THE GENERAL VICTIMS’ LAW IN MEXICO: A WHISPER OF SOLACE LONG IN THE MAKING

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This study explores the reasons behind the Mexican State’s failure to implement the General Victims’ Law (GVL). The GVL, which was enacted by President Enrique Peña Nieto in 2012 is reviled by a large constituency of Mexicans who see it as a normative simulation of justice where there is none. Yet, this law is also an unprecedented achievement for Mexican society as a whole. It is the result of civil society’s mobilization, a reflection of the Victims’ Movement’s demands, and a success of non-violent activism. For the purposes of this study, implementation is defined as the government’s act of putting a constitutional clause, law, regulation, or other rule dictated by the government into effect by means of procedure and in accordance with the letter of the rule in question. In order for a law to be effectively implemented, it must be enforced through official channels; violations must trigger some kind of external sanction through a formal sanctioning mechanism; and an expectation of compliance should exist. The need to tell the story of how the GVL came about and why, and how, it has been undermined throughout its implementation has motivated the writing of this thesis.
The research and writing of this thesis is dedicated to my mother, Beatriz, and to those who seek comfort in Mexico’s whispers of solace.
# TABLE OF CONTENTS

I. Introduction .................................................................................................................................1

II. Genesis ........................................................................................................................................4

   a. The Origins ..........................................................................................................................5
   b. The Debate ............................................................................................................................7
   c. The Enactment ......................................................................................................................13
   d. The (Weak) Implementation ...............................................................................................15
   e. The Reform ...........................................................................................................................21

III. Literature Review ....................................................................................................................24

   a. The State and the Rule of Law .........................................................................................24
   b. The Rules ............................................................................................................................30

IV. Capsize .....................................................................................................................................32

   a. The Incentive ......................................................................................................................33
   b. The Ability ..........................................................................................................................39
   c. The Unwillingness ..............................................................................................................44

V. Ayotzinapa .................................................................................................................................52

   a. The Night of Terror ...............................................................................................................53
   b. The Collusion .......................................................................................................................55
   c. The Lie .................................................................................................................................61

VI. Conclusion ................................................................................................................................67

Bibliography .....................................................................................................................................70
I. Introduction

How does one write a story of the impossible?
– Michel Rolph Trouillot

In many ways, this thesis tells a story of the impossible. A story of a country that has been navigating a seemingly never-ending path to justice for centuries. A story of a law that has faced an odyssey of obstacles before and after its enactment. And a story of a group of citizens who have devoted their lives to fighting for what is right, and, to date, continue their relentless search for truth and reparations. This is a story of injustice, mobilization, hope and exhaustion; a story that is both human and inhuman; solacing and disturbing; necessary yet shameful – this is the story of the General Victims Law in Mexico.

This study introduces the General Victims’ Law (GVL) to the reader, revisiting its drafting and enactment and analyzing its implementation. The GVL is reviled by a large constituency of Mexicans who see it as a normative simulation of justice where there is none, and a brilliant enterprise led by the Government and destined to co-opt civil society movements representing victims. Yet, this explanation is only one side of the story. The GVL is also an unprecedented achievement for Mexican society as a whole. It is the result of civil society’s mobilization, a reflection of the Victims’ Movement’s demands, and a success of non-violent activism. The unprecedented civilian nature of the law, and the need to tell the story of how it came about why, and how it has been undermined throughout its implementation have motivated the writing of this thesis. How do impunity and justice coexist? How do two different narratives of one same reality tread water together? How can citizens resist the dark currents of endemic violence, complacency and impunity? These are open and critical questions in the case of Mexico. Some tentative answers are offered on the pages that follow.
This study revisits literatures on rule of law, implementation, and democratization as frameworks to understand the failure of the Mexican government to implement the General Victims Law in Mexico and analyze the case of the 43 disappeared students in Ayotzinapa. I will review Guillermo O’Donnell’s (1993; 1999; 2004) considerations on the rule of law; Teresa Caldeira’s (1999) conclusions on legality and equality; Brinks’ (2008) observations on inequality and institutions and Helmke and Levitsky’s (2006) analysis of informal rules. Their research shows that the successful implementation of a law requires an effective rule of law and the support of a committed and transparent government – it places the government at the center of the rule-making process.

For the purposes of this study, implementation is defined as the government’s act of putting a constitutional clause, law, regulation, or other rule dictated by the government into effect by means of procedure and in accordance with the letter of the rule in question. In order for a law to be effectively implemented, it must be enforced through official channels; violations must trigger some kind of external sanction through a formal sanctioning mechanism; and an expectation of compliance should exist – in an optimal situation, compliance would be consistent over time and across the relevant context. Based on this definition, this study will shed light on the reasons behind the Mexican State’s failure to implement the General Victims’ Law.

The study demonstrates that civil society can – and must – play a role as important as that of the government in the rule-making process if that process is to have an effect: it can push legal projects forward; hold the government accountable for the weak implementation of a law; and pressure official authorities to respect the text of a law. Civil society can find its place at the center of the rule-making process with the government. But because civil society lacks the authority and necessary instruments to fully implement a law, a participatory project, one where
civil society and government officials join forces, is required. Even when the resources and ability to implement a law exist, a government’s unwillingness to put into practice the text of the legislation under consideration can turn the system in place into a simulation. That is why civil society’s agency is imperative to ensure the effective implementation of a given law – its leadership must be consistent and steady in order to resist the dark currents of impunity, injustice and corruption.

The thesis also closely analyzes both the Mexican State’s ability and willingness to implement the General Victims Law. While the ability to implement a law is an indicator of state capacity and an attribute of an effective state, the inability to implement a law is an indicator of state weakness. In turn, a State’s unwillingness to implement a law can indicate its disregard for the letter of the rule in question and it can also suggest a state’s wrongdoing. To determine how much incapacity and/or unwillingness from the Mexican State led to the limited implementation of the General Victims’ Law, I will analyze the law from its inception to its present implementation status.

This study will begin by presenting the origins of the General Victims Law to help the reader understand the context in which the law was conceived and the factors that led to its drafting and enactment, along with those that have influenced its implementation. Second, I will review key works from the literatures on rule of law, institutions and informal rules and identify which of the authors’ considerations can apply to the case of Mexico. I will then explain the weak implementation of the GVL by first analyzing the role that civil society has played, and looking in particular at the trajectory of the Movement for Peace with Justice and Dignity (MPJD), and by then observing the government’s role in order to understand the extent to which the Law’s weak implementation results from its inability or unwillingness to implement it.
Finally, I will close by presenting the case of Ayotzinapa and showing how the weakened pressure on the government from civil society organizations and victims, governmental incapacity, and most importantly governmental unwillingness, explain the outcome of the case.

II. Genesis

Over the past two decades, crime and violence have remarkably increased in Mexico.¹ Mass executions, disappearances, beheadings, and hangings are now commonplace across the country, as is impunity for these and many other crimes.² Not surprisingly, justice for the victims of crime and human rights violations has been long in the making. Prior to the enactment of the General Victims Law in 2012, no single legal instrument guaranteed the protection of their rights.³ Victims had no access to restorative justice – their rights to truth, justice and integral reparations were not satisfied. Within this context, the enactment of the General Victims’ Law emerged as an overdue recognition of those who have been most affected by the prevalence of violence and crime in Mexico: direct, indirect, and potential victims.⁴ The General Victims Law – at its origins – was a whisper of solace for all Mexican citizens.

¹ A wide variety of scholars, including Andrew Selee, Cynthia J. Arnson and Eric L. Olson have credited the increase in crime and violence to the shift in cocaine-trafficking routes and a limited transition from an authoritarian to a democratic rule of law. For more information, see: https://www.wilsoncenter.org/sites/default/files/crime_violence_mexico_centralamerica.pdf
² The Mexico Global Impunity Index published by the Center for Impunity and Justice Studies (CESIJ) at Universidad de las Américas in 2016 shows that only 4.46 percent of crimes recorded in Mexico result in convictions. The report also suggests that only approximately seven percent of crimes are actually reported and therefore 99 percent of crimes go unpunished.
⁴ On the one hand, the law defines “direct” victims as “those persons that have directly suffered some economic, physical, mental, or emotional damage or harm, or in general someone whose legal property or rights have been put in danger as a result of a crime or violations of their human rights...” On the other hand, it defines indirect victims as “family members or persons in charge of a victim who have a close relationship with him or her” and potential victims as “persons whose physical integrity or rights have
a. The Origins

Following his inauguration in 2006, President Calderón (2006-2012) on the National Action Party (PAN) launched a direct offensive against organized crime. The Mexican Government joined forces with the United States Government to combat drug cartels, put a halt to their illegal operations and curb the spread of violence. This joint offensive, which came to be known as the “war on drugs” led to the escalation of conflict between official forces and drug cartels, resulting in the death of thousands of civilians. In retrospect, scholars and civil society leaders have harshly criticized Calderon’s strategy on many counts and have particularly condemned his decision to increase the role of the military. The militarization of Calderon’s security strategy had a series of unintended consequences, including the increase in human rights violations.
In order to curb police corruption and counter the influence of drug cartels, Calderón deployed military forces to not only support – and in many cases replace – police forces, but to also lead civilian law enforcement agencies.\(^9\) While the military under Calderón captured twenty-five of the top thirty-seven most-wanted drug kingpins, the former President’s strategy overall failed to diminish the cartel’s presence – a series of new and smaller cartels emerged and the traditional rules of the game changed. Drug-related violence escalated in Mexico and, as has already been mentioned, the number of civilian deaths grew. Although the official figures have been widely debated, Mexican authorities registered 102,696 intentional homicides – 70,000 of which were drug-related killings – from December 2006 to November 2012 and it is estimated that there were approximately 27,000 disappearances.\(^10\) The prevalence of violence in Mexico was no novelty. But the country was shaken by a new and unprecedented paradigm: anyone – civilian or gang member; guilty or innocent; adult or child – could fall prey to Mexico’s indiscriminate violence.

When President Calderón’s Administration came to an end, the human toll had risen to unprecedented levels since the beginning of the Administration.\(^11\) These thousands of direct victims left behind many more indirect victims mourning their loved ones and trying to make sense of Mexico’s senseless violence. As the numbers of dead and missing increased during the drug war, victims found a national platform to voice their demands in the newly established

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\(^9\) More information can be found here: [http://www.cfr.org/mexico/mexicos-drug-war/p13689](http://www.cfr.org/mexico/mexicos-drug-war/p13689)

\(^10\) According to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns published in 2014, the Mexican government recognizes that 70,000 of the 102,696 homicides were drug-related killings – approximately 70 percent of the total. For more details, see: Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Mexico 28, April 2014. [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_36_Add.1_ENG.DOC](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_36_Add.1_ENG.DOC)

organizations that emerged to work on their behalf. The upsurge in violence prompted civil society organizations – led and supported in large part by victims themselves – to mobilize. The Movement for Peace with Justice and Dignity (MPJD) led by Javier Sicilia, a poet who lost his son to a drug cartel in 2011, became one of many prominent civil society organizations to exert pressure on government officials and advocate for victims’ rights. Other organizations, including “Mexico SOS,” led by Alejandro Martí and “Alto al Secuestro” (Stop the Kidnapping) led by Isabel Miranda de Wallace, actively sought to amplify victims’ voices and address Mexico’s collective grief. While each of these victim-led civil society organizations followed a unique agenda, many joined forces to advance one single goal: justice for the indirect victims who lost their relatives and loves ones.\(^{12}\) Mexico’s victims mobilized, marched, and rallied thousands of citizens – they put a human face on the country’s enduring conflict. No one – not even the Government – could ignore the resounding voices of civil society leaders advocating for victims’ rights. Their activism prompted, among many other unprecedented results, a national debate surrounding the enactment of a law to protect victims of crime and human rights violations.

\(b.\) **The Debate**

The first formal discussions around creating something like a General Victims Law took place two years after the Mexican Government passed a security and criminal justice reform mandating the enactment of a law to assist victims of crime.\(^{13}\) In 2010, six civil and academic organizations convoked a “Dialogue for Citizen Security with a Focus on Human Rights” where

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\(^{12}\) Laura Villagran, “The Victims’ Movement in Mexico” p.122
[https://www.wilsoncenter.org/sites/default/files/05_victims_movement_villagran.pdf](https://www.wilsoncenter.org/sites/default/files/05_victims_movement_villagran.pdf)

the participants discussed, among many topics, the need to enact a law to protect victims’ rights and put in place a fund to assist them. A year after, on June 10, 2011, the Government passed a human rights reform, which mandated the enactment of a law to address human rights violations within a maximum period of a year after the violation. Lawmakers, academic experts and victims gathered for a second dialogue focused on elaborating a legislative proposal for the victims’ law, which became one of three proposals presented to the Chamber of Deputies and the Senate for approval. In addition to the legislative proposal elaborated by victims, civil society organizations, academics, and lawmakers, the Calderón Administration and the National Autonomous University of Mexico (UNAM) each developed their own proposals for a victims’ law.

Around the same time the security dialogues around a victims’ law were held, government officials met with members of the Movement for Peace with Justice and Dignity in Chapultepec Castle, the National Museum of History. The Movement for Peace with Justice and Dignity and the executive branch attended the first meeting. During the dialogues of June 23, 2011, President Calderón heard and responded to victims’ testimonies; he expressed his sympathy for their plight; and declared that he too was “hurt by Mexico’s grief” at an event that aired live nationwide. In turn, Javier Sicilia urged President Calderón to reconsider his security

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14 Approximately 80 nongovernmental organizations participated in the dialogue convoked by the Center for Civic Collaboration, a public university; the Institute for Security and Democracy, INSYDE; FUNDAR, a center for research and analysis; México SOS; the Juárez Observatory for Public Security and Social Security, an umbrella group of civil organizations in Ciudad Juárez; and the Network of Public Security Experts. The agreements resulting from the dialogues can be found here: http://www.seguridad.colaboracioncivica.org/images/stories/documentos/pronunciamiento_final.pdf
15 CMDPDH “La verdadera razón del veto de Los Pinos a la Ley General de Víctimas” by Eliana García Luna, July 23, 2012 http://cmdpdh.org/2012/07/mariana-lojo-la-ley-general-de-victimas-aprobada-por-la-camara-de-diputados-y-por-el-senado-de-la-republica-misma-que-se-encuentra-en-espera-de-ser-publicada-incluye-garantias-para-el-derecho-a-la/
16 See p.137 – The Victims’ Movement in Mexico, Lauren Villagran https://www.wilsoncenter.org/sites/default/files/05_victims_movement_villagran.pdf
strategy, recognize his Administration’s debt to the victims and formally apologize to them.\(^\text{17}\)

The two parties engaged in a lively and unprecedented exchange. The Executive and the different organizations the victims exchanged their views in a dialogue between equals, hoping to solve a collective problem. A month after the dialogue with the executive branch, on July 28\(^\text{th}\), leaders of the Movement for Peace with Justice and Dignity organized a second dialogue with the legislative branch of the government.\(^\text{18}\) This was an unprecedented period of open dialogue between the Government and civil society in Mexico – the country’s longstanding wounds were placed at the center of the public debate and victims found a forum to voice their legal, medical and psychological needs.\(^\text{19}\) No one imagined at the time that the open deliberations between the Government and representatives of civil society would be halted by an unexpected conundrum.

Only one of the three proposals for a victims’ law presented to the Chamber and the Senate for approval passed both chambers in April 2012 – the General Victims Law (GVL) developed within the framework of the 2011 dialogues. Its approval was an extraordinary legislative success for those who had led the discussions from the onset: victims.\(^\text{20}\) The leaders of the Movement for Peace with Justice and Dignity widely celebrated the passing of the GVL and viewed this remarkable achievement as the most valuable outcome resulting from the Chapultepec dialogues of July 2011.\(^\text{21}\) Their celebrations were however interrupted on July 1\(^\text{st}\),

\(^{17}\) Proceso, “Sicilia, después de Chapultepec” by José Gil Olmos, June 25, 2011
http://www.proceso.com.mx/273966/sicilia-despues-de-chapultepec

\(^{18}\) The full dialogues can be found online on Youtube https://www.youtube.com/watch?v=0t8KIH934rQ

\(^{19}\) La Jornada, “Los claroscuros del diálogo de Chapultepec” by Luis Hernández Navarro, June 28, 2011
http://www.jornada.unam.mx/2011/06/28/opinion/023a1pol

\(^{20}\) The Chamber of Deputies unanimously approved the General Victims Law on April 30\(^\text{th}\), 2012. There were 369 votes in favor of the law and none against. For more details see Expansión, “La cámara de diputados aprueba la Ley General de Víctimas,” April 30, 2012
http://expansion.mx/nacional/2012/04/30/la-camara-de-diputados-aprueba-la-ley-general-de-victimas

2012, when President Calderón decided to veto the General Victims Law. Calderón was dissatisfied with the law passed by both chambers and justified his veto citing numerous design flaws in the proposal passed by the House and the Senate. He claimed that Congress lacked the constitutional authority to issue (emitir) a General Law to bring attention to the victims; argued that several of the law’s provisions were unconstitutional; and convoked legislators and civil society organizations to participate in a roundtable to formulate a new proposal. While certain organizations representing the victims with close ties to the Calderón Administration supported the President’s decision to veto the Law, the general public widely criticized his unwillingness to officially recognize the human rights violations directly tied to his security strategy.

President Calderón was not only criticized for the veto itself, but also for the timing of his decision. As noted previously, the Mexican Congress approved the GVL on April 30. The draft law was then submitted to the Executive for consideration, enactment, and publication. Under Article 72B, the Mexican Constitution grants the Executive 30 calendar days to consider a draft law and 10 days — following the initial 30 days granted — to enact and publish the law. Failure to veto within that period is taken as a signal of approval. However on May 10th, before the

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22 Calderón specifically requested a modification to Article 21 of the Constitution; made a case for the final proposal to capitalize on the experience, structure and budget of Provictima, which had assisted 7,000 people as of July 2012; and wanted to specify that the criminal should be the first individual responsible for repairing any damage made to the victims. See: La Jornada “Veta Calderón la ley de víctimas; pide al Congreso aclarar el tema de los subsidios” by Ángeles Cruz Martínez, July 5th, 2012

23 The victims’ organizations that supported the GVL such as Stop Kidnapping and Mexico SOS are considered Government Owned Non Governmental Organizations (GONGOS) by prominent scholars who have written about their activism, lawyers, including Santiago Corcuera, and other organizations representing the victims, including the MPJD. See: La Jornada “Veto de Calderón a la ley de víctimas, muestra su desprecio y cerrazón: Sicilia” by Fernando Camacho Servín, July 06, 2016 http://www.jornada.unam.mx/2012/07/06/politica/018n1pol

24 Santiago Corcuera Cabezut, Repercusiones del Veto a la Ley General de Víctimas y la Ley de Víctimas de Calderón, October 27, 2012 http://cmdpdh.org/2012/10/repercusiones-del-veto-a-la-ley-general-de-victimas-y-la-ley-de-victimas-de-calderon/ Article 72B of the Mexican Constitution states that “Every bill shall be regarded as approved by the executive branch if it is not returned to the chamber of its origin within ten business days; unless, during this time, the Congress shall have adjourned or suspended its sessions, in which case the return must be made on the first business day on which the Congress next meets.”
Executive had approved the General Victims’ Law, the leadership of the House and the Senate requested that the Secretariat of the Interior (Secretaría de Gobernación) return the draft law to them.\textsuperscript{25} The Secretariat of the Interior did so without submitting any modification to the text of the law. Importantly, there was no legal basis for either action. The congressional leadership resubmitted the law to the Executive on June 1st of that same year. By that time the 30 days allotted by Article 72B of the Constitution for the president to take action on draft laws submitted to him had passed.

This series of irregularities embroiled the debate between the Executive and Legislative branches surrounding the General Victims’ Law. On one hand, the Executive argued that the time limit granted under Article 72B was interrupted on May 10\textsuperscript{th} – when the Chamber of Deputies requested the draft law back from the Secretariat of Interior – and resumed on June 1\textsuperscript{st}.\textsuperscript{26} On the other hand, scholars and legal experts argued that Calderón had failed to respect the terms established by the Constitution, viewing his behavior as tantamount to a “pocket veto” – the kind that had been banned after the passing of a Constitutional reform in August 2011.\textsuperscript{27} Legal experts argued that even though the Secretariat of Interior had returned the law to the Chamber of Deputies on May 10\textsuperscript{th}, this could not possibly be considered a presidential veto, because the executive leadership had failed to formulate a single observation or reservation about

\begin{itemize}
\item \textsuperscript{25} Santiago Corcuera Cabezut, Repercusiones del Veto a la Ley General de Victimas y la Ley de Victimas de Calderon, October 27, 2012 \url{http://cmdpdh.org/2012/10/repercusiones-del-veto-a-la-ley-general-de-victimas-y-la-ley-de-victimas-de-calderon/}
\item \textsuperscript{26} “Caso Ley General de Victimas : el veto presidencial a examen” by Gonzalo Sánchez de Tagle, Nexos, August 29, 2012 \url{http://eljuegodelacorte.nexos.com.mx/?p=2072}
\item \textsuperscript{27} The Political Dictionary defines a pocket veto as “A legislative tactic that allows a President to indirectly veto a bill.” See: \url{http://politicaldictionary.com/words/pocket-veto/} and CMDPDH “La verdadera razón del veto de Los Pinos a la Ley General de Victimas” by Eliana García Luna, July 23, 2012 \url{http://cmdpdh.org/2012/07/mariana-lojo-la-ley-general-de-victimas-aprobada-por-la-camara-de-diputados-y-por-el-senado-de-la-republica-misma-que-se-encuentra-en-espera-de-ser-publicada-incluye-garantias-para-el-derecho-a-la/}
\end{itemize}
Accordingly, the President of the Permanent Commission from the Senate (Presidente del Senado de la Comisión Permanente), Senator José González Morfín instructed the Secretariat of Interior to publish the General Victims’ Law, and considered the law could be promulgated based on the provisions of Article 72B. Remarkably, Calderón finally did submit his veto of the law the night of July 1st, 2012 at 20:38, after the result of the Presidential election was announced and it was clear the candidate from his party, the PAN, had lost. The Permanent Commission of the Senate deemed President Calderón’s veto extemporaneous and its Constitutionality was at play. The series of irregularities committed during the constitutionally mandated term to consider and evaluate the General Victims Law thus further complicated an already entangled request to consider draft legislation.

The argument between the Senate and the Executive around Article 72B and the validity of the Presidential veto was the first in a series of quarrels surrounding the implementation of the General Victims Law. On July 20th, 2012, the Executive filed a constitutional controversy (68/2012) with the Mexican Supreme Court against the Senate and the Standing Commission of the Congress of the Union and impugned the decision from the Permanent Commission of the Senate that declared the Presidential veto inadmissible and extemporaneous. Upon the submission of the constitutional controversy, the recess commission of the Supreme Court

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28 CMDPDH “La verdadera razón del veto de Los Pinos a la Ley General de Víctimas” by Eliana García Luna, July 23, 2012 http://cmdpdh.org/2012/07/mariana-lojo-la-ley-general-de-victimas-aprobada-por-la-camara-de-diputados-y-por-el-senado-de-la-republica-misma-que-se-encuentra-en-espera-de-ser-publicada-incluye-garantias-para-el-derecho-a-la/
30 Felipe Calderón did not run for President during the 2012 campaign. The National Action Party’s (PAN) presidential nominee in 2012, Josefina Vázquez Mota, competed against Andrés Manuel López Obrador (Party of the Democratic Revolution), Gabriel Quadri de la Torre (New Alliance Party) and Enrique Peña Nieto (Institutional Revolutionary Party).
31 An extemporaneous veto is a delayed and/or postponed veto.
suspended the order to publish the General Victims Law in the Official Gazette and began to consider whether the veto of the draft law that President Calderón had submitted on July 1 respected the terms mandated by the Constitution, and whether the Technical Secretary of the Chamber of Deputies (Secretario Técnico de la Mesa Directiva de la Cámara de Diputados) had had the faculties to interrupt the legislative process and request the draft law be returned to the congressional leadership by the Secretariat of Interior.\textsuperscript{33} Ultimately, the law remained inoperative for seven months, until President Peña Nieto took office on December 1\textsuperscript{st}, 2012 and announced that he would withdraw the constitutional controversy from the Court’s consideration.

c. The Enactment

A month prior to the Presidential election, representatives from the Movement for Peace with Justice and Dignity met with the four running candidates – Josefina Vázquez Mota (National Action Party, PAN), Enrique Peña Nieto (Institutional Revolutionary Party, PRI), Andrés Manuel López Obrador (Democratic Revolutionary Party, PRD) and Gabriel Quadri de la Torre (New Alliance Party, PANAL). The encounter – known as the “Dialogue for Peace” – was a forum for leaders from the MPJD to challenge the candidates, and each of their parties on the issues of violence, security and justice for victims. During the meeting, the PRI candidate Enrique Peña Nieto pledged to place victims’ rights at the center of his Administration’s priorities and enact the General Victims’ Law.\textsuperscript{34} Peña Nieto followed through on the second part of his promise. He was elected Mexico’s 57\textsuperscript{th} President on July 1st 2012 and on his second day in

\textsuperscript{33} The Supreme Court was on recess at the time. See: “Caso Ley General de Víctimas : el veto presidencial a examen” by Gonzalo Sánchez de Tagle, Nexos, August 29, 2012  
\texttt{http://eljuegodelacorte.nexos.com.mx/?p=2072}  
\textsuperscript{34} ADN Político “Peña Nieto se compromete a mantener diálogo con las víctimas” January 9, 2013  
\texttt{http://www.adnpolitico.com/gobierno/2013/01/09/pena-nieto-se-compromete-a-mantener-dialogo-con-las-victimas}
office – December 2\(^\text{nd}\), 2016 – Peña Nieto announced his intention to withdraw the constitutional controversy in order to enact the General Victims’ Law.\(^{35}\) The decision to enact the General Victims Law was part of “13 Presidential Decisions” that President Peña Nieto announced in the early days of his Administration.\(^{36}\) In its early days, the new Administration seemed to be on course for bringing justice to the victims of crime and human rights violations in a way the Calderón Administration proved unwilling to.

Following President Enrique Peña Nieto’s order to withdraw the case and enact the General Victims’ Law the Supreme Court effectively dismissed the constitutional controversy on December 11, 2012.\(^{37}\) It took less than a month for the General Victims’ Law to be published in the Official Gazette.\(^{38}\) The original version of the General Victims’ Law encompassed 180 Articles and mandated the creation of the following institutions to bring attention to victims: the National System of Attention to Victims (Sistema Nacional de Atención a Víctimas, SNAV), the Executive Commission of Attention to Victims (Comisión Ejecutiva de Atención a Víctimas, CEAV), the National Registry of Victims (Registro Nacional de Víctimas), the Help, Assistance and Integral Reparations Fund (Fondo de Ayuda, Asistencia y Reparación Integral) and the Federal Legal Affairs (Asesoría Jurídica Federal).\(^{39}\) Under the National System of Attention to Victims, victims can claim their medical, legal, financial and psychological benefits; and they have the right to a prompt and effective investigation, leading to the identification, imprisonment

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and trial of the perpetrators. The Law was due to come into force 30 days following its publication and the Government was required to issue accompanying regulations within a maximum period of six months.

While most civil society organizations celebrated the enactment of the General Victims’ Law, some activists, including Isabel Miranda de Wallace and Alejandro Martí, who had advocated for the improvement and reform of the law prior to its enactment, voiced reservations about the law. Wallace and Martí – who had backed President Calderón’s veto – argued that the law did not accurately specify who could claim victimhood; it failed to establish a fund to provide financial reparations; and it created additional layers of bureaucracy without the necessary budget allocation for them to operate. Other prominent activists, including Javier Sicilia, recognized that the Law was perfectible but argued that its reform process should come after its enactment. Sicilia’s side of the argument was echoed in victims’ voices of despair – a kind of despair that had longed for justice too long and cried out for the rights embedded in the law, regardless of whether the Government had the willingness and ability to implement it.

d. The (Weak) Implementation

At the official ceremony where President Peña Nieto announced the law’s enactment, Javier Sicilia referred to the GVL as a “first step” that had to be followed by a commitment from Congress and the Executive to implement it – without which the General Victims’ Law would

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be, in Sicilia’s words, “only dead letter.”

However, the implementation of the GVL has been marked by a series of delays and significant shortcomings, which in turn have affected victims’ ability to claim the benefits and rights they are entitled to under the Law. Indeed, the Executive Commission was appointed in October 2013, three months after the deadline established by the law; the National System of Attention to Victims was created in January 2014 after a delay of eight months; and the National Registry of Victims remains incomplete. Almost four years after the GVL’s enactment, the institutions responsible for putting the Law into practice have largely failed to implement its articles. Explaining the lack of implementation of each of the GVL’s 180 articles is beyond the scope of the present study, I will therefore group the GVL’s rights into five different categories and illustrate their lack of implementation with specific examples. The five categories that I will systematically consider are: the GVL’s general character; victims’ rights to help, assistance and attention; victims’ rights during criminal justice proceedings; victims’ right to justice and truth; and their rights to an integral reparation.

GVL’s General Character. As a “General” law, the GVL applies nationwide and mandates authorities at the federal, state and municipal levels to comply with its provisions. The different branches of government – executive, judicial, and legislative – including all of their public offices, bodies and institutions are responsible for victims’ protection and must watch over the effective implementation of the Law’s first article: the provision of aid, assistance and integral reparations. Correspondingly, each state is required to publish its own legislation to

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44 Justice in Mexico “Mexican lawmakers call for increased oversight of Victims’ Law” by Tiana Carriedo, July 02, 2014 [https://justiceinmexico.org/mexican-lawmakers-call-for-increased-oversight-of-victims-law/](https://justiceinmexico.org/mexican-lawmakers-call-for-increased-oversight-of-victims-law/)

protect victims’ rights, abiding by the guidelines established by the GVL. The Victims’ Law not only requires Mexico’s 32 federal entities to harmonize their local legislation with the general provisions of the law, it also instructs them to create a series of local institutions to ensure victims are effectively assisted. For example, federal entities are required to establish a local executive commission of attention to victims, a local registry of victims, and an assistance and reparations fund. Victims, scholars and civil society organizations have warned numerous times that the Victims’ Law will not be fully implemented unless all government entities at all levels comply with the law’s requirements nationwide.\textsuperscript{46} Much to their chagrin, this has not been the case so far. To date, the majority of states have failed to harmonize their local legislations with the GVL, only 17 states have established an Executive Commission to assist victims at the state-level,\textsuperscript{47} and only six states have put a Fund of Help, Assistance and Integral Reparation in place.\textsuperscript{48} And as a consequence, the general scope of the Law is limited by states’ unwillingness to harmonize their laws and institutions as mandated by the GVL.

Victims’ Rights to Help, Assistance and Attention. States’ failure to harmonize their local legislations with the GVL’s provisions affects authorities’ ability to deliver effective help, assistance and attention to the victims, as is mandated by Articles 8 and 9.\textsuperscript{49} Indeed, the articles

\textsuperscript{47} The states are Nuevo León, San Luis Potosí, Veracruz, Estado de México, Tlaxcala and Yucatán. Proceso, Dictamen de la Ley de Víctimas, traicion a la palabra presidencial: Alto al Secuestro, October 27, 2016 http://www.proceso.com.mx/460368/dictamen-la-ley-victimas-traicion-a-la-palabra-presidencial-alto-al-secuestro
\textsuperscript{48} Ibid.,
\textsuperscript{49} Article 8 of the GVL states that “Victims will receive timely and prompt assistance, in accordance with their immediate needs and based on the victimizing act, in order to cover and guarantee their food and personal hygiene needs and ensure that they receive medical and psychological emergency attention, emergency transportation and transient accommodation under dignified and secure conditions from the moment the crime is committed or their rights are violated” and Article 9 specifies that “victims have the
and provisions mandating the drafting of local legislations and the establishment of executive commissions at the local level aim to guarantee victims’ benefit from targeted and effective attention. A large number of victims who have suffered a crime or a violation to their human rights do not have the financial resources to travel to Mexico City, where the Executive Commission of Attention to the Victims (CEAV) is headquartered. Moreover, even if all of Mexico’s victims had the means and will to request their rights before the CEAV, they would not be able to receive the attention they are entitled to by law. Indeed, in an interview with the newspaper El Universal, the CEAV’s President, Jaime Rochín del Rincón revealed that as of March 2016 – almost three years after the establishment of the Commission – commissioners have only been able to assist 114 victims.\textsuperscript{50} To put this number into perspective, the Commission receives approximately 20,000 demands from individuals who claim to be victims of a crime or human right violation every year.\textsuperscript{51} These demands add to the hundreds of thousands of victims who have historically been deprived of their rights in Mexico and unable to access justice.

Victims’ Rights during Criminal Justice Proceedings. Another way to evaluate the implementation of the GVL is to analyze the Government’s success in bringing justice to victims. To date, after decades of violence and impunity, victims largely navigate criminal justice proceedings by themselves. Indeed, in the 17 states that have established executive commissions to assist victims at the state-level, there are only 264 lawyers to assist victims.\textsuperscript{52} Considering that in 2016 alone, 561,418 crimes were denounced in these states, each lawyer would have to take care of 2,126 cases, without including the crimes that have yet to take place

\textsuperscript{50} El Universal “Ley, viacrucis en la justicia de las víctimas”: CEAV by Dennis A. García, March 14, 2016 \url{http://www.eluniversal.com.mx/articulo/nacion/sociedad/2016/03/14/ley-viacrucis-en-la-justicia-de-las-victimas-ceav}
\textsuperscript{51} Ibid.,
\textsuperscript{52} Ibid.,
and the human rights violations that are not included in this figure. The precariousness of the system in place to bring justice to victims is starker than these numbers reflect. The Report on the Human Rights Situation in Mexico released by the IACHR in March 2016 revealed that during their on-site visit from September 28th to October 2, 2015, commissioners “heard from victims throughout the country that the administration of justice is a ‘simulation’.” Victims’ impression of the administration of justice in Mexico indicates there is an enormous gap between law and practice and that in spite of the existence GVL, they feel largely neglected by the State.

Victims’ Right to Justice and Truth. While Article 10 of the GVL establishes that the State must guarantee victims’ right to justice – encompassing their rights to judicial remedy; due diligence and process; and an immediate and exhaustive investigation – in practice they confront significant obstacles in trying to navigate criminal justice proceedings. Whether it is because government authorities are overwhelmed by the amount of cases they need to handle simultaneously or are grossly incompetent; because victims have a hard time understanding the proceedings, which are often obtuse and technical; or because government authorities collude with offenders and lack the will to carry investigations forward, the conditions for Article 10 to

55 Article 10 of the GVL states that “Victims have the right to an adequate and effective judicial remedy before independent, impartial and competent authorities, guaranteeing victims the exercise of their right to know the truth; have access to an immediate and exhaustive investigation carried out with due diligence; and to see the perpetrators of crimes and or human rights violations be prosecuted and punished with respect for due process; and obtain an integral reparation for the damages suffered. The victims will have access to the justice mechanisms available to the State, including judicial and administrative proceedings. Legislation regulating victims’ intervention in the different proceedings should facilitate their participation.” See: http://www.diputados.gob.mx/LeyesBiblio/pdf/LGV.pdf
be respected are not guaranteed. And, in a country where 98% of crimes remain unpunished, justice and truth for the victims is merely an illusion.

Victims’ Rights to Integral Reparation. Within this context, we should not expect that victims can successfully claim their rights to integral reparation. Articles 1, 26 and 27 of the GVL establish that the Government is responsible for addressing the harm through any of the following measures: restitution, rehabilitation, compensation; satisfaction; and non-repetition. Yet, the Executive Commission of Attention to Victims reported to the IACHR in 2015 that the attorneys general’s offices, prosecutors’ offices, and human rights commissions at times differ in their criteria for assisting victims, and as a result, victims see the search for legal, medical or psychological assistance as a “labyrinth.” In many instances, the officials responsible for providing quality and timely assistance to the victims fail to do so because they lack the training to do so or the will and effort to properly perform. Authorities have even failed to compensate the victims with economic reparations and the Assistance and Integral Reparations Fund has remained largely inoperative. Indeed, as of March of this year, only 4.5% of the budget to support victims had been used – the Assistance and Integral Reparations Fund holds a budget of over $48 million and a little over $2 million have been used. The question that arises is, why

57 The GVL also establishes a series of provisions that back victims’ right to justice, including their right to participate in the investigation and be informed by government authorities throughout the proceedings. Yet, these sophisticated provisions are nullified by the scope of impunity in Mexico. See: Open Democracy “In Mexico, the human rights abuses of the ‘war on drugs’ have been a daily reality for more than a decade” by Centro PRODH, May 17, 2016 https://www.opendemocracy.net/drugpolicy/centro-prodh/in-mexico-human-rights-abuses-of-war-on-drugs-have-been-daily-reality-for-more-than-dec
59 Excelsior “Ley de Víctimas se ahoga en el fracaso” by Leticia Robles Rosa, March 14, 2016 http://www.excelsior.com.mx/nacional/2016/03/14/1080735
has only a minimal fraction of the budget been used? And why is the CEAV’s leadership putting a hold on 95.5% of the funds available for victims?

Since the publication of the GVL, civil society organizations and victims have argued that the law is being implemented in a “discretionary, improvised and bureaucratized fashion.”\(^6^0\) The CEAV’s leadership has been involved in a wide range of public controversies and a large number of activists, including Javier Sicilia, have condemned a lack of representation at the leadership level.\(^6^1\) Indeed, when seven advisors were named to preside over the National System of Victims’ Attention in 2013, Sicilia criticized the fact that six out of seven advisors came from Mexico City; that most of them are criminal lawyers; and a majority of them have no prior experience working with victims.\(^6^2\) In other words, their profiles do not correspond to what had been mandated by the text of the GVL. Moreover, because victims have largely been excluded from the decision-making processes within the CEAV, there is a growing sense that its leadership is not accountable to the subjects it is supposed to serve: the victims. Within this context, victims in Mexico face significant institutional and systemic obstacles that limit their ability to claim their rights under the GVL.

\(e.\) The Reform

Hoping to address the practical shortcomings of the General Victims’ Law, civil society organizations and human rights advocates called for the need to reform the Law. All political


\(^6^1\) Proceso, “Los pendientes de la Ley de Victimas” by Javier Sicilia, October 27, 2013 [http://www.proceso.com.mx/356549/los-pendientes-de-la-ley-de-victimas-2](http://www.proceso.com.mx/356549/los-pendientes-de-la-ley-de-victimas-2)

parties except for the PAN (PRI, PRD, PT, and PVEM) joined forces with civil society organizations, including Mexico SOS and the Movement for Peace with Justice and Dignity to push forward a first reform process in 2013. This coalition submitted a reform initiative encompassing 144 modifications to the General Victims’ Law. The suggested reforms covered a wide array of issues, including the importance of distinguishing between victims of crime and victims of human rights violations. Dozens of organizations and human rights advocates warned that the reform process was being jeopardized by its secrecy and asked President Peña Nieto to lead a transparent, inclusive and participatory reform process.64

A week prior to the release of reforms to the General Victims’ Law, civil society organizations and victims submitted their own recommendations and observations to legislators to ensure their opinions were taken into consideration in the reform process. In a letter to the Executive, civil society organizations, victims and experts summarized their main concerns with regards to the Law and stated their “opposition to any reform proposal or repeal initiative of the General Victims’ Law contrary to the basic principles protecting the rights of the victims.” The concerns articulated in the letter to the Executive include: the State’s failure to investigate human rights violations and protect the victims; the stigmatization and criminalization of victims; and the lack of due process. On October 25th, 2016 the legislative commissions of Governance, Justice, Human Rights and Legislative Studies finally approved a series of modifications to the General Victims’ Law that have been largely criticized by civil society organizations.

65 Aristegui Noticias “Profunda preocupación” por cambios a la Ley Víctimas (Carta a EPN) by the Editorial Board, August 10, 2016 http://aristeguinoticias.com/1008/mexico/profunda-preocupacion-por-cambios-a-la-ley-victimas-cartas-a-epn/
A statement released in October 2016 by 30 civil society organizations and numerous victims highlighted that the recent reforms to the General Victims Law constituted a setback that failed to address the “profound crisis of violence, delinquency human rights violations and revictimization.” For example, Stop Kidnapping (Alto al Secuestro) one of the organizations that led the drafting process of the General Victims Law argued that the approved reforms is a “simulation and a betrayal to the promise of the President.” In a statement released following the approval of the reforms to the General Victims’ Law by the legislative commissions of Governance, Justice, Human Rights and Legislative Studies, the organization argued that the reforms do not mandate the Executive Commission of Attention to the Victims (CEAV) to take care of those individuals requesting assistance due to a lack of response from the commissions at the state-level. In addition, Stop Kidnapping also highlighted that the reformed version of Article 67, which establishes a limit to the funds for reparations of 1,110,208 Mexican pesos, only contemplates the victims of crimes, not of human rights violations and denounced all of the shortcomings mentioned above. Finally, Stop Kidnapping highlighted that under the Accusatory


Penal System, all victims are entitled to be supported by a judicial advisor and noted that the violations of the General Victims Law were going largely unpunished.⁶⁹

Despite normative developments, the prevalence of violence and the reports of security forces’ involvement in extrajudicial killings, forced disappearances, kidnappings for ransom and torture call into question the Mexican government’s practical capacity and political will to respect the rule of law and guarantee fundamental human rights. In order to understand the reasons behind the State’s failure to implement critical laws, I will turn to what scholars have said in the past about this topic and identify which of their considerations can apply to the case of Mexico.

III. Literature Review

This study uses insights from the literatures on rule of law, legal implementation, and democratization as frameworks to understand the failure of the Mexican government to implement the General Victims Law in Mexico and analyze the case of the 43 disappeared students in Ayotzinapa. I will first analyze a series of state/government-related factors that may be relevant for explaining the outcome under consideration (the failed implementation of the General Victims Law, GVL). I will then look into the types of informal institutions that can potentially interfere with the implementation of the GVL.

a. The State and the Rule of Law

While the theoretical basis of this thesis does not build on the literature on democratization and democracy consolidation in Latin America, we will use insights from this

literature to understand specific dynamics affecting the rule of law and citizens’ rights. Here, it is important to distinguish between regime-type and state. While regime type influences institutional formation and distribution of power, this study will focus on the role of the state, as it is the entity responsible for implementing policy and legislation. For the purposes of this study, the state will be defined as “a set of social relations that establishes a certain order, and ultimately backs it with a centralized coercive guarantee, over a given territory.”

The concepts of order, equality and legality will be at the center of the following discussion.

Studying the latest wave of democratization in Latin America, authors such as O’Donnell (1996, 1999, 2001: 71 and 2004: 32), Mainwaring, Scully, and Vargas Culell (2009) have linked democracy and the rule of law in their work. O’Donnell considered that the order established by the state is unequal – it helps reproduce systematically asymmetric power relations – and it is formalized in the legal system. Although the ideal of equality before the law has proven difficult to put into practice, not all countries are ruled by an unequal governing order – restrictions to the arbitrary exercise of power apply in certain cases. Accordingly, in discussing the state, O’Donnell (2004) introduces the notion of the consistency of the rule of law, across territories and social classes, and links it to a country’s democratic tradition. The author considers that a democratic rule of law “ensures political rights, civil liberties, and mechanisms of accountability which in turn affirm the political equality of all citizens and constrain potential abuses of state power” (2004, 32). At the heart of the concept of “democratic rule of law” is the notion of political and legal equality backed by strong institutions, comprehensive laws and effective bureaucracies. The question that arises is, what explains the prevalence of an undemocratic rule of law?

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70 O’Donnell 1999: 135
71 O’Donnell 1999:135
O’Donnell expands beyond the consideration of State in terms of authority and activity to introduce the notion of legality. The author considers different types of polyarchies - formulation of Robert Dahl (1971) and their corresponding levels of representation and institutionalization.\(^7\) In doing so, O’Donnell attempts to incorporate “non-institutionalized” new democracies into a comprehensive theory of polyarchy and recognizes the importance of society to understand democracy and state interactions. Moreover, the author recognizes two constitutive dimensions of the state, namely the formulations of “state-as-law “and “state-for-the nation” and analyzes crisis in new democracies from a socioeconomic perspective. Under the premise that “a state that is unable to enforce its legality supports a democracy of low-intensity citizenship,”\(^3\) the author provides a categorization of countries in terms of their level of homogeneity, both territorially and functionally speaking.

O’Donnell groups a number of new democracies and develops a rigorous topography to measure the degrees of state presence with brown and blue as the two chromatic extremes. The author proceeds to analyze the impact of economic deterioration on the degradation of democratic governments. O’Donnell assesses the undermining of popular trust, the leaner role of the state and the instauration of hostile political environment. Focusing on Argentina, Peru and Brazil and their corresponding patterns of recurrent high inflation, the author considers the effects of economic deprivation such as the shortening of time horizons and implosion of social relations in a context of lawlessness. The impact of poor democratic performance leads to the “atomization of society” which “mirrors and accentuates the disintegration of the state.”\(^4\) Within this context, legality, order and equality are limited.

\(^{7}\) O’Donnell 1993: 1355  
\(^{3}\) O’Donnell 1993: 1361  
\(^{4}\) O’Donnell 1993: 1365
O’Donnell (1999) considers that Mexico is a case of “high territorial and functional heterogeneity” in spite of decades of centralizing authoritarian rule.\textsuperscript{75} High territorial and functional heterogeneity determine the distribution of power resources and the incidence of income inequalities. On the one hand, the prevalence of functional heterogeneity negatively affects the efficacy of state bureaucracies, and it also influences citizens’ ability to benefit from the services and claim the rights they are entitled to – irrespective of their class or status. As suggested by O’Donnell, weaker bureaucracies “create (or reinforce) systems of local power which tend to reach extremes of violent, personalistic rule open to all sorts of violent and arbitrary practices.”\textsuperscript{76} The prevalence of arbitrary practices is aggravated where poverty and discrimination go hand in with low intensity of citizenship.\textsuperscript{77} Accordingly, the denial of rights, the impunity of the drug trade, extrajudicial executions or forced disappearances, among others, can all be considered consequences of prevalent functional heterogeneity within a given territory; they are also indicators of weak rule of law; and reflect a government’s inability to implement its laws or regulations. In this context, the political and legal equality of citizens are not guaranteed and, legality is not universal. The author’s conclusions around order and legality can therefore be linked to the prevalence and incidence of violence.

In her discussion on violence and democracy, Teresa Caldeira observes the case of Brazil, which exemplifies the obliteration of legality within a state, as considered by O’Donnell. In O’Donnell’s terms, Brazil is a country with extensive brown areas, weak representative institutions and a non-universalistic application of rules. Caldeira illustrates the deprivation from

\textsuperscript{75} O’Donnell 1999:138
\textsuperscript{76} O’Donnell 1999: 138-139
\textsuperscript{77} In these cases “the specifically political conditions for the existence of polyarchy are usually met…but peasants, slum-dwellers, Indians, women, et al., are often unable to get fair treatment in the Courts, or to obtain from state agencies services to which they are entitled or to be safe from police violence.” O’Donnell 1999: 140
liberal and democratic citizenship in Brazil by referring to the unlawful intervention of police forces and the challenges the state faces establishing legality over its territory. In this case, violence and impunity delegitimize the rule of law. Moreover, introducing the “civil component of citizenship,” Caldeira invites the reader to look beyond the political perspective of democracy in a context of democratized institutions and ineffective rule of law. The disappearance of public spaces is another implication resulting from the systematic denial of liberal rights. In a context of insecurity, fear and seclusion, the authoritarian rule of violence erodes social capital formations. Indeed, public confidence implodes as the privatization of security and popular support for police violence develop. The culture of fear originating in the normalization of violence poses a severe threat to the democratic polity. Ultimately, successful democratic consolidations require a balance between authority and rule of law, political efficacy and active civil society.

Bringing the issue of resources into the discussion of inequality and legality, Brinks (2008:1) argues that marginalized groups will face significant limitations in trying to engage with the networks and institutions protecting their rights. Among the factors contributing to individuals’ legal inequality is their lack of education; shortages of information concerning their rights and duties; and a lack of resources to fully exercise and claim their rights. Together with authors including Méndez et al. (1999) and Foweraker and Krznaric (2000), Brinks suggests that democratic rights ought to not only be extended, but also claimed by marginalized groups. His explanation complements O’Donnell’s theory of functional heterogeneity. While O’Donnell observes the ineffectiveness of state-as-law and focuses on the systematic factors that limit

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78 Caldeira 1999: 693
79 O’Donnell (2004) argues that “the rules that regulate state institutions should be clear, publicly available, and properly enacted,” and adds that “prompt and effective mechanisms must be in place to prevent, stop, or redress state violations of citizens’ rights.”
individuals’ citizenship, Brinks introduces the notion of agency and analyzes the factors at the individual level that reinforce a citizenship of low intensity. Although both authors seek to answer similar questions looking at different levels of analysis, both focus on the role of institutions in either block or guaranteeing the effective implementation of rights.

It is thus essential to define what institutions are. Douglass North (1990) posits that “institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction.” Consequently, institutions enable, structure and constrain human interactions and can punish misbehavior. O’Donnell (1999a, 1999b) recognizes early on that having a network of mutually reinforcing institutions is a precondition for the rule of law and horizontal accountability. Brinks (2008) builds on O’Donnell’s considerations and distinguishes between formal legal improvements that are “concomitants of twenty-first century democracy” and developed informal institutions that rest on “longstanding patterns of social and economic power.” That institutions can be formal or informal is well known and all the authors studied as part of this literature review consider the way both types of institutions influence incentives in human interactions. Notably, Brinks’ distinction between formal legal institutions and informal institutions, evidences a degree of “discontinuity in the rule of law” – spaces where the rule of law is suspended – that becomes manifest at the lowest levels of the legal system and accounts for the prevalence of legal inequality. Because order within a given country is formalized by the legal system – going back to O’Donnell’s definition of the state – the prevalence of political and legal inequalities are indicative of weak mechanisms of accountability and poorly functioning institutions. In order to further develop the latter point, it is important to understand institutional practices and the interactions between formal and informal rules. Indeed,

80 North 1990: 3
81 Brinks 2008: 1
identifying the causes of failed implementation of laws in Mexico requires looking not only at how the weakness of formal institutions (understood as organizations, i.e., the lack of capacity of the state) results in the lack of implementation of formal institutions (understood as laws), but also identifying and examining informal institutions that may actively block the effective implementation of laws.

b. The Rules

According to O’Donnell (1997) formal institutions have “well-defined, legally established boundaries that delimit the proper exercise of their authority” and “there are state agencies empowered to control and redress trespasses of these boundaries by any official or agency.”

Because formal institutions are weak in Latin America, it is essential to look at informal institutions to paint a full picture of any country’s institutional system. For the purposes of this study informal institutions will be defined in accordance to Helmke and Levitsky’s definition as “socially shared rules, usually unwritten, that are created, communicated, and enforced outside officially sanctioned channels.” Informal rules consistently regulate behavior and while their violation induces sanction, they are not developed, communicated or enforced through formal channels. This explains why scholars such as Boussard (2000), Manor (2001) and Tsai (2006) link formality to state-enforced rules, and understand informality in relation to the norms and organizations that constitute civil society – according to Ellickson (1991) and J. Knight (1992), formal rules are enforced by a third party and informal norms as self-enforcing. And because political actors respond to a mix of formal and informal institutions, it is essential to observe the two types of institutions, as suggested by Douglas North and Guillermo O’Donnell.

82 O’Donnell 1997, 185
83 Helmke and Levitsky 2006: 5
Informal rules can directly influence the performance of democratic institutions when they can “reinforce, subvert, and sometimes even supersede formal rules, procedures, and organizations.” In their work “Informal Institutions and Democracy”, Helmke and Levitsky (2006) explore the effects of informal institutions in political representation, democratic accountability, democratic governance, citizenship and the rule of law. The two authors consider that informal rules can have positive or negative effects on any of the four areas outlined above. For instance, Brinks (2008) argues that rights require the development of a network of supporting formal and informal institutions in order to become effective and suggests that in major Brazilian cities, a set of norms exists within the justice system that permits and encourages extrajudicial executions of suspected violent criminals. As such, in order to understand the effects of informal institutions and determine the factors that actually drive politics and the implementation of laws in Mexico, we will have to look beyond “parchment institutions.” The considerations outlined above on informal institutions therefore beg the following question related to my study: what rules are actually being followed, and how do they interfere with the implementation of the General Victims Law in Mexico?

While a full analysis of informal institutions in Mexico largely would require a long-term study on the ground and largely exceeds the scope of this thesis, we will try our best to identify shared expectations about informal rules along with mechanisms of enforcement to determine whether informal behavior is rule-bound. Ultimately, this study will focus on the one hand on horizontal accountability, that is the degree to which public officials are responsible to or monitored by other agencies and institutions of the State, and vertical accountability in order to

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84 Helmke and Levitsky 2006: 2
85 Carey 2000: 33
86 O’Donnell 1996:12
understand the extent to which the victims are able to call on the state to act.\textsuperscript{87} This two-sided approach will hopefully allow us to paint a comprehensive picture of implementation of laws in Mexico and protection of citizens’ rights. In particular, the study examines how state/government related factors explain the state’s failure to comply with the General Victims’ Law; how the degree to which other institutions of the State call on the Mexican government to act and how able they are to get their way affects that outcomes; and at what citizens are calling on the state to do and how they are able to get their way influences the outcome.

IV. Capsize

The General Victims’ Law has been a complex endeavor since its inception. After surviving Calderón’s veto, it faced a series of shortcomings that limited its prompt enactment of implementation. And although the National System of Attention to Victims has now been established and holds the resources to effectively operate, too many victims remain on the margins of justice. To date, violence lies on the margins of accountability and victims are for the most part unable to claim their rights to truth and benefit from the integral reparation of their damage. In a country where violence endures and new victims emerge every day, it is essential to understand the factors that are preventing the effective implementation of the General Victims’ Law. As this study will show, both the government and civil society play a role to play in the implementation of the GVL. As the next section will show, while civil society organizations lack the agency to bring about the effective implementation of the Law, government authorities, in turn, are unwilling to respect the provisions of the GVL and act in accordance with their duties.

\textsuperscript{87} O’Donnell 1994, 199b; Schedler et al.1999; Mainwaring and Welna 2003
a. The Incentive

The General Victims’ Law was born out of civil society’s agency and mobilization. Its enactment was an extraordinary victory for citizen-led organizations representing victims in Mexico. In 2012, their activism translated into a vociferous call to action on the State’s most basic duty: its duty to defend the security and dignity of its citizens. During the different dialogues led by civil society organizations, the Calderón Administration was brought to the table and held accountable for the human rights violations that took place from 2006 to 2012. The momentum of the victims’ movement reached its peak around the time of the drafting and enactment of the GVL – in an unprecedented setting, victims’ rights were placed at the center of policy debates. However, the enactment of the GVL – which resulted from victims’ mobilization – had a demobilizing effect on the most vehement organization representing victims’ rights: the Movement for Peace with Justice and Dignity. Indeed, the partial demise of the MPJD, which had positioned itself as the loudest voice within the victims’ movement in Mexico, lowered the pressures on the Mexican government to implement the General Victims’ Law.

Weakened Mobilization. The MPJD faced numerous internal challenges since its inception, and, these heightened with the Movement’s increased engagement with the Government. Indeed, the MPJD’s increased collaboration with the Mexican Government in the public policy area alienated the most extreme factions within the Movement. The far-left faction of the MPJD rejected the Movement’s dialogue with the Government from the onset and opposed an interlocution with an entity that failed to abide by its most basic responsibility: to respect and protect the rights of all its citizens.88 The most radical factions of the Movement

88 La Jornada “Dudas en el movimiento por la paz sobre el diálogo con Calderón” by José Antonio Román y Rubicela Morelos, May 24, 2011 http://www.jornada.unam.mx/2011/05/24/politica/009n1pol
pleaded for a more disobedient form of activism, based on an outright and consistent opposition to the Government. The divide between the most moderate sections and most radical factions of the Movement widened when the leaders of the MPJD convened the dialogues with the Executive and Legislative branches of Government. Yet, while certain factions of the Movement saw the Government as a necessary partner in the fight for justice and dignity, the MPJD always resisted co-optation. The MPJD’s autonomy from the government in turn alienated other important actors – including numerous prominent victim-led organizations that operate in symbiosis with Government officials. A series of leadership reconfigurations further aggravated the internal weakening of the MPJD and its strained partnership with other NGOs.

**Leadership reconfigurations.** The three key figures – Julian LeBarón, Emilio Álvarez Icaza and Javier Sicilia – that had led the Movement since its inception parted ways at different junctures. First, Julian LeBarón – a Mennonite from Chihuahua whose brother, Benjamin, was murdered in 2009 by gangsters – joined the most radical voices within the MPJD who rejected any type of engagement with the Government and left the Movement following the second dialogue with the Executive on October 14, 2011. LeBarón’s departure widened the internal divide between the most radical voices, and more moderate voices, within the movement. Second, Emilio Álvarez Icaza also left the Movement after he was appointed as the IACHR’s

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90 Among these organizations are, Mexico SOS led by Alejandro Martí; Stop Kidnapping led by Isabel Miranda de Wallace and Common Cause led by María Elena Morera. In his essay “La Vida por Delante” Juan Villoro quotes Clara Judisman, who once said that “The Movement successfully avoided being captured by radical inclinations from the left but it wasn’t accompanied, in spite of Sicilia’s efforts, by victims who successfully captured the public’s attention and frequently attended the periodic meetings on public security led by President Calderón.” Villoro adds that the Movement successfully “moved forward between both extremes and discovered that true radicalization (in the etymological sense of the word that has to do with reaching the roots of the matter) laid in finding an uncomfortable intermediate position: the gap between two chairs.” See: “La Vida por Delante” by Juan Villoro in “El Movimiento por la Paz con Justicia y Dignidad” Eds. Javier Sicilia and Eduardo Vázquez Martín, Ediciones Era, 2016 p.310
new Executive Secretary on July 19th, 2012, just a couple of days after the Government submitted the constitutional controversy. Icaza – an old friend of Javier Sicilia – was the Movement’s political voice, the one in charge of organizing the dialogues with the Government and advancing concrete policy demands such as the General Victims’ Law. In Sicilia’s words, without Icaza “there could have been no dialogues with the Executive and Legislative branches.”92 The leader who had been traditionally in charge of pressuring and negotiating with the Government left the Movement at a juncture in which his leadership was most needed: a time to ensure the General Victims Law could come to fruition, be enacted, and most importantly, implemented. While the departures of LeBarón and Icaza represented a heavy blow for the Movement’s internal structure, the MPJD’s sense of purpose was most weakened with the retreat of the its leader, Javier Sicilia.

A month after Icaza announced his departure – in mid-August 2012 – the MPJD led a Caravan of 120 people that crossed the United States from East to West and was joined by mothers, fathers, sisters, and brothers of Mexicans murdered and disappeared during the drug war. At the final stop, in Washington DC, Javier Sicilia told Icaza that he had just bought new boots.93 In other words, he had taken off his son’s boots, which he had used since he first begun to publicly voice the collective nature of his pain. Sicilia’s decision to retreat from the public sphere was profoundly consequential at a time the Movement’s voice echoed across different political forums and was headline-grabbing. The leader justified his decision asserting that it was the MPJD had to “start thinking about new leaders, because social movements should be more

93 Conversation with Emilio Alvarez Icaza on February 18th, 2016
horizontal, less dependent on one single individual.” Yet, the horizontality Sicilia advocated for could not possibly materialize within a Movement that was internally fractured. And, the Movement’s ability to move its quintessential project forward – the General Victims’ Law – was particularly limited by the project’s centralization from its early days.

Victims’ Ownership. The MPJD’s leverage was further undermined by its inability to broaden the constituency of victims supporting the GVL. Discussing the drafting of the GVL, Jorge Verástegui González, a prominent lawyer and human rights activist, argues that the Mexican states were largely excluded from the initial discussion about the Law. Verástegui claims that the GVL was from the onset a centralized project born in Mexico City, resulting in a limited socialization of the law. Had more states been involved in the drafting project, the constituency supporting the General Victims Law’ would have been broader, and in turn, the Law’s development as an incipient project, would have not been as dependent on the MPJD’s leadership. Accordingly, the absence of a participatory drafting process partially explains why victims have largely been reluctant to claim their rights and benefits before the National System of Attention to Victims.

A group of victims is largely unaware of the existence of the National System of Attention to Victims. And, another group, who felt initially disenfranchised from the drafting process of the GVL, is reluctant to claim their rights within a system that largely ignored their voices and concerns. Feeling disenfranchised, this group of victims has opted to not engage in the implementation process of the Law, and consequently does not pressure the government to

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claim their rights.\textsuperscript{96} The issue of victim’s ownership is also intricately linked to the Government willingness and ability to socialize the National System of Attention to Victims. The CEAV has largely failed to disseminate victims’ rights and raise awareness around the existence of a National System of Attention to Victims.\textsuperscript{97} As Verástegui notes, the “processes, timing and language of the victims are not those of academics, politicians or civil servants.”\textsuperscript{98} Therefore, victims must be able to understand the law’s provisions in order to claim the rights and benefits they are entitled to. The MPJD had traditionally acted as a mediator between victims and government authorities – without its leadership, victims lack a channel to communicate their concerns and demands. And, as I will later explain, the issue of victims’ ownership is further aggravated by their lack of participation in any of the institutions established by the General Victims’ Law.

The comprehensive socialization of the GVL from the onset was a task that only civil society organizations acting in coordination with the Government could have undertaken. Indeed, guaranteeing the recognition of and respect for victims’ rights is a dual responsibility, that of the Government and civil society alike. Yet, at the time of the law’s gestation, the victims’ movement was incipient – it responded to a momentum built around the unprecedented mobilization of Mexico’s civil society – a momentum loaded with anger and frustration but also hopeful to bring about a change. And, at the time of the Law’s enactment and implementation, the Movement dealt with the implications of its inability to successfully consolidate, and its need to prioritize an impatient quest for long-overdue justice over the need to broaden the support

\textsuperscript{96} Introducción a la Ley General de Víctimas: Una Herramienta para las Víctimas y sus Representantes, Septiembre 2014, Open Society Foundations  
\texttt{http://colaboracioncivica.org/esp/wp-content/uploads/2014/12/LeyVictimas-1.pdf}  p.77

\textsuperscript{97} Ibid., p.70

\texttt{http://colaboracioncivica.org/esp/wp-content/uploads/2014/12/LeyVictimas-1.pdf}
constituency. Weakened by its internal changes of leadership and centralized constituency, the MPJD suffered the downsides of a vertical model and lacked a necessary partner: the Government’s political will.

State Failure to Assume Responsibility. The victims’ movement was not almighty, and it faced an unyielding obstacle: the Calderón Administration’s unwillingness to recognize the responsibility for its own violations of human rights. Without it, the agency of civil society organizations representing victims wobbled – the scope of the task to guarantee the respect of victims’ rights was too large.99 The drafting and enactment of the General Victims’ Law is a testament to the success of the victims’ movement. There is no doubt that the victims’ movement was successful, but it was also insufficient. It guaranteed the passing of adequate legislation to guarantee victims’ rights, but it lacked the agency to secure the Government’s compliance with the provisions of the legislation. While the MPJD’s leadership sought to push forward a horizontal strategy, the Movement’s centralized constituency and its internal disagreements over the need for more radical actions weakened its leverage. A broad faction within the Movement believed its strategy was insufficient to curtail the Government’s irresponsiveness and negligence, but this sentiment was not echoed internally. The Movement’s handful of radical gestures, including two hunger strikes in front of the Secretariat of Interior and victims’ independent search for their relatives were merely punctual actions.100 And, after finding a seat at the table with the Government, the MPJD abandoned the streets – its strikes became more rare; no caravans followed the enactment of the General Victims’ Law; and the Movement appeared to be demobilized by the very result of its militancy: its success in leveraging the Government.

99 Prólogo” by Javier Sicilia in “El Movimiento por la Paz con Justicia y Dignidad” Eds. Javier Sicilia and Eduardo Vázquez Martín, Ediciones Era, 2016 p.43
100 Pietro Ameglio Patella “Como construir la paz y reflexionar sobre ella en medio de la Guerra en Mexico?” in “El Movimiento por la Paz con Justicia y Dignidad” Eds. Javier Sicilia and Eduardo Vázquez Martín, Ediciones Era, 2016 p.275
The Movement’s inability to reinvigorate its activism left the Government plenty of room to entertain simulations and operate on the basis of void discourses, without the need to back its purposes with actions.

The case of the General Victims’ Law in Mexico confirms, as Brinks suggests, “the lack of rule of law in Latin America is not primarily a matter of inadequate legislation, but of the failure to comply with an increasingly well-developed legal framework.”\(^\text{101}\) For example, in cases of forced disappearances, Article 67 of the General Victims Law states that indirect victims can only receive financial assistance once criminals are sentenced.\(^\text{102}\) Considering that criminals have only been sentenced in six cases out of 22,000 registered cases of forced disappearances, indirect victims will most likely never receive the financial assistance they are entitled to.\(^\text{103}\) Within this context, while victims’ rights are enshrined in the GVL, they do not possess these rights in practice. To this point I have suggested that waning pressure on the government from civil society groups and victims’ weakened the government’s incentives to assume its duty to respect victims rights in practice. This question, however, needs to be addressed more directly: was the government’s failure to implement the GVL due to its \textit{inability} to do so, its \textit{unwillingness} to do so, or both? The next two sub-sections consider these questions in turn.

\textbf{b. The Ability}

The GVL is a complex law that requires the commitment and political will of government authorities to guarantee its effective implementation. Because Mexico is a federal republic composed of 31 states and a federal district, the Government’s ability to successfully implement

\begin{footnotesize}
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\item \(^{101}\) Brinks 2008: 6
\item \(^{102}\) Proceso “La ley de víctimas…revictimiza” by Patricia Dávila, March 28, 2015 http://www.proceso.com.mx/399703/399703-la-ley-de-victimas-revictimiza
\item \(^{103}\) Ibid.,
\end{itemize}
\end{footnotesize}
the General Victims Law must be observed at the national and state levels. At the national level, the Government has the resources to protect victims and watch over the effective implementation of the Law’s first article: the provision of aid, assistance and integral reparations. Indeed, to date, as previously noted, all of the institutions mandated by the law to bring attention to victims have been created, and are staffed and functioning. Only observing the establishment of formal institutions and funds allocation, the GVL’s apparatus appears to have enough material resources to function effectively.

Every year, the National System of Attention to Victims disposes of 0.014% of Mexico’s federal budget. As I mentioned in a previous section of this study, the Assistance and Integral Reparations Fund owns a budget of over $48 million to operate, which suggests the System holds enough resources to effectively assist victims. 104 Indeed, the institutions mandated by the GVL to bring attention to the victims are part of Mexico’s human rights bureaucracy, the world’s wealthiest. Only in 2014, the National Human Rights Commission (CNDH) and local human rights commissions in 32 states spent 3,000 million pesos. 105 To put these figures into perspective, the IACHR’s total budget for 2015 was 176 million pesos and the Interdisciplinary Group of Independent Experts (GIEI) in charge of investigating the Ayotzinapa events (discussed later in the thesis) needed 17 million pesos to produce its first report. 106 Therefore, at the national level, the Government has the resources and staff necessary to be able to implement the General Victims’ Law. Yet, this is not enough. The effective implementation of the GVL not only depends on resources and personnel, it is subject to states’ willingness to abide by their responsibilities under the Law.

104 Excelsior “Ley de Víctimas se ahoga en el fracaso” by Leticia Robles Rosa, March 14, 2016 http://www.excelsior.com.mx/nacional/2016/03/14/1080735


106 Ibid.,
The state-level harmonization of the GVL is a critical bastion to guarantee the successful implementation of the Law. To date, the majority of states have failed to harmonize their local legislations with the GVL, only 17 states have established an Executive Commission to assist victims at the state-level,\textsuperscript{107} and only six states have put a Fund of Help, Assistance and Integral Reparation in place.\textsuperscript{108} Unless all federal states across Mexico harmonize their legislations with the provisions of the GVL, authorities will not be able to effectively implement the Law.\textsuperscript{109} As long as states do not harmonize their local legislations with the provisions under the GVL, and establish the necessary institutions to bring attention to the victims, they will be unable to facilitate victims’ access to truth, justice or any measures of help, assistance and reparations. For example, in the state of Cuernavaca, the congressional office allocated over $1,000,000 to bring attention to the victims in 2015, but because local authorities failed to establish a local trust to operate these funds (as mandated by the GVL) the funding was lost.\textsuperscript{110} In response, Sicilia – whose son was murdered in the State of Cuernavaca – warned that as long as states continue to hold such an important responsibility in their hands and have the ability to put a hold on the system responsible for bringing attention to the victims in a given territory, the implementation of the GVL will be limited.\textsuperscript{111}


\textsuperscript{108} Ibid.

\textsuperscript{109} Comisión Ejecutiva de Atención a Víctimas “Fallan a la gente los estados que no han creado sus comisiones de Atención a Víctimas: CEAV,” January 14, 2016 http://www.gob.mx/ceav/prensa/fallan-a-la-gente-los-estados-que-no-han-creado-sus-comisiones-de-atencion-a-victimas-ceav?idiom=es


\textsuperscript{111} Ibid.
In addition, because a series of crimes, including disappearances, fall under the jurisdiction of local authorities, their handling is a responsibility of local entities.\textsuperscript{112} In total, 8 out of 10 crimes in Mexico fall under the jurisdiction of local authorities.\textsuperscript{113} Accordingly, each state is responsible for guaranteeing that victims of these crimes receive the attention they deserve and are entitled to under the GVL. States must not only harmonize their legislations with the GVL; they must also establish the necessary institutions to bring attention to the victims; and train judicial advisors in accordance with the National Code of Penal Procedures.\textsuperscript{114} While the CEAV has called on all states to support, commit to, and participate in the National System of Attention to Victims, a majority of states in Mexico have failed to abide by their responsibilities and create local commission to bring targeted, timely and effective attention to the victims.\textsuperscript{115} States’ unwillingness to harmonize their legislations with the GVL and establish the institutional apparatus required to bring proper attention to the victims evidences their disregard for the plight of victims. Their wrongdoing, which is reflected in their negligence – and in cases like Cuernavaca, in a blunt misuse of funds – delegitimizes the system to bring attention to the victims at the national level. As a result, victims feel their pain is unheard, their needs unattended and their rights ignored – their incentives to demand their rights before the National System of Attention to Victims is altered by the very inefficacy of the system.

\textsuperscript{112} Comisión Ejecutiva de Atención a Víctimas “CEAV pide a gobiernos locales no abandonar a las víctimas del delito ni de violaciones de derechos humanos” October 29, 2016 http://www.gob.mx/ceav/prensa/ceav-pide-a-gobiernos-locales-no-abandonar-a-las-victimas-del-delito-ni-de-violaciones-de-derechos-humanos?idiom=es

\textsuperscript{113} El Universal “Urgen a estados a armonizar ley general de victimas” by Pierre-Marc René, February 23, 2016 http://www.eluniversal.com.mx/articulo/nacion/sociedad/2016/02/23/urgen-estados-armonizar-ley-de-victimas


\textsuperscript{115} Comisión Ejecutiva de Atención a Víctimas “Fallan a la gente los estados que no han creado sus comisiones de Atención a Víctimas: CEAV,” February 14, 2016 http://www.gob.mx/ceav/prensa/fellan-a-la-gente-los-estados-que-no-han-creado-sus-comisiones-de-atencion-a-victimas-ceav?idiom=es
The Government’s ability to implement the GVL therefore not only depends on the existence of resources and staff at the federal level to put into practice the text of the Law, it is also determined by states’ willingness to abide by their responsibilities. And, it is also a function of victims’ participation in the system in place. Indeed, one of the main challenges limiting the Government’s ability to implement the GVL is victims’ distrust of government authorities and institutions. As such, victims’ participation in the system put in place by the state to assist them not only affects the government’s will to ensure the system operates effectively, it also affects the government’s ability to guarantee that it does so. Because victims need to be registered within the National System of Attention to Victims in order to successfully claim their rights, their participation within the system influences authorities’ ability to implement the GVL. As of July of this year, 5,665 people were registered in the National System of Attention to Victims.\footnote{La Jornada “Más de 5 mil personas, en Registro Nacional de Víctimas” by Rosa Elvira Vargas, July 19, 2016 \url{http://www.jornada.unam.mx/ultimas/2016/07/19/mas-de-5-mil-personas-en-registro-nacional-de-victimas}} And, overall in Mexico 92% of crimes go unreported.\footnote{Proceso “En 2015, una persona asesinada cada 28 minutos, revela informe del ONC” by Mathieu Tourliere, June 07, 2016 \url{http://www.proceso.com.mx/443284/en-2015-una-persona-fue-asesinada-28-minutos-revela-informe-del-onc}} Dark figures reflect, among others, victims’ refusal to denounce a crime, which depends on a series of factors, including the ease with which they can file a complaint before local authorities.\footnote{CDUNODC “La cifra oscura y las razones de la no denuncia en México” by Björn Florian Zakula, December 14, 2015 \url{https://cdeunodc.wordpress.com/2015/12/14/la-cifra-oscura-y-los-razones-de-la-no-denuncia-en-mexico/}} A victim’s decision to file a complaint also depends on whether he or she feels protected from a perpetrator; whether the victim trusts government authorities; and whether the victim considers he or she can receive a compensation for the damage caused.\footnote{Ibid.}
Since the creation of the CEAV, victims have voiced their opposition to the Commission and denounced the “terrible attention” provided by the commissioners.\textsuperscript{120} Indeed, victims view the CEAV as an obstacle in their fight for justice and truth – they argue that the CEAV’s personnel mistreats, humiliates and revictimizes them; and that they face unnecessary bureaucratic obstacles in order to qualify as victims under the National Registry.\textsuperscript{121} And, the Government’s failure to involve victims throughout the implementation process of the GVL has fuelled victims’ mistrust for the CEAV’s operations and limited its ability to successfully implement the law. At this point, the questions that arise are, is the government unable or unwilling to ensure that states abide by their responsibilities under the GVL? And, is the government unwilling or unable to increase victims’ participation within the National System of Attention to Victims?

c. The Unwillingness

From the onset, the General Victims’ Law was marked by the government’s lack of political will – President Calderon’s veto, along with numerous budget delays and institutional shortcomings all shaped the genesis of the Law. The fact that the GVL was not originally a government-led initiative raises numerous questions regarding the Mexican State’s commitment to victims of violence and human rights violations. Indeed, in its early days, the debate between the Calderón Administration and civil society organizations largely focused on whether the law should only assist victims of crime or should also bring attention to victims who have suffered human rights violations – that is, violations for which the State is responsible. Why then did the

\textsuperscript{120} Proceso “Familiares de desaparecidos acusan negligencia de la Comisión de Atención a Víctimas” by the Editorial Board, March 27, 2016 http://www.proceso.com.mx/399616/familiares-de-desaparecidos-acusan-negligencia-de-la-comision-de-atencion-a-victimas

\textsuperscript{121} Ibid.,
Calderón Administration, facing so many reprimands related to its human rights violations, fail to promote legislation to protect the victims of crime and/or human rights violations? And why did President Calderón personally blocked an initiative designed to bring attention to those who suffered most from his security strategy? The answers to these questions are a matter of state responsibility – the term human rights violation is reserved to describe abuses committed by the state.

During the Calderón years, and within the framework of the security strategy in place at the time, victims were largely considered collateral losses. They were stigmatized and accused of having ties with organized crime groups without proof or evidence. And the Government did not formally assume responsibility for any violation to the human rights of victims. The enactment of a law aimed to protect victims of crime and human rights violations defied the status quo in place. The Government’s support for the GVL involved its recognition that victims are not collateral losses or criminals, but instead, subjects with rights that must be respected and protected by the State. The Law mandated the Calderón Administration to recognize its wrongdoing and acknowledge the victims of human rights violations who had been neglected during his Administration and under the system the President had established to solely assist victims of crime. Indeed, the Special Prosecutor’s Office to Assist the Victims of Crime (Provictima) was established on October 11, 2011 to bring judicial and economic attention

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122 General Guillermo Galván, the Secretary of National Defense during the Calderón Administration, frequently referred to victims as “collateral losses” from 2006 to 2012. During a Senate hearing on Calderon’s security strategy, General Galván affirmed “In spite of the civilian deaths – children, young students and adults – during the clashes between armed forces and organized crime, the strategy will continue, these are collateral damages that are regrettable.” See: La Jornada “Muertes de civiles en el combate al crimen, ‘daños colaterales’: Galván” by Victor Ballinas, April, 13, 2010 [http://www.jornada.unam.mx/2010/04/13/politica/005n1pol](http://www.jornada.unam.mx/2010/04/13/politica/005n1pol)

restrictively to the victims of crime, excluding victims of human rights violations. Províctima, which was created by President Calderón with no budget or personnel, evidenced his unwillingness to assist victims, and in particular, his unwillingness to recognize victims of human rights violations. Supporting and enacting the GVL would have entailed recognizing his Administration’s wrongdoing.¹²⁴

Understanding Calderon’s reluctance to recognize the victims of human rights violations in a country riven by conflict and violence is relevant to the present discussion. It is relevant because it signals the executive’s negative sentiment toward the most vulnerable citizens in Mexico – those who have born the brunt of a failed security strategy and the indiscriminate use of force by organized crime and official forces. As I discuss below, the negative sentiment towards victims is also mirrored in President Peña Nieto’s failure to place victims at the center of his Administration’s policies and assist them with the respect they deserve; it is mirrored in states’ unwillingness to harmonize their laws with the GVL and abide by their duties; and it is also mirrored in the CEAV’s corrupt bureaucracy. Indeed, since its creation in 2013, the Executive Commission for Victims’ Attention has undergone numerous internal controversies, mostly surrounding power competition and misuse of funds – its leadership lost focus on addressing victims’ needs.

Since the CEAV was created in 2012 to serve as the executive body of the National System of Attention to Victims, it has undergone a series of leadership replacements, marked by alarming scandals. Indeed, in October 2013, Maria Olga Noriega Sáenz was appointed, along with six commissioners, as the President of the CEAV. Noriega Sáenz did not hold this position for a long time – six months after taking office she was illegally removed from her role as

President and presented harassment charges against the other commissioners. In an interview with MVS News, the former President of the CEAV denounced an “alarming” level of aggression among commissioners and argued that the Commission has “no set course.” The commissioners changed the locks to her office the day after announcing Noriega Sánz’s removal and commissioner Julio Hernández Barros – now President of the CEAV – blackmailed her two closest aides offering them almost $40,000 for their forced departure. None of the commissioners were held accountable for their attitudes and Jaime Rochín del Rincón replaced Noriega Sáenz. The first President of the CEAV was an uncomfortable figure for many within a corrupt system – she was vocal about the CEAV’s missteps from the very beginning and denounced the revictimization of victims by commissioners, numerous unmet promises, and the Commission’s systemic delays and internal quarrels, which have prevented commissioners from meeting their sole responsibility: guaranteeing that victims’ rights are respected.

The controversy around Noriega Sáenz’s illegal removal was only one of numerous internal scandals within the CEAV. The most recent took place in December of this year, when former commissioner Susana Pedroza denounced that Roberto Campa Cifrián, Undersecretary for Human Rights at the Secretariat of Interior, malversed almost $200,000 from the CEAV’s budget. Without previous notice, Campa replaced Pedroza when she was overseeing the Nochixtlán case – a case of massacre that involved two federal policemen in the killings of 6 people and the injury of 108. The CEAV mishandled the case from the onset. Pedroza told the

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126 Ibid.,
128 Ibid.,
press that Campa lacked the qualifications to oversee the case; that he misused over $200,000 from the CEAV’s fund and asked for almost $15,000 to allegedly pay for the psychological attention of 93 victims, who never received such services and could have benefited from the services of any of the experts that work directly for the CEAV.\textsuperscript{129} Pedroza submitted her letter of resignation on November 7, 2016 following the announcement of the latest reforms to the LGV, which have also been cause for debate.\textsuperscript{130} Among others, the latest reforms modify the CEAV’s internal structure, which is no longer a collegial body – it is now controlled by its executive director: Julio Hernández Barros, the commissioner accused of blackmailing Noriega Saenz’s aides in 2014.\textsuperscript{131} The concentration of power in Hernández Barros’s hands makes the victims particularly uncomfortable – a group of over 20 organizations representing victims have publicly asked for his resignation, arguing that he is only interested in advancing his personal agenda and completely disregards the needs of victims.\textsuperscript{132} It is still too early to determine whether the concentration of power in Hernández Barros’s hands will be detrimental to the CEAV’s operations. While this leadership reconfiguration is subject to influence the Commission’s performance, in reality, the CEAV has practically never operated under the leadership of the seven commissioners who were appointed more than three years ago. Since October 2013, the Commission has been mired in internal controversies and weakened by its commissioners’ unwillingness to do their jobs and in many instances, their resignations.

\textsuperscript{129} El Sol de Cuernavaca “Campa Cifrián desvió 4 mdp de la CEAV, afirma excomisionada” by Hugo Hernández, December 8, 2016 \url{https://www.elsoldecuernavaca.com.mx/mexico/campa-cifrian-desvio-4-mdp-de-la-ceav-afirma-excomisionada}

\textsuperscript{130} La Jornada “La Comisionada Susana Pedroza renuncia vía Twitter a la CEAV” by José Antonio Román November 7, 2016 \url{http://www.jornada.unam.mx/2016/11/07/politica/005n2pol}

\textsuperscript{131} \textit{Ibid.},

\textsuperscript{132} El Sur “En carta pública, piden víctimas y especialistas la renuncia del titular de la CEAV Julio Hernández” by César Martínez, November 14, 2016 \url{http://suracapulco.mx/6/en-carta-publica-piden-victimas-y-especialistas-la-renuncia-del-titular-de-la-ceav-julio-hernandez/}
It is not clear whether the quarrels within the CEAV are directly related to the government’s unwillingness to implement the GVL. Internal quarrels have certainly distracted commissioners’ attention from their main responsibility, which is to assist victims and guarantee their rights under the General Victims’ Law. And the funds misuse, involving Julio Hernández Barros and Roberto Campa Cifrián, evidence their disregard for a resource that is allocated for the benefit of victims. The level of corruption and lack of accountability within the CEAV raise serious questions about commissioners’ failure to utilize the Assistance and Integral Reparations Fund. As is mentioned in a previous section of this study, as of March 2016, only 4.5% of the budget to support victims had been used – the Assistance and Integral Reparations Fund holds a budget of over $48 million and a little over $2 million have been used. Do the numerous fraud allegations and the fact that the CEAV’s leadership has put a hold on 95.5% of the funds available for victims evidence a wrongdoing on their part? Answering the latter two questions is beyond the scope of the present study, yet, the evidence presented suggests that there is a gap between what the executive body of the National System of Attention to Victims is doing, and what they should be doing according to the law’s provisions.

By December 2016, the CEAV has largely failed to do its job. Commissioners have not only been involved in numerous controversies that evidence their detachment from their main responsibilities, they have also failed to ensure that states harmonize their legislation with the GVL. Indeed, civil society activists and victims, including Javier Sicilia, have blamed the Government for not informing local authorities of the Law’s provisions that apply to them and have argued that many governors are unaware of the existence of the General Victims Law because the Secretariat of Interior did not gather governors across the country to inform them of

133 Excelsior “Ley de Víctimas se ahoga en el fracaso” by Leticia Robles Rosa, March 14, 2016
http://www.excelsior.com.mx/nacional/2016/03/14/1080735
their obligations in the first place.\textsuperscript{134} These demands – the need to inform local authorities and raise awareness around the Law’s provisions – fall within the real of what the CEAV is able to do, particularly given that the commission has the funds and personnel to comply with its responsibilities. In addition, at the beginning of this study we noted that a law’s effective implementation entailed that its violations must trigger some kind of external sanction through a formal mechanism. Accordingly, the CEAV’s failure to ensure states harmonize their legislations with the GVL also depends on their success in sanctioning the states that fail to do so. The effective sanctioning in response to the violation of a law contributes to building a generalized expectation of compliance, which is the second factor we noted would indicate a government’s effective implementation of a law. Yet, the CEAV has itself directly violated the GVL’s provisions by failing to respect one of the principal obligations under the National System of Attention to the Victims’: to effectively promote sanctions for commissioners that fail to comply with the Law’s objective.\textsuperscript{135} Not only have commissioners failed to hold one another responsible for their negligence and wrongdoings, they have also failed to establish sanctions as incentives for states to adapt their own legislations to the GVL’s provisions. The general scope of the Law is consequently limited by states’ unwillingness to harmonize their laws and institutions as mandated by the GVL.

An institution’s failure to sanction authorities and individuals’ for violating the text of a given law can be a product of their inability or unwillingness to do so. In this case, because commissioners have not been held accountable for their wrongdoings; because the individuals accused of wrongdoings have kept their positions or even received a promotion; and the CEAV

\textsuperscript{134} Proceso, “Los pendientes de la Ley de Víctimas” by Javier Sicilia, October 27, 2013 http://www.proceso.com.mx/356549/los-pendientes-de-la-ley-de-victimas-2

has passively responded to states’ failure to harmonize their legislation with the LGV’s, this study considers the actions just stated as proofs of unwillingness. As the second part of this study showed, the CEAV has largely failed in each of five categories of behavior critical to the implementation of the GVL – yet no local state or government official has been sanctioned for its unwillingness to comply with the GVL’s provisions. The government’s unwillingness to establish sanctioning mechanisms in response to violations of the GVL, its failure to raise awareness of the National System of Attention to Victims, and its reluctance to institutionalize official channels promoting victims participation can explain the incidence of impunity at the external and internal levels.

The high level of impunity is aggravated by the lack of participation from civil society organizations and victims – which is mandated by the text of the GVL – and their inability to act as checks and exert pressure. Victims are not overseeing the CEAV and lack the institutional access to ensure that their rights are properly respected or hold commissioners responsible whenever they are not. For example, in the months of May and July of 2013, a group of victims, activists and legal experts gathered to discuss numerous challenges and priorities surrounding the implementation of the General Victims’ Law.\textsuperscript{136} The purpose of the dialogue was to ensure victims’ could articulate their recommendations at a time when the Government was preparing a series of regulations to accompany the GVL. The Secretariat of Interior however disregarded the document that came out of the dialogues and was presented before the Undersecretariat of Human Rights.\textsuperscript{137} The Secretariat of Interior deemed the period during which the regulations were being prepared inappropriate for victims to participate and affirmed that the CEAV was the

\textsuperscript{136} These dialogues were facilitated by the Center for Civic Collaboration (Centro de Colaboración Cívica – CCC), Peace Affairs and Services (Servicios y Asesoría para la Paz – SERAPAZ) and Fundar.

institution responsible of facilitating those types of processes. In short the victims who have advocated in favor of their increased participation within the National System of Attention to Victims, have seen their efforts blocked by government officials. If victims are unable to participate in a process that was established in the first place to benefit them, and if they are unaware of their rights and are not familiarized with the vocabulary and provisions of the GVL they will be unable to hold the state accountable for its violations. And victims’ disenfranchisement is particularly problematic in a country where there is considerable weariness and skepticism against the Federal Government – a government that has often been held responsible for notorious human rights violations, such as the case of Ayotzinapa.

V. **Ayotzinapa**

It all began with the abuse of force. The town of Ayotzinapa had witnessed abuses of force, extrajudicial killings and forced disappearances in the past. This case was neither the first outbreak of violence in Mexico nor the first conflict between rural students and heavy-handed police officers; it was *another* event symbolizing the ever-widening breach between social demands and political interests. Yet, September 26th, 2014 was different. This time around, indirect victims had instruments to hold the state accountable for the disappearance of their loved ones; this time around, the 43 students that went missing were not just seen as farm boys living in a rural and marginalized town – they were individuals with rights; and, this time around, the world was watching as Mexico’s democracy was being put to a test in Guerrero, one of the poorest and most violent states. This time around, indirect victims’, with the support of the international community, have taken justice into their own hands and fight to shed light on what actually happened on the night of terror.
a. The Night of Terror

On September 26th, 2014 a group of 100 students from the Rural Teachers’ College Raúl Isidro Burgos (Escuela Normal Rural Raúl Isidro Burgos) located in Ayotzinapa, in the southern Mexican state of Guerrero, travelled to the city of Iguala. The students had been soliciting money and were hoping to take a couple of buses to attend a demonstration in Mexico City that marked the anniversary of the 1968 Tlatelolco massacre. Students viewed the demonstrations on October 2nd as an opportunity to protest against the cuts to their state-financed school – a school with a long history of student militancy. The commandeering of buses to attend the commemorations of the Tlatelolco Massacre had long been a tradition for the rural students – they usually take the buses in order to travel to Mexico City and then return them – and bus companies and authorities had mostly tolerated it. The night of September 26th students were subject to a different treatment. At 8:15 p.m., the students commandeered a first bus that had stopped in front of a restaurant; the driver said he needed to stop at Iguala’s central bus station before heading to Mexico City and at the station, locked the students in the bus.

Another group of students, riding in two buses they had commandeered on earlier occasions, arrived at the station and freed their classmates – students commandeered two more buses and headed to

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Ayotzinapa on a total of five different buses. Three buses headed toward Iguala’s northern beltway and the other two drove along the southern beltway.

Police cars followed the three northbound buses, started firing warning shots into the air and eventually intercepted the vehicles. In a brutal show of force, police forces shot a student in the head and shot at students who tried to help him; they ran over, kicked and punched a student who was shot in the hand; struck another student in an arm; and, forced a group of students who were hiding in the third bus to disembark and later took them way in six or seven patrol cars – they are among the 43 missing students. The students riding the southbound buses also fell prey to violence: police forces cut off one of the buses, shattered its windows with tree branches, shot tear gas and took away its passengers. The passengers taken away by the police are the rest of the 43 students who disappeared. While police forces also intercepted the second southbound bus, the students on board managed to flee into the woods.

Ayotzinapa students were not the only victims of a disproportionate use of force by the police on the night of September 26th – another bus and several civilian vehicles came under attack even though they had no connection to the students. Altogether, three students and three by-standers were extrajudicially executed; 25 people were injured and 43 students disappeared by force. As police forces had recourse to force and violence to prevent the flight of the buses, state and federal police authorities passively witnessed the attacks and did not attempt to protect

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144 Ibid.

145 Ibid.

146 Ibid.

147 Ibid.

the victims. The day after the events, on September 27th, Guerrero State’s Attorney General opened an investigation into the events. On that same day, the body of Julio Cesar Mondragon Fontes, a 22-year old student was found – his organs were ruptured, his skull fractured and his facial skin and muscles had been torn away from his head.\(^{149}\) His condition epitomized the bloodshed that had taken place the night before he was found. And the blame was soon conferred on a criminal gang called Guerreros Unidos, which operates in Iguala and controls the municipal police.\(^{150}\) Yet, the collusion between organized crime and local authorities was evidenced in the arrest of 22 police officers on the day after the attacks.\(^{151}\) The level of negligence demonstrated by authorities at the municipal, state and federal levels in reaction to the events that unfolded on September 26th raises the following questions, how can the Government possibly bring attention to the victims if the institutions in charge of protecting them fail to do so? And, how can there be justice for the victims of crime and human rights violations, when there is a proved collusion between organized crime groups and government authorities across different states?

\[b. \text{ The Collusion}\]

The events that unfolded in October – the month following the night of terror – evidence the involvement of state authorities in the events of September 26th. For years, Guerrero has been the epitome of acute corruption at the state level and collusion between criminal gangs and police. Numerous drug cartels have found haven in Guerrero, where they have made deals with


local authorities over the years. The leftist Party of the Democratic Revolution (PRD) has
governed Guerrero since 2005 and done little to break the links between politics and crime.\(^\text{152}\) Indeed, two days after the disappearance of the 43 students, Iguala’s Mayor José Luis Abarca
and his wife María de los Ángeles Pineda fled together.\(^\text{153}\) Prosecutors later found that Abarca
periodically paid Guerreros Unidos between $150,000 and $220,000, partly to cover police
payoffs, and Pineda ran the gang’s criminal activities from the city hall – three of Pineda’s
brothers were also found to be linked to the Bertran Leyva drug cartel.\(^\text{154}\) Because of the evident
link between organized criminals and government officials at the state-level, Mexico’s Federal
Attorney General, Jesús Murillo Karam, announced the launch of a parallel investigation to the
one led by Guerrero State authorities on October 5\(^{th}\), 2016. Simultaneously, at the request of the
victims’ families, the Forensic Anthropology Team (EAAF) led a forensic investigation
alongside the Federal Attorney General’s investigation. With the involvement of an external
entity in the investigation, the Ayotzinapa case demarcated itself from other cases of human
rights violations. The eyes of the international community were placed on Mexico – citizens
around the world watched every step the Mexican Government took as the investigation
unfolded.\(^\text{155}\) Victims’ demand for the involvement of the Argentines evidenced their deep
distrust in domestic authorities and their reluctance to believe the Government’s version of the
facts – the Government’s version of the truth.

\(^{152}\) The New York Times “Mexico’s Barbarous Tragedy” by Enrique Krauze, November 10, 2014
\(^{153}\) The Telegraph “Mexico’s ‘imperial couple’ meets inglorious end” by Harriet Alexander, November 05, 2014
\(^{154}\) Ibid.,
\(^{155}\) The New Yorker “Crisis in Mexico: The Disappearance of the Forty-Three” by Francisco Goldman,
President’s Peña Nieto’s failed promises and his failure to follow through on his commitments have also deeply affected his credibility among the victims. It took more than 10 days for the President to address the students’ disappearance. Indeed, on October 5th, President Peña Nieto promised a “profound investigation” to resolve the case of Ayotzinapa.\footnote{Los Angeles Times “Parents in Mexico wait, and hope, as mass graves probed” by Tracy Wilkinson, October 6, 2014 \url{http://www.latimes.com/world/mexico-americas/la-fg-more-bodies-mass-graves-mexico-20141006-story.html}} The President’s message did little to calm the nation’s outrage – two days after his official address, thousands of people spearheaded the first mobilization in support of the Ayotzinapa victims. As social tensions began to rise, the investigation moved forward and Attorney Murillo Karam reported on October 10th that four people linked to the students’ disappearance had been detained and four mass graves had been found in Iguala.\footnote{Amnesty International “Mexico: Ayotzinapa student’s enforced disappearance – Timeline \url{https://www.amnesty.org/en/latest/news/2015/09/mexico-ayotzinapa-student-s-enforced-disappearance-timeline/}} Four days after, Government authorities reported that 28 of the bodies found in the first mass grave did not belong to the students. As authorities discovered additional mass graves, one thing became clear: the case of Ayotzinapa was not an exceptional case – it was just another case of human rights violations in Mexico. Every single corpse found in every discovered mass grave had witnessed its own version of terror and violence; its own September 26th; and its own demise in a country riven by impunity, where no justice and access to truth are guaranteed. Every single one of these corpses evidenced the Government’s failure to comply with its foremost responsibility: to protect the rights of its citizens.

As authorities found legions of mass graves in Iguala, and, none of the missing students, President Peña Nieto faced mounting pressures. Following the President’s second declaration on the students’ disappearance, in which he declared that solving the Ayotzinapa case was a
“priority” for the Mexican state, Sidronio Casarrubias Salgado, the leader of Guerreros Unidos was arrested. During his declaration on the arrest of Casarrubias, Murillo Karam noted that 36 municipal police officers from the towns of Iguala and Cocula and 17 members of criminal gangs had been arrested. Shortly after, on October 22nd, Murillo Karam publicly declared that Iguala mayor José Luis Abarga and his wife, María de los Angeles Pineda, had ordered the attack against the students, and Angel Aguirre, the governor of Guerrero resigned the following day. These successions of arrests, involving municipal police forces, gang members and local authorities became some of the most visceral fault lines of the case. And the involvement of government authorities in the disappearances of the Ayotzinapa students evidenced that the Mexican Government’s investigation and arrests were mere simulations.

In his first meeting with the missing students’ families, President Peña Nieto agreed to establish a panel of government officials and parents to provide information about the investigation and provide better support to the relatives. The families voiced their concerns regarding the Government’s ability to effectively investigate the case and their mistrust of Mexican authorities at all levels. The month of October was coming to an end, 56 people had been arrested in total, but none of the students had been found. Relatives were growing tired of the Government’s hollow promises and empty words. The month of November began with the arrest of Iguala Mayor José Luis Abarca and his wife, María de los Angeles de Pineda in Mexico City. While federal authorities portrayed the arrest as a major milestone in the case, the investigation was far from settled. On November 7th, government authorities asserted that

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159 Ibid.,
161 Ibid.,
members of the Guerreros Unidos cartel had killed the students and incinerated their bodies in a local dumpster. Yet, by mid-November, members of the EAAF declared that none of the remains found in La Parota, Iguala or Cocula (the local dumpster the Government constantly referred to) had been identified.

In desperate need for legitimization, the Government agreed to an unprecedented intervention. On November 12, 2014, the Inter-American Commission of Human Rights (IACHR), the Mexican State and the representatives of the 43 disappeared students in Ayotzinapa signed an agreement to establish the independent group of experts known as the Interdisciplinary Group of Independent Experts (GIEI). The involvement of the GIEI in the investigation evidenced the need for an external authority to act as mediator between the Mexican State and the relatives of the 43 missing students. The intervention of the GIEI, much like the role of the Argentine forensics evidence the failed implementation of the GVL. Not even two months had passed since the incidents of September 26th and the communication channels between the Government and the representatives of the 43 students had frayed – victims grew disappointed with the Government’s findings and needed an external authority to legitimize the official version of the September 26th events. As an independent body of experts, the GIEI was mandated to follow up on the investigation of the Ayotzinapa crimes.

The GIEI was led by Carlos Martín Beristain, Angela Buitrago, Francisco Cox Vial, Claudia Paz y Paz and Alejandro Valencia Villa. In addition to carrying its own investigation of the crimes, the GIEI also searched for the disappeared and assessed the extent to which victims received the attention to which they are entitled. The GIEI worked closely with the Argentine forensics, who shortly after the establishment of the independent group reported that three of the

30 bodies found in mass graves in Pueblo Viejo, in the municipality of Iguala, did not belong to the students. The month of November 2014 was coming to an end and not a single student had been found. Before the end of the month however, on November 27, President Peña Nieto disclosed a 10-step plan to reform the police and judiciary. President Peña Nieto’s plan entailed the creation of 32 state-level police forces and the elimination of more than 1,800 municipal police teams allegedly infiltrated by organized crime. The President’s plan aimed to restore the rule of law and government officials insisted it intended to make good on old promises. Whether the Government would follow through on its promises was yet to be seen. Until then, the case of Ayotzinapa emerged as a damning example of the Mexican Government’s failure to successfully oversee its own investigation of the events and guarantee victims’ rights to truth and justice; and its need to appeal to the international community for legitimation purposes.

December brought positive news as the EAAF confirmed that a bone fragment found in a mass grave belonged to Alexander Mora Venacio, a 19-year-old missing student. On December 8, 2014 Attorney General Murillo Karam confirmed the findings of the EAAF, declared that former mayor José Luis Abarca and his wife were being investigated for enforced disappearance, and concluded the press conference stating “enough, I’m tired.” Karam’s words raised further doubts about Mexico’s justice system and epitomized the government’s detachment from the pain of the parents who waited, as ashes were found and tested in Europe. Shortly thereafter, a

164 Ibid.,
central piece of the investigation was disclosed. The EAAF declared that there was not enough
evidence to support the theory – the Government’s theory – that the remains found in the San
Juan River had been burned in a local dumpster.\textsuperscript{168} The controversy over the incineration at the
Cocula dump emerged as a central point of contention between the Argentine forensics and
Government officials. Investigators from the General Prosecutor’s Office (PGR) had argued that
the 43 missing students had been handed over by the Iguala municipal police to gunmen from the
Guerreros Unidos gang and incinerated in the dump of Cocula.\textsuperscript{169} Three months after the
students had disappeared, the truth of what had actually happened to them was still unknown,
signaling the Government’s unwillingness to guarantee victims’ rights to justice and truth.

c. \textit{The Lie}

2015 began with the formal accusation of former Mayor José Luis Abarca, the
“intellectual author” of the enforced disappearance of the 43 students.\textsuperscript{170} On January 14\textsuperscript{th}, the
date the formal accusation was filed, Tomas Zerón, the person leading the investigation carried
out by Mexico’s attorney General’s Office declared that all lines of investigation had been
closed.\textsuperscript{171} Zerón’s declaration came as a shock for the relatives of the victims and the different
groups carrying independent investigations. The Government had decided to hold unto its
official version of the facts, which had previously been refuted by the Argentine forensics – in its

\textsuperscript{168} Amnesty International “Mexico: Ayotzinapa student’s enforced disappearance – Timeline
\textsuperscript{169} The New Yorker “Mexico’s Missing Forty-Three: One year, Many Lies, and a Theory That Might
\textsuperscript{170} El Financiero “Abarca Ofreció $500 mil a agentes de PF para evitar captura” by David Saúl Vela, July
\textsuperscript{171} \textit{Ibid.},
eyes all students had been killed and burned to ashes in the Cocula dumpster. A series of new revelations that emerged in February further challenged the Government’s official version: various detained police officers and gang members claimed they had been tortured to confess to their involvement in the disappearance of the 43 students – a severe violation of Article 10 of the GVL on due diligence. Moreover, on February 7th, the EAAF again challenged the official version declaring that there was no forensic evidence linking the disappeared students to the human remains found in the Cocula dump, but there was clear evidence showing that at least some of the remains belonged to victims unrelated to the Ayotzinapa case. As tensions over the truth heightened between independent and official investigators, Arely Gómez replaced Murillo Karam as Attorney General at the end of February.

The GIEI had recently started its own independent investigation and interviewed survivors, the abductees’ family members, individuals who had been detained in the case, police and legal officers; conducted their own evidentiary or forensic examinations; and studied the case files, a total of one hundred and fifteen volumes of approximately a thousand pages each. They also issued requests to the Attorney General’s office to interview additional possible witnesses, in many instances people that government authorities had not yet spoken to. For example, following a recommendation from the GIEI, two bus drivers presented their testimonies for the first time on April 8th. Their findings were strikingly different to the ones presented by the Government as “the official truth.”

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173 Ibid.,
175 Bus drivers presented their own testimonies on April 8th, 2015.
Members of the GIEI revealed on April 25th the existence of a fifth bus so far absent in the official investigation and released its first report on September 6th, 2015. The GIEI’s first report presented another round of challenges for the Government’s official investigation. The report highlighted serious failures in the official investigation of the case, including important mistakes in the handling of evidence, and recommended additional lines of investigation to be followed. On the same day the GIEI released its first report, President Enrique Peña Nieto declared that the investigation was still open and ten days after, authorities directly informed the media of the potential identification of the remains of Jhosivani Guerrero de la Cruz.\textsuperscript{176} The EAAF responded to the Government’s declarations suggesting that the genetic coincidence found during the DNA tests was not high enough to be linked to a positive identification of Guerrero de la Cruz. The Mexican Government’s decision to sidestep the independent experts was one of many actions that reflected its unwillingness to fully cooperate with the Argentine forensics and the GIEI. After the release of the GIEI’s first report, the relationship between the Government and the independent experts permanently changed – both entities had put forth two irreconcilable versions of the truth, and the government desperately sought to silence the GIEI.\textsuperscript{177}

The GIEI eventually declared its inability to solve the case because of the Government’s campaign of harassment, stonewalling, and intimidation.\textsuperscript{178} The experts claimed to have endured “carefully orchestrated attacks in the Mexican news media, a refusal by the government to turn

over documents or grant interviews with essential figures, and even a retaliatory criminal investigation into one of the officials who appointed them.”

These were all proofs that the government was unwilling to get to the heart of the truth. Unsurprisingly, the Mexican Government has always defended its cooperation with the experts and denied any attempt to interfere in the GIEI’s work. But for many, the Government’s attitude towards the GIEI evidenced its unwillingness to uncover what happened on the night of September 26th, 2014. The parting of ways between the government and the experts this past April prompted victims and experts to question the level of collusion between the authorities and drug gang and the reasons behind the government’s unwillingness to solve the case of Ayotzinapa. The attorney general’s top investigator resigned amid an internal affairs inquiry into his handling of the case, and to this date, the remains of only one of the 43 has been found and identified. Only one family has claimed their rights before the Executive Commission for Victims’ Assistance (CEAV).

The case of Ayotzinapa is the most recent epitome of the Government’s ability and unwillingness to guarantee victims’ rights to justice, truth and reparation. The indirect victims of Ayotzinapa have relentlessly fought to get to the heart of what happened on September 26th over the past two years – they have marched across the country, demanding for their rights; they have appealed to international organizations around the world, from the U.N. to the IACHR; and they

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181 The family of David Josué Evangelista received a compensation for the damages resulting from the teenager’s loss, who died on the night of September 26th and had no ties to the students. The Executive Commission for Victims’ Assistance (CEAV) approved a reparation plan for Garcia Evangelista’s relatives, which included a permanent legal adviser to follow up on the case; access to counseling programs; scholarships and a financial compensation.
have received the support of first in class independent bodies of experts, including the EAAF and the GIEI. Despite victims’ efforts to fight for their rights and the unprecedented level of attention the events of September 26\textsuperscript{th} have elicited around the world, the Government has repeatedly proven to be an obstacle in the way of justice and truth. Indeed, the Government has not only failed to fully collaborate with independent bodies of experts; government authorities have also denied access to key pieces of information and even manipulated essential evidence to the investigation of the Ayotzinapa case. The government’s interference in the case evidences its unwillingness to bring truth to light. And, not surprisingly, the victims of Ayotzinapa see the Government as an obstacle in the way – a corrupt entity colluded with organized crime groups that will do nothing to advance the investigation of their case. The relationship between the Government and the members of the Teachers’ College in Ayotzinapa has been strained for decades, suggesting the events of September 26\textsuperscript{th}, 2014 are an example of a broader dynamic in Mexico.

Since its opening in 1926, the Teachers’ College has been at the forefront of numerous social justice movements that occasionally turned into violent clashes with local authorities.\textsuperscript{182} The College is one of 16 Mexican institutions founded after Mexico’s revolution to train teachers, improve literacy and raise standards of living among the rural poor. And, since the 1960’s, the Teachers’ College has been home to a number of leftist leaders, including guerrilla leader Lucio Cabañas and Genaro Vazquez, who rallied masses during Mexico’s “dirty war” in the 60’s and 70’s and declared war on the State. Security forces and senior government officials from the PRI swiftly stifled these leftist student and guerrilla movements over five decades.

ago.\textsuperscript{183} To this date, the decades-old rights abuses have not been investigated and few officials have been prosecuted for their actions.\textsuperscript{184} And, as this study has shown, almost half a century following Mexico’s dirty war, the rights abuses that took place on September 26\textsuperscript{th}, 2014 have also gone largely unpunished, evidencing the overall inefficiency of the National System of Attention to the Victims.

Today, the reason behind the students’ disappearance remains unknown. Indeed, indirect victims to date ignore the motives behind the disappearance of their loved ones and have not been guaranteed their rights under the GVL, particularly the right to justice, embedded in Article 10 of the GVL. The case of Ayotzinapa is a case in which victims have taken justice into their own hands and have sought to overcome the Government’s obstacles with the help of the international community. Accordingly, they have navigated criminal justice proceedings and the path to justice and truth on their own, in parallel to the state. For example, determined to find the 43 students who disappeared, a community police force (Union de Pueblos y Organizaciones del Estado de Guerrero – UPOEG) formed and volunteered to find those missing.\textsuperscript{185} The emergence of the UPOEG is not atypical – in cases where state authorities are manifestly involved in human rights violations and fail to guarantee victims’ rights to justice, civilian-led groups frequently take justice into their own hands. That victims have to go to the field looking for the remains of their loved ones because the government is keeping them from knowing what happened and is unwilling to comply with its responsibilities under the law tells a disturbing story of the government’s relationship with the victims of crime and human rights violations. A story of

\textsuperscript{184} Reuters “Mexico looks for ‘dirty war’ graves on army base” by Gerardo Torres, July 08, 2008 \url{http://www.reuters.com/article/idUSN08316698}
unwillingness and ability; a story of respect for the written norm and disrespect for the actual right; and a story of shameful negligence.

VI. Conclusion

Javier Sicilia opens the prologue of his book on the Movement for Peace with Justice and Dignity with a reference to roman law and the figure of *homo sacer* (the sacred men) – an individual who is systematically included in legal codes and can be excluded at any time; an individual who may be killed with no repercussion; and an individual who is subject to the Government’s abuse of authority. The story of *homo sacer*, according to Sicilia, is the story of all Mexican citizens today – they are included in ornamental laws but can be kidnapped, disappeared, tortured and enslaved without any repercussion. His reference to *homo sacer* is telling in a context in which the Mexican government has formally recognized the rights of its citizens and has evidenced its absolute disrespect for the written text of laws. Mexico is an impressively developed country from the legal standpoint and is also party to a rich catalogue of international laws and treaties on human rights. On paper, Mexico follows a first-class legislation on human rights; in practice it is one of the world’s most dangerous countries – a country where 98% of crimes go unpunished and citizens navigate a culture of impunity every day.

The enactment of the General Victims’ Law was a victory for the Victims’ Movement. But it was a partial victory. This study has analyzed the Mexican Government’s ability and willingness to implement the General Victims’ Law. I began by observing the origins of the GVL, its genesis as the first legal instrument to guarantee the protection of victims’ rights in Mexico. I subsequently analyzed the numerous obstacles that delayed the enactment and

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implementation of the Law. And before introducing the case of Ayotzinapa, I studied the reasons that have accounted for the weak implementation of the General Victims’ Law, including the demise of the MPJD, the Government’s unwillingness to sanction states that fail to abide by their responsibilities under the GVL and the internal controversies within the CEAV. I concluded with the case of Ayotzinapa, illustrating that mobilization led by victims’ and civil society organizations is insufficient to bring about the successful implementation of the GVL when it is not accompanied by the support of government authorities.

The successful implementation of the General Victims’ Law is a pending project, which depends on civil society’s continued fight for what is right, and Government authorities’ willingness to accompany victims in their fight. Fortunately, today, victims can have recourse to a wide array of international instruments, beyond those available at the national level. They can present their cases before the IACHR and other regional or international bodies to demand justice and truth and be accompanied by a whole host of agents ready fight for what is right along their side. While the whereabouts of the 43 disappeared students associated with the Ayotzinapa case is yet to be discovered, the world is closely observing what happens in Mexico and politicians are mindful of new witnesses, for they can overshadow their own political agenda.

This study invites readers to look beyond the text of laws and the formal actions of government authorities and find the rules that are actually being followed and the interests that motivate individual or collective actions. Only by looking beneath the formal systems that constitute a cosmetic overlay to the informal rules that are actually regulating the politico-security game will civil society learn to disrupt government’s simulations of justice. And only through that discovery will civil society be able to dismantle the system in place to advocate for
one in which the text of the law is actually respected and individuals are subjects of rights, not homo sacers. Going forward, future studies must focus on identifying what tools civil society organizations can turn to and embrace when their projects are successful but insufficient; how they can resist the dark currents of impunity, corruption and internal weakening; and how they can effectively advocate for a system in which whispers of solace become unnecessary.
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