

Effective law enforcement and human security in Mexico

Felipe Carlos **Betancourt Higareda**

 <https://orcid.org/0000-0001-9908-9305>

Universidad Autónoma del Estado de México. México

Email address: fcbetancourth@uaemex.mx

Jorge **Olvera García**

 <https://orcid.org/0000-0002-2607-8987>

Universidad Autónoma del Estado de México. México

Email address: jolverag@uaemex.mx

Hiram Raúl **Piña Libien**

 <https://orcid.org/0000-0002-5745-6880>

Universidad Autónoma del Estado de México. México

Email address: hrpl@uaemex.mx

Alejandra **Flores Martínez**

 <https://orcid.org/0000-0002-2121-9445>

Universidad Autónoma del Estado de México. México

Email address: afloresm@uaemex.mx

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Abstract: Mexico is experiencing a level of violence and crime that threatens human rights and prevents the attainment of human security and human development. Effective law enforcement should not only be approached as a worthy ideal, or something only desirable or convenient, but as a human right, since it is focused on achieving the greatest protection of the most fundamental rights of the people: life, freedom, integrity, property, among others. This article develops this argument by examining legal doctrines on the subject and proposes the centrality of effective law enforcement to strengthen not only the rule of law, but individual security as well as other types of security. It thus highlights the importance of a better state handling of law enforcement in order to achieve peace, order, and prosperity in Mexico. Finally, this article also provides a description of the various means of challenge and appeal which are available in Mexico by which the human right to effective law enforcement may be obtained in order to achieve a minimum threshold of public security that could effectively guarantee human security and freedom.

Keywords: Mexico, effective law enforcement, human security, human rights, rule of law.

Resumen: México experimenta un contexto de crimen y violencia despiadada que amenaza seriamente la exigibilidad de los derechos humanos, así como la consecución de su seguridad y desarrollo humanos. En este sentido, la aplicación eficiente del Derecho en materia de seguridad pública no debería ser considerado solamente un ideal digno, o algo solamente deseable o conveniente para este país, sino más bien como un derecho humano básico, ya que se enfoca en la mayor y mejor protección de los bienes jurídicos más fundamentales de todas las personas: vida, libertad, integridad, propiedad, entre otros. El presente artículo desarrolla este argumento detalladamente y, a través de una reflexión teórica y doctrinal en la materia, promueve la centralidad de la aplicación efectiva del Derecho en materia de seguridad pública para fortalecer no solamente el Estado de Derecho, sino especialmente la seguridad humana, sus subtipos y demás tipos de seguridad para el Estado Constitucional Mexicano. Por último, el presente artículo proporciona una descripción de los diferentes medios de impugnación, válidos en México, a través de los cuales el derecho humano a una aplicación efectiva del Derecho en materia de seguridad pública puede ser exigido, con el objetivo de garantizar un umbral de seguridad humana y de libertad en este país.

Palabras clave: México, seguridad pública eficiente, seguridad humana, derechos humanos, Estado de derecho.

Summary: I. *Introduction.* II. *The Dignity and the Personality of the Individual as Foundations for the Recognition of Human Rights in Mexico.* III. *The Constitutional State and Fundamental Rights in Mexico.* IV. *Good Governance and Human Security in Mexico.* V. *Effective Law Enforcement and Human Security in Mexico.* VI. *Democratic Governance and The Human Right to Effective Law Enforcement in Mexico.* VII. *The Justiciability in Mexico of the Human Right to Effective Law Enforcement.* VIII. *Relevant Policies for Improving Law Enforcement in Mexico.* IX. *Autonomous Constitutional Bodies and Effective Law Enforcement in Mexico.* X. *Institutional Reform and Effective Law Enforcement in Mexico.* XI. *Conclusions.* XII. *References.*

I. Introduction

Humanitarian crises in Mexico have been triggered by the inability of the state to uphold the rule of law. Indeed, the most serious human rights abuses in this country derive from a widespread culture of impunity. Nevertheless, there has been little reflection in Mexico about the importance of effective law enforcement in advancing not only the rule of law but in guaranteeing human security in general.

Many scholars have focused on the importance of law enforcement agencies respecting the rights of suspected criminals,¹ yet very few have reflected on the

¹ For example, just to name a few of these scholars, Gustavo Flores-Macías and Jessica Zarkin, *The Consequences of Militarized Policing for Human Rights: Evidence from Mexico*, 57(3), *Comp. Pol. St.* 387, 418 (2024); Juan Masullo & Davide Morisi, *The Human Costs of the War on Drugs. Attitudes*

link between an effective law enforcement system and the attainment of human security in Mexico.² The present article is intended to fill this gap in the academic scholarship and argues that effective law enforcement should not only be regarded as a human right, but also one of highest priorities necessary to ensure a minimum threshold of security. Effective law enforcement should contribute to improving the level of human security in Mexico in addition to respecting the human rights of persons suspected and convicted of criminal activity. For this reason, effective law enforcement also constitutes a key factor in improving the rule of law in this country.

Besides, in terms of the conceptual relationship between law enforcement and human security, it has been argued³ that the ultimate purpose of law enforcement should be to preserve those social conditions which allow all human rights to be properly respected, protected, defended, promoted, and exercised. Preventive, investigative and prosecutorial agencies are of critical importance in modern societies, since their failures could have a negative impact not only on their specific law enforcement tasks, but also on the level of human security. These agencies are key to the advancement of political stability in any country, which is why it is important to promote their effectiveness. By improving their performance, these agencies strengthen the most foundational pillar of any democratic and free society: a solid rule of law.

Unfortunately, law enforcement agencies in Mexico have actually become part of the human rights problem,⁴ and the militarization of law enforcement tasks has exacerbated this type of abuse. Some of the main deficiencies of municipal, state, and federal preventive and prosecutorial agencies in Mexico which inhibit effective enforcement of the law are: a) fragmentation, b) inadequate training, c) lack of career development, d) lack of transparency and accountability, and, e) an authoritarian design model.⁵ Additionally, there is

Towards Militarization of Security in Mexico, 0(0), *Comp. Pol. St.* 1, 34 (2023); Pierre Gaussens and Carolina Jasso González, *Militarization of Public Security and Violation of Human Rights in Mexico (2000-2020)*, 15, *The A. Of H. R. J.* 26, 50 (2020).

² Among these scholars we found Martin Flegl and Eva Selene Hernández Gress, *A two – stage Data Envelopment Analysis model for investigating the efficiency of the public security in Mexico*, 6 *Dec. A. Jo.* 100, 181 (2023), who have highlighted the need for quality empirical research to design suitable strategies to improve the effectiveness of preventive and investigative agencies in overcoming the increasingly violent episodes in Mexico.

³ For more on this purpose of law enforcement, see, for example, Pera, *Dominic*, *Drug Violence and Public (In)Security: Mexico's Federal Police and Human Rights Abuse* 5 (Sept. 17, 2015) (unpublished undergraduate dissertation, University of San Diego).

⁴ For a more comprehensive treatment of this human rights problem, see, for example, Guillermo Zepeda Lecuona, *Criminal Investigation and the Subversion of the Principles of the Justice System in Mexico*, in *REFORMING THE ADMINISTRATION OF JUSTICE IN MEXICO* 133,152 (Wayne A. Cornelius & David A. Shirk eds., 2007).

⁵ For more on these deficiencies, see, for example, ENRIQUE THOTH VERDEJA MÁRQUEZ, *LA SOLUCIÓN A LA IMPUNIDAD E INSEGURIDAD PÚBLICA EN MÉXICO* 32 (ACASEPP, 2015). In fact, in addressing these deficiencies this author proposes the following actions to improve the performance of preventive and prosecutorial agencies in Mexico: a) To implement a police development sys-

confusion in Mexico regarding the formal scope of responsibility of the various law enforcement agencies since Mexico's "national security agenda has blended with its public security goals",⁶ causing uncertainty regarding which responsibilities the different agencies are to fulfill in their struggle against organized crime.

The lack of checks and balances, control mechanisms, and proper accountability within the law enforcement system in Mexico has also contributed significantly to human rights violations in the country. Furthermore, "Mexico's police institutions and model are the root causes of violence, corruption and insecurity",⁷ which means that the authoritarian culture of this country frequently induces law enforcement agencies to operate arbitrarily and perform deficiently. For this reason, Mexico needs better democratic checks over these agencies and more community participation demanding greater responsiveness, transparency and accountability so that their legal goods are more effectively protected.⁸

In this regard, Nicoline Ambe⁹ highlights the importance of the strength of the rule of law in effectively advancing human rights. She also acknowledges that the independence of the judiciary constitutes an essential condition for solidifying the rule of law since it prevents any other branch of government from enforcing the law arbitrarily. Unfortunately, both preventive and prosecutorial agencies in Mexico frequently perpetrate some of the most serious human rights abuses against both ordinary people as well as suspected criminals, mainly due to their cooptation by, and submission to, local political bosses who control them to further their own political agendas or to conceal their own collusion with organized crime.¹⁰

What clearly explains the exponential rise in the levels of violence and human rights abuses in Mexico are the ruthless clashes that regularly take place between rival criminal organizations, as well as those which occur between

tem based on procedures of career development, professionalization, certification and of disciplinary regime, b) To ensure the job stability and security of policemen, c) to employ proper admission, permanence and promotion profiles, based on the hierarchy and function of personnel, c) to implement promotion systems of policemen based on their performance, professionalization and dignification, to encourage their career development and their social recognition.

⁶ 6 Dominic Pera, *supra* note 3, p. 15; for more insight on this issue, see also Sigrid Artz, *The Militarization of the Procuraduría General de La República: Risks for Mexican Democracy*, in REFORMING THE ADMINISTRATION OF JUSTICE IN MEXICO 153, 174 (University of Notre Dame Press, 2007).

⁷ Dominic Pera, *supra* note 3, p. 18.

⁸ For more on the link between democratic governance, the rule of law and the public security crisis in Mexico, see, for example, David A. Shirk, *Criminal Justice Reform in Mexico: An Overview*, III(2) *Mex. L. Rev.* 191, 198 (2011).

⁹ Nicoline Ambe, *A Legal Analysis of the Domestic Enforceability of International Human Rights Law. The Rule of Law Imperative*, 47 *UNBJL*, 110, 111 (1998).

¹⁰ For an in depth analysis of the current reality, see, for example, JOHN BAILEY, *Crimen e Impunidad. Las trampas de la seguridad en México* 30 (Penguin House Mondadori, 2014). Professor Bailey, for example, even claims that weak 'formal' institutions in Mexico have been overridden by strong 'informal' institutions (or practices), such as clientelism, which have seriously undermined the rule of law and civic culture in this country.

these organizations and the state's various security agencies. These encounters often have the appearance of actual warfare since these agencies, and the Mexican army itself, have been encouraged to destroy these criminal organizations at all costs.¹¹ Despite the constitutional amendments initiated by President Felipe Calderón and approved by the Mexican Congress during his *sexenio* (2006-2012), which were designed to provide increased resources and improve the performance of the preventive and prosecutorial agencies, as well as the judiciary and penitentiary authorities in combatting organized crime, human rights abuses have sharply increased. In fact, Mexican civil society has experienced an increasing level of ruthlessness from criminal organizations. This makes effective law enforcement more necessary than ever to guarantee a minimum threshold of human security in Mexico.¹²

Today, effective law enforcement is a critical prerequisite for the proper defense and protection of fundamental rights in Mexico. This is especially true because of the humanitarian crises resulting from the ruthless violence of organized crime in different regions of the country. Thus, law enforcement agencies must be a key focal point of any comprehensive institutional framework intended to defend and protect human rights.¹³

However, even the most effective law enforcement system can succumb to arbitrariness if Mexican authorities do not use the state apparatus properly and consistently to enforce the law and instead use it to advance their own interests. The law enforcement system in Mexico should demonstrate the active involve-

¹¹ For a more comprehensive perspective on the reality in Mexico, see, for example, Felbab-Brown, Vanda, MEXICO'S OUT OF CONTROL CRIMINAL MARKET 1-29 (2019) (unpublished manuscript, on file with the Foreign policy at Brookings working paper). Professor Felbab-Brown, for example, claims that 'over the past two decades, criminal violence in Mexico has become highly intense, diversified, and popularized, while the deterrence capacity of Mexican law enforcement remains critically low. The outcome is an ever more complex, multipolar, and out of control criminal market that generates deleterious effects on Mexican society and makes it highly challenging for the Mexican state to respond effectively' (p. 2).

¹² Some interesting proposals regarding the reform of law enforcement in Mexico, come, for example, from David A. Shirk, *Future Directions for Police and Public Security in Mexico*, in *Police and Public Security in Mexico* 225,257 (Robert A. Donnelly & David A. Shirk eds., 2009). On the other hand, Professor Shirk, affirms that 'Mexico's public security agencies are ill-equipped, police lack professional training and preparation, their mandates are incongruent with the challenges they face, and there are inadequate mechanisms to ensure effective public oversight of police conduct. These institutional weaknesses in the public security apparatus suggest that Mexicans are not inherently lawless -at least no more so than people in the United States or elsewhere. Rather, in the absence of effective law enforcement, criminal impunity reigns.' (p. 28).

¹³ See, for example, Laura Isela Díaz Bernal, et. al., *La capacitación como medida de prevención de violaciones a derechos humanos por los elementos de seguridad pública en el Estado de México*, 12 *Dignitas*, 81, 130 (2018). These authors highlight the importance of permanent training of police officers in human rights in the performance of their duties so that they may be able to develop their abilities to such a degree that they effectively protect Mexican society from abuse by public security authorities as well as non-state actors.

ment of inclusive political institutions, or even consensus democracy,¹⁴ since this type of law enforcement presupposes effective accountability and control mechanisms. This accountability is especially important regarding the authorities in charge of the national system of public security in order to ensure that they execute their responsibilities lawfully and with the goal of strengthening the rule of law.

Effective law enforcement requires the ongoing training of police officers. This has, unfortunately, been largely disrupted, and even corrupted, by a deep clientelist culture that has neutralized its potential positive effects.¹⁵ This has occurred primarily due to powerful political bosses (or *caciques*) having coopted the preventive and prosecutorial agencies at the local, state, and even national level. As a result, impunity has increased astronomically and has become the most serious challenge to effectively advancing human security in Mexico.¹⁶ Through appropriate sanctions, Mexican authorities should ordinarily be able to guarantee the respect for human rights which are fundamental for protecting human dignity.

The endemic impunity in this country has been generated primarily by the shortcomings of preventive and prosecutorial agencies in performing their public responsibilities. Since the amendment to the Mexican Constitution in 2011 regarding the presumption of innocence, prosecutorial agencies cannot request the imprisonment of suspected criminals until they have been proven guilty and been sentenced. Despite representing some progress with the respect to human rights, the 2011 amendment has, nevertheless, been particularly challenging for Mexico, since law enforcement agencies do not currently possess sufficient human, technological, logistical, and budgetary resources, nor the trained personnel, necessary to successfully investigate every crime. Often, their personnel have not been sufficiently trained in the prosecution of crime and the formal processes designed to achieve this goal have become extremely slow to be implemented.¹⁷

¹⁴ For more on what an inclusive political institution entails, see DARON ACEMOGLU & JAMES A. ROBINSON, *Why Nations Fail?* (Crown Publishers ed., 2013).

¹⁵ For a thoroughly treatment of how this clientelist culture has worked in Mexico, see, for example, JOHN BAILEY, *supra*, note 10, p. 38. Professor Bailey, for example, claims that the efforts in Mexico to prioritize citizen security above political parties' own agendas have historically failed.

¹⁶ See *Id.* at p. 35. In fact, according to Professor John Bailey, Mexico has been hijacked by a security trap through which crime, violence, corruption, and impunity constantly reinforce each other and override any attempt to construct ethical democratic governance in this country.

¹⁷ This type of situation is of particular concern in Mexico according to Buscaglia, *Edgardo* & Jan Van Dijk, *Controlling Organized Crime and Corruption in The Public Sector* 12 (2005) (unpublished manuscript, on file with eScholarship.org, University of California at Berkeley); procedural complexity in criminal prosecutions and trials has worked as a barrier to fair access to court services, and to justice in general, in countries like Mexico.

II. The Dignity and the Personality of the Individual as Foundations for the Recognition of Human Rights in Mexico

Why should human rights be universally respected? It has frequently been argued that the main reason justifying this universal respect relies on the inherent *dignity* of the human being, on his or her dignity as a *person*, endowed, either potentially or in fact, with reason and free will, who, by his mere existence possesses a transcendental purpose.¹⁸ It has also been claimed that all people, no matter their accidental circumstances, share only *one* nature and the *same* dignity as their fellows, thus, in principle, each is entitled to this right as a result of this shared nature: that each individual shall be secure in the enjoyment of their freedom and happiness.¹⁹

The positive concession of legal recognition to every individual constituted a crucial step toward the official recognition of individual human rights since such recognition can only occur once every individual is recognized as a person under the law.²⁰ Consequently, formal legal recognition is granted to every person, whether their capacity to exercise their rights may be *potential* (as in the case of children) or *actual* (as in the case of mature people). Therefore, through the legal recognition of each individual the law concedes every human being certain fundamental rights, but also subjects him or her to basic duties, so that through these rights and duties each may determine his or her own destiny.

Legal recognition demands each person take full responsibility for her or his actions and constitutes the basic premise for attributing legal consequences for one's acts, in terms of rewards or sanctions. Thus people are officially acknowledged as their own masters, as "someone" rather than "something"; who are able to decide by themselves their own fate, thus distinguishing them from other entities that have recently been granted certain rights, but who are not masters over themselves (such as animals, the earth, the environment, etc.). This official acknowledgement of the individual person as his own master entitles him to the

¹⁸ For more on the dignity of the human being and the formal recognition of human rights, see, for example, Jürgen Habermas, *The concept of human dignity and the realistic utopia of human rights*, 55(64) *Diánoia*, 3, 25 (2010). It is possible to claim that by possessing reason and free will the individual person becomes not only a rational being but an owner of his own actions, which distinguishes him from other living beings, even from those with larger brains, such as dolphins or whales, which have not displayed the same rational intelligence and free will as human beings have.

¹⁹ For a more profound philosophical reflection on the purpose of the human being, see, for example, ARISTOTLE, *THE NICHOMACHEAN ETHICS*, (Oxford University Press, 1980). Based on this classic philosopher, age, sex, ethnic origin, religion, nationality, skin color, culture, etc., constitute accidental circumstances of the human person, which do not override his substance, or purpose, of his life.

²⁰ For a more profound reflection on legal personality and its impact on the formal recognition of human rights, see, for example, Luis Castillo-Córdova, *La Persona Jurídica como Titular de Derechos Fundamentales*, 167 *Actualidad Jurídica* 125,134 (2007). This author even claims that 'to the extent that only the human person can be subject of law, we speak of legal personality'.

enjoyment of civil liberties and political rights, without which he could not be authentically free within the political community.

Consequently, effective law enforcement should be regarded as a fundamental right in Mexico since it is only by this means that preventive and prosecutorial agencies can competently protect these basic legal rights. Hence, a more effective law enforcement system would contribute to the enhancement of freedom in this country, and through this, Mexicans could productively pursue the democratic governance of their country. Social, economic, and cultural rights, such as the right to education, dignified housing, access to health care, meaningful work, social security, adequate food, etc., are also important since they allow people to more effectively pursue their own personal and communal happiness.²¹

III. The Constitutional State and Fundamental Rights in Mexico

The Mexican constitutional state recognizes certain fundamental rights as legitimate limitations on the exercise of political power. In principle, this recognition aims to prevent the arbitrary exercise of power by executive, legislative and judicial authorities so that these fundamental rights, as well as other civil liberties and political rights, may be effectively protected from autocratic governance.²² Within the Mexican constitutional state, political power has been formally limited through basic principles, namely, the principles of constitutionality and of legality of authorities' acts.²³ The exercise of this power is also subject to the fundamental duties of transparency and accountability.

In our case study, Mexico, there are additional constitutional principles that authorities must follow which are designed to protect, defend, and promote hu-

²¹ For a thorough study on the impact of social, economic, and cultural rights on the welfare of a political community, see, for example, HEARTLEY DEAN, *SOCIAL RIGHTS AND HUMAN WELFARE* 3-4 (Routledge, 2015). For example, this author argues that the term social rights may be used in a normative sense to refer more generally to societal objectives and the levels of social protection that ought to be mutually guaranteed within all human societies (p. 3).

²² See, for example, IGNACIO BURGOA, *LAS GARANTÍAS INDIVIDUALES* 162-187 (Porrúa, 1994). Professor Burgoa used the term "individual guarantees" rather than "fundamental rights" when referring to these limitations, and explains that these "guarantees" mean the "different types of securities and protections in favor of the governed within a constitutional state, that is, within a structured and organized political entity in which government decisions are subjected to pre established rules based on the constitutional order" (p. 162). He subsequently argues that these constitutional guarantees "are equivalent to the legally positive consecration of human rights since they are invested of obligatoriness and imperativeness so that they shall be respected by state authorities" (p. 187).

²³ For a more comprehensive explanation of these principles, see, for example, IGNACIO BURGOA, *EL JUICIO DE AMPARO* 149-158 (Porrúa, 1994). Professor Burgoa explained, for example, the scope of both principles when they are combined, by arguing that the "amparo writ" not only protects the Mexican constitutional order, but it also extends its protection to secondary laws that are in accordance with this order.

man rights such as the *pro persona* principle and the principles of progressivity, universality, inalienability, interdependence, and indivisibility of these rights.²⁴ Another central characteristic of the Mexican constitutional state is the formal system of checks and balances incorporated into its presidential system of government, which is designed to ensure should not only good governance with respect to public policies and laws, but also to support the protection and defense of fundamental rights.²⁵ The formal goal of these checks and balances is to avoid the emergence of a tyrannical regime, that is, to impede the subjection of the entire Mexican political system to the arbitrary will of one individual or single branch of government.²⁶ Only when all fundamental rights are effectively protected in Mexico will civil liberties and political rights be exercised to their fullest extent throughout this country and human dignity be fully respected.²⁷

IV. Good Governance and Human Security in Mexico

As stated above, the protection of basic social, economic, health and cultural conditions necessary for living with dignity have become indispensable to guarantee human security within a constitutional state. This implies that a minimum threshold of human security must be guaranteed in order to encourage human development. Only through effective democratic governance it is possible to achieve these basic conditions, since, in principle, this form of governance im-

²⁴ For an in-depth reflection on these principles, see, for example, Hugo S. Ramírez García, *La Constitucionalización de la Persona: Un Marco de la Relación entre el estado de Derecho y los Derechos Humanos*, 47 *Cuestiones Constitucionales*, 370, 387 (2022).

²⁵ For a panoramic analysis of the relevance of these checks and balances in guaranteeing the respect, protection, and defense of human rights in Mexico, see, for example, Jorge Carpizo, *México: Poder Ejecutivo y Derechos Humanos, 1975-2005*, 126 *Boletín Mexicano de Derecho Comparado*, 1237, 1279 (2009). For example, to provide an “updated” account of the system of checks and balances within the Mexican presidential system of government, Professor Carpizo explains that many of the factors that had supported an autocratic regime in Mexico had disappeared or weakened by 2009. He also highlights the importance of the CNDH (the Mexican Human Rights Commission) in this system so that federal authorities can be better controlled and held accountable for human rights violations.

²⁶ For more on the relevance of suitable checks and balances to consolidate democracy in Mexico, see, for example, Laura Valencia Escamilla, *Equilibrio de Poderes, Cooperación y la Conformación de Gobiernos de Coalición en México*, 6(11) *Rev. Leg. de Est. Sociales y de Opinión Pública*, 7 (2013). Although Professor Valencia Escamilla also highlights that divided governments in Mexico, in which the executive and the legislative powers are in the hands of different political parties, lack a formal system of cooperation. Furthermore, she asserts that cooperation between political parties or coalitions of parties in Mexico does not take place because of programmatic coincidence, but on account of mutual conditions for electoral profit.

²⁷ For more on the relationship between fundamental rights and human dignity, see, for example, Francisco Javier Ansuátegui Roig, *Derechos Fundamentales y Dignidad Humana*, 10 *El Tiempo de los Derechos*, 3, 17 (2011). In reflecting on human dignity, Professor Ansuátegui asserts, for example, that ‘human dignity is the basic axiological reference of the system of rights that people are entitled to’.

plies deliberation and the implementation of sensible public policies that will effectively protect, defend, and promote all human rights.²⁸

In other words, good governance implies coherent steps are taken to ensure a minimum threshold of human security within the constitutional state. Although this intrinsic purpose of good governance has not been seriously disputed in legal scholarship, the appropriate means of achieving this threshold have been controversial in other social disciplines. For example, political science scholars have argued that enhancing certain specific aspects of democracy (such as public debate, political participation, transparency, accountability, responsiveness, rule of law, elections, etc.) would improve the ability of lawmakers and ordinary citizens to think about, discuss, and implement sensible policies that might improve the welfare, human security and human development of the people within the state.²⁹

In fact, the scholarly debate on human security has also been linked with the scholarly debate on human development.³⁰ Historically, it is possible to distinguish two broad routes that countries around the world have followed to promote human welfare (and human development). The first, led by the US and the West, is a free market economic system, mixed with some measure of social subsidiarity and social solidarity (or a welfare state). The second, currently led by China, North Korea and other countries, is the pursuit of a centralized economic system inspired by Marxist materialist thinking.³¹

²⁸ For the relevant evaluative criteria necessary to determine these policies, see for example, AMITAV ACHARYA, ET AL., *HUMAN SECURITY: FROM CONCEPT TO PRACTICE* 1-3 (World Scientific, 2011). These authors have proposed the HSIA (Human Security Impact Assessment) which they consider to be of a much broader scope than the EIA (Environmental Impact Assessment) since the HSIA includes in its measurement long-term political and social factors that could affect the achievement of human security in the respective constitutional state.

²⁹ For more on the effect of the quality of democracy on political decision-making processes within the constitutional state, see, for example, Larry Diamond & Leonardo Morlino, *The Quality of Democracy: An Overview*, 15(4) *Journal of Democracy*, 20-31387 (2004). In this regard, Professors Diamond and Morlino argue, for example, that a quality democracy 'will provide a context in which the whole citizenry can judge the government's performance through mechanisms such as elections, while governmental institutions and officials hold one another legally and constitutionally accountable as well (procedural quality)' (p. 22).

³⁰ See, for example, Alkire, Sabina, *A Conceptual Framework for Human Security* 1-52 (2003) (working paper, on file with the Centre for Research on Inequality, Human Security and Ethnicity, University of Oxford). Professor Alkire argues that human security and human development are both people centered, multisectoral and multidimensional: 'Human development provides the 'broad picture' long-term objective of human fulfilment within any society, whether it is rich or whether it is poor; whether composed of refugees or artisans or farmers. This broad objective is shared by human security although the human security approach pursues a narrower agenda.' (p. 36). Furthermore, she asserts that 'human security includes a strictly delimited subset of human development concerns (...), but it excludes much of human development as lying outside of its own mandate.' (p.36).

³¹ To obtain a more profound knowledge of the implications of both routes for the human development of multiple countries across the world see, for example, Acemoglu & Robinson, *supra* note 14, pp. 91-120.

Democratic governance implies that various controls function efficiently in the course of executive, legislative and judicial decision-making processes,³² for example: a) top-down accountability (through periodical elections), b) checks and balances (effective horizontal accountability), c) data access and transparency, d) the rule of law, e) equality and freedom, f) political participation, g) the public sphere (public debate and access to news media), etc. The goal of these controls is that laws, public policies, and judicial determinations be thoughtfully reached from an inclusive perspective, that is, a perspective based on what is beneficial for the entire community, which is the only one that can successfully advance human security and human development.

In this way, the different dimensions of a democratic regime should work effectively within the Mexican state so that legislative, executive and judicial authorities, and the society at large, may more easily achieve consensus or majority decisions (or majority opinions, as the case may be) regarding those laws, rulings and public policies that could effectively improve, not only human development, but also the various subdimensions of human security (e.g., food security, economic security, health security, environmental security, personal security, community security, and political security), as well as other pertinent types of security (e.g., citizen security, social security, public security, interior security, national security, international security, etc.). The proper functioning of the checks and balances within the Mexican presidential system of government ensure that the executive, legislative, and judicial powers do not disregard human rights, human security and human development in their public policies, laws and rulings. Consequently, the appropriate structural functioning of its democratic regime should become the starting point for advancing human security, human development and the respect for human rights within the Mexican constitutional state since a superior deliberative democracy could improve the quality of public policies aimed at enhancing the respect for fundamental rights as well as the effectiveness of the state apparatus, protect people from any type of threat to their existence or bodily integrity, and in foster their potential as rational beings.³³

³² See, for example, Diamond & Morlino, *supra* note 29, pp. 22-26. In this research paper, Professors Diamond and Morlino propose eight dimensions to measure the quality of any democratic regime: 'a) freedom, b) rule of law, c) vertical accountability, d) responsiveness, e) equality, f) participation, g) competition and h) horizontal accountability.' On the other hand, they also explain that 'at a minimum democracy requires: 1) universal, adult suffrage, 2) recurring free, competitive and fair elections; 3) more than one serious party; and 4) alternatives sources of information.'

³³ For more on the relevance of deliberative democracy on the quality of political decision-making within the constitutional state, see, for example, Nabaz Abdullan & Mohd Rahman, *The Use of Deliberative Democracy for Public Policy Making Process*, 5(3), *Pub. Pol. and Admn. Res.* 221, 231 (2015). Professors Abdullan and Rahman argue, for example, that public deliberation is the result of a quality democracy, that it legitimizes government decisions and maximizes the outcomes of public policies, and that there are several advantages of deliberative practices in public policy

Deficient democratic governance can become the most serious obstacle to safeguarding human rights in Mexico, including the human rights of access to justice and of due process of law, since without checks and balances, even the Mexican judicial power could easily manipulate its ruling in a way that avoids accountability for its decisions. To improve human security and human development in Mexico it is necessary to promote an extended civic culture that effectively protects, defends and respects human rights in everyday life, without the need for legal disputes. In other words, an extended civic culture would contribute to the enjoyment of human rights in ordinary life.³⁴ Furthermore, democratic governance also implies the pursuit of policies that can effectively promote the enjoyment of human rights in everyday life, especially through the standard decisions of administrative authorities. Good governance depends on expanding opportunities for citizen participation in executive, legislative and even judicial spheres (e.g., grand juries) so that the resulting laws or policies may be better oriented to the effective accomplishment of both human security and human development within the constitutional state.³⁵ Coherent policies that improve access to justice and guarantee due process of law will improve not only the rule of law but will increase the level of human security as well, since these fundamental rights have become essential to effectively defend, protect and advance all human rights, which are especially important in the context of the humanitarian crises that have resulted from the ruthlessness of organized crime.³⁶

making processes, among them, a reason-based discussion, a focused decision, and the facilitation of agreement on disputed preferences.

³⁴ For more on the importance of achieving a culture of respect for human rights to enhance human security within the constitutional state see, for example, Lloyd Axworthy, *Human Security and Global Governance: Putting People First*, 7(1) *Glob. Gov.* 19, 23 (2001). Professor Axworthy, explains, for example, that there is growing academic recognition that the protection of the people should be the principal concern of the security of any state, even above the protection of its national sovereignty. Even more, he affirms that 'human security today puts people first and recognizes that their safety is integral to the promotion and maintenance of international peace and security.'

³⁵ For more insight into the relationship between democratic governance and human rights, see, for example, Francisco Sagasti, *A human rights approach to democratic governance and development*, in *REALIZING THE RIGHT TO DEVELOPMENT. ESSAYS IN COMMEMORATION OF 25 YEARS OF THE UNITED NATIONS DECLARATION ON THE RIGHT TO DEVELOPMENT* 126, 128 (United Nations ed., 2013). Professor Sagasti explains that different values of democratic governance, such as 'participation, dialogue, consensus, transparency, accountability and the rule of law make the state more representative and capable of responding adequately to the concerns of its citizens.' (p.126).

³⁶ For more on the importance of the due process clause for defending and protecting human rights, see, for example, Gordon A. Christenson, *Using Human Rights Law to Inform Due Process and Equal Protection Analyses*, 52 *U. Cin. L. Rev.* 3, (1983). Professor Christenson, in discussing a precedent in the United States related to the exercise of the human right of due process to impede an arbitrary detention, stated that 'due process is an evolutionary concept that takes into account accepted notions of fairness.' Furthermore, he argues that 'a fundamental human right to be free from arbitrary detention exists'. As we can see, the due process clause constitutes an effective instrument to defend the people from abuses of power, thereby improving human security in any constitutional state.

V. Effective Law Enforcement and Human Security in Mexico

For these reasons, competent and effective law enforcement in Mexico should be recognized as a fundamental right, not only to successfully defend and protect the human rights of suspected, indicted, convicted and sentenced criminals, but also the victims of crimes and ordinary people, since this kind of law enforcement has become indispensable to prevent the disruption, disorder and even destruction of entire communities, especially that caused by non-state actors. Thus, effective and competent law enforcement constitutes a crucial means to advance human security within a constitutional state. There is a mutually dependent relationship between a functional law enforcement system and the level of human security in Mexico. Individuals cannot be protected, and human rights can hardly be enjoyed, unless the state apparatus implements preventive mechanisms that protect them from crime, investigative and prosecutorial strategies that discourage crime, judicial procedures that can efficiently resolve legal disputes, and penal systems designed to not only punish but to repair any damage.

The appropriate functioning of these five subdimensions (prevention, investigation, prosecution, judgment, and correction of criminal offenders) that encompass effective law enforcement is indispensable for guaranteeing the proper respect, protection, defense and promotion of all human rights in Mexico. As previously stated, this applies not only to those suspected, indicted, convicted and sentenced criminals, but to ordinary citizens and victims of crime who are regularly exposed to serious mental and physical harm, especially by non-state actors. Of course, protection of the human rights of people facing criminal investigation and prosecution is indispensable for achieving a fair criminal justice system, as Professor Ferrajoli would remind us.³⁷ Nevertheless, it is equally important that the Mexican state develop the capability of enforcing the law in a manner that also discourages any future criminal or unlawful behavior.

In other words, the robustness of law enforcement is critical for the overall strength of the rule of law in Mexico, and a solid rule of law is an essential precondition for peace, order, prosperity, and democracy, as well as human security and human development in this country. This is the reason why policies focused on improving the effectiveness of law enforcement are crucial in Mexico, since they could have a positive impact on the overall development, stability and internal security of this constitutional state.³⁸ Nevertheless, though crucial, effec-

³⁷ See, for example, LUIGI FERRAJOLI ET AL., *DERECHOS Y GARANTÍAS. LA LEY DEL MÁS DÉBIL* (Trotta, 1999).

³⁸ See, for example Tadbakhsh, Shahrbanou, *Human Security: Concepts and Implications* 5 (Sept. 2005) (unpublished manuscript, on file with Les Etudes du CERI, No. 117-118). To highlight the significance of effective law enforcement in achieving stability, national security, and human security within a constitutional state, Professor Tadbakhsh affirms that ‘the guarantee of national security no longer lay in military power, but in favorable social, political and economic conditions, the promotion of human development, and the protection of human rights.’ (p. 5).

tive law enforcement should be regarded as only one of several critical factors that could improve the state of human rights in Mexico. Other factors include the design of appropriate policies that guarantee social, economic, and cultural development, or as previously explained, more and better checks and balances within the Mexican presidential system of government to guarantee the proper level of accountability, transparency, and responsiveness of its authorities.

Without effective law enforcement, it is difficult to advance the rule of law and human security in this country. Therefore, one of the highest priorities of the Mexican government should be to improve systems for the prevention, investigation and prosecution of crimes, as well as the judicial and correctional systems, in such a way that all these dimensions of law enforcement might contribute to guaranteeing the appropriate protection of human rights. There is a growing academic debate focused on whether or not social, economic, and cultural rights should also be considered fundamental rights which could be guaranteed through redistributive policies.³⁹ Nevertheless, few scholars have openly argued in favor of a fundamental right to effective law enforcement, which should be regarded as more important in this country given the present context of humanitarian crisis (triggered by the ruthlessness of non-state actors), and since human security is a prerequisite to the enjoyment of any other rights.⁴⁰ In other words, before considering the expansion of human rights we should be more concerned about guaranteeing the most fundamental right of human security and ensuring a genuine rule of law.

From a sociological perspective, there is an ongoing tension within individuals between the quest for the common good and the pursuit of self-interest. If the pursuit of self-interest prevails, to the detriment of respecting the rights of others, then oppressive or extractive practices tend to expand which affect the overall peace, stability, order, and prosperity of the community, and thus, the level of human security and of human development. As a result, the first sensible policy needed to achieve effective law enforcement should be to establish a new program of civic education, from elementary school onward, which would foster civic virtue and make people more aware of the importance of behaving responsibly in society so that peace, stability, order, and prosperity may more easily be achieved. Indeed, if civic virtue is appropriately fostered throughout

³⁹ See, for example, HEARTLEY DEAN, *supra*, note 21; or Malcolm Langford, *The justiciability of social rights: From practice to theory*, in SOCIAL RIGHTS JURISPRUDENCE: EMERGING TRENDS IN INTERNATIONAL AND COMPARATIVE LAW, vol. 3, 4, (Cambridge, 2008). For example, Professor Langford asserts that 'it is arguable that one debate has been resolved, namely whether economic, social and cultural rights can be denied the status of human rights on the basis that they are not judicially enforceable – there is now too much evidence to the contrary.' (p. 4). And that this kind of evidence provides 'some answer to the critique that adjudicatory bodies lack the democratic legitimacy and institutional capacity to enforce such rights.' (p. 4).

⁴⁰ In support of this argument, see, for example, Article 2 of the *Ley General del Sistema Nacional de Seguridad Pública*, which explicitly states that the goal of public security in Mexico is to safeguard the integrity and the (fundamental) rights of people, as well as to preserve the freedoms and the public peace and order in the country.

Mexican society, a democratic form of government would not only be more feasible, but it would also demand more effective law enforcement. In fact, the expansion of civic virtue should aid Mexico considerably in overcoming its extreme social and economic inequalities since this could effectively restrain the exercise of oppressive political and economic practices which are usually the driving force behind these extreme inequalities and which are also reflected in higher public debt, lack of accountability, and political corruption.⁴¹

The weakness of the rule of law, which derives from the lack of civic virtue in society, has become convenient to the Mexican 'establishment' since corrupted politicians can get away with their attacks on preventive and prosecutorial agencies, and other autonomous constitutional bodies, which are then even less capable of effectively sanctioning unlawful or criminal behavior. Not surprisingly, the weakness of the rule of law is more common in autocratic regimes and in those countries that are experiencing processes of autocratization (which could be the case in Mexico), in which preventive and prosecutorial agencies, as well as independent auditing and review mechanisms, are deliberately kept weak or even deliberately conjoined with public corruption or organized crime.⁴² Therefore, one of the most significant policies that Mexico could enact to improve the rule of law and its transition to democracy should be to increase the degree of citizen responsibility towards the community. This kind of civic culture should foster not only an environment in which human rights are properly respected, protected, defended, and promoted, but an environment in which basic responsibilities towards individuals and the community at large may be fulfilled.

To improve human security and even human development in Mexico, it is crucial that people not only protect, defend and promote their fundamental rights, but that they fulfill their responsibilities towards their fellow citizens and the community at large. In fact, according to Beccaria, one of the main reasons for the imposition of legal sanctions and penalties is to awaken awareness in people regarding how their unlawful behavior can negatively impact the overall happiness of the community at large.⁴³ Consequently, law enforcement will be

⁴¹ For more on the importance of civic virtue in improving the general welfare of any country, see, for example, William A. Galston, *Civil Society, Civic Virtue, and Liberal Democracy*, 75(2) *Chi.-Kent L. Rev.* 603, 612 (2000). In this article Professor Galston argues, for example, that there is scientific evidence that 'stable intact families are the single best anti-poverty program,' that 'voluntary associations can serve as sites of resistance against tyranny and oppression,' and that these associations 'can foster the virtues that modern democratic societies need and can nourish the habits of civic engagement'.

⁴² In support of this argument see, for example, Buscaglia & Van Dijk, *supra* note 17, p. 2. In this article, these scholars test and prove the 'links between the growth of organized crime and that of corruption in the public sector in a large number of countries.' And they found that 'the two types of complex crime reinforce each other.'

⁴³ See, for example, Bernard E. Harcourt, *Beccaria's On Crimes and Punishments: A Mirror on the History of the Foundations of Modern Criminal Law*, in *FOUNDATIONAL TEXTS IN MODERN CRIMINAL LAW* 39,59 (MARKUS DUBBER, ED., 2014). In this article, Professor Harcourt explains

more effective when there is a widespread culture of social responsibility, solidarity, and subsidiarity which bolsters inclusive economic practices, as well as democratic values, within the system of government, such as transparency, accountability, and responsiveness to the legitimate requests of citizens.

On the other hand, if by the rule of law we also mean the rule of justice, then one could argue that there is no true rule of law (or true rule of justice) if people, apart from claiming their fundamental rights, are not willing to fulfil their basic duties toward other individuals or the community at large. Indeed, if we stop to reflect carefully, the enjoyment of human rights depends on the fulfilment of basic responsibilities in society, which means that each person has the fundamental right that every other member of society fulfill his or her basic obligations with regard to him or her. Otherwise it would not be possible to speak about a true rule of law (or true rule of justice) since this always implies an equilibrium between the enjoyment of rights and the fulfilment of duties.

Therefore, if individuals are focused merely on demanding the respect, protection, defense, and promotion of their own rights, but neglect the fulfillment of their basic duty of respecting the fundamental rights of other people, then the rule of law becomes increasingly weak. Instead, the law of the stronger shall become more decisive in social relationships, where the stronger is that group of people who are able to more forcefully demand the protection of their own rights, even if it would diminish the fundamental rights of others. The fulfillment of duties demands personal sacrifice, to provide others what they are entitled to, and even demands the practice of cardinal virtues, such as temperance and fortitude. Examples include the duty of working well and responsibly, or not overexploiting subordinates, etc. This is the reason why strengthening the rule of law in Mexico means to encourage the practice of not only civic virtues, but also moral virtues.⁴⁴ If moral virtues, but especially cardinal virtues (justice, prudence, fortitude, and temperance), are not sufficiently encouraged through its educative system, Mexico will become more likely to experience a rise in crime as well as violations of human rights.

Requiring the fulfilment of basic duties towards the entire political community also means advancing the rights of the Mexican state with respect to each of its citizens. Only if the rights of the entire political community are protected from arbitrary harm by individuals will human rights also be efficiently protected since the principal function of a constitutional state is to protect the welfare

that, according to Beccaria, “the metric of just punishments and of just laws —the metric of justice— is precisely the greater good of the individuals, or, as Beccaria writes in his very introduction, ‘whether or not (the laws) conduce to the greatest happiness shared among the greater number’” (p.45).

⁴⁴ See, for example, Aristotle, *supra* note 19. In this book, this classic philosopher highlights the significance of moral virtues, not only for the individual, but for the entire political community, since they lead to collective happiness. On the other hand, happiness depends on behaving ‘rationally’, that is, according to practical ‘right’ reason, which constitutes the basis for the practice of moral virtues.

of its citizens. This statement can be better explained in this way: if an organization (in this case the Mexican state) is overburdened by requests by individual citizens who do not themselves contribute to the overall appropriate functioning of the organization, this organization will stop working effectively, to the detriment of its individual members.⁴⁵ This means that Mexicans should be concerned about making their entire society work fairly, so that their own human rights may be adequately protected. If the Mexican state is incapable of fostering a culture of social responsibility, solidarity, and subsidiarity, and ineffective in protecting fundamental rights through appropriate penalties and sanctions, by allowing crimes to go unpunished, for example, then human rights violations will tend to grow significantly and human security will tend to diminish proportionately in this country.

VI. Democratic Governance and The Human Right to Effective Law Enforcement in Mexico

Institutional schemes that provide for power sharing among different political actors and the equitable distribution and decentralization of political power should enhance democratic governance and possibly even generate a consensus democracy in Mexico.⁴⁶ This kind of institutional design should also nurture better public deliberation regarding human rights policies since they would be inspired more by a perspective focused on the common good rather than the self-centered agenda espoused by political parties.⁴⁷ Democratic deliberation

⁴⁵ This figure of speech is based on Hebert Spencer's theory of structural functionalism. Helpful literature on structural functionalism include the following: JONATHAN H. TURNER, *Hebert Spencer*, THE BLACKWELL COMPANION TO MAJOR CLASSICAL SOCIAL THEORISTS 69-92 (George Ritzer ed., 2003); or Rober George Perrin, *Herbert Spencer's Functionalism* (April, 1974) (unpublished DPhil dissertation, The University of British Columbia).

⁴⁶ For more on what consensus democracy is, see, for example, Arendt Lijphart, *Consensus and Consensus Democracy: Cultural, Structural, Functional, and Rational Choice Explanations*, 21(2) *Scand. Pol. Stud.* 99, 108 (1998). Professor Lijphart explains in this article that a 'consensus democracy can be seen as an institutional arrangement that is able to produce as much consensus as possible in countries, such as ethnically and religiously divided societies, where a spontaneous consensus is in short supply' (p.100), and that in those societies where consensus democracy has become a reality, the derived 'power-sharing systems that were set up all followed the same general pattern: an inclusive government consisting of representatives of all the important rival groups; as much autonomy for these groups as possible; proportionality in representation and appointments, an a formal and informal minority veto power with regard to the most vital and fundamental matters' (p.101).

⁴⁷ To better understand the relationship between institutional design and the quality of deliberative democracy, see, for example, Jane Mansbridge, et. al. *A systemic approach to deliberative democracy*, in DELIBERATIVE SYSTEMS: DELIBERATIVE DEMOCRACY AT THE LARGE SCALE 1,26 (Jane Mansbridge and John Parkinson eds., 2012). In terms of the impact of institutional design on the development of effective deliberative systems, Professor Mansbridge argues that 'a highly functional deliberative system will be redundant or potentially redundant in interaction so that when one part fails to play an important role another can fill in or evolve over time to fill in. Such a

should enhance the capabilities of the Mexican state in enacting policies that could make law enforcement more competent and effective. This statement means that the more citizen participation there is in the consideration of policies related to the improvement of law enforcement, the better the quality of these policies will be, especially if the participation is informed, respectful, deliberative, and aimed at achieving the common good.⁴⁸

Enhanced accountability, transparency, and responsiveness of the Mexican system of government would also meaningfully contribute to law enforcement effectiveness against crime, especially organized crime. Furthermore, these democratic values should bolster the common good orientation of preventive and prosecutorial agencies. In addition, improved democratic controls over these agencies should discourage their extractive tendencies. Moreover, greater social accountability of law enforcement agencies should bolster their responsiveness to the demands of civil society. The current lack of accountability of these agencies mainly benefits those with more political influence and makes effective law enforcement and human security goals more difficult to achieve. Consequently, a more accountable, transparent, responsive, more democratically oriented law enforcement system in Mexico is essential to effectively defend, protect, and promote the fundamental rights of ordinary people, victims of crimes, and even suspected criminals, and will improve everyone's security.⁴⁹

Constitutional rules that guarantee more fair competition in business activities should effectively discourage public and private oligopolies that might disrupt the free and fair market system in Mexico which is essential for supporting a democratic regime, rule of law, human security, and human development.⁵⁰ The growth of the informal economy in Mexico has led to the emergence of 'caciques' (political bosses) who have a decisive influence on the economic expectations of many street vendors and who are able to control, or even manipu-

system will include checks and balances of various forms so that excesses in one part are checked by the activation of other parts of the system.' (p. 5).

⁴⁸ See, for example, *Id.* at p. 2. In fact, in acknowledging that more civic participation can improve deliberative systems within democratic regimes, Professor Mansbridge argues that 'most democracies are complex entities in which a wide variety of institutions, associations, and sites of contestation accomplish political work—including informal networks, the media, organized advocacy groups, schools, foundations, private and non-profit institutions, legislatures, executive agencies, and the courts. We thus advocate what may be called a systemic approach to deliberative democracy.'

⁴⁹ On the positive impact of a democratically oriented law enforcement system for the improvement of human security in Mexico, see, for example, EDGARDO BUSCAGLIA, *VACÍOS DE PODER EN MÉXICO* 25-38 (Random House Mondadori, 2013). On the other hand, Professor Buscaglia also explains that 'when states are weak, transnational and regional criminal organizations compete wildly, with violence, to fill in state voids, eating complete fragments of the country land and of the institutional scaffolding, to consolidate afterwards their illegal markets with much graver crimes, for example, human trafficking, abduction, or human organ trafficking' p. 26.

⁵⁰ For more on the relationship between a free and fair market system, the consolidation of a democratic regime, and the growth of human security, see, for example, Acemoglu & Robinson, *supra*, note 12, pp. 21-62.

late, them more effectively, especially in electoral terms, all of which seriously undermines the human security of these vendors.⁵¹ Effective law enforcement should also include a more fair application of the law in the economic realm where the values of impartiality and equality should also be emphasized. Consequently, one of the main instruments necessary to revitalize a prosperous free enterprise system in Mexico, as well as the effective transition to democracy, is strengthening law enforcement in the economic arena, both regulatory and criminal. If law enforcement remains weak in Mexico, the system of benefits will persist and be increasingly based on political influence or membership in the current political class. A solid law enforcement system should undermine the structure of prerogatives that this 'establishment' imposes on Mexican society.⁵²

VII. The Justiciability in Mexico of the Human Right to Effective Law Enforcement

It is important to recall that access to justice and due process of law should be deemed essential for the effective enjoyment of any human right in Mexico. Indeed, these rights should enable Mexican people to defend all their other rights, as well as the lawfulness of their actions or decisions, by being provided the realistic opportunity to present their evidence and arguments before a tribunal established for this purpose.⁵³ Access to justice implies that judges resolve legal controversies through a legitimate system of due process, that is, by hearing the question in controversy and objectively analyzing the evidence and legal defenses so that they may be able to apply the appropriate legal rules that

⁵¹ For more on these social phenomena, see, for example, John Bailey *supra*, note 10, p. 68. Professor Bailey explains, for example, that informal activities in Mexico generate corrupt interchanges whenever they involve government regulators and that policemen and other regulatory agents negotiate bribes to permit, or even protect and foster, illegal and informal activities. These policemen and agents subsequently compensate their respective bosses.

⁵² For more on this relationship between the weakness of the rule of law and a system of exemptions in Mexico, see, for example, Edgardo Buscaglia, *supra*, note 46, pp. 28-29. Professor Buscaglia also explains that improved *judicial, asset, corruption, and social* controls could reinforce the law enforcement system in Mexico since they are indispensable to combat both public corruption and organized crime, which, unfortunately, have captured state institutions and have thwarted social trust and social capital in this country.

⁵³ See, for example, Francesco Francioni, *The Rights of Access to Justice Under Customary International Law*, in *ACCESS TO JUSTICE AS HUMAN RIGHT* 1,26 (Francesco Francioni ed., 2007). Professor Francioni asserts in this chapter, for example, that the 'respect and protection of human rights can be guaranteed only by the availability of effective judicial remedies' and that the human right of access to justice should be understood as the right to have a case 'heard and adjudicated in accordance with substantive standards of fairness and justice'.

address the various rights and duties which will lead to a fair resolution of the legal dispute.⁵⁴

Due process of law means the procedure is impartial, that any judge will follow the law and arrive at an unbiased ruling, in conformity with positive law, to effectively resolve the legal dispute. Enforcement of this right also suggests that no administrative authority can arbitrarily deprive someone of his or her lawful rights. In this way, rights must be withheld, and duties may be imposed, only after an unprejudiced process is followed that demonstrates that this course of action is the appropriate result and reflects impartiality and fairness in social relationships. Due process in trials mainly consists in giving parties an equal opportunity to present evidence and arguments which demonstrate their entitlement to specific rights.

Both access to justice and due process of law have been regarded in Mexico as appropriate constitutional limitations on the potential abuse of political power and as crucial parts of the system of checks and balances in the Mexican presidential system of government that is designed to guarantee the enforcement of fundamental rights.⁵⁵ In this way, the degree of efficacy in the enforcement of these specific rights is a reliable indicator of the overall enjoyment of human rights in this country. There are various legal processes through which people can demand the enforcement of their human rights in Mexico.

Indeed, the Mexican Constitution, and the international human rights laws sanctioned by the Mexican Senate and President, have enabled a diversity of means to challenge the denial of, or enforce entitlement to, fundamental rights in this country. These include the writ of amparo, the constitutional controversy, the unconstitutionality action, the diffuse control of constitutionality, and

⁵⁴ See, for example, E. THOMAS SULLIVAN & TONI M. MASSARO, *THE ARC OF DUE PROCESS IN AMERICAN CONSTITUTIONAL LAW* 11 (Oxford University Press, 2007). In the context of American History, Professors Sullivan and Massaro explain, for example, that the due process clauses ‘functioned as an expression of the rule of law principle as protection of citizens against arbitrary treatment by the judiciary and other government officials. At first blush, due process expressly connected the concepts of rule of law with a provision of proper procedures providing for limitations of government search and seizure, protections for criminal defendants, basic notice and hearing opportunities, and a host of other procedural protections for unfair application of the law or deprivation of life, liberty or property without a firm base in existing law.’

⁵⁵ For more on the importance of these rights to the protection of other human rights, see, for example, Alfredo Islas Colín & Alejandra Díaz Alvarado, *El derecho al acceso a la justicia en el sistema interamericano de protección de derechos humanos*, (7)14 *Prospectiva Jurídica* 47, 60 (2016). Professors Islas and Díaz define due process of law as that constitutional guarantee that ensures the right of self-defense in a legal proceeding that must be resolved with a grounded, fair, and reasonable ruling. On the other hand, citing PABLO ELÍAS GONZÁLEZ MONGUI, *LA POLICÍA JUDICIAL EN EL SISTEMA PENAL ACUSATORIO* 43-53 (Ediciones Doctrina y Ley LTDA, 2007), they also explain that different constitutional guarantees are implicit in the due process of law, for example, the independence, the impartiality, and the immediacy of the judge, the principle of publicity, the rights of victims of crime, and the orality of legal proceedings, etc.

the diffuse control of conventionality, among others.⁵⁶ Nevertheless, additional means of challenge have been designed and implemented at the state level which are complimentary to these national methods and the appeals available under the Interamerican Commission of Human Rights.

In this way, Mexicans have recourse to various judicial mechanisms through which they can demand the protection of their human rights.⁵⁷ Furthermore, many Mexican states continue to implement new, refined appeals processes designed to protect and defend fundamental rights, but the scope of their application is more limited than those at the national level.⁵⁸ Despite their limited scope, these state level appeals play an important role in the enforcement of fundamental rights in Mexico and have prevented the arbitrariness of legislative, judicial, and even administrative rulings which could have compromised the exercise of fundamental rights in their respective states.

There are also supplementary constitutional appeals, quasi-judicial in nature, both at the national and state level of government in Mexico. These have also been successfully used in the defense, protection and promotion of human rights in this country. These include the human rights recommendations issued by autonomous constitutional bodies. These recommendations are usually released only after careful investigation of the facts in dispute when serious human rights violations have been discovered to have been perpetrated by administrative authorities of different levels of government in this country.⁵⁹

The controls of constitutionality and of conventionality (of the Interamerican Convention of Human Rights) have become special means of challenge that have meaningfully assisted in the enforcement of human rights in Mexico

⁵⁶ For more on these existing means of challenge and appeals valid in Mexico, see for example, Osvaldo Villegas Cornejo, *Mecanismos de Control Jurisdiccionales y No Jurisdiccionales Para la Defensa de Derechos Constitucionales*, 13 *Ex Legibus*, 247, 258 (2020).

⁵⁷ An exhaustive treatment of these state level means of challenge can be found in MANUEL GONZÁLEZ OROPEZA & EDUARDO FERRER MAC-GREGOR, *LA JUSTICIA CONSTITUCIONAL EN LAS ENTIDADES FEDERATIVAS* (Porrúa, 2006).

⁵⁸ Since these appeals rely on state constitutions and not the national constitution; see, for example, César I. Astudillo Reyes, *La Justicia Constitucional Local en México. Presupuestos, Sistemas y Problemas*, 115 *Bol. Mex. De Der. Comp.* 9, 56 (2006). Nonetheless, Professor Astudillo asserts that it is possible that we are witnessing an acceleration of state level appeals and that the system of constitutional justice at the state level in Mexico may soon become a reality in every region of the Mexican Republic (pp. 12-13).

⁵⁹ For more on the nature of these supplementary constitutional appeals, see, for example, Raymundo Espinoza Hernández, *Las Recomendaciones de la CNDH. El Control del Poder y la Protección de los Derechos Humanos*, 93 *Alegatos* 350, 351 (2016). Professor Espinoza explains, for example, that, technically speaking, these recommendations form part of the instruments of defense of the Mexican Constitution, and can also be considered as non-jurisdictional means of protection of human rights, as well as mechanisms for the protection of the Mexican Constitution regarding human rights, as well as mechanisms for the control of political power focused on protecting human rights; and finally, according to Professor Espinoza, they can be regarded as means of constitutional control of an administrative nature, since they oversee decisions of administrative authorities.

since they uphold the *pro persona* principle, as well as the constitutional principles of progressivity, universality, inalienability, interdependence and indivisibility of these rights, which together guarantee greater respect, protection, defense, and promotion of fundamental rights in legal disputes.⁶⁰

In addition, the Interamerican Court of Human Rights (ICHR) has published jurisprudential criteria that guarantee greater defense, protection, respect, and promotion of human rights in every legal dispute and which all judges, tribunals, and justices in Mexico must take into consideration before drafting their final rulings.⁶¹ All these means of challenge, appeals, principles, and jurisprudential criteria could also be employed to require the appropriate functioning of law enforcement agencies in the prosecution of ordinary crime, as well as organized crime, and to demand their satisfactory performance, accountability, transparency, and responsiveness so that peace, public order, and human security may more easily be achieved in this country.

Some final rulings resulting from a writ of *amparo* have become precedent and have assisted in clarifying of the responsibilities of Mexican preventive and prosecutorial agencies regarding the protection of human rights in the battle against crime and have also refined the scope of constitutional appeals and conventional means of challenge in the promotion of these rights.⁶² Jurisprudential criteria used by the Interamerican Court of Human Rights (ICHR), which is valid in Mexico, have suggested formal limits on law enforcement agencies in their struggle against crime so that their actions and decisions fully respect, pro-

⁶⁰ For more on these diffuse controls, see, for example, Eduardo Ferrer-MacGregor, *Interpretación Conforme y el Control Difuso de Convencionalidad. El Nuevo Paradigma Para el Juez Mexicano*, 9(2) *Est. Const.* 531, 622 (2011). In this research article, Professor Ferrer-MacGregor, for example, explains the principle of ‘interpretation according to’ (*interpretación conforme*) regarding human rights in Mexico, as well as the *pro persona* principle as an interpretative guideline of human rights in this country. In this way, Professor Ferrer-MacGregor asserts that every legal rule related to human rights in Mexico must be interpreted ‘according to’ the human rights established in the Mexican Constitution and in the international treaties approved by this country, and that the *pro persona* principle implies that no legal rule can be interpreted to exclude those rights and guarantees that are inherent to the human person.

⁶¹ For more on the relevance of this jurisprudence for the protection of human rights in Mexico, see, for example, Luis Fernando Angulo Jacobo, *El Control Difuso de la Convencionalidad en México*, 1 *Rev. del Inst. de la Jud. Fed.* 73, 85 (2013). This scholar argues, for example, that ‘through considering the possibility that all judges carry out the control of conventionality, the Mexican state demonstrates, at first sight, its intention of fulfilling the protection of human rights contained in international treaties’ (p. 83).

⁶² For example, the following precedent GARANTIAS INDIVIDUALES. CONCEPTO DE VIOLACION GRAVE DE ELLAS PARA LOS EFECTOS DEL SEGUNDO PARRAFO DEL ARTICULO 97 CONSTITUCIONAL, Pleno de la Suprema Corte de Justicia (S.C.J.N.) (Supreme Court) *Semanario Judicial de la Federación y su Gaceta*, Novena Época, tomo III, Junio de 1996, Tesis LXXXVI/1996, Página 460 (Méx.). This is a very relevant precedent in this subject matter, since it states that there are serious violations of human rights whenever there is insufficient legal, or political, or social, or material security as consequence of the negligence or omission of authorities to guarantee peaceful interactions within society, or if these authorities have neglected the due respect of human rights.

tect and defend the human rights of not only suspected criminals, but the rights of innocent people as well.⁶³ Despite these precedents and jurisprudential criteria, the following question is still relevant in Mexico: Is it possible to require, through some constitutional appeal or conventional means of challenge, preventive and prosecutorial agencies to enforce the rule of law and defend the human rights of innocent people against the disastrous effects of organized crime?

Based on one precedent established by the Mexican Supreme Court of Justice⁶⁴ which asserts that social, economic and cultural rights can be enforced through the writ of amparo, it is possible to answer this question, since this precedent helps us to argue that it is more reasonable that the lack of effective and competent law enforcement in criminal cases should be legally challenged through this type of constitutional appeal since its focus is protecting essential legal goods which can only be safeguarded through a proactive provision of the state: an effective law enforcement system. However, the writ of amparo should not be the only constitutional appeal available in Mexico to require the effective protection of fundamental rights from the ruthlessness of organized crime. Due to the critical levels of public insecurity, other appeals could serve this purpose as well, such as complaints before national and state human rights constitutional bodies, or official pronouncements from ordinary judges as part of their exercise of the controls of constitutionality and of conventionality in ordinary legal disputes.

Therefore, as a critical right necessary for protecting the life and the integrity of the individual, effective and competent law enforcement in criminal cases should be recognized as a human right enforceable through ordinary, constitutional and conventional appeals and other means of challenge. Additionally, the principles of progressivity, universality, interdependence, and indivisibility of human rights recognized in the Mexican Constitution, as well as the *pro persona* principle, also legitimize judicial enforcement of the human right to effective law enforcement by means of the diffuse controls of constitutionality

⁶³ For more on these criteria, see, for example, Javier Sepúlveda Amed, *Los límites de la violencia y el uso legítimo de la fuerza en la jurisprudencia interamericana*, in CRITERIOS Y JURISPRUDENCIA INTERAMERICANA DE DERECHOS HUMANOS: INFLUENCIA Y REPERCUSIÓN EN LA JUSTICIA PENAL 195,204 (Sergio García Ramírez, et. al. eds., 2014). Professor Sepúlveda, for example, cites extracts of final rulings of different controversies solved by the Interamerican Court of Human Rights (ICHR), such as the ‘Caso Zambrano Velez y otros vs. Ecuador’ or the ‘Caso Montero Aranguren y otros vs. Venezuela’, which have established criteria for the fair use of institutional violence against crime. For example, in the ‘Caso Zambrano Velez y otros vs. Ecuador’ the ICHR established that the use by any state of institutional violence must be limited by principles of proportionality, necessity and humanity, and in the ‘Caso Montero Aranguren y otros vs. Venezuela’ the ICHR has established that the exceptional use of lethal force and weapons must be constructed by the law, interpreted restrictively so as to be minimized in every circumstance, and be of absolute necessity to face successfully the threat that the state may intend to repel.

⁶⁴ DERECHOS ECONÓMICOS, SOCIALES Y CULTURALES. SON JUSTICIA-BLES ANTE LOS TRIBUNALES, A TRAVÉS DEL JUICIO DE AMPARO, Tribunales Colegiados de Circuito, Gaceta del Semanario Judicial de la Federación, Décima Época, Tomo III, Agosto de 2014, Tesis Aislada (V Región) 5o.19 K (10a.), página 1731 (Méx.).

and conventionality, since these judicial resources are aimed at extending the scope of protection of fundamental rights within ordinary legal disputes. The explicit acknowledgment of an enforceable right through constitutional and conventional appeals and means of challenge should be approached as a natural consequence of the validity of these constitutional principles, which, taken together, compel the Mexican state to guarantee the greatest respect, defense, protection, and promotion of human rights within its territory, even if this specific human right entails the legitimate use of force against criminals. Finally, effective law enforcement should also be deemed a critical human right necessary to advance peace, order, freedom, prosperity and human development in Mexico. Indeed, it is for the greatest benefit of all people living in Mexico that this human right become enforceable through judicial appeals and means of challenge since its justiciability shall effectively pressure the Mexican state to deal with the calamities produced by organized crime against the people in Mexico.

VIII. Relevant Policies for Improving Law Enforcement in Mexico

Perhaps the most positive public policy in the long term to enhance the rule of law in Mexico would be a comprehensive state approach to law enforcement, which should effectively avoid partisan use of preventive, investigative and prosecutorial agencies and should successfully foster accountability to the Mexican state and society as a whole, and not just a partisan majority in the Mexican Congress.⁶⁵ The mandate of state preventive police forces in Mexico should be institutionally based, not person based.⁶⁶ This kind of mandate reinforces a state vision of public security tasks and may improve transparency, responsiveness, and accountability of these enforcement agencies.

Additionally, more citizen participation within organizations of civil society that oversee preventive and prosecutorial agencies should also reinforce this state approach to law enforcement, which, in turn, should improve accountabil-

⁶⁵ For more on the origin of this state approach to law enforcement, see, for example, Josiah Flynt, *Police Methods in London*, 176(556) *The N. Am. Rev.* 436, 449 (1903). Professor Flynt explains that this approach started in Great Britain in 1829 with Sir Robert Peel who 'succeeded in getting through Parliament a bill by which the different parish and ward police forces were organized into one force' and 'the commissioner of the new force was selected and appointed by the Imperial Government, as is the case today'. He subsequently affirms that 'politics is not allowed to play any part in the management and direction of the organization' and that 'the most striking difference between London Police and police forces in the United States, as regards management, is that the former is an Imperial force'.

⁶⁶ See, for example, Enrique Thoth Verdeja Márquez, *supra* note 7, p. 94. According to this author, this new approach to the single mandate of preventive police forces shall improve the coordination between municipal, state, and federal agencies, encourage a single operative system, as well as efficient methods of assessment and supervision of results. It should also discourage institutional dispersion and reinforce institutional solidity and responsibility in public security tasks.

ity, responsiveness and transparency. This new state approach to law enforcement would also encourage more deliberation regarding policies that effectively reduce the attractiveness of crime by substantially increasing the costs of breaking the law, and, at the same time, expanding the incentives to comply with it.⁶⁷ Since the cooptation of preventive and prosecutorial agencies by executive incumbents, which hinders their independence, autonomy, accountability and transparency, constitutes the most serious challenge to implement this comprehensive state approach to law enforcement in Mexico,⁶⁸ it is crucial that before implementing policies based on ‘rational choice theory’ or on ‘opportunity theories’ to deter crime, this country first transform its authoritarian approach to law enforcement so that public security tasks may effectively be directed toward strengthening the rule of law.

In other words, a more democratically controlled law enforcement system, achieved by encouraging more citizen participation in the accountability and transparency of both preventive and prosecutorial agencies, would improve the protection of fundamental rights and legal goods of ordinary people from both ordinary crime and organized crime. In the end, this kind of transformation of the law enforcement system should also improve citizen security in this country and support its overall transition to democracy. Once the authoritarian approach to law enforcement in Mexico is transformed into one which is more responsive, transparent, and accountable to society, public policies designed to deter crime and improve law and order based on ‘opportunity theories’ and ‘rational choice theory’ would also become more beneficial to this country.

⁶⁷ For more on the timeliness of these policies to improve law enforcement in Mexico, please see, for example, Markus Felson & Clarke Ronald V, *La ocasión hace al ladrón. Teoría práctica para la prevención del delito*, in SERIE CLAVES DEL GOBIERNO LOCAL 6 193,234 (Fundación Democracia y Gobierno Local ed., 2008). Professors Felson and Ronald argue, for example, that opportunity is a ‘root cause’ of crime and explain in their paper ten principles to reduce crime: 1. Opportunities play a role in causing all crime; 2. Crime opportunities are highly specific; 3. Crime opportunities are concentrated in time and space; 4. Crime opportunities depend on everyday movements of activity; 5. One crime produces opportunities for another; 6. Some products offer more tempting crime opportunities; 7. Social and technological changes produce new crime opportunities; 8. Crime can be prevented through reducing opportunities; 9. Reducing opportunities does not usually displace crime; 10. Focused opportunity reduction can produce wider declines in crime.

⁶⁸ For more on this type of challenge, see, for example, Edgardo Buscaglia, *supra* note 49, pp. 63-69. Professor Buscaglia affirms, for example, that the appointment, permanence, and dismissal of prosecutors depend on the political ups and downs of the relative state government and that they are subject to the approval of the respective Governor. On the other hand, he also argues that the absence of effective control mechanisms over prosecutorial agencies has created a vacuum of state power in Mexico that have led to abuse by these agencies. To impede the arbitrariness of their behavior, he proposes strengthening the legal and technical controls and supervision of the resolutions of these agencies.

IX. Autonomous Constitutional Bodies and Effective Law Enforcement in Mexico

Another proposal to improve law enforcement in Mexico would be the creation of autonomous constitutional bodies that oversee the performance of preventive, investigative, and prosecutorial agencies in their public security tasks. These new entities (whether national, state, or municipal) could be modeled after already existing autonomous constitutional bodies that exist at the national level in Mexico such as the *Instituto Nacional Electoral* (INE) (Electoral National Institute), and which could function as supervisory boards that encourage more efficient citizen control over law enforcement agencies. One positive effect of these already existing autonomous constitutional bodies, such as the INAI (*Instituto Nacional de Acceso a la Información Pública*), the COFECE (*Comisión Federal de Competencia Económica*), the CNDH (*Comisión Nacional de Derechos Humanos*), or the Banxico (*Banco de México*), has been helping the growth of consensus democracy in Mexico by more fairly distributing the system of checks and balances between the different governmental powers of the Mexican state so that its public administration is more effectively oriented toward the enhancement of the rule of law within the Mexican constitutional state.⁶⁹

Nevertheless, and especially in recent times, these kinds of bodies in Mexico have become vulnerable to the colonization of party or group interests and politics which have compromised their independence, impartiality, objectivity, and legality, and thus, their accountability and transparency as well, which has a negative effect on their ability to work as part of the checks and balances of the Mexican system of government.⁷⁰ The solution to this colonization should not be to eliminate these kinds of organizations, but to improve their institutional design so that their independence, impartiality, state and citizen-driven perspective, may be effectively protected from any party or group interest.⁷¹ For this reason, law enforcement agencies, the judiciary, and penal institutions, all

⁶⁹ For a deeper analysis of these bodies, please see, for example, José Fabián Ruiz, *Los órganos constitucionales autónomos en México: una visión integradora*, 37 *Cuest. Const.* 96, 98 (2017). Professor Ruiz argues, for example, that these kinds of bodies bolster the non-partisanship, de corporatization, and democratization of public entities, that they have constituted the best way to supervise, make transparent and democratize relevant faculties of the constitutional state; and that they better guarantee impartiality and technical honesty in the supervision of different government tasks.

⁷⁰ During the *sexenio* of 2018 – 2024 the performance of many constitutional autonomous bodies at the national level, such as the CNDH, the INAI, the INE, the *Bank of México*, the COFECE, etc., have been accused of working in the interests of the ruling elite rather than in the interest of the nation, precisely because their impartiality, independence, objectivity, accountability and transparency have been compromised by party and group interests.

⁷¹ The best way to achieve this is through preserving consensus decision-making (a qualified majority of the Mexican Congress) regarding the institutional design of these kinds of bodies, so that it becomes very difficult for a single party or coalition of parties to override the principles that guarantee their impartial functioning.

require competent oversight through independent and autonomous bodies that could effectively discourage their ‘capture’ by political bosses.⁷²

These autonomous constitutional bodies (or supervisory agencies) should have their councilors selected and removed through a qualified majority (66%) of the relevant legislative body, whether it be the Mexican Congress or a state congress, following rigorous criteria, so that they may not be easily subjected to the extortion or manipulation of a single party or a coalition of parties.⁷³ These bodies should also be accountable to the respective pertinent legislature and be subject to the same rules of inspection, administration, criminal responsibility and formal checks and balances of the Mexican presidential system of government.⁷⁴ These autonomous bodies should also be modeled after the Mexican Federal Judiciary Council, which is the constitutional office authorized to oversee the appointment of judges, supervise their performance, and manage their professional careers; likewise, these bodies should supervise the appointment and performance of police officers and the careers of all members of preventive and prosecutorial agencies.⁷⁵ Other formal responsibilities that these bodies (or supervisory entities) could exercise are the following:

- a) To propose the budget of law enforcement agencies based on an informed and accurate analysis of their needs.
- b) To monitor through reliable indicators the overall performance of these agencies.

⁷² Nonetheless, this kind of oversight has been proposed for some time for law enforcement agencies in Mexico, see, for example, Hiram Escudero Álvarez, *Los órganos constitucionales autónomos y la seguridad pública*, in LOS DESAFÍOS DE LA SEGURIDAD PÚBLICA EN MÉXICO 53,54 (2002). Based on Luigi Ferrajoli, Professor Escudero Álvarez, for example, has already proposed special autonomous constitutional bodies so that the rights of accused persons may be shielded from arbitrariness resulting from a lack of autonomy, independence, impartiality and objectivity of experts and public defenders, since these professionals could also compromise the fundamental rights of the accused.

⁷³ Consequently, these proposed bodies should also be like the INAI and the Mexican states’ bodies in charge of guaranteeing transparency and access to public information, since they enjoy technical and administrative autonomy, legal personality, and are specialized, independent, and collegiate, are formed by an odd number of councilors, and possess the faculty of deciding their own budget as well as their internal organization (Art. 37. *Ley General de Transparencia y Acceso a la Información Pública*).

⁷⁴ Therefore, their political, administrative, and criminal responsibilities should also be broadly regulated by Title IV of the Mexican Constitution (CPEUM) (Arts. 108-114), just as other public servants, whether federal, state, or municipal, are subjected to these constitutional rules. For example, their administrative responsibility should also derive from the actions or omissions that could impact the legality, honorability, loyalty, and efficiency of their work; or they should have internal controlling boards that efficiently inquire into actions and omissions that constitute administrative faults.

⁷⁵ Just as the Mexican federal and state judiciary councils oversee the administration, surveillance, discipline, and careers of judges (see Article 73 of *Ley Orgánica del Poder Judicial de la Federación*), these new constitutional bodies should survey and oversee the administration, discipline and careers of municipal, state, and federal preventive and prosecutorial personnel.

- c) To carry out constant supervisory audits over these agencies so that they may be effectively compelled to perform their duties accordingly.⁷⁶

X. Institutional Reform and Effective Law Enforcement in Mexico

The National Council of Public Safety in Mexico already exists, created under the *Ley General del Sistema Nacional de Seguridad Pública*⁷⁷ (Act of the National System of Public Safety), but this council is not an independent, autonomous, and specialized constitutional body that could enhance the necessary checks and balances related to the Mexican law enforcement system, nor does it provide for the transparency and accountability of preventive and prosecutorial agencies. Nonetheless, this Act does represent a crucial step forward in the design of new, autonomous, constitutional bodies that could reinforce a state approach to public security in Mexico.⁷⁸ The existing National Council of Public Safety is composed of three main commissions: a) data, b) certification and accreditation, and, c) crime prevention and citizen participation.⁷⁹ All of these commissions could be handed over to our proposed supervisory body at the national level, retaining many of their original responsibilities, but with more influence, independence, and autonomy from those authorities they oversee.

The problem with the present National Council of Public Safety is that its institutional design can easily lead to conflicts of interest since its members can act as accusers, judges, and defendants at the same time. A new National Council of Public Safety, as an autonomous constitutional body, should resemble the INE, which possesses a General Council that makes decisions collectively.⁸⁰ This new constitutional body, at the national level of government, should also

⁷⁶ Furthermore, these new constitutional bodies, at the federal, state, and municipal level of government, should also imitate the Mexican Federal Judiciary Council (see Article 86 of *Ley Orgánica del Poder Judicial de la Federación* to have a panoramic view of its scope), and have the ability to issue internal regulations related to the management, career and disciplinary regime of preventive and prosecutorial agencies; to make decisions about the appointment, confirmation, removal, bar or reinstatement of police officials; the power to suspend policemen involved in the commission of felonies, based on the reports of investigative agencies; the ability to process administrative complaints; the ability to appoint the heads of their auxiliary bodies and addressing their resignations, license, removals, and suspension, among others that could be adapted from the official capacities that the Mexican federal and state judiciary councils possess regarding judges.

⁷⁷ See Article 12 of this Act. This Council is composed of the Mexican President, the Secretary of the Interior, the Secretary of National Defense, the Secretary of the Navy, the Secretary of Public Safety, the Attorney General, the State Governors, the Head of Government of Mexico City, and the Executive Secretary of the National System of Public Safety.

⁷⁸ For example, most of the capacities established in Article 7 of this Act could be assumed by this new autonomous constitutional organism, although some other capacities should continue being carried out by the different law enforcement agencies of Mexico.

⁷⁹ See Articles 17, 19 – 22. *Ley General del Sistema Nacional de Seguridad Pública*.

⁸⁰ See Art. 41. *Constitución Política de los Estados Unidos Mexicanos. Apartado A*.

resemble the Mexican Commission of Human Rights (*CNDH*), which possesses a consultative council, a general secretary, and several appointed positions / appointed officials / visiting officials.⁸¹ Thus, the consultative council of this proposed supervisory body should be comprised of honorable and knowledgeable citizens that are able to efficiently review the work of its General Council to guarantee its impartiality and independence.

The visiting officials of this new Council of Public Safety should assess the work of law enforcement agencies using specific standards relating to performance, behavior, loyalty, and discipline. The visits of these officials should keep preventive and prosecutorial agencies focused on fulfilling their responsibilities and duties and prevent other government institutions, especially municipal, state, and federal executives, from interfering in law enforcement tasks and from compromising the independence, autonomy, impartiality, objectivity, and professionalism of these agencies. These officials should also aid this new autonomous body in preparing reports to be submitted to the Mexican Congress so that it can monitor the state of law enforcement at the national level, state, or in a municipal levels when necessary.⁸²

These reports should also assess the level of training and the qualification of police officers, their career development, the level of coordination among law enforcement agencies, and the degree of social participation in law enforcement tasks. To improve the performance of the public security apparatus, both ordinary citizens and police officers should be able to present complaints against law enforcement authorities for failing to carry out their duties appropriately. There should also be coordination between this new constitutional body at the national level and the Mexican Commission on Human Rights, as well as with other autonomous bodies, such as the INAI, the Federal Judiciary Council, or the INE, so that they can support each other in the fulfilment of their corresponding responsibilities and thus foster the rule of law in their respective areas.

For example, if a citizen submits a complaint before the *CNDH* due to misconduct by law enforcement authorities, the *CNDH* should notify this new National Council of Public Safety about the complaint so that both organizations can support each other in resolving it based on their respective areas of responsibility. To this end, this new constitutional body should require the authorities accused of misconduct to produce a thorough report regarding the subject of the complaint so that they are aware of the reasons and motivations behind the challenged actions or omissions. This procedure should strengthen the degree of responsiveness, accountability, and transparency of law enforcement agencies to the Mexican state and society.

⁸¹ See Art. 5. *Ley de la Comisión Nacional de Derechos Humanos*.

⁸² Each state and municipality should have its own council of public safety (or new constitutional autonomous body), similar to the National Council of Public Safety, to monitor the state of law enforcement in its own territory or municipality and submit their reports to the corresponding state legislature or municipal council.

However, these new constitutional bodies, at the national, state and even municipal level, should also, whenever possible, use alternative means to resolve conflicts, such as mediation and arbitration, to encourage solidarity, subsidiarity, and a culture of peace within law enforcement agencies, as well as between citizens and the authorities. Just as the Federal Judiciary Council does,⁸³ these proposed bodies should have their own unit of administrative responsibilities to try all those preventive and prosecutorial personnel that may be accused of administrative misconduct. These new bodies should also monitor the functioning of the crime prevention systems, the training of police officers, the independence and autonomy of preventive and prosecutorial agencies from executive power, as well as their accountability.

These new autonomous bodies should themselves be subject to accountability as well and be obliged to periodically send reports to the legislature which would reinforce their independence and autonomy with regard to the executive power.

Mexico needs a constitutional amendment that effectively requires states' law enforcement agencies to become more engaged with and supportive of the federal government's fight against organized crime.⁸⁴ The concentration in the Mexican General Attorney (FGR) of the responsibilities involving combating organized crime has, paradoxically, increased its vulnerability to organized crime. It has also encouraged the penetration of organized crime into the states' preventive and prosecutorial agencies as well as they attempt to interfere with the Mexican General Attorney's investigations into these criminal organizations.⁸⁵

A democratically oriented law enforcement system in Mexico, through the creation of these new autonomous constitutional bodies could become the most effective driver for improving the rule of law, human security, and human development in this country. These bodies should also encourage situational crime

⁸³ See Arts. 99-100. *Ley Orgánica del Poder Judicial de la Federación*.

⁸⁴ For a thorough assessment of the situation of law enforcement at the state level in Mexico, see, for example, Edgardo Buscaglia, *supra* note 49, pp. 63-69. Professor Buscaglia explains, for example, that at the state level in Mexico criminal investigations are not led by prosecutorial agencies themselves, since they usually operate in favor of the corresponding executive power. This way of operating invites serious violations of due process of law. To avoid these kinds of violations, Professor Buscaglia affirms that Mexico needs, especially at the state level of government, hard control mechanisms over law enforcement agencies and the judiciary, so that they may support high-quality prosecutions in order to obtain well-grounded and fair sentences against criminal suspects.

⁸⁵ See Article 73, XXI, b. *Constitución Política de los Estados Unidos Mexicanos*. See also, John Bailey, *supra* note 10, pp. 181-182. Professor Bailey, for example, acknowledges that criminal organizations focus their corruptive and threatening activities on preventive and prosecutorial agencies at all levels of government, and that some municipal and state policemen have become spies, defenders and even direct members of these organizations. He also asserts that sometimes rival criminal organizations make use of different police departments, or even different high ranking officials within the same department, and that prosecutorial agencies and the administrative personnel of courts have become the most vulnerable to infiltration by organized crime.

prevention, since based on rational choice and opportunity theories, human behavior is driven by a rational assessment of costs and benefits, which means that if the price of carrying out a crime surpasses its potential rewards, criminals will ordinarily refrain from engaging in it.⁸⁶ These new bodies should design and implement new policies that reduce the attractiveness of crime by increasing its costs so that potential criminals would perceive such conduct as risky, less profitable, and less excusable to a legal tribunal. For example, if the number of policemen in any municipality or state of Mexico were increased, were better equipped and trained, had more and better surveillance vehicles, weaponry, cameras, salaries, and systems of accountability, etc., the commission of crimes would be effectively discouraged in such places.

These new bodies should discourage those factors that increase the rewards and reduce the cost of committing crime at the local level in Mexico, such as: a) easy escape, b) time needed to commit the crime, c) possibility of not being identified, and, d) the possibility of not being arrested.⁸⁷ However, enhanced technology, infrastructure, organization, and logistics of preventive police forces, would substantially increase these 'costs' and sharply reduce the 'benefits' of committing crime. Indeed, the improvement of situational crime prevention, by providing effective incentives to comply with the law, and by increasing the personal efforts and negative consequences for breaking the law, should be greatly encouraged by these new constitutional bodies in Mexico.⁸⁸

These constitutional bodies should also manage the distribution of resources, technology, and qualified personnel within preventive agencies. Additionally, to improve the investigation of crimes, it is also vital that these autonomous bodies promote larger budgets, more resources, more qualified personnel, better facilities and logistics, and upgraded technology for prosecutorial agencies.

These new constitutional bodies should first improve on some of the internal aspects of preventive, investigative and prosecutorial agencies to achieve a more effective law enforcement system in Mexico, for example:

- a) A system of career development to upgrade the performance, professionalization, and dignity of police officers.

⁸⁶ For more insight on the relevance of situational crime prevention for improving the rule of law in Mexico, see, for example, Felson & Clarke, op. cit., *supra* note 67, pp. 193-234.

⁸⁷ See Enrique Thoth Verdeja Márquez, *supra* note 5, p. 29.

⁸⁸ For more on the specific situational crime prevention policies that these constitutional bodies could promote, see, for example, GRAEM NEWMAN, ET AL., RATIONAL CHOICE AND SITUATIONAL CRIME PREVENTION: THEORETICAL FOUNDATIONS 4-5 (Ashgate 1997). In the introduction to this book, for example, Professor Graem Newman explains that the theory of situational crime prevention possesses an interactionist view of causation, which means that 'the cause of a particular behavior is tied closely to the immediacy of the situation or, to put it yet another way, the situation is seen as the primary or foreground agent in crime causation'. In this way, 'situational crime prevention is about intervening in proximal crime situations to inhibit the operation of a crime event, generating causal mechanisms which will counter the criminogenesis of the situation.'

- b) Better salaries, training, and equipment officers.
- c) Better coordination between federal, state, and local agencies.
- d) The development of reliable indicators that accurately measure the efficiency of their respective funding levels.
- e) The creation of standardized systems of operation.
- f) Better distribution of their overall budget.⁸⁹

In the case of the judiciary, it is essential to encourage increased independence, autonomy, and competence through permanent training, and to supply it with a larger budget, better facilities, and more qualified personnel. These goals could also be encouraged by the *Consejo de la Judicatura Federal* (Federal Judiciary Council) and pursued before the Mexican Congress and the Federal Executive Power.

Lastly, regarding the penitentiary system, it is imperative that these new constitutional bodies encourage the improvement of penal facilities, the increase of its budget to make prisons places that demonstrate respect for the human rights of convicted and sentenced criminals, more efficient training of its personnel regarding human rights, enhancement of its current logistics and surveillance technology to avoid riots or disturbances within penal institutions, so that this system may be able to foster the successful reintegration of convicted and sentenced criminals into society.⁹⁰ Combining all of the foregoing policies should contribute to improving law enforcement in Mexico. However, unless the authoritarian practices within the law enforcement system are transformed, these policies will not be able to improve the rule of law or human security, nor will they be able to defend the rights of those accused of committing crime or the innocent victims of organized crime.

XI. Conclusions

An effective law enforcement system should be regarded as a basic human right in Mexico. Such a system is not only necessary to overcome the humanitarian crises resulting from the ruthlessness and violence of non-state actors, but also to increase the level of human security and human development in this country.

⁸⁹ See Enrique Thoth Verdeja Márquez, *supra* note 5, pp. 37, 42, 90-94; see also Arturo Alvarado Mendoza & Sergio Padilla Oñate, *Organización policial y debilidad institucional: balance de las capacidades de las policías estatales*, 90(42) *Izt. Rev. C. Soc. Hum.* 11, 47 (2021). In this article, Professors Alvarado Mendoza & Padilla Oñate call attention to the need to fortify the institutional capacity of law enforcement agencies to improve their performance against crime, especially organized crime, and they define this capacity as the ability of authorities to frame public policies, execute them with sufficient budgets and operate them efficiently.

⁹⁰ For more on the specific policies that should improve the human security of prisoners in Mexico, see, for example, Baruch Alejandro Castro Bernal, *La Reinserción Social a la Luz de los Derechos Humanos* (Sept. 27, 2023) (unpublished Ph.D. dissertation, Universidad Autónoma del Estado de México).

Furthermore, it should be considered one of the most fundamental rights by the Mexican state since it implies an institutional design that effectively guarantees all other human rights. It would make no sense for the Mexican state to formally acknowledge human rights if it remains institutionally incapable of guaranteeing their actual fulfillment.

Indeed, the extent of impunity in Mexico exacerbates security problems since fundamental rights are constantly violated by non-state actors and authorities alike without any effective deterrent or incentive to prevent such violations. Consequently, effective law enforcement should be advanced as a fundamental right in Mexico to guarantee the protection of the individual in all circumstances, whether in daily life or official proceedings, such as trials, administrative procedures, or exercising a petition right. To this end, specific reforms to the law enforcement system of Mexico have been proposed in the present article, reforms that could guarantee a public security system that genuinely protects and defends all human rights and thus improves the level of security in this country.

These proposals are based on a state approach to public security which could be the best strategy to overcome the clientelist and authoritarian tradition in law enforcement that has weakened the rule of law and has encouraged impunity and ongoing violations of human rights in Mexico. This enhanced state approach to public security could also prompt a transition to democracy in Mexico and increase the level of economic, social, political, and human development since it should encourage the rule of law (or the rule of justice) in all of these areas. Perhaps the most important contribution of this article was to identify the fact that an effective law enforcement system is fundamental for the protection of individuals against threats to themselves and their rights. A better system for protecting fundamental rights, through effective and competent law enforcement, can guarantee a minimum threshold of human security that may enable people in Mexico to more confidently pursue their own economic, social, political, environmental, cultural, and human development. Competent and effective law enforcement is also extremely important to improve all other aspects of security in this country, whether of individuals or of the Mexican constitutional state itself, since they also depend on a strong foundation of the rule of law.

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