

**DTEI-258**

**Bringing willingness back in.**

State capacities and the human rights compliance deficit in Mexico

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CENTRO DE INVESTIGACIÓN Y DOCENCIA ECONÓMICAS

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## Acknowledgements

I wish to thank the comments to earlier versions of this working document by Luis Daniel Vázquez, Rupert Knox and Daniel Joloy. I also thank the comments made by numerous colleagues in different presentations of this paper at the Seminar of CIDE's International Studies Division, the 2017 International Studies Association Annual Conference and the Human Rights and Democracy Seminar in FLACSO-Mexico. I also wish to thank Sofía Cruz for her valuable research assistance.

## Abstract

This working document is inscribed within the International Relations literature that explores the domestic scope conditions under which governments are more likely to comply with their international human rights commitments. It focuses on the role of “state capacities” and “willingness” as key explanatory variables. Taking Mexico as a “crucial” case study, the document’s main argument is that while it is true that attempts to explain poor compliance must take capacities seriously, they need to rely on willingness as a central explanatory factor that is causally and analytically prior to state capacities. The document, in this sense, tries to contribute to the development of theories of compliance with international human rights norms and to the conceptual understanding and the operationalization of the notions of state capacities and, particularly, willingness.

**Key words:** human rights, compliance, state capacities, willingness, Mexico.

## Resumen

Este documento de trabajo se inscribe dentro de la literatura de Relaciones Internacionales que explora las condiciones nacionales bajo las cuales es más probable que los gobiernos cumplan con sus compromisos internacionales en materia de derechos humanos. Se centra en el papel explicativo de las “capacidades estatales” y la “voluntad estatal”. Tomando México como un estudio de caso “crucial”, su principal argumento es que si bien es necesario tomarse a las capacidades en serio, también es fundamental incluir a la voluntad como una variable explicativa que es causal y analíticamente anterior a la de capacidades estatales. El documento, en este sentido, busca contribuir al desarrollo de las teorías de cumplimiento con las normas internacionales de derechos humanos y al entendimiento conceptual y a la operacionalización de las nociones de capacidad estatal y, particularmente, voluntad.

**Palabras clave:** derechos humanos, cumplimiento, capacidad estatal, voluntad, México

## Introduction

Perhaps the key question in current International Relations debates on the issue-area of human rights is that related to the conditions under which states are more likely not only to commit but to comply with international human rights norms. In principle, the existence of a broad and highly institutionalized international human rights regime, and the activism around it by transnational and local advocates, should be having a positive effect on the levels of respect of human rights in practice. But, as the levels of formal commitment with the regime have grown consistently and despite intense activism, the global aggregated levels of compliance have remained mostly unchanged (Landman 2005; Simmons 2009; Hafner-Burton and Tsutsui 2005; Hafner-Burton and Ron 2009). There is a clear gap between commitment and compliance. In this way, the International Relations literature that examines the influence of human rights norms and transnational advocacy is now focusing on the issue of (domestic) scope conditions under which compliance is more likely to take place. Among these factors, the issue of state capacities is capturing increasing attention. It is argued that explanations of noncompliance with international human rights norms that do not consider states' capacities are "incomplete" (Cole 2015: 406; Risse and Ropp 2013; Börzel and Risse 2013; Engleheart 2009). Broadly speaking, the argument is that weak capacities block the positive effects of transnational pressure or other mechanisms that might otherwise lead states into compliance. In this sense, lack of capacities is proposed as a key cause for the international compliance deficit mentioned above.

At first sight, this argument on the blocking effects of weak state capacities seems appealing to explain cases like that of Mexico, characterized by a large commitment-compliance gap. Since the early 1980s, Mexico ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the American Convention of Human Rights. Afterwards, it has consistently ratified without much delay the most important treaties adopted in the framework of the United Nations (UN) and Inter-American human rights regimes, and

other treaties, such as the Rome Statute of the International Criminal Court.<sup>1</sup> Furthermore, in 1998 Mexico recognized the jurisdiction of the Inter-American Court of Human Rights and in 2002 the competence of the Human Rights Committee, the Committee Against Torture and other UN treaty bodies to receive personal communications or complaints. Mexico, in this way, has shown a strong formal commitment with the international human rights regime.

Since the early and particularly the mid-1990s, on the other hand, the human rights situation in the country has been closely scrutinized “from above” (Brysk 1993). Transnational human rights pressures and shaming have been a relevant element of the country’s human rights processes in the recent past, particularly since the mid-1990s (Anaya Muñoz 2009 and 2012; Saltalamacchia and Covarrubias 2011). Ever since, the human rights organs and bodies of the UN and Inter-American regimes have adopted tens of critical reports on the human rights situation in Mexico and issued nearly 2,500 concrete recommendations. Notably, the Inter-American Commission of Human Rights has decided against Mexico in numerous individual cases and has issued two country reports and the Inter-American Court on Human Rights has adopted seven condemnatory rulings (see [www.recomendacionesdh.mx](http://www.recomendacionesdh.mx)). Furthermore, international Non-Governmental Organizations, such as Amnesty International, Human Rights Watch or the Washington Office for Latin America, amongst many others, have persistently exerted pressure through campaigns, letters, press releases and tens of special reports (Anaya Muñoz 2009 and 2012). But despite the adoption of binding international legal commitments and the endurance of transnational pressure, Mexico has not made progress in its compliance with human rights norms, as a systematic revision of the annual reports by Amnesty International and the US State Department shows.<sup>2</sup> This

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<sup>1</sup> For a full list of the human rights treaties ratified by Mexico and the dates of ratification see <http://www2.scjn.gob.mx/red/constitucion/TL.html> (consulted: April 30, 2016).

<sup>2</sup> The most “economic” way to review the human rights situation depicted by the Amnesty International and US State Department reports, is to look at the Cingranelli and Richards (CIRI) and Political Terror Scale (PTS) indexes, which are based on the codification of the content of these reports (see <http://www.humanrightsdata.com/>

disappointing outcome needs to be explained because, in addition to the adoption of international legal commitments and the endurance of transnational pressure, Mexico is a highly globalized country, with clear aspirations of being “part of the club” of “modern” and “civilized” democratic states; a transitioning democracy with a highly active and transnationalized civil society that has been mobilizing and litigating in favor of human rights for quite some time now. These are conditions associated with stronger effects of international norms and pressures and thus a higher likelihood of compliance (Keck and Sikkink 1998; Simmons 2009; Neumayer 2005; Davis and Murdie 2012; Ropp and Sikkink 2013). So, something might be “blocking” the effects of all these otherwise positive human rights influences and conditions. As already stressed, the weak capacities argument seems at first glance an attractive explicative option. However, for the capacities argument to work, willingness must be clearly present. In other words, before we argue that the Mexican state has been unable due to lack of capacity, we need to be certain that it has been willing to comply with international human rights norms. In this sense, the main argument of this paper is that willingness should be brought “back in”, as a key explicative factor in theories of compliance, particularly those that are stressing the role of lack of capacities.

From a methodological perspective, this paper is a “disciplined-configurative” case study and to some point a “crucial” one (Eckstein 1975: 99-104, 113-123, Gerring 2004: 347-350), which not only allows for a systematic, theory-driven explanation of a “case”, but can also question existing theoretical arguments and offer alternatives and feedback. In this sense, the article seeks to explore the compliance deficit in Mexico as

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and <http://www.politicalterroryscale.org/>). A review of CIRI’s Physical Integrity Rights index and the PTS for Mexico shows that the human rights situation in the country has varied only marginally throughout the past three decades, being consistently bad throughout this period. (For a discussion on the differences between the CIRI and PTS data see Wood and Gibney 2010.) Dai (2013), however, stresses that measuring compliance is a subjective exercise in the sense that the benchmarks established for that have been continuously increasing. So, the situation in practice might have improved while—due to this ever-stricter benchmarks—the Amnesty International and State Department Reports continued to present an equally negative picture.

such, but also to illuminate a broader discussion on the blocking effects of weak state capacities and willingness and thus to contribute to the refinement of theory.<sup>3</sup>

The paper proceeds as follows. Section 1 reviews the literature on the commitment-compliance gap and the purported blocking effects of weak state capacities and argues that willingness must be explicitly and prominently included in theories of compliance. Section 2 offers a conceptual discussion on capacities and willingness and their operationalization. Section 3 explores empirically Mexico's weak institutional capacities. Borrowing an analytical framework from corruption studies in the Public Administration literature, in section 4 the document explicitly traces whether the last three Mexican governments have been willing—whether they have tried to improve its compliance with human rights norms. The paper concludes stressing that even if Mexico's institutional capacities are clearly weak, the possible blocking effects of limited statehood are not neatly observed, particularly because governmental willingness to achieve significant human rights change has been extremely low. So, lack of willingness continues to be a prominent part of the compliance problem in Mexico. Drawing from the insights of such a “crucial case” for the theory, the paper concludes stressing that a theory of compliance that looks at the blocking effects of weak capacities should be further specified through the explicit inclusion of willingness as a key explanatory variable, causally and analytically prior to state capacities.

### **1. STATE CAPACITIES AND THE COMPLIANCE DEFICIT. BRINGING WILLINGNESS BACK IN**

In the early 1990s, international relations and comparative politics scholars started to pay close attention to the issue of the influence of international norms, actors and processes over the human rights practices of states, focusing on the notion of pressure “from above” and the role of transnational advocates (Brysk 1993 and 1994; Sikkink 1993). Their arguments on external influences and their analytical frameworks were soon after further developed in the influential “boomerang effect” and “spiral model”

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<sup>3</sup> On case studies, as particularly useful in the generation of theory, see Gerring 2004.

frameworks (Keck and Sikkink 1998; Risse, Ropp and Sikkink 1999). The basic argument was that, recurring to the legitimacy and the normative appeal of international human rights norms and to the effective distribution of reliable and shocking information on repression, transnational advocates could leverage and persuade rights-violating governments into improving their respect for human rights. This literature recognized explicitly the importance of the participation of domestic civil society actors in the exertion of pressure and the efforts to persuade their own governments, but in practice it highlighted the role of pressure “from above” or external, transnational dynamics. Domestic institutional and political factors, such as regime type, elite preferences and state-society relations were not a prominent part of the explanation. A “second generation” of studies that looked at the interaction between rights-violating governments and their transnational critics, however, explicitly stressed the central relevance of domestic factors and processes. Some authors, for example, underlined domestic conflict, threats to security and the role of “pro-violation constituencies”. They concluded that, regardless of their intensity, transnational normative pressures would not have a decisive effect over the human rights practices of governments that faced internal armed challengers or in general terms (real or perceived) security threats (Cardenas 2007; Shor 2008; also see Cavallaro and Mohamedeu 2005). Others found that domestic politics—e.g. changes in governing elites—complemented transnational pressure in the generation of important human rights transformations (Anaya Muñoz 2009). Simultaneously, some authors stressed the gap between commitment and compliance. Sonia Cardenas (2007) found that countries that experienced meaningful processes of pressure “from above” are likely to increase their commitments with international human rights norms (ratifying treaties or modifying their domestic laws and institutions, for example), but fail to implement the norms they have committed to. This gap between commitment and compliance—or between “rights in theory” and “rights in practice” (Foweraker and Landman 2010)—has currently become the focus of the human rights literature in International Relations.

The compliance deficit was also highlighted by the early quantitative literature that sought to determine the effects of the ratification of international human rights treaties (Hathaway 2002). Subsequent quantitative studies, however, found that compliance was contingent on domestic institutional and social factors, such as regime type, the independence of the judiciary and the strength of civil society (Hafner-Burton and Tsutsui 2005; Landman 2005; Neumayer 2005; Cole 2016: 407-410). More recently, in what is perhaps the most sophisticated and persuasive research on the effects of the ratification of international human rights treaties, Beth Simmons stressed the key role of domestic factors, showing that treaty ratification will have more significant effects in non-consolidated democracies (or democracies “in flux”) in which domestic advocates have both the incentives and the means to mobilize and litigate for human rights change (Simmons 2009; also see Risse and Sikkink 2013, 287-288). So, now the International Relations literature on the effects of international human rights norms and the influence of transnational advocates is focusing on the desired but difficult transition from commitment to compliance and on the scope conditions (most of them domestic) that might render it more likely.

In their recent revision of the original “spiral model”, Risse, Ropp and Sikkink (2013) acknowledged that the transition from commitment to compliance was undertheorized in their initial work and that it was therefore necessary to identify key scope conditions in which this transition is more likely to take place. All the new scope conditions they introduced are related to domestic factors—regime type, decentralization and the level of statehood or state capacities.<sup>4</sup> In what follows, I focus exclusively the latter or, in other words, on the issue of the capacities of states to implement meaningful human rights change. Risse and his colleagues explicitly introduce the “managerial” approach to international institutions to the study of human rights. This approach emphasizes that the reasons for noncompliance might not necessarily be related to a willful, premeditated or deliberate

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<sup>4</sup> Their fourth scope condition, material and social vulnerability was already present in the original boomerang-spiral model.

decision by states to violate the norms, but to limits on their actual capacities to respect them (Chayes and Chayes 1993 and 1995; Cole 2015: 410-411). In other words, the managerial approach notes that “noncompliance can be attributed to a country’s structural incapacity to implement a treaty, rather than its strategic unwillingness to comply with it” (Cole 2015: 431 and 434). The introduction of this type of argument to the study of international human rights institutions and norms is noteworthy because the literature has been dominated either by rational choice-like approaches—which emphasize calculations by states of the costs and benefits of noncompliance—or by sociological arguments—which stress social influence mechanisms.

It seems, in this sense, that the managerial approach can make a significant contribution to the study of human rights. Not all states possess the capacities required to enforce rules (particularly highly demanding rules, such as those expressed in human rights treaties) and to implement the policies preferred by central authorities; at least not in all their territory or not in all areas of public policy (Risse and Ropp 2013; Börzel and Risse 2013; Krasner and Risse 2014; Zhou 2012: 1258). As one author would put it, “[e]ven if a government wants to honor its human rights treaty obligations, whether out of a desire to reap rewards or prevent punishments, it may simply be unable to do so” (Cole 2015: 406; also see Englehart 2009: 164).<sup>5</sup> So, an explanation of the deficit in compliance with international human rights norms based on the lack of capacities assumes a willing (central) government that tries to implement human rights norms but cannot make much progress because it does not have the capacity to do so. In this way, lack of capacities would thwart a willing government’s efforts to change human rights outcomes. If we insert this argument within the spiral model or any other based on the role of transnational activism—which assume that the governmental will to

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<sup>5</sup> In a case study on judicial decisions in the Democratic Republic of Congo, Lake (2014: 515) found the opposite—that is, that limited statehood has “created openings” for transnational actors to have a direct or indirect impact on the delivery of public goods (such as the administration of justice) which has resulted in “surprisingly progressive human rights outcomes”. For a normative argument on the human rights obligations of non-state actors in areas of limited statehood see Jacob, Ladwig and Oldenbourg 2012.

change can be (will be) generated through coercion and/or persuasion, particularly in cases of “liberalizing” states that are socially and or materially vulnerable (Risse and Sikkink 2013, 287-290)—, lack of capacities or limited statehood are a kind of “blocking factor” that obstructs the otherwise positive effects of pressure, persuasion and socialization.

Without governmental willingness to implement human rights norms and policies, however, the question of states capacities becomes irrelevant. If a government does not want to change its behavior in the first place, it does not matter how capable it is to do so. Willingness, in this sense, is causally and therefore analytically prior to capacities when explaining compliance with international human rights norms. Nevertheless, it is taken for granted by the theory that stresses the role of state capacities.<sup>6</sup> This is problematic because government willingness to pursue meaningful human rights change is not easily generated. The benefits of abusing human rights might be appealing and the costs of meaningful improvements are considerably high. Some governments might rely on widespread or selective repression or more subtle violations of human rights to control dissidents and hold on to power. Changing structures of incentives, entrenched practices or long-standing institutional trends might be highly costly and troublesome. So, even in the face of transnational pressures, violating human rights might be the preferred (least costly) course of action for many governments, including those of transitioning democracies. Willingness, therefore, cannot be taken for granted. Theories of compliance that emphasize lack of capacities or limited statehood need to be more carefully specified and explicitly include willingness as a key explanatory variable. More so, given that those theories rely on the assumption that willingness “will be there”, an explicit empirical examination of willingness is necessary. Willingness must be brought back in as a key explanatory variable; causally and analytically prior to state capacities.

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<sup>6</sup> In the concluding chapter of their recent revision to the spiral model, Risse and Sikkink assume that liberalizing and vulnerable countries will be willing to implement change (2013, 287-289).

## 2. CONCEPTS AND OPERATIONALIZATION

State capacity is a complex concept and definitions abound. Some authors within the human rights-related literature define it as “the willingness and capability of the state apparatus to carry out government policy” and consider that it “reflects the degree to which the principal (i.e. the government) controls its agents and the degree to which the government can police private citizens” (Englehart 2009: 167). But including willingness as a component of capacity is confusing and misleading. As already stressed, willing elites might lack strong or effective institutions; conversely, capable states might not have willing rulers. Capacities and willingness are different concepts. In addition, focusing on the degree of actual control over actors implies an emphasis on effectiveness or outcomes more than the capabilities to do so. Krasner and Risse stress that we must differentiate between the ability to provide services and the delivery of those services. The fact that a government can provide a specific service does not necessarily mean that it will be willing to do so (Krasner and Risse 2014). For example, for strategic or ideological reasons, a government might decide to limit the provision of a good to the population or to specific sectors. So, following Krasner and Risse, for conceptual clarity and analytical precision, it is important to stress the difference between an effectiveness or outcomes-based approach to state capacities and one that focuses on the abilities of the state to operate. As will become evident, the approach defended here relies more on the latter understanding of state capacities.

Zhou rightly notes that most definitions of state capacity or statehood imply the ability of the state to: a) enact and enforce rules (and we could add policies) and, b) to control its territory (2012: 1258). Krasner and Risse define statehood as “the monopoly over the legitimate use of force and the ability to successfully make, implement, and enforce rules and regulations” (Krasner and Risse 2014: 545, emphasis added). In part drawing on these arguments, this document focuses on the notion of “ability”—“the

power and skill to do something”<sup>7</sup>—to define its notion of state capacities.<sup>8</sup> Assuming that “power and skill” depend on having certain resources (or more so certain type of resources), by state capacities this paper understands the concrete set of material and notably human *resources* that governments have to implement norms, rules or policies.<sup>9</sup> It goes without saying, furthermore, that state capacity is not a dichotomous or “all or nothing” variable; clearly, it is a matter of degrees (Krasner and Risse 2013).

The operationalization of this notion, however, is not straightforward either. Zhou, for example, uses measures on “the regulation of political participation” and “polity fragmentation” from the Polity IV dataset (Zhou 2012). Englehart resorted to different subjective measures of rule of law and corruption, together with data on tax collection as a proportion of gross domestic product (Englehart 2009: 167-169). Cole, on the other hand, relies on a broader set of measures on the involvement in politics by the military, the strength and expertise of the bureaucracy to provide services without interruption or drastic policy changes and to control political corruption, communications infrastructure and levels of urbanization, military expenditures and personnel, iron and steel production, energy consumption and development assistance (Cole 2015, 419-422). But some of these proxies are more specifically related to political rights and other are too broad or general; too indirect or distant from the original concept of state capacities. Others, reflect perceptions of effectiveness, and thus

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<sup>7</sup> Merriam-Webster on-line dictionary <http://www.merriam-webster.com/dictionary/ability> (consulted: May 16, 2016).

<sup>8</sup> In their exploration of the role of state capacity in economic development, Acemoglu, García-Jimeno and Robinson (2015, 7) also develop their definition of state capacity on the notion of “ability”.

<sup>9</sup> Acemoglu, García-Jimeno and Robinson (2015, 7) also focus on human resources, by conceptualizing state capacity “as the presence of state functionaries and agencies”. According to these authors, “This represents a central aspect of what Mann (1986) calls the ‘infrastructural power’ of the state” (ibid). This paper’s emphasis on the human resources of certain institutions of the state broadly coincides with Hendrix’s notion of “bureaucratic/administrative capacity”, which is found to be particularly important in explaining the role of state capacity in explaining civil conflict (Hendrix 2010; Hendrix and Young 2014).

follow an outcomes approach, more than one that directly observes actual resources.<sup>10</sup>

As argued above, the issue of state capacities is closely related to the resources available to governments to adopt and implement (or enforce) the norms or rules in force or the policies they prefer. Norms, rules or policies, on the other hand, are related to specific services the state is supposed to provide or functions it is expected to perform. Statehood, furthermore, is exercised territorially and/or around specific areas or issues of public policy (Risse and Ropp 2013; Börzel and Risse 2013; Krasner and Risse 2014). To delimit and thus better handle the empirical analysis, this paper focuses on the public security and criminal justice sector. For this, the following section reviews some key indicators of material and particularly the human resources available to perform the functions related to policing, the investigation of crime and the judicial punishment of those responsible. In a weak or poor (under-resourced) institutional context for public security and criminal justice, violations of human rights such as executions, torture and disappearances, amongst others, are more likely to take place and even proliferate. For example, overwhelmed prosecutors, lacking in qualified investigators and forensic experts, are more likely to resort to torture to obtain confessions and therefore to have elements to prosecute. On the other hand, insufficient or corrupt police forces, prosecutors and judges cannot or will not protect people from the abuses of other authorities or powerful private actors. In addition, a poor institutional structure for the procurement and administration of justice is likely to result in high levels of impunity, which in turn gives incentives for the continuation of rights-violating practices.

The notion of “willingness” (or, as it is usually referred to, “political will”) is equally difficult to conceptualize and operationalize. But, as opposed to that of capacities, it has not been extensively studied by the literature; including the political science literature that has focused on human rights. There are nonetheless some

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<sup>10</sup> Exploring the capacities and civil conflict literature, Hendrix (2015) finds fifteen different operationalizations of state capacity, all of which have (to different degrees) validity problems.

interesting and useful efforts to conceptualize and operationalize it in public policy and more specifically corruption studies.<sup>11</sup>

Willingness, to begin with, implies preference and intent (Brinkerhoff 2000; Post, Raile and Raile 2010). An actor is said to be willing to achieve objective *X* if, first, she has a strong preference for it. Furthermore, precisely because of this preference, she will have the intent to obtain it. Of course, preference and intent are not binary. An actor's preference for *X* can have different degrees of intensiveness and thus she can have a stronger or weaker intent to pursue it. In this sense, just like capacity, willingness is not a matter of "all or nothing" but of degrees. The preferences and intent of actors, furthermore, cannot be directly observed. Willingness should be inferred from what we can observe and gauge empirically. Actors can say what their preferences are and state their intent to pursue them—they can develop persuasive discourses and make promises. But they might be insincere. They might act rhetorically—that is, they might elaborate norms-based discourses for purely instrumental reasons (Schimelfennig 2001; Anaya-Muñoz, Nuñez and Ponce, forthcoming). We can realistically expect that some (if not most) rights-violating governments that face significant international human rights pressures will, for instrumental reasons, develop an insincere rhetoric of commitments and promises to uphold human rights.<sup>12</sup> So preferences and intent, and therefore willingness, cannot be observed in discourse. The best option is not to focus on what actors say, but on what they do. For this, I borrow a specific framework of five indicators proposed by Derick W. Brinkerhoff (2000, 242-243) to measure "political will" in the case of anti-corruption efforts: a) locus of initiative; b) analytical rigor; c) mobilization of support; d) application of credible sanctions, and e) continuity of effort. Each of these indicators can obviously range in a continuum from low to high, so the

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<sup>11</sup> Just like the violation of human rights, the problem of corruption has perverse effects in social and political processes in most countries in the world. Both pose enormous, long-term challenges, while their successful solution depends at least in part on a clear and strong "political will" by the governing elite (Brinkerhoff 2000).

<sup>12</sup> Research has shown that this has been the case for the Mexican government in the recent past (Anaya Muñoz 2014).

higher a government scores across more indicators the stronger its willingness will be. These indicators are fleshed out in section 4, which applies them focusing on high-profile human rights initiatives adopted during the past three presidential administrations in Mexico.<sup>13</sup>

### **3. THE (LIMITED) CAPACITIES OF THE MEXICAN STATE**

According to official data from Mexico's National Institute for Statistics and Geography (*Instituto Nacional de Estadística y Geografía*, INEGI), in 2013-2014, state and municipal level police forces had nearly 349 officers per 100,000 inhabitants (INEGI 2014d and 2014a).<sup>14</sup> According to *México Evalúa*, a leading public security think-tank in Mexico, the average number of police officers at the international level is 340 per 100,000 inhabitants. So, in average, Mexico is within international standards. However, stark differences between states are important to note—more than three fourths of Mexico's 32 states have fewer police officers than the international average (México Evalúa 2012, 22-24; Le Clerk and Rodríguez 2016: 23).

From a different perspective, 51 percent of state-level police officers only have secondary education (grades 7th to 8th) and 32 percent high school (grades 9th to 12th). Only 10 percent have college studies and less than a quarter of a percentage point have postgraduate studies. The remaining 6 percent only have elementary or no studies at all. These indicators are slightly worse for municipal-level forces in which, for

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<sup>13</sup> Vicente Fox (2000-2006), Felipe Calderón (2006-2012) and Erique Peña Nieto (2012-2018).

<sup>14</sup> Data for state police forces are from 2014 while those for municipal police forces are from 2013. INEGI does not provide data for both forces simultaneously in either year. The calculations for the number of police officers per 100,000 inhabitants are made on the bases of a total population of 112,336,538, reported in the 2010 national census (INEGI 2010). Unfortunately, INEGI does not provide sufficient data on federal forces and institutions, so the analysis in this section focuses on the state-level, which is, in any case, the level in which the bulk of Mexico's police forces and justice sector infrastructure concentrates and in which most crimes and violations of human rights take place.

example, over 9 percent of officers have elementary studies, if at all. On the other hand, 43 percent of state-level police forces have a monthly salary that ranges from \$5,000.00 to \$10,000.00 pesos.<sup>15</sup> Around 44 percent make between \$10,000.00 to \$15,000.00 pesos a month. Only 2.85 percent earn more than \$20,000.00 a month. Again, the indicators are worse for municipal forces, in which nearly 27 percent of officers earn less than \$5,000.00 pesos a month (INEGI 2014d and 2014a). To give the reader an idea of what these levels of income mean in practice, at the end of 2014, the National Council for the Evaluation Social Development Policy (*Consejo Nacional de Evaluación de la Política de Desarrollo Social*, CONEVAL) set the line of “moderate poverty” in an urban context at \$2,636.00 pesos *per capita* a month. This means that a family of four would need a minimum monthly income of \$10,544.00 pesos to barely stay above the poverty line ([www.coneval.org.mx](http://www.coneval.org.mx)). So, in practice over 40 percent of police officers in Mexico have poverty-level salaries and another 40 percent can barely stay on the other side of the poverty threshold.

The availability of technology resources might also give us an idea of the capacities of police forces in Mexico. In 2013, state-level public security institutions had a total 43,235 computers and over 233,000 personnel. This means that there is roughly one computer for every five police officers. Similarly, these institutions have 8,777 telephone lines available, which renders, in average, one telephone line for every 26 members of the public security institutions (INEGI 2014d).

From a different perspective, according to INEGI’s 2015 National Survey on Victimization and Perception of Public Safety (*Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública*, ENVIPE), over two thirds of the population perceived the state and municipal-level police forces to be corrupt and nearly 55 percent thought the same of the Federal Police (INEGI 2015b). Perceptions, of course, are related at least in part to the way institutions perform in practice. So, they can be considered as effectiveness or outcomes, not resource indicators. But, in this case,

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<sup>15</sup> That is, approximately, between \$250.00 and \$500.00 dollars (at early 2017 exchange rates).

performance also suggests a *quality* of the institution and its members. Perceptions on the corrupted character of Mexican police officers talk of the type of human resources available to state institutions—in this case, corrupt police officers. So, at least indirectly, these perception indicators depict the (type of) resources available to the state to perform its security function.

Prosecutors, on the other hand, are said to be at “the heart” of the impunity problem in Mexico (Zepeda Lecuona 2003: 8-9). David Shirk has found that “[t]he main criticisms of the Mexican criminal justice system reside less with judges and courtroom procedure than with law enforcement, particularly prosecutors (*ministerios públicos*) and police officers” (Shirk 2011: 213, also 204-205). In 2013, 40,108 persons worked in the state-level system of public prosecutor’s offices (*agencias del ministerio público*). Only 9,003 of them were public prosecutors—that is approximately 8 prosecutors per 100,000 inhabitants or 7.9 prosecutors per 1,000 registered crimes. This means that, in average, every prosecutor would have handled about 125 criminal investigations during the year. Furthermore, state prosecutor’s offices were staffed with 13,104 investigators and 2,936 forensic experts (*peritos*). So, in 2013, the state-level system for the procurement of justice had around 11.7 investigators per 100,000 inhabitants and about 11.5 per 1,000 reported crimes; and 2.6 forensic experts per 100,000 inhabitants or 2.5 per 1,000 reported crimes. In this way, in average, every investigator would have had to conduct roughly 92 investigations during the year and every forensic expert would have had to provide input in the investigation of 417 crimes (INEGI 2014b).<sup>16</sup> State-level prosecutors are better paid than police officers—only about 7.8 percent of them are located under the \$10,000.00 pesos a month “moderate poverty” line mentioned above. Over half of them earn between \$15,000.00 and \$25,000.00 pesos a month. Nevertheless, only 11 percent of prosecutors have salaries above \$30,000.00 pesos a month, perhaps closer to a middle-class wage. A similar income distribution can be observed in the case of investigators—almost half of them earn between \$15,000.00

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<sup>16</sup> These calculations are made on the bases of 1,142,886 reported crimes in 2013 (INEGI 2014b) and for a total population of 112,336,538 people in 2010 (INEGI 2010).

and \$25,000.00 pesos a month. Nevertheless, as opposed to prosecutors, only half a percentage point of them make more than \$30,000.00 pesos a month and over 26 percent still receive salaries between \$5,000.00 and \$10,000.00 pesos. Forensic experts, on the other hand (intuitively, a key piece in a modern and “scientific” investigative system) get more meagre salaries—around 26 percent of them do not reach the \$10,000.00 pesos a month threshold, while nearly 50 percent of them earn something between \$10,000.00 and \$15,000.00. Technology wise, the state-level system for the prosecution of crime has 32,194 computers—that is, nearly one computer per person employed (INEGI 2014b).<sup>17</sup> In sum, prosecutors and investigators are slightly better paid than police officers working in public security (not so much forensic experts), but still are largely badly paid. Apparently, on the other hand, they are well equipped in terms of basic technological equipment. However, as suggested by the number of personnel employed, the system for the procurement of justice is clearly overloaded. In this context of scant, poorly paid human resources, it is not surprising that public prosecutors only conclude 13 percent of the investigations they initiate or that, in most states, prosecutors fail to execute more than half of the arrest warrants granted by judges. Understandably, only less than 10 percent of Mexicans trust public prosecutors (México Evalúa 2012, 5, 32-35; Le Clerk and Rodriguez 2016: 59). INEGI survey data suggests that most Mexicans (around two thirds) perceive that prosecutors and investigators are corrupt (INEGI 2015b).<sup>18</sup> In the same line, scholars have found clear evidence of inefficiency in prosecutors’ work, which they explicitly link to the lack of a professional system for criminal investigations and corruption (Magaloni Kerpel

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<sup>17</sup> Unfortunately, INEGI does not provide information on the education level of the persons employed or the number of telephone lines in the state-level system of the procurement of justice.

<sup>18</sup> In 2015, Mexico had a score of 35 in the *Corruption Perceptions Index*, by Transparency International, in a scale that ranges from zero (more corruption) to 100 (less corruption). Mexico is the 95th less corrupt country in the world, together with Mali, Philippines and Armenia and has the worst score for all OECD countries (Transparency International n/d; Institute for Economics and Peace 2016: 60).

2007).<sup>19</sup>

The state-level courts system had a total number of 58,922 employees in 2013. Of these, only 4,171 were magistrates and judges—that is, 3.7 per 100,000 inhabitants (INEGI 2014c). This contrast sharply with the 16 magistrates and judges per 100,000 people in a 49-country comparative study (Le Clercq and Rodriguez 2016). Not surprisingly, the level of education in the personnel of the state courts system is relatively high—over 53 percent of all employees have college studies and 6 percent hold postgraduate degrees. This is more so in the specific case of magistrates and judges, 65 percent of which have college studies and nearly 26 percent postgraduate degrees. In terms of the technology resources available for state judicial systems, in 2013 there was almost a parity between computer equipment and personnel employed (INEGI 2014c). So, overall, the state-level courts system is composed of educated and well equipped personnel. However, just as in the case of public prosecutors, magistrates and judges are overwhelmed by the caseload they have to handle (see Le Clercq and Rodriguez 2016: 24; Shirk 2011: 195-196; Institute for Economics and Peace 2016: 23-24).<sup>20</sup> This leads judges to delegate proceedings on court clerks and thus “many inmates report that they never had the chance to appear before the judge who sentenced them” (Shirk 2011: 196, 210-211). On the top of all this, once again, over two thirds of Mexicans perceive that judges are corrupt (INEGI 2015b).

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<sup>19</sup> Recently, Mexico’s Attorney General, Arely Gomez, acknowledged that her office lacked the financial and human resources to offer an adequate response to the problem of disappeared persons in Mexico. She informed that the Special Prosecutor’s Office for Disappearances only had 29 prosecutors and 58 field agents, who were handling over 1,000 investigations (Roman 2016). There are over 27,000 cases of disappeared persons in Mexico.

<sup>20</sup> In this context of insufficient human resources, nearly half of those under detention in Mexico’s penitentiary system are still awaiting sentence. This figure contrast sharply with the 23 percent in average for the 49-countries study mentioned in the text (Le Clercq and Rodriguez 2016: 24; Shrik 2011: 195-196). In absolute terms, in 2010, around 70,000 prisoners still awaited the conclusion of their trials, and the figure has risen consistently, reaching over 80,000 in 2014. This and the overall levels of impunity point at an “overstretched justice system” in Mexico (Institute for Economics and Peace 2016: 23-24).

#### **4. THE (LACK OF) WILLINGNESS OF MEXICO'S GOVERNMENTS**

The description developed in the previous section shows that Mexico has weak capacities for the implementation of its security and justice functions. In other words, Mexico's capacities (in the public security and administration of justice sector) is limited, due to an understaffed, overwhelmed, corrupt and to a good degree impoverished institutional structure. It would thus be understandable if, under this scenario of limited state capacities at the subnational level, central authorities could not implement norms, rules and their preferred policies or achieve the outcomes they seek. In this section's analysis, the document focuses on high-profile human rights initiatives that should result in the protection of physical integrity rights. Judging from the data in the previous section, it would follow that Mexico has limited capacity to protect physical integrity rights. On these bases, it could be argued that Mexico has failed to comply—regardless of its initiatives and reforms—because of lack of capacities.

Indeed, Mexico's compliance deficit coincides with weak institutional capacities. But this simple covariation does not show that the blocking mechanism described in section 2 has been in force. It does not show that weak state capacities have thwarted or blocked a willing government's attempts to comply with international human rights norms—particularly because we do not know if the Mexican government has in fact been willing in the first place. So, as an analytical “first move”, we should determine whether the Mexican government has indeed been willing to improve the levels of respect of human rights in practice and comply with international human rights norms.<sup>21</sup> In what follows, I apply the five indicators of willingness mentioned in section

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<sup>21</sup> For this section, I heavily rely on a series of interviews with key informants (activists and former and current government officials) conducted in Mexico City in the Autumn of 2016.

The informants agree that both lack of capacities and lack of willingness are important elements in the explanation of the compliance deficit in Mexico (interviews with Guevara, Arjona, Joloy, Aguirre, Acosta and Sepúlveda). Some of them consider that lack of capacities is more directly important in low profile, “every day” cases. Lack of willingness, on the other hand, is a more prominent explanation in cases in which

3, to gauge the will of the last three Mexican governments to comply with international human rights norms, focusing on some high-profile human rights initiatives related to the protection of physical integrity rights.

### **a) Locus of initiative**

Where has the initiative to change practices or behavior come from? Has it come from the government or has it been induced (by persuasion or coercion) by other actors, domestic and/or external? This is important because imposed agendas are more difficult to be appropriated by actors--“[i]mported or imposed initiative[s] confronts the perennial problem of needing to build commitment and ownership; and there is always the question of whether espousals of willingness to pursue reform are genuine or not” (Brinkerhoff 2000, 242). As already stressed in the Introduction, for the past two decades and a half transnational advocates, human rights organs of the UN and Inter-American regimes and domestic civil society organizations have exerted persistent pressure over successive Mexican governments. It has been shown that the different federal governments have responded adopting growing commitments with

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public human rights organs (i.e. Mexico’s National Human Rights Commission) have determined that a violation has taken place and the government has accepted the related recommendations from these organs. This seems to be the case particularly in cases in which members of the armed forces are involved as perpetrators (Guevara, interview). Others consider that some individuals within the government have the will, but cannot implement change either because the institutions they work for do not have the capacity required or because they are isolated within their own government agencies. Willingness is, in any case, individual, not institutional (Arjona and Acosta, interviews). Others stress that a combination between lack of capacities and lack of willingness is particularly strong and thus has a greater negative impact on compliance in the case of subnational governments (Sepúlveda, interview). Others stress the possibility that, at least in some issues, such as torture, there has been lack of willingness to produce the institutional capacity required (Aguirre, interview). On the contrary, others argue that there has been some willingness to develop institutional capacities within agencies such as the PGR, but it has been very difficult in an institutional context in which corruption devours everything (García, interview). Finally, others find more willingness in middle-ranking officials and some members of Congress and stress the lack of willingness at the highest levels of government (Acosta, interview).

international human rights norms and accepting the scrutiny of international organs (including their competence to receive individual complaints and decide on specific cases), and implementing initiatives to reform the domestic legal, institutional and policy frameworks. So the literature suggests that the locus of initiative lies within international and domestic critics. However, it has also been argued that this growing commitment with the international human rights regimes and the domestic initiatives can, at least in part, be explained as the result of internal political changes, particularly to a specific shift in the domestic ruling coalition in the early 2000s, when an opposition candidate, Vicente Fox, won the presidency for the first time in seventy years. In this sense, it has been argued that this new ruling elite had an independent preference for democracy and human rights (Anaya Muñoz 2009). Some important human rights initiatives taken during the Fox administration (2000 to 2006)—like the ratification of international treaties, the withdrawal of reserves to other treaties or the acceptance of the competence of some UN treaty bodies to receive individual communications—emerged from within the government itself (Guevara, interview). But the participation of human rights champions within the Fox ruling elite was short-lived—by 2005, its key members had left the government.

After this period, a few other individuals that sympathize with the human rights agenda have continued to occupy important positions within different government agencies, like the Ministry of Foreign Affairs, the Ministry of the Interior and the General Attorney's Office (PGR). From these positions, they have adopted and pursued their own initiatives. But this has been the exception. The rule has been that the most important human rights policies and reform initiatives—like the 2011 human rights constitutional reform, the General Law on Victims, the Law to Protect Human Rights Defenders and Journalists and its Mechanism of Protection, the Special Prosecutor's Office for Crimes Against Journalists, the international Interdisciplinary Group of Independent Experts (GIEI) to investigate the disappearance of the Ayotzinapa students, and the still pending general laws on torture and disappearances—are best explained as government responses to the pressure exerted by international and

domestic human rights advocates and international human rights organs (interviews with Guevara, Arjona, Joloy, García, Aguirre, Acosta and Sepúlveda; also see Anaya Muñoz 2009, 2012 and 2014; Joloy 2012).

The National Human Rights Commission (CNDH) has also occasionally triggered high profile human rights initiatives. The CNDH's special program on disappearances, for example, conducted extensive investigations throughout the 1990s and published a very influential special report in 2001 on the matter. Following the findings and recommendations of this special report, the Fox government established a Special Prosecutor's Office within the PGR to investigate the disappearances and other grave violations of human rights perpetrated in the 1970s "dirty war" (Human Rights Committee 1993: parrs. 121 and 132; Human Rights Committee 1997: parrs. 109-113; Human Rights Committee 2008: parrs. 160-166). In a similar fashion, following the CNDH's investigations and conclusions regarding the attacks on journalists, and as already argued as a response to great pressure by international and domestic human rights NGOs, the government created the Special Prosecutor's Office for Crimes against Journalists (Human Rights Committee 2008: parrs. 171-172; Acosta, interview). The CNDH, however, is an autonomous organ of the Mexican State, not a governmental entity. Its objective is, precisely, to influence government practices and understandings. So, we cannot consider its initiatives as governmental as such.

Content analysis of Mexico's periodic reports to the Human Rights Committee (HRC) of the UN also suggest that the drive for human rights reform has not come primarily from the government itself. In these reports, the government often presents an uncritical image of the human rights situation, suggesting, for example, that its legal and institutional framework is adequate, as it is, to achieve compliance with extant treaty obligations. In the 1993 report, for example, the government claimed that "Mexico possesses (...) the legal machinery for guaranteeing human rights and preventing torture and impunity" (Human Rights Committee 1993: parr. 131; also see Human Rights Committee 1997: parrs. 85-89, 107-108). Only after it has been pressured, it has opted to promote legislative reforms. So, in sum, with the partial

exception of a brief period of three or four years during the early 2000s, and a few specific and low-profile initiatives by individual human rights champions that occasionally occupy government positions, the human rights agenda in Mexico has been primarily driven from “outside” the governmental sphere. The most important human rights initiatives have been imposed to or “imported” by the government as a response to the pressure from international and domestic critics. The Mexican government thus scores very low in the first indicator of willingness.

### **b) Analytical rigor**

This indicator is related to the elaboration and the recourse to in-depth, comprehensive technical analysis of the problem or phenomenon to be addressed. Has the government produced this kind of analysis? Has this analysis been used to design a comprehensive strategy to change outcomes in practice? In this sense, “[r]eformers who have not gone through these analytic steps (...) demonstrate shallow willingness to pursue change” (Brinkerhoff 2000, 242). This kind of rigorous and systematic analysis of the human rights situation has been non-existent in Mexico. The different governments under review have not developed a system to gather and/or generate human rights indicators, necessary to undertake rigorous analysis (Arjona, Guevara, Joloy, Acosta and Sepúlveda, interviews). The most recent National Human Rights Action Plan (NHRAP, the administration’s master plan for the promotion of the human rights agenda and the implementation of human rights-based public policies), adopted in 2014, contains a detailed and even critical diagnosis of the human rights situation in the country, which acknowledges a major compliance problem (Programa Nacional de Derechos Humanos 2014-2018). But this analysis is too broad or general—it fails to analyze specific patterns of violations and to identify concrete causal mechanisms (Guevara, Arjona and Sepúlveda, interviews).

The proposed bill for a new General Law on Torture, sent by president Enrique Peña Nieto to Congress in December 2015, acknowledges that torture and other cruel, inhuman or degrading treatment is “a national problem”, but does not present any kind

of systematic empirical analysis of why that is the case (Presidencia de la Republica 2015a, 2-6; Joloy, interview). Similarly, the also recent proposed bill for a General Law on Disappearances surprisingly lacks any kind of explicit systematic empirical analysis of the severe disappearances crisis faced by the country (Presidencia de la Republica 2015b, 2-4; Joloy interview). The main drive to diagnose Mexico's human rights situation has come from domestic and international NGOs and, notably, from the organs and bodies of the UN and Inter-American regimes. The broader or most comprehensive exercise to analyze the human rights situation in the country was the *Diagnóstico sobre la situación de derechos humanos en México*, elaborated in 2003 by a group of national independent experts appointed by the Office of the United Nations High Commissioner for Human Rights (UNHCHR, 2003). The *Diagnóstico*, sanctioned and supported by the Fox government, offered the bases for the elaboration of the 2004 NHRAP (Secretaría de Gobernación 2004) and is the sole attempt to undertake a comprehensive analysis of the human rights problems in Mexico (Guevara and Arjona, interviews). But even this diagnosis was too broad or general and mainly descriptive; it did not follow a clear and systematic methodology and did not attempt to describe specific processes or mechanisms that lead to the entrenched violation of human rights in practice. The last three Mexican governments also obtain a very low score in this second indicator of willingness.

### **c) Mobilization of support**

This indicator is related to the actions taken by the government to identify and mobilize social actors that can support its efforts to address a problem or phenomenon. Has the government included participative frameworks that incorporate the different stakeholders in its strategy to address the problem and promote change? Has the government tried to build up broad and strong social and political alliances around its own initiatives to balance the opposition of groups whose interests might be affected by reforms? A government that actively seeks to build a broad social and political coalition around its own initiatives shows strong willingness. On the other hand, an idle

government that quietly waits for its initiatives to mature and move forward “on their own” most likely lacks political will. As already mentioned, some government officials have developed their own initiatives to promote human rights change. In this sense, government officials from PGR or the Ministry of the Interior (SEGOB) have sometimes tried to build coalitions with civil society around specific issues, to persuade their skeptical superior officers or to push a particular agenda or initiative forward, *vis a vis* opposing forces within the government itself (Arjona and García, interviews). But, once more, this has been the exception, more than the rule; particularly in high-profile or key initiatives or reform processes. For example, in 2010, in response to growing international and domestic pressure, the government sent to Congress a bill to reform the system of military jurisdiction. The reform, which was staunchly opposed by the military hierarchy, was left to linger in congressional committees until the administration was over. The Calderon government did not seek to build a coalition with the domestic and international NGOs and the numerous UN and Inter-American human rights organs that for years had advocated for a reform to military jurisdiction to move the initiative forward and counter the opposition of the Armed Forces (Anaya Muñoz 2014).

Broad coalitions of domestic and international civil society organizations, international human rights organs and some government officials or legislators have emerged around the adoption of the most relevant human rights reforms in the recent past, like the 2011 human rights constitutional reform, the General Law on Victims and the Law to Protect Human Rights Defenders and Journalists and its Mechanism. The same has been the case for the proposed general laws on torture and enforced disappearances, under discussion in Congress at the time of writing. However, these coalitions have not been called by or led by the government, but by advocates from civil society (Joloy, Aguirre, Acosta and Sepúlveda, interviews). Sometimes, they have emerged even despite the opposition or reluctance of the government (Joloy interview; Joloy 2012). So, the Mexican government also scores very low in this indicator of willingness.

#### **d) Application of credible sanctions**

This might be the most important indicator of all. Governments that want to successfully implement difficult reforms need to identify and apply rewards and sanctions to influence the behavior of actors “on the ground”. In this sense, the key seems to be in individual criminal accountability. Has the government used prosecution (or the fear of prosecution) as its “principal tool for compliance”? (Brinkerhoff 2000, 243) Furthermore, if the government makes promises to investigate and sanction those responsible for the violation of norms: are these promises translated into credible threats of investigations and sanctions? Willing governments are expected to show that violating norms will have severe individual consequences. In this respect, Mexico’s periodic reports to the HRC give scattered information on the initiation of investigations and the arrest of a few officers, presumably involved in cases of torture or disappearances (Human Rights Committee 1993: parrs. 125-125, 153). But seldom such reports clarify whether or to what point the investigations led to the formal presentation of charges and concluded in convictions. In the 1997 periodic report to the HRC, for instance, the government claimed that “because of [the] recommendations and efforts at reconciliation [by the CNDH], a total of 2,567 public servants have been punished” for their involvement in acts of torture (Human Rights Committee 1997: parr. 133). The report, however, did not specify what it meant by “punished”. Similarly, in the 2008 periodic report, the government stated that “all complaints concerning acts of torture, enforced disappearances and extrajudicial killings that have been filed with the federal and local prosecutorial authorities have been investigated with a view to clarifying the facts and, as appropriate, bringing perpetrators to justice” (Human Rights Committee 2008: parr. 180). However, in fact, up to late 2015, federal courts have only delivered a maximum of 12 convictions for enforced disappearances and fifteen for torture. Furthermore, even if military involvement in enforced disappearances has been documented, only one member of the armed forces has been convicted for this crime (Open Society Justice Initiative 2016, 14-15: Inter-American Commission on

Human Rights 2015: 12-13). This outcome is startling in a country with over 27,000 disappeared persons and in which torture is a widespread practice, according to the consensual appraisal by international human rights organs and specialized NGOs. Amnesty International has recently obtained official data on torture complaints that strongly suggests that the government's repeated pledges to investigate and punish have not been matched by deeds--from 2006 to 2014, the PGR received 4,055 torture complaints (most of them in 2013 and 2014), but only opened 1,884 investigations and at best presented charges in fewer than five cases per year (Amnesty International 2015, 7; cf. Open Society Justice Initiative 2016, 14-15). In sum, despite the rhetoric displayed, federal authorities are simply not effectively investigating torture and disappearances and are blatantly failing to punish those responsible. A similar panorama of nearly absolute impunity can be observed in the case for extrajudicial executions (Amnesty International 2015b, 2010, 2000 and 1990; Commission on Human Rights 1999; Human Rights Council 2014; Open Society Justice Initiative 2016). All this shows that the Mexican government has not established an effective and credible system of (negative) incentives to influence the behavior of its agents on the ground. In this sense, it clearly has an extremely poor score in this key indicator of willingness.

#### **e) Continuity of effort**

Initiatives and actions need to have a long-term perspective, both in design and in practice. Are the initiatives undertaken by the government conceived and applied as one-shot endeavors and/or isolated concessions or are they designed to be long-term, multi-step efforts? The establishment of mechanisms to monitor and evaluate impact is particularly important in this long-term approach to human rights reform. In addition, it "also includes assigning appropriate human and financial resources to the reform program and providing the necessary degree of clout over time" (Brinkerhoff 2000, 243). An initial approach to this question is to look at the NHRAPs. To date, four different federal administrations have adopted a NHRAP. The first of them, adopted by

the government of Ernesto Zedillo (1994-2000) in 1998, only contained a list of abstract aspirations to be pursued by several ministries of the federal government. It did not include a mechanism to monitor or evaluate impact, let alone about the provision of a specific budget for its implementation (Poder Ejecutivo Federal de los Estados Unidos Mexicanos 1998). The following three NHRAPs are much more elaborate and systematic in terms of their structure and the objectives, aims, policies and specific actions they propose. All of them contain specific objectives and/or actions for the development of indicators and the establishment of follow-up mechanisms and evaluation of impact, and contain specific dispositions aiming at the allocation of a specific budget for their implementation (Secretaria de Gobernacion 2004, 262-269; Programa Nacional de Derechos Humanos 2008-2012; Programa Nacional de Derechos Humanos 2014-2018). To a good degree given the short-term nature of the public policy planning cycle in Mexico (constrained to the six-year presidential period), NHRAPs are not designed as long-term, State policy plans, but at best as short-term, administration policy endeavors. The first and second plans, furthermore, were adopted just as the administrations were about to expire. Furthermore, the current government itself has stressed the shortcomings of the follow-up mechanisms devised and the failure to obtain a specific budget for their implementation (Programa Nacional de Derechos Humanos 2014-2018). The monitoring mechanisms have not been operational in practice. The NHRAP 2014-2018 just established its monitoring mechanism in August 2016, two years before the end of the administration (Arjona, interview). Overall, it is argued that beyond the case of the NHRAPs, human rights initiatives in Mexico have been one-shot and short term endeavors which are not properly supported by the government after their introduction (Arjona, Joloy and Aguirre, interviews). In other words, “the Calderón and Peña Nieto governments have demonstrated a pattern of launching initiatives and reforms with great fanfare, only to starve them of resources and political support” (Open Society Justice Initiative 2016, 18). Again, this was the case for the Calderón government’s proposal to reform the Military Penal Code to eliminate military jurisdiction in cases of the violation of human

rights in 2010 (Anaya Muñoz 2014) and seems to be for the proposed bills for general laws on torture and disappearances, introduced by the Peña Nieto government (Aguirre, interview).

In sum, the past three Mexican governments score extremely low across the board in these five indicators of willingness. Their willingness to advance human rights change has been highly limited. However, two of these willingness indicators can be related to lack of capacities--governments might have lacked the institutional resources required to develop rigorous analysis and, most importantly, to apply credible sanctions. Indicators that are supposed to provide observations on willingness might be reflecting lack of capacities. This potential endogeneity problem might not only apply to these indicators but overall to the relationship between capacities and willingness as such, because showing preference and intent might ultimately depend on having the resources to do so and, on the opposite, because not having resources might be due to a lack of willingness to generate them. This seems to be a conceptual conundrum which might only be solved empirically on a case-by-case basis. In terms of the application in this working paper of the two indicators in question, it could be argued that the elaboration of rigorous analysis requires the investment of a large sum of resources. But on further scrutiny, lack of resources does not seem to be a problem in this case. After all, as already mentioned, a credible diagnosis was already elaborated by the UNHCHR in 2003, with the support from the government, and the 2012-2018 NHRAP includes a good general diagnosis of the main human rights problems in Mexico which, provided more systematic effort, could have produced a much more solid and systematic analysis exercise. Furthermore, Mexico's system of private and public universities and research centers is important and offers a broad and solid capacity to produce high quality research. So, it seems that, in this case, the "analytical rigor" indicator is showing lack of willingness, not lack of capacities. On the other hand, regarding the application of sanctions, it could be argued that weak institutions for the administration of justice (such as those described in the previous section) cannot be expected to successfully persecute and sentence violators of human rights, just as they

can't do so with ordinary criminals. Indeed, the previous section shows that Mexico's capacities for the administration of justice are weak, but it does not show that they are non-existent. More could be done to punish perpetrators under current circumstances, at least in a good number of key, high profile cases. This has not been the case. Mexico's justice system could deliver more than the handful of condemnatory sentences on torture, disappearances and executions it has rendered in decades. As the reader might recall, only one member of the armed forces has been ever sentenced for enforced disappearance. One human rights expert interviewed for this research stressed that the government has not been willing to pursue justice in cases in which the violation of human rights has already been established by CNDH investigations, particularly in cases involving members of the armed forces as perpetrators (Guevara, interview). In this sense, it seems that this indicator is showing lack of willingness, not lack of capacities.

## **Conclusions**

Explicitly recognizing capacity-related causes of noncompliance is important from theoretical and policy perspectives. Ignoring capacities as a key element could result in omitted variable problems and thus lead us to invalid explanations and misleading policy prescriptions on the compliance deficit problem. But the same must be stressed about willingness. In this sense, this paper takes both capacities and willingness seriously.

This paper contributes to the conceptualization and the operationalization of state capacities and, more so, willingness. The operationalization of both concepts is particularly complicated and it seems that potential endogeneity problems might be inevitable. Careful process tracing seems to be necessary to solve this problem on a case-by-case basis and thus to make sure we make accurate observations and therefore valid claims. This might not be so easy to guarantee using quantitative techniques.

Empirically, the paper finds that indeed Mexico has weak institutional capacities for the administration of criminal justice, a sector closely linked to physical integrity

rights. Insufficient, impoverished and undereducated police forces are joined by poorly paid and clearly too few prosecutors, investigators and forensic experts. Though considerably more educated and better paid, magistrates and judges do not seem to be enough either. Corruption, furthermore, significantly undermines all institutions. As already acknowledged, this limited capacity is at least potentially related to specific micro processes that directly lead to the violation of human rights. In other words, weak capacities very likely have had something to do with Mexico's severe compliance deficit. But this is not to say that weak capacities or limited statehood have been "blocking factors", as proposed by the related literature, outlined in section 1. In the case of Mexico, the fact of weak institutions does not necessarily mean that the government has been willing to achieve change and that its compliance efforts have been obstructed by lack of capacities. As shown in section 4, the Mexican government has not been willing to achieve human rights change--in other words, it has not been willing to comply. State capacities are indeed weak; but an explanation of the compliance deficit in Mexico begins with an extremely low governmental will.

Some international and most domestic advocates are aware of this, and have continued to insist on the "lack of willingness" problem (interviews with Guevara, Arjona, Aguirre and Joloy). In this sense, from a policy perspective, this paper stresses that governments from developed democracies (particularly those that take human rights as a component of their foreign policy) and other international actors such as funding agencies should look closer and recognize that the pressure exerted by international and domestic NGOs and by UN and Inter-American human rights organs and bodies has not been enough; that it has failed to produce the expected willingness on the part of the Mexican government.

We should expect that, just like Mexico, many other countries with human rights problems will also have limited capacities. But, as the Mexico case-study shows, before attempting to explore the possible blocking effects of state capacities, we should explicitly trace whether governments have been willing in the first place. Beyond the Mexican case, the main contribution of this paper is to stress that a theory on weak

capacities or limited statehood as a blocking factor of compliance needs to be specified with more precision. It needs to take both capacities and willingness seriously. It needs to recognize and factor in that the positive effects of international norms, transnational activism and other mechanisms that induce compliance are mediated by the actual generation of willingness on the part of rights-violating governments. Willingness cannot be only inferred based on target country characteristics as suggested by the literature (see Risse and Sikking 2013, 287-293). It should be empirically explored in a systematic fashion. In this sense, the empirical examination of willingness should have analytical priority. Although more comparative research is needed, cases like that of Mexico, stress that willingness must be brought back in.

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## **Interviews**

- Acosta, Mariclaire. Skype interview by author, September 8, 2016. Current director of Freedom House's Mexico Office. Former Under-secretary for Human Rights and Democratization of Mexico's Ministry of Foreign Affairs and former Special Advisor to the Secretary General of the Organization of American States. Founder and former director of the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH) and the Academia Mexicana de Derechos Humanos.
- Aguirre, Santiago. Skype interview by author, August 23, 2016. Deputy Director of the Centro de Derechos Humanos Miguel Agustín Pro Juárez.

Arjona, Juan Carlos. Interview by author, Mexico City, August 16, 2016. Private consultant. Former General Director of International Organs of the General Attorney's Office and former Director of Public Policy and Human Rights of the Ministry of the Interior.

García, Eliana. Interview by author, Mexico City, September 6, 2016. Senatorial advisor. Former Deputy Attorney General for Human Rights, Crime Prevention and Community Services of Mexico's General Attorney's Office. Former member of Mexico's Chamber of Deputies.

Guevara, José Antonio. Skype interview by author, August 11, 2016. Current Executive Director of the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos. Former Third Inspector of Mexico City's Human Rights Commission, Deputy Director of Human Rights of Mexico's Ministry of Foreign Affairs and Director of the Unit for the Promotion and Protection of Human Rights Unit of the Ministry of the Interior.

Joloy, Daniel. Skype interview by author, August 30, 2016. Senior Political Analyst, Amnesty International. Former Director of Advocacy of the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos.

Sepúlveda, Ricardo. Interview by author, Mexico City, September 20, 2016. Current director of Human Rights and Public Policy of Mexico's Ministry of the Interior. Former director of the Unit for the Promotion and Protection of Human Rights of the Ministry of the Interior.