during 2020 and 2021, has converted the Mexicali customs office into a strategic point for the transfer of weapons (López Ponce, 2020). As stated in the theoretical references, the implementation of a public policy involves a series of actors, and at border crossings, customs are essential for implementing the LFAFE. However, in April 2021, it was announced that the Financial Intelligence Unit had filed a criminal complaint against the administrators of the Tijuana, Mexicali, and Tecate customs offices for corruption by allowing the illegal entry of merchandise, fuel, drugs, and weapons into Mexico (Álvarez, 2021).

In this context and given the evident failure in the implementation of public policy, the analysis of firearms trafficking in Mexico and its regional impacts, such as the case of Baja California, must necessarily emphasize what the U.S. and Mexican governments have done to address the phenomenon, especially when the narrative of the systemic agenda seems to be inclined to blame U.S. laws and gun shops for the ease of access to weapons. The above is mentioned because in Mexico, for two decades and four federal administrations (2000-2006; 2006-2012; 2012-2018 and the current one 2018-2024), concern has been expressed to the United States about the illegal trafficking of U.S. weapons into the country, which has strengthened organized crime (Ortega & Mack, 2019).

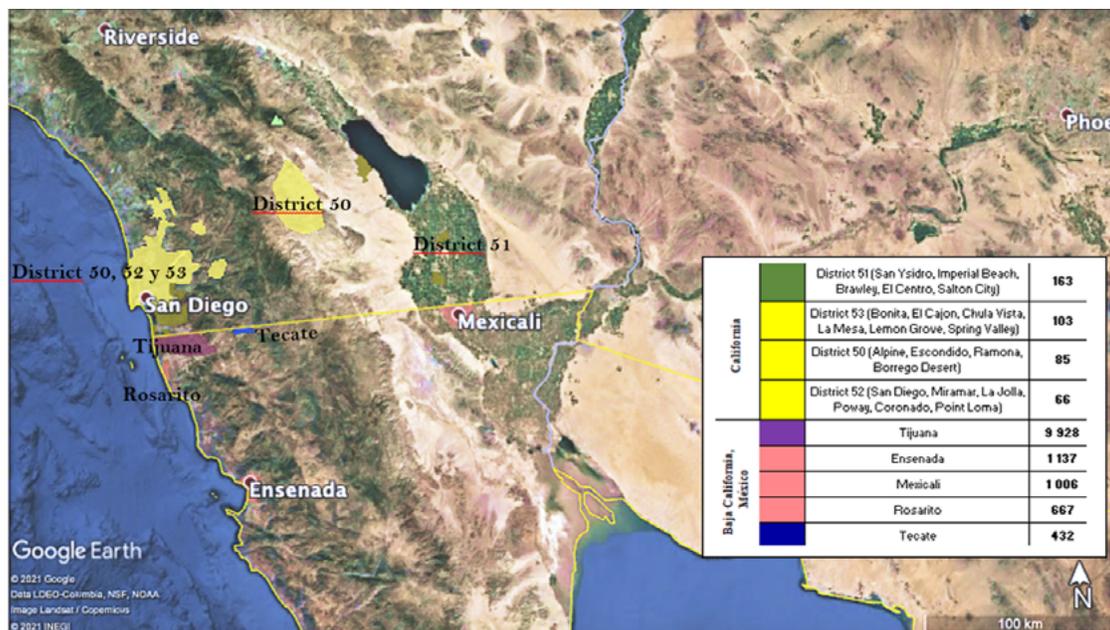
The above has resulted in binational work to address different border issues where arms trafficking has not necessarily been the most determining factor in the relationship between countries:

- In 2005 the Secure Borders operation was signed, which had an immigration control focus because it organized four entities operating border security: Customs and Border Protection; Immigration and Customs Enforcement; Citizenship and Immigration Services; and the Coast Guard (Cámara de Comercio México-Estados Unidos, 2011, p. 5).
- In 2008, the United States and Mexico signed the Merida Initiative Letter of Agreement, which was intended to recognize the shared responsibilities of the United States and Mexico to counter the drug-fueled violence that threatened citizens on both sides of the border (Ocampomi, 2021).
- In 2009, the Merida Initiative involved binational operations such as “Fast and Furious”, in which weapons were introduced into Mexico as decoys to be traced and identify arms trafficking routes. This initiative failed with the loss of 2 500 weapons (U.S. Department of Justice, 2012).
- In 2019, operation “Frozen” was carried out, which was designed to curb arms trafficking through seizures at inspection points at border crossings such as San Diego-Tijuana, El Paso-Ciudad Juárez, Laredo-Nuevo Laredo, McAllen-Reynosa, and Brownsville-Matamoros (Sánchez, 2019).

It is important to mention that the U.S. government has focused on other interests—for example, the fight against terrorism—and has reduced the issue of firearms trafficking to operations. From a theoretical perspective, this could be explained by the strength of its institutional structures, i.e., homicidal violence by firearms and related to organized crime does not represent a challenge to territorial control in its border cities with Baja California. Specifically, in the 2013-2020 period in districts 50 (Alpine, Escondido, Ramona, Borrego Desert), 51 (San Ysidro, Imperial Beach,

Brawley, El Centro, Salton City), 52 (San Diego, Miramar, La Jolla, Poway, Coronado, Point Loma) and 53 (Bonita, El Cajon, Chula Vista, La Mesa, Lemon Grove, Spring Valley), firearms-related homicidal violence has been much lower compared to that in cities such as Tijuana, Mexicali, Tecate, Rosarito, and Ensenada (see Figure 3).

**Figure 3. Firearms-related intentional homicides in border cities in California, United States, and Baja California, Mexico, 2013-2020**



Source: created by the authors with state and municipal crime incidence data systematized by the State Security and Investigation Guard (*Guardia Estatal de Seguridad e Investigación*, GESI, 2021) and the Gun Violence Archive CA Stats of the civil organization Gun Violence Archive (GVA, 2021)

Thus, even though the responsibility of the United States and its legislation for the sale of weapons is decisive, Mexican governments have not assumed responsibility for their own legislation. At this point, it is important to highlight that the response of the state government in the two administrations—Francisco Vega de Lamadrid (2013-2019) and Jaime Bonilla Valdez (2019-2021)—covered by the study has been to adhere to the Weapons Exchange and Voluntary Disarmament Campaign implemented by the Sedena and stipulated in Article 5 of the LFAFE (Redacción/El Vigía, 2019; Editorial Staff, 2019). In other words, the impact of firearms circulating illegally in the state has been minimized by the actors involved in implementing the LFAFE.

Thus, the effect of arms trafficking in a territory such as Baja California can be observed in the number of intentional homicides and the perception of insecurity in the state. In the two periods of state government under study—and with the information available in the National Urban Public Safety Survey (Inegi, 2021b)—between 2016 and 2020, Tijuana and Mexicali, the two main border cities in Baja California, have

had an average perception of insecurity of 71.92% and 68.2%, respectively. Likewise, in 2018 Ensenada had a rate of 46.6 homicides per 100 000 inhabitants. In 2020 this rate reached 90.58, which placed it, along with Tijuana, among the top six of the 50 most violent cities globally (Seguridad Justicia y Paz, 2021).

These facts show that, because of the inability to contain the insecurity and violence generated by firearms, the short-, medium-, and long-term repercussions have been on society because the perception of insecurity is also present in community withdrawal and fragmentation of the social fabric. This can be seen in the lack of confidence in the effectiveness of the government in two of the strategic cities for the crossing of firearms: Tijuana with 12.08% and Mexicali with 21.98% (Inegi, 2021b). In the end, a phenomenon such as firearms trafficking reveals that an unattended problem only grows, which leads to other problems that further complicate the response capacity of federal, state, and local governments.

Thus, firearms trafficking and the lack of control of firearms show the challenges faced by the Mexican State to counteract the implications of homicidal violence in regions such as Baja California. However, to understand the challenges that must be faced, it is important not to ignore the theoretical approaches that point out that organized crime—as the main beneficiary of firearms trafficking—is a criminal agent with a marked transnational dimension. This means, for example, that organized crime traffics firearms from North America to other sub-regions such as South America and Central America (UNODC, 2020, p. 9).

This adaptability of organized crime to traffic firearms from one region to another has led to national agendas being overtaken by a global phenomenon in which—as in the case of Mexico—the institutional fragility of nation states plays a determining role in the success of the implementation of arms control policies. Likewise, the characteristics shared by these subregions have been homicidal violence, the perception of insecurity, the fragile rule of law, and the flight of people from their places of origin due to the lack of security and employment, among others. Nevertheless, there are areas of opportunity that States such as Mexico can address to strengthen their institutions in the face of problems that have grown and not only threaten, but plague regions such as Baja California. Thus, in the face of the challenges posed by firearms trafficking, the following is proposed:

- Given the increase in the illegal trafficking of firearms by foreign citizens or dual nationals, the regulatory framework of Mexico should reform Article 84 Bis to increase the costs for those who decide to commit the crime of trafficking in firearms or firearms parts.
- Given the lack of control over the registration of illegal firearms throughout the country, and especially at the subnational level, it would be appropriate for the Mexican State, in coordination with, for example, the UN and the Organization of American States (OAS), to create an external auditing body to establish mechanisms to assist subnational governments in tracing and registering illegal firearms in their territories.
- Although this research did not focus on homemade weapons due to lack of information, journalistic sources increasingly report on this type of firearms. For this reason, the regulatory framework in Mexico should be updated and

provide for the containment of this phenomenon in the face of the wave of violence and the ease of manufacture in clandestine laboratories.

- It is necessary to reform the precepts—from Article 10, which has to do with the right to possess weapons, Article 17, which obliges the registration of weapons within 30 days, and the penalties found in Article 77—to make it more difficult for citizens to possess weapons, and to increase the costs of not complying with firearms registrations.

Although these proposals for the regulatory framework do not necessarily imply that the firearms policy in Mexico will solve firearms trafficking, they reinstate it in the systemic and institutional agenda. It is also pertinent to consider that a large part of the responsibility lies in the LFAFE and in the legal loopholes that have allowed organized crime to consolidate its criminal structures and make them profitable through access to firearms. For this reason, without a solid and robust framework, it is difficult for the operations of the Sedena, Customs, and state and local governments to have a permanent impact on the seizure of firearms. By having a robust institutional structure, a subnational government such as Baja California could have better resources to deal with weapons trafficking, especially when considering what is happening in the neighboring state of California and its struggle to limit free access to firearms by its citizens. In other words, after hundreds of shootings in the United States due to pro-gun legislation, where multiple victims lost their lives in the 1980s, California, by and large, is making an effort to remain a pro-gun control state (McGreevy, 2021). The above is an impressive feat on the part of the state authorities due to the regulations that guarantee the civil right to bear arms through the Second Amendment (*Bill of Rights*, 1689) and federal laws (for example, *National Firearms Act*, *Gun Control Act of 1968*, *Protection of Lawful Commerce in Arms Act*, among others).

The above indeed seems to show that there is a discrepancy since, on the one hand, it is limited to strengthening the narrative of firearms possession, but, on the other hand, it maintains the massive consumption of weapons through fairs and the modest payment of taxes. In fact, in 2021, the Federal Judicial Branch<sup>5</sup> authorized long firearms in the state (France24, 2021). Even so, there are several lawsuits related to access to ammunition for this type of weaponry, along with the SB-264 bill that seeks to prohibit the entry of firearms fair promoters to public spaces under county authority (California Legislative Information, 2021).

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<sup>5</sup> Federal Judge Roger Benítez of the U.S. District Court for the District of San Diego, California.

## Conclusions

This work analyzed the trafficking of firearms from the United States to Mexico and the correlation with homicidal violence in the country's northwest region, specifically Baja California. It was observed that the fewer firearms seizures in Baja California, the greater the criminal violence associated with them. In order to test the hypothesis put forward in the study, the arms policy of the country was analyzed, specifically the Federal Firearms and Explosives Law (LFAFE) and the National Code of Criminal Procedures (CNPP), to identify the legal loopholes that have been used by criminal groups and all those individuals dedicated to trafficking arms in the country.

Likewise, the historical lack of interest in the seizure of firearms in the country has been demonstrated. According to the theoretical references and the institutional agenda, this could be due to the lack of institutional capacity to deal with crime and the negligence of the authorities responsible for firearms seizures. An example of this is subnational governments or customs and their reluctance to implement public policy within the framework of the LFAFE and the CNPP. As a result of the above, there is a lack of updated and reliable data on firearms, while we also have a highly armed and deeply insecure society. This crime is beginning to be studied in detail in different Mexican regions because it is key to the disarmament and pacification of the country.

It is important to make clear that the concern of federal administrations about the problem of illicit weapons has not been enough. Hence the position of the Federal Government 2018-2024, through the Ministry of Foreign Affairs, is to be applauded for the filing of the lawsuit against gun manufacturers and sellers—Smith & Wesson Brands Inc, Barrett Firearms Manufacturing Inc, Beretta Holdings Spa, Beretta U.S.A. Corp, Century International Arms Inc, Colt's Manufacturing Company LLC, Glock Ges. M.B.H., Glock Inc., Sturm, Ruger & Co. Inc., Witmer Public Safety Group Inc., Interstate Arms—seeking redress for lax U.S. firearms regulation. The future of the lawsuit is uncertain; however, it marks a milestone for the public agenda and the fight against insecurity related to organized crime activity. It is also a step in the search for comprehensive solutions, i.e., for a review of gun legislation in the United States and the LFAFE in Mexico. Ideally, according to the institutional agenda, the authorities should dot the i's and cross the t's to be precise and efficient in their daily work. A problem such as this requires the technical support of international organizations, Mexican academia, and specialized civil society organizations.

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